

# ***Public Participation Provisions in Environmental Impact Assessment process in Ethiopia: A Comparative Analysis***

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## ***Abstract***

*The Constitution of the Federal Democratic Republic of Ethiopia and relevant subsidiary laws grant people the right to full consultation and to the expression of views in the planning and implementation of environmental policies. However, the impact of these general principles on the desired outcome is limited, suggesting the need for formulation of further detailed rules. Particularly, an effective realization of such constitutional stipulations require detailed rules that clearly set out identification of legitimate stakeholders, mechanisms of information accessibility, information dissemination, grievances handling processes, timeline to review and make comments, incorporation of public comments into final Environmental Impact Assessment (EIA) decisions. The objective of this article is to comparatively assess and explain the sufficiency and lacunas of the existing Public Participation Provisions (PPPs) of Ethiopia against countries having detailed rules required for the realization of effective public participation. To this end, a doctrinal research method is used to assess the content, principles and gaps in the existing legal documents. It is argued in the article that the existing environmental laws of Ethiopia are short of providing the required PPPs rules ranging from identification of stakeholders to grievance handling mechanisms. This in fact would render public participation to be a mere procedural requirement than creating an avenue for the public to influence environmental decision making processes. The assessments conducted thus uncover the dire need for the enactment of detailed PPPs and the possible ways to achieve this.*

***Key Words:*** *Environmental Impact Assessment, Public Participation, Public Participation Provisions*

## **Introduction**

Environmental Impact Assessment (EIA) is a systematic and proactive process examining the consequences of development actions to the environment.<sup>1</sup>It

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mainly seeks to identify, predict and describe probable effects of such actions on public interest inherently connected to the environment. The use of EIA as a mechanism of protection of public interest has long been a subject of public policy debate and legislative actions. One of the critical issues in such moves is ensuring public participation in EIA processes.

With the public concern over the environment is steadily increasing, public participation during EIA has become a mandatory requirement in several developed and developing countries.<sup>2</sup> Equally, scholars and institutions stressed the place of public participation as a fundamental component of the EIA process.<sup>3</sup> Reflecting this position, the International Association for Impact Assessment (IAIA) has incorporated public involvement as an important principle of good practice in EIA. In practical terms the institution stresses the need for enabling laws that provide appropriate opportunities to inform and involve the interested and affected segments of the public in the documentation and decision-making process of EIA.<sup>4</sup>

Looking into the Ethiopian practice, one would see that there are insufficient evidences over public participation in EIA processes. Even if there are previous studies conducted on public participation in the EIA process, they are of more general in nature and do not specifically target the EIA provisions which are of significance to properly carry out public participation. Moreover, the studies are also short of providing a comparative assessment of public participation provisions of Ethiopia against countries having best experiences in the area.<sup>5</sup>

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<sup>1</sup> Glasson J., Therivel R., Chadwick A., *Introduction to Environmental Impact Assessment: Principles and Procedures, Process, Practice and Prospects*, 2nd edn, The Natural and Built Environment Series. UCL Press, UK, (1999), p. 4

<sup>2</sup> Obaidullah Nadeem, Rizwan Hameed, and Sajjad Haydar, Public Consultation and Participation in EIA in Pakistan and Lessons Learnt from International Practices, *Pakistan. Institute of Engineering and applied Science*, Vol. 14: (2014), <https://www.researchgate.net/publication/262161132> (accessed Sep. 9, 2021) p. 73

<sup>3</sup> C. Wood, *Environmental Impact Assessment: A Comparative Review*, 2nd ed. Prentice Hall, Harlow, Great Britain (2002), P. 275

<sup>4</sup> International Association for Impact Assessment (IAIA), *Principles of Environmental Impact Assessment Best Practice*, (1999), [http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA\\_web.pdf](http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf) (accessed Sep. 10, 2021).

<sup>5</sup> For example, see the article which is written by Dejene Janka on the title, Environmental Democracy in Ethiopia: Emphasis on Public participation in Environmental Impact Assessment in Ethiopia, published on *Bahir Dar University Journal of law*, Volume 1 No. 2: 2010. In this article the writer has tried to assess the legal regimes governing public participation in the EIA process and pinpointed the practical gaps that hinder the process. However, the writer does not single out those public participation provisions that extend from stakeholders Identifications to grievance handling mechanisms and does not indulge in to comparatively assessing the EIA laws of Ethiopia against countries having better experience in the area.

Thus, this article seeks to comparatively assess the sufficiency and lacunas of the existing Ethiopian environmental laws in ascribing enabling Public Participation Provisions (PPPs) against the experiences of South Africa and Kenya. The two African countries are selected because of their experience in having detailed rules of public participation. It has to be also noted that best practice of public participation of other countries might be dealt with where doing so is of a particular significance to draw lessons related to the subject.

The subsequent part of the article is organized in two major sections. The first section provides an overview of theoretical background such as the meaning, objective and significance of public participation in general. The second section provides a comparative assessment of how PPPs of Ethiopia identify legible participants/stakeholders and discusses the EIA stage and procedures through which the public can be allowed to participate in the desired process. This section also makes a comparative assessment of the nature and content of information to be disclosed to the public and how grievance handling mechanisms adopted under the Ethiopian environmental legislation are employed. Finally, the paper provides concluding remarks.

### **1. Theoretical Background: Meaning, Objective, and Significance of Public Participation in the EIA process**

The International Association for Impact Assessment (IAIA) defines public participation in the environmental assessment as “the involvement of individuals and groups that are positively or negatively affected, or that are interested in a proposed project, program, plan or policy that is subject to a decision-making process.”<sup>6</sup> Public participation is also meant for the involvement of citizens in decision making regarding an EIA process with a view to influence decision makers through presentation of information, and turning their focus of decision to the differential environmental effects of development projects.<sup>7</sup> As such,

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<sup>6</sup> International Association for Impact Assessment (IAIA), Public participation: International Best Practice Principles, Special Publication Series No.4., <http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf> > (2006), (Accessed, Sep. 20, 2021)

<sup>7</sup> Joseph F.C. Dimento, *The Global Environmental and International Law*, University of Texas press, 2003, p. 173

public participation is essentially concerned with informing, consulting and involving the public in planning and managing EIA activities.<sup>8</sup>

