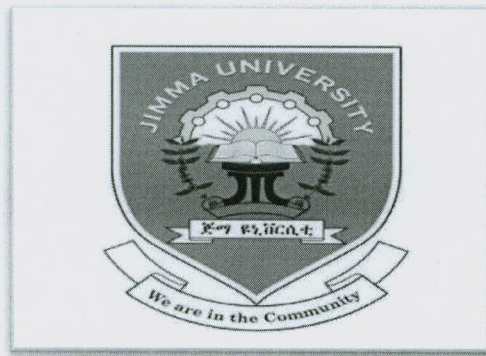


**INTERPLAY BETWEEN INVESTMENT LAWS AND ENVIRONMENTAL LAWS IN
ETHIOPIA WITH REGARD TO ENVIRONMENTAL PROTECTION**

A Thesis Submitted to the School of Graduate Studies of Jimma University to Partial Fulfillment
of the Requirement for the degree of LL.M in Commercial and Investment Laws

BY *Acc 46138*

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JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

LL.M PROGRAM

JUNE 12, 2015

JIMMA, ETHIOPIA



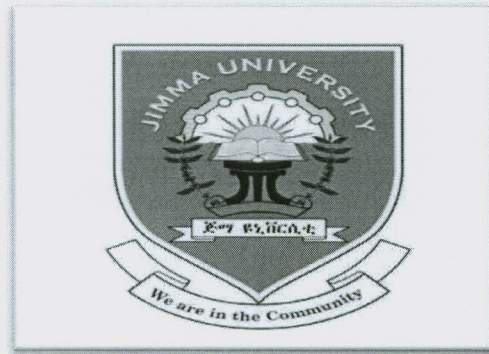
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Under the guidance of

DEJENE GIRMA JANKA (PhD)



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DECLARATION

I sincerely declare that this thesis entitled “interplay between investment laws and environmental laws in Ethiopia with regard to environmental protection”, has been carried out by me under the guidance and supervision of Dr. Dejene Girma Janka..

The thesis is my original work and has not been submitted for the award of any degree or diploma to any University or Institution for any other purpose.

Declared by:-

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ACRONYMS AND ABBREVIATION

1. CADU	Chilalo Agricultural Development Unit
2. CIT	China's income tax
3. EIA	Environmental impact assessment
4. EIC	Ethiopian investment commission
5. E.g	For example
6. EU	European Union
7. FDRE	Federal Democratic Republic of Ethiopia
8. FDI	Foreign Direct Investment
9. IPR	Investment Policy Review
10. JVP	Joint Venture Proclamation
11. PDRE	People's Democratic Revolution of Ethiopia
12. TNC	Trans National Corporations
13. UNDP	United Nation Development Program
14. WHO	World Health Organization
15. USA	United States Of America
16. FEPA	Federal environmental protection agency
17. EWDs	Environmental wrong doings
18. BIT	Bilateral investment treaty
19. EPRDF	Ethiopian people revolutionary democratic front
20. GDP	Gross National Product
21. GTP	Growth and Transformation Plan
22. LDCs	Least Developed Country
23. PSC	Petroleum production contract
24. PSA	petroleum sharing agreement
25. Ltd	Limited
26. MA	Millennium ecosystem
27. PASDEP	Plan for accelerated and sustainable development to end poverty
28. EPA	Environmental protection agency
29. HPR	House of people representative

30. OECD	Organization for economic cooperation and development
31. MW	Mega Watt
32. ECC	Environmental Clearance certificate
33. Art.	Article

ABSTRACT

Now a day's investment activities have been increasing in an alarming speed. This is due to the undeniable fact of globalization which consecutively created highly favorable condition for MNCs to go to different corner of world to establish their plant, and invest on different sectors of economy. Some times while doing investment MNCs have been polluting air and failed to work in socially responsible manner. Due to this fact, there have been different move by the world society to protect environment. Despite these move, there still have gaps that should be filled immediately by cooperation of world community, especially by developed countries.

Currently, in Ethiopia too, there are huge inflows of FDI and domestic investments due to the strong measure the current government has been taking to promote investment by adopting investment friendly laws. Besides, the government of Ethiopia has been enacting environmental protection laws. Hence, in Ethiopia, there are large amount of investment promoting laws and environmental protection laws. On one hand, the government has been turning every stone to achieve the goals of economic development, and on another hand it seems that there are moves toward protecting environment. However, balancing these two important agendas (development and environmental protection) highly requires commitment.

This paper going to assess how much place and attention is being given for environmental protection by investment laws of the country, and the obligations that are set in environmental laws to investment activities. Furthermore, incompatibilities between selected investment laws and environmental laws will be analyzed. Finally, an attempt will be made to asses legal gaps, if any, on chosen investment and environmental laws of the country.

CHAPTER ONE: INTRODUCTION

1.1 Back ground of the study

Despite its difference in aspects of policy formulation for investment promotion, Ethiopia has lifelong investment history. Immediately after Emperor Haile Selassie was removed from power; in September 1974, a Military government known as Derg was established from several divisions of the Ethiopian Armed forces. The government installed a Command economic system where market system was deliberately repressed and socialization of the production and distribution process followed.¹ In the history of this regime there were no as much investment welcoming policies and laws. Notwithstanding these stringent investment policies, there was project like, the Swedish based CADU project, which was one of the foreign large-scale farming projects In the Chilalo regions².

