Lecture Note: Enforcement of fundamental rights vis-à-vis *Locus Standi* in Ethiopia

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1. Introduction

The concept of *Locus Standi* is very much significant in the protection and enforcement of human rights and freedoms enshrined both in Ethiopia's Constitution as well as in international human rights instruments. Despite its importance, however, since the concept was interpreted very strictly, it was felt problematic to apply it in human rights litigations and it is only recently that the trend has started developing. This is what this note will be dealing with in three sections. The first section will give readers a general overview of the conceptual understanding of the principle of locus standi, a comparative analysis of the principle in the field of human rights enforcement and exceptions restricting the absolute application of the principle. The second section will deal with the incorporation of the principle in the Ethiopian justice system by way of making a reference to civil and criminal litigation processes. The third section will discuss the application and significance of the principle of locus standi in constitutional/human right litigations in Ethiopia; in this section, attempt will be made to mention the impact of the principle in human rights enforcement, the emerging trends in human right litigations in relation to the principle and the respective role of Non-Governmental Organizations (NGO) in applying the principle in their human rights and freedoms enforcement activities.

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2. Conceptual foundation

2.1. Definition and purpose of *Locus Standi*

The term Locus Standi is derived from two Latin terms namely "**Locus**" which means place [1] and "**Standi**" meaning standing/to stand.[2] Therefore, *Locus Standi*, together, refers to a place of standing. Legally, the term refers to the right of appearance in a court of justice.[3] The concept demands that a person must have a sufficiency of interest to sustain his/her standing to sue. It signifies a right to bring an action and to be heard.[4] In short, this institution requires the plaintiff to show the existence and a violation of a given right or interest in order to be allowed to institute a case in a court of law. Why this concept or why restrict anyone from initiating a legal suit by putting such qualitative criterion?

- The first reason is to prevent suits by a person who wants to litigate someone else's claim against the defendant.[5] If, for instance, Mr. A concluded a contract with Mr. B, but if, unfortunately, B failed to discharge his obligation as per their agreement, it is the interest of A that is affected and as a result it is only Mr. A who solely reserves the right to take Mr. B to court. But if Mr. C wants to litigate on behalf of A without getting an express or implied authorization from A, as a rule, there is no reason to permit C to go ahead since he is not the one whose interest is affected.
- The second reason is to prevent two suits against a defendant for a single wrong.[6] Where the interest in the subject matter of the suit has been transferred to another person, the defendant should not be subject to suits both by the person who had the interest

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[1]. Lokesh Rana, ***Encyclopedia of Law***, (2007), pp. 138
[2]. P. Ramanatha Aiyar, ***Concise Law dictionary***, (2006), pp. 699
[3]. *Ibid.*
[4]. *Ibid.*
[5]. Sedler, R. A., ***Ethiopian Civil procedure***, (1968), p. 52
[6]. *Ibid.*

originally and by the person to whom the interest has been transferred. For instance, in contractual transactions, if one of the contracting parties assigns his/her right to a third party as per art. 1962 of the Ethiopian civil code, and once the assignment is complete; it is the assignee not the assignor who will have the interest or the right to stand, [7] and the assignor will lose all his rights towards the original defendant in the suit.

So, the concept of *Locus Standi* is designed with the intention of making litigations smooth, cost and time wise and convenient for both of litigants in the case as well as for the decision-making body, be it a court or another competent extra-judicial organ.

2.2.Locus Standi in comparative jurisprudence

Locus standi has a great place in many countries civil, criminal as well as constitutional/human rights jurisprudence. For the purpose of comparison, I will try to mention this institution is treated in American, Indian, Nigerian and South African constitutional legal order especially in constitutional litigation.

United States

In the U.S.A, it has been established that the court will not allow a person to challenge the constitutionality of a statute unless that particular individual has a litigable interest, i.e. the right to bring a legal case/proceeding in the court.[8] The primary rule as to standing is that the individual who challenges the constitutionality of a statute must show that his/her material interest will immediately be or has been adversely affected by the enforcement of such a law or he will be one amongst those who could be so injured. The injury complained of must be fairly or casually related to the challenged action, and the

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[7]. *Ibid.*

[8]. Basu, Durga. D., (Dr.), ***Human Rights in Constitutional Law***, (2003), pp. 174

injury complained of must be to the plaintiff personally.[9] American courts will not declare the unconstitutionality of a statute where the plaintiff has not sustained or is not immediately in danger of sustaining some direct injury. This position of the courts is shown by a Supreme Court justice's opinion that the courts can't annul congressional acts on the ground that they are unconstitutional unless there is a justification for a direct injury suffered or threat which has the capacity of presenting a justiciable issue upon such an act.[10]

The reason for such a position can be traced back to the very roots of the power of judicial review that unlike civil law constitutional courts, American courts follow the "*case or controversy*"[11] approach to a constitution or any other litigation where they will only be operational if there is a living controversy or real case between two or more disputants.

