

# **Environmental Democracy in Ethiopia: Emphasis on Public Participation in Environmental Impact Assessment Process**

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## **Abstract**

The concept *environmental democracy* refers to a participatory form of environmental decision-making. Thus, in a system where there is environmental democracy, the public will be able to engage in decisions that will have impacts on the environment. On the other hand, different instruments at international, regional, and national levels have been emerging with a view to ensuring public participation in environmental decision-making processes. This is so because, nowadays, there is a general consensus that public participation in making environmentally fateful decisions will contribute to the effective protection of the environment. In Ethiopia, too, there are laws, policies, regulations, etc. which aim at ensuring environmental protection. Since environmental democracy is of paramount importance for effective environmental protection, this article intends to explore the extent to which these laws, policies, regulations, etc. can accommodate the needs of environmental democracy by focusing on public participation in the environmental impact assessment process. It will also explore the extent to which the public is participating in environmental impact assessment process in practice. The article argues that despite the fact that Ethiopia has put in place a policy framework to ensure public participation in the environmental impact assessment process thereby opening door for environmental democracy and there is also some sort of public participation in the environmental impact assessment process in practice, environmental democracy in Ethiopia is still at its early stage. In order to show the correctness or otherwise of this argument, the methods the writer has used to gather information are literature review, legal and other instruments' analysis, and interviews.

## **A. Introduction**

*Environmental democracy* refers to a system that requires the participation of everyone with a stake in the handling of environmental issues. Thus, environmental democracy favours and requires the participation of the

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public on decisions that will have impact, be it positive or negative, on the environment. For instance, the adoption of environmental laws, policies and programmes and the implementation of projects, public or private, are some of the matters pertaining to the environment. Environmental democracy, therefore, requires the participation of the public (stakeholders) in decisions involving these matters.

Fortunately, the concept environmental democracy is now obtaining wider acceptance. For instance, international instruments like the Rio Declaration contain provisions that require and facilitate public participation in environmental decision-making thereby promoting environmental democracy. At the regional level, one may consider the Aarhus Convention which, *inter alia*, focuses on public participation on decisions involving environmental matters which encourages and facilitates environmental democracy. At the national level, too, countries have been making laws and policies which aim at ensuring public participation in environmental decision-makings which in turn can facilitates environmental democracy. On her part, Ethiopia has also put in place policy framework (laws, policies, and others) to protect the environment starting from the promulgation of its current Constitution in 1995. Although the limit of environmental democracy goes far beyond environmental impact assessment process, this article will limit itself, due to practical limitations, to the consideration of the extent to which this policy framework accommodates the needs of environmental democracy by focusing *only public participation in environmental impact assessment process and the extent to which the public has been participating in environmental impact assessment in practice*. Moreover, as matter of practical limitation, this article does not purport to consider the laws, policies, programmes, and other documents of regional governments in the field of environment although they are undoubtedly relevant to environmental democracy in Ethiopia. Further, instead of looking at Environmental Impact Assessment (EIA) reports submitted to the Federal Environmental Protection Authority (EPA), the writer has

opted to interview the officials at the Federal EPA, who deal with such reports, and some stakeholders to know whether or not public participation in the EIA process actually exists on the ground.

Bearing the above provisos in mind, the article is divided, in order to adequately explore its theme, into five sections; while the first section is the introductory part, the second section deals with environmental democracy and public participation, the third section deals with policy framework for public participation in the EIA process in Ethiopia (and, hence, for environmental democracy), and the fourth section deals with the practice of public participation in the EIA process in Ethiopia to see the extent to which environmental democracy exists on the ground. Then, the final section contains the conclusion and recommendations which will wind-up the discussion.

## **B. Environmental democracy and public participation**

Modern environmental thought emerged in the decade following 1962: the publication of *Silent Spring* (the “clarion call” on pesticides poisoning from Rachel Carson) and the 1972 Stockholm Conference on the Human Environment (which created the basis of the United Nations Environment Programme).<sup>4</sup> During this period, the environmental movement and its underlying philosophies were becoming a global phenomenon.<sup>5</sup> Almost four decades later, environmental issues are still seen as global phenomena. Indeed, environmental issues are now one of the priority areas the international community is paying attention to. This is so because population growth, advancement in technology, and change in life

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<sup>4</sup> See Rachel Carson: **Silent Spring**, Boston, 1962, mentioned in Giulia Parola, **Towards Environmental Democracy**, Faculty of Law, University of Iceland, 2009 (unpublished), p 19 and Giulia Parola, **Towards Environmental Democracy**, Faculty of Law, University of Iceland, 2009(unpublished), p 19.

<sup>5</sup> Ibid

style have been causing major environmental problems<sup>6</sup> such as pollution, habitat destruction, species extinction, chemical risk, and high energy production which have global dimension.<sup>7</sup> Of course, any environmental degradation caused by natural or anthropogenic factors is generally self-rectified by nature itself. Thus, environmental problems occur when nature becomes unable to rectify environmental degradations on its own,<sup>8</sup> whereas the current environmental problems are more serious either due to their magnitude or type thereby making it difficult for nature alone to rectify them.<sup>9</sup>

Can *environmental democracy* be of any help to overcome the current environmental problems? At this point one must note that this writing does not deal with the political model that is better for environmental protection;<sup>10</sup> rather, it proceeds on the assumption that

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<sup>6</sup> In generic sense, environmental problems are sometimes called environmental 'pollution'. See P.C.Mishra and R.C. Das, **Environmental Law and Society: A text in Environmental Studies**, Macmillan, India, 2001, p 17.

<sup>7</sup> Stephen R. Champman, **Environmental Law and Policy**, Prentice Hall, Columbus, Ohio, 1998, p13. Some writers argue that there are five big causes of environmental problems: these are population growth, wasteful resource use, poverty, poor environmental accounting, and ecological ignorance. See G. Tyler Miller, **Sustaining the Earth**, 7<sup>th</sup> ed, Thompson Brooks/Cole, 2005, p 11

<sup>8</sup> H.V. Jadhav and S.H. Purohit, *Global Warming and Environmental Laws*, 1<sup>st</sup> Edition, Himalaya Publishing House, Mumbai, 2007, p 17

<sup>9</sup> For example, the *Bhopal gas tragedy* (India) of 1984 due to the discharge of toxic gas and the *Chernobyl* Incident (USSR) of 1986 due to large-scale radioactive contamination alone resulted in the death of thousands of human lives. H.V. Jadhav and S.H. Purohit, cited at note 5, p. 17

<sup>10</sup> For example, some writers argue that authoritarian or anarchist model is a better model for environmental protection. According to authoritarian perspective, the protection of environment and long term human survival require authoritarian politics. This is so because environmental crises require extraordinary concentration of power capable of suppressing human needs, whereas authoritarian system allows a state to have concentrated power and use it to suppress human wants that, if left unchecked, would overwhelm the carrying capacity of the earth. On the other hand, authoritarian model claims that

democracy is a better model to address environmental problems<sup>11</sup> and then consider why public participation in environmental decision-

