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International Environmental Law Principles: An Assessment on Ethiopian Legal and Policy Framework

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Abstract: *A number of international environmental law principles are emerged and still emerging mainly from treaties and customary international law. The most common of these principles include principle of State Sovereignty and Responsibility, Pre-cautionary, Prevention, Polluters Pay, Sustainable Development, Public Participation and Common but Differentiated Responsibilities. Whether this principle has enshrined or not under the Ethiopian legal and policy framework, the extent of their incorporations and as to which principle is given higher attention than the other, requires closer assessment. This paper assesses the recognized international environmental law principles from the perspective of the Ethiopian legal and policy framework and argues that although the practical implementation is questionable the most common International environmental law principles are adequately incorporated, either explicitly or implicitly. The paper also argue that the principle of Sustainable Development is given greater attention than other principles since it is treated as an end by itself while the remaining are treated as a means to achieve sustainable development.*

Keywords: International Environmental Law Principles, General Principle of Law, Sustainable Development, Environmental Impact Assessment,

Abbreviations
GPL-General Principles of Law
PIEL- Principles of International Environmental Law
IEL- International Environmental Law
CIL- Customary International Law
PPP- Polluters Pay Principle
SD- Sustainable Development
EIA- Environmental Impact Assessment
EPC- Environmental Pollution Proclamation
EPE- Ethiopian Environmental Policy

1. Introduction

International Environmental law (hereinafter referred as IEL) is relatively young branch of International law which is developed in response to pressing concern on the state of the environment such as over exploitation, loss of biodiversity, desertification, pollution water and treat of global warming. Thus, in the nineteenth century, various environmental treaties related to the protection of certain species of wildlife, flora and fauna, anti pollution were concluded and served as primary source of international environmental law. The law has synergies with related areas of international law like international trade, human rights, and so on.[1]

However, as per art.38 of the ICJ statute in addition to treaty laws, general principles of law (herein after referred as GPL) are relevant source of International Environmental law (in determining the right and obligation of states with respect to the conservation and protection of the environment. Most multilateral environmental agreements refer to certain principles of international environmental law (hereinafter referred as PIEL). Principles such as the state sovereignty over own resources and the principle of common but differentiated responsibilities have been enshrined in the Rio Declaration that was adopted at the Rio Conference in 1992.[2]The remaining principles also have been incorporated in another international document in one way or another. In addition, different countries and institutions/organizations have adopted their own version environmental laws and policy which consists of PIEL.

In Ethiopia, one may wonder to what extent PIEL are adopted in the legal and policy framework. The FDRE constitution, the Pollution Control Proclamation, the Environmental Impact Assessment proclamation, the Environmental Control Organs Establishment, the Mining, Fishery, Biodiversity and other related proclamations, as well as the 1997 Environmental Policy has something to say about IELPs but it further requires an assessment as to whether PIEL has been incorporated under the Ethiopian legal and policy framework or not, is the incorporation good or bad*(i.e.,* the extent of the adoption) and as to which principle is given

[1] Schrijver Nicolas Jan, Soverginity over Natural Resources,(1995),p.218
[2] ---------,International Environmental Law, Multillateral Environmental Agreements(Hannoi,2017), p.20

due attention. The answer to these questions is not as such easy since the rules governing environmental related issues are very diversified and scattered in to different piece meal legislations.

The aim of this article is therefore to assess carefully to what extent general principle of international environmental law is enshrined or incorporated under the Ethiopian legal and policy framework. In doing so, through analysis and assessment of literature, most relevant national laws, and international environmental instruments, the paper first tries to clarify the concept of general principle of international environmental law, analyze its functions, and legal status. And it also explains the meaning and nature of the most common PIEL together with the international documents or custom within which they are enshrined. Finally, it review and make assessment how some of the most relevant Ethiopia domestic laws and policy reflects IELP including as to which principle is more recognized than the others. Since the paper work has time and scope limitation only four relevant domestic legislations and the policy are selected for assessment. Consequently, the paper should not be taken as a definitive work on the subject.

2. The Concept, Function and Legal Status of International Environmental Law Principles: An Overview

2.1. The Concept of IELPs

When we think of IELP, it is important to refer Art.38 of the Statute of International Court of Justice (ICJ). According to this provision treaty, custom, general principles of law and judicial decisions as well as writings of legal experts are the source of international law in general so that the court can resolve a case on the basis of these sources. Thus, since IEL is part and parcel of international law, the above sources including the general principles mutantis mutandis applies.

There is neither official definition nor a collection of internationally recognized General Principles of Law (GPL). One ICJ judge Cancado Trindada tried to define GPL as basic pillars of the international legal system which encompasses moral value, concept of justice and reflecting the conscience of the international community which are stated in general terms and do not have a specific content.[3] Most professional lawyers agree that GPL cannot stand alone but need transformation or need to have root into binding obligations in order to play their at most role in international life. General Principles of Law, even if they are part of the law are norms of general nature which give guidance to state behaviour without being directly applied. The violation of such principles cannot be pursued in international courts unless they are made operational by means of more concrete norms such as treaty and customary international law (hereinafter referred as CIL). [4] But whatever definition is given and whatever distinction is made no one deny that GPL are important tools of international law in different aspect.

The general legal principles which serve as principles of IEL are two groups of principles. One is the GPL under the general public international law as applied to environmental laws since IEL is branch of International Law. This kind of principles include the principle of State Sovereignty over natural resources with its own limitation, principle for management of shared natural resources and common property, principle of common heritage of mankind, the principle of Co-operation, duty to inform and consult. The Second group of GPL are principles of IEL in the strict sense(i.e., from the beginning) which includes principle of Sustainable Development, principle of Common but differentiated responsibilities, principle Precautionary, principle of Prevention and the principle of Polluters Pay.[5]

In terms of scope not every principles has the same scope in IEL. Some relates to injunctions/ prohibition of state and its peoples from acting in certain way in their own jurisdictions while others related to obligations with respect to neighbours, international areas or the global environment in general.[6] Thus, some imposes positive duty while other principles tend to impose negative duty.