However, this investment project led to extensive mechanization and eviction of perhaps 6,000 tenant households without fair compensation; the government maintained land available for various elites.³ Realizing the importance of FDI, in 1983, Derg attempted the Joint Venture Proclamation (JVP) which gave incentive such as, five years period income tax relief for new project, import and export duty relief, tariff protection, and repatriation of profit and capital.⁴ This proclamation was also amended in 1989 in a better way than the previous one, by allowing majority foreign ownership in many sectors, except in those related to public utilities, banking

¹ Meskerem Daniel Menamo, Impact of Foreign Direct Investment on Economic growth of Ethiopia, 2014, p.6, available at <https://www.duo.uio.no/bitstream/handle/10852/39250/Menamo-Meskerem-Master-Thesis.pdf?sequence=1> accessed on 10 November 2014

² Adil Yassin, large scale transnational land acquisition in Ethiopia – is it an acceleration for development? November, 2010, p.5, available at http://thesis.eur.nl/pub/8690/Adil_Yassin_RP%202009-10 accessed on 08 November 2014

³ *ibid*

⁴ *Supra* note 1, p.7

and finance, trade, transportation and communication.⁵ However, political instability and civil wars from different corners of the country discouraged the inflow of FDI.

After overthrowing the Derg regime, the political system has changed from command economic system to market economic system. This change has created good environment for investment opportunity. The new transitional government promulgated an investment law in 1992. It was widely viewed as providing inadequate incentives and imposing too many restrictions to promote either domestic or foreign investment.⁶ But later on the government enacted another laws and regulations in order to avoid restrictions that are burdensome for investment. In 1994 new constitution were enacted in which the ownership of land is vested on the nation, nationalities and people of the country and the government. In line to this constitutional base, TNCs and private investors are acquiring vast hectares of agricultural lands and Several industrialized countries, EU countries, USA, rapidly growing developing nations like China and India, Israel and oil-rich countries, especially from the Arab Gulf, including Saudi Arabia leased large scale lands in Ethiopia for different kinds of investment projects.⁷

In recent years, the Ethiopian government has taken a number of steps to create a more investor-friendly environment, and accordingly the Ethiopian Investment Commission (“EIC”), has considered liberalization of the foreign trade regime as a primary objective of the country’s pillar policy.⁸ Currently, due to these favorable back grounds of investment policies in Ethiopia, there have been huge in flow of FDI in different investment sectors like agriculture, manufacturing, tourism, hydropower, social services, and mining.

In addition to these afore mentioned investment activities, Ethiopia has her own environmental protection history, since human acts and environments are closely related either directly or indirectly. A lot of attempts have been made either to destruct or to construct environment.

⁵ *ibid*

⁶ Michael P. porter, the Ethiopian investment law, Addis Ababa University, 1999, p.363 available at <http://icsidreview.oxfordjournals.org/content/14/2/362> accessed on 01 November 2014

⁷ *Supra* note 2, p.5

⁸ Darryl Vhugen, large-scale commercial investments in land: seeking to secure land tenure and improve livelihoods, Haramaya University College of Law’s Environmental Policy Center and Social Justice Center, April 2010, P.8 Available at <http://www.ajol.info/index.php/hlr/article/viewFile/98568/87834>, accessed on 10 November 2014

Under the rule of Emperor Haile Selassie, different environmental laws were enacted. Among the others; forest laws (proclamation no. 225 of 1965 and wild life laws are important to mention.⁹ After the down fall of rule of Haile selasie , Derg regime had made environmental laws. Accordingly, it incorporated the issue of environmental protection under art.55 (3) of PDRE Constitution, and under proclamation no.192 of 1980(a proclamation to provide for the conservation and development of forest and wild life resource.)¹⁰ However, despite of this history, In Ethiopia there has been infant stage of development on environmental protection laws and policies. The practice of considering environmental and health impacts was introduced as early as 1980 into water resources development projects assisted by UNDP/WHO, though the main focus was limited to water-related and water-based health problems.¹¹ Ethiopia did not have a comprehensive environment policy. Later, in 1997 the environmental policy was issued to provide for overall guidance in the conservation and sustainable utilization of the country's environmental resources in general.¹² This was general policy and did not touch every aspect of environmental issues in order to solve environmental problems.

Most importantly, the 1994 constitution has tried to incorporate significant provisions dealing with environment. Accordingly, article 92 of the constitution lay down the environmental objective and described this in its sub provisions.¹³ Depending on this base of the constitution different laws and regulations have been made by the government of Ethiopia. Consequently, in 2002 some legal and regulatory framework was developed in the form of three proclamations: (i) on Environmental Protection Organs establishment proclamation (ii) on Environmental Impact Assessment proclamation and (iii) on Environmental Pollution Control proclamation.¹⁴ And

⁹ Mellese Damite, Teaching material on environmental law, Bahrdar, jimma university and author, 2010, pp.117-120.

¹⁰ Id, p.127

¹¹ Mellese Damtie and Mesfin Bayou, overview of environmental impact assessment in Ethiopia; Gaps and challenges, MELCA Mahiber, January 2008, p.16, available at <http://www.melcaethiopia.org/images/stories/Publication/Overview%20of%20EIA>, accessed on 10 November 2014

¹² id, p.17

¹³ Constitution of federal democratic republic of Ethiopia, proclamation no.1/1995, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 1st year no.1 Addis Ababa 21st august, 1995

¹⁴ Federal Democratic Republic of Ethiopia, Water Supply and Sanitation Program, Final Document on Environmental and Social Management Framework (ESMF), P.8 Addis Ababa, October 2013, p.8, available at <http://www->



there are other related laws like radiation protection laws, solid waste management to mention some.