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democratic government is not determined enough to do so because it lacks the concentration of power necessary to suppress the needs of citizens to protect the environment. See W. Ophuls, **Ecology and the Politics of Scarcity: A Prologue to a Political Theory of the Steady State**, San Francisco 1977; R. Heilbrunner: **An Inquiry into the Human Prospect**, New York 1974; Paehlke, “**Democracy, bureaucracy, and environmentalism**”, *Environmental Ethics*, 1988, p. 291; J. Passmore, **Man’s Responsibility for Nature: Ecological Problems and Western Traditions**, New York 1974; K.J. Walker, “**The Environmental Crisis: A Critique of Neo-Hobbesian Responses**,” *Polity*, vol. 21, 1988, p. 67–81; and D. Torgerson: “**Constituting Green Democracy: A political project**”, *The Good Society*, Vol 17, N. 2, 2008, p.18, all cited in Giulia Parola, cited at note 1, p 20. On the other hand, Anarchist perspective is a view that says environmental crises can be overcome through “institutional transformation toward a pattern of decentralized, egalitarian and self-managing local communities attuned to ecological constraints and complexities”. So, according to this approach, the cause for environmental problem is not uncontrolled human desire advanced by authoritarian perspective but hierarchical social structures that are capable of distorting the human potential to create cooperative communities that can live in harmony with nature. See Kenny, “**Paradoxes of Community**” in *Democracy and Green Political Thought*, eds. B. Doherty and M. de Geus, London 1996, p. 23 and D. Torgerson: “**Constituting Green Democracy: A political project**”, *The Good Society*, Vol. 17, N. 2, 2008, p. 18, cited in Giulia Parola, cited at noted 1, p 20

<sup>11</sup> Although some have argued that democracy leads to environmental policy inaction, many scholars think that democracy improves environmental quality. A lack of democracy is at the root of many ecological problems. Some scholars argue that political rights and freedom of information help the promotion of environmental groups, raising public awareness and encouraging environmental legislation. Democracy is more reactive to the environmental needs of the public than other systems. See J. Rocheleau, “**Democracy and Ecological Soundness**”, *Ethics and the Environmental*, Vol. 4, 1999, p.38; C. B. Schultz and T.R. Crockett: “**Economic Development, Democratization, and Environmental Protection in Eastern Europe**”, *Boston College Environmental Affairs Law Review*, vol. 18, 1990, p. 53-84; R. A. Payne: “**Freedom and the Environment**”, *Journal of Democracy*, vol. 6, 1995, p. 41-55; V. Kotov and E. Nikitina, “**Russia and International Environmental Cooperation**” in *Green Globe Yearbook of International Cooperation on*

making is necessary and the extent to which such participation exists in Ethiopia. That being said, what is *environmental democracy*? One may try to define the term *environmental democracy* by first looking at the meanings/features of the two words—democracy and environment—separately. To begin with, *democracy* is a fluid concept that defies any single and universally acceptable meaning.<sup>12</sup> However, it is a system of government that is characterized by popular control.<sup>13</sup> That means, democracy is a system of government that allows people to decide on their fate by controlling decision-makers,<sup>14</sup> whereas participation is one of the mechanisms the public can use to control decision-makers.

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*Environment and Development*, eds by H.O. Bergesen and G. Parmann, Oxford, 1995, p. 17-27; E. Neumayer, “**Do Democracies Exhibit Stronger International Cross Sectional Analysis**”, *Journal of Peace Research*, 2002, p. 139-164; E. B. Weiss and H. K. Jacobsen: “**Getting Countries to Comply with International Agreements**”, *Environment*, vol. 41, 1999, p. 16-23. E. Berge: “**Democracy and Human Rights: Conditions for Sustainable Resource Utilization**” in: *Who Pays the Price? The Socio cultural Context of Environmental Crisis*, ed B.R. Johnson, p. 187-193, all cited in Giulia Parola, cited at noted 1, p 22-23

<sup>12</sup> For example, the following are some of the definitions of the concept *democracy* different scholars offer: democracy refers to ‘a political system in which power is shared by all’; democracy refers to ‘a political system where the will of the whole people prevails in all important matters’; democracy refers to ‘a system in which there is a government we can get rid of when we want to’; democracy refers to ‘a system by which ordinary citizens exert a relatively high degree of control over their leaders’; democracy refers to ‘a political system which supplies a regular constitutional opportunities for changing governing officials’; and, democracy refers to ‘a system which ensures the responsibility of officials’. See Tatu Vanhanen, **The process of Democratization: A Comparative Study of 147 States, 1980-1988**, Crane Russak, New York, Washington DC, London, 1990, pp 7-9. These different definitions have different points to emphasis. However, if we closely scrutinize them, we will see that *popular control* is one of the features they share.

<sup>13</sup> Indeed, some have argued that *popular control* is one of the underlying or core principles of democracy. David Beethan, **Democracy and Human Rights**, Polity Press, UK and USA, 2000, p 4-5

<sup>14</sup> Tatu Vanhanen, cited at note 9, p 8-9

Therefore, democracy allows the public to participate in the making of decisions that affect their interests. On the other hand, *environment* can be defined as everything that surrounds us, both the natural world in which we live as well as the things produced by us.<sup>15</sup> Thus, it comprises the biosphere (the actual livable space covering the earth), the atmosphere (the air component of the environment), the hydrosphere (the water component of the environment), and the lithosphere (the soil component of the environment).<sup>16</sup>

By conflating the points raised in relation to both concepts, *environmental democracy* could be defined or understood as a system where the public controls those who make decisions that affect the environment or its components. Thus, public participation in environmental decision making becomes an important element of environmental democracy. Other writers have also defined the term environmental democracy in more or less similar fashion. For example, Michael Mason defines environmental democracy as a participatory and ecologically rational form of collective decision-making.<sup>17</sup> According to Hazen, environmental democracy is the notion that holds that environmental issues must be addressed by all those affected by their outcome, not just by governments and industrial sectors.<sup>18</sup> She adds that for those whose daily lives reflect the quality of their environment, participation in environmental decision-making is as important as participation in education, health care, finance and government.<sup>19</sup> Parola also defines Environmental democracy as a

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<sup>15</sup> P.C.Mishra and R.C. Das, cited at note 3, p 1 and H.V. Jadhav and S.H. cited at note 5, p. 8

<sup>16</sup> H.V. Jadhav and S.H. Purohit, cited at note 5, p 8

<sup>17</sup> M. Mason, **Environmental Democracy**, Earthscan Publications Ltd, London, 2006, p 1.

<sup>18</sup> SUSAN HAZEN, **Environmental democracy**, (1998) available at

<http://www.unep.org/ourplanet/imgversn/86/hazen.html>, accessed on 13 May 2010

<sup>19</sup> Ibid

system where communities manage their immediate environment through deliberative and participatory institutions.<sup>20</sup> Based on these definitions, therefore, it could be concluded that public participation in environmental decision-making is a glaring feature of environmental democracy.