In this context, the main principles of IEL concerning the conservation and protection of the environment emerges from multilateral agreements, customary law, international case law and soft laws such as the Stockholm and Rio Declarations.

2.2 The Function of IELPs

The general principles of international environmental law which mainly have emerged from international treaties, agreements, and customs provide various function/significance towards the protection of the environment. The generality nature of these principles makes them applicable to the whole international community.[7]Among the functions of IELP:-

- Complexities of international environmental regulation and the difficulty to reach an agreement on environmental rules between States (because they are at different stages of development and economic interests) suggest that effective environmental regulation cannot be achieved by clear and precise legal rules applicable in all circumstances. Rather, it requires general norms, i.e. principles that may serve as the basis for more specific and differentiated rules in particular legal areas and situations. IELP by allowing for a wide range of meanings, by leaving adequate room for interpretation and elaboration are more suitable to meet the task than specific and detailed rules. Therefore, principles can make environmental decision making process less cumbersome and time-consuming.[8]

[3] Jeroen Van Bekhoven, Public Participation As General Principle of International Environmental Law, Its Current Status and Real Impacts,(Sep,2016),pp.224-225

[4] Winfried Lang, UN Principles and Internatonal Environmental Law,(1999), pp.158-159

[5] Hans Chr.Bugge, Principles of International Environmental Law,pp.1-4

[6] Schrijver,(1995), p.227

[7] Max Valverde Soto, General Principles of International Environmental Law,(Costarica,1996), p.193

[8] Louis Paradell-Trius, Principles of International Environmental Law:Overview(oxford,2000), p.93

- Principles are well suited to face the scientific uncertainty and the speedy scientific changes surrounding some environmental problems. Principles can adequately operate in the dynamic regulatory regime required to meet these challenges. In short, in the absence of more fixed and defined environmental obligations, principles provide a degree of predictability regarding the parameters within which States should address environmental demand.[9]
- Principles can serves as basis for further negotiation of bilateral or multilateral environmental agreement and provide guidance for the harmonization of national laws.
- Principles may crystallized and produce customary international law
- Due to their moral force and mixed legal status they facilitate compliance with environmental standards.
- They serve as basis for dispute settlement and interpretation.

Generally, all the above functions suggest that IELP suit the complexities of international environmental problems and can provide important legal significance in the field of international environmental law by serving as interpretative tool; gap filling tool; and as means of stabilizing state practice and compliance.

2.3 The Legal Status of IELPs

It is difficult to establish the parameters and determine the legal status of each general principle of EIL in the absence of judicial authority which is assigned to identify PIEL; because they have emerged over a relatively short period of time, and in the presence of conflicting interpretations in state practice. However, the legal status and application of each principle in relation to a particular activity/incident must be considered on the facts and circumstances of each case having regard to several factors including the source of the principle, its content and the circumstances in which it exists.[10]

Though no general conclusion can be made as to their legal status and binding or non binding nature, some PIEL are well established as customary international law and as treaty obligations, others are newly emerging legal obligations, and still others have a lesser developed legal or normative status as guiding interpretative standard or simply inspirational norms.[11] [12]

In all case, however, the principles have broad support and are reflected in state practice through repetitive use or reference in international and national legal texts. Of these general principles, Principle 21 of the Stockholm Declaration (sovereign right of States to exploit natural resources and the responsibility to ensure that the activities within their jurisdiction do not cause damage to the environment of other States/ beyond the limits of national jurisdiction) and the co-operation principle are sufficiently well established international customary obligations the violation of which would give rise to legal remedy. The same may be said generally in respect of the precautionary principle which shifts the burden of proof in cases related to the conduct of certain hazardous activities. Some international courts also have now been willing to apply the precautionary principle to resolve environmental disputes. The status and effect of the other principles is less clear and whether they give rise to actionable obligations or not is open to question unless incorporated under binding legal documents.[13]

In general, arguments can be made that each IELP have significant legal consequences as states and international courts/tribunals are increasingly prepared to rely on some of these principles to justify their actions and to reach conclusions in the particular sets of facts or cases.

3. International Environmental Law Principles and Their Incorporations under International Environmental Documents

There are a number of IELP which are enshrined under various international environmental instruments as well as which are part and parcel of the public international law itself forming custom. For instance, Article 3 of the Climate Change Convention enshrines the protection of climate for the benefit of present and future generations, the principle of common but differentiated responsibilities and respective capabilities, the principle of equity, the principle of full consideration to the specific needs and special circumstances of developing country parties, the precautionary principle, and the principle of sustainable development. The preamble of this Convention also refers to Principle 21 of the Stockholm Declaration (sovereign right of States to exploit natural resources and the responsibility to ensure that the activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction) and the principle of intergenerational equity. Article 3 of the Biodiversity Convention includes the text of Principle 21 of the Stockholm Declaration as the sole Principle. Other instruments also set out IELP such as the Rio Declaration on Environment and Development (Rio Declaration) and the Agenda 21. The 1985 Vienna Convention for the Protection of the Ozone Layer (the Ozone Layer Framework Convention) also has established a list of general obligations (Article 2).

Therefore, before making an assessment into the Ethiopian legal and policy framework from the standpoint of IELP, it is important to have a brief discussion about the common IELP as they enshrined under different environmental documents and custom.