India

Like that of the U.S.A, in India too, the same position is taken. Art. 3 of the Indian Constitution clearly stipulate that a law which violates a basic right is void. This being the principle, however, the Indian Supreme Court like its American counterpart, has applied both the "Standing" and "injury" tests before coming to the question of the constitutionality of a given statue.[12] Here, as well we have the same reason for such a criterion like that of the American courts that Indian courts can only decide a judicial controversy if presented before it in the form of a *lis* (a suit).[13] It follows from the very essence of the judicial function that the court has no power of making a simple

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[9]. *Ibid.* , pp. 175
[10]. Opinion of justice Sutherland in Massachusetts vs. Mellon (Cited in Basu, *Op. Cit.*, pp.175)
[11]. *Ibid.*, pp. 174
[12]. *Ibid.*, pp. 176
[13]. *Ibid.*

pronouncement in the abstract.[14] Nevertheless, one distinguishing features of the Indian Supreme Court which differentiates it from the American judicial function is that the former, by virtue of art. 143 of the Indian constitution, has some advisory jurisdiction that the court pronounces an opinion on a given draft law.[15] In the Indian constitutional litigation process, the question of *locus standi* has three aspects,[16] these are;

a) The legal or constitutional right, which is alleged to have been violated, should belong to the person who moves the court,
b) The right or interest which is violated should be due to the existence/enactment of a certain law or other state act; and
c) The injury alleged to have been sustained must be to the plaintiff or the petitioner individually.

Nigeria

In Nigeria, a person will not be competent to challenge the constitutionality of a statute or an administrative act unless he/she personally has a civil right which has been infringed by the impugned law or administrative act.[17] It must be an interest or injury over and above that of the general public. In other words, a general interest common to all members of the public is not a litigable interest to accord standing in Nigeria.[18] This position was taken by the Nigerian Supreme Court in its decision, by using the 1979 Nigerian constitution a ground, which reads "*the judicial power vested in accordance with the fore going provisions shall extend to all matters between persons,.....and to all actions..... relating thereto for the*

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[14]. *Ibid.*
[15]. *Ibid.*
[16]. *Ibid.*
[17]. *Ibid.* pp. 184
[18]. *Ibid.*

determination of any question as to the civil rights and obligations of that person" [19]

Therefore, in the Nigerian constitutional/human right litigation system, the principle of Locus Standi has a decisive place even stringent[20] than that of the U.S.A. and India.

South Africa

In the South African constitutional order, especially in human right litigation we observe a relatively different and broader view unlike the American, Indian and Nigerian system discussed above. South African courts seem to take an opposite stand that broadens the conceptual understanding of locus standi; and their ground is the 1997 South African constitution which authorizes, apart from the one whose rights are allegedly violated, his/her representative, or if some rights which belongs to a certain group/class has been violated, anyone acting as a member of, or in the interest of the group or anyone in the public interest to bring a suit in the court of law.[21]

Therefore, when an applicant alleges that a fundamental right has been infringed or threatened; Sec. 38 may be directly relied on to obtain standing,[22] and pursuant to the cited provision of the constitution, not only his/her personal right infringement can be subject of the litigation, he/she can also bring another person's violation of right in a form of suit though the plaintiff/petitioner is not interested in the outcome of the case.

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[19]. Sec. 6(6)/b/ of the 1979 Nigerian constitution (cited in Basu, *Op. Cit.*, pp. 183)

[20]. In the American and Indian constitutional system, Locus standi is the principle and it has its own exception, (Jayakumar N.K., *infra note*, 30) however, in the Nigerian system, the situation seems to be absolute. (Basu, *Op. Cit*, pp. 184)

[21]. Sec. 38(a)-(e) of the 1997 south African Constitution

[22]. Johan De Wall and et al, ***The Bill of Rights Hand book***, (2001), p. 82

However, this provision of the constitution is not without qualification of its own. The South African Constitutional Court in a leading case concerning standing held that someone will have standing if and only if:[23]

- there is an allegation that a right in the bill of rights has been infringed or threatened, and,
- The applicants can demonstrate with reference to the categories listed under Sec. 38 (a)-(e) that there is a sufficient interest in obtaining the remedy they seek.

To come to a conclusion, in many countries, the traditional interpretation accorded to the principle of locus standi especially in constitutional litigation seems to be relatively narrow except in the South African system which follows a relatively broader approach. But, in other systems as well, there are newly emerging trends which erodes the restrictive interpretation of the principle.

1.3. Exceptions to the rule

As mentioned above, nowadays, the old idea of locus standi can't be interpreted in a very restrictive manner any more due to the emergence and development of certain important notions at least in the field of human rights directly or indirectly. These can, therefore, be considered exceptions to the basic rule of locus standi. I will try to mention three important areas as exceptions; i.e. the *notion of Habeas Corpus*, the *concept of Public Interest Litigation (PIL)* and *the notion of Writ of Quo Warrento.*

i. The notion of *Habeas Corpus*

Etymologically, it is a Latin term derived from two phrases *Habeas* and *Corpus.* Habeas means to bring and Corpus means a body.