However, in order to facilitate the participation of the public in environmental decision-making, governments' transparency is of paramount importance.<sup>21</sup> In other words, in order to exercise its right to participate in decision-making, the public needs to get, from the government, the information on which decision is to rest. Moreover, the public needs to get the chance to give their opinions and influence decision. This is why some writers argue that access to information motivates and empowers people to participate in an informed manner, whereas lack of access to information hinders the public from making meaningful participation in the decision-making process. In this regard, actually, governments pledged, in the 1992 Rio Declaration on Environment and Development, to open environmental decision-making to public input and scrutiny, which is a manifestation of environmental democracy.<sup>22</sup>

At this juncture, one may wonder why public participation is held so important to environmental democracy. First, environmental issues are best handled with the participation of all concerned citizens, at all levels.<sup>23</sup> For instance, public participation enables decision-

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<sup>20</sup> For more on this point, see Giulia Parola, cited at note 1, p 26-28

<sup>21</sup> Accountability is also one of the features a government is supposed to have to facilitate the use of the right to participate in decision-making process. See [Monika Kerdeman, What Does Environmental Democracy Look Like?](http://www.wri.org/stories/2008/04/what-does-environmental-democracy-look-like) Available at <http://www.wri.org/stories/2008/04/what-does-environmental-democracy-look-like>, accessed on 13 May 2010

<sup>22</sup> Parola argues that informed and legally empowered citizen is the most important aspect of environmental democratization. Giulia Parola, cited at note 1, p 24-25.

<sup>23</sup> Principle 10 of the 1992 Rio Declaration. The principle further stipulates that at the national level, each individual shall have access to information concerning the

makers to address issues that are perceived as important by the public; brings traditional knowledge into the decision-making process which will improve the quality of a decision; and ensures that the impact of a given decision on the environment is properly assessed.<sup>24</sup> Second, public participation in environmental decision-making enhances government's ability to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions.<sup>25</sup> Third, it is in the nature of democracy to involve the public in decisions that are likely to affect their interests, in this case, their environment. Therefore, the importance of public participation in environmental democracy lies beyond question. Accordingly, involving the public in decisions that could have impact on the environment is a manifestation of environmental democracy in a given system.

Obviously, everyday decisions that could have effect on the environment are made beginning from making strategies (policy formulation) to project implementation. Thus, in a system where there is environmental democracy, the public has the right to participate in the making of these decisions. On the other hand, environmental laws require that the formulation of strategies and the implementation of projects be preceded by *environmental impact assessment* (EIA). Here, EIA refers to a process of identifying, in advance, the impact of a given action (strategy or project) on the environment with the view to

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environment that is held by public authorities...and the opportunity to participate in decision-making process. States shall facilitate and encourage public awareness and participation by making information widely available.

<sup>24</sup> See, for example, the discussion of Ross Hughes on stakeholders' participation in the EIA Process; Ross Hughes, **Environmental Impact Assessment and Stakeholder Involvement**, included in Annie Donnelly, Barry Dalal-Crayton, Ross Hughes, **A Directory of Impact Assessment Guidelines**, 2<sup>nd</sup> ed, International Institute for Environment and Development, 1998, p 21-22

<sup>25</sup> For more on this point, see Joseph Foti and others, **Voice and Choice: Opening the Door to Environmental Democracy**, World Resource Institute, 2008, p. x

avoiding or minimizing undesirable environmental consequences.<sup>26</sup> Thus, EIA involves decision making at both strategic and project levels. For example, by using EIA, one can conclude that the environmental impact of a given strategy or project will be greater or less than its benefit thereby leading to the conclusion that the strategy or project be rejected or adopted. Environmental democracy, therefore, favours the participation of the public in the EIA process as it involves making decisions that may affect the environment. In other words, environmental democracy requires involving the public in the EIA process when EIA is done and its report is reviewed or evaluated.

At this juncture, it appears necessary to first consider who does EIA and who evaluates EIA reports. In some countries like the USA, conducting EIA is the responsibility of federal agencies.<sup>27</sup> Thus, if EIA is required for a given strategy or project, the concerned federal agency has to do prior EIA before proceeding with a course of action such as issuing license. However, in many countries, EIA is done by a proponent.<sup>28</sup> In relation to strategies a proponent is any organ of government that initiates a strategy and seeks its approval, whereas in relation to a project a proponent is any person who initiates a project

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<sup>26</sup> See D.K. Asthana and Meera Asthana, **Environment: Problems and Solutions**, S. Chand and Company Ltd, India, 1998, p 336; John Ntambirweki, **Environmental Impact Assessment as a Tool for Industrial Planning, included in Industries and Enforcement of Environmental Law in Africa**, UNEP, 1997, p 75; H.V. Jadhav and S.H. Purohit, cited at note 5, p. 10; and Duard Barnard, **Environmental Law for All: A Practical Guide for the Business Community, The Planning Professions, Environmentalists and Lawyers**, Impact Books Inc, Pretoria, 1999, P 179.

<sup>27</sup> See sec 102 of the US National Environmental Policy Act (1969) and CEQ Regulations 1606.5 of 1999. Some scholars are of the opinion that making government agencies conduct EIA is better by questioning the objectivity of the private sector in the course of doing EIA. See William L. Andreen, **Environmental Law and International Assistance: The Challenges of Strengthening Environmental Law in Developing World**, Columbia Journal of Environmental Law, V 25, No 17, 2000, p 48

<sup>28</sup> Ibid

and seeks its approval. In Ethiopia, the EIA law uses the term *public instrument*, instead of *strategy*, and defines it as a policy, a strategy, a programme, a law or an international agreement.<sup>29</sup> Thus, policies, strategies, laws and international agreements may be subject to EIA and the proponent; that is, the person that will be responsible for doing EIA in this regard is the government organ that initiates these instruments.

In any case, whosoever conducts EIA, the responsible person must submit its EIA report to the organ that is responsible for evaluation. Who evaluates EIA reports? As far as this issue is concerned, there is consensus that approval is the responsibility of government organ. Thus, government organs (like in the US) or proponents (like in Ethiopia) must do EIA and submit the reports of their EIAs to the responsible government agency (usually environmental agencies) for evaluation.

The point then is at both stages; that is, when EIA is done and its report is evaluated, the public has to be involved. This means, those who do EIA must involve the public in the course of doing EIA, whereas environmental agencies that are tasked with the responsibility of evaluating EIA reports must involve the public in their evaluation process. If this is done, environmental democracy will be facilitated. Is this happening in Ethiopia? Before one tries to answer this query, it is necessary to first figure out whether Ethiopia has put in place adequate *policy framework*<sup>30</sup> that is capable of facilitating public participation in the EIA process at both stages thereby opening door

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<sup>29</sup> See article 2(10) of the EIA Proclamation of Ethiopia, Proclamation 299/2002

<sup>30</sup> In this paper, I use the term *policy* to refer to an intentional course of action designed by government bodies or officials to accomplish a specific goals or objectives. Thus, it includes legislative measures, judicial measures, programmes and guidelines. For more on the meaning and content of *policy*, see generally, Jessica R. Adolino and Charles H. Blake, **Comparing Public Policies: Issues and Choices in Six Industrialized Countries**, CQ Press, Washington DC, 2001, p 10-11

for environmental democracy. Then it would be logical to ask whether the public is actually participating in the EIA process in practice. This point will be taken up after the following section.

