



**APPRAISING THE CHALLENGES OF PRACTICING THE RIGHT TO
PUBLIC PARTICIPATION IN THE EIA PROCESS IN ETHIOPIA**

LLM THESIS

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**A THESIS SUBMITTED TO THE COLLEGE OF LAW AND GOVERNANCE,
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DECLARATION

I hereby declare that “appraising the challenges of practicing the right to public participation in the EIA process in Ethiopia” is my original work and has not been presented for a degree in any other university, and all sources of material used for this research have been duly acknowledged.

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ACRONYMS AND ABBREVIATIONS

AARHUS - Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

AU- African Union

EI - Systematic Environmental Impact

EIA - Environmental Impact Assessment

EIS- Environmental Impact Statement

EPA- Environmental Protection Authority

ESCAZU- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

ESPOO- Convention on Environmental Impact Assessment in a Trans-boundary Context

FDRE- Ethiopian Federal Democratic Republic Constitution

FMMAIP- the Freedom of the Mass Media and Access to Information Proclamation

IAIA- International Association for Impact Assessment

IAP2- International Association for Public Participation's

NGOs- Non-Governmental Organization

SNRS -Sidama National Regional State

UNECE- United Nation's Economic Commission for Europe

USA- EPA- United States of Americas' Environmental Protection Agency

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ABSTRACT

This qualitative research appraises the challenges of effectively practicing the right to public participation in the EIA process in Ethiopia, in highlighting inherent gaps from both legal and empirical perspectives. The research employed both descriptive and analytical qualitative study designs, consisting of theoretical and empirical parts. The theoretical part examined the Ethiopian environmental legal and policy frameworks, along with the relevant literature. On the other hand, the empirical part of the research utilized case studies. Documented data and key informants interviews were the principal methods used to gather the data used in the research.

The research found that the right to public participation is exercised by interested and affected party (who) for normative, substantive and instrumental rationales (why) at consultation level (what) through different mechanisms (how) such as the public meetings, telephonic surveys, workshops and so on.

It also disclosed that the Ethiopian environmental legal and policy frameworks in practicing the right to public participation in the EIA process are not adequate since they are not compatible with international best practice principles of public participation drawn from the literature.

Moreover, the research revealed that despite legal and policy provisions guaranteeing public participation, different the legal and empirical factors have been impeding the effective practice of the right to public participation in the EIA context in Ethiopia. These findings have significant implications for policy makers, regulators, and practitioners involved in EIA processes.

The conclusion drawn is that by addressing the identified impeding factors and promoting inclusive and genuine practice of the right to public participation; Ethiopia can strengthen its environmental governance and ensure SD.

Key words: *public participation in environmental decision-making, environmental rights, the right to public participation, EIA process, the effective practice of public participation.*

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The right to public participation is, inter alia, the procedural environmental right that has received much attention in recent year due to its significance in achieving good environmental governance and sustainable development.¹ Generally, the environmental rights consist of the substantive environmental rights (fundamental right) and procedural environmental rights (necessary to achieve substantive environmental rights). Substantive environmental rights includes the right to a clean air, clean water and adequate sanitation, safe climate, healthy and sustainable produced food, healthy biodiversity and ecosystem and non-toxic environment in which to live, work, study and play. Procedural environmental rights are interchangeable called as the ‘fundamental access right’ and it encompasses the right to information, the right to public participation and the right to access to justice in environmental matters.² Thus, the right to public participation is the one component of procedural environmental rights that this study is going to examine.

The right to public participation is recognized under international, regional and national legal instruments.³ For instance, among the international legal instruments, the Rio Declaration on Environment and Development adopted in 1992 (the Rio Declaration of 1992), United Nation Environment Program Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, adopted in 2010 (Bali guidelines of 2010) and Framework Principles on Human Rights and the Environment developed by former United Nations Special Rapporteur on Human Rights and the Environment Professor John Knox and that were presented to the United Nations Human Rights Council through Human Rights Council Resolution 37/59 guarantees this right.⁴ Out of many

¹ United Nations Environment Program (UNEP) and UN Economic and Social Commission for Asia and the Pacific (ESCAP), ‘ Technical Briefing Paper prepared for Expert Meeting on Human Rights and the Environment on: An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision Making in Asia-Pacific, (18 June 2021) 5 (UNEP and ESCAP Technical Briefing Paper on Human Rights and the Environment in Asia Pacific)

² ibid

³ ibid

⁴ Rio Declaration on Environment and Development, adopted in 1992 principle 10[Rio Declaration of 1992] ; United Nation Environment Program Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters adopted in 2010 guidelines 8 - 14(Bali guidelines of 2010); John Knox, ‘Framework Principles on Human Rights and the Environment’ [2018] United Nations Human Rights Special Procedure, Special Rapporteurs, Independent Experts And Working Groups, principle 9.

regional legal instruments, Convention on Environmental Impact Assessment in a Trans-boundary Context, adopted in 1991 (Espoo Convention of 1991), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in 1998 (Aarhus convention of 1998), the African Convention on the Conservation of Nature and Natural Resources adopted in 2003 (the African Convention of 2003) and Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in 2018 (Escazu Agreement) stipulates and guarantees the right to public participation under their ambits.⁵ Also the right to public participation is now increasingly reflected in many environmental laws at the national level. In this regard, African countries constitutions such as South Africa, Kenya, Tunisia and Zimbabwe can be mentioned.⁶

It has many possible roles in environmental impact assessment (EIA) process, inter alia, educating and informing the public, improving the substantive quality of decisions, increasing trust in institutions, reducing conflict and cost-effectiveness⁷ and also helps in achieving substantive environmental right like the right to clean and healthy environment.⁸ This right is mainly practiced and enforced when EIA is carried on during different development projects or programs.

EIA is the process which involves in analyzing of a proposed projects or programs from the economic, social and environmental dimensions with a view of identifying alternatives prior to its approval or rejection.⁹ It aims to allow information for decision-making that analyzes the biophysical, social, economic and institutional consequences of proposed actions; promotes transparency and public participation in decision-making; identifies procedures and methods for the follow-up (monitoring and mitigation of adverse consequences) in policy,

⁵ Convention on Environmental Impact Assessment in a Trans-boundary Context, adopted in 1991 art, 2(2) (Espoo Convention of 1991); Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ,adopted in 1998, its preamble, art2,3 and 6 (Aarhus convention of 1998) ; African Convention on the Conservation of Nature and Natural Resources (adopted in 11 July 2003, Entered into force on 23 July 2016)(African convention of 2003), art 16 (1)(b); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in 2018 (Escazu Agreement of 2018) art1,2 and 7.

⁶ Oliver Fuo, 'Public participation in decentralized governments in Africa: Making ambitious constitutional guarantees more responsive' (2015) 15 African Human Rights Law Journal 167-191, 169.

⁷ Desta Gebremichael, 'Role of Public Participation in Environmental Impact Assessment in Ethiopia: Theory and Practice [2017] 26.

⁸ UNEP and ESCAP Technical Briefing Paper on Human Rights and the Environment in Asia Pacific, 5.

⁹ Gebremichael (n7) 11.

planning and project.¹⁰ Moreover, it is known that EIA requires public participation during the development projects and programs. Thus, public participation becomes the fundamental principle of the EIA process¹¹ and, then the latter helps the practical implementation of the former.

In Ethiopia, the Ethiopian Federal Democratic Republic Constitution (FDRE constitution of Ethiopia 1995) which was proclaimed in 1995 after the ruin of the socialist regime in 1991, recognizes, inter alia, procedural environmental rights that of the right to public participation under ‘Fundamental Rights and Freedoms.’¹² Article 43(2) of the FDRE Constitution states that; ‘Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.’ Article 92(3) of the FDRE Constitution indicates a same idea, positing 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.’ Also, environmental policy of Ethiopia recognizes the same rights in the parts of its specific objectives and in the key Guiding Principles.¹³ In detail, it stipulates that the sustainable environmental condition and economic production can be ascertained through giving the power to the communities to make their own decisions on matters that affect their life and environment¹⁴ and through the empowerment and participation of people and their organization at all levels in environmental management activities.¹⁵ In same fashion, other succeeding environmental legislations and guidelines in Ethiopia has recognized or provided the right to public participation in environmental matters.

Especially, Environmental Impact Assessment Proclamation 299/2002 (EIA Proclamation) expressly incorporated the right to public participation and requires EIA to serve the involvement of the public and, in particular, communities in the planning of and decision making on developments which may affect them and its environment.¹⁶ It also obliges the

¹⁰ Vikrant Sopan, ‘Environmental Impact Assessment: A Critique on Indian Law and Practices’ (2018) 5 Intl JMRD 01, 1.

¹¹ Ejikeme Johnson, Emmanuel Terese and Smart Ndubuisi, ‘Public Participation in Environmental Impact Assessment: A Critical Analysis’ (2018) 3 AE 7, 1.

¹² The Constitution of the Federal Democratic Republic of Ethiopia 1995, art 43 (1 & 2). (FDRE Constitution of 1995)

¹³ Environmental Policy of Ethiopia 1997, art 2.2 and 2.3.

¹⁴ *ibid* 2.3 (b).

¹⁵ *ibid* 2.2 (h).

¹⁶ Environmental Impact Assessment proclamation 299/2002 its preamble and art 15(1) (EIA Proclamation 299/2002).

authority or the relevant regional environmental agency to cause any environmental impact study report available to the public or particular communities likely to be affected by the implementation of a project and to get comments on it.¹⁷ However, in reality on the ground, irrespective of what laws guarantees, there has been the concern of not effectively practicing the right to public participation in EIA process, at grass-root level by the local community in Ethiopia. As well as it is not clear that to what extents and objectives that the public should practice this right in Ethiopia. For instance, Mellese Damtie and Mesfin Bayou have been revealed that the non-existent of effective public participation than that of required in complying with formal requirements of environmental laws of Ethiopia. Besides, they contended that the public participation in EIA is not suited to the social, economic, and geographical or gender characteristics of communities, and there is no proper response to the contributions of individuals and organizations.¹⁸ Moreover, Gebremichael Desta discloses that the absence of effective public participation in EIA process in Ethiopia.¹⁹

As it indicated in above section in this thesis, EIA is the one mechanism that enables the practical implementation of environmental right that of the right to public participation and there has been previous researches regarding on environmental rights in general, the role public participation in EIA context and the challenges of EIA in Ethiopia. For example, Mellese Damtie and Mesfin Bayou assessed the gaps and challenges in EIA process²⁰ and more recently, Gebremichael Desta established the role of public participation in EIA process in Ethiopia.²¹

However, although the gaps and challenges of EIA and the role of public participation in EIA process was evidenced over recently, little attention has been paid in relation with assessing the challenges preventing the effective practice of the public participation in environmental right approach in EIA process in Ethiopia.

Thus, present research tried to identify the problems hindering the full exercise of the right to public participation in EIA process, from both legal and empirical points of views. In this study, the term right to public participation understood as the public participation in environmental

¹⁷ ibid 15(1)(2)

¹⁸ Nicholas Benequista (ed), Solomon Kebede (rev), Mellese Damtie and Mesfin Bayou, ‘*Overview of Environmental Impact Assessment in Ethiopia: Gaps and Challenges*’ (MELCA Mahiber, 2017) 56; Desalegn Amsalu, ‘Environmental Rights in Ethiopia: Shifting from Theory to Practical Realization’ (2018) 9 J. of Sust. Dev. Law & Policy 49, 7.

¹⁹ Gebremichael (n7) 436.

²⁰ Bayou (n18) 56.

²¹ Gebremichael (n7).

rights perspectives and which are recognized by law and policy framework in guaranteeing public or community involvement during environmental decision- making in general and in EIA context in particular. Also this study understood and valued those explanations, discourses and notions of public participation are very important and equal applicable and relevant in enforcing the ‘environmental right approach’ of public participation in EIA processes. In other words, this is meaning that, this study assumed that all those discourses, assertions and discussions of public participation are relevant and pertinent in applying or practicing the right to public participation in EIA process.

1.2 STATEMENT OF THE PROBLEM

As it pointed in the introduction section in this research, the right to public participation is one of the procedural environmental rights that have a major role in fulfilling substantive environmental rights like the right to clean and healthy environment²² and in achieving sustainable development.²³ This right is mainly applied and practiced when EIA is carried out and at its various stages of the project cycle.²⁴

EIA is a tool that involves in analyzing the impacts of proposed projects from the economic, social and environmental dimensions with a view of identifying alternatives and bringing sustainable development.²⁵ It is utilized to anticipate the environmental effects (positive or negative) of a plan, policy, program, or project prior to the decision to move forward with the planned action.²⁶ Generally, EIA requires the involvement of public or communities at various stages of the project cycle during its execution.²⁷ Thus, as indicated above, public participation becomes an integral part of the EIA process,²⁸ as the former provides opportunities for interested and affected parties to participate in development projects or programs.²⁹

In Ethiopia in ensuring sustainable development, FDRE Constitution, ordinary legislations and policy frameworks provided both substantive and procedural environmental rights under its ambit.³⁰ The right to public participation enshrined, inter-alia, the procedural environmental

²² UNEP and ESCAP Technical Briefing Paper on Human Rights and the Environment in Asia Pacific,5.

²³ Gebremichael (n7) 115.

²⁴ Ndubuisi(n11) 2.

²⁵ Sopan (n10) 1.

²⁶ Dibya Jyoti, ‘Environmental Impact Assessment in India: An Appraisal’ (2016) 3 RG 50, 2.

²⁷ Ndubuisi(n10) 2.

²⁸ Gebremichael (n7)115.

²⁹ Ndubuisi (n11).8.

³⁰ FDRE Constitution of 1995 art 43(2) and 92(3); EIA Proclamation 299/2000 its preamble and art 15; Env’tal Policy of Ethiopia 1997 art 2.2(h) and 2.3(b).

rights in the legal and policy frameworks explicitly.³¹ Consequently, public or local communities have legal entitlements to participate in development activities, especially in policies and projects affecting their community.³² Moreover, EIA proclamation expressly incorporated the right to public participation and requires EIA to serve the involvement of the public and, in particular, communities in the planning of and decision making on developments which may affect them and its environment. To this end, directive no. 2/ 2008 issued to determine the categories of projects subject to the EIA provided the lists of projects that require the EIA procedure.

However, regardless of what laws and policy stipulated, in practically, in Ethiopia there has been problem of not effectively practicing the right to public participation in EIA process.³³ This would be a clear infringement of constitutional environmental rights of citizens or community and that remains constitutional ambition of sustainable development in a vein. As well as there has been the concern of what actually the right to public participation consists in Ethiopia.³⁴ In relation with practical applying public participation, Razzaque and Richardson argued that actual practice of public participation in environmental decision-making often differs markedly from theoretical models. Besides, they stated that legal provision of opportunities for participation in environmental decision-making does not in itself ensure that participation will occur or be meaningful. They further contended that there are numerous barriers to effective public participation.³⁵ Thus, this study will address legal and empirical challenges preventing the effective exercise of the right to public participation in EIA context in Ethiopia.

For instance, Ejikeme Johnson, Emmanuel Terese and Smart Ndubuisi found that the better attention to public participation during the EIA process leads to greater environmental assessment, and thus to the formulation of projects that deliver more social benefits, fewer environmental costs and greater economic and financial benefits.³⁶ Also, Gebremichael Desta affirmed that public participation in EIA has both pragmatic and normative significances. From a pragmatic point of view, public participation in the EIA decision-making process foster a multiple of social goals such as educating and informing the public, incorporating public values in decision-making, improving the quality and sustainability of decisions, increasing trust

³¹ *ibid*

³² *ibid.*

³³ Amsalu (n18); Bayou (n18) 56-57.

³⁴ Bayou (n18) 56-57.

³⁵ John Razzaque and Benjamin Richardson, 'Public participation in environmental Decision-making'[2006] 166

³⁶ Ndubuisi (n11)5.

in institutions, reducing conflict and enhancing cost-effectiveness. From a normative point of view, public participation in environmental decision-making and EIA ensures participatory democracy.³⁷ Hence, if the public participation in EIA process is not practically applied, then the good environmental governance and sustainable development cannot be achieved.

According to Amsalu Desalegn, study concerning Environmental Rights in Ethiopia: Shifting from theory to practical realization” the environmental rights of communities in its practical application are ‘myths’ in Ethiopia.³⁸ Also Damtie mellese and Bayou Mesfin, book entitled with, “Overview of environmental impact assessment in Ethiopia: gaps and challenges” disclosed that nothing at all is known about public participation in EIA process in Ethiopia. In details, they affirms that in Ethiopia it is not known about what the right to public participation actually constitutes, who and how can decision be made, what should be effects of the public participation when the people protest that they are badly affected by the project.³⁹ Moreover, Gebremichael Desta thesis concerning ‘role of public participation in EIA process in Ethiopia’ find out that the absence of effective public participation in EIA process in Ethiopia.⁴⁰

These above instanced and others multidisciplinary studies have explored the role of public participation in sustainability of the projects, the gaps and challenges of EIA and the role of public participation in EIA process, but they did not get to the heart of appraising legal and empirical challenges preventing the effectively practicing of the right to public participation (in environmental rights perspectives) in EIA process in Ethiopia. Particularly, the existed related literatures did not address the issues of legal nature and contents of the rights to public participation, the adequacy of environmental laws and policy frameworks and factors responsible in preventing or hindering the effective practicing of this right in EIA context. Identifying the legal and empirical problems of preventing the effectively practicing of the right to public participation in EIA process has importance in evaluating and knowing whether the FDRE constitutional ambition of bringing sustainable development that integrates social, economic and environment matters has been stepping forwards or remained in vein. Its effective practice and implementation can be assumed to be useful in enhancing environmental protection and fostering the human right to a healthy environment. Furthermore, this study may support EIA practitioners, competent authorities and stakeholders in effectively applying or practicing

³⁷ Gebremichael (n7) 444.

³⁸ Amsalu (n18) 71.

³⁹ Bayou (n18) 56-57.

⁴⁰ Gebremichael (n7) 436.

the right to public participation during environmental decision-making in general and in EIA process in particular.

Therefore, the purpose of this qualitative research is to appraise the factors hindering the effective practice of the right to public participation in EIA process, from both legal and empirical points of views.

1.3. OBJECTIVES OF STUDY

1.3.1 General objective

The main aim of this research is to appraise the challenges in practicing the right to public participation in the EIA process in Ethiopia, in highlighting inherent gaps from both legal and empirical perspectives.

1.3.2 Specific objectives

Depending up on the general objective of the research, the research framed following specific objectives;-

- To analyze the legal nature and content of the right to public participation in Ethiopian environmental laws in context of EIA processes.
- To examine adequacy of the current environmental legal and policy frameworks of Ethiopia for genuine practice of the rights to public participation in EIA process.
- To identify the major factors hindering the practicing of the right to public participation in EIA process in selected a case study area.
- To offer recommendations on, for genuinely practicing of the right to public participation in IEA process in Ethiopia.

1.4. RESEARCH QUESTIONS

As per and in concomitant with aforementioned specific objectives of the research, the research formulated the following research questions:

- What is the legal nature and content of the right to public participation in Ethiopian environmental legal and policy frameworks in the context of EIA procedures?
- To what extent do the current Ethiopian environmental legal and policy frameworks enable and support the meaningful participation of the public in the EIA process in Ethiopia?
- What are the major factors hindering the effective practice of the right to public participation in EIA process in selected a case study area?

- What should be done to ensure genuinely practicing of the right to public participation in EIA process in Ethiopia?

1.5. RESEARCH METHODOLOGY

It is known fact that the legal research broadly categorized as doctrinal and non-doctrinal research. Doctrinal legal research is defined as ‘research into legal doctrines through analysis of statutory provisions and cases by the application of power of reasoning’.⁴¹ While non-doctrinal legal research defined as ‘research into relationship of law with other behavioral sciences’.⁴² It gives prominence to relationship of law with people, social values and social institutions’.⁴³ Thus, doctrinal legal research is considered as ‘research in law’ while non-doctrinal legal research is regarded as ‘research about law’.⁴⁴

This research is both doctrinal and non-doctrinal legal research since it involves in analyzing the Ethiopian environmental laws and policy framework in the context of the right to public participation in EIA process and appraises the empirical factors hindering the effective practical application of the right to public participation in EIA processes in selected case study area.

This research focused on examining the public participation in environmental rights approach. However, researcher considers that before understanding the right approach for participation, it is very important to contextualize and analyzes up to date development of public participation in EIA out of ‘right’ approach for participation. Thus, in order to full understand and draw relevant insights from up-to-date development of the right approach of participation, the research approaches reviewing the concepts, theories, objectives, types, principles and other settings of public participation in first. This was done through analyzing and reviewing theoretical, conceptual and empirical relevant literatures of public participation in environmental decision making in general and in EIA processes in particular.

In respect of mode of enquiry in conducting this research, the research will employ qualitative research design. The qualitative research involves in expressing the phenomena in its quality or kind rather than measuring or quantifying the phenomena.⁴⁵ Also it aims at discovering the

⁴¹ Khushal Vibhute and Filipos Aynale, ‘Legal Research Methods Teaching Material’ [2009] Prepared under the Sponsorship of the Justice and Legal System Research Institute, 71.

⁴² *ibid*

⁴³ *ibid*

⁴⁴ *ibid*

⁴⁵ C.R. Kothari; Research Methodology; Methods and Techniques (2nd edn, New Age Int’l (P)Ltd Pub 2004) 3.

underlying motives and desires, using in depth interviews for the purpose.⁴⁶ The main aim of this research was to examine legal and empirical factors hindering full realization of right to public participation in EIA process through collecting qualitative information. Thus, this is underlying justification for the selection of qualitative research design for this research. In regard to the research methods, both descriptive and analytical frameworks were applied. The research depends on both primary and secondary data sources for qualitative information.

The research has both theoretical and empirical parts (...evidence gathered from information collected from real-life experiences).⁴⁷ The theoretical part relied on largely analyzing Ethiopian environmental legal and policy frameworks and reviewing the relevant literature. On the other hand, the empirical part utilized the a case study that depend on both primary data that was collected in semi-structured interviews with key informants and secondary data that was gathered from the analysis of relevant EIA study reports.

The theoretical part was conducted by undertaking an in-depth review of the relevant academic, empirical and policy literature and analyzing Ethiopian environmental legal and policy framework on the right to public participation in environmental decision making, in general, and in the EIA process, in particular. For the empirical part, the case studies were selected from different projects sectors in the regional state covered by this research based on Directive No.2/ 2008 issued to determine the categories of projects subject to the EIA.⁴⁸ This directive is adopted in enforcing EIA Proclamation and lists the types of projects which are the subject to EIA.⁴⁹ Consequently, the researcher undertook a preliminary survey to gather EIA study reports of different projects. This is because conducting an empirical study on the practicing of the right public participation in EIA requires the existence of EIA study reports. In this regard, the preliminary surveys evidenced presence of EIA practices, albeit imperfect, in other sectors, such as the industrial sector. Thus, the direction of the empirical study changed to projects in the industrial sector.

⁴⁶ ibid

⁴⁷ Ranjit Kumar , 'Research Methodology a step-by-step guide for beginners' (3rd edn, SAGE Publications Ltd 2011) 8.

⁴⁸ A Directive Issued to Determine Projects Subject to Environmental Impact Assessment No. 2/ 2008(Directive No .2/2008 Determining Categories Of project)

⁴⁹ ibid

Regarding with geographical location of the study, in relation with gathering and analyzing EIA study reports and interviewing the key informants the study area is delimited to Sidama National Regional state (SNRS). This kind of distinction in selecting study area is made for the following reasons. These reasons are cost and convenience related factors. Sidama National Regional state is where the researcher resides and the researcher's home university found in. This enables the researcher without much cost gathering EIA reports and interviewing key informants. The second reason is convenience related. Sidama National Regional State's capital is the Hawassa city. Hawassa city is among the largest and fastest growing city in Ethiopia and many of the country's industrial activities are concentrated in it. This enables the researcher to interview regional key informants and other experts conveniently. Accordingly, the researcher interviewed Sidama national regional state environmental forestry and climate change authority, Hawassa city administration environmental forestry and climate change controlling office, licensing authorities (Sidama national regional state investment commission) and consulting firms. Although the researcher planned to interview environmental interested non-governmental organization (environmental NGOS), there was no environmental NGOs in SNRS.

In order to triangulate and substantiate the information obtained from key informants vis-à-vis the appraising the problems of preventing the effective practice of the right to public participation in EIA process, secondary data of EIA reports of different EIA projects were collected through purposively sampling. Those aforementioned various sources collected qualitative data were organized and processed to substantiate the study. To this end, utmost ethical consideration was taken to respect the ethical rigors of research and the secrecy of the informants during and after the research. Consequently, key informants were described in this research by secret codes.

1.6 SIGNIFICANCE OF THE STUDY

As it illustrated in introduction and statement of the problem parts of this research, previous academic and empirical studies have explored the absence of effective of implementation of the public participation in EIA context. But those previous literature did not get to the heart of appraising legal and empirical challenges preventing the practical realization of the right to public participation in EIA process in Ethiopia. Thus, this research tries to assess factors preventing full realization of the right to public participation in EIA context, from both legal and empirical points of view. To this end, the research was intended to have the following significances:-

- Through disclosing the problems preventing full realization of the right to public participation in EIA process, recommends the way forward effectively realizing the right to public participation in onwards. This has major contribution for our country in achieving sustainable development that integrates social, economic and environmental issues.
- It provides evidence based information for stakeholders in applying public participation in EIA process.
- It provides awareness to the citizens in exercising their constitutional environmental right of the right to public participation. In this regard, it has benefit in informing the level or the extent of the right while the public or citizens practicing this right.
- It can also contribute to policy and law makers' understandings of the practical implementations of the right public participations in EIA process and helps to pinpoint gaps for inaction of further legal instruments if needed.
- It can also be helpful basis for those interested in conducting further research on right to health and clean environment and other procedural environmental right in Ethiopia, mainly concerning the application of EIA procedure.
- It also benefits the researcher in advancing researcher's profession.

1.7 SCOPE OF THE STUDY

The research is concerned with analyzing the legal and empirical factors in practicing the right to public participation in EIA processes. Thus, the research was involved in looking the public participation in environmental rights dimension. In doing so, the research appreciates the philosophical foundation, essences and a concept of public participation is so important and applicable understanding and practicing the environmental right approach of public participation. Therefore, it involves in reviewing and analyzing the conceptual, theoretical and empirical related literature of public participation in environmental decision making and in EIA process.

In terms of contents, inter alia, substantive and procedural environmental rights, the research concerned with the examining only the issues of the right to public participation in EIA processes. Therefore, analyzing and discussing other environmental rights is out of the scope of this research. Also discussing adequacy of the environmental institutional issues in practicing the right to public participation is the out the domain of this research.

In respect of geographical delimitation, as it stated in methodology part of the research, the empirical part of the research through utilizing the case studies, the study area is delimited to Sidama Nation Regional state. Therefore, the research was emphasized on appraising the major legal and empirical factors that affects effective practice of the right to public participation in EIA process that was provided under Ethiopian environmental laws.

1.8 LIMITATIONS OF THE STUDY

- **Limitations of this research are:**
- The empirical part of the research bases on the case studies. In this regard, it only gathers and analyzes EIA reports and interviews key informants from Sidama Nation Regional State. This may causes issues of its representativeness; that means it may be criticized for credibility of its generalizations, whether it is possible to generalize based on the findings of the few cases. However, this issue of representativeness is minimized or averted through triangulation of data, since case studies facilitate validation of data through looking things from more than one perspective and through a proper selection of case.⁵⁰ Thus, an appropriately selected case may be representative enough to other similar cases.
- As it mentioned in methodology sections of this research, in order to collect data, the researcher will interviews the regional government officials and experts. In this regard, the regional government officials may lack initiation in giving the neutral and reliable data for political or other reasons. In spite of the fact that of mentioned challenges, the research has attained its aimed end, through triangulating data that were gathered.