[23]. Judgment of the Constitutional Court of the Republic of South Africa in the case *Ferreira vs. Levin No.* (Cited in Johan De Wall, *Op. Cit.*, pp. 85)

Together, they refer to the process of bringing the body.[24] This concept is not actually new especially in litigation and enforcement of Criminal law rights of an arrested person. It is a popular writ to preserve personal freedom, directed to the person in whose custody a person is kept, ordering the body of the person so kept to be brought before the court issuing the writ, so that judicial inquiry may be made in to the legality of the restraint or imprisonment and appropriate judgment rendered thereon.[25] The institution of habeas corpus found its historical origin in the famous British Habeas Corpus Act of 1679. According to the Act, *any person or persons shall bring any Habeas Corpus directed unto any officer for any person who is kept under the office's custody.*[26] This means, in the case of a petition for the writ of habeas corpus, the general rule of locus standi is not applicable; in other words, the petition can be made not only by the person whose right to liberty has been infringed but also by any other person who is a complete stranger. This is for the sole purpose of protecting the criminal law rights, which are ensured by domestic as well as international human right instruments, of the person who is illegally kept under custody.

ii. The concept of Public Interest Litigation (PIL)

Public interest litigation is a relatively recent development in litigation proceedings. The notion "public interest" is not capable of precise definition and has no rigid meaning and is elastic and takes its colors from the statute in which it occurs.[27] It can be defined as, simply, the interest which concerns the public at large. It doesn't mean, however, that matter which is interesting as gratifying curiosity or love of

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[24]. Gunther, W. Harms, ***Blackstone's pronouncing Law dictionary***, (1968), p. 84

[25]. *Ibid.*

[26]. The British Habeas Corpus Act of 1679, Sec. II (Cited in **M.V. Pylee, *Select constitutions of the world*,** (2006), p. 794)

[27]. P. Ramanatha A., *Op Cit.*, pp. 945

information or amusement; but that in which a class of a community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.[28] If this is the literal definition of the notion of "public interest", what is then "public interest litigation"? The Indian Supreme Court, in a leading case on this issue,[29] defined public interest litigation as a legal action initiated in a court of law for the enforcement of a public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights and liabilities are affected. This definition was given by the court which gave the same definition for the term public interest. (*See the above definition of the term public interest*). What does this mean to the traditional restrictive notion of locus standi? The answer is, if the interest which is affected is of the public or the community at large and if an individual or group of individuals who may or may not have a direct or indirect connection to the issue brings a legal suit before a competent court requesting for the abolishment/annulling of the practice or a law which allegedly affects the interest of the general public, the court cannot reject the claim based on the traditional ground that they don't have any sufficient or definite interest in the case. In other words, this type of litigation which concerns the general public is a clear exception to the principle of locus standi.

This being the conceptual background of the notion of public interest litigation, the basic requirement to apply it is the existence of a law which provides such a remedy especially in human right litigation proceedings. In the American and Indian justice systems, this social action or public interest litigation is widely accepted as a legitimate method to seek judicial remedies against public authorities.[30] In both

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[28]. *Ibid.*

[29]. *Jonatha Dal. vs. H.S. Chowdhury* (Cited in Saharay and Saharay, ***Words and Phrases under the constitution***, (2003), pp. 326)

[30]. Jayakumar N.K. (Dr.), ***Administrative Law***, (2005), pp. 97

countries, however, the notion is developed in the opinions given by imminent chief justices of the supreme courts in certain leading cases. Conversely, in the South African legal and constitutional order, we find a constitutional provision backing the notion; Sec. 38 (d) clearly states that anyone acting in the public interest has the right to approach a competent court by alleging a violation of a fundamental right of the general public. Nevertheless, there are two prerequisites to apply this constitutional provision.[31] These are:

- It must be shown that a person is acting in the public interest; and
- It must also be shown that the public has a sufficient interest in the requested remedy.

In Nigeria, as I tried to mention it elsewhere above,[32] the institution of public interest litigation finds no place. Therefore, a person will not be competent to challenge the constitutionality of a statute or an administrative act unless he/she personally has a civil right which has been infringed by the impugned law or administrative act.[33] In short, a general interest common to all members of the public is not litigable interest and the traditional concept of locus standi seems to be absolute; i.e. without an exception.