### **C. Policy framework for ensuring public participation in the administration of EIA Process in Ethiopia**

The term *public* refers not only to the people that are likely to be affected by a given decision but also to everyone who has a stake in a given course of action.<sup>31</sup> Thus, *public participation* in the EIA process could be defined as the involvement of the public (those with a stake) in decisions involving EIA to share information and knowledge and to contribute to the intended action and its success to ultimately enhance their own interests.<sup>32</sup> With this in mind, one has to ask what the policy framework for public participation in the EIA process in Ethiopia looks like. To begin with, so far, Ethiopia has issued many laws and policies that are meant to ensure environmental protection.

Of these policies and laws, the 1995 FDRE Constitution ('the Constitution' hereinafter), the 1997 Environmental Policy of Ethiopia (EPE), the 2002 EIA Proclamation, and the 2002 Environmental Protection Authority Establishment Proclamation are more pertinent to the administration of EIA. Of course, one of the earliest commitments of Ethiopia to use EIA in environmental decision-making process and also engage the public in such process came into being when it ratified the Convention on Biodiversity in 1994. Article 14(1)(2) of the Convention requires every contracting party to introduce appropriate

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<sup>31</sup> For example, some writers define *public involvement* in the EIA process as a process through which the views of *all interested parties* are integrated into project decision-making.<sup>31</sup> According to this definition, therefore, the term *public* refers to all stakeholders. See **Public Involvement: Guidelines for Natural Resource Development Projects**, Environment and Sustainable Development Division (ESDD), UNESCAP, 1997, p 4

<sup>32</sup> See, for example, Ross Hughes, cited at note 21, p 21-22

procedures requiring EIA of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures and also introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account. However, in this writing, we will focus only on the domestic policy framework. That being the case, do the above-mentioned policy framework in relation to EIA provide for adequate stipulations aiming at ensuring effective public participation in the EIA process thereby facilitating environmental democracy? The following sections will answer this query.

## I. FDRE Constitution

The first place to look for the right of the public to participate on matters affecting its interests is the supreme law of the land, the Constitution. In this regard, article 43(2) of the FDRE Constitution, which is the most pertinent provision to the issue at hand, stipulates 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*.<sup>33</sup> This means, nationals have the right to participate in the development of the country such as through investment. Particularly, they have the right to be consulted when policies (like laws, programmes, international agreements, etc) are made and projects are (to be) approved.

The above stipulation of the Constitution contains some interesting points. Firstly, the Constitution deals with the right of *nationals*, not of *public* which refers to stakeholders in general. Second, the Constitution deals with nationals themselves selectively as it singles out only those nationals whose community will be affected by a

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<sup>33</sup> Emphases added

policy or a project. Therefore, broad-based public participation cannot be claimed with respect to national development, in particular, the right to be consulted with respect to policies and projects. On the other hand, the fact that nationals whose community will be affected by a policy or a project can have the right to be consulted and they form part of the public lies beyond question. Thus, article 43(2) of the Constitution aims at ensuring public participation in its narrow sense. This means, only the nationals whose communities will likely be affected by a strategy (policy) or project that needs EIA can claim participation in the EIA process as of right while stakeholders may be granted the privilege to do so. This can be taken as a step towards promoting environmental democracy. However, it remains far from adequately promoting environmental democracy because some stakeholders which the term *public* refers to, such as experts, NGOs, government organs, and other members of the public are excluded from the coverage of article 43(2). In this regard, some countries provide for the duty of a proponent to consult not only the community likely to be affected but also other stakeholders including members of the public, interested bodies and organizations.<sup>34</sup> For example, in USA, agencies undertaking environmental impact studies are supposed to involve the public or those persons and agencies who may be *interested* or *affected* by a given action.<sup>35</sup> Under our Constitution, however, the duty of a proponent pertains only to the community likely to be affected, not to any interested party.

Anyway, article 43(2) of the Constitution is capable of facilitating environmental democracy but only with respect to limited

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<sup>34</sup> Section 11(9) of the EPA law of the Guyana, See Mark Lancelot Bynoe, '**Citizen Participation in the Environmental Impact Assessment Process in Guyana: Reality or Fallacy?**', 2/1 Law, Environment and Development Journal (2006), p 44

<sup>35</sup> See Sec 1506.6 of the 1999 CEQ Regulations on Public Involvement. Emphasis added. The Regulations also provide for ways of involving the public like NEPA-related hearings, public meetings, mailing information to those who request it, etc.

persons. For example, it is unlikely for the people living in Region Five of the country to claim participation, even if they may be interested, in environmental decisions that will affect the community in Region Two of the country. If the provision recognized the participation of the public in its wider sense, it would be possible for the people in Region Five to participate in environmental decisions that affect the people in Region Two. Therefore, one can say that the Constitution, in this case, does not go far enough to guarantee public participation in environmental decision-making thereby facilitating environmental democracy.

The other relevant provision in the Constitution is article 29(3) which deals with the *right of thought, opinion and expression*. Under this article, the Constitution guarantees the freedom of the press and other mass media which includes access to information of public interest. Thus, the Press and other Mass Media can seek information on what the government is doing or is to do in relation to EIA and air their opinions with a view to either alert the public or influence the outcome of a given course of action. Accordingly, to the extent this stipulation enables the press and other mass media to alert the public and/or air their views to influence a given course of action, one may argue that this constitutional provision creates a condition capable of facilitating public participation in environmental matters to eventually facilitate environmental democracy. However, article 29(3) of the Constitution does not seem to deal with the right of the public in broader sense to get access to information of public interest. Of course, article 29(2) of the Constitution guarantees everyone's freedom of expression which includes, *inter alia*, freedom to seek and receive information or ideas of any kind in any form and regardless of frontiers. If this stipulation is given liberal interpretation, which requires committed judicial activism, one may argue that everyone's right to seek and receive information or ideas on matters of public nature/interest is guaranteed. Once again, care must be taken not to confuse *everyone* with the term

*public* in its broader sense because the term *everyone* under article 29(2) refers to *individuals*, not to other stakeholders such as NGOs and government organs.

In conjunction with the above constitutional stipulations, one has to look at the 2008 Freedom of the Mass Media and Access to Information Proclamation which was enacted to implement, among other things, articles 12 and 29 of the Constitution. This Proclamation contains detailed provisions with regard to the rights of the Mass Media and citizens to access, receive, and impart information held by public bodies.<sup>36</sup> However, in some ways, the Proclamation also seems to follow the same path with article 29 of the Constitution. Subject to a long list of exempted information it contains (see arts 16ff), it deals with the rights of citizens and the Mass Media, not *persons* in general, to access, receive and impart information held by public bodies. Accordingly, it could be said that the coverage of the Proclamation with regard to guaranteeing access to information for all stakeholders to encourage and promote their participation in matters involving the environment is not comprehensive. This is critical in particular when one considers those stakeholders such as NGOs working in the field of environmental protection that are excluded although they can play more significant roles during the EIA process or, generally, when environmentally fateful decisions are made through participation to ultimately promote environmental democracy in the country.<sup>37</sup>

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<sup>36</sup> See, for example, articles 4 and 12, Freedom of the Mass Media and Access to Information Proclamation, Proclamation 590/2008.