3.1. The Pre-Cautionary Principle of IEL

[9] Id, p.94
[10] Philippe Sands, Principles of International Environmental Law,(2nd ed),(Newyork,2003), p.231
[11] Ibid
[12] Hannoi,(2017), pp.20-21
[13] Philippe Sands, (2003), pp.232

The precautionary principle is a common legal concept in national and international regulatory policies and laws. In general terms, it means that if there is threat or risk of serious or irreversible damage to human health or the environment, precautionary actions must be taken even though there is lack of full certainty surrounding the issue. The main idea of the principle is about how to act in situations of uncertainties, lack of knowledge, risks. It is the opposite of the traditional wait-and-see approach.[14] [15]

The principle has already incorporated in several multilateral environmental agreements; soft laws such as Rio Declaration principle 15, and hard laws such as Framework Convention on Climate Change Art.3, the Montreal Protocol, the World Charter for Nature, and the Biodiversity Convention. The Rio declaration under principle 15 has stated that in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. 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.[16] Thus, the principle recommends immediate actions to be taken in response to potential environmental threats than waiting for certain and absolute scientific proof.

The Precautionary Principle reverses the burden of proof. That is, the polluter or resource user bears the legal duty of proving his activity is not harmful to the environment before he can proceed. But shifting the burden of proof involves practical problems because countries making the decision may vary significantly in their assessments of what constitutes serious threats or risks or scientific uncertainty.[17]

There are two conditions for the application of the Precautionary principle. The first condition is threat of serious or irreversible environmental damage. The second is scientific uncertainty as to the environmental damage. The precautionary principle will not apply if there is no scientific uncertainty; measures still need to be taken but these will be preventative measures to control/regulate the relatively certain threat of serious or irreversible environmental damage, rather than precautionary measure which is appropriate in relation to uncertain threats.[18]

States have extensively recognized the precautionary principle through their participation in the negotiations and ratification of international environmental agreements. By examining international environmental agreements, national laws and policies, and judicial decisions, we can reasonably conclude that there is sufficient evidence to prove state practice and opinion juris as required by Article 38(1b) of the Statute of the ICJ for proving the existence of an international custom and indicates that the principle has been accepted as a binding international norm by a significant number of states.[19]

3.2 The Prevention Principle of IEL

This principle requires the prevention or minimization of damage to the environment by reducing, limiting or controlling activities which might cause such damage. So that, state are required to prevent damage to the environment within its own jurisdiction by means of appropriate regulatory, administrative and other measures.[20]

The preventive principle requires action to be taken at an early stage and, if possible, before damage has actually occurred. Like the precautionary principle it is reflected in state practice and supported by an extensive body of domestic environmental legislation which establishes authorization procedures, environmental standards, access to environmental information, and the need to carry out environmental impact assessments in relation to the conduct of certain proposed activities. The preventive principle may also back by the use of penalties and other liability rules.

The preventive approach has been endorsed, directly or indirectly, by the 1972 Stockholm Declaration, indirectly by the Rio Declaration, the 1982 World Charter for Nature, the 1989 Lom´e Convention and the 2001 Treaty establishing the East African Community.[21] It has also been referred to by the ICJ in the *GabcõÂkovo-Nagymaros* Case.[22] The prevention principle is almost universally believed to form part of customary international law and also viewed as being at the basis of many environmental agreements.[23]

In theory, dividing line may be drawn between preventative and precautionary principles using uncertainty as the criterion. If the environmental effects of a particular activity are known, measures to avoid them may be termed preventative. If such effects are uncertain, the same measures may also be labeled precautionary.[24] As knowledge on the issue advances, the measures automatically will become less precautionary and more preventative. Ultimately, once all uncertainty has been removed, precaution is no longer

[14] Hans Chr.Bugge,(-------), pp.7-8
[15] Environmental Law Principles and Concepts,(OECD)(Paris,1995), p.15
[16] Ibid
[17] Id, p.16
[18] Axel Luttenbergerger, The Role of Precautionary Principle in Environmental Protection of Costal Area,(2014),pp.76-77
[19] Rabbi Elamparo Deloso, The Precautionary Principle: Relevance in International Law and Climate Change,(Dec.2005), p.24
[20] Philippe Sands, (2003), p.246
[21] Id, p.247
[22] Louis Paradell-Trius (2000), pp.97-98
[23] Arie Trouwborst, Prevention, Precaution, Logic and Law,(Netherlands), p.112
[24] Ibid

the right word. Strictly speaking, the taking of preventative action is conditional upon the existence of certainty regarding the threats involved. Conversely, precautionary means acting as soon as alarm is ringing even if certainty is not yet available.[25]

3.3 Sovereignty and Responsibility Principle of IEL

International environmental law has developed between two apparently contradicting principles. First, states have sovereign rights over their natural resources. Second, states should not cause damage to the environment. Therefore, to strike the balance the principle of sovereignty has the following environmental limitations:-

Principle not to Cause Tansboundary Harm/damage: The concept of sovereignty is not absolute, and is subject to a general duty not to cause environmental damage to the environment of other states, or to areas beyond a state's national jurisdiction. The principle not to cause harm is endorsed as the basic obligation of international environmental law in Principle 21 of the Stockholm Declaration and the *Trail Smelter* and *The Legality of the Threat or Use of Nuclear Weapons* Case by ICJ. After its incorporation in the Stockholm Declaration, the principle has been incorporated in other international instruments such as Rio Declaration and has enjoyed wide support in the practice of States and other members of the international community. It is universally agreed that it reflects a general rule of customary international law.[26] [27]

Principle of Shared resources: shared resources are a resource which does not fall as a whole within the jurisdiction of one state, but touches common political borders or migrate from one territory to another. Examples of resources which may be shared or transboundary include river basins, watershed areas, marine living resources, and migratory wildlife. Most environmental agreements for the management of shared resources contain the general obligation for equitable and harmonious utilization of the resource. This obligation is primarily related to cooperation on the basis of a system of information, prior consultation and notification in order to achieve equitable use of such resources without causing damage to the interests of other states.[28]

Principle of Common Heritage of Humankind: According to the principle, defined territorial areas which have elements of cultural or natural significance should be held in trust for future generations and be protected from exploitation by individual, states and corporations. States are only administrators of the wealth and must cooperate in the conservation and share of the economic benefits of those areas For example, areas beyond national jurisdiction such as the high seas are considered common heritage of humankind and the applicable concept is not sovereignty, but common heritage of humanity.[29]

This all limitations demonstrate that the principle of sovereignty is not absolute but rather subject to a general duty not to harm the interests of other countries through transboundary pollution or resource degradation.