The other point in relation to PIL, which is worth mentioning here, relates to the situations/transactions which raises the question of public interest and whose harm initiates litigation by any person in a court of law. To the knowledge of the writer of this term paper, the most fertile area in public interest litigation seems to be environmental disputes. For instance, in Malaysia, as per the revised environmental quality act of 1996 and by the effective activity of the department of

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[31]. Johan De Wall and et al., *Op. Cit.*, pp. 89
[32]. See pp. 4 above FN # 20
[33]. Basu, *Op. Cit.*, pp. 184

environment under the ministry of natural resources and environment of the country; anyone can make a formal complaint relating to any environmental case.[34] In India as well, the area in public interest's contribution has been significant in environmental law. M.C. Mehta, as a petitioner in person, was the first individual in bringing a large number of issues to the court concerning environmental and ecological degradation. He brought five major suits which makes the courts to order the closure of several industries.[35] On the other hand, Non-Governmental Organizations (NGOs), in some countries, have the right of standing on behalf of anyone to bring an alleged human right violation of any kind and claiming compensation under the tort law despite the non-existent of an interest on their own. For instance, we find such a provision in the Netherlands civil code art. 3:305 a.[36]

To sum up, we can safely conclude that public interest litigation, by setting aside the old concept of locus standi, especially in environmental disputes and, as we've tried to see, to some extent, in human right litigations, is playing a decisive and constructive role.

iii. The writ of Quo Warrento

Literally, *Quo Warrento* means "by what authority". It refers to an extra-ordinary remedy and proceeding by information to prevent one usurping an office or using a franchise or privilege that is not rightfully his.[37] This writ (remedy), especially in England, is usually issued on behalf of the Crown by the Queen's Bench division of the

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[34]. Maizatun Mustafa (Dr.), ***Clean Water: right and remedies under environmental law in Malaysia***, p. 5 (***Internet Source***)

[35]. Jona Razzaque, ***Public interest environmental litigation in India***, (Legal service India. Com) **/Internet Source/**

[36]. Gerit Betlem, ***Trans-national litigation against multi-national corporations before Dutch's civil courts***, **(internet source) /** See also M. Kamminga and S. Zia-Zarifi(eds.), ***Liability of multi-national corporations under international law***, (Kulwer Law International, 2000), pp. 283-305/

[37]. Harms, *Op Cit.*, pp. 168

high court of justice against a person who claims or usurps any office, franchise or liberty to enquire "by what authority" he supports his claim in order to determine the right.[38] In India, quo warrento proceedings afford a judicial inquiry in which any person holding an independent and substantive public office or franchise or liberty is called upon to show by what right he holds in relation to the said office or franchise or liberty. If the inquiry leads to a finding that the holder of the office has no valid title to it, the issue of the writ ousts him from that office.[39]

Who can apply for the writ? An individual in spite of the fact that his/her right has not been infringed can move a petition for the writ to challenge the holding of a substantive public office by a usurper.[40] Therefore, if someone has a ground to challenge the holding of a substantive public office by an unqualified person, he/she has the right to apply for the writ though he/she doesn't have any direct or indirect interest or a standing.

3. *Locus Standi* in the Ethiopian justice system

Locus Standi or the right to stand or to bring a suit in a court of law is a well-established principle in Ethiopia especially in civil litigations and the exceptions that I've tried to mention above are not that much popularized.

3.1. *Locus Standi in civil matters*

The legal provision guiding civil litigations in Ethiopia with regard to locus standi is art. 33(2) of the Ethiopian code of civil procedure. It reads "*no person may be a plaintiff unless he has a vested interest in*

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[38]. Saharay, H.K. and Saharay, M.S., ***Words and Phrases under the Constitution***, (2003), pp. 461

[39]. *Ibid*

[40]. Jayakumar, N.K., *Op Cit.*, pp. 95

the subject matter of the suit." The reading of this provision clearly tells that in order to be a plaintiff in Ethiopian courts, one has to show that the other party; i.e. the defendant had infringed his/her right in one way or another and due to such an infringement, he/she sustains a damage no matter how much the amount is. But what is the power of this legal provision or what will be the possible effect if this provision is not properly observed? If one institutes a case in a court without being qualified as a plaintiff due to his/her failure to show a vested interest, the legal consequence is striking of the suit by the court upon the objection made by the other disputant (the defendant).[41] Therefore, it is safe to say that the Ethiopian civil justice system seems to take a strong position concerning the principle of standing.

3.2. Locus standi in criminal proceedings

The question of standing hardly arises in criminal proceedings. The possible situation in which the issue may arise is in the case of public and private prosecution, and the institution of either of these proceedings will be determined by the seriousness of the crime committed by the accused. If a public prosecutor, as per art 42(1) of the Ethiopian code of criminal procedure, refuses to institute a criminal proceeding against an accused as the alleged offence is only punishable on complaint, he/she (the public prosecutor) shall authorize *the appropriate person* to conduct the private prosecution.[42] This means the individual who was directly aggrieved/injured by the accused will get the right to standing in the shoe of the prosecutor to move the court. But who is this appropriate person who gets the standing? Art. 47 of the same code lists down the appropriate persons who can enjoy the right of standing by virtue of art. 44(1).[43]

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[41]. See Art. 244(2) and Art. 245(2) of the Ethiopian code of civil procedure.