1.9 ORGANIZATION OF THE STUDY

This research categorized into five chapters.

Chapter one is an introductory part of the research and deals with background of the study, statement of the problem, research questions, objective, significance, scope and methodology of the research.

Chapter two of the research concentrated on reviewing and analyzing the relevant literatures to public participation in environmental decision-making and in EIA procedures. This chapter is foundational chapters for others succeeding chapters in this research; this is because, it

⁵⁰ Kumar (n47) 126.

establishes the theoretical and conceptual frameworks for other chapters. Also this chapter establishes evaluative frameworks that will help in answering the research questions. As indicated in aforementioned parts of this chapter, in principle this research aims at examining the public participation in environmental 'right' approach. However, in the necessity of having full-fledged understanding of the very developments, essences and concepts of public participation, this research involved in reviewing and analyzing those related literatures out of the domain of the right perspectives of public participation as well as related literatures in the domain of environmental participatory rights approaches. Thus, this chapter examined and reviewed the conceptual and theoretical frameworks of the right to public participation in environmental decision-making in general and in EIA context, in particular.

Consequently, in details, this chapter involved in analyzing and identifying the theories of public participation, definitions of public participation and objectives/ rationales of public participation in environmental decision-making in general and in EIA procedure in particular. Also examined and discussed the types/levels of public participation, the enabling conditions for public participation and principles of effective public participation in EIA procedures. Moreover, it highlighted the meaning, objectives and the steps of EIA study. Finally, the chapter examined and discussed the notion of public participation in environmental right approach.

Chapter three emphasizes on analyzing and examining the relevant environmental legal and policy framework on the right to public participation in EIA context. The FDRE constitution recognizes all international agreements ratified by Ethiopia as an integral part of the law of the land.⁵¹ In addition to this, Ethiopia is a party to many international environmental agreements.⁵² Taking into account this fact, the discussion about the legal nature and contents of the right to public participation in EIA in Ethiopia cannot be fully comprehended without considering the relevant international and regional agreements to which Ethiopia is a party. However, it is not feasible to discuss all of the international and regional environmental instruments within the limited scope of this study. Thus, this chapter focused on the international and regional environmental instruments that are most relevant to the discussion at hand, namely:- the Stockholm Declaration on the Human Environment adopted in 1972 (the Stockholm Declaration of 1972), Rio Declaration, Aarhus Convention, and the African Convention on the

⁵¹ FDRE Constitution of 1995, art9(4)

⁵² Environmental Protection Authority, 'United Nations Conference on Sustainable Development (Rio+20) [2012] National Report of Ethiopia Addis Ababa, 22-24 (EPA National Report on Sustainable Development of 2012)

Conservation of Nature and Natural Resources adopted in 2003 (the African Convention of 2003). Despite the fact that, Ethiopia is not a party to the Aarhus Convention, this Convention necessitates to be appreciated, at least for academic reasons, because of its innovative legal approach towards the right to public participation in environmental governance and its global significance.

Concerning, Ethiopian environmental laws and policy frameworks, specifically, this research analyzed the FDRE Constitution of 1995, the Environmental Policy of 1997, the EIA Proclamation of 299/2002, the Freedom of the Mass Media and Access to Information Proclamation of 590/2008(FMMAIP), Environmental and Social Impact Assessment Practitioners' Directives by Environmental protection authority (EPA) of 2010, Directive No.2/2008 issued to determine the categories of projects subject to the Environmental Impact Assessment, Environmental Impact Assessment Guideline Document of 2000 and environmental impact assessment procedural guideline series 1/2003. Finally, by doing this, this chapter responded the first and second questions of the research.

Chapter four of this research involved in exploring and examining the empirical factors hindering the effective practice of the right to public participation in EIA process. In assessing empirical factors affecting the effective of the practice of the right to public participation in EIA context, this chapter involved in analyzing qualitative data that was be gathered through interviewing key informants and EIA reports. Thus, this chapter responded the third question of the research. Finally, chapter five forwarded the summary, conclusion and recommendations.

CHAPTER 2: CONCEPTUALIZING PUBLIC PARTICIPATION IN EIA PROCESS

2.1 INTRODUCTION

Razzaque and Richardson in their milestone work argue that over the past few decades public participation in environmental decision-making has come up an un-erasable attributes of numerous environmental regulatory systems in world-wide. They further contend that the development approvals, pollution licenses, land use plans and other types of regulatory processes that impacts individuals and organizations have growingly necessitated greater consultation, and more transparent and accountable decisions.⁵³

Generally, this chapter will involve in reviewing and examining theoretical and empirical relevant literatures on the theories and concepts of public participation in environmental decision making, EIA and in environmental rights perspectives. Also it will involves in analyzing and identifying the objectives/ rationales, levels/types, enabling environment for public participation in EIA context as well as principles for effective public participation in EIA. After then, this chapter will look for in highlighting meaning and objectives of EIA study, steps of EIA study. In last, it will scrutinize notion of the public participation in environmental right approach.

In details this chapter will examines and review different theories supporting public participation in environmental decision making. In this regard the theories of ‘rational elitism’, ‘liberal democracy’ and ‘deliberative theories’ of democracy for public participations will be considered. And then, it will make an attempt in evaluating the concept/definition of public participation in environmental decision making in general and in EIA procedure. Since this research aimed in appraising the legal and empirical challenges in applying the right to public participation in EIA process, it is not possible to assess challenges of public participation in EIA procedure, without defining who public is and without knowing what does mean participation. Thus, it will make move to define who public is and what does mean participation.

After having examined, the theories and definition of public participation, it will follows in looking in to and identifying the types/levels and rationales/objectives of public participation in EIA procedures. It also discusses and identifies the enabling factors for effectively practicing of public participation and the basic principles of effective public participation in EIA process.

⁵³ Razzaque and Richardson (n35) 2.

With regard to, the rationales of public participation in EIA process, the normative rationales, substantive and instrumental rationales will be discussed. In relations with, the types/levels of public participation in EIA procedure, information sharing (one –way communication), consultation (two- way communication), collaboration (shared control over decisions and resources) and empowerment (transfer of control over decision and resources) types of participation will be illustrated. After then, it will make an attempt to identify and establish the enabling conditions/factors and basic principles for effective public participation in EIA process. Furthermore, it will comprehend the meaning and objectives of EIA procedure and steps of EIA procedure. Finally, this chapter will appreciate notion of the public participation in environmental right approach.

2.2 THEOREICAL APPROACHES TO PUBLIC PARTICIPATION

The basic theory of public participation grew quickly following Arnold Kaufman pioneered the concept of ‘participatory democracy’ in 1960.⁵⁴ During the late 1960s and 1970s, coinciding with the political upheavals of these times when publics agitated for more democratic governance and stronger environmental protection, public participation provisions began to appear in the planning and environmental regulations of some states. Getting over into broader discourses on ‘good governance’, ‘environmental justice’ and ‘environmental citizenship, by the 1990s, consultation and participation became the continual words of effective environmental decision-making.⁵⁵

Katalin Gabriella contended that the roots of the theory of public participation extends to political science, psychology and sociology or, more specifically, into democratic theory, communication theory, risk evaluation, decision theory and environmental science. Also he argued that the writings where theory building which is connected with ‘practical experience’ are very meager.⁵⁶

The theory of public participation is basically originated in the theories of democracy.⁵⁷ Nowadays, the complicated and varied characteristics of sustainability, featuring various social

⁵⁴ Lang Huanlin, ‘Public participation in environmental decision-making in China: Towards an ecosystem approach’ [2014] Thesis fully internal (DIV), University of Groningen, 24.

⁵⁵ *ibid* 5.

⁵⁶ Gabriella Kiss, ‘Evaluation of Public Participation Processes in Environmental Decision-making: Evaluation of Referenda and Public Hearings on Waste Management from a Participant Perspective’ [2013] Ph.D. Dissertation, 10.

⁵⁷ Gabriella Kiss, ‘Why Should the Public Participate in Environmental Decision-Making? Theoretical Arguments for Public Participation’ (2014) 22 *Per Poly Social and Management Science* 13-20, 14.

objectives and supporting environmental protection proposes that no single institution can be anticipated to hold all of the expertise and knowledge demanded for good decision-making.⁵⁸ Thus, this engendered the public participation in environmental decision-making is necessary.⁵⁹

Razzaque and Richardson identified that the public participation has been justified from two main perspectives, a '*process*' perspective and a '*substantive*' perspectives. The former is based on the rationales that it reinforces the democratic legitimacy of those decisions; the latter improves the substantive outcomes of decision-making processes.⁶⁰ However, unlikely that of Razzaque and Richardson, many other writers forwards or adds the 'normative perspectives' as third one.⁶¹ According to normative rationale, the public participation fulfills fundamental democratic rights. In regard with this rationale, citizen empowerment is an ideological end in itself irrespective of outcome, grounded on values of procedural equity and justice.⁶² It revealed that the across with these perspectives, several schools of thought on the rationale and role of public participation have developed.⁶³ In this regards, Biegelbauer and Hansen discloses different theories of democracy for participation and argued that each of these theories has different roles for citizens.⁶⁴ In this regards, the three school of thought of public participation is discussed in here.

The first one is the 'rational elitism' school. Others call this school of thought as 'elite theories'.⁶⁵ This school of thought views environmental policy as complicated and technical, calling for mainly technical and administrative expertise. This paradigm stresses decision-making by experts, and grants limited participation to the general public when they hold information that may help experts. Technical environmental risk assessments and economic cost-benefit analyses of development proposals are situations in which governments often favor 'expert' participation.⁶⁶ In this paradigm, the function of public is considered as spectators of

⁵⁸ Razzaque and Richardson (n35) 7.

⁵⁹ *ibid*

⁶⁰ *ibid*

⁶¹ Kiss, Evaluation of Public Participation (n 56) 1; Nicola Sharman, 'Objectives of Public Participation in International Environmental Decision- Making' (2023) 72 Cambridge University Press 333-360, 4.

⁶² *ibid*

⁶³ Razzaque and Richardson (n35) 7.

⁶⁴ Peter Biegelbauer and Janus Hansen, 'Democratic Theory and Citizen Participation: Democracy Models in the Evaluation of Public Participation in Science and Technology' (2011) 38 Science and Public Policy 589-598, 3.

⁶⁵ *ibid*

⁶⁶ Razzaque and Richardson (n35) 7-8.

political game and their role is limited to participation in regular elections, which ensure that governing elites can be removed from office.⁶⁷

A second school of thought to participation is the ‘liberal democratic’ one, which emphasizes procedural rights for individuals and non-governmental organizations to be consulted and heard in decision making. When electoral legitimacy is weak, procedural legitimacy assumes greater salience. The traditional polyarchal mechanisms (e.g., elections and political parties) of liberal-democratic systems have been criticized as unable to manage the demands of competing interest groups in modern societies. The ‘conflict-generating potential of the institutions of the democratic polity by far outweighs their conflict resolving capacity.’⁶⁸ As a result, most liberal-democratic states have sought to create supplementary public consultation and information processes in administrative and legislative decision-making.⁶⁹ However, this theory criticized for not providing an institutional framework for active citizen interaction and not furnishing mechanisms that the citizens influence the structure of governing elites’ power. The views of citizens have given weight only and as far as, if it is consistent with bureaucratic control.⁷⁰

These critics have contributed for the commencement of a third paradigm of participation, called deliberative democracy, which seeks to empower citizens in the actual making of decisions and to reorient decision processes to fundamental ethical and social values.⁷¹ It aims at resolving the isolation between the citizens and the institutions.⁷² While sustainable development cannot be guaranteed, wide participation in political debate is seen as essential to allow for the educational cultivation and exchange of environmental values.⁷³ Biegelbauer and Hansen referred rational elitism and liberal democracy traditions as theories of representative democracy.⁷⁴ As it aforementioned in liberal democracy paradigm, also Kiss Gabriella disclosed that the representative democracy can be resulted in, political ‘apathy’ and ‘passivity’ of the people.⁷⁵

2.3 DEFINING PUBLIC PARTICIPATION IN EIA

In this research defining the term public participation has very importance since this research involved in appraising the empirical challenges in applying the right to participation in EIA

⁶⁷ Biegelbauer and Hansen (n64) 4.

⁶⁸ Razzaque and Richardson (n35) 8.

⁶⁹ *ibid*

⁷⁰ *ibid*

⁷¹ Kiss, Evaluation of Public Participation (n56) 14.

⁷² *ibid*

⁷³ Razzaque and Richardson (n35) 9.

⁷⁴ Biegelbauer and Hansen (n64) 4.

⁷⁵ Kiss, Evaluation of Public Participation (n56) 14.

procedure. Thus, it become impossible to appraise the empirical challenges without defining the very meanings of the term what does mean public participation. Accordingly, in order to have full-fledged understandings of term what does mean public participation, the term ‘public which “focuses on *who* is included” and the term ‘participation’, which “addresses the question of *how* they are included and the role they play once included’⁷⁶ will be dealt separately.

2.3.1 Who public is?

Different scholars and organizations defined the term public in the context of public participation in EIA processes in different manners. Glucker, Peter and others state that, in EIA literature, the terms ‘the public’, ‘stakeholders’ and ‘citizens’ are frequently used interchangeably.⁷⁷ By contrast, in some cases, these two concepts are appreciated otherwise.⁷⁸

Glucker, peter and others argued that many authors do not define the term ‘public’.⁷⁹ Gebremichael Desta asserted that defining the term the ‘public’ has both academic and practical importance.⁸⁰ He further noted that any discussion about public participation without defining or identifying the actors envisioned to be involved in the participatory process can hardly make sense.⁸¹

A Bali guideline 2010 has defined ‘the public’ as ‘one or more natural or legal persons and their association, organizations or groups’.⁸² The guideline has gone further to define ‘the concerned public’ as ‘those affected by or having an interest in an environmental decision that has direct effect on them’.⁸³ In similar fashion, protocol adopted by united nations economic commission for Europe(UNECE); on strategic environmental assessment to the convention on environmental impact assessment in a trans- boundary context defines the ‘public’ means ‘one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups’⁸⁴

⁷⁶ Gebremichael (n7) 134-135

⁷⁷ AnneGlucker, Peter Driessen and others, ‘Public participation in EIA : why, who and how?’(2013)43 Environmental Impact Assessment Review 104-111, 7.

⁷⁸ *ibid*

⁷⁹ *ibid*

⁸⁰ Gebremichael (n7) 135

⁸¹ *ibid*

⁸² Bali guideline 2010

⁸³ *ibid*

⁸⁴ United Nations Economic Commission for Europe, ‘Protocol On Strategic Environment Assessment to the Convention on Environmental Impact Assessment in a Trans- boundary Context’[adopted on 21 May 2003, entered in to force on 11 July 2010]

Also United States of Americas' Environmental Protection Agency (USA- EPA) 'Public Involvement Policy' defines the term 'the public' 'includes anyone, including both individuals and organizations, who may have an interest in an Agency decision.'⁸⁵ This policy, in its broadest sense referred 'the public' to meaning that 'the general population of the United States'.⁸⁶ Specifically, the policy in its appendix parts tried to mention who public is and elaborate as follows:

In addition to private individuals, "the public" includes, but is not limited to, representatives of consumer, environmental and other advocacy groups; environmental justice groups; indigenous peoples; minority and ethnic groups; business and industrial interests, including small businesses; elected and appointed public officials; the news media; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional representatives and societies; civic and community associations; faith-based organizations; and research, university, education, and governmental organizations and associations.⁸⁷

As well as, Dietz Thomas and Stern Paul defined the term 'public' as follows:

The term "public" encompasses of organized interests, sometimes referred to as stakeholders; people selected by a systematic process to create a representative sample, as is done in survey research; people selected purposively to represent particular perspectives, knowledge bases, or interests; or individuals who themselves choose to engage in processes that are open to all.⁸⁸

From aforementioned definitions, it can be deduced that, the term public seems to be broad that encompasses those organized and non-organized individuals and groups in the participatory processes as well as those who are affected and interested parties by the proposed activities of the development.

In contrast, other scholars defined and understand the term public narrowly. For example, Mostert excludes public bodies from the definition of public and defines public participation

⁸⁵ United States of America Environmental Protection Agency (EPA), 'Public Involvement Policy, [2003] EPA 233-B-03-002US EPA Archives Document, 1.

⁸⁶ *ibid* 23.

⁸⁷ *ibid*

⁸⁸ Thomas Dietz and Paul Stern (Edns), '*public participation in environmental Impact Assessment and Decision-Making*' (The National Academies Press 2008) 29.

narrowly ‘as direct participation by non-governmental actors in decision making’.⁸⁹ Also Avramoski Oliver posits that the authors understood the term public participation in different manners and sometimes it is utilized interchangeably with other terms, such as ‘stakeholder’ or ‘citizen participation’.⁹⁰ However, he argues that the term public participation is growingly differentiated from stakeholder involvement in recent literature, and then defines the terms stakeholders ‘as individuals or representatives of a group who make use of, have an impact on, or are impacted by the issue of concern’.⁹¹ Moreover, he asserts that in principle, only key stakeholders had better participate to avoid unmanageable and fruitless groupings.⁹² For Avramoski, ‘key stakeholders are those people, groups or institutions who can significantly affect the outcome of the process.’⁹³

However, there were concerns in defining who the public is.⁹⁴ Because defining ‘who public is’ has the inherent risk of exclusion and inclusion of the actors in participatory process.⁹⁵

As Creighton James remarks, the term public has ‘constantly shifting definitions’ that may differ from issue to issue.⁹⁶ Also, Gebremichael Desta argues that the meaning of the term public can greatly vary depending on the underlying philosophical rationales and goals that each respondent has in relation to public participation.⁹⁷ In same fashion, World Bank pointed out that determining the relevant stakeholders for any given concern depends on the situation and types of activity to be supported and task managers generally take pragmatic position that the development concern being addressed identifies the stakeholders.⁹⁸

2.3.2. What is participation?

As Creighton James posit it, the word ‘participation has many different meaning’.⁹⁹ Similarly, World Bank affirms that the term, ‘participation is a rich concept that means different things to different people in different settings. For some, it is a matter-of principle: for others, a practice:

⁸⁹ Erik Mostert, ‘The challenges of public participation’ (2003) 5 IWA Publishing 179-197, 2.

⁹⁰ Oliver Avramoski, ‘The role of public participation and citizen involvement in lake basin management’ [2004] Thematic Paper, 3.

⁹¹ *ibid*

⁹² *ibid*

⁹³ *ibid*

⁹⁴ Gebremichael (n7) 136.

⁹⁵ *ibid*

⁹⁶ James Creighton, ‘*The public participation handbook: Making better decisions through citizen involvement*’ (1st edn, Jossey-Bass 2005) 22-23.

⁹⁷ Gebremichael (n7) 136.

⁹⁸ The World Bank, ‘participation source book’ [1996] environmental sustainable development, 143.

⁹⁹ Creighton (n96) 8.

and for others, an end in itself. All these interpretations have merit.’¹⁰⁰ Also Ali Hussen indicates that the term participation is interchangeably used with the terms such as, community participation, citizen participation, people’s participation, public participation, and popular participation.¹⁰¹

Creighton defines the term ‘participation as “a continuum” which consist very an infinite number of points along the scale’.¹⁰² He expressed a continuum in a figure which encompasses, ‘inform the public’, ‘listen to the public’, ‘engage in problem solving’, and ‘develop agreements’.¹⁰³

World Bank points out that the public involvement can be brought through ‘consultation’ and ‘participation’.¹⁰⁴ According to World Bank, the extent to which those involved are permitted to influence, share or control decision-making is the major factor that differentiates consultation from participation. After indicating this, World Bank defines the word participation as ‘a voluntary process in which people including marginal groups (poor, women, indigenous and ethnic minorities), come together with project authorities to share, negotiate and control the decision-making process in project design and management’.¹⁰⁵ Additionally, the World Bank understands the term ‘participation’ in the context of development as “a process through which stakeholders’ influence and share control over development initiatives and the decisions and resources which affect them’.¹⁰⁶

From aforementioned definitions and explanations, it is feasible to point outs some main elements of participation. The first important common attributes is that participation renders different levels of engagement for the public in participatory processes. By contrast, EIA practice asserts that less active forms of participation such as information provision may actually trigger more genuine (formal and informal) forms of public participation such as shared decision

¹⁰⁰ World Bank 1996 (n98) xi.

¹⁰¹ Hussein Ali, ‘Determinants of Community Participation in the Implementation of Development Projects: A Case of Garissa Sewerage Project, Kenya’ (2018) 4 Int’l Journal of Economics, Commerce and Management 843,3.

¹⁰² ibid

¹⁰³ ibid

¹⁰⁴ World bank, ‘*public involvement in EIA Process: requirements, opportunities and issues*’ (no 5, Environmental Department 1993 EA sourcebook update) 4

¹⁰⁵ ibid

¹⁰⁶ World Bank 1996 (n98) xi.

making or social protest.¹⁰⁷ The levels of public participation will be dealt with in other section of this chapter. Therefore, here it is not needed to illustrate the levels or types of participations.

The second important common attributes is that participation empowers the public, in general, and disadvantaged members of the public in particular. In this regard, Arnstein Sherry posits participation ‘as “citizen control” that enables “have not” citizens obtaining the majority of decision making seats and managerial power’.¹⁰⁸ The third related point that can be inferred from the above explanations and definitions is that participation involves an interactive process; it is done in a collaborative and deliberative framework. Thus, as cited by Gebremichael, Rowe and Frewer affirms that there is no a single universal definition what participation constitutes and is not.¹⁰⁹

2.3.3 Defining public participation

It is the fact that, the term public participation encompasses to separate words; public and participation. In above section, this chapter tried to disclose the definition and concepts of both words ‘the public’ and ‘participation’ separately. However, here under in this section, it will try to illustrate definition and concepts of term ‘public participation’ through joining that of two words together. The term public participation has different meanings in a different discipline and for different authors. Its common synonyms include public involvement/engagement, citizen participation / involvement / engagement, stakeholder / community participation / involvement / engagement.¹¹⁰

However, Quick and Bryson, asserts that the term ‘citizen participation’ once used interchangeably with ‘public participation’, is now fading of favor because the term citizen participation excludes many participants who do not have formal citizenship status and also neglects numerous other types of public or civic participation and engagement.¹¹¹ In the words of Rowe and Frewer, ‘Public participation is a complex concept, the scope and definition of

¹⁰⁷ Glucker (n77)3.

¹⁰⁸ Sherry Arnstein, ‘A Ladder of Citizen Participation’ (1969) 35 Journal of the American Institute of Planners 216-224, 217.

¹⁰⁹ Gebremichael (n7) 134.

¹¹⁰ Avramoski (n90) 3.

¹¹¹ Kathryn Prick and John Bryson, ‘Theories of Public Participation in Governance’ [2016] 3.

which is open to debate.’¹¹² Although there is no prior agreements on defining what does mean public participation, some authors and organization defines it as follows:

Quick and Bryson defines public participation in governance as ‘the direct involvement or indirect involvement through representatives of concerned stakeholders in decision-making about policies, plans or programs in which they have an interest’.¹¹³ As cited by Quick and Bryson, Freeman posits that the stakeholders are persons, groups or organizations that may influence or be affected by policy decisions.¹¹⁴ This definition responds who question through expressing the ‘concerned stakeholders’ to participate but fails to respond what and how question (levels of influence and methods of involvement in decision-making respectively).

Okello, Beevers and others defined public participation as ‘an interactive process that involves communication, listening, consulting, engaging and partnership with the public as stakeholders to establish and deliberate on areas of agreement and disagreement in aid of decision-making’.¹¹⁵ As it inferred from this definition the term public participation includes ‘interactive’ decision making processes in participatory approach. Interactive decision-making is a procedure in which different parties play an active role and jointly arrive at a decision.¹¹⁶

Similarly, Creighton defines public participation as ‘the process by which public concerns, needs and values are incorporated in to governmental and corporate decision- making. Also he notes that public participation is two- way communication and interaction, with the overall goal of better decisions that are supported by the public.’¹¹⁷ He identified that the definitions of public participation constitutes following elements:

- Public participation applies to administrative decisions—that is, those typically made by agencies (and sometimes by private organizations), not elected officials or judges.
- Public participation is not just providing information to the public. There is interaction between the organization making the decision and people who want to participate.

¹¹² Gene Rowe and Lynn Frewer, ‘Evaluating Public-Participation Exercises: A Research Agenda’ (2004) 29 Science, Technology, & Human Values 512-556, at 514.

¹¹³ Bryson (n 111) 1.

¹¹⁴ *ibid*

¹¹⁵ Nick Okello, Lindsay Beevers and Others, ‘The Doing and Undoing of Public Participation During EIA in Kenya’ (2009) 27 IA and Project Appraisal 217-226, 2.

¹¹⁶ Gebremichael (n7) 150.

¹¹⁷ Creighton (n96) 7.

- There is an organized process for involving the public. It is not something that happens accidentally or coincidentally.
- The participants have some level of impact or influence on the decision being made.¹¹⁸

Dietz and Stern define the term public participation, as ‘organized processes adopted by elected officials, government agencies, or other public- or private-sector organizations to engage the public in environmental assessment, planning, decision making, management, monitoring, and evaluation’.¹¹⁹ They further argue that these processes supplement traditional forms of public participation (voting, forming interest groups, demonstrating, lobbying) by directly involving the public in executive functions that, when they are conducted in government, are traditionally delegated to administrative agencies.¹²⁰ However, as Glucker, Driessen and others noted, this definition of public participation, exonerates or fails to recognize ‘informal forms of public participation’¹²¹ and fails to identify the levels of or influence of public in the participatory process.

Also Andre, Connor and Others, and International Association for Impact Assessment (IAIA) defines public participation in the context of environmental impact assessment as ‘the involvement of individuals and groups that are positively or negatively affected, or that are interested in, a proposed project, programs, plan or policy that is subject to a decision-making process’.¹²² Levels of participation in EA varies from passive participation (a unidirectional form of participation), to participation through consultation (such as public hearings and open-houses) and to interactive participation (such as workshops, negotiation, mediation and co-decision).

Otwang and Phenrat conceptualize public participation in terms of its rationales; ‘instrumental’, ‘substantive’ and ‘normative’, which are identified by Glucker, Driessen and others in their intensive literature review.¹²³ According to the instrumental rationale, public participation is merely meant for achieving a smooth and legitimate implementation of project and to resolve

¹¹⁸ *ibid*

¹¹⁹ Dietz and Stern (n88) 29.

¹²⁰ *ibid*.

¹²¹ Glucker (n75)3.

¹²² Pierre Andre, Desmond Connor, and Others and International Association for Impact Assessment (IAIA), ‘Public Participation: International Best Practice Principles’ (2004) Special Publication Series; No. 4, 1.

¹²³ Ashijya Otwang and Tanapon Phenrat, ‘ Comparative Analysis of Public Participation in the EIA Process for Thai Overseas Investment Projects: Krabi Coal Terminal, Hongsa Coal Power Plant, and Dawei Special Economic Zone’(2017) 35 Impact Assessment and Project Appraisal 325-339,3.

conflicts among stakeholders. On other hand, according to the substantive rationale, public participation is valued as a tool to enhance decision- making regarding a project by harnessing local information and knowledge, and incorporating experimental and value based knowledge, as well as testing the robustness of information from other sources again that obtained from the public. Finally, with respect to the normative rationale, public participation is meant to influence decisions, to elevate democratic capacity, provide social learning, and empower and emancipate marginalized individuals and groups.¹²⁴

From above illustrations and definitions of public participation, it is possible to deduce that there is no accepted single universal definition for term public participation. Supporting this assertion, Armeni argues that ‘the notion of public participation in environmental decision – making remains ambiguous and unsettled’.¹²⁵ Although there is no prior on the definition of public participation, it is possible argues that, lets controversy as it is, generally, the term public participation upholds and responds who, why, how and what questions in participatory approach in environmental decision-making.