3.4 The Polluters Pay Principle (PPP)

The Polluter Pays Principle (hereinafter referred as PPP) which is also called the concept of internalization of environmental costs has evolved from legal and economic principle, to environmental damages cost principle.[30]The principle requires that the polluter should bear the expenses of carrying out pollution prevention measures or paying for damage caused by his pollution. It also seeks to ensure that the full environmental costs are reflected in the ultimate market price for goods and services. The main concern of the principle is as to who should pay for environmental protection than how much should be paid, leaving the amount for public authorities.[31]The concerned public authority would determine the quantum of payment by following legal or administrative procedures.

Generally speaking, the fundamental idea behind the PPP is that states should take the necessary actions to ensure that polluters and users of natural resources pay the full environmental costs of their activities (the internalization of environmental externalities).[32]

The PPP was initially adopted in the early 1970s by OECD, and then the EC (European Community) Treaty and Principle 16 of the Rio Declaration also incorporate it by making reference to the internalization of environmental costs. Further support for the PPP was given in Agenda 21 which suggested that governments use free market mechanisms in which the prices of goods and services should increasingly reflect the environmental costs.[33]

Environmental taxes, charges, trade permits and other economic instruments, if well designed, can help to move market prices more closely towards full environmental costs. Because, these costs promote the purchase or use of less environmentally harmful

[25] Id, p.117
[26] Max Valverde (1996), p.194
[27] Louis Paradell-Trius, p. 97
[28] Axel Luttenbergerger,(2014), p.8
[29] Max Valverde,(1996), p.196
[30] Sally-Ann Joseph, The Polluter Pay Principle and Land Remediation: A Comparison of the United Kingdom and Australia Approaches(2013), p.25
[31] Axel Luttenbergerger,(2014), p.12
[32] Robert A.Coly, Development and Implementation of Polluters Pay Principle in International Hazardous Materials Regulation,(2012), p.33
[33] Id, p.36

alternatives as well as initiate polluters to invest in innovative solutions to environmental problems to improve their profit margins.[34] [35]

However, the PPP has not received the same degree of support and attention given to the preventive or the precautionary principle. It is doubtful whether it has achieved the status of a generally applicable rule of CIL, except in relation to states in the EC and the OECD.[36]The main reason for the lack of support is that governments have found measuring of environmental costs and benefits difficult at the national level and even more difficult at international level to internalize environmental costs for the use and degradation of shared transboundary resources and global commons.[37] [38]

3.5 The Principle of Common but Differentiated Responsiblities

This principle provides that all States have common responsibilities to protect the environment and promote sustainable development, but the actions required from different States vary with their different social, economic(depending on the contribution of the country to the environmental problem and its capability for addressing the environmental problem) and ecological situations. It weakens responsibilities for the developing country. In other words, developed countries will be asked to carry more of the burden of achieving sustainable development on a global basis, since they contribute more to environmental degradation and they have greater financial and technical resources. [39]

The principle of common but differentiated responsibility has developed from the application of equity in international law and the recognition that special needs of developing countries must be taken into account in the development, application and interpretation of rules of IEL. It is now recognized under the UN Framework Convention on Climate Change, Principle 7 of the Rio Declaration and the Paris Agreement. Principle 7 of the Rio Declaration states the principle: States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, states have common but differentiated responsibilities.''[40]

Generally, the principle includes two elements. The first element concerns the common responsibility of all states for the protection of the environment at national, regional and global levels. Common responsibility describes the shared obligations of two or more states towards the protection of a particular environmental resource. The second element concerns the need to take in to account of different circumstances, particularly in relation to each state's contribution to the creation of a particular environmental problem and its ability to prevent, reduce and control the threat.[41]Differentiated responsibility can be expressed in different techniques such grace periods, financial, technological and other technical assistance, delaying implementation, and less stringent commitments to developing countries to help them implement the obligations of particular treaties.[42] Despite its recent emergence, the principle of common but differentiated responsibility finds its roots numerous multilateral environmental agreements and is supported by state practice but still remains controversial.[43]

3.6 The Principle of Sustainable Development

The principle of sustainable development (hereinafter referred as SD) is a principle which requires for a kind of development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The principle also requires that the environment should be considered as part of all economic and social development policies. The contents of SD are described as an aggregation of other principles of IEL. SD proposes that the primary focus of environmental protection efforts is to improve the human condition. Thus, the protection of wildlife, natural resources and so on is not a goal in itself but is a necessity means for ensuring a higher quality of life for humans.[44]

SD, as reflected in international agreements, encompasses at least three substantive elements:

A. Intergenerational Equity: According to this element each generation is responsibility to leave an inheritance of wealth no less than what they themselves have inherited. So, the present generation holds the natural resources in trust for future generations.

B. Sustainable Use of Natural Resources: Natural resource exploitation should proceed in a way and at a rate that does not lead to the long-term decline of these resources and guards against their future exhaustion.[45]

[34] Axel Luttenbergerger,(2014), p.14
[35] Robert A.Coly,(2012) p.34
[36] Philippe Sands,(2003), p.280
[37] Axel Luttenbergerger,(2014), p.14
[38] Robert A.Coly,(2012), p. 34
[39] Hannoi,(2017), p.23
[40] Philippe Sands, (2003), p.285
[41] Ibid
[42] Id, p.289
[43] Id, p.285
[44] Max Valverde (1996), p.206
[45] Axel Luttenbergerger,(2014),p.5

C. Integration of Environment and Development: In order to achieve SD, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. Therefore, when implementing economical and social development objectives, environmental obligations should be taken into consideration, and vice versa.[46]