Instead of being a mere procedural requirement for providing information to the public, it seeks to gather input over concerns of participants that should be taken into account in decision-making process. If handled properly, public participation in planning, decision-making and environmental impact assessment has a critical role to play in helping to integrate economic, social and environmental ends. It also serves as a safeguard against bad or politically motivated decisions, and as a mechanism to increase public awareness over the delicate balance between economic and environmental tradeoffs.<sup>9</sup> Finally, public participation, where it is made transparently, may increase public confidence in the decision making process.<sup>10</sup>

Public participation for EIA purposes may take different forms and varies according to the stages of an EIA process and the techniques that might be applied to achieve a particular objective. According to Yang, who has made comprehensive review of the relevant literature on the subject, public participation in EIA processes has the purposes of :

- (i) Informing and educating, by distributing data early through various media to reach the maximum number of people, and then allowing the public to have sufficient time to prepare their opinions;
- (ii) Identifying and evaluating issues, including problems, needs, values and alternatives;
- (iii) Collecting feedbacks; and;
- (iv) Establishing trust and resolving conflicts.<sup>11</sup>

Generally, sharing information, involving the community at an early stage of decision making, taking into account community aspirations, and capacitating the community to influence the outcome of the decision making are some of the basic objectives for engaging interested and affected parties in an EIA processes.

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<sup>8</sup> Brian D. Clark, Improving Public Participation in Environmental Impact Assessment, *Built Environment*(1978),Vol. 20: No. 4, (1994), <https://www.jstor.org>, (accessed on Sep. 22, 202), p. 294

<sup>9</sup> Id.

<sup>10</sup> Id., p.294

<sup>11</sup> Shanshan Yang, Public Participation in the Chinese Environmental Impact Assessment (EIA) system, *Journal of Environmental Assessment Policy and Management*, Vol.10: No.1, 2008, p. 94

## 2. Public Participation Provisions of Ethiopia and Selected Countries: A Comparative Analysis

The basic requirement for public involvement in an EIA process is having an enabling legislation that promotes participatory process and a working framework for local capacity building and commitment for enforcement.<sup>12</sup> Such legislative acts come under the domain of public participation provisions (PPPs).

According to Environmental Law Alliance Worldwide (ELAW) and Netherlands Commission for Environmental Assessment (NCEA), the general profile of PPPs in most countries includes provisions regarding Stakeholder identification (who should be involved during public participation process) and the EIA stages in which public participation is to be conducted, information is disseminated and accessed. Also, it is concerned with the timeline where the public reviews, the EIA documents and the stage where public comments would be inculcated in final decisions. Still another integral element of the PPPs is the degree of opportunity for appeal and the stage where the grievance redressing mechanisms are allowed in the EIA process.<sup>13</sup> Against this backdrop, the next sections of this article make a comparative assessment on the sufficiency and the dearth of the existing PPPs of Ethiopia.

### 2.1 Identification of Stakeholders - Who should be Involved During Public Participation in the EIA process?

Early identification of stakeholders, their skills and roles, and the extent of interests that will be affected are among the necessary requirements for achieving successful participation.<sup>14</sup> Stakeholders are defined as ‘all those people and institutions that have an interest in the successful design, implementation and sustainability of the project.’<sup>15</sup> Stakeholder participation

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<sup>12</sup> Asha Rajvanshi, Promoting Public Participation for Integrating Sustainability Issues In Environmental Decision –Making; the Indian Experience, *Journal of Environmental Assessment Policy and Management*, Vol. 5: No. 3, special Issue: Public and Stakeholder Participation in Environmental Decision-Making (September, 2003), p. 298

<sup>13</sup> Environmental Law Alliance World Wide (ELAW), 2013. EIA Law Matrix.: <https://www.elaw.org/node/5986>, and Netherlands Commission for Environmental Assessment (NCEA), NCEA , 2013, Countries & profiles. at: <http://www.eia.nl/en/countries>, (Accessed Nov. 20, 2021)

<sup>14</sup> Sandara E. Odemene, Optimizing Public Participation in Environmental Decision Making in Nigeria, thesis submitted in partial fulfillment of the coursework requirements for the Degree of Masters in Environmental Policy and Management, unpublished, (2015), p.22

<sup>15</sup> Ross Hughes, *Environmental Impact Assessment and Stakeholders Involvement*, International Institute for Environment and Development, (1998), p.1

involves processes whereby all those with a stake in the outcome of a project can actively participate in decisions on planning and management.<sup>16</sup>

As such, participants for the EIA process include the developers, the regulators, the facilitators and the public.<sup>17</sup> The developers may include private and public sectors. The regulators represent governmental departments related to the proposal at national, regional and local levels.<sup>18</sup> The facilitators are those who plan and develop the EIA process. They are usually consultants, advisors and advocates; and they are often employed by developers, or by the regulators and the public.<sup>19</sup> While such classification and definitions of stakeholders are largely visible in the practice, scholars also try to identify possible categorizations based on theoretical and empirical evidences in the literature.

Shanshan Yang, after a thorough review of the relevant literature, tried to categorize those sections of the public into three categories.<sup>20</sup> The first category comprises of any person, industry and business affected or likely to experience physical, health and social-economic harm from the execution of a proposal. Those falling in this category could be identified through criteria such as proximity to the project, probable physical, health, social and economic benefits or losses resulting from the project, and other social and economic values associated with an institution, individual or an area likely to be affected by the implementation of the proposed project in general.<sup>21</sup>

The second category of participants constitutes statutory groups and non-governmental environmental groups at international, national and local levels. Under the third category we find the general public who want to conserve wilderness or scenic areas or to have pollution-free air and water, or who are just interested in the proposal. Turning to the experience of countries, in South Africa, one can see that the most important and comprehensive environmental legislation governing participation of the public include the South African Constitution of 1996 (Act 108 of 1996), the National Environmental Management Act (NEMA) of 1998, the Environmental Impact Assessment Regulations, and Integrated Environmental Management Guideline series 7 on Public Participation.

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<sup>16</sup> Id.

<sup>17</sup> Yang, *supra* note 11, p. 94

<sup>18</sup> Id.

<sup>19</sup> Id., p. 94

<sup>20</sup> Id.

<sup>21</sup> Id.