<sup>37</sup> With regard to the recognition of the right of citizens to seek, obtain and impart information held public bodies, the objective of the Proclamation, as clearly indicated under article 11, is to encourage and promote public participation in the business of the government to ultimately promote good governance. If good governance is promoted, environmental democracy will certainly be promoted, too.

We can also look at articles 8 and 12 of the Constitution as relevant provisions to environmental democracy although they may be considered thinly related to the concept. First, article 8 declares the sovereignty of the people.<sup>38</sup> If they are sovereign, then, it is (and must be) their democratic right to participate (directly or indirectly, as the case may be) in environmental decision-making. Second, article 12 obliges government (it could be federal or regional) to conduct its affairs transparently. Thus, it is a constitutional obligation of a government to make information accessible to the public on what it does in the interest of transparency. This in turn enables the public to be informed about what the government does and make meaningful participation in decision-makings, in particular, environmental decisions. Hence, like article 29, the above articles could also be taken as capable of paving way for environmental democracy.

## II. Environmental Policy of Ethiopia (EPE)

In 1997, Ethiopia adopted its comprehensive National Environmental Policy (EPE) with the view to realizing the right of Ethiopians to live in clean and healthy environment and to bring about sustainable development. In order for these lofty goals to be attained, the policy makes different stipulations, where the requirement that EIA should be used is one of such stipulations. Interestingly, in addition to requiring the use of EIA, the policy demands engaging the public in the EIA process through consultation and it holds that such engagement is an integral part of the EIA process.<sup>39</sup> Thus, the policy, unlike the Constitution, is broader as it recognizes the need to involve the *public* in the EIA process. Accordingly, the EPE creates condition for public participation in the EIA process thereby facilitating environmental democracy.

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<sup>38</sup> Care must be taken not to equate *people* for *stakeholders* for the former is narrow than the latter within the meaning of the Constitution.

<sup>39</sup> Section 4.9 of the 1997 EPE

However, although it may be argued that it is a general document and hence less is expected of it with regard to providing details, the 1997 EPE also suffers from defects in relation to creating conducive environment for public participation (consultation) in the EIA process (and, hence, for environmental democracy) by at least stipulating some minimum conditions. For instance, while the EPE could have done it, it fails to tell us how the public should be consulted (like requesting online comments or arranging workshops to get face-to-face comment), at what stage of the EIA should it be consulted (for example, when it is done; if so, at what stage? Or, when EIA reports is evaluated?), and what language should be used during consultation. Thus, it could be concluded that the EPE is relevant to facilitate public participation in the EIA process, and, hence, environmental democracy, only to the extent it recognizes the need to consult the public during the administration of the EIA. This means, the EPE is also far from creating conducive environment for public participation in the EIA process; yet it has better stipulation than the Constitution which deals only with nationals who belong to the community likely to be affected by a policy or a project as it deals with the public in general.

### **III. EIA Proclamation**

In 2002, the government of Ethiopia adopted the EIA Proclamation, the first of its kind. The Proclamation requires using EIA for some projects and public instruments before they are approved.<sup>40</sup> If so, does it recognize the right of the public to participate in the EIA process of projects and public instruments? The relevant provisions of the Proclamation to answer the question are the following.

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<sup>40</sup> According to articles 5 and 13 of the EIA Proclamation No 299/2002, the Federal EPA is required to list projects and public instruments that are subject to EIA and which require prior EIA.

### **Article 6 Trans-Regional Impact Assessment**

1. A proponent shall carry out the environmental impact assessment of a project that is likely to produce a trans-regional impact in consultation with the communities likely to be affected in any region.
2. ....
3. The Authority shall, prior to embarking on the evaluation of an environmental impact study report of a project with likely trans-regional impact, ensure that the communities likely to be affected in each region have been consulted and their views incorporated.

### **Article 9 Review of Environmental Impact Study Report**

1. ....
2. The Authority and regional environmental agencies shall, after evaluating an environmental impact study report by taking into account any *public comments and expert opinions*, within 15 working days:<sup>41</sup>
  - a. approve the project without conditions and issue authorization [...]
  - b. approve the project and issue authorization with conditions [...]
  - c. refuse implementation of the project [...]

### **Article 15 Public participation**

1. The Authority and regional environmental agencies shall make any environmental impact study report accessible to the *public* and solicit comments on it.
2. The Authority and regional environmental agencies shall ensure that the comments made by the *public and in particular by the communities likely to be affected* by the implementation of a project

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<sup>41</sup> Emphasis added

are incorporated into the environmental impact study report as well as in its evaluation.<sup>42</sup>

The above-mentioned three articles from the EIA Proclamation do have something to tell about public participation in the EIA process. First, article 6 imposes on proponents of projects the duty to conduct EIA in *consultation* with the communities likely to be affected in any region. Two points need emphasis here. First, article 6 imposes the duty to engage (through consultation) the community likely to be affected only in relation to projects. Hence, proponents of public instruments (such as policies and laws) are under no obligation to engage the community likely to be affected by the implementation of their public instruments when they do EIA before the instruments are approved. Second, proponents of projects are required to consult not the public but only the community that is likely to be affected by the implementation of their projects. Therefore, article 6 of the Proclamation deals with public participation in the EIA process in a narrow way; that is, it requires the participation of the *community* likely to be affected (as part of the public) by a *project*. Thus, broad-based public participation, which is required by environmental democracy, at EIA performance stage is not guaranteed. However, the Proclamation seems firm on the need to consult the community<sup>43</sup> likely to be affected by a project because it obliges the Federal EPA to ensure that such consultation has taken place before even starting the evolution of EIA reports.

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<sup>42</sup> Emphasis added to both sub-articles

<sup>43</sup> At this juncture, a question whether the term *communities* includes communities in another country where a project is to be implemented around a boarder is not clear. Moreover, there are no guidelines adopted by the Federal EPA to clarify this point. But, as practice shows, the term is used to refer only to local communities, not those in another country.

At this juncture, it is interesting to note that article 6 of the EIA Proclamation does not recognize the consultation right of the communities likely to be affected by projects but the obligations of proponents to consult them although it could be argued that the flip side of the proponents' obligations shows the right of the communities.<sup>44</sup> Moreover, article 6 does not tell us the stage at which proponents must consult the community likely to be affected by their projects; that is, at the preliminary assessment or preparation of the environmental impact study, or both. Similarly, it does not tell us for how long the consultation of the community should last and how it should take place. Therefore, although article 6 of the EIA Proclamation is clear on the need to engage the community likely to be affected by a project when EIA is done, it is still plagued with inadequacies. Thus, it will not be able to facilitate effective participation of the community likely to be affected by a project unless it is supplemented by other provisions (in subsidiary laws). However, the organs that have been authorized to make supplementary laws to implement the EIA Proclamation (that is; the Council of Minister and the FEPA) have not yet made such laws. This makes it difficult for the community likely to be affected by a project to effectively participate in the EIA process of the projects.