In addition to the substantive elements, SD also encompasses procedural elements. There is general consensus that the procedural elements of SD are the right to have access to information relating to the environment, the right to participate in the decision-making process, and the right to have access to remedies in the event of any damage. These are universally accepted human rights that have been extended to environmental issues more recently. A particularly important development in relation to procedural elements is the 1998 of Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Rio Declaration also has significant relevancy.[47]

When we look at the international environmental agreements SD has been expressly or implicitly referred in a number of them such as Principle 3 and 4 of Rio Declaration, Agenda 21, Principle 1 of Stockholm Declaration, the 1987 report of World Commission for Environment and Development, and Art.33 of the 1990 Lome Convention.[48] Similarly, the Uruguay Round Agreement establishing the World Trade Organization and the Treaty establishing the European Community (EC) also includes references to the objective of sustainable development and the need to protect/preserve the environment.[49] With regard to the legal status of SD, the procedural components of have already attained normative status being part of international human rights laws and considered as part of CIL. Whereas for the substantive components, it can be argued that at least the principle of integration has received sufficient state practice to be considered normative.[50]

3.7 The Principle of Public Participation

Participation in decision-making provide opportunities for people to have a say in decisions affecting their living conditions since clean environment benefits all and no one can escape from the impacts of a polluted environment. Not only this, environmental issues are best handled with participation of all concerned citizens, at all levels. With public participation the quality of the decisions on environmental issues as well as the implementation of these decisions will be improved. Consultations with the public can provide different points of view, various kinds of knowledge, and useful insights on overall efficiency of environmental decision-making.[51] Therefore, to achieve high quality decision and implementation at the national level each concerned individual needs to have appropriate access to environmental information including information on hazardous materials and the opportunity to participate in decision making processes.

The Public Participation principle consists of three different elements: participation in decision-making processes on environmental issues, access to environmental information, and access to administrative/judicial proceeding.[52]Without access to environmental information, the participation in decision-making is useless. Similarly, obtaining a form of compensation for environmental harm through administrative or judicial proceedings is difficult if there is lack of environmental information on the table.[53] Therefore, the three elements are connected to each other and the effective fulfillment of one of the elements depends on the other elements.

The Principle is enshrined in U.N. World Charter for Nature, Principle 10 of the Rio Declaration, the Convention on Biological Diversity, the U.N. Convention to Combat Desertification and Convention concerning the Protection of the World Cultural and Natural Heritage. The Climate Change Convention and the Kyoto Protocol also call upon State parties to promote and facilitate public access to information on climate change and its effects.[54]The principle also found in the regional environmental agreements, particularly in European environmental law. The most important convention concerning public participation applicable within Europe is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which is known as the Aarhus Convention. [55] So far this convention is the only environmental agreement that is completely dedicated to the principle of public participation.

Generally, public participation should be considered as a principle of international environmental law since it is clearly accepted by the international community and incorporated as legal norm at the national, regional and international level.

4. International Environmental Law Principles: An Assessment on Ethiopian Legal and Policy Framework

In Ethiopia there are a number of legislations and a Policy which have direct or indirect relevancy towards the protection and conservation of the environment. The legislations can be considered into two groups. Firstly: domestic laws such as the FDRE Constitution, the Pollution control Proclamation, Environmental impact assessment Proclamation, Water Resource Management Proclamation, Public Health Proclamation, Proclamation on the Establishment of Environmental Protection Organs, Federal Rural

[46] Max Valverde,(1996), p.207
[47] Sumudu A. Ataputtu, Emerging Principle of International Environmental Law, p.136
[48] Max Valverde,(1996),p.207
[49] Axel Luttenbergerger,(2014), p.5
[50] Max Valverde Soto(1996), pp.183-184
[51] Jeroen Van Bekhoven, (2016), p.229
[52] Id, p.228
[53] Id, p.229
[54] Id, pp.242-243
[55] Ibid

Land Administration and Land Use Proclamation, Solid Waste Management Proclamation, Mining proclamation, Development Conservation and Utilization of Wildlife Proclamation, Forest Conservation, Development and Utilization Proclamation. Secondly: those international environmental agreements in which Ethiopian is a party and become the integral part of the law of the state by virtue of Art.9 (4) of the constitution. The policy which have direct relevancy to environmental issues particularly refers to the 1997 Environmental Policy.

Within the above mentioned context, the environmental laws and policy of Ethiopia has incorporated the common principles of IEL which are briefly discussed in the previous section. Therefore, taking in to account the time limitation the paper has, the assessment on the selected domestic laws and policy as to whether the principles are incorporated or not, the extent of the incorporation and as to which principle is given a due attention is conducted as follows.

4.1 Assessment of the Legal Framework

The FDRE Constitution:

The FDRE Constitution incorporates a number of provisions relevant to the protection, sustainable use, and improvement of the country environmental situations. When we look at relevant provisions of the text, it would be evident that some of the IELP are given due attention under the grand law of the state in a general manner opening a room for interpretation. The Principle of Public Participation in the environmental issues is clearly recognized under Art.43 (2), 89(6), and 92(3) of the Constitution. According to this provisions the people of Ethiopia has right to access environmental information, to participate and be fully consulted with respect to environmental policies and activities that affects their interest. In addition to the principle of participation, the principle of sustainable development as well as common but differentiated responsibility has also enshrined under the constitution. Under Art 43(1) and 89 the legislator *(i.e,□□□-□□□□□ □□□□ □□□)* intentionally qualifies the right to development of the people only to that of sustainable development, thus no one cannot invoke the constitutional provisions to support his claim for unsustainable development. On the other hand, the government duty is only towards ensuring sustainable development for the common benefit of the community. In addition to this principles as per Art.85, 89 and 92(1) (4) of the constitution both the government of Ethiopia and the citizens has common responsibility to protect the environment but due to the better capacity of the government than the citizens more and burdensome responsibilities are vested on the shoulder of the former including the duty to follow up development projects. Generally, from the above constitutional provisions it is safe to conclude that at least the public participation, sustainable development and common but differentiated responsibility PIEL has enshrined. The incorporation of these important provisions into the supreme law of the land has raised environmental issues to the level of fundamental human rights and has resulted adoption of other environmental legislations. However, the question of implementation could be arguable and not within the scope of this paper.