As such, South Africa has crafted the necessary environmental legislation ranging from the South African constitution of 1996 to the 2010 public participation guideline which enshrine detailed rules intended for the realization of effective public participation in the EIA process. With regard to identification of stakeholders, the National Environmental Management Act (Act 107 of 1998) of South Africa states that the participation of all interested and affected parties must be promoted and participation by vulnerable and disadvantaged persons must be ensured.<sup>22</sup> The act thus identifies interested and affected parties as stakeholders. It specifically requires the participation and consideration of the concerns of vulnerable and disadvantaged communities in environmental decision making processes. The EIA Regulation of the country also identifies the competent environmental authority. The institutions with this authority include all State departments administering a law relating to a matter affecting the environment relevant to an application for an environmental authorization; all organs of state which have jurisdiction in respect of the activity to which the application relates; and all potentially interested, registered, or affected parties as stakeholders in an EIA process.<sup>23</sup>

In addition to the regulation, the country's Department of Environmental Affairs has adopted a public participation guideline that provide detail rules necessary for the realization of effective public participation. For example, even if the country's EIA regulation identifies Interested and Affected Parties (IAPs) and Registered Interested and Affected Parties as legible stakeholders, it does not provide a clue that would help one to differentiate one from the other. Hence, the guideline fills the gap by defining IAPs as any person, group of persons or organization interested in or affected by an activity and any organ of a state that may have jurisdiction over any aspect of the activity. On the other hand, it defines registered IAPs as any interested and affected party whose name is recorded in the register opened for that application.<sup>24</sup>

The guideline further enunciates that some stakeholders such as organs of the state, the owner or persons in control of the land etc..., should be specifically

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<sup>22</sup> The National Environmental Management Act (Act 107 of 1998) of South Africa, *Gazette No. 19519, Notice No.1540*, see chapter 1 (section 4f), [hereinafter NEMA of South Africa, 1998]

<sup>23</sup> Environmental Impact Assessment Regulations, 2014, Government Notice R982 in *Government Gazette 38282* dated 4 December 2014, as amended by Government Notice 706 in *Government Gazette 41766* dated 13 July 2018, chapter 6

<sup>24</sup> Department of Environmental Affairs (2010), Public Participation 2010, Integrated Environmental Management Guideline Series 7, Department of Environmental Affairs, Pretoria, South Africa, Section 6, [hereinafter Public Participation Guideline of South Africa, 2010]

approached and be granted the right to participate in the EIA process as IAPs.<sup>25</sup> For other stakeholder, the guideline stipulates consideration of criteria related to inquiry of social profile of the people or community, previous experience of involvement in public participation proceedings, consideration of established lists and databases held by consultants, authorities or research institutions for identification of residents, NGOs, community based organizations or constituents as legible stakeholders during public participation in the EIA process.<sup>26</sup> In summary, the South African environmental legal framework has emulative elements such as detailed justification for identification of stakeholders and wide ranging screening mechanism for inclusion of those legitimately entitled to the right to participate in EIA processes. The PPPs of this country also provide special protection for the involvement and inclusion of vulnerable and disadvantaged groups as stakeholders in the EIA process.

Turning to the Kenyan experience, we could see that public participation in environmental decision making process is mainly regulated through the 2010 national constitution, Environmental Management and Coordination Act of 1999, and the 2003 Environmental (Impact Assessment and audit) Regulation. Moreover, the country has adopted public participation bill and public participation guideline which are instrumental to foster public participation in governmental decision making processes. With regard to identification of stakeholders, the constitution of the country generally stipulates that public participation should ensure equality and non-discrimination and that principle of governance should include democracy, participation of the people, inclusiveness, good governance, integrity, transparency and accountability.<sup>27</sup>

Further, the Environmental (Impact Assessment and audit) regulation of the country obligate parties such as project owners to seek the views and comments of persons and communities who may be affected by the project during the process of conducting an environmental impact assessment study report.<sup>28</sup> More specifically, the 2016 public participation guideline of the country enunciates that participation in county governance is open to all members of the public, either individually or in a legally binding self-organized format. According to the guideline no one can be limited from participating on any grounds such as

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<sup>25</sup> *Id.*, see section 4.3.

<sup>26</sup> *Id.*

<sup>27</sup> The Constitution of the Republic of Kenya, Nairobi: National Council for Law Reporting, (2010), Article 27 and 10 (2) a, b and c

<sup>28</sup> Environmental (Impact Assessment and Audit) Regulations of Kenya, (2003), see part III and IV of the guideline,[hereinafter EIA Regulation of Kenya, 2003]



age, race, colour, gender or political affiliation.<sup>29</sup> As such, the guideline defines the term ‘public’ to refer to the residents of a particular county; professional associations; community based organizations; and rate payers of a particular city or municipality.<sup>30</sup>

Apart from identifying such segments of the public as participants, the guideline enumerates rights, duties and responsibilities of members of the public related to equal participation, freedom of expression, right to access to information and specific right to participate in EIA processes.<sup>31</sup>

Still worth noting in Kenyan experience is the contents of the 2018 public participation bill. This bill, in its guiding principle, states that the public, communities and organizations to be affected by or be interested in a decision shall have a right to be consulted and involved in the decision making process and that effective mechanisms of public participation should be provided to guarantee the involvement of all stakeholders.<sup>32</sup> It can thus be argued that the PPPs of Kenya properly identify stakeholders who are legible for public participation and enunciate the rights and duties pertaining to participants in the decision making process.

With close parallels to South Africa and Kenya, Pakistan has institutions and laws regulating and protecting public rights related to the environment. The country’s environmental protection agency issued a guideline for public consultation in 1997. The guideline in the relevant section identifies stakeholders who are entitled to the right to participate in an EIA process. Accordingly, local people, other affected communities, government agencies and local council, Non-governmental organizations (NGO’s), community leaders and others with legitimate interest are identified as stakeholders entitled to participate in EIA process.<sup>33</sup> These stakeholders are expected to be representative enough for varying segments of the public with sufficient potential to protect public interest against moves affecting the environment.

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<sup>29</sup> Ministry of Devolution and Planning & Council of Governors Republic of Kenya County Public Participation Guidelines, 2016, see section 3.4 [hereinafter Public Participation Guideline of Kenya, 2016]

<sup>30</sup> Id., see key terms/concepts, p. vii

<sup>31</sup> Id., see section 3.4 of the guideline.