If it said this all about in regard with the concepts and definitions of whom public are, what does mean participation and what does mean public participation, it is better to proceed to next section dealing with levels or types of public participation.

2.4 LEVELS OR TYPES OF PUBLIC PARTICIPATION IN EIA PROCESS

There are different types or levels of public participation. Public participation spectrum developed by the International Association for Public Participation’s (IAP2) identifies different levels of public participation in democratic decision-making on continuum of increasing community influence.¹²⁶ Some authors identify those components of public participation as ‘types’ of public participation while others calls ‘levels’ of public participation. For instance, IAP2 identifies those different forms of public participation as ‘levels ‘of public participation’.¹²⁷ In contrast, Arnstein Sherry identifies those components of public participation as the ‘types ‘of participation’.¹²⁸

As it indicated IAP2 spectrum of public participation shares similarities with other models, such as; ‘ladder of citizen participation’, ‘ladder of children’s participation’, ‘ladder of

¹²⁴ *ibid*

¹²⁵ Chiara Armen, ‘Participation in Environmental Decision-Making: Reflecting on Planning and Community Benefits for Major Wind Farms’ (2016)28 *Journal of Environmental Law* 415–441, 1.

¹²⁶International Association for Public Participation (IAP2), ‘spectrum of public participation’ [2000] (<https://organizingengagement.org/models/spectrum-of-public-participation/>) 4.

¹²⁷ *ibid* 1.

¹²⁸ Arnstein(n108)217.

empowerment’, ‘typology of youth participation’ and ‘empowerment pyramid’, and ‘youth engagement continuum’ among others and it is grounded on decades of research and practice in the field of public participation.¹²⁹ Accordingly, it identifies the five different levels of public participation in EIA process. These levels are information, consultation, involvement, collaboration and empowerment.

2.4.1 Information provision

Information provision requires one direction communication flow and its objective is to provide relevant and objective information to the public to assist them in understanding the problem, alternatives, opportunities, and/or solutions.¹³⁰ This process requires continuous provision of information that the public needs to know concerning the project or the subject under consideration.¹³¹ In this regard, World Bank asserts that the information should be provided in a timely manner and in a form that is meaningful for, and accessible to the groups being consulted.¹³² Moreover, IAP2 discloses that when leaders are not fully transparent and withhold important or essential information, or when they provide biased information for the purposes of misrepresenting an issue and manipulating public perception, an informing process can become difficult.¹³³ Creighton argues that public information is an important part of an effective public participation program, but by itself does not forms public participation.¹³⁴

2.4.2 Consultation

Consultation involves in two ways interaction process whereby information flows between the proponent and the public. In a consulting process, participants contribute their viewpoints, opinions, or preferences, and leaders then use this information to inform their decisions. It allows evaluation and collation of public responses. These responses could be concerns, observations, discussions, and contributions are collated and steps are taken to address them. Measures that address these concerns are also communicated back to the public as a reassurance that their concerns are or will be duly considered and not neglected.¹³⁵ World Bank contends that:

¹²⁹ *ibid*

¹³⁰ *ibid*

¹³¹ *ibid*

¹³² World Bank 1993(n104) 22.

¹³³ International Association for Public Participation (n126) 4.

¹³⁴ Creighton (n96) 9.

¹³⁵ International Association for Public Participation (n126) 4.

In consultation while decision-making authority is retained by government, interaction with people and eliciting feedback allows affected populations to influence the decision-making process by raising issues that should be considered in scoping; project design; mitigation, monitoring and management plans; and the analysis of alternatives.¹³⁶

Arnstein Sherry categorizes the levels of information provision and consultation process as degrees of tokenism that ‘allow the have-nots to hear and to have a voice’.¹³⁷ However, he contends that under these conditions participants lack the power to insure that their views will be heeded by the powerful.¹³⁸

2.4.3 Involvement

Involvement brings the proponent and the public together to work toward mutual objectives. The interaction allows the proponent to gather public views and concerns and demonstrates how those are or will be addressed. The goal of this process is not to turn control of the process or decision making over to the public. Instead, it is a deliberative method of working on preferences and reaching a consensus. It is achieved through workshops and deliberative polling.¹³⁹

2.4.4 Collaboration

As the name depicts, collaboration requires that the proponent and the public share responsibilities and work together in order to determine the most appropriate approach to be adopted. In this instance, the public has the ability to influence the decision making process, negotiate rules and program procedure.¹⁴⁰ Arnstein Sherry categorizes this level of public participation (collaboration or partnership) as degree of citizen power that enables participants to negotiate and engage in exchanges with traditional power holders.¹⁴¹

2.4.5 Empowerment

Empowerment allows the public full control of the processes as well as the final decisions reached. The proponent undertakes to manage the project in line with public decisions. It puts

¹³⁶ World Bank 1993(n104) 23.

¹³⁷ Arnstein(n108)217.

¹³⁸ *ibid*

¹³⁹ International Association for Public Participation (n126) 5

¹⁴⁰ *ibid*

¹⁴¹ Arnstein(n108)217.

final decision making in the hands of the public.¹⁴² Arnstein Sherry refers this level of public participation as the level in which ‘have-not citizens obtain the majority of decision-making seats, or full managerial power’.¹⁴³

In regard with the importance of different levels of participation, Odemene Sandra claims that the level with the highest influence is not better than that with least the influence since the later paves way for the former.¹⁴⁴ Similarly, EIA practice affirms that less active forms of participation such as information provision may actually trigger more genuine (formal and informal) forms of public participation such as shared decision making or social protest.¹⁴⁵

2.5 RATIONALES OF PUBLIC PARTICIPATION IN EIA

As touched up on in the theoretical approaches of public participation section in this chapter, different authors evaluate and present different objectives for involving public in EIA process. However, Glucker Driessen and Others have done an extensive review of existing academic literature as well as practice guides and manuals on objectives of public participation in EIA process.¹⁴⁶ They refined those objectives in terms of their underlying three rationales. Therefore, the analysis in this section will rely on the often-cited typology developed by above authors, which identifies and evaluates three distinct rationales for public participation based on what are described as substantive, normative and instrumental.

First, according to the substantive argument, public participation improves the quality of decisions by integrating additional knowledge and perspectives into deliberations in EIA processes. According to this rationale, public input is crucial to understanding the social interests and values that interact with the technical elements of environmental issues, thus supporting sound problem-solving and better informed decision-making. This is sometimes narrowed to an environmentalist point of view, whereby it is asserted that the public have environmental interests which may otherwise be neglected. Others recognize that measuring decision quality usually must balance a variety of environmental, social and economic factors. In any case, either reasoning follows a functionalist and outcome-orientated approach.¹⁴⁷

¹⁴² International Association for Public Participation (n126) 6.

¹⁴³ Arnstein(n108)217.

¹⁴⁴ Sandra Odemene, ‘Optimizing Public Participation in Environmental Decision Making in Nigeria’[2015] Thesis submitted in partial fulfillment of the coursework requirements for the Degree of Master of Environmental Policy and Management in university of Adelaide, 14.

¹⁴⁵ Glucker (n77)106.

¹⁴⁶ *ibid* 107.

¹⁴⁷ *ibid* 107-108.

Secondly, according to the normative argument, public participation fulfills fundamental democratic rights. From this point of view, citizen empowerment is an ideological end in itself regardless of outcome, based on principles of procedural equity and justice. It closely accords with arguments that rely on established procedural human rights norms, such as the right to political participation, the right to a fair trial, the right to information and indigenous peoples' rights. Part of the normative argument is thus primarily concerned with ensuring that incumbent power interests can be challenged and countered. This could serve either to temper powerful political forces that would favor corporate interests above environmental or other socio-economic concerns, or to protect against 'green politics' that may lean in the direction of overly authoritarian or technocratic approaches. It can be associated with the concept of environmental democracy.¹⁴⁸

Thirdly, according to the instrumental argument, public participation contributes to sustaining public trust in institutions and provides a basis for justification for decision in EIA process. It fosters a sense of stakeholder ownership, thus enhancing the acceptability of decisions, reducing resistance to implementation and enforcement, and encouraging public mobilization to participate in the implementation of decisions. Inclusion of politically powerful actors in particular can also help decision-makers to understand their interests and may help to and persuade other participants to accept a preferred position. In this sense, instrumental objectives have strong governmental appeal and can be relatively supportive of incumbent powers' interests and agendas.¹⁴⁹

2.6 THE ENABLING ENVIRONMENT FOR EFFECTIVE PUBLIC PARTICIPATION IN EIA PROCEDURE

Jimenez, Ledeunff and others argue that participation is meant to generate decisions that are better anchored among different groups in society, in particular those that are directly affected by the decisions being made and to enable wider representation in decision-making. They state that participation will neither be useful nor meaningful, unless certain conditions are in place.¹⁵⁰ In this regard, different scholars identify different enabling factors for the effectiveness of public participation in EIA process. For instance, Palerm Juan evaluates and identifies the 'legal provisions' and 'actors' attitude and capacities' as the factors that the enable for the best practice

¹⁴⁸ *ibid* 106-107.

¹⁴⁹ *ibid* 108-109

¹⁵⁰ Alejandro Jimenez, Helene Ledeunff and Others, 'The Enabling Environment for Participation in Water and Sanitation: A Conceptual Framework' (2019) 11 MDP 308, 21.

of public participation in EIA processes.¹⁵¹ Also World Bank identifies that the success of exercising public participation in EIA process influenced by two factors. These are the enabling environments (such includes appropriate legislative framework, capacity to carry out consultation, adequate resources and social science expertise) and the ‘appropriateness of consultation framework (framework defining what, when, who, where and how) of the public participation process.’¹⁵² Elaborating these elements of effectiveness that were identified by World Bank is necessary here. As World Bank asserts, the first element of enabling environments consists four factors for effectiveness of public participation in EIA process.

Accordingly, the first factor of enabling environment; ‘appropriate legislation framework’ is concerned with presence of EIA legislation. World Bank contends public participation in EA is often difficult without a legislative framework. However, Armen Chiara asserts that even when legislation embeds enforceable rights to participate, the wider legal and policy context often limits the reasons to be taken into account in the decision-making process, and used in turn to justify the decision.¹⁵³ He discloses that participation is repeatedly constrained by technical risk assessment, cost-benefit analysis and the idea that the public lacks expertise and misunderstands science.¹⁵⁴ In same fashion, Jimenez, Ledeunff and others identifies contextual and procedural factors that may jeopardize the success of participatory efforts. They consider contextual factors are those that are largely outside of the control of agencies or participants (e.g., demographics, history, and culture) or those that can only be influenced by management and institutional decisions in the mid- and long-term (e.g., the legal and institutional framework). While procedural elements are those over which agencies and participants have considerable control when designing and executing participatory efforts (e.g. representativeness and inclusivity, access to information, and opportunity to influence).¹⁵⁵ Also Palerm Juan affirms that there are many examples where the attitudes and capacities of actors alter the effectiveness of participation processes, regardless of the legal provisions.¹⁵⁶

The second factor of enabling environment; ‘local capacity factor’ - is concerned with the importance of local capacity to carry out participation and it mainly related with having strong

¹⁵¹ World Bank 1993(n104) 7-8

¹⁵² *ibid*

¹⁵³ Armen (n125) 416.

¹⁵⁴ *ibid* 308.

¹⁵⁵ Ledeunff (n150)

¹⁵⁶ Juan Palerm, ‘An Empirical and Theoretical Analysis Framework for Public Participation in Environmental Impact Assessment’ (2000) 43 *Journal of Environmental Planning and Management* 581-600, 589.

national institutions that could take on the management responsibility for the consultative process, which sometimes took long time. Task managers also found that while international consultants could play a useful advisory role in setting up the process, the key players needed to be in-country.¹⁵⁷ In this regard, Palerm Juan argues that not only capacity does a matter for the participation but also willingness of citizen is too. For this scenario he presents an example and indicates that the capacity but no willingness is the situation where a group of citizens who have many concerns over a project, have the legal opportunity to participate, but are afraid of repression, and thus decide not to get involved.¹⁵⁸

The third factor of enabling environment; ‘adequate resources factor’ - is connected with that the conducting participation will incur costs for in-country activities and for the time and travel of task managers and other project staff. The costs will vary, of course, according to the project setting and the chosen methods and intensity of participation. World Bank reveals that in most cases, participation accounts for a mere fraction of total project preparation costs and a small percentage of EA preparation costs.¹⁵⁹

The fourth factor of enabling environment; ‘social science expertise factor’ is the related with the necessity and inclusion of social science expertise while conducting participation in EIA processes. The skills of social scientists are needed to manage participation process. Accordingly, World Bank identifies four important areas where these skills of social science expertise are most needed. These includes; identification of participant groups, stake holders and other social groups in the project's area of influence, design of consultation/participation of influence, design of consultation/participation management and resolution and institutional analysis.¹⁶⁰

The second element, ‘the consultation framework’ refers to that the framework established and recognized during the scoping, defining what, when, who, where and how the consultation in EIA process is undertaken. The consultation process that has the well-defined arrangement on ‘the rules of the game’ at the start promotes respect and trust among the participants. The consultation framework should determine the issues to be addressed and those not under discussion, the time duration for consultation, the sampling of participants (including their legitimacy and representativeness), the setting and location for meeting, the consultation method

¹⁵⁷ World Bank 1993(n104) 7-8

¹⁵⁸ Palerm(n156) 589

¹⁵⁹ World Bank 1993(n104) 7.

¹⁶⁰ *ibid*

and the documentation and dissemination methods familiar with local culture and language (including feedback to those consulted).

2.7 BASIC PRINCIPLES FOR EFFECTIVE PUBLIC PARTICIPATION IN EIA

Different authors identify different principles for effective public participation in EIA process. For instance, Gebremichael distinguishes three principles for public participation in EIA processes. These are access to information; public participation in decision making; and access to justice in environmental matters. These three principles generally described as ‘access pillars’ or ‘procedural principles’ of public participation.¹⁶¹ Conversely, Diduck, Sinclair and others describes the principles for meaningful public participation in EIA processes include as follows:

- early and adequate notice of all major steps in project planning and decision-making;
- Fair and reasonable access to regulatory and project information;
- financial and technical assistance to involved parties so that they can represent their interests adequately;
- Reasonable opportunities to comment on, and influence, decisions regarding the project, alternatives to the project, and key project features and impacts;
- Integrity, accountability and transparency of process, and follow-up on input given by the public; and
- Open and fair public hearings if the project proposal generates significant controversy.¹⁶²

Moreover, Andre, Enserink and Others formulate and identify three tries of international association for impact assessment public participation best practice principles (IAIA public participation best practice principles) in EIA process.¹⁶³ These includes; - basic principles, operating principles and developing guidelines. Basic principles are principles that applied to all stages of public participation in EIA processes from strategic to operational levels. Operating principles are the principles of public participation that depicts how the basic principles should be applied to the main steps and activities of the EIA processes. Developing guidelines determine important directions for the improvement of public participation in IA.¹⁶⁴ Here discussing all those three tries of principles of public participation is not relevant. Thus, this

¹⁶¹ Gebremichael(n7)197.

¹⁶² Alan Diduck, John Sinclair and Others, ‘Achieving Meaningful Public Participation in the Environmental Assessment of Hydro development: Case Studies from Chamoli District, Uttarakhand, India’ (2007)25 Impact Assessment and Project Appraisal 219-231, 220.

¹⁶³ Pierre Andre, B.Enserink, and others, ‘Public Participation International Best Practice Principles’ (2006) Special Publication Series No 4 Fargo International Association of Impact Assessment USA,3.

¹⁶⁴ *ibid*

study delves in to discussing the basic principles of public participation. As it indicated above, different authors identify different principles of public participation. However, this study prefers to analyzes the basic principles of public participation that were established by Andre, Enserink and Others in IAIA documents since these principles refined as international best practice principles. Accordingly, as they categorize contemporary public participation practice in EIA should be:

- **Adapted to the context:-** Understanding and appreciating the social institutions, values, and cultures of the communities in the projects areas; and respecting the historical, cultural, environmental, political and social backgrounds of communities which are affected by a proposal.
- **Informative and proactive:** recognizing that the public has a right to be informed early in a meaningful way in proposals which may affect their lives.
- **Adaptive and Communicative:** recognize that the public is heterogeneous according to their demographics, knowledge, power, values and interests. The rules of effective communication among people, in respect of all individuals and parties should be followed.
- **Inclusive and Equitable:** ensuring that all interests, including those not represented or underrepresented (indigenous people, women, children, elderly and poor) are respected regarding the distribution of impacts, compensation and benefits. Equity between present and future generations in a perspective of sustainability should be promoted.
- **Educative:** contributing to mutual respect of all impact assessment stakeholders with respect to their values, interests, rights and obligations.
- **Cooperative:** promoting cooperation, convergence and consensus building rather than confrontation. Engaging conflicting perspectives and values as well as trying to reach general acceptance of the proposal towards a decision that promotes and supports sustainable development.

Imputable: improving the proposal under study, taking into account the results of the public participation process; including reporting and feedback about the results of the public participation process, especially how their inputs have contributed to decision making¹⁶⁵

¹⁶⁵ ibid

Having said all this about regarding the basic principles for effective public participation in EIA, it is also important to highlight the meaning and objective of EIA. Since, this study is mainly related with concern of public participation, discussing the issues of EIA in detail is not needed. Therefore, the next section will involves in highlighting the meanings, objectives and steps of in EIA study.

2.8 MEANING AND OBJECTIVE OF EIA

As a result of human action, the environmental crisis, has become a major global issue affecting every part of the globe (both developed and developing), causing a lot of sufferings to millions of people worldwide.¹⁶⁶ In developing countries as they frequently suffer from insufficient considerations of impacts, alternatives and public participation, the severe is mostly large.¹⁶⁷ Thus, EIA was originated and promoted as a tool and policy instrument for integrating the environment and development issues in late 1960s and early 1970s.¹⁶⁸

There is no set definition of EIA. It has been defined by various scholars based on their perceptions and opinion. The IAIA and Institute of Environmental Assessment of United Kingdom, defines environmental impact assessment as ‘the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made’.¹⁶⁹ Matemilola and Salem defines EIA is an anticipatory and participatory tool for identifying, predicting, and analyzing the possible impacts of a proposed project on the physical environment, as well as the associated social, economic, and health impacts.¹⁷⁰ It takes into account the ecological, social and economic aspects in appraising the possible environmental effects of a proposed project. Its appraisal aims to ensure that decision-makers consider the environmental impacts to determine whether to continue with the project.¹⁷¹

¹⁶⁶ Adugna Feyissa Gubena, ‘Environmental Impact Assessment in Ethiopia: A General Review of History, Transformation and Challenges Hindering Full Implementation’ (2016) 6 *Journal of Environment and Earth Science*, 2.

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ International Association for Impact Assessment and Institute of Environmental Assessment of UK, ‘Principles Of Environmental Impact Assessment Best Practice’ (2005) 2 *Journal of Multi-Disciplinary Evaluation*, 2.

¹⁷⁰ Saheed Matemilola and Hammed Salem, ‘Environmental assessment’ [2021] Springer Nature, 1.

¹⁷¹ Bhushan Ambade and Charwak Ambade, ‘Environmental Impact Assessment: A Case Study of Construction of Metro Rail Nagpur, Maharashtra (India)’ (2023) 10 *SSRG International Journal of Recent Engineering Science* 39-43, 39.

IAIA establishes the objectives of EIA to include:¹⁷²

- To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;
- To anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals;
- To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- To promote development that is sustainable and optimizes resource use and management opportunities.

2.9 STEPS OF EIA STUDY

Different authors and organizations categorize the steps of EIA study in to different categories. The IAIA and Institute of Environmental Assessment of United Kingdom, identifies the steps or processes of EIA in to ten steps. These includes;- screening, scoping, examination of alternatives, impact analysis, mitigation and impact management, evaluation of significance, preparation of EIA, review of the EIA, decision making and follow up.¹⁷³ In contrast, Palerm describes that the procedure of EIA consists of six steps such includes; screening, scoping, environmental impact statement (EIS) preparation, EIS review, decision and post-project monitoring.¹⁷⁴ As cited by Mnengwane, Rhodes University identifies the steps of EIA processes includes; - screening, scoping, assessment, EIA report, review, decision and monitoring.¹⁷⁵ Also, Secretariat of the Convention on Biological Diversity categories steps of EIA procedures to encompass five levels .These are;- screening, scoping, EIS preparation (includes impact assessments, mitigation), quality review, decision and post-evaluation.¹⁷⁶ Here, the intention is not to compare or analyze the steps of EIA with each other or to not refine the best one, but it is only to highlight the existence of different steps that should be followed during EIA processes. Thus, here the steps that are identified by the Secretariat of the Convention on Biological

¹⁷² International Association for Impact Assessment and Institute of Environmental Assessment of UK (n169) 2.

¹⁷³ *ibid* 4.

¹⁷⁴ Palerm (n156)589.

¹⁷⁵ JJJ Mnengwane, 'The Effectiveness Of Public Participation in Environmental Impact Assessment in Selected South African Case Studies' [2014] Mini-Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree Masters in Environmental Management at the Potchefstroom Campus of the North-West University,17

¹⁷⁶ The Secretariat of the Convention on Biological Diversity , 'Environmental Impact Assessment on support of marine biodiversity and the sustainability of marine resources'[EIA Module] (https://www.cbd.int/marine/soi/soi-training-modules/SOI-module-EIA_Training-Guide-en.pdf)

Diversity will be discussed. As it disclosed above the Secretariat of the Convention on Biological Diversity there are generally six steps in EIA processes.

The first one is ‘screening’ steps in EIA processes. This screening step involves in determining whether your project requires an EIA. The second one is ‘scoping.’ It involves in identifying the issues and impacts that are likely to be important and to establish terms of reference for EIA. The third one is ‘EIA preparation’. This step includes preparing environmental impact statement, mitigation measures, monitoring, baseline studies and environmental management. It involves in documenting clearly and impartially impacts of the proposal, the proposed measures for mitigation, the significance of effects, and the concerns of the interested public and the communities affected by the proposal. The fourth one is ‘quality review’. This step demands whether the report meets its terms of reference, provides a satisfactory assessment of the proposal and contains the information required for decision making. The fifth step is ‘decision – making’. This step involves in determining approval or rejection of the proposal and to establish the terms and conditions for its implementation. The sixth and the last one is ‘post-evaluation’ process. This process involves in assessment continues with ongoing monitoring, evaluation, communication and management.¹⁷⁷

Having said in regard with theories, concepts, rationales, debates, levels or types of public participation in EIA study as well as enabling conditions for public participation, meaning, objectives and steps of EIA study, it is better to precede next section that will appreciate the notion of public participation in environmental ‘rights’ perspective. Since this study is involved in and aimed at appraising the practice of ‘right to public participation’ in EIA process, grasping the concepts of ‘public participation’ in relation with the environmental rights approach’ is very important. Therefore, the next section will appreciate the essences of public participation in environmental rights perspectives.

2.10 NOTION OF PUBLIC PARTICIPATION IN ENVIRONMENTAL ‘RIGHTS’ PRESPECTIVE

Aneme Girmachew defines environmental rights ‘as claims which are recognized by law and capable of enforcement by judicial organs and other institutions of the state’.¹⁷⁸ Also, he reveals that, environmental rights have mostly developed as part of human rights law, irrespective their

¹⁷⁷ *ibid*

¹⁷⁸ Girmachew Aneme, ‘The Policy and Legislative Framework of Environmental Rights in Ethiopia’ (2012) IV Ethiopian Human Rights Law Series, 4.

existence within the laws, customs and principles that make up national and international environmental laws.¹⁷⁹ In same fashion, Geleta Zerihun states that environmental rights are pioneered in the area of international human rights law and international environmental law.¹⁸⁰ Also with regards to its emergence, as Gellers Joshua cited, Boyd discloses that the three primary international trends has led to growth of environmental rights such as; - ‘the move towards constitutional democracy (mainly among developing nations), a global rights revolution, and the global environmental crisis in 1960s’.¹⁸¹ Furthermore, Gellers Joshua identifies three approaches why countries adopt constitutional environmental rights in their legal and policy frameworks. These are; norm socialization approach, a rationalist-materialist approach and domestic politics approach.

The first ‘norm socialization approach’ states that the states adopt the constitutional environmental rights in response to the behavior of actors such as other states, transnational activists and intergovernmental organization. It upholds views that the countries adopt as a result of being entrenched within a broader world culture as opposed to internal rational calculation.¹⁸² The second ‘a rationalist-materialist approach’ states that ‘the world powers might compel weaker states to adopt new norms by “manipulating material incentives” or ‘altering the substantive beliefs of leaders in other nations’. According to this approach the powerful states have been known to impose a constitutional guide on weaker states or to ask compliance to such a guide as a term of normal relations’.¹⁸³ The third ‘domestic politics approach’ asserts that the ‘pressures to adopt environmental rights may come from a range of actors within a state who seek to right past wrongs or encourage environmental clean-up attempts’.¹⁸⁴

Over the years on the category and meaning of environmental rights three approaches have developed within human rights law.¹⁸⁵

The first approach, distinguished as ‘anthropocentric’, considers environmental rights as component of civil and political rights; intending the protection of individual human beings

¹⁷⁹ *ibid*

¹⁸⁰ Zerihun Geleta, ‘Environmental Rights and Investment in Ethiopia: A Strenuous Relationship’(2015) Koninklijke Brill Nv Leiden 272

¹⁸¹ Joshua Gellers, ‘Explaining the Emergence of Constitutional Environmental Rights: A Global Quantitative Analysis’(2015) 6 *Journal of Human Rights and the Environment* 75–97,

¹⁸² *ibid* 80

¹⁸³ *ibid* 81

¹⁸⁴ *ibid* 82

¹⁸⁵ Patricia Birnie, Alan Boyle and Others, ‘*International law and the Environment*’ (3rd edn Oxford University Press 2009) 271-273.

against the harmful impact of the environment. In this sense environmental right appreciated are predominantly procedural rights that guarantee access to information, right to participation in decision-making process and the right to effective remedy when environmental harm takes place. The focus on the protection of humans from environmental harm subjects this approach to be criticized. Accordingly, this approach is identified as a procedure of ‘greening of human rights law’.¹⁸⁶

The second approach places environmental rights as part of economic, social and cultural rights. According to this approach the environmental rights would include substantive rights such as the right to healthy and clean environment and the protection of biodiversity as such. This approach has been valued as ‘ecocentric’ for its proportionate focus on the protection of humans and the environment itself.¹⁸⁷ According to this approach, however, the environmental rights are programmatic rights and ‘vulnerable to tradeoffs against other similarly privileged but competing objectives, including the right to economic development’.¹⁸⁸

The third approach looks environmental rights as group/ solidarity rights to healthy environment and sovereignty over natural resources that can only be invoked collectively. This approach is vitiated by the arguments over the validity and position of group/ solidarity rights within the human rights discourse.¹⁸⁹

Aforementioned approaches as it is, in generally, environmental rights are consists of substantive environmental rights (fundamental rights) and procedural environmental rights.¹⁹⁰ Substantive environmental rights includes the right to a clean air, clean water and adequate sanitation, safe climate, healthy and sustainable produced food, healthy biodiversity and ecosystem and non-toxic environment in which to live, work, study and play.¹⁹¹ Procedural environmental rights are interchangeable called as the ‘fundamental access right’ and it encompasses the right to information, the right to public participation and the right to access to

¹⁸⁶ *ibid* 272.

¹⁸⁷ Andrew Hoffman and Lloyd Sandelands, ‘Getting Right with Nature: Anthropocentrism, Ecocentrism and Theocentrism’ [2004] Ross School of Business Working Paper Series No. 903, 7-8.