The Proclamation for Establishment of Environmental Protection Organs:

A number of proclamations and regulations which contain provisions for the protection of the environment are adopted. The Environmental Protection Organ Establishment Proclamation No. 295/2002 which is now replaced by Proc. 916/2007(the organ is established as a Ministry)[56] is one of them. Since the substantive content of the two laws are more or less similar, the assessment basis on the independent environmental legislation.

Under the preamble and substantive part of the proclamation some of PIEL has been incorporated in one way or another. While explaining the reasons for establishment of independent environmental protection organ(now a Ministry), the preamble stated that separate organ is established to achieve sustainable use of environmental resources and to bring coordinated common but differentiated responsibilities among environmental protection agencies at federal and regional levels. To this end, among other things ensuring sustainability of the environment is one of the important objectives of the environmental authority. [57]Furthermore, the term protection is defined in a compatible form with the internationally recognized definition of SD as sustaining natural resource with the view to safeguard the interest of the present generation without compromising the opportunity for future generations.[58] Thus, the organ is expected to come up with environmental policies, strategies and implementation techniques which will contribute to the achievement of SD, not vice versa. Regarding Public Participation principle, both the federal and regional environmental organs are required to consult the public at large and other concerned organ so as to get approval while preparing, reviewing or updating environmental policies, law and strategies.[59]

The organ is expected to establish a system of environmental assessment, set environmental standards and follow of compliance, formulate environmental safety policies and laws on hazardous substances or wastes.[60]As the discussion on the IELP has been made, impact assessment, environmental standards, safety polices and so on are mechanisms by which the principle of prevention can be applied. They are the manifestation of the principle. Finally, the Polluter Pay principle is also visible under Art.6 (12) which mandates

[56] Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proclamation No. 916/2015

[57] The Environmental Protection Organ Establishment Proclamation No. 295/2002, Art. 5 and 15(2)
[58] Id, Art. 2(6)
[59] Id, Art. 6(2) and 15(1)
[60] Id, Art. 6(3,4,7,10)

the authority to propose disincentive measures such as mandatory payment of compensation for any environmental damage to discourage practices that may affects the sustainable use of natural resource.

Therefore, it is possible to conclude that the proclamation has played significant role by incorporating directly or indirectly the IELP of Sustainable Development, Prevention, Polluter Pay and Common but Differentiated Responsibilities between the federal and regional environmental organs.

The Environmental Impact Assessment Proclamation:

The Environmental Impact Assessment Proclamation No. 299/2000 contains provisions which are designed to ensure sustainable development, public participation, the taking of prevention and pre-cautionary measures, and to ensure the polluter pays the cost of environmental damages. Environmental impact assessment (hereinafter referred as EIA) is a scientific prerequisite for the application of the prevention and pre-cautionary principles. [61] Which means, when the finding of the EIA shows that the environmental damage or loss of a given project is uncertain then there is a need to apply the pre-cautionary measure and when the finding of the EIA has disclosed certain environmental impacts of the given project then there is a need to apply preventive measures to avoid or reduce the identified impacts. Therefore, the main reason of conducting EIA is to predict environmental effects of development activities and to take either prevention or pre-cautionary measures based on so as to ensure sustainable development.

Under the proclamation, the fact that any project is prohibited from commencement without authorization of the concerned environmental organ before the conduct/evaluation of EIA;[62]the fact that the owner of a project is expected to come up with EIA study report together with the means to prevent the likely adverse effects of the project on the environment; the fact that authorization will not be given if the negative impact of the project cannot be satisfactorily avoided[63] or when the negative and beneficiary effect of the project is arguable/uncertain;[64]the fact that conditional authorization is given when the negative impact of the project is less and can effectively be avoided[65] shows that the Principle of Prevention and Pre-Cautions are purely incorporated and given due attention under the Ethiopian environmental legal framework.

Not only these principles, but also the Polluters Pay and Public Participation are effectively enshrined in the proclamation. As far as the former is concerned the cumulative reading of Art.3 (4) and 18(5) of the proclamation gives us the assertion that the owner of a project or any person at fault will be liable to restore or in any other way to compensate the environmental damage he/she has caused. These provisions are a clear reflection of the PPP. The latter is exclusively recognized under Art.15 under the same caption, without forgetting other relevant provisions.[66]Accordingly, any EIA performed without the consultation with the communities likely to be affected by the project or that particular intended activity is not acceptable. The authority while evaluating the EIA study is also expected to take into account the public opinion and comments. So, the authority is not the sole organ with full discretionary power to decide over the acceptance or rejection of the EIA report in particular and the project in general.

Thus, the overall purpose the EIA and the EIA proclamation can be summarized as: ensuring sustainable development, taking of either preventive or pre-cautionary measure as necessary, making the polluters pay for the environmental damage they have caused and ensuring that the concerned members of the community have effectively participated in the process. And here we can see that the principle of SD, Prevention, Precaution, Polluters Pay and Public Participation are incorporated.

The Environmental Pollution Control Proclamation:

The Pollution Control Proclamation No.300/2002 (hereinafter referred as EPC Proclamation) is one of the core environmental legislations which have direct relevancy towards the protection the environment. In different part of the proclamation we can find the Prevention, Precaution, Polluters' Pay and Prevention principles of international environmental law.