<sup>32</sup> Kenya Gazette Supplement No. 17 (Senate Bills No. 4), The Public Participation Bill, 2018, Guiding Principles of Public Participation, part 4, p.47, [hereinafter Public Participation Bill of Kenya, 2018].

<sup>33</sup> Id.

From the experiences of the three countries, one can see that participants who are entitled to participate in the EIA process need to be clearly identified and the identification need to involve those who are likely to be affected, positively or negatively, by the decision. Also, it should consider the voices of those who do have a mere concern and those who can affect the outcome of a proposal. Moreover, there should be clear criteria that would help public authorities to screen and identify stakeholders and to clearly set out the rights and responsibilities pertaining to participants.

Looking into Ethiopia's experience, the FDRE Constitution expressly states 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 directly affect them.<sup>34</sup> The Constitution tends to grant the right to participate in EIA processes to those segments of the public who bear the direct impact of a project and it seems that it does not grant this right to those who might be indirectly affected and having interest in the conservation of natural resource and the environment.

The Amharic version of the relevant constitutional provision,<sup>35</sup> however, employed the term 'የሚመለከተው ህዝብ' which literally means 'the concerned public'. This wording of the Amharic version, which is binding at times of competing interpretations, is different from the English version which suggests bearing direct impact of a project as inclusion criteria for stakeholders. Such disparity of meanings in the two versions of the constitutional provision leaves the determination of stakeholders open for debate.

As a way out of such problem, the author would argue that the constitution provides only general principles. Thus, it would be better to look into other subsidiary environmental laws of the country to identify the specifics about those stakeholders who are legible to take part during public hearings in an EIA process.

To this end, the EIA Proclamation No. 299/2002 of Ethiopia stipulates that environmental authorities should make EIA study report accessible to the public and 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

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<sup>34</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gazette*, (1995), Art. 92, [hereinafter FDRE Const.].

<sup>35</sup> *Id.*, Art. 106

incorporated into the EIA study report.<sup>36</sup> Even if the provision at hand does not specifically identify those legible participants, it tends to identify both sections of the general ‘public’ and those section of the public who in particular are ‘likely to be affected’ to have a stake in the EIA process. Though it may be argued that the term ‘general public’ is inclusive of those who are going to be affected indirectly, and those who do have interest to be involved and participate in the EIA process, the proclamation does not specifically identify all those stakeholders who are legible to participate in the EIA process.

In more complementary tone, the 2003 EIA procedural guideline series1 of the Ethiopian Environmental Authority sets out details which are instrumental in our quest for identification of stakeholders in the EIA process. In this regard, it is stated under the guideline that the main objective of participation is to grant appropriate and timely access and opportunity to the process for ‘all Interested and Affected Parties (IAPs).’<sup>37</sup> More specifically, the guideline in part 6.4, identifies local communities, the work force, customers and consumers, environmental interested groups and the general public as stakeholders who are entitled to participate in the EIA process. As such, the guideline tries to list and identify stakeholders who are generally stated under the constitution and the EIA proclamation.

However, when we look into the procedural guidelines of Ethiopia in light of public participation guideline of South Africa and Kenya, there are still some gaps which are significant in the identification of participants in the EIA process. For example, rather than specifically identifying legible public participants, it employs generic words such as ‘the work force’ and ‘customers and consumers’ which place practical difficulty in the identification of those who fall in this category. Moreover, unlike the experience of South Africa, the guideline does not clearly identify developers, facilitators, and regulators as stakeholders. It also fails to provide rules that might be applied for identification of stakeholders who should be specifically approached and those who should be identified through the application of some established criteria that public authorities might resort to in the course of identification of those applying for participation. Unlike the experiences of Kenya too, the guideline does not stipulate some of the rights, duties and responsibilities pertaining to stakeholders

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<sup>36</sup> Environmental Impact Assessment Proclamation, Proclamation No. 299/2002, *Federal Negarit Gazette*, (2002), Article 15 [hereinafter EIA Proc. No. 299/2002]

<sup>37</sup> Federal Democratic Republic of Ethiopia, Environmental Protection Authority, Environmental Impact Assessment Procedural Guideline Serious 1, 2003, Part. 4.2.2. (Hereinafter EPA, EIA procedural guideline Serious 1)

who are going to participate in the public participation process. The repercussion of all such lacunas thus would inevitably cast practical hurdle in the identification of stakeholders and their rights, duties and responsibilities during public participation process.

## **2.2 In which EIA stage should the public participate in the EIA process?**

Once the issue of identification of stakeholders is addressed, the other pivotal issue worth considering is the EIA stages through which the views of the public are to be heard and participation to take place. In more general terms, the major EIA stages include screening, scoping, preparation of the EIA report, reviewing the EIA report, decision-making and monitoring. Perhaps as is revealed by comparative studies, in most countries, conducting public participation is set to be a mandatory requirement during one or two stages of the EIA process.<sup>38</sup>

In fact, the EIA stage through which participation is to be conveyed may differ from country to country. While in some countries public participation can occur earlier and persist across all EIA stages, in others it can only start late in the EIA process (e.g. in the review stage after EIA report has been almost done).<sup>39</sup> Equally worth noting is that the phase in which participation starts determines the quality of the entire EIA process. In general terms, early involvement of stakeholders is considered to ensure better input from the public, better quality of EIA reports and more credibility and transparency in the process.<sup>40</sup>

Looking into the detailed accounts of experiences from the selected countries, one could practically notice the realities behind the stages. The 1997 public participation guideline of Pakistan suggests that the concerned public should be involved during five stages of every EIA project. These include identification of the need and level of EIA; various steps of the preparation of EIA report and review; project implementation; and monitoring of impacts. However, in Pakistan, as is revealed by one study, the practice shows that the public is consulted mainly during review of EIA report and in the scoping stage of EIA.<sup>41</sup>

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<sup>38</sup> Obaidullah Nadeem, et' all, *supra* note 2, p.75

<sup>39</sup> Jin Chen, Public participation provisions in Environmental Impact Assessment (EIA) legal system ;Case studies in China, India and Indonesia, A Thesis submitted to the Faculty of Geosciences for the Degree of Master of Science in Sustainable Development, (2013), P.12