However, when we look in to the provisions of the aforementioned laws; investment as well as environmental laws and regulations, there are some gaps while putting sufficient environmental protection measures even though there is also law in relation to operation of mining which highly promote environmental protection in general, and which specifically requires doing of EIA for all kind of investment activities (Except for reconnaissance license, retention license or artisanal mining license,) with regards to mining investment.

Moreover, both investment and environmental protection laws do not specifically require cooperation between investment commission and environmental protection organ. One of the important provision dealing about duty to cooperation is art.21 of EIA proclamation. However, it is general provision and does not expressly require cooperation between investment commission and ministry of environmental protection and forestry. Of course it is not expected for environmental laws to set different kinds of specific provisions to create cooperation between environmental protection organ, and other executive organ. But, its general articulation has made lenient cooperation between ministry of environment protection and forestry, and investment commission. Without having strong cooperation between these organs, it is less likely expected that those existing environmental protection laws will become fully realized.

Furthermore, if we consider current investment as well as environmental laws, there are insufficiencies while containing important elements to guarantee “sustainable development”¹⁵.

wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2013/12/05/000442464_20131205113659/Rend ered/PDF/E43630P13359100Box379885B00PUBLIC0, accessed on 01 November.

¹⁵ See what is sustainable development written by Robert W Kates, Thomas M, and Anthony A, available at http://www.hks.harvard.edu/sustsci/ists/docs/whatisSD_env_kates_0504.pdf, accessed on 31 March 2015, In here sustainable development (though it is controversial) is defined as the “ability to make development sustainable—to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.” In addition to these, Sustainable development does not promote zero growth or steady-stead economy to overcome the environment crises our world is facing, rather, it underscores the important role that economic growth plays in solving the two intertwined problems, poverty and environmental degradation. Furthermore, It requires exploitation of renewable resources such as forests and fish stocks not to exceed rate of regeneration and maximum sustainable yield and it is further meant to help us change our ways of life and actions that have been

However, this is not to deny the fact, that there are significant elements in both investment and environmental law with regards to environmental protection. But, it is to mean that, they are not fully flagged and complete enough to protect the environment in order to achieve the goal of sustainable development (which is very crucial to save future generation).

1.2. Statement of the problem

Development with environmental destruction can be considered as zero sum game. Nothing will be gained for human being by doing investment without due care of environment. Because, Environment is what we breath, what we feed and on top of all it is everything for survival of living things, especially for human being. Therefore, it is a must to protect environment for survival and sustainability of human being. The very essential tool for environmental protection would be considered as EIA. Now a day, most country in the world including Ethiopia has been adopting EIA laws. However, despite its large amount of significance while ensuring environmental protection, EIA is sometimes used improperly or it is done for purposes other than environmental protection.¹⁶

Currently, better than before, Ethiopia has environmental law regimes as well as investment laws. However, significant question will be followed if one reminds to ask whether the investment laws of the country give sufficient attention to environmental needs. For example, investment proclamation as well as investment regulation do not allow different kind of incentives for those investors who responsibly protect the environment in general, and to those investors who protect environment going beyond their duty. Regulation no.270/2012 is an investment regulation currently in function¹⁷. It is mainly enacted to attract investors (especially

putting pressure on the natural environment(the idea is taken from the lecture note, Ermias Ayalew, Jimma university, school of law, postgraduate program, 18th January, 2015)

¹⁶ Dejene Girma Janka, The chance to improve the system of EIA in Ethiopia: a look at the new investment proclamation, Oromia law journal, p. 140, available at <http://www.ajol.info/index.php/olj/article/download/107619/97470>, accessed on 21 March 2015.

¹⁷ Regulation on investment incentives and investment areas reserved for domestic investors, regulation no.270/2012, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 9th year no.4, Addis Ababa, 29th November, 2012.

FDI) by allowing different incentive schemes. This investment scheme is mainly based on the area of investment and based on sectors of the investment. Allowing incentive for those investors who invest on priority sectors (like manufacturing sector) and who are going to invest in some regions like Gambella to enhance and promote equitable distribution of resource would be encouraging. Other than these incentive schemes, investment regulation preferred to keep silent though allowing investment incentives for those investors who have given high attention for environmental protection has significant importance on insuring sustainable economic as well as overall development.

In addition to this environmental laws of the country also failed to give incentive to those investors who are going to do their business in environmentally friendly manner. Comparatively, there are countries in the world which give incentive for those investors who do their business in environmentally friendly manner. For example, in china under the new CIT regime, a 3 year exemption and a three year 50% reduction of corporate income tax has been granted to income derived from qualified environmental protection, energy and water conservation project.¹⁸ Australian¹⁹ and Canadian²⁰ income tax legislation also set incentives for environmentally friendly investors.