[42]. See Art. 44(1) of the Ethiopian code of criminal procedure.

[43]. - The injured party him/herself or his/her legal representative
- The husband or wife on behalf of the spouse
- The legal representative of an incapable person, and/or

To conclude, normally criminal proceedings are instituted by the representative of the state; i.e. the public prosecutor since the presumption is the offender, by committing the offence against an individual citizen, indirectly inflicts harm on the society on the state in general, so, technically, the interest belongs to the public though the immediate injured one is the individual and as a result the prosecutor is the one who has the right to institute the case in court. But, this may not be always the case as some offences, though they may have the tendency of harming the interest of the society, the degree of the harm may not be that much high and so that instead of the public prosecutor, the individual him/herself will have the right to bring the case to court. That is why from the out set, I've said that the issue of locus standi arises in criminal proceeding hardly.

The other issue which needs focus here is if there are exceptions to the rule of standing in the Ethiopian justice system. To answer this question, it needs a reference to the relevant laws of the country. With regard to the writ of habeas corpus, it is well treated under art. 177(3) of the Ethiopian code of civil procedure that if the person restrained is unable to use his/her right, *any person* on his/her behalf, can make the application. Again, even if the idea of public interest litigation is a newly emerged legal regime in Ethiopia, we have laws which recognize it in environmental litigations.[44] Considering the last exception, i.e. the writ of *Quo Warrento*, it doesn't seem to get a proper status. Neither the constitution nor administrative laws such as the civil service proclamation, the 1994 draft proclamation on administrative procedure made a reference to the concept. A seemingly relevant provision in the FDRE constitution in this regard is

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- The attorney of a body corporate.

44. See Art. 11(1) of Procl. # 300/2002 (*The Environmental Pollution Control Proclamation*)

art. 12, which is about the conduct and accountability of the government and its officials and the people, if lost confidence in their representatives, may call them back. But the situation where by an individual may challenge the holding of a public office by a person who is allegedly unqualified, unlike other countries, is nonexistent in Ethiopia.

4. *Locus Standi* in constitutional/Human Right litigation

4.1. Global overview

When we come to human right protection regime vis-à-vis the locus standi criterion to lodge a petition, the international community doesn't seem to be sure whether or not the requirement of the of the existence of a vested interest can be a bar for an individual who came with a petition involving a violation of a fundamental rights and freedoms. For instance, if we look at art. 1 and art. 2 of the optional protocol to the ICCPR of 1976:

- First, state parties should give their consents or become parties to the protocol in order for the human right committee to be able to receive individual communications/ petitions;
- Secondly, even if this is so, as per art. 2 of the same protocol, the petitioner must show his/her standing.[45]

Therefore, if one wants to bring a claim on behalf of another person, there has to be an authorization unless the individual whose right is allegedly violated is unable to give his/her formal consent.[46] Similarly, in the European human right regime, if a violation occurs, it is only the real party in interest; i.e. the one whose right has been denied, who can bring a complaint to the European commission now to the court,[47] and just like the ICCPR optional protocol provision, the European system, too, requires ratification of the state parties of the existence of

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[45]. You must show that you are personally and directly affected by that law, policy … (See the Human Right Fact Sheet #7, *Complaint Procedure*, pp. 7 and 9.)

[46]. *Ibid.*

[47]. Robertson and Merrils, ***Human Rights in the world***, (1996), pp. 127

the right of individual petition to the commission and as a result, the provision was made optional that it applies to states who have ratified the convention.[48] However, the overall implementation of human right and fundamental freedoms recognized in the convention through the commission had been deleted as an old system by protocol XI and replaced it by the European court of human rights.[49] And, under the present court system, ratification by the state parties to accept the jurisdiction of the court concerning individual communication/petition is no more a prerequisite and state parties shall not hamper, by any means, the effective exercise of this right.[50] As to the principle of vested interest, however, the provision seems to hold the *status quo* as it clearly provides, "……*any person*…….*claiming to be the victim of a violation* ……." Therefore, one must show that he/she has an interest in the case since he/she is the one whose rights are violated. Similarly, the Inter-American human right regime doesn't seem to give a solution to the issue.[51]Considering, the African human right context, the situation goes even from bad to worse. Pursuant to the protocol of the African Charter on Human and Peoples Rights (ACHPR) which established the African Court of Human and Peoples Rights, state parties should first make a solemn declaration accepting the competence of the court to receive individual complaints.[52] This means, even if the individual can show an interest, if his/her state doesn't make the required solemn declaration, he/she may not be able to lodge his/her petition to the court.

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[48]. *Ibid.*

[49]. Kapoor, S.K. (Dr.), ***International Law and Human Rights***, (2002), pp. 814& 818

[50]. See art. 34 of protocol XI of the European convention for the protection of human rights and fundamental freedoms of 1950.

[51]. See art. 44 and art. 45 of the American convention on human rights of 1969.