<sup>40</sup> Obaidullah Nadeem, et al, *supra* note 2, p.75

<sup>41</sup> *Id.*, p, 75. While addressing the issue, the writers argue that 'it is neither financially feasible nor administratively possible to consult all interested and potentially affected public during all these stages.' The author of this article also agrees with the assertion that conducting public

In South Africa, the national legislation requires that public participation must be done after submission of an application for either Basic Assessment (BA), scoping or environmental impact report.<sup>42</sup> In addition, consultations with relevant state departments and parliamentary scrutiny are required prior to publication of EIA report.<sup>43</sup>

In Kenya, project proponents are legally required to seek the views of persons who may be affected by the project during preparation of the EIA report. In addition, environmental authorities, within fourteen days of receiving the EIA study report, should invite the public to make oral or written comments on the report.<sup>44</sup> This clearly shows that the public is entitled to participate during preparation of the EIA report and after completion and submission of the report to environmental authorities. It can be deduced from the experiences of the above countries and their EIA laws that the EIA stages through which public participation is to be conducted need to be clearly articulated and that participation need to begin at the earliest stage of scoping, preparation of the EIA report and in its review stage.

In Ethiopia, the EIA proclamation is short of stating the EIA stage through which public participation is to be carried out. The EIA procedural guideline, however, states that proactive consideration and integration of environmental concerns should be sought at the earliest stages of the conceptualization of the projects, programs or policies and that the public should get appropriate and timely access and opportunity to participate in the process.<sup>45</sup> The guideline also indicates that the scoping stage is the process of interaction and identification of boundaries of EIA studies. In such interactional processes, important issues of concerns are going to be identified through the involvement of potentially affected groups or IAPs.<sup>46</sup>

Moreover, the guideline obligates environmental agencies to make sure that the views, concerns and position of IAPs are taken into account during assessment,

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participation in all stages of an EIA process clearly poses immense financial and administrative hurdles which may place an insurmountable hurdle in the practical participation of the public in the EIA process. As such, it would be tenable if participatory stage is mandatorily required at the early stage of scoping, EIA preparation and review stage which is believed to ensure better input from the public, better quality of EIA reports and more credibility and transparency in the process.

<sup>42</sup> Public Participation Guideline of South Africa, 2010, *supra* note 24, section 4.1 see method of notification

<sup>43</sup> *Id.*, Section 24O of EIA Act, 2010

<sup>44</sup> EIA Regulations of Kenya, 2003, *supra* note 28, see part III and IV of the guideline

<sup>45</sup> EPA, EIA Procedural Guideline Serious, *supra* note 37, Guiding principles, Par. 4.2.2

<sup>46</sup> *Id.*

reviewing, auditing and at all stages of decision making.<sup>47</sup> Hence, with regard to identification of the stage of participation, the EIA procedural guideline of the country embodies rules significant in addressing the issue at hand. It can, however, be noted from the guideline that it does not specifically state the EIA stage through which the public is entitled to participate. Rather, it addresses the issue incidentally while it states the responsibilities of environmental authorities in the EIA process. Moreover, it also obligates responsible environmental authorities to seek the views of the public in all EIA decision making processes. However, like that of the practice of South Africa and Kenya, it would have been better had the guideline clearly and directly entitle stakeholders to at least participate at the earliest stage of scoping and the EIA review stages which are considered to be financially feasible and administratively possible.<sup>48</sup>

### **2.3 Mechanisms of notification and timeline for public participation**

Realization of effective public participation requires addressing issues related to mechanism of getting information (that describes where and how information can be obtained and viewed by the concerned stakeholder) and the timeline for making comments. Generally, the information with regard to public participation can be obtained through several techniques such as media outlets (radio, television, newsletters, internet etc.) and/or other mechanisms that ensure public visibility of the issue. Apart from providing detailed information to the public on the issue, sufficient time must be allowed to stakeholders to read, discuss and consider the information and its implications as a way to enable them to present their views in the EIA process.<sup>49</sup>

In line with this, Kenya`s Environmental (Impact Assessment and Audit) Regulations 2003, states that once the project report is approved by the authority (the National Environment Management Authority of Kenya), the owner of a project is required to post posts in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project.<sup>50</sup> The owner of the project is also required to publish

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<sup>47</sup> Id., see part. 6.1

<sup>48</sup> For further clarification on the issue, see *supra* note 41

<sup>49</sup> Hussein Abaza, Ronald Bisset, Barry Sadler, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, (2004), Approach public participation in environmental impact assessment-legal framework, *International Journal of Research - Granthaalayah*, 5(5), p.75 <https://doi.org/10.5281/zenodo.583918>, (accessed Nov. 21, 2021)

<sup>50</sup> EIA Regulation of Kenya, 2003,*supra* note 28,see part III, section 17

notice on the proposed project for two successive weeks in a newspaper with nationwide circulation. Also, it is required to make announcements of the notice in both official and local languages on a radio with a nationwide coverage for at least once a week for two consecutive weeks.<sup>51</sup> In addition, the country's 2018 Public Participation Bill also states that the responsible authority shall establish mechanism to enable the widest reach which may include television stations, information communication technology centers, websites, community radio stations, public meetings, and traditional media.<sup>52</sup>

In South Africa,<sup>53</sup> the person conducting public participation is required to set up a notice board at a place noticeable to the public at the boundary or on the fence of the site where the activity is to be undertaken as well as in any alternative sites being considered. The applicant is also expected to give written notice to the owner or person in control of the land, occupiers, in both the local and district municipality. Further, the applicant must make public announcements of the facts in one local newspaper or any official Gazette that is published specifically for the purpose of providing public notice. In addition, the applicant must place an advertisement in at least one provincial newspaper or national newspaper if the activity has or may have impact extending beyond the boundaries of the metropolitan or local municipality and advertisement is not being placed in any official Gazette referred above.<sup>54</sup> Potential or registered interested and affected parties, including the competent authority, should be provided with a period of at least 30 days to submit comments on each of the basic assessment, scoping and environmental impact assessment report.<sup>55</sup>

In India, the project owner has to submit the executive summary of the project to the State Pollution Control Board (SPCB) for initiating the actions for the issue of notice for public hearing. The notice should indicate the date, time and venue for public hearing.<sup>56</sup> The State Pollution Control board is responsible to publish a notice for a public hearing in at least two news papers widely circulated in the region around the project as soon as project owners file an application to it.<sup>57</sup> So as to enable the public to properly understand about the nature and effects of the project, one of the news papers should be in the vernacular language of the

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<sup>51</sup> Id., Article 17(a)

<sup>52</sup> Public Participation Bill of Kenya, 2018, *supra* note 32, guideline paragraph 1, p.50

<sup>53</sup> Public Participation Guideline of South Africa, 2010, *supra* note 24, see chapter six

<sup>54</sup> Id.