Still, in Ethiopia cooperation between investment commission and environmental protection organ (current ministry of environmental protection and forestry) is not taken as important tool for realization of protection of the environment. Art.21 of the EIA proclamation, proclamation N.o299/2002, is important provision to mention. Accordingly, it states that, any person shall have an obligation to cooperate in the implementation of EIA proclamation. However, the provision is bit general and do not specifically require cooperation between the two organs of government. In here, of course one can argue that it is not expected to put specific provision

¹⁸ Anuschka Bakke, tax and the environment: the world of possibility, available at <https://books.google.com.et/books?id=6G4OafGuoMQC&pg=PA22&lpg=PA22&dq=incentives+for+environmentally+friendly+investors&source=bl&ots=t-4Q3yxEiO&sig=Ztt6URxAizFIolqWxsxiXZcMOM&hl=en&sa=X&ei=WQd0VZTRDuea7gbznIKoDg&ved=0CD4Q6AEwBQ#v=onepage&q=incentives%20for%20environmentally%20friendly%20investors&f=false>, accessed on, 07 July,2015, p.22

¹⁹ Australian income tax legislation provides for a specific deduction for the expenditure incurred for the sole and dominant purpose of carrying on environmental protection activity. (ibid)

²⁰ In Canadian laws also environmentally friendly investors are allowed for tax incentives. (Ibid)

which require cooperation between the two organs of government. However, if there are laws that specifically require cooperation between the two organs of government it will be easier to achieve the goal of environmental protection.

Doing EIA has multi-dimensional importance. Among other things, it can realize sustainable development and guarantee every one's constitutional right of living in healthy and clean environment.²¹ Currently we have EIA proclamation which can be considered as good beginning towards environmental protection. Furthermore, we have also mining law²² which specifically requires EIA for almost all mining operation activities. However, still there are other investment laws which do not require doing of EIA to give investment license. Besides, both investment laws and environmental laws of the country do not give incentive for those investors who use clean technology and other similar measures which are important for environmental protection, in their investment activities.

In addition, among other things, prescribing appropriate measures for Environmental wrong doers by law is important to guarantee the goals of environmental protection. Under EIA proclamation²³, the maximum as well as minimum penalties prescribed are 100,000 Ethiopian birr and 5000 Ethiopian birr consecutively, which can be considered as very insignificant in current market value. Besides, Criminal law of the country is the other important area of law that has dealt with the penalty in cases where failure of environment protection is occurred. Consequently, art 520 of the code²⁴ talks about Mismanagement of Hazardous Wastes and other Materials. This provision lays down maximum penalties of either 5000 Ethiopian birr or rigorous imprisonment not exceeding three years or both, which cannot compensate environmental damage.

²¹ Supra note 16, p. 135

²² A proclamation to promote sustainable development of mineral resource, proclamation No.678/2010, Federal *Negarit Gazeta* of the Federal Democratic Republic of Ethiopia Addis Ababa 4th August, 2010

²³ Environmental Impact Assessment Proclamation, proclamation no.299/2002, Federal *Negarit Gazeta* of The Federal Democratic Republic of Ethiopia, 9th Year No. 11 ADDIS ABABA-3rd December, 2002

²⁴ Criminal code, Proclamation No. 414/2004, Federal *Negarit Gazeta* of The Federal Democratic Republic of Ethiopia, done at Addis Ababa, this 9th day of may 2005

In addition to these, proclamation No.803/2013²⁵ is important to consider. The proclamation has tried to come up with relevant environmental protection concepts. However, the provisions seem general and in some cases lack clarity. For example, it would be doubtful if one considers whether the proclamation has set clear authorization to ministry of environmental protection and forestry so as to compel investors to respect environmental laws of the country (particularly to suspend investment activity, if it feels that the investment activity will probably cause environmental damages). But, giving this mandate in clear language increases the probability of insuring environmental protection on one hand promoting legal and efficient investment activities on the other hand.

Furthermore, there are also incompatibilities in some provisions of investment and environmental laws. For example, current investment proclamation gives investment permit without requiring doing EIA. However, EIA proclamation strictly forbids giving investment license without doing EIA.

1.3. Literature review

A move to strict environmental protection measures may create uneven condition for investment promotion. There are two conflicting interests by which, with the cost of one, the other will highly be successful. Meaning, if there are strict environmental protection laws in a country; there will have low inflow of investment (especially FDI) activities with that country due to these strict environmental regulations and vice versa. Of course, no one can deny that, investment is a vital engine for a countries development. Currently, by the appropriate use of investment, a country like USA has built world's number one economy. However, if the development were not by giving due care for environmental protection, it would be destruction today, not development. Therefore, though investment and economic development are essential things for countries advancement, it will be meaningless if it is not based in line with appropriate environmental protection measures.

²⁵ A proclamation to amend the proclamation on the definition of powers and duties of the executive organs of the federal democratic republic of Ethiopia, proclamation No.803/2013, Federal *Negarit Gazeta* of The Federal Democratic Republic of Ethiopia, 19'h Year NO. 61 ADDIS ABABA 29th July, 2013

Those Countries like Ethiopia, which has at infant stage of economic development would be expected to work very hard so as to alleviate, and if possible to eradicate poverty and at the end to become high income country. But, this goal cannot be achieved by letting back the environmental issues which is crucial for sustainable development. By now, Ethiopia is at early stage of development as well as environmental protection measures. The country has enacted different policies and laws that are dealing with investment and environmental protection. By critically looking up on these current policies and legislations, one can identify their relationship.

There are some publications that are discussing about investment and environmental protection in Ethiopia. However, most of the research conducted has focused on floriculture industry of the country with regard to EIA though there are also some researchers conducted with regards to theoretical base. Accordingly, Mulugeta Getu²⁶ has done research on the title “Ethiopian floriculture and its impact on the environment.” Here the researcher tried to focuses on practical environmental impacts of the project in one hand, and identified some legal gaps in connection with floriculture sectors. Consequently, he concluded that the legal attention given to removal of floriculture waste is weak when compared to water resource management proclamation and public health proclamation.