Therefore, the EIA Proclamation does not provide for adequate stipulations that deal with public participation in the EIA process when EIA is done; first it does not deal with the broad-based public; and, second, it deals only with project level EIA, not strategic EIA. Hence, it is far from facilitating broad-based public participation in the EIA process at preparatory stage; and, hence, environmental democracy.

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<sup>44</sup> Actually, one may argue that this right has to be read into the Proclamation because it is recognized by the Constitution, under article 43(2) as discussed before.

The other two articles, article 9 and article 15, provide for the role of the public at EIA report evaluation stage. Article 15(1) obliges the Federal EPA and regional environmental agencies to make EIA report accessible to the *public* and solicit comments on it. Then, article 15(2) obliges these organs to ensure that the comments made by the *public and in particular by the communities likely to be affected* by the implementation of a project are incorporated into the environmental impact study report as well as in its evaluation.<sup>45</sup> Finally, article 9 obliges the Federal EPA and regional environmental agencies to take action on EIA reports, within 15 working days, after evaluating them by taking into account any *public comments and expert opinions*.

An interesting scenario here is the fact that, unlike article 6, articles 9 and 15 of the EIA Proclamation use the term *public*, not *communities likely to be affected*. Hence, their scope of application is wider. Therefore, unlike at the preparation stage, the EIA Proclamation recognizes the need to involve the public in the EIA process at EIA report evaluation stage. That is to say, the authorities that are tasked with the responsibility to evaluate EIA reports and pass decisions thereon are required to seek public opinions as inputs for their decisions. This is a good stipulation capable of facilitating environmental democracy.

However, there are still problems in relation to applying the two articles. First, the articles do not make it clear how environmental organs can make EIA reports accessible to the public and solicit comments. For example, should they use TV, radio, newspapers, public meetings, or make copies of EIA reports available to those who want to comment on them? Some countries require publication of notice in daily newspaper that EIA report has been submitted to environmental organ for evaluation and that the public can give their

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<sup>45</sup> In this sense, one can argue that *consultation* seems similar to *participation* because the inclusion of the comments obtained through consultation shows that the public can influence decision-making.

comments.<sup>46</sup> Moreover, articles 9 and 15 do not specify for how long environmental agencies need to solicit public comments. Some countries explicitly specify this time. For example, in Guyana, the duration is 60 days,<sup>47</sup> whereas it is 45 days in the US with the possibility of extension or reduction, as the case may be.<sup>48</sup> In Ethiopia, however, no such duration is fixed. Yet, we know that once they received EIA reports, environmental organs must take action within 15 working days. Thus, it could be concluded that environmental agencies have less than 15 working days to solicit public comments before they take action on EIA reports. This period seems short and it makes public participation at this stage difficult. There are also other problems like the selection of the language to use during report publication and comment solicitation. But, overall, it could be said that the two articles are also plagued with inadequacies thereby making public participation in the EIA process at evaluation stage difficult. This means, they are not capable of facilitating good environmental democracy.

In any case, like the previous instruments, the EIA proclamation has also failed to create adequate and conducive environment for the participation of broad-based public in the EIA process of all actions (strategies and projects) that are subject to EIA and that will affect the environment. Moreover, the provisions of the proclamation that are pertinent to public participation are plagued with inadequacies. Actually, these inadequacies were supposed to be remedied by subsidiary laws such as regulations and directives. Nonetheless, almost a decade later after the Proclamation was enacted, the organs that are authorized/required to make these subsidiary laws; that is the

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<sup>46</sup> Steven Ferry, **Environmental Law: Examples and Explanations**, 4<sup>th</sup> Edition, Aspen Publishers, Austin, Boston, Chicago, New York, and The Netherlands, 2007, p 86

<sup>47</sup> Section 11(9) of the EPA of the Guyana, See Mark Lancelot Bynoe, cited at note 31, p 47

<sup>48</sup> Steven Ferry, cited at note 43, p 86

Council of Ministers and the Federal EPA,<sup>49</sup> have failed to make such laws thereby making the application of the provisions of the EIA Proclamation, in particular, those relating to public participation difficult.<sup>50</sup> Hence, the EIA Proclamation, although it opens door to environmental democracy like the other instruments, is also far from being adequate to facilitate public participation in the EIA process thereby promoting environmental democracy.

#### IV. EIA Guidelines

The other instrument that has bearing on public participation in the EIA process in Ethiopia is the Federal EPA guidelines. So far, the Federal EPA issued two procedural guidelines to facilitate the effective use of EIA in decision-making process. The first guidelines were issued in 2000. These guidelines recognize that the participation of interested and affected persons (which is synonymous with *public* in broader sense) in the EIA process is necessary. Moreover, the guidelines stipulate that interested and affected persons (public) should be involved in the EIA process at scoping, EIA performance, and EIA

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<sup>49</sup> See articles 19 and 20 of the EIA Proclamation No 299/2002

<sup>50</sup> Six years later, in 2008, the Federal EPA issued directives to implement the provisions of the EIA Proclamation. However, the directives still have two major problems. First, it is limited to listing projects (not public instruments) that require EIA. Thus, it does not address the problems affecting public participation in the EIA process. Second, the directives have not yet become law for two reasons. To begin with, the directives have not been signed by the chairperson of the environmental council; that is, the Prime Minister. Besides, although the publication of directives in Federal Negarit Gazeta is not a common practice in our system, article 2(2) of the Federal Negarit Gazeta Establishment Proclamation of 1995 requires all federal law to be published in the Federal Negarit Gazeta. Then, under article 2(3), it obliges all Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person to take judicial notice of laws published in the Federal Negarit Gazeta. This means, these entities are not obliged to take judicial notice of laws that are not published in the Federal Negarit Gazeta

report evaluation stages. Further, the guidelines provide for the modes of involving the public in the EIA process. For instance, they provide that public meetings; telephonic surveys; newspaper advertisements; interviews and questionnaires; working with established groups; and workshops and seminars can be used as methods of ensuring public participation in the EIA process.<sup>51</sup> Therefore, on the face of it, these guidelines are suitable for facilitating public participation in the EIA process at both stages (performance and evaluation) thereby promoting environmental democracy.

In 2003, the EPA issued the EIA Procedural Guidelines Series 1 of 2003 replacing the 2000 guidelines.<sup>52</sup> Like its predecessor, these guidelines also recognize the importance of public participation in the EIA process at various stages. However, unlike the 2000 guidelines, the 2003 guidelines are less clear on the stages at which the public can participate in the EIA process. For instance, while they stipulate that scoping should involve the public, they are silent on the participation of the public when EIA study is conducted and its report is evaluated. Nevertheless, the guidelines could still be construed to require public participation at the other stages of the EIA as well.<sup>53</sup> Hence, it may be

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<sup>51</sup> See Federal Democratic Republic of Ethiopia Environmental Protection Authority Environmental Impact Assessment Procedural Guidelines Document, Addis Ababa, May 2000, Paragraphs 3.1.3, 3.4, and 3.5

<sup>52</sup> See Federal Democratic Republic of Ethiopia Environmental Protection Authority Environmental Impact Assessment Procedural Guidelines Series 1, Addis Ababa, November 2003. The relevant paragraphs of these guidelines include paragraphs 5.2.3, 5.2.6, 6.3, and 6.4.