¹⁸⁸ James May and Erin Daly, ‘New Directions in Earth Rights, Environmental Rights and Human Rights: Six Facets of Constitutionally Embedded Environmental Rights Worldwide’ [2011] 11-09 IUCN Academy of Environmental Law 14.

¹⁸⁹ Nico Horn and Anton Bosl (ed), ‘*Human Rights and the Rule of Law in Namibia*’ (2nd edn, Macmillan Publishers 2008).

¹⁹⁰ UNEP and ESCAP Technical Briefing Paper on Human Rights and the Environment in Asia Pacific 5.

¹⁹¹ *ibid*

justice in environmental matters.¹⁹² Thus, the right to public participation is the one component of procedural environmental rights that this study is going to examine. Since this study assumes those theoretical and empirical analyses of chapter one as equal applicable and relevant for the right approach of public participation, discussing the right perspective of public participation as separate is not necessary.

2.11 SUMMARY

Generally, this chapter involved in conceptualizing the public participation in EIA process. In doing so, it engaged in reviewing and examining theoretical and empirical relevant literatures on public participation in environmental decision- making in general and public participation in EIA process in particular. To this end, in detail this chapter analyzed and identified theories of public participation (rational /elite theories, liberal democratic theory and deliberative democracy) and defined public participation in EIA process. Then after, it reviewed and distinguished the levels or types of public participation in EIA process such include information provision, consultation, involvement, collaboration and empowerment. It also identified three rationales/objectives of public participation in EIA process. There are substantive rationale, normative rationale and instrumental rationale. After having noted the rationales of public participation, it analyzed the presupposing elements for effective public participation in EIA process that include enabling environment (appropriate legislative framework, local capacity factor, adequate resource factor and social science factor) and the element of consultation framework. Subsequently, it approached with basic principles for effective public participation in EIA process (typically identified seven IAIA public participation international best practice principles such includes adapted to the context, information and proactive, adaptive and communicative, inclusive and equitable, educative, cooperative and imputable).

After then it looked for in highlighting meaning and objectives of EIA study, steps of EIA study. In last, it scrutinized the notion of the public participation in environmental right approach; and then claimed in interlinking and understanding that those explanations, discourses and notions of public participation out of right approach is equal applicable and relevant in enforcing public participation of right approach(environmental rights approach)

¹⁹² ibid

CHAPTER3: THE RIGHT TO PUBLIC PARTICIPATION IN EIA PROCESS IN ETHIOPIAN ENVIRONMENTAL LEGAL AND POLICY FRAMEWORK

3.1 INTRODUCTION

Getting enormously discussed the conceptual and theoretical frameworks as well as practical significance of the public participation in the context of EIA in preceding chapters, this chapter, in first, will look at critically the legal content and nature of the right to public participation in EIA process in Environmental legal and policy frameworks in Ethiopia. To this end, it will analyze the legal content and nature of the right to public participation in EIA process in line with and through applying the theoretical and empirical frameworks defining who public are, why public exercise the right to public participation (the rationales), to what levels the public exercise the right to public participation (types of the public participation) and in what mechanisms (techniques) the public practice the right to public participation that were presented earlier in chapter two.

In doing so, it will analyzes the relevant international and regional legal and policy frameworks. This is because the FDRE Constitution of 1995 of Ethiopia recognizes all international agreements ratified by Ethiopia as an integral part of the law of the land¹⁹³ and those agreements function as a primary guide in the interpretation of both substantive and procedural environmental rights.¹⁹⁴ In addition to this, Ethiopia is a party to many international environmental agreements, as well as major international human rights treaties.¹⁹⁵ Taking in to account this fact, the discussion about the legal contents and nature of the right to public participation as well as the adequacy of environmental and policy frameworks in practicing the right to public participation in EIA in Ethiopia cannot be fully appreciated without considering the relevant international and regional agreements to which Ethiopia is a party.

Since, it is not possible to discuss all of the international and regional environmental instruments within the limited scope this study, this chapter focuses on the international and regional environmental instruments that are most relevant to the discussion at hand, namely: the Stockholm Declaration, the Rio Declaration, the Aarhus Convention, and the African Convention. Even though Ethiopia is not a party to the Aarhus Convention, this Convention

¹⁹³ FDRE Constitution of 1995, art9 (4).

¹⁹⁴ *ibid* art13 (2).

¹⁹⁵ EPA National Report(n50) 22-24

needs to be considered, at least for academic purposes, because of its groundbreaking legal approach towards public participation in environmental governance and its global significance.

In regard with Ethiopian environmental laws and policy frameworks, specifically this research will analyze the FDRE Constitution of 1995, the Environmental Policy of 1997, the EIA Proclamation of 299/2002, the FMMAIP of 590/2008, Environmental and Social Impact Assessment Practitioners' Directives by EPA of 2010, Directive No.2/2008 issued to determine the categories of projects subject to the EIA, Environmental Impact Assessment Guideline Document of 2000 (EIA guideline) and environmental impact assessment procedural guideline series 1/2003 (EIA procedural guideline).

After then this chapter, in second place, will evaluate the adequacy of Ethiopian environmental legal and policy frameworks in practical applying the right to public participation in EIA process. To this end, for sake of relevancy, it will analyze only EIA proclamation of 299/2002 and EIA Guideline Document of 2000 in line with and through applying seven IAIA international best practice principles such include adapted to the context, informative and proactive, adaptive and communicative, inclusive and equitable, educative, cooperative and imputable that were discussed earlier under chapter two of this research.¹⁹⁶ Finally, by doing this, this chapter will attain its ultimate aim which is responding the first and second questions of the research.

3.2 ANALYZING THE LEGAL NATURE AND CONTENT OF THE RIGHT TO PUBLIC PARTICIPATION IN EIA PROCESS IN ETHIOPIA

As it briefly pointed in introduction section in this chapter, in order to have full-fledged understanding on the legal nature and contents of the right to public participation in EIA process in Ethiopia; it is crucial to analyze international, regional and national environmental legal and policy frameworks. Therefore, here, in first, this research will analyze and evaluate the international and regional environmental instruments, and then the Ethiopian environmental legal and policy frameworks will come after.

3.2.1 Analyzing international and regional legal frameworks

3.2.1.1 Stockholm declaration

The Stockholm declaration is a result of the first global environmental conferences that called the United Nations Conference on the Human Environment that took place in Stockholm,

¹⁹⁶ n 35-36

Sweden during 1972.¹⁹⁷ The declaration consists of 26 principles and aim at ‘considering the common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.’¹⁹⁸ Ethiopia was the participant of the promulgation of the Stockholm declaration.¹⁹⁹ As well, currently Ethiopia has participated²⁰⁰ the meeting named ‘Stockholm+50’, inter alia, that aims ‘implementation of the environmental dimension of sustainable development.’²⁰¹ In this meeting, the Ethiopian Prime Minister Abiy Amhed has expressed the political will of Ethiopia in implementing Stockholm Declaration by ‘highlighting how Stockholm in 1972 connected poverty, development, and the environment.’²⁰²

When it assessed the provisions of this declaration, it did not recognize the right to public participation and define who public is in its express terms since there is no clear provision stipulating the right to public participation in its ambit. However, in its preamble the declaration aimed:-

[T]o defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development’.²⁰³

Besides, the declaration states and demands ‘to achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts’.²⁰⁴ As it inferred from these above stipulations, it is possible to argue that although the declaration didn’t recognize the right to public participation in explicitly, it recognizes the right to public participation implicitly and putting responsibility on the shoulder of citizens, communities, enterprises and institutions to defend and improve the human environment. If it established that the declaration implicitly recognizes the right to public participation, it is crucial to asses in what objective the declaration is recognized this right.

¹⁹⁷ United Nations, ‘Report of the United Nation Conference on the Human Environment’ [1972] A/Conf.48/14/Rev.1 UN/SA Collection 3.9 (Stockholm Conference Report).

¹⁹⁸ *ibid* 3-5.

¹⁹⁹ *ibid* 43.

²⁰⁰ International Institute for Sustainable Development, ‘Summary of Stockholm+50’ (2022) 13 Earth Negotiations Bulletin 14, 1.

²⁰¹ *ibid* 3.

²⁰² *ibid* 1.

²⁰³ Stockholm Conference Report, Para 6 of the Preamble of Declaration.

²⁰⁴ *ibid*, Para 7.

In this regard, as well, there is no clear stipulation that the declaration states for recognizing the right to public participation as objective or rationale. But this is not meaning that the rationales for the recognition of the right to public participation cannot be inferred from the declaration through contextual interpretation. As it noted above, the declaration puts the responsibility up on the citizens, communities, enterprises and institutions at every level in view of defending and improving the human environment for the interest of present and future generations. The words of declaration ‘defending and improving’ bestow the right on citizens, communities, enterprises and institutions to influence the environmental decisions that affect them. Thus, it is possible to contend that the declaration recognized the right to public participation in the view of normative rationale; since recognizing the right to public participation in a view of influencing decision is an aspect of normative rationale as in noted in chapter two of this research.

Moreover, the declaration does not provide the level (types) of public participation and mechanisms (techniques) of the public participation. This would have not been surprised since its recognition of the right to public participation itself was inferred.

Also declaration deemed to be anthropocentric since it puts the human person at the center of the environment. In this regard, it considers human beings as ‘both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.’²⁰⁵ Also it states that ‘both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself and of all things in the world, people are the most precious.’²⁰⁶ Regardless such limitation, the Stockholm Declaration is mainly praised for setting of groundwork for the subsequent development of global and regional environmental norms.²⁰⁷ If it illustrated to this extent the position of right to public participation in this declaration, it is important to proceed to the Rio Declaration, which came to life in 1992.

3.2.1.2 Rio declaration

At the 1992 United Nations Conference on Environment and Development held in Rio de Janeiro through reaffirming and seeking to build upon Stockholm Declaration, adopted Rio

²⁰⁵ *ibid* para 1.

²⁰⁶ *ibid*

²⁰⁷ Gunther Handl, ‘Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992’ [2012] United Nations Audiovisual Library of International Law 1.

Declaration.²⁰⁸ This declaration aims with '[respecting] the interests of all and protect the integrity of the global environmental and developmental system.'²⁰⁹ To this end, the declaration provides 27 principles on environmental and developmental matters. Among these principles, the principles 3 and 4 of the Rio Declaration state, respectively, that the 'right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations' and that in 'order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.'²¹⁰

Likely Ethiopia had participated promulgation Stockholm Declaration, also actively participated during the Rio Declaration was promulgated.²¹¹ This declaration under principle 10 states that:

The environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to the information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and an opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.²¹²

As it apparently stated in this above principle, the declaration recognizes that of three fundamental access rights/procedural rights of environments. These are the right to information, the right to public participation and the right to public participation. It is also clear from the provisions of the Rio Declaration that procedural environmental rights were not only recognized but a positive obligation was placed upon states to ensure the full and proper enjoyment of these rights. Moreover, it recognizes the EIA under principle 17 by stating that, 'EIA, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority'.²¹³

²⁰⁸ Rio Declaration of 1992.

²⁰⁹ *ibid*, on its preamble.

²¹⁰ *ibid*

²¹¹ EPA National Report on Sustainable Development of 2012, 15.

²¹² Rio Declaration of 1992

²¹³ *ibid*

Although chapter two of this research noted that defining ‘who public is’ has significance for practicing the right to participation,²¹⁴ this declaration does not provide the operational definition ‘who public is’ in exercising the right to public participation in environmental decision making. However, in above quoted principle, it points to ‘all concerned citizens and each individual’ at the relevant level to engage in participatory process. Thus, it can be contends that ‘all concerned citizens and each individuals’ are stakeholders that can be participated in the participatory process of environmental decision- making or in EIA process.

As far as why public participation in EIA process is concerned, in chapter two, the rationales of public participation are widely noted. Under the vein of repetition and in the view of remembering, there are three rationales these include normative, substantive and instrumental.²¹⁵ When the declaration is examined in view of why it recognized the right to public participation (rationales), it is not possible to establish it simply since principle 10 does not provide the express reason for its recognition, but recognizes ‘participation’ as best mechanism in handling environmental issues. Therefore, it is better to analyze principle 10 in combining with other principles of the declaration. In this respect, principle 20 and 22, respectively, provides the effective participation of women and indigenous community in environmental management and in achieving sustainable development.²¹⁶ As it inferred from above mentioned principles, the declaration aims at empowering and emancipating the marginalized individual and groups. Hence, it can claim that the declaration incorporated the right to public participation in the view of normative rationale; since recognizing the right to public participation in a view of empowering and emancipating the marginalized individual and groups is an aspect of normative rationale as in noted in chapter two of this research.²¹⁷

On the other hand, the declaration does not provide the level or types of public participation and mechanisms for engaging in participatory process since it involved in providing the general principles on environmental and developmental matters. However, likely Stockholm Declaration, the Rio Declaration is predominantly the follows human centric approach in protecting the environment²¹⁸

²¹⁴ n 20-22

²¹⁵ n30-31

²¹⁶ Rio Declaration of 1992.

²¹⁷ n30-31

²¹⁸ Rio Declaration of 1992, principle 1.

3.2.1.3 Aarhus convention

Aarhus Convention is one of the groundbreaker legal instruments that aspire to associate environmental and human rights by allowing rights to the public and enforcing obligations on state parties to implement environmental legal principles.²¹⁹ It is a regional pact that its scope of application is limited to Europe and central Asia, which constitute the region of the United Nation Economic Commission for Europe.²²⁰ It is presently the only international convention on procedural environmental rights that permits any state to join as a party.²²¹

This convention recognizes both substantive and procedural environmental rights, with more emphasis on the latter. Accordingly, the Aarhus Convention states in its preamble, inter alia, that ‘every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations’²²². So as ‘to be able to assert this right and observe this duty,’ the Aarhus Convention goes on recognizing procedural environmental rights (access rights) such as the right to information²²³, the right to public participation²²⁴ and the right to justice in environmental matters and acknowledging in this regard that citizens may need assistance in order to exercise their rights.²²⁵ Also convention imposes obligation on the parties to the convention to take the necessary legislative, regulatory and other measures to implement the provisions and set the framework for enforcement.²²⁶

Unlikely the Stockholm and Rio Declaration, this convention explicitly provides the operational definition ‘who public is’ in exercising the right to public participation in environmental decision making. Consequently, it defines the term ‘the public’ as one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.²²⁷ As well, it further goes defining the term ‘public concerned’ as ‘the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an

²¹⁹ UNEP and ESCAP Technical Briefing Paper on Human Rights and the Environment in Asia Pacific 6.

²²⁰ Svitlana Kravchencko, ‘The Role of Civil Society :The Law of Energy for Sustainable Development [2005] Cambridge University Press,525

²²¹ *ibid*

²²² Aarhus Convention, para 7 of its preamble and art 1

²²³ *ibid*, para8 of its preamble and art 4.

²²⁴ *ibid*, para 8 of its preamble and art 6.

²²⁵ *ibid*, para 8 of its preamble

²²⁶ *ibid*,art 3.

²²⁷ *ibid*,2(4).

interest.²²⁸ Thus, as it concisely presented in above provisions of the convention, this is declaration respond the question of who should be involved in the participatory process in environmental decision –making or in EIA process.

As far as the issues of rationale for the recognition of the right to public participation in environmental decision-making or in EIA process is concerned, Aarhus Convention in its preamble stipulates the importance of the right to public participation in decision making. These importance includes, enhance and implementation of decisions, contribute to public awareness in environmental issues, give the public the opportunity to express its concerns, enable public authorities to take due account of public concerns, promotes accountability and transparency in decision-making and strengthen public support for decisions on the environment.²²⁹ From these importance statements of the public participation of the convention, as the essences of rationales for the public participation has been noted in chapter two of this research,²³⁰ the convention's recognition the participation in view that, latter contributes to public awareness in environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of public concerns manifests the normative rationale. While its recognition of participation in enhancing decisions reflects the substantive rationale and its recognition of participation in implementation of decisions, strengthen public support for decisions on the environment and promoting accountability and transparency shows the instrumental rationale of the participation.

In regard with the levels (types) of public participation, as it briefly presented in chapter two of this research, there have been different level/types of participation (information providing, consultation, involvement, collaboration or empowerment) .²³¹ In this regard, it is had better to examine convention for which level (whether information providing, consultation, involvement, collaboration or empowerment) the latter has recognized the participation.

The convention under its article 6(2) requires information providing or dissemination to the concerned public by different techniques likes ‘either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner among other things :

²²⁸ *ibid* 2(5).

²²⁹ *ibid*, para 9 and 10 of its preamble.

²³⁰ n30-31

²³¹ n 27-30

- The proposed activity and the application on which a decision will be taken;
- The nature of possible decisions or the draft decision;
- The public authority responsible for making the decision;
- The envisaged procedure;

It further puts that ‘the public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public [...] for the public to prepare and participate effectively during the environmental decision-making.’²³² Also under its article 6(7) the convention stipulates reflow of information from the public to the proponent through different techniques. This directly refers the level of consultation since the latter involves in two-way communication. Besides, the sub article 5 and 8 of article 6 of the convention, respectively, directs the proponents to identify the concerned public and to inter in to discussions with the former as well as oblige the government to take reasonable care on the outcome of the participation; this in turn refers the involvement level of public participation since the latter involves in bringing the proponent and the public together to work toward mutual objectives. However, it is possible to argue that the convention does not recognizes the collaboration and empowerment levels/types of public participation since the concerned public is not given the ability to influence the decision making process; rather as per article 6(9) of the convention the decision –making power is clearly retained for the government agency. Also in the same article the convention requires the accessibility of decision along with the reasons and considerations on which the decision is grounded to the public. In regard with mechanisms/techniques of public participation, sub articles 2,5 and 7 of article 6 of the convention, respectively, recognizes the techniques such as public notice, discussion, writings, public hearing and inquiry as mechanisms that the concerned public to participate in decision making process.

3.2.1.4 African convention

The African Convention is a continent-wide pact adopted in 2003 under the auspices of the African Union (AU) as an amendment to the 1968 counterpart convention.²³³ As stated in the preamble to the African Convention, the reason for amending the 1968 African Convention on the Conservation of Nature and Natural Resources was the need for ‘expanding elements related

²³² Aarhus Convention art 6(3).

²³³ African Convention of 2003.

to sustainable development’.²³⁴ In contrast to the 1968 African Convention, which appreciates ‘the ever-growing importance of natural resources from an economic, nutritional, scientific, educational, cultural and aesthetic point of view’, the (revised) African Convention adds ‘environmental’ and appreciates ‘the ever growing importance of natural resources from economic, social, cultural and environmental points of view’.²³⁵ Unlike its predecessor, the (revised) African Convention includes procedural environmental rights.²³⁶ The so-called three access pillars of public participation or procedural environmental rights are dealt with in article 16 of the African Convention, which proclaims as follows:

1. The Parties shall adopt legislative and regulatory measures necessary to ensure timely and appropriate
 - a. Dissemination of environmental information;
 - b. Access of the public to environmental information;
 - c. Participation of the public in decision- making with a potentially significant environmental impact; and
 - d. Access to justice in matters related to protection of environment and natural resources.

As pointed out in the above quote, the African Convention, like the Aarhus Convention, demands the parties to the convention to consider for legislative measures that ensure timely and appropriate access to information, public participation and access to justice in environmental matters. With specific regard to local communities, the African Convention requires parties to ‘take the measures necessary to enable’ their ‘active participation by the local communities in the process of planning and management of natural resources upon which such communities depend with a view to creating local incentives for the conservation and sustainable use of such resources.’²³⁷ The recognition of these procedural rights in the African Convention can be considered as a positive step up.

However, unlike the Aarhus Convention, the African Convention does not provide minimum normative standards for the enforcement of the right to public participation, nor does it provide a formal definition of the term ‘public’, beyond dummy recognition of the three access/procedural rights.

²³⁴ *ibid*, para 3.

²³⁵ *ibid*

²³⁶ *ibid* art 16, 17(3).

²³⁷ *ibid*, art 17(3).

3.2.2 Analyzing Ethiopian environmental legal and policy frameworks

3.2.2.1. *FDRE constitution*

As mentioned already, global and regional environmental instruments call upon signatory states to adopt adequate legal and institutional frameworks for the enforcement of their commitments, as stated in such instruments. So as to identify whether Ethiopia has assumed the necessary steps to practice these environmental rights, it is crucial to highlight some of the key substantive environmental rights and procedural environmental rights, emphasizing on analyzing the nature and contents of the right to public participation in the FDRE constitution in line with aforementioned frameworks (in view of remembering includes who public is, rationales of participation, levels or types of participation and techniques of participation).

To begin with, FDRE constitution under chapter three titled with ‘Fundamental Rights and Freedoms’ has incorporated, inter alia, development and environment related stipulations. Accordingly, under article 43 which is titled with ‘the right to development’ recognizes the right to participation by stating that ‘nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.’²³⁸ Besides, it reiterates this right in Chapter 10 that outlines the ‘National Policy Principles and Objectives’ parts under the article coined with environmental objectives by stipulating 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.’²³⁹ Under the same article, the constitution imposes an obligation on government to refrain from designing and implementing development activities that damage or destroy the environment and imposes the duty to protect the environment on both government and citizens.²⁴⁰ Furthermore, under article 89(6) that guarantees the economic objectives of the country, it stipulates that; ‘government shall at all times promote the participation of the people in the formulation of national development policies and programs; it shall also have the duty to support the initiatives of the people in their development endeavor.’²⁴¹ As these stipulations clearly indicate, the right to public participation in development and in environment matters has been given due recognition in the FDRE Constitution.

²³⁸ FDRE constitution of 1995, art 43(2).

²³⁹ *ibid* art 92(3).

²⁴⁰ *ibid* art 92(2).

²⁴¹ *ibid* art 89(6).

In regard with ‘who public is in practicing the right to public participation the constitution is not expected to provide operational definition for public participation since the constitution only involves in providing the general principles of environmental decision-making.

As far as rationale for recognition of the right to public participation is concerned the constitution is not clear on this point since it only says the citizen to participate with respect to policies and projects affecting their community; but do not explain clear reasons why the citizens participate in environmental policies and projects that affect them directly. Although the constitution fails to provide clear reason for recognition of the public participation, it is possible to argue that the constitutional recognition it as ‘right’ of citizen reflects normative rationale of public participation.

Regarding the level or type of the public participation, article 43(2) requires the national to ‘participate’ in national development and especial to be ‘consulted’ with respect policies and projects affecting their community. From this stipulation, it is possible to deduce that the constitution recognized the right to participate and the right to be consulted as a different since the constitution (using the conjunction ‘and’) recognized the right to participate as a right exercised during national development and the right to be consulted as a right exercised during the policies and projects affecting the community. In contrast, under article 92(3) the constitution provides the fully consultation and expression of views in the planning and implementation of environmental policies and projects that affects them directly. Thus, it is possible to claim that FDRE constitution provides the consultation level of public participation since consultation process involves in two way communication (providing information to public and receiving information from the public).

Concerning the mechanisms/ techniques in practicing or implementing the right to public participation there is no clear stipulation that indicates the techniques to be employed during the participation in the constitution. In this regard, it is possible to claim that the clear constitutional stipulation indicating the techniques/tools for participation is not expected to be incorporated under the constitution since FDRE constitution involves in providing the general legal and political framework principles of the country.

Having noted this about the rights to public participation; it is important to highlights those remaining two procedural environment rights such as the right to information and the right to have access to environmental justice in the FDRE Constitution for the sake of academic purpose.

In regard with the right to information, FDRE Constitution makes no explicit mention of the right to access to information in relation to environmental matters. However, the Constitution recognizes the right of citizens to information in general, which should also include the right to information about the environment.²⁴² Besides, the FDRE constitution stipulates that ‘the conduct of affairs of government shall be transparent.’²⁴³ Since, it is hardly possible to ascertain the principle of transparency governance without ensuring the right to access to information. Thus, it can be argued that the principles of transparency may also provide additional explanation for the right to access to information in environmental matters.

Referring the right to access to justice, the FDRE Constitution provides a nonspecific framework, but does not explicitly posit environmental matters. Article 37(1) of FDRE constitution recognizes the right to access to justice in general term by stating that ‘everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.’ In regards with, whether the environmental rights are justiciable or not needs future research and are out of the scope of this research; thus not needed to discuss this here. Under the same article, the constitution bestows the right to justice to both individuals/group of individuals and associations, which allows them to institute a case on their own behalf or on behalf of other persons with a similar interest or, in the case of associations, on behalf of their members.²⁴⁴ Thus, it is clear that, the FDRE constitution recognizes the right to access to justice in general terms that should include the right to have access to justice in environmental matters. If this is said for procedural right of environment; it is important to highlight substantive environment right under FDRE constitution.

Article 44(1) of FDRE constitution recognizes substantive environmental rights by stating that, ‘all persons have the right to a clean and healthy environment.’²⁴⁵ In addition to this, FDRE constitution repeats this right in chapter 10 that outlines the ‘national policy principles and objectives’ parts by stipulating that, ‘government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.’²⁴⁶ As it understood from this stipulation, the constitution also directs the government to exert the maximum effort to ensure the substantive environmental rights of citizens. Moreover, constitution impose obligation on government to

²⁴² *ibid* art 29(2).

²⁴³ *ibid* art 12(1).

²⁴⁴ *ibid* art 37(2) (a and b).

²⁴⁵ *ibid* art 44(1).

²⁴⁶ *ibid* art 92(1).

refrain from designing and implementing development activities that damage or destroy the environment.

3.2.2.2 Environmental policy

Ethiopia has adopted an Environmental Policy in 1997, which addresses a variety of sectorial and cross-sectorial environmental issues. This policy states its overall goal as follows:

The overall policy goal is to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.²⁴⁷

This broad policy goal captures the essence of the ideal of sustainable development in its broad sense since sustainable development. Consistent with the above mentioned overall policy goal, Ethiopia's environmental policy mentions different specific policy objectives under its section 2.2. In these specific policy objectives the policy recognizes the empowerment and participation of the people and their organizations at all levels in environmental management activities.²⁴⁸ Succeeding with the overall and specific policy objectives, the environmental policy provides a set of key guiding principles. Also in line with its overall and specific policy goals and the key guiding principles, it provides different sectorial and cross-sectorial environmental policies under its paragraph III and IV respectively.

Under cross-sectorial policies part, inter alia, environmental policy recognized policies on; community participation and environment, environmental information system and EIA.²⁴⁹ The aim of the cross-sectorial policy on community participation, inter alia, includes:

- To reorient management professionals employed in natural resource and environmental extension programs to embrace participatory development, and to strengthen their communication skills so as to more effectively disseminate both the results of scientific research and the practical experience of local farmers;

²⁴⁷ Environmental Policy of Ethiopia 1997, Sect II (2.1).

²⁴⁸ *ibid*, Sect 2.2 (h).

²⁴⁹ *ibid*, Sect 4.2, 4.7 and 4.9 respectively.

- To develop effective methods of popular participation in the planning and implementation of environmental and resource use and management projects and programs;
- To ensure genuine grassroots level participation throughout all phases of environmental and resource development and management, from project conception to planning and implementation to monitoring and evaluation.
- To develop the necessary legislation, training and financial support to empower local communities so that they may acquire the ability to prevent the manipulated imposition of external decisions in the name of participation, and to ensure genuine grassroots decisions in resources and environmental management;
- To increase the number of women extension agents in the field of natural resource and environmental management;²⁵⁰

Besides, environmental policy under cross-sectorial policies part provides the policy foundation for EIA; considers public consultation as an inherent part of EIA and the latter's procedures to have provision for both an independent review and public comment before consideration by decision makers.²⁵¹ Furthermore, it states that 'EIA consider not only physical and biological impacts but also address social, socio-economic, political and cultural conditions.'²⁵² In short, this concise discussion shows that environmental policy of Ethiopia recognizes the right to public participation and requires EIA process should involves the former.

Concerning the issues of 'who public are' the policy do not provide operational definition for the term 'the public' but as it noted in above quote expressing the aim of community participation, the policy recognizes and requires the local communities to participate in environmental decision-making.