There is also works like the investment promotion and environment protection in Ethiopia’s floriculture done by Elias Nour²⁷ in his work he tried to analyze some of investment laws (investment proclamation and regulation) and environmental laws of the country with regards to the place they have given for environmental protection. Furthermore, he tried to asses legal gaps on EIA proclamation and pollution control proclamation. But, the study is limited on showing ineffectiveness of these few legal gaps with regard to environmental protection in specific floriculture industry.

²⁶ Mulugeta Getu, Ethiopian floriculture and its impact in environment, journal of Mizan law review,2009, p.241-269, available at <http://www.ajol.info/index.php/mlr/article/download/54011/42554>, accessed on 26 march 2015

²⁷ Elias Nour, investment promotion and environment protection in Ethiopia’s floriculture, 2012, p.102-113, Available at http://wrap.warwick.ac.uk/56244/1/WRAP_THESIS_Nour_2012.pdf, accessed on 26 March 2015

In addition, there is also one work done by Tesfaye Abate,²⁸ in here, he tried to examine EIA and monitoring in Ethiopian context, and analyzed that there should be an incentive for investors who are going to do EIA to reimburse the cost incurred while doing EIA. However, he did not deal about the necessity of incentives for those investors who will do their investment in environment friendly manner in general, and necessity of incentive for those investors who protect environment going beyond their duty(for example, if an investor apply recycle use of solid waste despite the fact that using it is not required by law)

There are publications like “remedies for environmental wrong-doings in Ethiopia”²⁹ in here the author mainly focused on different sorts of remedies for environmental wrong doings like civil, criminal, and administrative remedies of Ethiopia by comparing with selected countries. Finally, the author concluded that there are certain problems which affect effective use of these remedies like civil remedies. And the countries environmental law do not permit suit against environmental protection organ for their failure to discharge their obligations. Further, important work was done by the same author³⁰, in his work the author analyzed to show non attainability of objectives of EIA proclamation due to failure of issuance of directive and regulation by appropriate government organ. In addition to this, the author has tried to show the change made in new investment proclamation and those important things put under mining proclamation with regards to environmental protection.

However, none of the writer mentioned here in above has discussed to show interplay between investment and environmental laws with regard to environmental protection in a holistic approach. For example, not any researcher discussed to answer the question whether the investment regime we have in place pay sufficient attention to environmental needs or not, in connection with the incentive provided for investors with regard to those investors who protect

²⁸ Tesfaye Abate Abebe, environmental impact assessment and monitoring under Ethiopian law, journal of haramaya law review, 2012, p.122-123 available at <http://www.ajol.info/index.php/hlr/article/download/98572/87838>, accessed on 20 March 2015.

²⁹ Dejene Girma Janka, remedies for environmental wrong doing in Ethiopia, Mekele university school of law, 2013,p. 1-23, available at <http://www.leynexus.net/journal/wp-content/uploads/2014/03/Vol-2-No-1-publishable.pdf>, accessed on 22 march 2015.

³⁰ Dejene Grma Janka, the chance to improve the system of IEA in Ethiopia; a look at the new investment proclamation, oromia law journal, available at <http://www.ajol.info/index.php/olj/article/download/107619/97470>, accessed on 26 March 2015

environment in general and, in particular to those investors who protect the environment by going beyond their duty. As it stated here in above, one writer (Tesfaye Abate)³¹ has tried to discuss about the necessity of incentive. However, his finding is very narrow and only limited to necessity of incentive for investor when they do EIA (to compensate the cost of EIA). Also, sufficient work has not been done to show whether some provisions of environmental law we have in place are incompatible with environmental laws.

Furthermore, even though there are some literatures which are discussing about the necessity of cooperation between investment commission and environment protection authority, however there still have issues to be analyzed with regard to cooperation. One writer while discussing in floriculture industry,³² generally put the importance of coordination between regional and federal environmental authorities. There is also one important finding which has done by Dejene Girma³³, with regard to cooperation. Accordingly, the writer shows the poor linkage between environmental protection organs and licensing organs. Here, the researcher discussed importance of cooperation between the two government authorities (Ministry of investment commission and environmental protection and forestry), by organizing committee to follow up and discuss periodically with regard to environmental issues.

Moreover, sufficient works have not been done to analyze mandates of ministry of environmental protection and forestry especially in relation to the availability of legal provisions which are compelling investors to respect environmental laws. And there are also insufficiency of literature to analyze whether environmental laws of the country compel ministry of environmental protection and forestry to work in cooperation with other executive organs of government, including federal investment commission.

³¹ Supra note 28. The writer here tried to show that since EIA requires additional costs to the investor, and therefore, it may discourage investment unless incentives are provided to cover the costs.

³² Mulugeta Getu, Defiance of environmental governance: environmental impact assessment in Ethiopian floriculture industry, a journal of environmental research and management, Haramaya university, p. 222, available at http://www.e3journals.org/cms/articles/1376567319_Getu.pdf, accessed on 20 March 2015.

³³ Dejene Girma Janka, environmental impact assessment in Ethiopia: law and practice, a dissertation Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, TUSCALOOSA, ALABAMA, 2012, P.148, available at http://acumen.lib.ua.edu/content/u0015/0000001/0001119/u0015_0000001_0001119.pdf, accessed on 20 March 2015.