<sup>55</sup> Id., see chapter six

<sup>56</sup> Ministry of Environment and Forest, Public Hearing Notification I, published in *the Gazette of India*, part II, Section 3(ii), (1997)

<sup>57</sup> Id.

region. Then SPCB shall mention the date, time and place of public hearing. Suggestions, views, comments and objections of the public shall be invited within thirty days from the date of publications of the notifications.<sup>58</sup>

In Ethiopia, however, neither the EIA proclamation nor the EIA procedural guideline specifically stipulate mechanisms through which the public could get access to information about the time, date and the place where the public hearing is going to be conducted and the timeline for making comments. In addition, even if the EIA procedural guideline states that appropriate and timely access and opportunity to the process should be provided for all interested and affected parties, it is short of providing mechanisms of notification and details that will inform the public about the date, time and the place where public participation is going to be convened.<sup>59</sup> The timeline for making comment on the EIA document is not also stated under the EIA laws of the country. This would inevitably cause adverse impact on the implementation of public participation by rendering the process to be carried out at the wish and discretion of authorities. In this regard, the practices discussed above clearly suggest the need to have detailed regulatory rules that dictate where and how information can be obtained and viewed by the concerned stakeholders and the time limit for making comments which in fact are lacking under the environmental laws of Ethiopia. As such, there has to be detailed rules that would oblige project proponents<sup>60</sup> to properly adhere to the techniques through which the public could get information like media ways (radio, television, newsletters, internet etc.) and/or at certain places like posting a poster in strategic public places in the vicinity of the site of the proposed project, the concerned governmental authority, library and the like. Moreover, as the experiences of the selected countries show, the public should be provided with a time limit for making suggestions, comments and forward its views from the date of publications of the notifications.

## **2.4 The nature of public information and the requirement of integrating it in EIA processes**

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<sup>58</sup> Id.

<sup>59</sup> EPA, EIA Procedural Guideline Serious 1, *supra* note 37, Part, 4.2.2.

<sup>60</sup> See, Tesfaye Abate, Environmental Impact Assessment and Monitoring under Ethiopian Law, *Haromaya University Law Review*, vol. 1: issue I, p. 111. As costs related with EIA process are to be covered by proponents, it is thus the duty of proponents to cover all costs required to carry out public participation process.



The effectiveness of public participation is determined by the availability and quality of the information given to the participants by the government agencies regarding the EIA. Meaningful participation can only occur if the public is knowledgeable on the importance of the EIA processes.<sup>61</sup> As such, sufficient and relevant information must be provided in a form that is easily understood by non-experts.<sup>62</sup> This enables stakeholders to clearly understand the nature, significance and the possible impact of a proposed project in a way that promotes effective public participation.

The experiences of countries such as South Africa show that the quality of information and level of access to it is key to institutional success in EIA processes. As a way to attain such ends, the person conducting public participation process in South Africa is required to ensure that information containing all relevant facts in respect of the application or proposed application is made available to potential interested and affected parties; and participation is facilitated in such a manner that all potential or registered interested and affected parties are provided with a reasonable opportunity to comment on the application or proposed application.<sup>63</sup> Interested and Affected Parties and the competent authority should obtain clear, accurate and understandable information about the environmental impacts of the proposed activity or implication of a decision.<sup>64</sup>

The country's EIA regulation also provides that in those instances where a person is desirous of but unable to participate in the process due to illiteracy, disability, or any other disadvantage, special mechanism should be adopted to accommodate their concern and interest.<sup>65</sup> Moreover, the applicant must also ensure that the comments of interested and affected parties are recorded in reports and plans. Further, written comments including responses to such comments and records of meetings need to be attached to the reports and plans that are submitted to the competent authority.<sup>66</sup> Finally, where a person desires but is unable to access written comments due to lack of skills to read or write

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<sup>61</sup> Marzuki, A. A Review on Public Participation in Environmental Impact Assessment in Malaysia, *Theoretical and Empirical Research in Urban Management*, No. 3/12, (2009), p.133

<sup>62</sup> Hussein Abaza, et al, *supra* note 49, p,75

<sup>63</sup> South African National Environmental Management Act, 1998 (ACT NO. 107 of 1998), Amendment to the Environmental Impact Assessment Regulation, No. 2014, chapter six, pp, 243-247 [hereinafter NEMA of South Africa, 2014].

<sup>64</sup> Id.

<sup>65</sup> NEMA of South Africa, 2014, *supra* not 63, esee chapter six

<sup>66</sup> Id.

due to disability; or any other disadvantage, reasonable alternative methods of recording comments must be provided.<sup>67</sup>

In Kenya, the 2003 EIA regulation requires an EIA study report to be accompanied by a non-technical summary outlining the key findings, conclusions and recommendations of the study and shall be signed by the proponent and environmental impact assessment experts involved in its preparation.<sup>68</sup> The country's 2016 public participation guideline also states that communication should be tailored to meet the needs of persons with disabilities, senior citizens, the marginalized and the less educated residents of the County.<sup>69</sup> To meet such needs, the guideline specifically recommends communications to be carried out in a manner that address the special condition of each individual involved in the public participation process. For example, for persons with disability the recommended communication ways are usage of Braille, sign language, publications, radio, TV, and newspapers. For elderly people, it suggests using large print publications for communication purpose. This way, Kenya's PPPs manages to accommodate the concerns and the needs of each and every participant including those who might encounter different barriers to effectively participate in the public participation process.

Hence, one of the basic principles in the EIA process and public participation is that relevant information is communicated and provided clearly and understandably to the public. So as to make meaningful and effective participation, there should be special mechanism that would enable the integration of the concerns and needs of people with disability or those who are marginalized or less educated section of the society. In summary, the experience of South Africa and Kenya is substantially informative of viable mechanisms to ensure public participation.