As far as the rationales for the recognition of the right to public participation is concerned, as it inferred from in above quote expressing the aim of community participation, the policy recognizes different rationales. Accordingly, the community participation aiming to promote the skill of environmental management professionals and increasing the number of women extension agents in the field of natural resource and environmental management can be argued that this reflects the normative rationales of public participation. The aims of community

²⁵⁰ ibid sect 4.2.

²⁵¹ ibid

²⁵² ibid

participation empowering local communities in acquiring ability to prevent the manipulated imposition of external decisions in the name of participation can be contended that this directly indicates substantive rationale of public participation in environmental decision making. The aim of community participation in implementing the environmental and resource use and management projects and programs can be claimed that this depicts the instrumental rationale of public participation. In short, it can be claimed that the environmental policy of Ethiopia recognizes the right to public participation in views of the normative rationale (as the right that has end in itself), substantive rationale (as in puts enhancing the quality of environmental decision) and instrumental rationale (as means in implementing environmental decision).

Having briefly noted on why the Ethiopian environmental policy incorporated, it is safer to proceed in to identifying the levels or types of public participation incorporated under this policy regime. In regard with the levels of public participation, likely FDRE Constitution, the Ethiopian environmental policy in the parts of community participation recognizes the consultation level of public participation (two-way communication) by stating ‘to ensure information flow among all levels of organization including the Federal and Regional States and the people at the grassroots level by developing a two way mechanism for data collection and dissemination.’²⁵³

Concerning the mechanisms/ techniques in practicing or implementing the right to public participation there is no clear stipulation that indicates the techniques to be employed during the participation in the environmental policy of Ethiopia. As it notoriously realized, the policy provides the general principles that specific legislation to be derived or emanated. Consequently, Ethiopian environmental policy, as it noted in above quotes indicating the aims of community participation directs to ‘develop effective methods of popular participation in the planning and implementation of environmental and resource use and management projects and programs.’²⁵⁴

3.2.2.3 Environmental legislations

As it indicated in introduction section of chapter three of this research, in relations with the environmental legislations of Ethiopia, for the sake of the relevance, here, it discussed the only the EIA Proclamation and the FMMAI Proclamation; with emphasis on the former since this research involved in assessing the right to public participation in EIA procedure. Here, in first the EIA proclamation is analyzed; and then FMMAI proclamation is followed.

²⁵³ ibid

²⁵⁴ ibid

Accordingly, EIA Proclamation, in its preamble foregrounds the significances of EIA in terms of promoting sustainable development by proposing that efficient mechanism that harmonizes and integrates environmental, economic, cultural and social issues in to environmental decision making process.²⁵⁵ Besides, it discloses the importance of EIA such as; predicting and managing the environmental effects of proposed development activities, promoting the implementation of the environmental rights and objectives enshrined in the FDRE Constitution, and bringing about administrative transparency and accountability in environmental decision making.²⁵⁶ Moreover, the preamble recognizes the right to public participation in EIA process by stating that ‘EIA serves [...] to involve public and in particular, communities in the planning of and decision taking on developments which may affect them and its environment.’²⁵⁷

After illustrating aforementioned general statements of purpose in its preamble, the proclamation under article 5 stipulates that ‘every project (whether government or private) that fall in any category listed in any directive issued pursuant to this proclamation shall be subject to EIA.’²⁵⁸ As per this article the Directive No.2/2008 was issued that determines the categories of projects subject to the EIA. Here, it is not needed to examine issues connected with directive since it will be examined in next section. As it indicated above, the proclamation after grounding the right to public participation in its preamble and then moves to provide the detail provisions under its ambit. Accordingly, articles 6 of the proclamation impose duty on the proponent ‘to carry out EIA for project that is likely to produce a trans-regional impact in consultation with the communities likely to be affected.’²⁵⁹ Pursuant to this article, one can argue that the proponents of projects do not have legal obligation to involve public/communities during EIA process for the projects that produce only regional environmental impact.

In same fashion, the proclamation under article 15 obliges competent federal and regional environmental bodies to make any EIA report accessible to the public with a view of requesting comments on it and to ascertain incorporation of public’s/ communities’ likely to be affected comments in EIA report and the degree of comments (as per Amharic version) in its evaluation. From these mentioned provisions of proclamation, it is possible to realize that conducting EIA and participating of the public/communities during EIA process is the legal duty of projects

²⁵⁵ EIA Proclamation of 299/2002, in its Preamble Para 2.

²⁵⁶ *ibid*

²⁵⁷ *ibid*

²⁵⁸ *ibid* art 5(1).

²⁵⁹ *ibid* art 6(1).

proponents. On other hand, the legal duty of competent federal and regional environmental bodies are making EIA reports accessible to the public to be commented, ascertaining the incorporation of public's/ communities' comments in EIA reports and evaluating the degree of comments during the EIA report evaluation. Thus, it can be asserted that the legal role of the competent federal and regional environmental bodies is to get comments on EIA reports and to evaluate the degree of the public's/communities' comments in EIA reports after EIA reports is made; but not to checkout presence of public participation on the other stages of EIA process such as screening, scoping, EIS preparation, decision and post-evaluation; as these stages were discussed in chapter two of this research.

Concerning the issues of 'who public are' the EIA proclamation do not provide operational definition of public participation in EIA process; but it in general term requires the consultation of the communities likely to be affected.

Similarly, as far as rationale for recognition public participation in EIA process is concerned, the EIA proclamation is not clear on this point, since it only provides the public or communities to participate with respect development affecting them and their environment; but do not explain reasons why the public or communities participate in environmental policies and projects affecting them and their environment. Thus, it is not possible to establish EIA proclamation's rationale is whether normative, substantive or instrumental for the incorporation of public participation in EIA process.

Having presented the absence of clear rationale on why EIA proclamation incorporated public participation in EIA process, it is sounder to proceed in to identifying the levels or types of public participation incorporated in EIA proclamation. In regard with the levels of public participation in EIA process, as it clearly stipulated in its article 6 and 15, the EIA proclamation recognize the consultation level of public participation (two-way communication). Whereas, EIA proclamation under its article 9(2) renders the decision making power to the competent authority. In this regard, EIA proclamation holds the same status with FDRE Constitution and the Ethiopian environmental policy.

Concerning the mechanisms/ techniques in practicing or implementing the right to public participation in EIA process there is no clear stipulation that indicates the techniques to be employed during the participation in EIA proclamation. In this regard, it is possible to claim that EIA report is the only mechanism or merely one of a set of mechanisms for ensuring public

participation in EIA process as per EIA proclamation. It is also unclear whether public participation should start at the early stages of the EIA project cycle or be withheld until an EIA report is produced and made accessible to the public for review. Moreover, although EIA proclamation on its preamble recognizes EIA promotes the implementation of environmental rights, nowhere it employs the term the ‘right to public participation’ rather than using the term ‘public participation’. If all this is said about the EIA proclamation, let’s proceed to FMMAI proclamation.

The FMMAI proclamation²⁶⁰ regulates access to information in relation to the mass media and members of the public. This proclamation under its part three which is titled with the access to information mentions its objectives. Among listed objectives of proclamation, the proclamation intends ‘to encourage and promote public participation, public empowerment, to foster a culture of transparency, accountability and efficiency in the functions of public bodies and to encourage and promote good governance.’²⁶¹ As it inferred from above discussion of FMMAI proclamation, although the proclamation mainly focus on regulating the right to information in general, recognizes the right to public participation in general; that also includes the right to participate in environmental matters. However, it does not provide operational definition of public participation, the objectives of public participation, levels or types of public participation and mechanisms for public participation.

3.2.2.4 Environmental directives

As it mentioned in introductory section of chapter three in this research, in regard with environmental directives for sake of relevancy the only Environmental and Social Impact Assessment Practitioners’ Directives²⁶² and Directive No.2/2008²⁶³ will be dealt with here. Accordingly, in the first, Directive No.2/2008 will be examined; and then revised Environmental and Social Impact Assessment Practitioners’ Directives will be followed.

Directive No.2/2008 is issued as pursuant with article 5 of EIA proclamation by the former Environmental Protection Authority (EPA, now the Ministry of Environment, Forestry and Climate Change). This directive aims to determine the categories of projects subject to the EIA process and lists types of the projects that should undertake EIA study. Accordingly, the

²⁶⁰ Freedom of the Mass Media and Access to Information Proclamation of Ethiopia 590/2008(FMMAI Proclamation of 2008).

²⁶¹ *ibid* art 11(3).

²⁶² Environmental and Social Impact Assessment Practitioners’ Directives of 3/2010 (EIA practitioners’ directive 3/2010)

²⁶³ Directive No .2/2008 Determining Categories Of projects.

directive identifies 22 projects that require the EIA study during their conception. Among those listed projects, for the sake of illustration the projects such as irrigation development (irrigated area of 3000 ha or more), taking fish from lakes on a commercial scale, textile factory, cement factory, paper factory, hospital construction, sugar refinery, tire factory with production capacity of 15000 kg/day or more, airport construction, establishment of industrial zone and condominium construction are projects that should undertake EIA study; that were right to public participation is implemented. However, directive apart from the listing the types of projects, do not incorporates criteria that was used in identifying those projects. Also, it does not deal with the issues of the right to public participation. It does not deal with issues of the right to public participation. Hence, here, it is not necessary to discuss rationales of public participation, levels or types of public participation and mechanisms for public participation.

After having above note in regard with directive no.2/2008, let's proceed to examine revised environmental and social impact assessment practitioners' directive. The revised environmental and social impact assessment practitioners' directive (directive no 3/2010) is issued as per article 7(2) and 20 of EIA proclamation with repealing environmental and social impact assessment practitioners' directive no 02/2006. This directives aims at providing the standards/parameters in granting competence accreditation for environmental and social impact assessment consulting experts and organization so that the impact study to incorporate the environmental, social and economic issues and to make latter that has enough quality.²⁶⁴ In its preamble, the directive intends that the environmental and social impact assessment should fulfill the environmental rights of citizens. Besides under article 6(4) it imposes obligation on consulting officials and organizations to possess those approved environmental and social impact assessment reports and public participation consultation documents for not less than ten years.²⁶⁵ From these above stipulations, it can be deduced that this directive guarantees the right to public participation in EIA process and to the consultation level. However, likely EIA proclamation, it does not provide an operational definition of public participation in EIA process. Also, it does not stipulate the objectives of public participation, levels or types of public participation and mechanisms for public participation.

²⁶⁴ EIA Practitioners' Directive 3/2010,art 4.

²⁶⁵ *ibid*

3.2.2.5 Environmental guidelines

EIA proclamation under article 8(3) and 13(2) grants the power for competent environmental authority to issue guidelines that determine the elements essential to develop as well as assess an EIA study report. Consequently, competent environmental authority issued many EIA guideline documents which provide for EIA procedure as well as for EIA in specific development sectors in the country (including: agriculture, industry, transport, mining and dams and reservoirs).²⁶⁶ Among those guideline documents, as it noted in this chapter at introduction section, for sake of relevancy the only EIA guideline document of 2000 [EIA guideline] and EIA Procedural Guideline Series 1/2003[EIA Procedural Guideline Series] will be critical dealt with here. Accordingly, in the first, EIA guideline will be examined; and then EIA Procedural Guideline Series will be followed.

EIA guideline aims at being a reference material to ensure effective environmental assessment and management practice in Ethiopia for all parties who engage in the process.²⁶⁷ Among those specific aims, the guideline provides specific objectives such as:-

- Providing all interested parties with a consistent approach to EIA (including: project proponents, consultants, communities, NGOs and the authorities);
- Assisting community and NGO groups in realizing their environmental rights with regard to EIA;²⁶⁸

Also, it provides a number of principles of EIA process and recognizes the participation as one principle of EIA process by stating that ‘participation requires that all interested and affected parties have the opportunity to participate meaningfully in the EIA process.’²⁶⁹ It identifies stakeholders in EIA process such includes proponent, consultant, interested and affected parties and competent agency (environmental and licensing agency as per EIA procedural guideline identify); and their respective roles in EIA process.²⁷⁰

Surprisingly, unlikely predecessors of Ethiopian environmental legal and policy frameworks, this guideline defines the term participation as ‘interested and affected individuals and groups will have an opportunity to participate in decisions about ways in which environmental concerns

²⁶⁶ Federal Democratic Republic of Ethiopian Environmental Protection Authority, ‘Environmental Impact Assessment Guideline Document’ [2000] 1. [FDRE EIA Guideline].

²⁶⁷ *ibid*

²⁶⁸ *ibid*

²⁶⁹ *ibid* 6.

²⁷⁰ *ibid* 11.

are addressed.²⁷¹ Specifically, it goes further defining interested party as ‘individuals or groups concerned with or affected by an activity and its consequences such includes the authorities, local communities, investors, work force, customers and consumers, environmental interest groups and the general public.’²⁷² However, it does not define who the affected party in EIA process is. But it considers interested and affected parties as key to a successful EIA and is responsible for providing input and comments during the scoping phase, in assessing and mitigating impacts and in the review of the EIA report. Thus, it is possible to understand that this guideline tried to responds the question of ‘who public is’ as an interested and affected party of the proposed project without directly defining the term public or public participation. However, the guideline creates confusion by failing to make distinction between stakeholders and interested party; since as per guideline both include proponents, consultants, competent agencies and local communities.

Concerning the rationale for recognition of public participation in EIA process, it is crucial to examine the roles and responsibility of interested and affected parties in each EIA stages as per the guideline. Under its specific objective the guideline aims that ‘assisting community and NGO groups in realizing their environmental rights with regard to EIA. As review of literatures identified in chapter two of this research, EIA guideline also describes the different steps of EIA process such includes pre-screening, screening, scoping, environmental impact study, reviewing, decision- making and a systematic environmental impact (EI) follow up.’²⁷³

Guideline considers pre-screening stage as a first stage in which the proponent contacts with the competent agency via a formal meeting, a telephonic conversation or correspondence by means of facsimile or electronic mail.²⁷⁴ This stage does not provide the role of interested and affected parties. It sets screening stage as a second stage that involves in determining whether or not a proposal requires EIA and the level at which the assessment should occur. This stage requires in deciding the public participation process and proponent to advertise of application in a view of informing interested and affected party of the project via ‘on site’ advertising (placing notice board) or ‘media advertising’ (newspaper read by the people where project proposed to take place).²⁷⁵ After this stage, the scoping stage is commenced.

²⁷¹ *ibid* v.

²⁷² *ibid*

²⁷³ *ibid* 13-21

²⁷⁴ *ibid* 14.

²⁷⁵ *ibid* 14.

As per guideline, scoping stage involves in identifying and narrowing down the potential environmental impact. This stage calls for public consultation of interested and affected parties intending that the public consultation ‘assure the quality, comprehensiveness and effectiveness of the environmental assessment.’²⁷⁶ Also it recognizes the different methods/mechanisms for public participation, these includes;- public meetings, telephonic surveys, exhibits, displays and open days, newspaper advertisements, written information, surveys, interviews and questionnaires; working with established groups (e.g. NGOs, Community Organizations etc.) and workshops and seminars.²⁷⁷

Guideline after recognizing aforementioned mechanisms for public participation, it considers public meetings are not always effective in giving and taking information. In this regard, it suggests that to select an appropriate technique to ensure true consultation, considering the social and economic environment within the affected environment of the proposal area is necessary.²⁷⁸ It further provides that the scoping report, inter alia, consist ‘a description of the public participation process including a list of interested and affected parties, and minutes of meetings.’²⁷⁹ In this stage interested and affected parties have the opportunity to review scoping report within 4 weeks in view of the project not to be objected because of non-consultation of key part and omission of issues and alternatives that were raised.²⁸⁰ Review of scoping report ascertains whether the issues raised are incorporated or not.

After this stage, environmental impact study proceeds. As guideline indicates, this stage, involves in the assessing and describing impacts.²⁸¹ However, the guideline does not disclose the roles of the interested and affected parties during this stage. The next to this stage of EIA is stage of EIA review.

Unlikely environmental impact study stage, the guideline puts that in the stage of EIA review the interested and affected parties have the right to review the environmental impact report in view of ascertaining the documents’ hold of adequate information of project and its sufficiency for decision making. In this regard, guideline impose duty on proponents coordinating interested and affected parties in reviewing environmental report via ‘distributing the document to all of

²⁷⁶ ibid 15.

²⁷⁷ ibid 15.

²⁷⁸ ibid

²⁷⁹ ibid

²⁸⁰ ibid 16.

²⁸¹ ibid 18.

the interested and affected parties or by making the document available in strategic places (e.g. public, schools, clinics etc.).²⁸² After the closing of review stage, the decision making stage is commenced.

The guideline indicates that in decision-making stage the competent agency 'should decide whether to accept the application as it stands, reject the application or request that the document be amended.'²⁸³ In this regard, the competent agency has obligation to provide the record of decision available to the interested and affected parties upon the request. Also, the interested and affected party dissatisfied by the decision has a right to appeal within 30 days after receipt of such a decision to the former general manager of the EPA (now to the general manager of Ministry of Environment, Forestry and Climate Change).²⁸⁴

The last stages that follows the decision-making is the stage of EI follow up. In line with the guideline this stage involves in 'a systematic evaluation of the activities of the operation in relation to the specified criteria of the condition of approval.'²⁸⁵ In this stage, the guideline, entitles the interested and affected parties to comment and review on the report of auditing.²⁸⁶

As this brief discussion has noted, from the roles of interested and affected in EIA process, it can be drawn different rationales/objectives recognizing the public participation in EIA process under this guideline. As it mentioned above, the aims of the guideline that mentioned in its specific objective parts recognizing the public participation intending at 'realizing the environmental rights' is directly reflects the normative rationale (normative rationale considers the right that has end in itself) of recognizing public participation in EIA process. On other hand, the objectives that guideline in scoping stage calls for public consultation of interested and affected parties [...] 'assure the quality, comprehensiveness and effectiveness of the environmental assessment and that the EIA review stages requires the interested and affected party to review the environmental impact report in view of ascertaining the documents 'hold of adequate information of project and its sufficiency for decision making' clearly reflects the substantive rationale (substantive rationale involves enhancing the quality of environmental decision) of public participation in EIA process. The guideline's aspiration of bestowing the interested and affected party with the opportunity to review the scoping report in perspective of

²⁸² ibid 19.

²⁸³ ibid

²⁸⁴ ibid 20.

²⁸⁵ ibid 21.

²⁸⁶ ibid

project not to be objected because of non-consultation and omission of issues and alternatives that were raised refers the instrumental rationale; that aims at implementing the decision of proposed project. Thus, it is possible to claim that the guideline consists of three rationales in recognizing the right to public participation in EIA process such includes normative rationale, substantive rationale and instrumental rationale.

Having briefly noted on why the EIA guideline incorporated public participation in EIA process, right now, it is safer to proceed in to identifying the levels or types of public participation incorporated under EIA guideline. In this regard, as it mentioned above, the screening stages requires ‘information dissemination’ to the interested and affected party of the project and the scoping stage calls for public consultation via, inter alia, public meeting, written information, workshops and seminars. In scoping stage, the interested and affected party has opportunity to review scoping report so as to ascertain issues raised [during consultation] have been addressed in the scoping report. Also EIA review stage bestows opportunity for interested and affected party to review EIA report in view of checking adequacy of information and its sufficiency for decision- making. As well, a systematic EIA stage requires interested and affected party in reviewing and commenting on the report of auditing. As it clearly indicated in these stages, there are two way communications that involves in giving information to the interested and affected party and receiving information from the latters. In between this two way communications, the interested and affected party has a role of expressing their views and concerns and ascertaining whether the reports have been addressed the issues that were raised. Thus, it is possible to assert that likely FDRE constitution, environmental policy, EIA proclamation and directive no 3/2010, this guideline provides ‘consultation level’ of public participation in EIA process.

As far as, the mechanisms of the right to public participation in EIA process are concerned, as it noted above in scoping stage discussion, the guideline’s recognition of different mechanisms for public participation in EIA process is already identified. Hence, the mechanisms of public participation in EIA process are not needed to be discussed again.

Having this brief note on the EIA Guideline Document, it is better to proceed to examine EIA Procedural Guideline Series. EIA Procedural Guideline Series is a nearly at all, a verbatim copy of EIA Guideline Document in relation with the matter to public participation. Thus, only analyzing the new points that EIA Procedural Guideline Series adds in relation with the issues of

the public participation needed to be discussed here, because evaluating whole parts of EIA Procedural Guideline Series creates redundancy.

As it disclosed above, the EIA Guideline only defines only who is the interested party in EIA process, but does not define who affected party is. Unlikely EIA Guideline Document, EIA Procedural Guideline the both interested and affected party as ‘individuals or groups concerned with or affected by an activity and its consequences [such] include local communities, work force, customers, or consumers, environmental interested groups and the general public.’²⁸⁷ However, there is lack of consistency in both guidelines in defining interested and affected party. This is because EIA guideline includes authorities and proponents in the definition of interested party in clear manner; whereas EIA procedural guideline excludes the competent environmental agency and proponents from the definition of interested and affected party. Also the definitions of participation of both guidelines are too broad since it includes organized and non-organized group; as well general public in the participatory process; and obviously this makes definition inadequate for practical exercise of public participation. Similarly, EIA guideline requires the communities’ consultation in scoping stages, reviewing of scoping reports, reviewing of EIA report and reviewing and commenting on a systematic EI follow up report (auditing report); whereas EIA Procedural Guideline impose obligation on competent agency to check ‘views, concerns and position of interested and affected party are taken into account during assessment, reviewing, auditing and at all stages of decision making.’²⁸⁸ In this regard also, the both guidelines are not concomitant with each other.

Unlikely EIA guideline, EIA procedural guideline recognizes that decision-making stage of EIA ‘should be consultative, participatory and influence others to behave responsibly and sustainably’²⁸⁹; as well proponent to cover expense, inter alia, public participation.²⁹⁰ Moreover, EIA Procedural Guideline in details recognizes the role of interested and affected parties in EIA process to:

- Provide comments at various stages of EA with reasonable time frame,
- Work in partnership with Environmental Agencies and proponents,

²⁸⁷Federal Democratic Republic of Ethiopian Environmental Protection Authority, ‘Environmental Impact Assessment Procedural Guideline Series 1 [2003] 2.[FDRE EIA Procedural Guideline Series].

²⁸⁸ ibid 14.

²⁸⁹ ibid 12.

²⁹⁰ ibid 17.

- Act and lobby in good faith, knowledge, reason and in a cooperative manner and use all means and facilities to ensure fairness in EA administration,
- Follow and monitor changes and inform the environmental and sectorial agencies and local administration the occurrence of adverse incidence or any other grievance in the course of implementation of a project or public instruments,
- Advocate and uphold the principle and values of environmentally sustainable development, etc.²⁹¹

In short, from above brief presentation, it can be understood that the Ethiopian environmental policy and legal frameworks in EIA context tried to respond who (who public is) as interested and affected party without providing the operational definition for the term public or public participation in clear manner; why (the rationale of public participation) as normative, substantive and instrumental; what (what level/types of public participation) as consultation level and how (mechanisms for public participation) questions of public participation in EIA process to include different mechanisms like public meetings, telephonic surveys and workshops and so on.

Having analyzed the nature and content of the right to public participation in EIA process in line with who (who public is), why (the rationale of public participation), what (what level/types of public participation) and how (mechanisms for public participation) questions of public participation in EIA process under international, regional and national environmental legal, policy and guidelines instruments, it is now necessary to proceed to the next section that will involve in analyzing the adequacy environmental legal and policy frameworks in practicing the right to public participation in EIA process.

3.3 ANALYZING THE ADEQUACY OF ENVIRONMENTAL LEGAL AND POLICY FRAMEWORKS IN PRACTICING THE RIGHT TO PUBLIC PARTICIPATION IN EIA

As it noted in introduction section of this chapter, in order to analyze the adequacy of environmental legal and policy frameworks in practicing the right to public participation in EIA process, this research involves in only examining EIA proclamation of 299/2002 and EIA guideline of 2000 in line with and through applying seven IAIA public participation international best practice principles such as includes adapted to the context, information and proactive, adaptive and communicative, inclusive and equitable, educative, cooperative and

²⁹¹ ibid 19.

imputable that were discussed earlier under chapter two of this research. This is because, both EIA proclamation and EIA guideline are primarily important instruments requiring public participation in EIA process; unlikely FDRE constitution and environmental policy providing the general principles governing the right to public participation in environmental governance. Also, as it is notorious that both EIA proclamation and EIA guideline are emanated from FDRE constitution and environmental policy, here examining only EIA proclamation and EIA guideline is relevant.

3.3.1 Adapted to the context

To begin with, as it noted in chapter two, this principle requires that the public participation should involves in ‘understanding and appreciating the social institutions, values, and culture of the communities in the project area; and respecting the historical, cultural, environmental, political and social backgrounds of the communities which are affected by a proposal.’²⁹² Thus, appraising the existence or incorporation of this principle under both EIA proclamation and EIA guideline is important here. As it indicated in above (in the section examining the EIA proclamation in this chapter), the EIA proclamation under its preamble recognizes the right to public participation. In detail under its article 6(1) requires the proponents to consult community while undertaking EIA for the project that is likely produce a trans-regional impact. However, the proclamation nowhere provides that the consultation should understand and appreciate social institutions, values, and culture of the communities in the project area in EIA process. In same fashion, although EIA guideline recognizes the right to public participation,²⁹³ nowhere it requires the consultation should understand and appreciate social institutions, values, and culture of the communities. Thus, it is possible to assert that the principle ‘adapted to the context’ is lacking in both EIA proclamation and EIA guideline.

3.3.2 Informative and proactive

The Informative and proactive principle of public participation asserts that ‘the public has a right to be informed early in a meaningful way in proposals which may affect their lives.’²⁹⁴ Thus, assessing the existence or incorporation of this principle of public participation under the ambit of the both EIA proclamation and EIA guideline regime is crucial. In this regard, EIA proclamation in its preamble requires the public or communities involvement in the planning of

²⁹² n34-36 .

²⁹³ FDRE EIA Guideline 14.

²⁹⁴ n34-36 .

and decision taking on developments which may affect them and its environment. Besides, under its article 6(1) impose obligation on proponent to undertake EIA in consultation with communities likely to be affected. As well under article 15(1) it requires competent authority to make EIA report accessible to the public and solicit comment on it. As it inferred from these stipulations, although the EIA proclamation recognize the consultation of public or community, it does not provide the clear time and the stages that the community or public should informed about the projects. Unlikely, EIA guideline requires the competent authority to cause the proponent to advertise application in view of formally informing interested and affected party of the potential project in screening stage of EIA process.²⁹⁵ The guideline provides that the ‘advertising may take the form of “on-site” advertising where a notice board may be placed in the location of the site or through “media advertising” where an advert is placed in an appropriate newspaper (i.e. one that is read by the people where the development is proposed to take place).²⁹⁶ As it indicated in above discussion, the first steps of EIA process that guideline provides is the pre-screening stage in which the proponent contacts with the competent agency²⁹⁷ and there is no relevance of informing the contact of proponent with competent agency to public. However, the second EIA stage (screening stage) calls for informing the public via ‘on-site advertising’ or ‘media advertising’ about the project. Hence, it can be affirmed that the EIA guideline incorporates ‘informative and proactive principle’ public participation in EIA process.

3.3.3 Adaptive and communicative

The adaptive and communicative principle insists that public participation should ‘recognize that the public is heterogeneous according to their demographics, knowledge, power, values and interests; the rules of effective communication among people, in the respect of all individuals and parties, should be followed.’²⁹⁸ In this regard, although EIA proclamation under article 15 obliges competent agency to make any EIA report accessible to the public with a view of requesting comments on it, nowhere provide clear mechanisms that enables public (interested or affected party) involving in consultation. However, EIA guideline provides different methods or mechanisms for consultation of public; inter alia; public meetings, telephonic surveys, written

²⁹⁵ FDRE EIA Guideline 14.