In addition to these, the researcher scrutinized the necessity of inserting doing EIA in investment proclamation as one criterion to get investment license, and thoroughly argued the inadequacy of remedy when EWDs are committed. Therefore, there were gaps which not filled by the researchers while looking the interplay of investment and environmental laws with respect to environmental protection. Hence, this work was an effort to fill these gaps. And accordingly, it reflected on the necessity of giving care for environmental protection by both investment and environmental laws.

1.4. Objectives of the research

1.4.1 General objective

The general objective of the research is to examine the relationship between investment laws and environmental law with regards to environmental protection, and evaluate the necessity of incorporating sufficient environmental laws in Ethiopian legal system to protect the environment and ultimately to sustain development.

1.4.2 The specific objectives of the study can be

- ❖ To analyze and show how much attention had been given in investment laws of the country to protect environment and finally to reveal important legal gaps, for law maker, appropriate organ of Government and to fill the gap in the existing literature.
- ❖ To examine how much environmental regime currently we have, has been setting appropriate remedies for investment activity of the country which damage or negatively affect environment, and finally to show legal gaps to law makers, government organ, and to fill the gap in the existing literature.

1.5. Research question

1.5.1 Main question

The very important question this research answered was, does the investment regime we have in place pay sufficient place to environmental need? Does the environmental regime we have discourage or encourage investment?

1.5.2 The derivative questions were:

- ❖ Do the current investment laws unequivocally require cooperation between investment and environmental authorities?
- ❖ Do the current investment laws and environmental laws require sufficient incentives for those investors who responsibly protect the environment in general and to those investors who protect environment going beyond their duty?
- ❖ Do the current investment laws require doing EIA before getting investment license? If not, is it not important to incorporate it in investment laws of the country?
- ❖ Do the current environmental laws stipulate appropriate measures to be taken when environmental damages are happen? Is there any standard in Ethiopia which can measure environmental damage?
- ❖ Are there any provisions of investment law which are incompatible with environmental protection laws of the country?
- ❖ Do current environmental laws of the country give sufficient mandate in a clear language to ministry of environmental protection and forestry to compel investors in line with environmental laws of the country?

1.6. Significance of research

Since the research done in this area of study is not adequate, this research can play a gap filling role in the existing literature. Furthermore, the result of the finding will be revealed to the public and government organs, and it has paramount importance for law makers to review the existing investment laws and environment protection laws in a way to keep up sustainable development. By showing vital importance of cooperation, it can also serve as an incentive for the government organs, especially for investment and environmental government organs, to build cooperation between them, to protect environment in a better way than before.

1.7. Research methodology

My research was mainly library based on the written documents on the relationship of environmental and investment laws. Given the relatively short time-frame for this study, this study did not an attempt to make complete study of all the legal frame works of investment and environmental laws. Rather, some selected laws based on their importance to the sector. Furthermore, I have focused up on among other things; analysis of legal documents, internet sources and case studies whenever possible.

1.7.1 Sources of Data

Both primary and secondary sources of data were gathered so as to get relevant information to accomplish the research. As to sources of primary data, Purposive interview were taken by the researcher from the selected stake holders of Federal investment commission and minister of environmental protection and forestry. These interviews with stakeholders are expected as a means to answer the research questions. The interviews mainly were focused on the legal gaps of investment and environment with regard to environment protection.

Secondary sources of data were also gathered from different published and unpublished sources like; books, journals, publications, lecture notes, and others relevant internet sources.

1.7.2 Sampling technique and data gathering instruments

Method of Purposive sampling was employed while gathering information from interviewee. Among others; the selection of interviewee were based on their professional experience relevant educational back ground. Accordingly, interviews were conducted with legal experts of both investment commission and ministry environmental and forest. The interviewees were selected based on their expert knowledge by the assignment of head of investment commission and vice ministry of environment and forest. Both environmental laws and investment laws were selected based on their significance to the sector.

1.8 Scope of the research

As my work was based on analyzing the relationship of investment laws and environment protection laws, it was a must to focus on both investment and environmental laws of the federal government. However, due to large number of the laws in the area, the researcher limited this study on selected basic investment and environmental protection laws; such as on current investment proclamation and regulation, mining operation proclamation, a proclamation to regulate petroleum production and the petroleum production sharing agreement model, environmental impact assessment proclamation, environmental pollution control proclamation, solid waste management proclamation, the new criminal code, an amendment proclamation on the definition of powers and duties of executive organs, and Environmental Protection Organs Establishment Proclamation .With respect to case study, expecting that there would have relevant information, interviews were conducted from stakeholders of federal investment commission and ministry of environmental protection and forestry.

1.9. Limitation of study

While conducting this study, there were number of factors that affect the result of the research. Among the others the following were major. Since most of the research we have currently is focused on Environmental impact of the floriculture company (mainly based on practice), there were inadequacy of literature. The other limitation of the study was inadequacy of resources (especially financial) to gather relevant information from different concerned organs and area. Furthermore, since there were only a few months to conduct the research, time was other constraint. Expecting the aforementioned limitations from the begging, the researcher tried to use all the effort so as to avoid the negative impacts of it on the research. For example, the researcher used the existing literature exhaustively and made use of it at most analytical talent when looking up on investment and environmental protection laws. Furthermore, the researcher used the given time and resource efficiently and effectively.

1.10. Ethical consideration

Ethics in research is very essential thing. Understanding its essentiality, the researcher considered ethical principles /standards to keep the ethical values of concerned society. Therefore, while doing my research I respected norm of the society, I have not disclosed their identities and name without their free, full and expressed consent.