Coming to the Ethiopian context, the EIA proclamation No. 299/2002 specifically provides that EIA report that is submitted to the Authority or the relevant regional environmental agency for review shall include a brief statement summarizing the study in non-technical terms as well as indicating the completeness and accuracy of the information given in the study report.<sup>70</sup> Thus, proponents are obliged to prepare and submit EIA reports in non-technical terms which could easily be understood by any ordinary person. The report should also

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<sup>67</sup> Id.

<sup>68</sup> EIA Regulations of Kenya, 2003, *supra* note 28, part III, section 18(2)

<sup>69</sup> Public Participation Guideline of Kenya, 2016, *Supra* note 29, see section 3.4 which deals about Communication and access to public information

<sup>70</sup> EIA Proc. No. 299/2002, *supra* note 36, Art. 9

provide sufficient and very relevant information about the negative impacts of the projects and the remedies available in this regard. More specifically, proponents are expected to include sufficient and basic information related to the nature of the project including the technology and processes to be used and their physical impacts; the content and amount of pollutants that will be released during implementation as well as operation.<sup>71</sup>

The EIA procedural guideline series 1 also replicates what has been stated under the EIA Proclamation. It states that an EIS shall contain sufficient information to enable the determination of whether and under what conditions the project shall proceed.<sup>72</sup> It further requires submission of a brief statement that summarizes the EIS in non-technical terms and shows the completeness and accuracy of the information given.<sup>73</sup> The guideline also obligates environmental agencies to make sure that the public, especially affected communities are given meaningful opportunity in the EIA process. The institutions are also responsible to make sure that the views, concerns and position of IAPs are taken into account at all stages of decision making.<sup>74</sup> Hence, the EIA laws stated above enunciate the need for preparation of an EIA document in non technical terms and in a manner that is easily understandable by the public. The information to be disclosed under the EIA should be substantially significant and precise enough to inform the public about the impact of the project on humans and the environment. However, other than stating the requirement of preparing the EIA document in non-technical terms, the laws are short of providing special mechanism to be implemented in those instances where a person is desirous of but unable to participate in the process due to illiteracy, disability, or any other disadvantages.

The non-existence of such mechanisms would have the effect of bypassing the concerns of people with disability, the marginalized, the less educated or any other disadvantageous people in the EIA process. This in fact poses negative repercussion in fostering inclusive public participation in the EIA process. In this regard, the practices of South Africa and Kenya is of significant importance in that both countries provide mechanisms which are mainly intended to integrate the concerns of those who are unable to participate due to different reasons.

## 2.5 Determination of Options for Public Participation

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<sup>71</sup> Id., Art. 8

<sup>72</sup> EPA, EIA Procedural Guideline Serious 1, *supra* note 37, Part 5, p.8

<sup>73</sup> Id.

<sup>74</sup> Id., part 6.1

The other pivotal issue that public participation provisions need to clearly articulate is the method or technique of participation to be applied in the EIA process. In this regard, there are numerous techniques or methods that can be used to involve stakeholders during public participation process in the EIA. These include but not limited to:

- Public meetings (these are “open” with no restriction as to who may attend);
- Advisory panels (a group of individuals chosen to represent stakeholder groups which meet periodically to assess work done/results obtained and to advise on future work);
- Open houses (a manned facility in an accessible local location which contains an information display on the project and the study. Members of the public can go in to this venue to obtain information and make their concerns/views known);
- Interviews (a structured series of open-ended interviews with selected community representatives to obtain information/concerns/views);
- Questionnaires (a written, structured series of questions issued to a sample of local people to identify concerns/views/opinions. No interviewing may be involved); and,
- Participatory appraisal techniques (a systematic approach to appraisal based on multiple and varied inputs generated through group inquiry and analysis. The appraisal may be assisted, but not controlled or directed, by external specialists.<sup>75</sup>

It has to be noted that the appraisal methods considerably differ from country to country based on their specific interest and need. For example, in China, questionnaire survey, expert consultation and testimony hearings are the techniques suggested for public consultation.<sup>76</sup> Furthermore, seminars and discussion forums may be held to collect 'public opinion. Hearings may also be held as the most formal channel to consult the public.

Such appraisal process in Kenya requires making announcement and adequately informing the public about it prior to the process itself. The Kenyan law also requires the use of public hearing as a method of appraisal which must be conducted at least three times with the affected parties and communities to

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<sup>75</sup> Hussein, Abaza, et al, *supra* note 49, p.73

<sup>76</sup> Wang and C. Xin-geng, *The Design of Public Participation in Environmental Impact Assessments, Aquatic Ecosystem, Health and Management* Vol. 9: (2006), pp, 93-97

explain the project and its effects, and to receive their oral or written comments.<sup>77</sup> The laws of the country further stipulate requirements that need to be adhered to while conducting the public hearing. It states, among others, that public hearing shall be presided over by a suitably qualified person appointed by the Authority and it shall be conducted at a venue convenient and accessible to people who are likely to be affected by the project. Moreover, a project owner should be given an opportunity to make a presentation and to respond to presentations made at the public hearing. And the presiding officer shall in consultation with the Authority determine the rules of procedure at the public hearing.<sup>78</sup>

In South Africa, the most appropriate mechanisms suggested for conducting public participation are: public meetings and open days, conferences, press release, questionnaires or opinion surveys, information desks and/or info lines and meetings/workshops with constituencies (e.g. national standing committees, non-governmental organizations/community based organizations).<sup>79</sup>

With a similar modality to South Africa, Pakistan adopted a range of techniques believed to facilitate public participation. For example, public hearing, public meeting, focus group meeting, village meeting, small group meeting are some of the techniques listed under the pertinent guideline. Among those techniques, focus groups, workshops, and review of scope of EIA by concerned stakeholders have been categorized as the most effective techniques for achieving the objectives of public participation.<sup>80</sup> It is thus imperative that EIA laws need to clearly articulate the method or technique of participation to be used during public participation in an EIA process. This would help authorities to easily conduct public participation in the EIA process by picking the appropriate technique which is already identified by public participation provisions.