<sup>53</sup> For example, when EIA is done, proponents should involve stakeholders even if the guidelines do not expressly require this for two reasons. First, the evaluating authority is supposed to consider the extent of public participation in the EIA process for approval. This implies that proponents are expected to involve the public when they conduct EIA study for failure to do so may result in the rejection of their reports by the approving authority. Moreover, the guidelines require the decisions of evaluating agencies to be *consultative* and *participatory*, an expression that could be understood as referring to consulting and engaging the public in

concluded that, like its predecessor, the 2003 guidelines also create suitable condition for public participation in the EIA process thereby facilitating environmental democracy.

However, although both guidelines relatively create conducive environment for public participation in the EIA process (and, hence, for environmental democracy), they do not have force of law. As a result, they are like soft rules governing the conducts of concerned parties such as proponents and environmental organs. More importantly, however, neither of the two guidelines was approved by the Environmental Council, the organ that is competent to approve the instruments the Federal EPA prepares. Thus, in legal sense, let alone the 2000 guidelines, the 2003 guidelines themselves are at draft stage despite the fact that the Federal EPA seems to use it as though they were approved. Consequently, one cannot speak with certainty that, the 2003 guidelines are capable of facilitating effective public participation in the EIA process. Of course, environmental agencies can make the guidelines have force of law even if they are at draft stage by using them during evaluation and also requiring proponents to use them strictly when they do EIA. In default such measures, let alone guidelines which are at draft stage, even those guidelines which are approved will remain less forceful to ensure public participation in the EIA process to eventually facilitate environmental democracy in the country.

## **V. Environmental Protection Organs Establishment Proclamation No 295/2002**

In 2002, Ethiopia enacted the Environmental Protection Organs Establishment Proclamation No 295/2005 with the view to providing institutional framework for environmental protection. Accordingly, the Proclamation has re-established the Federal EPA, and it also requires

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decision-making. Hence, it could be argued that the 2003 guidelines are also capable of facilitating public participation in the EIA process.

the establishment of regional environmental agencies and sectoral environmental units. These organs have been given the responsibility to ensure environmental protection. Thus, since environmental protection involves public participation, they are obliged to ensure public participation in environmental decision-making. For instance, the Federal EPA is required to issue environmental standards, guidelines and other necessary documents to ensure environmental protection. Thus, it can make instruments that require public participation and ensure their implementation. Regional environmental agencies on their part are required to, among others things, enforce federal environmental standards such as the 2003 EPA Procedural Guidelines which require public participation in the EIA process. Further, sectoral environmental units are required to ensure that their sectors comply with environmental protection requirements. Thus, when EIA is required, they are required to ensure that it is done and in the way it is required to be done such as by involving the public in the EIA process. Therefore, one may conclude that Ethiopia has put in place an institutional framework that is capable of ensuring the working of its policy framework to protecting the environment. On the other hand, as it is an integral part of environmental protection endeavours, this institutional framework can (and should) ensure public participation in environmental decision-making which will eventually facilitate environmental democracy.

To wind up, the FDRE Constitution, the 1997 EPE, the EIA Proclamation, the Environmental Protection Establishment Proclamation, and the Federal EPA Procedural Guidelines (even if they are still at draft stage) are some of the relevant instruments that provide for the necessary frameworks (policy and institutional) Ethiopia has so far put in place to ensure public participation in the EIA process. However, except the guidelines, the other instruments do not contain adequate stipulations to guarantee effective and adequate public participation in the process. Moreover, the stipulations they

contain in relation to public participation in the EIA process are plagued by gaps and inadequacies. On the other hand, subordinate laws that are supposed to be made to implement the general stipulations of these instruments and also to fill their gaps and rectify their inadequacies have not been made yet. Accordingly, the instruments remain far from being adequate to facilitate public participation in the EIA process thereby promoting environmental democracy. On the other hand, while the Federal EPA's 2003 Guidelines are relatively better suited to facilitate public participation in the EIA process and promote environmental democracy, they still are at draft stage. Similarly, even if they were approved, guidelines lack force of law to bind everyone since they are institutional rules unlike other instruments such as regulations or proclamations. Therefore, it could be said that although Ethiopia is in the right track towards ensuring environmental democracy through public participation in the EIA process, it is yet to travel long way with regard to providing adequate policy framework to that end.

#### **D. Practice of Public Participation in the EIA Process (Environmental democracy on the ground)**

As we have seen in the preceding section, however inadequate they might be, Ethiopia has laws, policies, and guidelines which in one way or another recognize the importance of public participation in the EIA process. Therefore, there is a policy basis for environmental democracy. That being said, the issue worth raising and entertaining remains the practice of public participation in the EIA on the ground.

First, as the previous discussions have shown, both the Constitution and the EIA law authorize (require) the participation of the public in environmental decision-making at both strategic and project level. However, according to the Federal EPA, there has never

been public participation in the EIA process at strategic level.<sup>54</sup> This is so because so far no EIA has ever been made for public instruments as the existing policy framework does not address this issue adequately. For instance, although the EIA proclamation requires the Federal EPA to issue directives that specify which public instrument should be subject to EIA and which should not be, the EPA has not issued such directives. As a result, it is not possible to require EIA for public instruments before decisions are taken on them. What this, in effect, means is that the provision of the EIA Proclamation that requires EIA for public instruments will be suspended until the Federal EPA issues directives that determine public instruments that must be subject to EIA. Therefore, in the absence of EIA for public instrument (that is, strategic EIA), it would not be possible to talk about the participation of the public in the EIA process at strategic level. This in turn indicates that environmental democracy on the ground, in the sense of public participation in the EIA process at strategic level, is yet to be a reality despite the fact that the law recognizing the relevance of public participation at this stage was made almost a decade ago.

On the other hand, according to the information I obtained from the personnel at the Federal EPA, the system of EIA is working in Ethiopia, putting aside its effectiveness, at project level.<sup>55</sup> Accordingly, it is possible to talk about public participation at project level. Indeed, some argue that in some countries most public participation in

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<sup>54</sup> Interview with Ato Solomon Kebede, Head of the EIA Department, Federal EPA, 7 and 8 September 2009

<sup>55</sup> Public Lecture by Dr. Tewolde Berhan Gebre Egziabher, Director General, Ethiopian Environmental Protection Authority, 7 May 2009; Interview with Ato Solomon Kebede, cited at note 49; interview with Ato Abraham Hailemeleket, EIA Expert, Federal EPA, 24 August 2009; and interview with Ato Wondosen Sintayehu, Acting Head, Environmental Policies and Legislation Department, Federal EPA, 24 August 2009

environmental decision-making occurs at project level.<sup>56</sup> Do we have public participation in the EIA process at project level in Ethiopia? Project level participation of the public may be classified into two: participation when EIA is done by a proponent and participation when EIA reports are evaluated by authorities. As we have seen before, the policy framework in Ethiopia allows the public/communities likely to be affected by a project to participate in its EIA process at both stages. The following sub-sections will illustrate what the reality is like.