1.11. Organization of the paper

This paper went to touch on the legal set-ups of environmental laws and investment laws. It highly discussed on the relationship between investment laws and environmental laws. The first chapter of the paper mainly focused on the general introduction and proposal of the research. The

second chapter of the paper is about general overview of investment and environmental laws in Ethiopia. Accordingly, different investment policies including GTP have been discussed. Selected Investment laws were also discussed. Furthermore, in the second section of this chapter, general overview of countries environmental laws and policies were considered. The chapter among the others deals about the place of cooperation between the investment and environment authorities, and whether investment laws require doing EIA to get investment license or not. These and other related points were discussed.

The third chapter of the paper was about analysis of interaction between investment laws and environmental laws in Ethiopia. Here, the researcher in section one, went to give attention on how much recognitions are given for environmental protection under investment laws. Among the others, this chapter in its sub topic dealt about whether investment laws require doing EIA before giving investment permit. Furthermore, availability of investment incentive schemes for environmentally friendly investors was analyzed. In addition, the necessity of cooperation between investment commission and environmental organ were discussed. The second section of this chapter scrutinized about adequacy of remedies for EWDs and the mandates of ministry of environment and forestry. The third section of the paper dealt about the incompatibility of investment and environmental laws. Finally, the paper ended with the recommendations and conclusion.

CHAPTER TWO: GENERAL OVERVIEWS OF INVESTMENT LAWS AND ENVIRONMENTAL LAWS IN ETHIOPIA

2.1 General over view of investment laws in Ethiopia

2.1.1 Introduction

Even though, it has been difficult to give clear cut definition for the term investment, still it is possible to give reasonable meaning. According to black's law dictionary, investment is to mean "expenditure to acquire property or assets to produce revenue; a capital outlay".³⁴ Furthermore,

³⁴ Bryan A. Garner, Black's law dictionary, 7th edition, ST.PAUL MINN, West Group, 1999, UNITED STATE OF AMERICA, p.831

there are authors like Fisher and Jordan, who defined investment as commitment of funds made in the anticipation of some positive rate of return.³⁵

Investment can also be defined from legal points of view. In Ethiopia there are investment laws, bilateral agreements, and international treaties dealing about investment. Each of these things are tried to define investment. Accordingly, investment proclamation defined it as “expenditure of capital in cash or in kind or in both by an investor to establish a new enterprise or to expand or upgrade one that already exists.”³⁶ Here, investment proclamation put in light of expansion of existing capital and establishment of new project either in cash or in kind. Furthermore, a different international treaty in which Ethiopia is signatory and bilateral investment treaties has defined investment. For example, Ethiopia- China BIT defines investment in much expanded manner and included portfolio investment.³⁷ There are many other bilateral investment treaties Ethiopia has made with other countries which define investment in nearly similar fashion.

In Ethiopian investment law, there are important elements that are included in investment definition. For example, expenditure of capital can be considered as essential element. The term capital is defined under article 2(3) of proclamation no.769/2012 “capital” means local or foreign currency, negotiable instruments, machinery or equipment, buildings, working capital, property rights, patent rights, or other business assets. In here, investment is defined in a wider scope to recognize portfolio investment as an investment and it has been getting acceptance from time to time. Because, to a large extent such opinions are influenced by the fact that treaties defining

³⁵Tesfaye Abate, Teaching material on investment, Prepared under the Sponsorship of the Justice and Legal System Research Institute, Addis Ababa, 2009, p.1

³⁶ Investment proclamation, proclamation No.769/2012, *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, 18th year no.63, Addis Ababa, 7th September, 2012.

³⁷ The term "investment" means every kind of asset and shall include in particular, but not exclusively:

a) tangible and intangible, movable and immovable property, as well as any other rights such as leases, mortgages, liens, pledges, privileges, guarantees and any other similar rights, b) a company or business enterprise, or shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise, c) returns reinvested, claims to money and claims to performance pursuant to contracts having an economic value, d) industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and any other similar rights, e) concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

investments include shares in the definition of foreign investment.³⁸ Therefore, despite challenges against portfolio investment, it has been considered as an investment.

Currently, better than before, investments are growing in an astonishing manner. Due to globalization, MNCs have gone from one corner of the world to the other one. This created an even environment for investment. Investment is very vital for a countries development. In history, no country is developed without welcoming investment. As one writer quoted, Investment is the lifeblood of economic growth – sustainable or otherwise; For rich and poor alike, investment is of special importance in charting a global path to sustainable development and it is needed to nurture the institutions, technologies, organizations, ideas and values that could allow humans the world over to live well while preserving the Earth’s ecosystems – the essence of sustainable development.³⁹ However this may not work all the time; the significance of investment especially FDI will be determined depending on different factors like economic and political policies a country has adopted.

2.1.2 Investment policies in Ethiopia

Despite the dissimilarity of economic policies, Ethiopia has her own history on formulation of investment policy. During the regime of H/selassie, economic policy was mainly known to be a market-oriented economic system and was influenced by western oriented modernization. The regime of Derg was mainly characterized by command economic system. After the down fall of the Derg, in 1991, EPRDF government officially condemned the socialist system and formulated market-oriented system. Consequently, privatization is accelerated due to the shift from command economy to market oriented economy of the country. From the early stage of transitional government, privatization of public ownership was declared, policies were formulated, laws were enacted and finally, good conditions were created for private sector investment.