Preamble is where the law maker states the reason why the law is enacted and the intention behind. With is purpose the preamble of the pollution proclamation begins with the recognition of Common Responsibility of the government and all people to protect the environment and ends by ascertaining that the whole purpose of the proclamation is to take pre-cautionary (elimination) or prevention (mitigation) measure to avoid or reduce undesirable consequence of pollution. Furthermore, by virtue of the proclamation the organ (now Ministry) is mandated:

- To take measures against a person who pollute the environment. And that person has a legal duty to clean up or pay the cost of the cleaning up; [67](Polluter Pay Principle)
- To close or relocate the project to prevent the harm;[68](Prevention Principle)
- To order owner of a project to install a sound technology that avoids or reduces waste,

[61] The Environmental Impact Assessment Proclamation No. 299/2000, Preamble Paragraph 2 and 3
[62] Id, Art. 3(10)
[63] Id, Art. 9(2)(c)
[64] Id, Art. 4(2) and 7(1) respectively
[65] Id, Art. 9(2)
[66] Id, Art. 6(1) and 9(2)
[67] The Pollution Control Proclamation No.300/2002, Art. 3(4),16,17
[68] Id, Art. 3(5)

- And to authorize/permit the generation, keeping, storage, transportation, treatment or disposal of any hazardous waste;[69] (Prevention Principle) as well as
- To set various environmental standards to reduce harm;[70](Prevention Principle)
- To assign environmental inspectors who will follow up compliance with environmental standards and other requirements.[71] (Prevention and Precautionary principle)
- To provide incentives and custom duty exemption for the introduction of environmentally friendly equipment and methods.[72] (Prevention principle)

We can see that most of the provisions of the EPC Proclamation are interconnected with the principle of Prevention. Similarly Art 3(4) incorporates the Polluter-pays Principle and empowers the EPA to make the polluter to clean up or pay the cost of cleaning up the polluted environment. Again, Art 17(b) (c) of the proclamation empowers the trial court, in its discretion to order the person convicted for polluting the environment to cover the cost of cleaning up and restore the environment to the condition it was prior to the infliction of the damage and when such restoration is not possible to pay appropriate compensation.

Finally, the right to standing without the need to prove vested interest is one of the mechanisms to ensure public participation in the environmental issues. The proclamation liberalizes the civil procedure code traditional mode of litigation which requires vested interest and allows public interest litigation only with respect to the protection of the environment. It grants the standing procedural right[73] even to a private individual for initiating action against any person who is causing or is likely to cause damage to the environment. This provision of the proclamation when effectively utilized can facilitate easy access to justice and public participation on environmental issues.

Generally, the EPC Proclamation has placed its fingerprints in harmonizing the most common and accepted PIEL into the domestic legal framework. Particularly, it advocates for the Polluter Pays, Prevention, Precaution, Public Participation and Sustainable Development Principles. It also recognized that protecting the environment is the common responsibility of all but the task to be done varies to the government, the project owner, NGO's and the public at large.

Mining Operations Proclamation:

The proclamation governs the conduct of all mining operations and related activities within the territory of the Ethiopia. And it recognizes the general obligation of the government to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable development of the countries mineral resources.[74] Particularly, the licensing authority has a duty to ensure that the mining operation is carried out taking in to account the environment and the community in the area.[75]From these and other wordings of the proclamation, it is possible to infer that principle of Sustainable Development is the central objective of the law. In effect we can say that the principle is well established here.

Furthermore, the proclamation requires a person who wants to obtain mining operation license to submit an environmental impact assessment for approval.[76] Not just the EIA but also once the license is issued, any holder of a license needs to allocate funds to cover the costs of rehabilitation of any environmental impacts/damage caused by the mining operation and to allocate further funding in community development of the within the licensed area.[77] The law also has stated that non compliance with the EIA, environmental and health standards could result in the revocation or suspension of the license. And when the license is revoked or terminated for other reasons the license holder is required to address and make things right in relation to the environmental and other effects of the operation.[78]

Conducting EIA, the need to comply with environmental standards and the taking of measures of revocation or suspension upon non-compliance are mechanisms by which the Principle of Prevention is applied in a given situation. Therefore, despite the fact the principle of prevention is not clearly mentioned under the proclamation it is still implicitly recognized. In addition, the requirement of allocating fund to cover the cost of rehabilitation is clearly aimed at making the Polluters to Pay for the environmental damage they caused by the mining activities. Even the revocation or close up or termination of the license cannot relive the holder of the license from covering the costs and address all environmental issues resulted from the operation. This shows that the Polluters Pay Principle is well incorporated under the proclamation. Finally, the requirement of funding in the community development also shows the government commitment to integrate development issues and environment, which is one aspect of the principle of Sustainable Development.

[69] Id, Art. 4(1)(2)
[70] Id, Art. 6
[71]Id, Art. 8
[72] Id, Art. 10
[73] Id, Art. 11
[74] Mining Operations Proclamation No. 678/2010 as amended by Proc. No. 802/2013, the preamble, paragraph. 3
[75] Id, Art. 52(4)(J)
[76] Id, Art. 28(1)(c), 26(1)(c) and 60(1)
[77] Id, Art. 60
[78] Id, Art. 61(3)(4) and 44(2)(e)

To summarize, the Mining Operation Proclamation has explicitly and implicitly enshrined the IELP of Sustainable Development, Prevention, and Polluter Pay in relation to the mining sector.

International Environmental Treaties and Customary International law:

Many treaties have been adopted for the protection of different aspects of the environment. Those treaties adopted and ratified by Ethiopia are part of the Ethiopian environmental legal framework. According to the Constitution, all international agreements ratified by Ethiopia are an integral part of the domestic law.[79] Starting from 1972 Ethiopia has ratified many multilateral environmental agreements, including:[80]

- Convention on Biological Diversity;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- United Nations Framework Convention on Climate Change and its Kyoto Protocol;
- Vienna Convention for the Protection of the Ozone Layer and
- Montreal Protocol on Substances that Deplete the Ozone Layer*;*
- Rotterdam Convention on Prior Informed Consent for Certain Hazardous Chemicals
- Stockholm Convention on Persistent Organic Pollutants and so on.

In addition to the ratified environmental treaties, there are customary international environmental related laws which are binding on the whole country without the need for securing consent such as principles of state sovereignty and responsibility.