²⁹⁶ *ibid*

²⁹⁷ *ibid* 13

²⁹⁸ *ibid*.

information, workshops and seminars.²⁹⁹ Also, it asserts that considering the social and economic environment within the affected environment of the proposal area is important in selecting an appropriate consultation approach to ensure true consultation and language issues for informing the public.³⁰⁰ From this precise presentation, it can be claimed that the EIA guideline incorporates ‘adaptive and communicative principle’ of public participation in EIA process.

3.3.4 Inclusive and equitable

The inclusive and equitable principle holds a view that public participation should involve in ‘ensuring that all interests, including those not represented or under-represented (encouraging the participation of indigenous peoples, women, children, elderly and poor people) are respected regarding the distribution of impacts, compensation and benefits.’³⁰¹ It claims that ‘equity between present and future generations in a perspective of sustainability should be promoted.’³⁰² Having noted about the essence of what this principle maintain, after then, it is safer to proceed to distinguish the existence or incorporation of this principle under both EIA proclamation and EIA guideline. In this respect, the cumulative reading of preamble, article 6(1) and article 15(1) of the EIA proclamation recognizes the involvement of the public and, in particular, consultation of the communities likely to be affected by the project in EIA process. From this, it can be claimed that the position of EIA proclamations only involves in making general statements in identifying who are entitled to participate in EIA process. On the other hand, EIA guideline provides that the participation should include that ‘all interested and affected parties have the opportunity to participate meaningfully in the EIA process.’³⁰³ As noted above in this chapter, further goes defining the interested party as individuals or groups concerned with or affected by an activity and its consequences; these includes the authorities, local communities, investors, work force, customers and consumers, environmental interest groups and the general public.³⁰⁴ EIA guideline fails in defining who affected party in EIA process is. Unlikely EIA Procedural Guideline defines the both interested and affected party as ‘individuals or groups concerned with or affected by an activity and its consequences [such] include local communities, work force,

²⁹⁹ ibid 15.

³⁰⁰ ibid.

³⁰¹ n 34-36

³⁰² ibid.

³⁰³ FDRE EIA Guideline 6.

³⁰⁴ text to n 63.

customers, or consumers, environmental interested groups and the general public.’³⁰⁵ From this brief presentation, it is possible to understand that, although the EIA proclamation and guidelines provide interested and affected party to participate in EIA process, nowhere clearly encourage the participation of indigenous peoples, women, children, elderly and poor people) and calls for equity between present and future generations. Thus, it is possible to claim that the principle ‘inclusive and equitable principle’ is lacking in both EIA proclamation and EIA guideline.

3.3.5 Educative

As it noted in chapter two, this principle requires that the public participation in EIA process should be ‘contributing to mutual respect of all impact assessment stakeholders with respect to their values, interests, rights and obligations.’³⁰⁶ Having noted about the substance of what this principle upholds, after then, it is nicer to proceed to distinguish the incorporation or status of this principle under both EIA proclamation and EIA guideline. In this respect, the EIA proclamation as presented in this chapter above, identifies the roles of stakeholders regarding public participation in EIA process in a manner that the proponents to consult communities, the public or communities to be consulted and competent agency to make any EIA report accessible to the public with a view of requesting comments and to ascertain incorporation comments of public or communities in EIA report.³⁰⁷ Moreover, also EIA guideline identifies the roles of stakeholders regarding public participation in EIA process in a manner that proponents and consultant to ensure adequate participation; interested and affected party to inputs their views and comments, review scoping report within four weeks (typically in regions), to review EIS and to review and comment on systematic EI follow up report; competent agency to cause the proponent to advertise their project informing the public (interested and affected party), to review scoping report in ascertaining consultation of public (interested and affected party), to make proponent be made available to public.³⁰⁸ As well guideline in scoping stage calls for public consultation of interested and affected parties in a view of ‘assuring the quality, comprehensiveness and effectiveness of the environmental assessment.’³⁰⁹ As this precise presentation indicates, the EIA proclamation and the guideline try to identify values, interests, rights and obligations of stakeholders on public participation in EIA process; as the extent

³⁰⁵ FDRE EIA Procedural Guideline Series, 2.

³⁰⁶ n34-36.

³⁰⁷ text to n 58-60.

³⁰⁸ text to n 62-68.

³⁰⁹ *ibid.*

remaining contentious. After then, it can be defended that the EIA proclamation and EIA guideline is not lacking ‘educative principle’ of public participation in EIA process.

3.3.6 Cooperative

As it done for other principles in above, in first, it is necessary to disclose what a cooperative principle of participation dictates. As it noted in chapter two this research, the cooperative principle of public participation dictates that the public participation should involves in ‘promoting cooperation, convergence and consensus building rather than confrontation; engaging conflicting perspectives and values as well as trying to reach general acceptance of the proposal towards a decision that promotes and supports sustainable development.’³¹⁰ Having noted about the view of what this principle dictates, after then, it is sounder to go forward to distinguish the incorporation of this principle under both EIA proclamation and EIA guideline. Concerning this, the EIA proclamation and EIA guideline nowhere in clear manner provides that the consultation to be cooperative. However, EIA procedural guideline requires interested party and affected party ‘establishing partnership and networking among and between key stakeholders,’³¹¹ and ‘to act and lobby in good faith, knowledge, reason and in a cooperative manner and use all means and facilities to ensure fairness in EA administration,’³¹² From this discussion, it can be pointed that even though EIA proclamation and EIA guideline do not provides the cooperative principles of public participation, the EIA procedural guideline incorporates this principle.

3.3.7 Imputable

This last but not list, imputable principle of public participation upholds the view that participants need to have genuine opportunity to be heard and influence decisions. In detail it requires the public participation should engage in ‘improving the proposal under study, taking into account the results of the public participation process; including reporting and feedback to stakeholders about the results of the public participation process, especially how their inputs have contributed to decision-making’³¹³ After having indicating about the essences of what this principle dictates, after then, it is had better to go forward to distinguish the incorporation of this principle under both EIA proclamation and EIA guideline. As it noted in above discussion, EIA proclamation and EIA guideline incorporates the consultation of communities in EIA process.

³¹⁰ n34-36.

³¹¹ FDRE EIA Procedural Guideline Series 14.

³¹² ibid 19.

³¹³ n 32-36.

Moreover, in detail, EIA guideline requires consultation of the interested and affected party in scoping stage; latter's inputs and comments on scoping report and review of EIS report and comment on systematic EI follow up report(auditing report).³¹⁴ According to the EIA guideline the role that the interested and affected party plays in consultation is to give their views and concern of the project and to ascertain whether the issues that were raised have been addressed in the scoping report; as well to review and comments of EIS report and auditing report.³¹⁵ However, EIA guideline nowhere responds that what interested and affected party shall do if issues that were raised have been not addressed in the scoping report. Besides, the interested and affected party do not have any role in pre-screening, screening, EIS and decision making (authority of decision making is purely remained for competent agency) stages of EIA process.³¹⁶ The role that the interested and affected party has after EIA process is that of right of appeal on the decision to former general manager of the EPA (now general manager of Ministry of Environment, Forestry and Climate Change).³¹⁷ From this presentation, it is clear that the interested and affected party do not have more role than giving their views and concerns in EIA process. Thus, EIA proclamation and EIA guideline do not provides the 'imputable principles' of public participation.

3.3 SUMMARY

From a legal perspective, it is plausible to argue that the right to public participation in EIA has a broad legal and policy foundation in Ethiopia. Ethiopia is a party to many international and regional environmental instruments, which recognize substantive and procedural environmental rights. Besides to recognizing ratified international agreements as an integral part of the law of the land, the Ethiopian environmental legal and policy frameworks incorporates procedural environmental rights, inter alia, the right to public participation in environmental decision-making in general and in EIA context in particular.

Concerning with the content and nature of the right to public participation in EIA process, a critical review of environmental legal and policy frameworks, in respect of 'who public is' provides the 'interested and affected party' as a public who exercises the right to public participation in EIA process. However, the interested and affected party is not consistently and concisely defined in environmental legal and policy frameworks in EIA context for the sake of

³¹⁴ text to n 62-68

³¹⁵ *ibid.*

³¹⁶ *ibid.*

³¹⁷ *ibid*

practical application of the right to participation. Thus, the proponents have open discretion in terms of determining the number and the type of participants as well as the mechanisms or form and time of their participation.

Pertaining to the objectives or rationales of practicing the right to public participation in EIA process, it supports normative rationale (considers the right to public participation as environmental procedural right that has end in itself), substantive rationale (enhancing the quality of EIA decision) and instrumental rationale (implementing EIA decision without objection of participants).

Regarding the types or levels (level of influence in participatory process) of practicing the right to public participation, it reflects the ‘consultation level’ of participation. As Arnstein Sheryy categorizes, the consultation that involves ‘in the “degrees of tokenism” that “allow the have-nots to hear and to have a voice”³¹⁸ ; but the participants (interested and affected party) do not have the power in influencing EIA decision; the decision-making power is absolutely remained for the competent environmental agency. On the other hand, the types or the level of participation such as involvement, collaboration and empowerment is non-existent in Ethiopian environmental legal and policy frameworks in the context of EIA process.

In respect of, the mechanisms (techniques for public participation) in practicing the right to public participation in EIA process, the environmental legal and policy frameworks provides different mechanisms such includes inter alia public meetings, telephonic surveys, workshops and seminars and newspaper advertisements. However, this is not backed by the proclamation, but provided under the EIA guideline.

This chapter also examined the adequacy of Ethiopian environmental legal and policy frameworks in practical applying right to public participation in EIA process. To this end, it analyzed the EIA proclamation of 299/2002 and EIA Guideline Document of 2000 in line with and through applying seven IAIA international best practice principles such includes adapted to the context, information and proactive, adaptive and communicative, inclusive and equitable, educative, cooperative and imputable. Consequently, the principle of informative and proactive, the principle of adaptive and communicative, the principle of educative and the principle of cooperative is incorporated in Ethiopian environmental legal and policy frameworks in practicing the right to public participation in EIA context. Except the educative principle, others

³¹⁸ n27-29.

incorporated principles like the principle of informative and proactive, the principle of adaptive and communicative and the principle of cooperative is not backed by legislation; but only by guidelines. In contrast, the principle of adapted to the context (understanding of social institutions), principle of inclusive and equitable and principle of imputable is lacking totally in Ethiopian environmental legal and policy frameworks in practicing the right to public participation in EIA context. Moreover, practicing the right to public participation does not correspond to the different stages of the EIA process (such includes screening, EIS and decision making).

CHAPTER 4: CASE STUDIES ON FACTORS IMPEDING EFFECTIVE PRACTICE OF THE RIGHT TO PUBLIC PARTICIPATION IN EIA PROCESS IN ETHIOPIA: LESSON FROM SIDAMA REGIONAL STATE

4.1 INTRODUCTION

Getting examined the legal nature and contents of the right to public participation in environmental policy and legal frameworks as well the latter's adequacy in practicing the right to public participation in EIA context in preceding chapter (chapter three), this chapter will assess the factors preventing the practicing the right to public participation in EIA context. As it briefly presented and noted in the statement of problem in chapter one of this research, the previous studies have affirmed that the absence of effective practice of public participation in EIA process in Ethiopia. In this regard, writers assert that 'without implementing the EIA regulatory requirements with a genuine public participation, Ethiopia could face a real challenge in the long term to implement its commitment to promoting SD or environmentally resilient economic and social development programs.³¹⁹ Thus, assessing the impediment factors preventing effectively practicing of public participation in EIA process has importance. In order to do so, as it mentioned in methodology part (chapter one), this chapter will involves in applying the case studies delimited in SNRS of Ethiopia. Consequently, the researcher will interview key informants and evaluates EIA reports in line with framework analyses that presupposes (enabling conditions) for effectively practicing public participation in EIA process (include factors of appropriate legislation, local capacity, adequate resource and social science expertise and consultation framework that were identified by World Bank as it noted in chapter two in this research.³²⁰

Coming back to the details of the sources of qualitative information, the key informants comprise of three officials/experts from the SNRS Environment, Forestry and Climate Change Bureau (environmental agency), two officials/experts from Hawassa City Administration environment, forestry and climate change office, two officials/experts from SNRS investment Commission (licensing agency) and two environmental consultants. Even though the researcher planned to interview environmental NGOs, there are no environmental NGOs in the SNRS.³²¹ As noted above, the qualitative data were gathered through semi-structured interviews. To this end, the different interview guide were prepared with similar structures comprising of eight

³¹⁹ Gebremichael (n7) 429.

³²⁰ n 31-33.

³²¹ Interview with E1, (12 March, 2024); Interview with E2, (13 March, 2024).

parts: the first part was about the personal details of the persons interviewed; the second part comprises questions on concern of appropriate legislative framework, the third part consists questions on local capacity, the fourth part concerned with the question of budget/financial issue, the fifth part provides the question on social scientists issues and the sixth part consists questions on consultation framework. The Seventh part seeks and inquiry any major factors from the key informants' perspective. The optional the eighth part was concerned to inquire on awareness on the environmental rights; inter alia; the right to public participation in EIA process.

In order to achieve the confidentiality of the information, key informants are represented by separate secret identification codes assigned to each of them. Consequently, ten secret codes are assigned to the ten officials/experts. The six key informants of competent environmental bodies assigned as E1, E2, E3, E4, E5 and E6. While the two key informants from the licensing body are designated by L1 and L2, the two key informants of EIA consultants are identified as C1 and C2. These different secret codes can help distinguish the responses obtained from the various key informants in a confidential manner.

Generally, the key informant interviews were structured in light of framework of analyses that presuppose for effectively practicing of the public participation in EIA process. As it noted above as well in chapter two of this research, these framework of analyses include elements of enabling environment factors (such include appropriate legislation, local capacity issues, adequate resource, and social science expertise) and the consultation framework. In addition to these factors that presuppose for effectively practicing the public participation in EIA process, attempt was made to include and adds questions seeking the factors impeding public participation in EIA process in the view of key informants and 'awareness issues' on the environmental rights; inter alia; the right to public participation. Thus, these and other related issues are presented and analyzed to capture the substance of the interviews held with the key informants. Accordingly, the discussion is structured so as to address these important points covered by the interview guide.

Moreover, the information obtained from the key informants whenever necessary substantiated through analyzing additional qualitative data that have been gathered through EIA reports of six projects of different sectors in SNRS such include EIA Report for Granite Quarry Project of Hoko Woreda, EIA Report for Petroleum Station project of Daye Woreda, EIA Report for Fuel

Station Project of Bona Town, EIA report for Food Complex Industry Expansion Project of Hawassa city, EIA report for Industrial Park Employees Housing Development Project of Hawassa city and EIA Report for Garment Industrial Park Project of Hawassa city. To this end, the factual descriptions extracted from the respective EIA study reports are provided as appendices;³²² and then cross referencing to the factual details provided in these appendices, the presentation substantiates key informants responses on the framework of analyses. Here, it is also important to note that even though reports are used terminology such as Environmental and Social Impact Assessment (ESIA), the term EIA is used consistently for the current discussion as there is no any evident conceptual difference in their usage.

Following this introductory section, the second section deals with the general overview of public participation in EIA process in SNRS followed by the third section concerning the responses and discussion on existence of appropriate legislation in practicing the right to public participation in EIA process. The fourth and the fifth sections deal with the responses and discussion in relation with the local capacity and adequate resource in practicing the right to public participation in EIA process respectively. The sixth and seventh section concerned with the responses and discussion on the factor of social science expertise and on the element of consultation framework in practicing the right to public participation in EIA process. The eighth section deals with the responses and discussion on major impeding factors of public participation in EIA process in the points of view of the key informants if any. The ninth section presents awareness issues on the environmental rights; inter alia; the right to public participation.

From the above sections presentation and discussion, the tenth section infers and analyzes the different impeding factors of practicing the right to public participation in EIA process in Ethiopia. Eventually, the chapter is ended by drawing a brief conclusion.

4.2 GENERAL OVERVIEW OF PUBLIC PARTICIPATION IN EIA PROCESS IN SNRS

As it known, SNRS was formed in 2019 separating from southern nations, nationalities, and peoples' region in Ethiopia. As key informants explain, in the region, the regional institution of the environment, Forestry and Climate Change authority was departed from Agricultural Bureau and independently reestablished as environment, Forestry and Climate Change Bureau in 2008 E.C. EIA study is also begun in the region to be undertaken since 2009 E.C onwards. Many projects operated before 2009 E.C were operated without undertaking EIA study as well as

³²² Appendices extracted from the various EIA study reports n 111- 128.

public participation. After institution operated as separate institution, it proposed and decided that those projects operated before 2008 E.C to undertake environmental management plan. Consequently, those projects that were operated before 2008 E.C undertook the environmental management plan in the region; while those projects that have been operating 2009 E.C onwards involved in preparing EIA study and undertaking the public participation as per directive no.2/2008 categorizing the projects that need EIA study. However, key informants disclose that the construction sector is not undertaking the EIA study and public participation even though the projects legal required undertaking EIA study before its operation.³²³

4.3 REPONSES AND ANALYSIS ON APPROPRIATE LEGISLATIVE FRAMEWORK

As noted in review of literature (chapter two) and in introduction part of this chapter, the presence of appropriate legislative framework is one enabling condition for effectively practicing public participation in EIA process. In line with this condition, the respondents were asked different questions. Relying on the type of the questions, responses vary from Yes/No answers to open ended ones (**Appendix 1**). Consequently, attempt is made to summarize the responses obtained from the key informants and unanswered questions are left space.

In details, in relation with question whether EIA legal frameworks provides clear & working definition on ‘who public is’ is or not; as it can be deduced from (appendix 1) many key informants respond that EIA legal frameworks fails to provide operational definition of who public is/ participants in the process. This is largely reflected in also different EIA reports. For example, EIA report for petroleum station of Daye Town considers the participants as key stakeholders that include citizens, NGOs, agencies, authorities and interest group.³²⁴ Whereas, EIA report for granite quarry project of Hoko Town regards the participants as local people and relevant organizations include district administration officials and public figures.³²⁵ Moreover, this report in its consultation minute considers participants as local communities representatives. In regard with the question of EIA guidelines’ uniformity in defining ‘interested and affected party’, many respondents appreciate the inconsistency of EIA guidelines with each other in defining interested and affected party in participatory process. Also, the many respondents state that EIA proclamation does not provide mandatory provision on the public participation and a clear provision regarding public participation as ‘right to public participation’. Concerning the question of practical role of participants’ played in EIA procedure; many key informants noted

³²³ E1 n 329; E2 329; Interview with E4, (19 March, 2024); Interview with E5, (20 March, 2024).

³²⁴ EIA Report for the Establishment of Petroleum Station [2022] 8.

³²⁵ EIA Report for Granite Quarry Project [2023] 21.

that the legal role of participants is to give their opinion regarding the project. However, they assert that in informal and practical the local community has the role of stopping operation of project by raising opposition. For example, key informant states that the project request to operate drinking water bottling factory in Hawassa City at Gamato Gale Keble was stopped by the informal opposition of local community.³²⁶ Also other key informant notes that stone excavation project that found at lookke area in Hawassa city was banned by the informal opposition of local community.³²⁷

4.4 REPONSES AND ANALYSIS ON LOCAL CAPACITY

As per the framework analyses that are indicated in introduction section in this chapter, the local capacity is one enabling environment/factor for effectively practicing public participation in EIA. As World Bank asserts the local capacity is referring that the existent of national institution managing public participation in EIA.³²⁸ In line with this criterion, the respondents were asked different questions. Relying on the type of the questions, responses vary from Yes/No answers to open ended ones (**Appendix 2**). Accordingly, the key informants were asked the existent of regional institution managing public participation in EIA. In this regard, all key informant response that the existent of regional, zonal and at woreda level environmental, forestry and climate change managing institutions (regional environmental authority and offices) that were primarily administrating public participation in EIA in SNPS. Also they note that the existent of Ministry of Environment, Forestry and Climate Change institution managing the public participation in EIA process at Federal level. Also some key informants mention that the existent of other regional governmental institution which play secondarily role in managing public participation in EIA process such include SNRS investment Commission and trade, industry and urban development bureau. Additional key informants were asked the presence of specific working processes facilitating the concern of public participation in the institutions. Regarding this question, as it can infer from responses of key informants (**appendix 2**) many respondent disclose that the absence of specific working process that was designated in dealing with public participation. But they responded that the issues of public participation are included in EIA working process. However, some key informants state the lack of environmental issues facilitating offices and experts at Keble level.³²⁹ According to this key informant, the existent of environmental offices and experts at Keble level is very necessary in implementing public

³²⁶ E1 n329.

³²⁷ E4 n 331.

³²⁸ n 31-34.

³²⁹ E1 n 329; E4 335; Interview with E5, (20 March, 2024);

participation because the office at Keble level can facilitate many matters that involves with local community.

4.5 REPONSES AND ANALYSIS ON ADEQUACATE RESOURCE

The other important factor that enables the success of public participation in EIA process is existent of adequate resource. As World Bank notes adequate resource is specifically referring to the availability of financial cost of public participation in EIA process.³³⁰ In light with this criterion, the respondents were asked different questions. Relying on the type of the questions, responses vary from Yes/No answers to open ended ones (**Appendix 3**).

Concerning this criterion, the key informants were asked whether their institutions provide finance in facilitating public participation in EIA; and then all key informants reveal that the their institutions do not provide finance for public participation in EIA. Besides, in relation with the question whether the proponents do provide finance for facilitating the public participation in EIA process; some key informants disclose that the proponent do not provide finance in facilitating public participation.³³¹ Whereas other key informant mentions that remuneration paid to consulting firms includes finance of public participation.³³² Also other key informant states that they warn participants not to take financial benefits from the proponents in view of not to be lobbied by proponents.³³³ However, all key informants note that the proponents pay the remuneration of undertaking EIA study for consulting firms as per their contractual agreements.

4.6 REPONSES AND ANALYSIS ON SOCIAL SCEINTISTS

The existent of social scientists in managing public participation is another enabling environment for the success of public participation in EIA process as noted in chapter two of this research.³³⁴ As it can be seen from appendix 4, in light with this criterion, the respondents were asked the presence of any social scientists in managing public participation in EIA process. Concerning this question, many key informants disclose that EIA process engages different environmental experts that were licensed by the government. In this regard, the EIA reports' annexes also affirm that EIA study of one project engages different environmental experts like environmental pollution expert, bio diversity and eco system analyst, environmental health expert, water resource use expert, greenhouse gas emission analyst expert and social affairs

³³⁰ n 31-33.

³³¹ E1 n 329; E2 329; Interview with E3, (13 March, 2024); E4 n 331; E5 n 331; Interview with E6, (20 march, 2024).

³³² Interview with C2, (8 April, 2024).

³³³ Interview with C1, (6 April, 2024).

³³⁴ n31-33

expert.³³⁵ However, many key informants assert that those experts participating or managing EIA study as well as public participation are environmental or social experts but not scientists.

4.7 REPONSES AND ANALYSIS ON CONSULTATION FRAMEWORK

It has already noted in chapter two, setting the consultation framework addressing issues such as what, when, who, where and how the consultation in EIA process undertaken at the start or scoping stage is one element that determine the success of public participation in EIA process.³³⁶

In line with this condition, the respondents were asked the presence of the practice of setting consultation framework at the start of EIA process and that the consultation framework addresses what, when, who, where and how issues are handled in the consultation process (**Appendix 5**). Concerning this question, many key informants disclose that the absence of the practice of setting or producing the consultation framework by consultants at the start of EIA process. Also, some key informants disclose that the lack of consultation guideline produced by government and the need to have consultation guideline drafted by concerned government body in effectively managing public participation in EIA process.³³⁷ Moreover, all EIA reports also do not evidence the presence of the practice of setting or producing the consultation framework in managing the public participation in EIA process.

4.8 RESPONSES AND ANALYSIS ON AS IMPEDING ELEMENTS FOR PRACTICING PUBLIC PARTICIPATION IN EIA IN KEY INFORMANTS' PERSEPECTIVE

Here, in this part of section, the interview guide as it can be seen on **appendix 6**, inquired in to seek to any other impeding factors of public participation in EIA process. In line with this inquiry, the respondents were asked question or given opportunity to raise any reasons that in their experiences assume as the impeding factors of effectively practicing public participation in EIA process. Relying on the type of the question, responses are open ended ones (**appendix 6**) and here, an attempt is made to summarize the responses obtained from the key informants as follows.

In this regard, in first place, many key informants state that the consulting firms and proponents produce fake EIA document without actual conducting the latter and public participation.³³⁸

³³⁵ EIA report for Food Complex Industry Expansion Project[2017]; EIA Report for Garment Industrial Park Project[2020]; EIA report for Industrial Park Employees Housing Development Project[2021]; EIA Report for Fuel Station Project [2023].

³³⁶ n31-33.

³³⁷ E2 n 329; C1 n341; C2 n340.

³³⁸ E1 n 329; E4 n 331; E6 n339;C2 n 340.

Also other key informant adds that Keble administrators also involve in producing the fake documents expressing that the public participation were undertaken at Keble level; in fact/in reality that were not undertaken.³³⁹ Besides, one key informant states that consultants skip many activities of EIA process since its cost is very high and environmental agencies do not make also series evaluation and auditing on EIA reports.³⁴⁰ They consider aforementioned reason as halting effective practice of public participation in EIA process.

In second place, many key informants reveal that the government considers the EIA as an anti-development tool, not needed to the poor country and that takes time and extra cost in operating the projects.³⁴¹ Other key informant in this regard also notes that the government considers public participation in EIA process as a simple requirement exercise for the operation of projects.³⁴² Besides, all EIA reports validate this attitude since public participation encompasses not more than ten participants as per the one project. In this regard, key informants contend that the attitude of government is not good in practicing the public participation.

In third place, many key informants mention that lack of awareness on issues of environment as one factor that halts practicing the public participation in EIA process.³⁴³ In this regard, key informants state that there is no media creating awareness on environment and community do not differentiate expression opinion and politics. The community fear to express their negative ideas on the project during the consultation.³⁴⁴

In fourth place, many key informants denote that the lack of compliance with EIA laws (EIA proclamation and guidelines) is also as the reason for not practicing the public participation in EIA. Concerning this, key informants as example mention that many construction sectors' projects is permitted to operate by construction bureau of government without the requirement of EIA study and public participation even though the projects is required EIA study as per directives and guidelines.³⁴⁵ Other key informant mentions that the presence of projects which operate without EIA study because of the order or influence of government officials.³⁴⁶

³³⁹ E3 n339.

³⁴⁰ C2 n 340.

³⁴¹ E1 n329; E6 n339; C1 341.

³⁴² C2 n340.

³⁴³ E2 n 329; E3 n339; E6 n339 ; C2 n340

³⁴⁴ E3 n339; C1 n341.

³⁴⁵ E2 n339; E4 n 331; E5 n 331; C2 n340.

³⁴⁶ E2 n339

In fifth place, some key informants mention that corruption on side of consultant and proponent as well on government side as the factor hindering the effectively practicing the public participation in EIA process. In respect to this, some key informants disclose that the consultant and proponent agree among themselves in which the proponent gives money; and then the consulting firms produce EIA document and public participation without actual conducting EIA and public participation.³⁴⁷ Also other key informant state that the government officials in Ethiopia engage in approving EIA and public participation documents without evaluating latters by taking pecuniary benefits.³⁴⁸ Besides, one key informant notes that the EIA sector is very corrupted sector in Ethiopia.³⁴⁹ In sixth place, some key informants express that lack of willingness on the side of proponent to undertake EIA and public participation; because the proponents always think their economic gain of their projects but not environmental issues.³⁵⁰ Also key informants posit that the lack of specific work process of public participation in environmental agencies as one factors rendering practice of public participation in EIA process ineffective.³⁵¹

4.9 REPONSES AND ANALYSIS ON AWARENESS REGARDING PUBLIC PARTICIPATION AS AN ENVIRONMENTAL RIGHT

Here, in this part of section, the key informants were asked different question in a view of assessing the awareness regarding public participation as environmental right (**Appendix7**). Relying on the type of the question, responses are vary from Yes/No answers to open ended ones; and then an attempt is made to summarize the responses obtained from the key informants. Accordingly, the key informants were asked the question how he/she understand by the concept of environmental right. Concerning this question, many key informants response that the environmental right as the right that the participants to know about the project. Some key informants state that environment right of citizens to live in clean and safe environment. Some other understands the environment right as the right of citizens to express their view.