### **I. At performance stage**

Although proponents should involve the public particularly the communities that are likely to be affected when they do EIA, it is difficult to conclude that such participation meaningfully exists in practice. In this regard, the Head of the Federal EPA EIA Department mentioned the absence of binding and detailed instrument pertaining to public participation in the EIA process as a cause for the inadequacy of public participation in the EIA process at this stage. For example, the existing binding instruments do not resolve many relevant issues such as issues relating to how proponents should communicate with the public, for how long, and at what stage.<sup>57</sup>

There are also other interesting points pertaining to the participation of the public in the EIA process at preparation/performance stage. First, although doing EIA requires multi-disciplinary experts, EIA is sometimes done by a single person who sits in his/her office and ticks in a checklist table. Under such circumstance, there is no way that the public participates in the EIA

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<sup>56</sup> For example, in Hungary, the level at which most public participation in environmental decision-making occurs is at the project level, although environmental organizations do also have the legal right to participate in the development of environmental policies, laws, and regulations. See Alexios Antypas, **A new age for environmental democracy: the Aarhus Convention in Hungary**, [2003] 6 *Env. Liability*, p 2020-203

<sup>57</sup> Interview with Ato Solomon Kebede, cited at note 51

process simply because there is no EIA. Second, when EIA is actually done, most proponents do not involve the public in the process. Instead, they forge the names, comments, signatures and other necessary information and frame up minutes of meeting with the public and then submit their EIA reports to the concerned authorities for approval. Here, too, the right of the public to participate in the EIA process of a project that may affect their interest becomes illusory. Third, regional environmental agencies do not ensure, although they have the responsibility to do so, the participation of the public in the EIA process at preparation stage for various reasons such as lack of independence. This is also bad because proponents will not worry about involving the public in their decisions. All these problems, coming together, will make public participation in the EIA process at this stage illusory. It should, however, be noted that the Federal EPA has been trying to resolve the problems by using different mechanisms such as requiring proponents to video the public during participation.<sup>58</sup>

Therefore, it could be concluded that although there is a policy framework for public participation in environmental decision-making at EIA preparation stage, the practice shows that such participation is limited.

## **II. At evaluation stage**

The second stage at which the public can participate in environmental decision-making in relation to EIA is when EIA reports are evaluated. As stated before, the EIA Proclamation obliges the Federal EPA and regional environmental agencies to make EIA reports accessible to the public and solicit comments thereon. The practice also shows that the Federal EPA has been involving broad-based public (including NGOs and government agencies with stakes) in its

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<sup>58</sup> The information in this paragraph was obtained by interviewing Ato Solomon Kebede, cited at note 51

evaluation process. For example, it was indicated that EIA reports are sent out to stakeholders for their comments before the Federal EPA passes its decision.<sup>59</sup> Moreover, some stakeholders also testify that sometimes the Federal EPA requests them to comment on EIA reports before it makes final decision although they still believe that their involvement in the process at this stage is limited.<sup>60</sup> The Federal EPA also admits that there is still a problem with regard to engaging broad-based public (stakeholders) in the evaluation of the EIA reports. As a result, sometimes, the Federal EPA decides on EIA reports without involving stakeholders. Here, the major reasons given by the Federal EPA include failure of some stakeholders to give prompt comments on EIA reports (as the EPA has only 15 working days to take action on such reports) and lack of guidelines on public participation (who is *public*, how to involve the public, for how long, in what language, etc).<sup>61</sup> Hence, it could be concluded, based on the testimonies of the EPA and some stakeholders, that there is (limited) public participation, at least in the EIA process of some projects, at evaluation stage. However, the participation still remains inadequate for various reasons.

Therefore, as the preceding discussions have shown, public participation in the EIA process in practice is very limited both when EIA is done and its report is evaluated. When this is coupled with the

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<sup>59</sup> Public Lecture, Ato Solomon Kebede and Ato Wondosen Sintayehu, at Akaki Campus, AAU, 17 November 2009

<sup>60</sup> Interview with Ato Yeneneh Teka, Director, Wildlife Development and Protection Authority, 31 August 2009; interview with Ato Fanuel Kebede, Senior Wildlife Expert, Ethiopian Wildlife Development and Protection Authority, 31 August 2009; and interview with some people at the Ethiopian Institute of Biodiversity Conservation, who demanded anonymity, on 1 September 2009; The two agencies are highly interested in having EIAs done and are properly evaluated because development activities not preceded by proper EIA will jeopardized the accomplishment of their missions.

<sup>61</sup> Interview with Ato Solomon Kebede, cited at note 51

inadequacy of the policy framework to ensure public participation in the EIA process, effective public participation in the EIA process will become illusory thereby negatively affecting the prospect of having good environmental democracy. As a result, it could be argued that environmental democracy in Ethiopia is still at its early stage.

## **E. Conclusion and Recommendations**

As this article has tried to reveal, public participation, although not its only element, is an integral part of environmental democracy. Thus, a system that facilitates effective public participation in environmental decision-making concomitantly promotes environmental democracy. In Ethiopia, there is a policy framework for public participation in the EIA process, one of the areas that involve environmental decision-making. However, this policy framework is inadequate to ensure effective public participation in the EIA process. Moreover, the practice shows that although there is some form of public participation in the EIA process at both preparation and evaluation stages, they are very limited. One of the major reasons contributing to the absence of adequate public participation in the EIA process is the absence of adequate policy framework. Therefore, it is recommended that the concerned government organs, in particular, the Council of Ministers and the Federal EPA should make the necessary laws to fill the gaps and remedy the inadequacies in the existing policy framework. More specifically, first, the Council Minister should issue regulations to cure the inadequacies in the EIA Proclamation and to facilitate its effective implementation in general and its provisions pertaining to public participation in the EIA process in particular; second, the Federal EPA should also issue directives which can facilitate the effective implementation of the EIA proclamation such as by determining the public instruments that should be subject to EIA to ultimately promote public participation in the EIA process. The issuance of such laws will enable the public to

participate in the EIA processes of projects and public instruments which will in turn facilitate environmental democracy. Moreover, regional state environmental agencies and the Federal EPA should try to ensure that proponents genuinely involve the public in the EIA process and they should also involve the public when they evaluate EIA reports. Finally, in the interest of public participation, and, hence, environmental democracy, the Federal Parliament must revise its EIA Proclamation. It should, in particular, consider the part of the Proclamation that obliges environmental protection organs to take action on EIA reports in fifteen working days as this requirement may hinder effective public participation thereby affecting environmental democracy. At this juncture, as the country has other equally competing interest, that is, promote investment, the amendment to the fifteen days requirement should take the form of granting environmental protection organs the discretion to reduce or increase it on case by case basis. Hence, the fifteen days requirements can be maintained to avoid procrastination by environmental protection organs.