[52]. Art. 34(6) of the protocol of the ACHPR (The Protocol that established the African Human and poples rights Court)

This being the case, then, what will happen in all the systems discussed above, if a person without an interest is found lodging a petition to one of the institutions? Will it be declared inadmissible? It doesn't seem so as in all the instruments, the grounds of inadmissibility are listed and the requirement of locus standi is not included in any of these instruments under the category of the grounds of inadmissibility of a petition. That is why I have started my discussion at the beginning of this section by saying that the international community is not sure about this issue.

4.2. Locus Standi's impact in the enforcement of human rights under the current Ethiopian Constitution

In the Ethiopian constitutional structure, the right to petition and the right of access to justice are recognized as fundamental democratic rights under art. 30 and art. 37 of the FDRE Constitution respectively. Art 30 of the constitution clearly stipulates that everyone has "the right ……*to petition*" and art. 37(1), on the other hand, ensures the right of access to justice by spelling out "*everyone* has the right to bring *a justiceable matter* to …..A court of law."

From the above two provisions of the constitution, at first glance, one may think that the criterion of locus standi is losing its significance in the Ethiopian justice system especially in human rights litigations. This position seems to be supported by one Ethiopian constitutional law scholar who wrote "…..*the law and the courts would interest themselves and actively engaged in broad social issues, such as enhancing the democratization process or the ethnic and gender equalization process or ensuring a clean and healthy environment, etc…this is the constitution that wants to operate with its hands on the business and begs to be employed to radically transform the society on the basis of the principles it unfolds*."[53] Others, however, don't buy

[53]. Fasil Nahum (Dr.), ***Constitution for a Nation of Nations***, (1997), pp. 151

this line of argument rather they want to construe the words of the provision restrictively. We can summarize this position as follows.

- First, the strict meaning of justiceability requires the existence of a vested interest of the claimant or the plaintiff; and art. 37 (1)'s phrases "*everyone….*" And "*……justiceable matter…..*"Should be understood strictly to mean "everyone who can show a vested interest".
- Secondly, even sub art. (2) of art 37 clearly substantiate the above line of argument that an association or even an individual may bring a suit in a court either by a representative capacity or by way of showing a similar interest with those of his/her fellow peers.
- Thirdly, locus standi is an important principle by setting out the procedural qualification to be a plaintiff and it also avoid court congestation by removing unnecessary and unqualified suits from the scene.[54]

Therefore, according to the above argument, we can't totally deny the significance of the principle of locus standi.

In the Ethiopian constitution, there are various provisions intended to protect fundamental human and democratic rights and freedoms. Some of these rights are justiciable that they can be enforced by the regular courts or by any other competent organ with judicial power. But, is anyone allowed, without being required to show a vested interest, to bring a complaint by alleging that some other person's fundamental rights are violated/infringed to a court or any other competent organ? The constitution gives no clear answer in this regard. Better than the constitution, which is said to be the mother of all laws, the code of the

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[54]. ***The right to petition and access to justice***, (1998), /unpublished material in Amharic/ pp. 18, (translation mine)

Ethiopian civil procedure under art. 177(3) clearly stipulates that if an individual is restrained illegally and unable to make application to the court to order his/her physical release, any person can make the application on behalf of that individual; nevertheless, the constitution in its provision where it states the right of habeas corpus of an arrested person, failed to answer the question. Either like that of art. 38 of the South African constitution or like our own subordinate laws concerning a specific type of rights,[55] the FDRE constitution should have some sort of remedy to solve the problem.

If locus standi is going to be a bar, under the pretext of narrow interpretation of art. 37's term justiceability in human right litigation and if all suits involving the violation of human rights in all social, economic, political and cultural aspects of life, are going to be rejected for lack of standing by the so called "competent organ" to which the petition is submitted[56] the constitutional provision on human rights are going to be less effective and violators of human rights will usually get a defense to escape from the law and perhaps they may even take it as a green light to continue their act. But whether we like it or not, this is a possible consequence of the vagueness of the constitution or the non-existence of any subordinate law on the issue.

4.3. Newly emerging trends in human right litigation vis-à-vis locus standi

- **The Role of Non-Governmental Organizations (NGOs)**

One of the newly emerging trends in human right litigation is that the role of both international as well as local/domestic Non-Governmental Organizations (NGOs). NGOs pervade and are a vital part of the overall human rights regime. Above all, human rights NGOs bring out facts, contribute to standard setting as well as to promotion,

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[55]. See the environmental pollution control Proclamation, *Supra Note* 44.