Concerning the question for why the public participation is conducted in EIA; the many key informants note that the public participation in EIA process is undertaken in a view of implementing project and ensuring good decision (instrumental rationale and substantive rationale respectively as discussed in chapter two of this research). Other key informants

³⁴⁷ E3 n 329; C1 n341.

³⁴⁸ C1 n341; C2 n340.

³⁴⁹ C1 n341.

³⁵⁰ E3 n 329; E6 n339

³⁵¹ E1 n329; E2 n339

respond that the public participation practiced in EIA as a right of citizens. With regard to the question states that, do the key informants consider that the right to public participation can be practiced in EIA process; nearly at all key informants affirm that the right to public participation can be exercised. In similar fashion, in relation with question that denotes that does EIA laws considered as fundamental law in practicing the right to public participation; nearly at all key informants confirm that EIA laws is the fundamental law in practicing the right to public participation

4.10IMPEDING FACTORS OF PRACTICING THE RIGHT TO PUBLIC PARTICIPATION IN EIA PROCESS

Having briefly discussed and analyzed about the framework analyses and other impeding factors for effectively practicing the right to public participation in EIA process, it is possible to deduce different impeding/hindering factors of genuine practice of the right to public participation in SNPR state. In this section, attempt is made to scrutinize the major impeding factors of genuine practice of the right to public participation in EIA in light of conforming to the frameworks of analyses and other additional factors as discussed in the current chapter; and as well looking into chapter three discussion and findings.

4.10.1 Inadequacy of EIA legislative framework

As analysis of chapter three and this chapter (chapter four) denotes, although Ethiopia has plethora of legal and policy frameworks dealing and recognizing with the public participation, however there are inadequacy of EIA legislative frameworks practicing the right to public participation in the EIA context. These includes;-

4.10.1.1 Lack of the clear provision of EIA legislative frameworks recognizing public participation as environmental right.

As it clearly noted in chapter three, FDRE constitution recognizes the public participation in right approach.³⁵² However, although environmental policy, EIA proclamation and EIA guidelines recognize public participation, do not recognize public participation as ‘right’ (environmental right) in clear term. Thus, the lack of clear provision of EIA legislative frameworks recognizing public participation as environmental right can be taken as one impeding factors for not effectively implementing the right to public participation in EIA process.

³⁵² n52-55

4.10.1.2 EIA legislative framework fails to meet international best practice principles

As it clearly and briefly analyzed in chapter three, EIA proclamation and EIA guidelines which are very important in practicing the right to public participation fails to meet in recognizing international best practice principles such include the principle of adapted to the context (principle recognizing social institutions), inclusive and equitable principle (principle recognizing all interests including the interests of present and future generations) and imputable principle (principle ensuring the influence on decision- making by participants) in their contents.³⁵³ Thus, lack of adequate environmental legislation that conforming to international best practice principles also can be taken as impeding factors for not effectively implementing the right to public participation in EIA process.

4.10.1.3 Lack of clear and precise operational definition of who public is

As theoretical discussion in chapter three and empirical analysis of chapter four disclose that the EIA guidelines try to respond ‘who public is’ in exercising the right to public participation as affected and interested party. But either EIA proclamation or EIA guidelines do not provide clear operation definition for the term of public or public participation or the right to public participation. Also the theoretical discussion of chapter three and empirical discussion of chapter four reveal that the definition of interested and affected party itself is inconsistent in its legal content as well as in practice (in EIA reports).³⁵⁴ Therefore, the lack of clear and precise operational definition of whom public is or public participation contributes for ineffectiveness of practicing the right to public participation in EIA process.

4.10.1.4 Lack of clear legislative backed aim of public participation

The environmental legal and policy frameworks provide the aims of public participation in EIA as normative, substantive and instrumental as it noted in chapter three and chapter four.³⁵⁵ However, the aim of public participation in EIA process is not backed by the legislation (EIA proclamation). Consequently, the lack of clear aim while practicing the public participation can be one challenge in practicing the right to public participation in EIA process.

4.10.2 Absence of specific working processes/not institutionalizing public participation

As it briefly analyzed in this chapter above, although the local capacity meets the requirement of framework analyses, as key informants affirm, there is no working process designated for implementing issues of public participation in environmental agencies. In other words, this is

³⁵³ n69-74

³⁵⁴ n62-68; text to n 81.

³⁵⁵ n68; text to n 86

meaning that public participation is not institutionalized. So, the absence of working process of public participation by its own in environmental agencies contribute to not genuinely practicing the latter in EIA process.

4.10.3 Lack of adequate resource

Accords to framework analyses, conducting genuine consultation incur costs for different activities. However, the key informants reveal that the lack of provision of finance for public participation except the remuneration of EIA study that is paid to consulting firms.³⁵⁶ Even though key informants claim that EIA remuneration includes the costs of public participation, but they do not assure that the consulting firms provide finance for facilitating public participation. Although proponents pay remuneration to consulting firms for conducting EIA study, there is no costs/finance that is provided in facilitating the public participation process such may include holding consultation hall, for accessing information to participants and for accessing EIA documents to the participants and etc. Hence, adequate resource requirement is not meets the framework analyses.

4.10.4 Lack of social scientists

Concerning social scientists, the framework analyses require that for conducting genuine public participation in EIA process, the public participation should be managed by the social scientists.³⁵⁷ As it analyzed and noted in this chapter, although there are different environmental experts that undertake public participation in EIA process, there are no expert at rank of social scientists.

4.10.5 Lack of consultation framework setting practice

Setting/designating the consultation framework at the start of EIA process addressing issues such as what, when, who, where and how the consultation going to be undertaken is one element for the success of public participation as noted in this chapter as well as in chapter two.³⁵⁸ Regarding this element, the key informants affirm that the lack of the practice of setting or preparing consultation framework for public participation in EIA process.

On the other hand, EIA guidelines also primarily focus on concern of EIA rather than public participation as well do not response the when, where and who issues of public participation. In

³⁵⁶ text to n82..

³⁵⁷ n31-34.

³⁵⁸ n31-33.

other words, EIA guideline 2000 and EIA procedural guideline 2003 do not address the issues like stipulating time framework (the time and duration for participation), setting and location for the consultative meetings (capital cities, rural communities, town halls, market places) and sampling of participation (whom to include) and their legitimacy and representativeness. Therefore, the lack of practice of the preparing the consultation framework addressing issues such include what, when, who, where and how or that consists the clear rules of game at the start of EIA process is obviously diminishes the genuine practice of the right to public participation in EIA process.

4.10.6 Fraudulent acts of consultants and proponents

As it noted in this chapter, many key informants assert that the consulting firms and proponents produce fake EIA document without actual conducting the latter and public participation.³⁵⁹ Also they disclose that Keble administrators also involve in producing the fake documents expressing that the public participation were undertaken at Keble level; in fact/in reality that were not undertaken.³⁶⁰ EIA proclamation under article 6 imposes legal duty on the proponent 'to carry out EIA and public participation and under article 15 puts legal duty on environmental bodies only ascertaining and evaluating the incorporation of public's/ communities' comments in EIA reports. Consequently, this paves the way for consultant and proponent to engage in unnecessary dealings or fraudulent acts. Therefore, the Fraudulent Acts of Consultant and proponent can hamper the practice of the right to public participation in EIA process. In this regard, it can be argued that rendering the legal duty of undertaking EIA and public participation up on only proponents is lacuna of the law.

4.10.7 Attitude of government on EIA and public participation

Many key informants reveal that the government considers the EIA as an anti-development tool, that is not needed to the poor country and that takes time and extra cost in operating the projects.³⁶¹ Besides, the government considers public participation in EIA process as a simple requirement exercise for the operation of projects.³⁶² Moreover, all EIA reports evidence that not more than ten participants as per project has been participating. Thus, attitude of government on

³⁵⁹ text to n83-84.

³⁶⁰ *ibid.*

³⁶¹ text to n83-84

³⁶² *ibid.*

EIA and public participation can be one factor impeding the practice of public participation in EIA process.

4.10.8 Lack of awareness on issues of environment and environmental rights

As it briefly mentioned in this chapter key informants mention that there is a lack of awareness on environmental issues due to the absence of media creating awareness on the environment. Also they assert that the community does not differentiate expression opinion and politics as well fears to express their negative opinion on the project during the consultation.³⁶³ Moreover, the many key informants do not know the concepts of environmental right in well as it analyzed in this chapter.³⁶⁴ Therefore, lack of awareness on issues of environment and environmental rights also can be one factor diminishing the practice of public participation.

4.10.9 Lack of compliance with existed EIA laws

Key informants reveal that, although the projects legal requires EIA study, there are different projects that operate without EIA study, especially in construction sector.³⁶⁵ In this regard, if it is proven that there is non-compliance with EIA laws; obviously, this will affect the practice of public participation.

4.10.10 Corruption on side of consultants, proponents and government

As analyzed above in this chapter, many informants mention that there is corruption on side of consultant, proponent and government.³⁶⁶ In this respect, key informants prove that the consultant and proponent agree among themselves in which the proponent gives money, and then the consulting firms produce EIA document and public participation without actual conducting EIA and public participation. As well they reveal that the government officials approve EIA and public participation documents without evaluating them by taking pecuniary benefits from the proponents. Thus, the corruption among the stakeholders of EIA is also one impeding factor of practicing public participation in EIA process.

4.11 SUMMARY

This chapter aimed at assessing the impeding factors of genuine practice of the right to public participation in EIA process. To this end, it involved in applying the case studies delimited in Sidama National Regional State [SNRS] of Ethiopia. Accordingly, it involved in interviewing

³⁶³ text to n83-84.

³⁶⁴ text to n85-86.

³⁶⁵ text to n84-85.

³⁶⁶ *ibid.*

10 regional key informants and gathering six EIA reports of different sectors in the region in line with framework analyses such include the elements of the enabling environment (include appropriate legislative framework, local capacity, question of budget/financial issue, social scientists issues) and consultation framework that ensure the genuine practice of the public participation in EIA process that were noted in chapter two. Additional, it involved in inquiring any additional points of view on the matter from the key informants. Then after, it presented and analyzed the responses of key informants vis-à-vis substantiating EIA selected EIA reports.

After having analyzed the responses of key informant and EIA reports, the attempt was made to scrutinize the major impeding factors of genuine practice of the right to public participation in EIA in light of conforming to the frameworks of analyses and other additional factors that were raised by key informants in current chapter and as well as looking into chapter three discussion and findings. Consequently, it found that legal and empirical factors have been impeding the practice of the right to public participation in EIA process. From legal points of view; lack of clear provisions of EIA legislative framework, EIA legislative framework fails to conform international best practice principles, lack of clear and consistent operational definition who public is and lack of clear legislative backed aim of public participation are major factors that challenges the practice of the right to public participation in EIA process in Ethiopia. From empirical points of view;- absence of specific working process, lack of adequate finance, lack of social scientists, lack of practice of consultation framework, fraudulent acts of consultants and proponents, attitude of government on EIA and public participation, lack of awareness on environment and environmental rights, lack of compliance with existed EIA laws and corruption on side of consultants, proponents and government are factors halting the genuine practice of the right to public participation in EIA process in Ethiopia.

CHAPTER5: KEY FINDINGS, CONCLUSION AND RECCOMENDATION

5.1 INTRODUCTION

After having analyzed the impeding factors of the practicing the right to public participation in EIA process under chapter four of this research, this chapter will devoted to present the summary of major findings of the study, draws conclusion and forwards recommendation of the research. To this end, in first, it will attempt to summarize the finding on the first research question that pertains to the legal nature and content of the right to public participation in EIA. In second, it presents summary of the finding on the second research question that concerns with the adequacy of Ethiopian environmental legal and policy frameworks in practicing the right to public participation in EIA process. In third place, it will present summary of the finding on the third research question that concern in inquiring the major impeding factors of practicing the right to public participation in EIA. Finally, it will end up with drawing conclusion and presenting recommendation.

5.2 KEY FINDINGS OF THE STUDY

5.2.1 On legal nature and content of the right to public participation in EIA

In the aim of responding the first question that pertained with the legal nature and content of the right to public participation in EIA, the chapter three examined Ethiopian environmental legal and policy frameworks (international, regional and national frameworks) in line with evaluative frameworks that were discussed in chapter two such includes who public is, the rationales/why the right practiced, to what level the right practiced and in what mechanisms/techniques the right practiced.

Consequently, in the respect of ‘who public is’ in practicing the right to public participation in EIA context, the Ethiopian environmental policy and legal frameworks tried to respond ‘who public is’ as interested and affected party without providing the operational definition for the term public or public participation in clear manner. However, the interested and affected party is not consistently and concisely defined in environmental legal and policy frameworks in EIA context for the sake of practical application of the right to participation. Thus, the proponents have open discretion in terms of determining the number and the type of participants as well as the mechanisms or form and time of their participation.

Pertaining to the objectives or rationales of practicing the right to public participation in EIA process, Ethiopian environmental policy and legal frameworks supports normative rationale

(considers the right to public participation as environmental procedural right that has end in itself), substantive rationale (enhancing the quality of EIA decision) and instrumental rationale (implementing EIA decision without objection of participants).

Regarding the types or levels (level of influence in participatory process) of practicing the right to public participation, it reflects the ‘consultation level’ of participation. As Arnstein Sherry categorizes, the consultation that involves in “the degrees of tokenism” that “allow the have-nots to hear and to have a voice ; but the participants (interested and affected party) do not have the power in influencing EIA decision; the decision-making power is absolutely remained for the competent environmental agency. On the other hand, the types or the level of participation such as involvement, collaboration and empowerment is non-existent in Ethiopian environmental legal and policy frameworks in the context of EIA process.

In respect of how/ mechanisms for public participation in EIA, it recognizes different mechanisms like public meetings, telephonic surveys and workshops, exhibits, displays and open days, newspaper advertisements, written information, surveys, interview and questionnaire. However, these mechanisms is not backed by the proclamation, but provided under the EIA guideline.

5.2.2 On adequacy of the environmental legal and policy frameworks in practicing the right to public participation in EIA

Concerning the second research question that referred to the adequacy environmental of legal and policy frameworks in practicing the right to public participation in EIA process, the chapter three was concerned with inquiring on it. Accordingly, to this end, it examined Ethiopian environmental legal and policy frameworks specifically the EIA proclamation, the EIA guideline and EIA procedural guideline were examined in line with evaluative frameworks of seven international best practice principles of public participation in EIA such include adapted to the context, information and proactive, adaptive and communicative, inclusive and equitable, educative, cooperative and imputable principle that were noted in chapter two. To this end, the principle of informative and proactive, the principle of adaptive and communicative, the principle of educative and the principle of cooperative is incorporated in Ethiopian environmental legal and policy frameworks in practicing the right to public participation in EIA context. In contrast, the principle of adapted to the context (understanding of social institutions), principle of inclusive and equitable and principle of imputable is lacking totally in Ethiopian

environmental legal and policy frameworks in practicing the right to public participation in EIA context. Moreover, practicing the right to public participation does not correspond to the different stages of the EIA process (such includes screening, EIS and decision making).

5.2.3 On the case study regarding the major factors impeding the right to public participation in EIA.

In the aim of responding the third research question that involved in inquiring the major factors impeding the right to participation in EIA, the chapter four involved in applying the case study delimited to Sidama National Regional State [SNRS] of Ethiopia. To this end, it interviewed regional key informants in line with framework analyses and gathered EIA reports of different projects; and then presented and analyzed in line with analyses framework that include appropriate legislative framework, local capacity, question of budget/financial issue, social scientists issues) and consultation framework practice. It also involved in inquiring any additional points of view on the matter from the key informants out framework analyses guideline. Consequently, it found that legal and empirical factors have been impeding the practice of the right to public participation in EIA process. Legal factors include; - lack of clear provisions in EIA legislative framework considering public participation 'right' of public participation, EIA legislative framework fails to conform international best practice principles, lack of clear and consistent operational definition who public is and lack of clear legislative backed aim of public participation are major factors that challenges the practice of the right to public participation in EIA process in Ethiopia. Empirical factors include;- absence of specific working process, lack of adequate finance, lack of social scientists, lack of practice of consultation framework, fraudulent acts of consultants and proponents, attitude of government on EIA and public participation, lack of awareness on environment and environmental rights, lack of compliance with existed EIA laws and corruption on side of consultants, proponents and government are factors halting the genuine practice of the right to public participation in EIA process in Ethiopia.

5.3 CONCLUSION

This qualitative research has critical appraised the challenges of effectively practicing the right to public participation in EIA process in Ethiopia. Through the analysis of legal frameworks and empirical data, the research found that the right to public participation is exercised by interested and affected party (who) in a view of normative, substantive and instrumental rationales (why)

for consultation level (what) through different mechanisms (how) such as the public meetings, telephonic surveys, workshops and so on.

It also disclosed that the Ethiopian environmental legal and policy frameworks in practicing the right to public participation in the EIA process are not adequate since they are not compatible with international best practice principles of public participation drawn from the literature.

Moreover, the research revealed that despite legal and policy provisions guaranteeing public participation, different the legal and empirical factors have been impeding the effective practice of the right to public participation in the EIA context in Ethiopia. These findings have significant implications for policy makers, regulators, and practitioners involved in EIA processes. While this research provides valuable insights in to the challenges faced in Ethiopia, generalization of the empirical findings to nationwide context may have limitation since empirical data was conducted in a specific geographic region (SNRS). In spite of the fact that, the research claims generalization since the research triangulated findings of key informants vis-à-vis EIA reports that the latter's were prepared by nationwide accredited environmental consultants.

Thus, the conclusion drawn is that, by addressing the identified impeding factors and promoting inclusive and genuine practice of the right to public participation; Ethiopia can strengthen its environmental governance and ensure SD.

5.4 RECOMMENDATIONS

Here, the research recommends the measures in halting legal and empirical impediments to the right to public participation in the EIA processes. Accordingly the following measures should be undertaken:

In halting legal impediments

- ✓ Revising EIA proclamation and guidelines provisions (By Legislature & Ministry of Environment, Forestry and Climate Change respectively) to:
- ✓ Incorporate the public participation in environmental right approach or as the 'right to public participation'.
- ✓ In clearly defining the right to public participation in EIA.
- ✓ In clearly and consistently defining 'interested or affected party' in EIA.
- ✓ In backing the aim of practicing the right to public participation in the EIA legislation.
- ✓ In extending types/level of practicing the right to public participation in EIA process to involvement and collaboration types/levels of public participation that enable the

interested or affected party to influence the process, even though the ultimate power of decision-making retained to environmental agency.

- ✓ In incorporating the international best practice principles of public participation in EIA process such include the principle of adapted to the context, principle of inclusive and equitable and principle of imputable.
- ✓ In extending the practice of the right to public participation to other stages of EIA such as screening and EI study stages.
- ✓ In making undertaking of EIA with public participation the concurrent legal duty of environmental bodies and proponents. This halts fraudulent acts of proponents and consulting firms made.

In halting empirical impediments

- ✓ Working process of public participation at environmental body level should be created. This may be undertaken by ministry of civil service at federal level or civil service bureau at regional level.
- ✓ Proponents should provide finance in facilitating public participation other than remuneration that made to consulting firms. This action should be undertaken by environmental agency/ministry.
- ✓ Social scientists in managing the public participation at the costs proponents should be invited. This action should be undertaken by environmental agency/ministry.
- ✓ The consultation frameworks at the start of EIA process that responds who, how, where, when and what question should be set. This action should be undertaken by consulting firms and the environmental agency/ministry should control and inspect the implementation of aforementioned task by consulting firms.
- ✓ Those proponents and consulting firms and governmental officials who engage in fraudulent acts and in corruption and permitting operation of projects that needs EIA and public participation without latters should be prosecuted and held liable according to article 18 of the EIA proclamation before the court law. This measure should be undertaken by general attorney or prosecution office.
- ✓ Environmental bodies should also work with media in a view of changing the attitude of government on environmental and creating environmental awareness for stakeholders of EIA and for general public.

5.5 FUTURE RESEARCH

- ❖ The research proposes future empirical study on:
 - ✓ Challenges in practicing the right to information (the procedural environmental right) in EIA context in Ethiopia.
 - ✓ Adequacy of environmental institution and their role in practicing the environmental rights in EIA context in Ethiopia.
 - ✓ Proposes national wide empirical study on challenges impeding effectively practicing the right to public participation (the procedural environmental right) in EIA context in Ethiopia.

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APPENDICES

Appendix 1: Key Informants' Response on the Factor of Appropriate Legislative Framework in Practicing the Right to Public Participation in EIA

Appendix 2: Key informants' Response on the Factor of Local Capacity in Practicing the Right to public participation in EIA

Appendix 3: Key Informants' Response on the Factor of Budget/Finance in Practicing the Right to Public Participation in EIA

Appendix 4: Key Informants' Response on the Factor of Social Scientists in Practicing the Right Public Participation in EIA

Appendix 5: Key Informants' Response on the Factor of Consultation Guideline in Practicing Public Participation in EIA

Appendix 6: Key Informants' Response on the Question of Any Other Impeding Factors of Public Participation in EIA Process in the Perspective of Key Informants.

Appendix 7: Key Informants' Response on the Factor of Awareness on Environmental Rights; Inter Alia; the Right to Public Participation.

Appendix 8: EIA report for food complex industry expansion project [2017]

Appendix 9: EIA report for fuel station project [2023]

Appendix 10: EIA report for garment industrial park project [2020]

Appendix 11: EIA report for granite quarry project [2023]

Appendix 12: EIA report for industrial park employees' housing development project [2021]

Appendix 13: EIA report for petroleum station project [2022]

APPENDIX 1:- Key Informants' Response on the Factor of Appropriate Legislative Framework in Practicing the Right to Public Participation in EIA

Key Informants	Is EIA legal frameworks adequate in providing clear & working definition on 'who public is?	Is EIA guidelines adequate in precisely and consistently defining interested and affected party so that practical application to be possible?	Does EIA proclamation recognize public participation as mandatory in EIA?	Does EIA proclamation clearly stipulate public participation as environmental right?	Does EIA proclamation clearly stipulate practical role to be played by participants [IAPS]?	
E1	No	No	-	No	Yes, Expressing their views, but Informal up to stopping operation of project.	
E2	No	No	-	I am not sure on EIA proclamation, but FDRE Constitution does so.	No, informal up to rejecting operation of project.	
E3	No	-	-	No	Yes, giving opinion but informal banning the operation of project	
E4	-	No	-	-	Yes, giving opinion	
E5	-	No	-	No	Yes, giving opinion	
E6	No	No	No	No	Yes, Expressing their views, but Informal up to stopping operation of project.	
L1	-	-	-	Yes	Yes, giving opinion	
L2	-	-	Yes	Yes	Yes	
C1	-	-	No	No	Yes, giving opinion	
C2	-	No	No	Yes	Yes	

APPENDIX 2:- Key informants’ Response on the Factor of Local Capacity in Practicing the Right to public participation in EIA

Key Informants	Are there institutions managing public participation?	Are there specific working processes on public participation in the institutions?
E1	Yes, Federal, regional, zonal and at woreda level	No
E2	Yes, regional, zonal and at woreda level	No
E3	Yes, regional, zonal and at woreda level	No
E4	Yes, regional, zonal and at woreda level	No
E5	Yes, regional, zonal and at woreda level	No
E6	Yes, regional, zonal and at woreda level	No
L1	Yes, regional, zonal and at woreda level	-
L2	Yes, regional, zonal and at woreda level	-
C1	Yes, regional, zonal and at woreda level	No
C2	Yes, regional, zonal and at woreda level	No

APPENDIX 3:- Key Informants' Response on the Factor of Budget/Finance in Practicing the Right to Public Participation in EIA

Key Informants	Does your institution provide finance in facilitating public participation in EIA?	If yes, what amount of budget and to do what activities during participation?	Do proponents provide finance for facilitating the public participation in EIA process?
E1	No	-	No
E2	No	-	No
E3	No	-	No
E4	No	-	No
E5	No	-	No
E6	No	-	No
L1	No	-	-
L2	No	-	-
C1	No	-	No, We warn participants not to take any finance from proponent; because participants not to be lobbied.
C2	No	-	Yes, our remuneration includes the cost of public participation.

APPENDIX 4:- Key Informants’ Response on the Factor of Social Scientists in Practicing the Right Public Participation in EIA

Key Informants	Are there any social scientists in your institution managing public participation in EIA process?
E1	No social scientists but different environmental related experts.
E2	No social scientists but 111 licensed environmental consulting firms at country level; each consulting firm has six or seven Environmental experts.
E3	No social scientists but different environmental related experts.
E4	No social scientists but different environmental related experts.
E5	No social scientists but different environmental related experts.
E6	No social scientists but different environmental related experts.
L1	-
L2	-
C1	No social scientists but different environmental related experts.
C2	No social scientists but different environmental related experts.

APPENDIX 5:- Key Informants' Response on the Factor of Consultation Guideline in Practicing Public Participation in EIA

Key Informants	Is there a practice of setting consultation framework at the start of EIA process by consultants of projects?	If the answer is yes, does consultation guideline address issues like; informing, timing, location, sampling, methods and language for participation
E1	No	-
E2	No	-
E3	No	-
E4	No	-
E5	No	-
E6	No	-
L1	-	-
L2	-	-
C1	No, we follow only EIA guideline	-
C2	No ,we follow only EIA guideline	-

Appendix 6- :- Key Informants' Response on the Question of Any Other Impeding Factors of Public Participation in EIA Process in the Perspective of Key Informants.

Key Informants	Are there any impending factors for effective public participation in EIA process?
E1	Fraudulent Acts of Consulting Firms and Proponents, Attitude of government regarding EIA as anti-development and Lack of its work process (not institutionalizing public participation).
E2	Lack of awareness on environmental issues, Weak law enforcement and Political interference
E3	Political view, Lack of Awareness, Corruption on side of Consultant and Lack of willingness on side of proponents(precedes their economic gain)
E4	Fraudulent Acts of Consulting Firms and Proponents, Fraudulent Acts of Keble administrators and Weak law enforcement(e.g. Construction sectors permitted to construct without EIA study)
E5	Non-compliance with law (Weak law enforcement)
E6	Political view, Awareness, Corruption and Fraudulent acts on side of Consultant and proponent and Lack of willingness on side of proponents(precedes their economic gain but not issues of environment)
L1	-
L2	-
C1	Attitude of government regarding EIA as not needed for poor country, corruption on part of government and proponents and Lack of Awareness.
C2	Corruption on part of government, attitude of government considering EIA and public participation as only simple requirement, Fraudulent Acts of Consulting Firms and Proponents(Fake document preparation) and Permitting projects to operate without undertaking EIA study.

APPENDIX 7:- Key Informants' Response on the Factor of Awareness on Environmental Rights; Inter Alia; the Right to Public Participation.