In the Ethiopian context, unlike the experiences discussed above, no functional method is identified for ensuring public participation in pertinent EIA laws. Of course, Article 15 of the EIA proclamation No. 299/2002 requires the Federal Environmental Protection Authority (EPA) or relevant regional agencies to make any environmental impact study report accessible to the public and solicit comments on it. It also requires the need to ensure that public comments are incorporated into the final report. However, neither the EIA proclamation nor

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<sup>77</sup> EIA Regulations of Kenya, 2003, *supra* note 28, part IV, No. 22

<sup>78</sup> *Id.*

<sup>79</sup> Public Participation Guideline of South Africa, 2010, *Supra* note 24, section 5, guidance on the level of public participation, p.9

<sup>80</sup> Obaidhllah Nadeem, *et al*, *supra* note 2, p. 78

the EIA procedural guideline providing those methods that could be used to engage IAPs and the public during public participation process. More specifically, the laws fall short of articulating detailed rules that, among others, regulate as to who shall preside over such public hearings. Nor are there rules that oblige public authorities to conduct such public hearings at a venue which is convenient and accessible to people who are likely to be affected by the project. This, in fact, poses additional burden and difficulty on authorities vested with the power to facilitate and conduct public participation. It may also grant them a discretion to choose any inconvenient method and place that might not be suitable to integrate the concerns of all stakeholders. In this regard, the experiences discussed above are of a particular significance to address the lacunas noticeable under the Ethiopian environmental laws.

## **2.6 Grievance handling mechanisms during public participation**

Stakeholder in an EIA process may forward their comments and suggestions during public participation and consultation secession. If those comments and suggestions are not properly addressed and a grievance handling mechanism is not set up, participation in the EIA process would be an incomplete exercise. Thus, public participation provisions should envisage grievance handling mechanisms which are designed to resolve disputes that might arise between stakeholders, project owners and authorities responsible for conducting public participation in the EIA process. So as to properly handle grievances, comments and responses to such comments and reports of meetings should be attached to and need to be submitted to the competent authority.<sup>81</sup> Then, stakeholders need to be informed about the decision rendered, where the decision could be accessed and the fact that an appeal may be lodged against the decision.<sup>82</sup>

In this regard, Kenya's public participation guideline clearly states that the public should have a mechanism of raising concerns and there should be a way of addressing public complaints and offering redress to members of the public.<sup>83</sup> The guideline also stipulates that the public could communicate grievance using either an e-platform or a physical complaints mechanisms. Relevant authorities are responsible to conduct a register of complaints that should be open to public scrutiny. This would help the public to bring issues which are bypassed or rights infringed in public participation in the EIA process to the appropriate bodies.

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<sup>81</sup> NEMA of South Africa, 1998, *supra* note 22, see chapter six, p.43

<sup>82</sup> *Id.*

<sup>83</sup> Public Participation Guideline of Kenya, 2016, *Supra* note 29, see section four of the guideline, p. 43,

The guideline further stipulates principles designed to regulate compliant handling mechanisms. Some of these principles include:

- Visibility – information about how and where to complain is well publicized to interested parties.
- Accessibility – the process of making a complaint and investigating it is easy for complainants to access and understand.
- Responsiveness – complaints are acknowledged promptly, addressed urgently, and the complainant is kept informed throughout the process.
- Objectivity and fairness – complaints are dealt equitably and objectively.
- Remedy – if a complaint is upheld, the organization provides a remedy.
- Review – there are opportunities for internal and external review and/or appeal about the organization’s response to the complaint and complainants are informed about these avenues.
- Accountability – accountabilities for complaint handling are clearly established and complaints and responses to them are monitored and reported to the county government and other stakeholders.<sup>84</sup>

Coming to the Ethiopian context, we see that Article 17 of the EIA proclamation generally states that any person dissatisfied with the authorization, monitoring, or any decision of an Authority in charge of the task may submit a grievance notice to the head of the environmental Authority or the relevant regional environmental agency. The relevant head of the Authority or relevant regional environmental agency shall render a decision within 30 days following the receipt of the grievance. The EIA procedural guideline also requires appeals and grievance to be entertained and decisions to be communicated in due time. However, the legislations are short of providing mechanisms that dictate how complainants can submit their claims, principles that dictate the overall compliant handling mechanisms, the right of complaints to get access to and redress within the administrative and judicial system of the country. Rather, both legislations stipulate general principles regarding grievance handling mechanisms in an EIA process. This clearly calls for having a directive or a guideline that properly regulates the overall process of grievance handling mechanisms like the experience of Kenya as discussed above.

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<sup>84</sup> Id.

## **Concluding Remarks**

Public participation is a critical component of EIA process. Attaining the goal of this public moves fundamentally requires formulating and enforcing laws that would enable the public to effectively participate and influence decision making process of public authorities on environmental matters. In the context of Ethiopia, however, there are legal lacunas that would pose formidable challenge in the realization of meaningful and effective public participation in an EIA processes. Contrary to the experiences of South Africa and Kenya, wherein participation of the public in the EIA process is mainly carried out through specific public participation guidelines, there is nothing of such mechanism in Ethiopia.

The existing environmental legislations provide principles aimed at the implementation of EIA in general. Yet, they lack detailed rules related to identification of stakeholders and their respective roles and responsibilities during public participation. No clear stipulation of EIA stages are set out as mechanisms of notification through which the public would know about the date, time and the place where public participation is going to be convened. The legal frameworks do not also provide the appropriate method or technique to be applied to gather comments and suggestion of the public or those IAPs in the public participation process. In addition, mechanisms that dictate the overall compliant handling procedures, the right of complaints to get access to and redress within the administrative and/or judicial bodies of the country are left to the discretion of public authorities than being properly articulated through legal frameworks.

All the above constraining issues thus attest the need for formulation of detailed public participation guideline by a competent authority. The guideline, among other issues, needs to properly incorporate public participation provisions that properly identify stakeholders and their respective roles and responsibility. Further, it should envisage mechanisms of notification through which stakeholders would know about details of where and how information can be obtained and viewed and the time line for making comments. Finally, it should set out detailed rules that enunciate possible techniques to facilitate public participation among stakeholders and articulate grievance handling mechanisms and the recourse that aggrieved parties may utilize to achieve desired goals.