[56]. The competent organ which is authorized in our country's constitutional system to day to adjudicate human right disputes is the House Of the Federation (HOF).

implementation, and enforcement of human rights norms. They provoke and energize, spread message of human rights and mobilize people to realize that message.[57] NGOs operate on the basis of differing mandates, each responding to its own priorities and methods of action, bringing a range of viewpoints to the human rights movement.[58] The post-cold war efforts to make human rights an integral part of the mainstream in a wide range of activities have highlighted that expansion by bringing a significant number of development and humanitarian NGOs in to picture, by urging business and other private actors to accept human right responsibilities and by underscoring the relevance of human rights considerations in areas such as trade, environment or labor.[59] Apart from the above activities undertaken by NGOs and apart from the preparation and distribution of reports on specific countries concerning human right violations, they use usually those reports and information to engage in lobbying or other forms of advocacy before national executive officials or legislatures and international organizations. Through their lobbying activities, they may be able to urge particular forms of pressure against the violators, they may be able to initiate litigation before national or international tribunals or join in an already instituted proceedings like that of the *amicus curiae.*[60] In our legal system as well, the role of domestic NGOs is growing in an increasing manner both in types and in numbers. Today, in Ethiopia, we have various types of NGOs some of which are engaged in human right promotion activities. And recently, some NGOs are actively participating in human right litigations concerning the violation of a specific type of right protected under the constitution of the country. One typical example for this is a

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[57]. Steiner, H.J.& Alston, P., ***International Human Rights in context***, (2000), pp. 938

[58]. *Ibid.*

[59]. *Ibid.* pp. 940

[60]. Literally, It means "*the friend of the court*" (See the discussion, infra note, 63)

court case on environmental pollution issues.[61] The plaintiff - Action Professionals' Association for the People (APAP), is a non-governmental organization engaged, among other things, in public interest litigation. It lodged complaints on urban pollution to the 5th Civil Bench of the Federal First Instance Court, placing the Environmental Protection Authority as the sole defendant. The issue of the matter revolves around two rivers allegedly polluted with, among other things, hazardous effluents and chemical wastes released by the industrial establishments within the vicinity. The first river known as the "Akaki" River crosses the capital city and ends up in the Awash River, which is the mainstay in terms of water supply to the (Afar) people.

The Akaki River has two tributaries, both with in the city of Addis Ababa. Particularly in one of the tributaries is released industrial effluent from around 41 industries, mainly untreated and of hazardous nature. Mojo River lies further down the stream, itself being a tributary to the Awash River. This river lies beside some industries allegedly releasing their pollutants into it. The main of these industries is the Mojo Leather Factory. APAP alleges that it has learnt from a multitude of researches conducted in the past and Environmental Audit Reports of the EPA that the two river basins i.e., Akaki and Mojo are being polluted by solid and liquid wastes of the metropolis and the untreated liquid as well as solid wastes discharged into these rivers by different factories in and around Addis Ababa and Mojo towns. It also stated that this was a clear violation of international human rights instruments and chemical related Multilateral Environmental Agreements ratified by Ethiopia. Also violated are national laws, particularly the Environmental Pollution Control Proclamation (No.300/2002), enacted for the protection and promotion

[61]. Action Professional Associations for the People (APAP) vs. Environmental Protection Authority (EPA) reported by Wondwossen Sintayehu (EPA).

of the right to the highest attainable state of health of citizens and safety to the environment. The plaintiff based its right to bring a case before the court on Article 11 of Proclamation No 300/2002). As per the wording of this provision of the law, any person shall have, without the need to show any vested interest, the right to lodge a complaint at the EPA against any person allegedly causing actual or potential damage to the environment. The law further goes to state that it is possible for the person to institute a court case with in sixty days from the date the decision was granted by the EPA. The plaintiff stated that it has passed the initial stage of fetching a local remedy and affirmed that it can enforce the same cause through the court.[62] From this what we can understand easily is that some of our local NGOs are taking the initiatives in participating in the human right litigations to contribute their share in the overall human rights protection and enforcement regime.

- **The role of the institution of *Amicus Curiae***

The Latin term "*amicus curiae*" is derived from the Greek phrase, *amaykas kuriyay*, which literally means a friend of the court.[63]Considering the role and the scope of power of this institution, it is designated by the court to interpose in a dispute and inform or advise the court with regard to points of law or fact about which the court is doubtful or which may escape its attention.[64] Some scholars argue that this institution, since its historical origin traces back to the Anglo-Saxon legal system, has no relevance to the continental legal traditions while others don't buy this argument that if it works to the common law system, why is it not possible to work in the civil law

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[62]. For the purpose of convenience and to have a complete understanding about the case, I attached the full document of the case here with as a form of appendix.

[63]. Getachew Aberra, ***The Amicus Curiae: its relevance to Ethiopia***, Journal of Ethiopian Law (JEL) Vol. XIX, December, 1999, pp. 82

[64]. *Ibid.* pp. 83

system.[65] When we come to the human rights enforcement problem in our country, we can easily understand the immediate relevance of the institution since the law and the courts of Ethiopia are getting ever more in accessible to large sections of the population such as women, children the disabled and so on. It is a hard fact that these groups of the societies are facing lack of resources, ignorance and other problems and due to which they cant be represented at all or may be poorly represented in a dispute in the outcome of which they are personally interested.[66] This is why, then, the amicus curiae's relevance to the Ethiopian justice system and more specifically to human right proceedings should not be questioned.