Key Informants	What do you understand by the concept of environmental right?	For what aims your institution conduct public participation?	Do you believe that the right to public participation can be practiced in EIA process?	Do you consider that EIA laws as fundamental law in practicing the right to public participation?
E1	Expressing views	Implementing project and As right	Yes	Yes
E2	Citizens to have clean and safe environment.	Implementing project and ensuring good decision	Yes	Yes
E3	-	Implementing project and ensuring good decision	Yes	Yes
E4	Expressing views	Implementing project and ensuring good decision	Yes	Yes
E5	Right to know about project	Implementing project and ensuring good decision	Yes	Yes
E6	Right to know about project	Implementing project and ensuring good decision	Yes	Yes
L1	Right to know about project	-	-	-
L2	-	-	Yes	-
C1	Right to know about project	Implementing project and ensuring good decision	Yes	Yes
C2	To live in clean environment	Decision Quality, sustainable development and as right.	Yes	Yes

Appendix 8: EIA report for food complex industry expansion project [2017

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የወይይት አጀንዳ/ፕሮጀክት በአካባቢው እና በህብረተሰቡ ላይ የሚያደርሰው ጥቅም እና ጉዳት ላይ መወያየት

ለዓትቀን:-----

በወይይቱ ላይ የተሳተፉ የአካባቢው ነዋሪ ተወካዮች

ተ.ቁ	የተወካዮች ስም ዝርዝር	የስራ ድርሻ	ፊርማ
1		1	
2	ገ/ሥነ ስነ		
3	ገ/ሥነ ጥናት		
4	ገ/ሥነ ጥናት		
5	ገ/ሥነ ሥነ		
6	ገ/ሥነ ሥነ		
7	ገ/ሥነ ሥነ		
8	ገ/ሥነ ሥነ		
9	ገ/ሥነ ሥነ		
10	ገ/ሥነ ሥነ		

እኛ ከላይ ስማችን የተጠቀሰው የፕሮጀክቱ ድርጅት የ _____

ለማምረት-መፈለጋቸውን በተመለከተ በጥልቀት ተወያይተናል። ይህ ESIA በአካባቢ ጥበቃ መመርያ እና ደንብ መሰረት በሚገባ ተከትሎ እንዲሰራ ተወያይተን ከተስማማን በኋላ በሚከተሉት ሀሳቦች ላይ ደረሰናል።

- ይህ ድርጅት፣ ከግንባታው ጀምሮ በአካባቢው ህብረተሰብ የስራ እድል መስጠት አለበት።
- ድርጅቱ በአካባቢ አየር መለወጥ ችግር እና በቀበሌ ህዝቡ ላይ እንደሁም በአቅራቢያው በሚገኙ ድርጅቶች ላይ ሊደርሱ የሚችሉትን ጉዳዮችን ለማጥፋት ወይም ለመቀነስ መስራት አለበት።
- በየጊዜው ከህብረተሰቡ ጋር በመገናኘት እና ከሚመለከተው የመንግስት አካል ጋር በመቀራረብ መስራት አለበት።
- በፕሮጀክቱ ምክንያት በአካባቢው ላይ ለሚደርሱ ችግሮች/ጉዳዮች ለመከላከል እና ለመቀነስ፤ በሚዘጋጀው “ESIA” ዶክመንት በመመራት መስራት ይኖርበታል።
- በቀበሌው ውስጥ በሚሰሩ መሠረተ ልማቶች (ለምሳሌ የጤና፣ የመንገድ፣ የትምህርት ቤት፣ የወሃ እና የመሳሰሉት) እንዲቀበሉ ነዋሪ በማሰብ በቀዳሚነት መሳተፍ ይኖርበታል።

Appendix 9: EIA report for fuel station project [2023]

6.3. Public and relevant organizations consultation and participation

Discussion and consultation has been conducted (Fig. 1) with local people and relevant organizations that include district administration officials, public figures officials. This enabled to catch background information significant to impact assessment and environment management in particular, to identify any areas of specific concern, which needed to be addressed by the owners. The consultations made were aimed at providing relevant information about the proposed project: discussion on possible adverse and beneficial effects of the farm to the community and to collect recommendation on ways of tackling the perceived adverse effects and maximizing the benefit of the fuel industry. Therefore, views and concerns of key stakeholders were assessed in Worancha Kebele at the proposed project site with special emphasis to communities around the project, which probably affected directly or indirectly by the project. Local communities have raised many questions during the public consultation.



Figure 1: Image of public consultation and participation events at project site (Photo: By Kono Environmental Consulting PLC EIA team)

The stakeholders' concerns in the implementation of the project are about ensuring community participation, employment opportunity priority for local community and conservation of environment of the area and socio-cultural values and norms.

Issues raised by participants

- Appreciation of the project contribution to the local people by supporting and engagement for any construction of infrastructure with the community, creating job opportunity and changing the working culture of the community.
- Facilitate goods and technologies, which will have advantage in alleviating poverty.
- Attract and encourage other large-scale investment.
- Increases the capital of regional and district administration through taxation and other fees related to the project directly and indirectly.
- Women will have a chance of earning better income from the employment opportunity at the project that will enable them to change their life and become active participants on the social economic and political environment.
- Increases individual and family income which has positive impact on the growth and social wellbeing of children (nutrition; education, health etc.).
- They further suggested that the owners of the project should give due emphasis or consideration for the above relevant issues.

To enhance ideas discussed with community, the project proponents have the following responsibilities;

- Community members are therefore should timely engage in every issues of the project. Community committees will set up in each of the communities to discuss and solve any negative impacts of the project.
- These committees comprise the traditional leader, an elder, a youth representative, women's representative and any other member that the community deems fit.
- Meetings will be held every four months with these committees in order to understand their problems and develop ways of solving them.

6.4. PROJECT ALTERNATIVES

Due to the zoning of land to various land uses, it is not possible to set up petroleum stations just anywhere. To be economically viable, the pre-selected sites must combine the following:

- a) Abundance resources, available all year long and the possibility of sustainable production;
- b) Existing water supply all year long in acceptable quantity and quality;
- c) Existing transportation facilities or possibilities to create at a reasonable cost;
- d) Existing energy supply.

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ሰዓት:-----

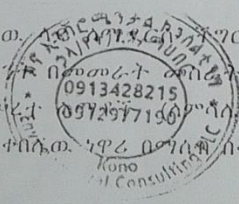
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ተ.ቁ	የተወካዮች ስም ዝርዝር	የስራ ድርሻ	ራራማ
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4	ደህና ገብረ		
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ለማምረት መፈለጋቸውን በተመለከተ በጥልቀት ተወያይተናል። ይህ ESIA በአካባቢ ጥበቃ መመርያ እና ደንብ መሰረት በሚገባ ተከትሎ እንዲሰራ ተወያይተን ከተስማማን በኋላ በሚከተሉት ሀሳቦች ላይ ደረሰናል።

- ይህ ድርጅት ከግንባታው ጀምሮ በአካባቢው ህብረተሰብ የስራ እድል መስጠት አለበት።
- ድርጅቱ በአካባቢ አዋር መለወጥ ችግር እና በተበላህ ህዝቡ ላይ እንዲሁም በአቅራቢያው በሚገኙ ድርጅቶች ላይ ሊደርሱ የሚችሉትን ጉዳዮችን ለማጥፋት ወይም ለመቀነስ መስራት አለበት።
- በየጊዜው ከህብረተሰቡ ጋር በመገናኘት እና ከሚመለከተው የመንግስት አካል ጋር በመቀራረብ መስራት አለበት።
- በፕሮጀክቱ ምክንያት በአካባቢው የሚገኙ ችግሮች/ጉዳዮች ለመከላከል እና ለመቀነስ በሚዘጋጀው "ESIA" ይከመራት መብራት ይኖርበታል።
- በተበላህ ወስጥ በሚሰሩ መሳሪያዎች ላይ የሚገኙ የመንገድ፣ የትምህርት ቤት፣ የወሃ እና የመኖሪያ ቤት) እንደ ተበላህ ነዋሪ በሚገኙ ሰባተኛ ይኖርበታል።



Appendix 10: EIA report for garment industrial park project [2020]

ESIA for Garment industrial park Project

The current existing environmental situation of the area, necessary to provide the basic background for impact identification assessment, has been obtained from these sources. In general, the health related information's concerning the area is determined from the Awassa town health office. Review of business plan document of the promoter; the business plan of the company has been examined and used as secondary source of relevant data regarding production process. Data and information collected from this source include:

- Waste production type methods of disposal and handling
- Secondary quantitative data about the socioeconomic features of the project gathered from the socioeconomic study publications of the district.



2.1. Site observation

The current situation of the site proposed for the factory is determined by site observation. The site visit included activities, socioeconomic aspects, health, cultural and other values in the project area.

2.2. Public participation and interview

According to EPA (2004) the idea and comments of the public is fundamental for the success of the project that should be held from early planning of the project up to its implementation, monitoring and evaluation. Since, garment Products Manufacturing Project is planned for expansion, the ideas and comments of the local residents around the project area very crucial to manage any unforeseen impacts and public comments. Mainly the attitude of the local community is tried to be incorporated in the document. It was very helpful to obtain basic information on socio-economic, socio-cultural and biophysical impacts of the project and the associated measures to be taken. The discussion was participatory, in which the participants expressed their views, concerns and suggestions without any reservation on the proposed project.

The main areas of interview and discussion were included the following points:

- (i) Attitude of the community and other stakeholders towards the proposed project;
- (ii) Responsibilities of the local community;
- (iii) Contribution and participation of the community on the project;
- (iv) Views and fears of the community on the project;
- (v) The responsibility of the proponent organization for the local community during project implementation and after wards.

Interview results shows that participants were reflect their fear, views & suggestions and forwarded some questions on the issues as follows.

ESIA for Garment industrial park Project

- Local people has also mentioned as they are willing to participate, contribute labor in the project activities and provision of production materials. As per their suggestion, the project has got acceptability and eagerly waiting its implementation.
- The community believes that the project will increase their income by getting jobs in the company.

2.3. Assumptions and /or Gaps in knowledge

The data collected (particularly secondary data) from the garment products manufacturing project would have some degree of limitations or uncertainties due to lack of organized data. To solve these constraints and limitations the study team tried to get reliable information by conducting site visit and observations, interviewing concerned stakeholders and reviewing relevant literatures.

2.4. Limits of the study area

Readymade Garment Manufacturing Plant Project has been located at 15.4 ha of land in *Awassa town Administration in the existing compound of Awassa Textile Sh.Co.* The total area of the project site is about 350,000m². Out of which 80,000 m² is a built-up area used for factory implementation and the rest is used for parking and greening. The Updated Environmental and Social Impact assessment study is delimited to core project zones which are directly indirectly impacted by the project.

3. Project description

3.1. Site description

Awassa, a newly emerging city in Ethiopia, is the capital of *Sidama Regional State*. The city administration is divided into 8 sub-cities and 32 Kebeles2 (20 urban and 12 rural). The administrative land area of Hawassa is 15,720ha, with the municipal boundary (i.e. urban kebeles) covering 65 km² (Figure 2).



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የወይይት አጀንዳ፡ ፕሮጀክቱ በአካባቢው እና በህብረተሰቡ ላይ የሚያደርሰው ጥቅም እና ጉዳት

ላይ መወያየት

ለዓት፡ _____ ቀን 12/12/2012

በወይይቱ ላይ የተሳተፉ የአካባቢው ነዋሪ ተወካዮች

ተ.ቁ	የተወካዮች ስም ዝርዝር	የስራ ድርሻ	ፊርማ
1	ፖለቲከኛ ተወካዮች	ፖለቲከኛ	
2	ጸሐፊ ገበየሁ	ገበየሁ	
3	ዳካታ ቦዋ	ገበየሁ	
4	ዘውዴ በጠረ		
5	ሮሚክሮን ራዲዎ		
6	ፖሊስ ፖርቶ		
7	ገገጉ ታዬ		
8	ሮሚክሮን ራዲዎ		
9	ቀጠላ ገገ		
10	ቆንጊ ፖሊስ		

እኛ ከላይ ስማችን የተጠቀሰው የፕሮጀክቱ ድርጅት የህዋሳ ጨርቃ ጨርቅ አ.ማ ኃላፊነቱ የተወሰነ የግል ኩባን የእንዲሰራል ፓርክ ግንባታ ላይ ለማስራት መፈለጋቸውን በተመለከተ በጥልቀት ተወያይተናል። ይህ EIA በአካባቢ ጥበቃ መመርያ እና ደንብ መሰረት በሚገባ ተከትሎ እንዲሰራ ተወያይተን ከተስማማን በኋላ በሚከተሉት ሀሳቦች ላይ ደረሰናል።

- ይህ ድርጅት፣ ከግንባታው ጀምሮ በአካባቢው ህብረተሰብ የስራ እድል መስጠት አለበት።
- ድርጅቱ በአካባቢ አየር መለወጥ ችግር እና በቀበሌ ህዝቡ ላይ እንድሁም በአቅራቢያው በሚገኙ ድርጅቶች ላይ ሊደርሱ የሚችሉትን ጉዳዮችን ለማጥፋት ወይም ለመቀነስ መስራት አለበት።
- በየግዜው ከህብረተሰቡ ጋር በመገናኘት እና ከሚመለከተው የመንግስት አካል ጋር በመቀራረብ መስራት አለበት።
- በፕሮጀክቱ ምክንያት በአካባቢው ላይ ለሚደርሱ ችግሮች/ጉዳዮች ለመከላከል እና ለመቀነስ፣ በሚዘጋጀው “ESIA” ዶክመንት በመመራት መስራት ይኖርበታል።
- በቀበሌው ውስጥ በሚሰሩ መሠረተ ልማቶች (ለምሳሌ የጤና፣ የመንገድ፣ የትምህርት ቤት፣ የወሃ እና የመሳሰሉት) እንደ ቀበሌው ነዋሪ በማስብ በቀዳሚነት መሳተፍ ይኖርበታል።

Appendix 11: EIA report for granite quarry project [2023]

5.2.6. Cultural heritages, Historical, Recreational and Religious Sites
Environmental conditions can directly or indirectly influences cultural heritages, historical monuments and architectural, religious, scenic and recreation sites. During the consultations with the community and field observations, no historical, recreational and religious sites were noted but there are trees culturally used for food purposes that need preservation. Even if the tree is not common around project site, it needs conservation by bringing from where it is common.

5.2.7. Gender Equity Issues

There is gender inequality in most part of Ethiopia. Women manage the bulk of household affairs in Ethiopia, including food marketing and preparation, fetching water and collecting fuel wood, and caring children. In addition, they also perform petty trading, casual work etc. At project site like the project area district administration, the gender equity issues have similar scenario. Women have better equal opportunity of employment with men than rural area. The nature of this mining project is less comfortable to women. Therefore, it is expected that the women can involve in the vacant job available by this small scale mining project but the proponent should ensure the availability of personal protective equipment. Furthermore, Women efficiency and commitment in carrying out their assignment qualify them to be employed in the envisaged project. This gender specific opportunity will address the historical disproportionate burden of unemployment on woman. Consideration to be given for keeping the above beneficial opportunity the project provider to women and actions to avoid work area problems women can face.

5.2.8. Public Attitudes and perception

Discussion and consultation has been conducted with local people and relevant organizations that include district administration officials, public figures officials. This enabled to catch background information significant to impact assessment and environment management in particular, to identify any areas of specific concern, which needed to be addressed by the owners. The consultations made were aimed at providing relevant information about the proposed project: discussion on possible adverse and beneficial effects to the community and to collect recommendation on ways of tackling the perceived adverse effects and maximizing the benefit of the food processing complex industry.

Therefore, views and concerns of key stakeholders were assessed in project area, with special

emphasis to communities around the project, which probably affected directly or indirectly by the project. Local communities have raised many questions during the public consultation. The stakeholders' concerns in the implementation of the project are about ensuring community participation, employment opportunity priority for local community and conservation of environment of the area and socio-cultural values and norms.

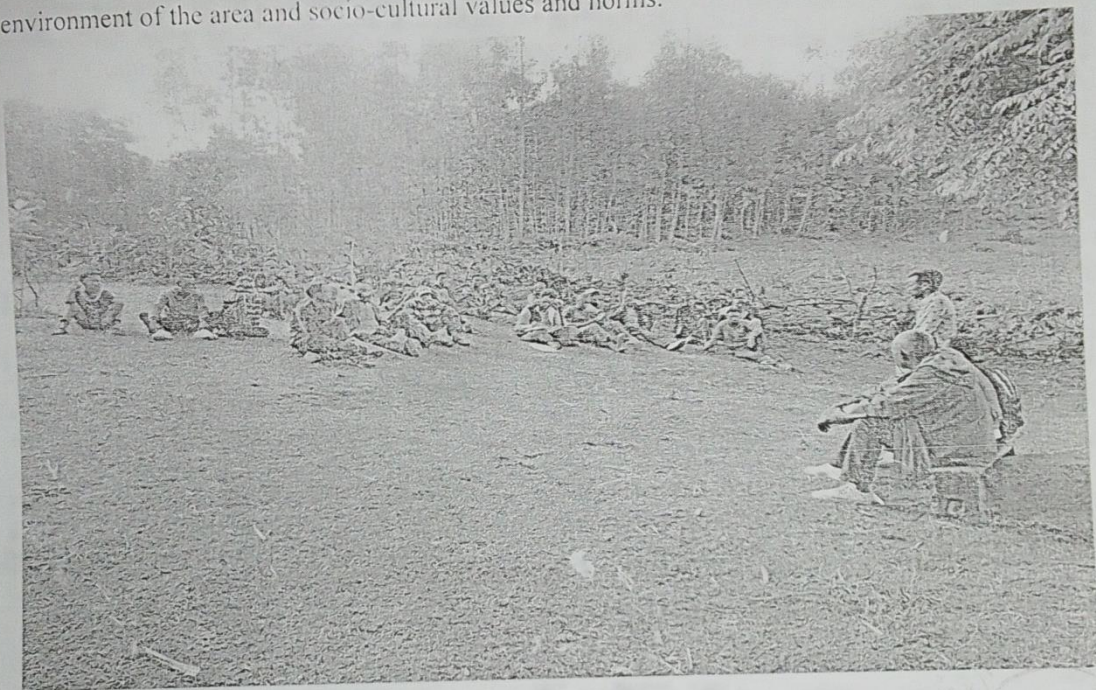


Figure 4: Public consultation with stakeholders at the project site

Issues raised by participants

- Appreciation of the project contribution to the local people by, supporting and engagement for any construction of infrastructure with the community, creating job opportunity and changing the working culture of the community.
- Facilitate goods and technologies, which will have advantage in alleviating poverty.
- Attract and encourage other large-scale investment.
- Increases the capital of regional and district administration through taxation and other fees related to the mining project directly and indirectly.
- Women will have a chance of earning better income from the employment opportunity at the project that will enable them to change their life and become active participants on the social economic and political environment.

Appendix 12: EIA report for industrial park employees' housing development project [2021]

Stakeholder consultation forum English version

Hawassa Industrial Park Employees 'Housing Construction Project Stakeholders' Consultation Forum Minutes

Meeting place: RORI HOTEL, GUDUMALE HALL, HAWASSA

Date: 24 August 2021

Time: 9:30-13:00 hours

Forum organizer: Hawassa Industrial Park and Cornerstone Development Group

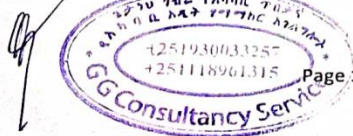
Forum facilitator: GG Consultancy Service (two members)

Purpose of the consultation forum:

- To brief the purpose, nature and scale of the housing project;
- To inform the duration of the housing project activities;
- To evaluate the potential risks and impacts of the project on local communities;
- To gain inputs for proposed impact mitigation measures for potential risks and impacts to avoid and minimize;
- To proposed stakeholder engagement process highlighting the ways in which stakeholders can participate;
- To gain input from stakeholders during the discussion and to create a common understanding and shared responsibilities throughout the project lifetime;
- To gain inputs to design communication and grievance handling mechanisms of potential stakeholders;

Meeting agenda:

- To assess the current situation of project affected persons and socio-economic problems
- To identify and evaluate potential impacts of the project during the pre-construction phase
- To identify and evaluate potential impacts of the project during the construction phase
- To identify and evaluate potential impacts of the project during the implementation phase
- To identify and evaluate potential impacts of the project during the demolition phase
- To collect and organize information from the participants to be used for the study



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Rethinking Affordable Housing
Rizq House Bldg 14th floor
Addis Ababa, Ethiopia

Environmental and Social Impact Assessment of CDG Housing Project at HIP

Stakeholder Engagement Meeting

Attendance Sheet

Date: August 24, 2021, Time 08:30 AM - 1:00 PM Location-Hawassa Industrial Park, Hawassa

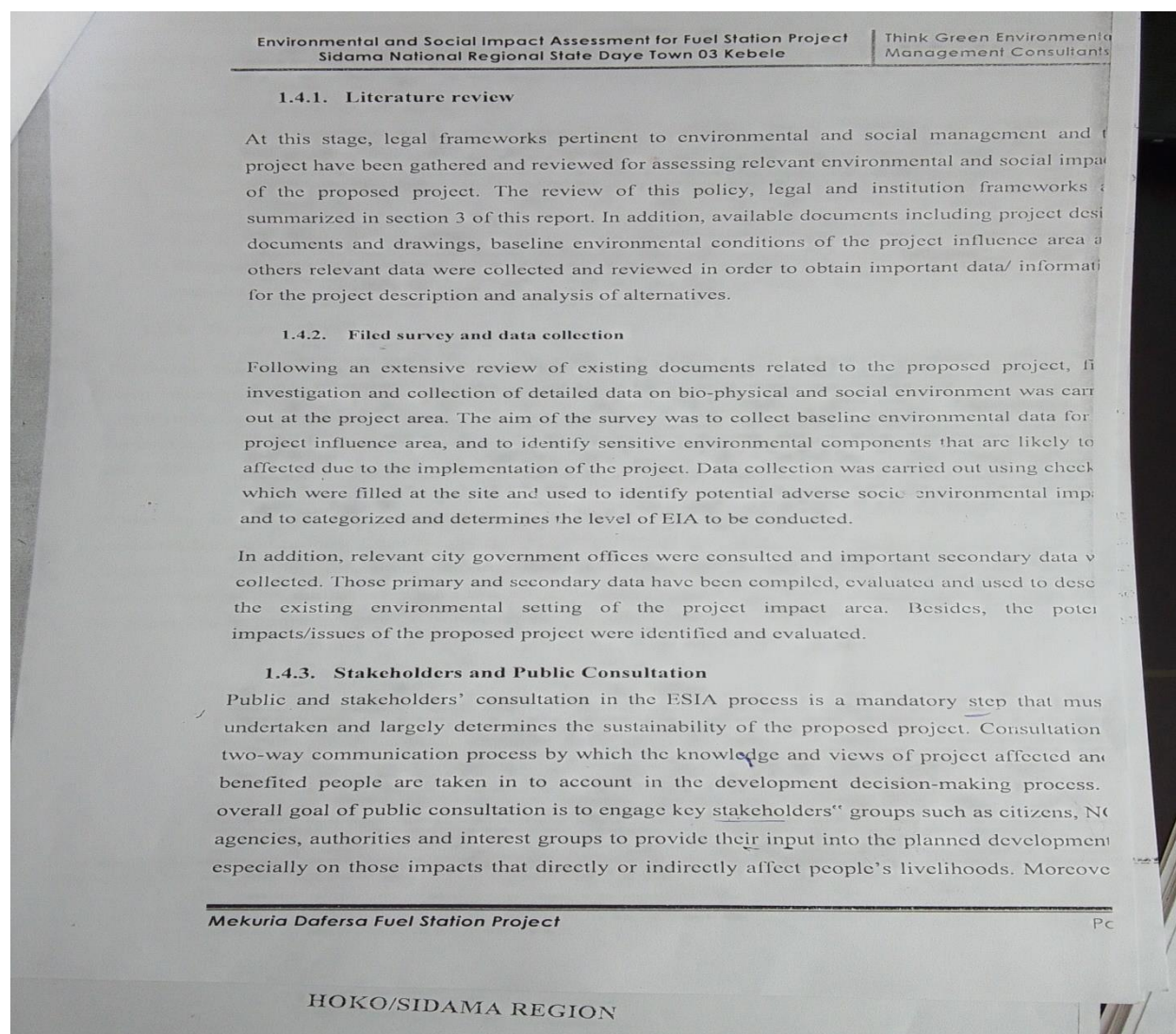
S/N	Name of participant	Organization/ Office/Section	Responsibility	Mobile No.	Email	Signature
1	Salman Keltu	CDG	Asst. Head	0911220287	solemnkeltu@cdg.gov.et	
2	Belay H. MICHIEL	EIC-HIP	Manager	0916825493	belayh@eic.gov.et	
3	SIRAK AMBAYE	CDG	CEO	0983067784	sirak@cornerstone-et	
4	Abinet Hailu	private	Former HIP-Resident	0912-121081	abinet.hailu@gmail.com	
5	Zewdu Shimeles	urban man factoring	Regional Manager	0930054767	zeshimeles@gmail.com	
6	Fitsum Ketema	LPDC	GM	0912125072	f.ketema@lpdc.gov.et	
7	Belay Hamese	EPO(Hawassa)	head	0916333315	egrebelay59@gmail.com	
8	MELAKU TSEGAYE	HIP-ZLP	SIC	093508817	mstakaw243@gmail.com	
9	Hibret Lemma	HIP-IA	CEO	0947381489	hibret.hipia@gmail.com	
10	Beata Endrias	HIP-IA	Project Manager	0923030223	beata.hipia@gmail.com	
11	Temesachew	Alphabeta	Administrator	0916131136	temesachew@alphabeta.gov.et	

BEZA and Getaneh Gebre Environmental Audit and Management Consultancy Services

CORNERSTONE
RETHINKING AFFORDABLE HOUSING
Rice Market, 1st floor
Addis Ababa, Ethiopia



Appendix 13: EIA report for petroleum station project [2022]



involving key stakeholders" inputs in the ESIA the planned project is strengthened by these inputs.

The aim of public participation includes:

- > Inform and involve interested and affected groups, public authorities, and interest groups.
- > Explicitly address their comments, concerns, and inputs, both in documentation and decision making.
- > Ensure that all relevant actors and parties are involved or at least represented.
- > Safeguard sufficient access to all relevant documents and information concerning the project and the EIA documentation.

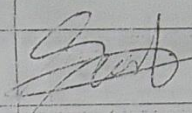
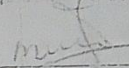
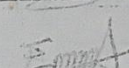
1.4.4. Impact analysis

Following the evaluation of the baseline conditions and analysis of stakeholder's opinions, environmental impacts likely to result from the proposed project were identified and their significances were evaluated. Impact significance was assessed quantitatively/qualitatively based on their magnitude, extent, duration and significance of the impact and their relative importance and values.

Following the identification, prediction and evaluation of impacts, appropriate mitigation measures has been proposed that are capable of preventing, reducing, or offsetting the negative impacts to acceptable levels. Finally environmental and social management and monitoring plan that comprises the outline of significant environmental and social impacts, the mitigation measures and responsible bodies to implement the mitigation measures have been developed.



03 ቀበሌ የሚኖሩት ከተማ/ወረዳ ለሚተገበረው የሥራ ምዝገባ ለጽሑፍ ማህበረሰብ ተፅዕኖ ዉይይት ላይ የተገኙ ተሳታፊዎች

ተ.ቁ	የተሳታፊው ስም	የመጠበቅ ቀበሌ	ስልክ ቁጥር	ፊርማ
1	ደምሴ ማሙሎ	አማካሪ	09122203238	
2	ሙንጣጣ ሙንጣጣ		0916369909	
3	አብነት ሽሐዓ		0936206993	
4	ቱጌራ ቱጌራ		0938944902	
5	ሽሐዓ ደፍሪካ		0928850384	
6	ሙንጣጣ ሙንጣጣ		0944022136	
7	ቱጌራ ቱጌራ		09	
8	ቱጌራ ቱጌራ		0926256662	
9	አብነት አብነት			
10	ሙንጣጣ ደፍሪካ			
11	ጢሞቴዎስ አብነት		0926976840	

12 አብነት ደፍሪካ