Consequently, all International Environmental Law Principle which are parts of the international environmental treaties in which Ethiopia is a party and the CIL Principles which have environmental relevancy are technically considered as part and parcel of the Ethiopian environmental legal framework, as if they are incorporated by the state legislature itself.

4.2 Assessment on the Policy Framework:

The Environmental Policy of Ethiopia was approved by the Council of Ministers in April 1997. Like the Constitution, the Policy (hereinafter referred as EPE) set an objective of improving the well being and quality of life of Ethiopians and the promotion of sustainable development together with implementation strategies to achieve these objectives.

The EPE also provides a number of guiding specific IELPs that need to be used to guide development activities in different sector. Some of these principles are briefly discussed below to illustrate the incorporation IELP within the Ethiopian Environmental policy.

A. Public Participation – the need to encourage all individuals and the community to be actively involved in the planning, management and implementation of environmental issues affecting their lives and environment is widely recognized in the policy. The policy also calls for the empowerment of the communities' ability to prevent manipulated environmental decisions and for the wide dissemination/ access of environmental information.[81] This is similar to the international environmental principles of Public Participation.

B. Sustainable Development – the Policy requires that the use of renewable and non renewable resources should be sustainable, maintained and minimized in a manner that does not compromise the need of the future generation. In addition the protection of the environment should be integrated in ever development plan to assure continuous and uninterrupted access to land and natural resources.[82] This is a clear incorporation and reflection of Principle of Sustainable Development in the Policy.

C. Prevention – the policy has stipulated various sectoral and cross-sectoral specific environmental regulation mechanisms and standards; such as the adoption and dissemination of technologies that use resources efficiently, conducting mandatory environment impact assessment, setting regulation standards related to pollution and hazardous substance and so on.[83] These regulatory mechanisms are the feature of Principle of Prevention**.**

D. Precaution –The policy advises the concerned authority to take the decision on the side of caution when a compromise between short-term economic growth and long-term environmental protection is necessary. [84] Accordingly, when a decision is going to be made by assessing the potential damaging impact of a given activity, in all doubtful circumstance the Pre-Cautionary Principle should always be applied. This is the incorporation of Precautionary PIEL.

E. A Polluters Pay Principle – according to the policy, in all sectors of economic activity and especially in the industry sector the Polluters Pay Principle should be adopted and for its effective implementation the public and private sector planning, accounting and decisions should be based on covering the cost of any environmental damages. Therefore, we can see that the Polluter Pays Principle is also incorporated.[85]

[79] The FDRE Constitution, Art. 9(4)
[80] Mulugeta Getu, The Ethiopian Environmental Regime Versus International Standards: Policy, Legal and Institutional Framework, PP.61-62
[81] Ethiopian Environmental Policy,(1997), Art. 2.2.h and .i, Art. 2.3.b, i and m, Art.3.2.a and b, 3.3.f , Art.4.2. a-g
[82] Id, Art.2.2.a and b, Art.2.3.a,b, and c, Art. 3.1. a
[83] Id, Art.2.2.f, Art. 3.1.p and s , Art. 3.8.a
[84] Id, Art. 2.3.f, Art. 3.1.q Art. 3.8.a and b
[85] Id, Art. 2.3.g Art. 3.8.b

F. The Duty of the Government and the Public to Protect the Environment – in various provisions of the policy the common but differentiated responsibility of the government and the public (including individuals and private enterprises) towards the protection of the environment is recognized.

Generally, based on the above illustration of the link between the Policy and the IELP it is possible to conclude that the EPE has incorporated the most common PIEL.

5. Conclusions

International Environmental Law Principles (IELP) are principles which have direct and indirect relevancy in the protection of the environment. Many of them are part of binding or non-binding international environmental documents as well as the customary international law. Thus, some of them are binding with a normative value; some of them are non-binding which have interpretive value while some others are potentially emerging with inspirational value. The most common Principles of IEL includes Sustainable Development, Pre-Cautionary, Prevention, State Sovereignty and Responsibility, Polluters Pay, Public Participation and Common but Differentiated Responsibilities.

When we make a closer assessment on the legal and policy framework of Ethiopia from the stand point of these IELPs, the FDRE Constitution is the first law to be mentioned. Under the grand law of the state at least the Public Participation, Sustainable Development and Common but Differentiated Responsibility PIEL has been enshrined. Following the constitution the core environmental legislations are proclaimed with the aim of protecting the environment. In order to achieve their aim the Pollution Control, the EIA and Environmental organs proclamations has come up with guiding IELPs both as a means and as an end. Thus, we can say that the core proclamations has played their significant role in harmonizing/incorporating the most common and accepted the IELP into the domestic legal framework, directly or indirectly. The IELP of Sustainable Development, Prevention, Polluter Pay, Pre-caution, Public Participation, and Common but Differentiated Responsibilities between the federal and regional environmental organs or between the government and the citizens are enshrined in the legal framework. In this regard, the significance of Mining Operation proclamation cannot be underestimated. The ratified environmental treaties and relevant customary international law principles are also complementary source of environmental principles to the Ethiopian legal framework. The 1997 Environmental Policy of Ethiopia has also incorporated the above mentioned IEL principles and served as stepping stone for the core environmental legislations. Therefore, it is safe to conclude that IELP are adequately incorporated under the legal and policy framework of Ethiopia. However, the implementation of the principles is still questionable and out of the scope of this paper.

At this junction, one may ask as to which principle is highly given attention either by the legal or policy framework. After going through the critical assessment of all the relevant legal and policy framework of Ethiopia, my answer is that even if all of the most common IELP discussed are given due attention both under the legal and policy framework, the Principle of Sustainable Development has taken the higher attention and position. Because it can easily be understood from the wording, structure and the whole purpose of the environmental legal and policy frameworks that other principles of IEL are treated as means to ensure Sustainable Development while Sustainable Development is treated as an end by itself.

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