- **The role of the Human Right Commission and the office of the Ombudsman**

Both democratic institutions are created in Ethiopia in 2000. The Human Right Commission was established pursuant to proclamation No. 210 /2000 whereas the office of the Ombudsman came to existence by proclamation No. 211/2000. Both institutions are created to protect, promote and respect the fundamental rights and freedoms of citizens though from two different angles.[67] The Human rights Commission is vested with the power of *ensuring* the respect of human rights enshrined in the constitution by all stakeholders, the compatibility of laws and acts of the government with that of the human rights of citizens and making recommendations on revision of laws and policies, *educate* the public through all means possible about the relevance and values of human rights, *investigate* alleged human right violations upon complaint or by initiation of its own, and others.[68] Similarly, the office of the Ombudsman has the power to investigate any alleged mal-administration in government offices and

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[65]. *Ibid.* pp. 101
[66]. *Ibid.* pp. 102
[67]. Art. 5 of both Procl. # 210/2000 and 211/2000.
[68]. Art. 6 of Procl. # 210/2000

to supervise that directives and decisions made by the executive do not contravene the basic rights of citizens.[69] Both institutions have also, arguably, powers to enforce the recommendations that they have rendered to the concerned government office.[70] Despite this and other major turning points in human rights protection in Ethiopian political history, both institutions don't have the power to participate in human right litigations by representing others in a court of law. In the above case involving environmental disputes, APAP had requested the Human Rights Commission to act as an amicus curiae and join the suit.[71]

To sum up, since scheme of human right protection and respect in our country and the application of international human right law is still in its infancy, especially in our country, much of the human rights lawyer's and other institutions work involves norm enunciation as well as interpretation and application.[72] And one of this means of interpretation and application is making human right litigation among one of the exceptions of locus standi so as to create conducive atmosphere for all stakeholders to participate in the protection and enforcement of human rights movement both locally as well as globally.

5. Final Remarks

The concept of locus Standi, its relevance to human right litigation and the current situations in Ethiopian human right protection and enforcement regime and the impact of the principle on this regime have been discussed. Generally, we can't deny the significant role that the traditional principle of locus standi plays in any country's justice

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[69]. Art. 6 of Procl. # 211/2000

[70]. Art. 41 of both Procl. # 210/2000 and 211/2000.

[71]. APAP vs. EPA , *Op. Cit*, pp. 3

[72]. Fransisco F. Martin *et al.*, ***International Human Rights Law and Practice***, pp. 1328

system especially in the concept of speedy trial. But, some area of court cases may not be always possible to proceed with by applying the principle in a very restrictive manner, as a result of which, as any other legal principles, locus standi also suffers from some exceptions mentioned above in a very brief manner. One of this exceptions, which, however, is not clearly and sufficiently incorporated in the Ethiopian system of litigation, is human right litigation which may not require the petitioner to show his/her vested interest from the outcome of the case. This widens the opportunity for the public at large, especially in our country's practical reality where the community has not or has a very little knowledge of its rights and duties; some concerned bodies may take the step in the judicial organs of the country without facing any stringent procedural barriers such as locus standi and get fair justice. But this may be done if some other tasks are accomplished by the concerned stakeholders in the movement for effective human right protection and enforcement. But first, there are some conditions to be fulfilled, such as the following:

- The first and perhaps the most important role should be played by the government by reviewing its judicial policy with special reference to human right issues by making the constitution free from any doubt with respect to the human right protection and enforcement mechanisms and by making new laws which expressly allow anyone to participate in human right litigation process by continuing what is started before like that of the institution of public interest litigation. And it is also expected to improve and strengthen the already existing democratic institutions like the Human Right Commission and the office of the Ombudsman by way of widening their scope of power and by also creating a better enforcement mechanisms so that they may play some role in enforcing human rights and ensuring good governance and sustainable development. The government is also expected to educate its citizens about the relevance and

practical significance of the concept and other pertinent institutions such as the amicus curiae and it should also facilitate the establishment of such institutions along side with the already existing ones.

- The second categories of stakeholders, next to the government, are NGOs and other civil societies. They are also to play as equal role as the government. They are expected to promote respect, value and protection of human rights by way of raising awareness through formal or non-formal education, they should also be able to exert much pressure on the government and other institutions to pay due attention to the issue. They should also assist the government in its activity. They are also expected to continue and strengthen their active role by participating directly in human right litigations as is started by some of them currently.
- The third categories of entities are private lawyers. They should abide strictly by the code of conduct enacted by the government in relation to rendering free service to clients (*Pro Bono service*) at least 50 hour annually (as per the regulation on the code of conduct of private attorneys) and they should use this opportunity in human right litigation process by designing a special litigative strategy, advocacy and client relations.

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