³⁸ M. Sornarajah; *The International Law on Foreign Investment*, 3th edition, Cambridge University Press, United States of America, 2010, p.9

³⁹ Lyuba Zarsky, *International Investment for Sustainable Development; Balancing Rights and Rewards*, Earthscan, UK and USA, 2005, p.1

2.1.2.1 FDRE Constitution

The new constitution, established after the down fall of the Derg, has shifted the overall policies of the country. Furthermore, it is an undeniable fact that the country has made a significant progress in economic and social development since 1992 as a result of the adaptation and implementation of favorable policies and strategies that are instrumental in improving the national economy.⁴⁰ Among these changes made; economic policy changes are vital to consider.

Article 40 of the constitution has guaranteed the right to property which is one of the basic democratic rights of the human being. The recognition of this right under the FDRE constitution has opened a wide door for investment opportunities in different economic sectors. Private investors (such as domestic and foreigners) have started to spend a lot of money and capital in different investment sectors.

2.1.2.2 Growth and transformation plan

The GDP of Ethiopia has been increasing in a double digit and has become one of the top ten fastest growing economies in the world. In order to maintain this economic growth and to transform it rapidly, the country has implemented the five year Growth and Transformation Plan (GTP) for the period 2010/11-2014/15.⁴¹ The plan has incorporated ambitious and grand goals so as to attain millennium development target and eventually end poverty.⁴² Different economic, service, and social sectors are identified based on their contribution and importance on countries rapid economic growth.

The countries vision specifically on economic sector includes: “building an economy which has a modern and productive agricultural sector with enhanced technology and an industrial sector that plays a leading role in the economy, sustaining economic development and securing social

⁴⁰ Ethiopian investment guide, available at http://ethemb.se/wp-content/uploads/2013/07/Investment_Guide-2012.pdf, accessed on May 09 2015, p.8

⁴¹ Ethiopia’s Growth and Transformation Plan –nearing the half-way mark, available at <http://aigaforum.com/articles/eth-gtp-plan-half-way.pd>, accessed on May 9, 2015, p.1

⁴² ibid



justice and increasing per capita income of the citizen so as to reach the level of those in middle-income countries.”⁴³ Therefore, according to the plan, it is to build an industrial sector which will take the leading role of the country’s economy and to establish a modern and productive agricultural sector. These very important visions were attempted to realize by using private sector investment as an engine of the economy and it had been underscored in the GTP plan.

2.1.3 Investment laws in Ethiopia

Commitment of the government with regards to investment promotion is highly increasing from time to time. To make the investment environment more attractive, the government has made frequent amendment of investment laws. During the amendments of these laws important positive changes were introduced. Private sector investment especially FDI has been encouraged by providing different kinds of incentives (such as tax incentive)

2.1.3.1 Investment proclamation

It is commonly known that every country in the world has aspiration to economic, political, social and environmental developments. Despite their desire to development, some countries give more emphasis on economic development while others on environmental dimension and some on both dimensional developments. The difference is clear when we look at the choices that have been made by developed and developing countries (especially least developed countries or LDC). Most developed countries are boomed at the pick of development. As a result, they feed their citizen very well and do not be suffered by the hammer of poverty. Inversely, developing and LDCs especially Ethiopia has been in deep rooted poverty for long. In order to shift this, it seems that, they have been trying to turn every stone to realize economic development, and finally to eradicate poverty.

⁴³ Growth and transformation plan volume one, ministry of finance and economic development, Addis Ababa, November 2010 , available at www.ethiopians.com/Ethiopia_GTP_, accessed on 2 May 2015, p. 21

To achieve this objective, they have been using their domestic investment policies as basic tool. Thus, Ethiopia as a member of LCDs formulated attractive investment policies and consequently enacted number of investment friendly laws. If we analyze the changes and amendments made on investment proclamation within two decades, there were more than six time amendments; such as Proclamation No.15/92⁴⁴, Proclamation No. 37/1996,⁴⁵ Proclamation No. 116/1998,⁴⁶ Proclamation 280/2002,⁴⁷ proclamation No.769/2012 and the recent amendment proclamation (proclamation No.849/2014). This also indicates, the country's motive to create at most smooth and favorable environment for investment and investors such as domestic and foreign.

Proclamation no.769/2012 is the currently working investment proclamation even if minor amendments were made in the new amendment investment proclamation no.849/2014.⁴⁸ In fact,

⁴⁴ The proclamation was enacted to encourage, expand and coordinate investment in the country. However, restricted to broad sectional categories, Incentive schemes were provided to investors. These are; agricultural development and agro-processing; manufacturing, large scale capital-intensive road and building construction, the development, protection and preservation of natural resources; rural transportation, as well as support machinery and services. The incentives provided were: 100% duty exemption for imported capital goods and equipment including spare-parts worth up to 15% of the value of the capital goods imported and exemption from the payment of income tax for periods ranging from 3-8 years depending on the type and location of investment. {Taken from lecture note; Ermias Ayalew, Ethiopian investment policy and Law, Jimma university, school of law, postgraduate program, 20th January 2015.}

⁴⁵ There were changes made in this proclamation. Inter alia; Areas eligible for incentives were clearly specified, Some areas of investment that were reserved for government were allowed for the participation of private investors (e.g. large-scale hydropower generation above 25 MW for all private investors), Education, health, tourism, engineering and technical consultancy as well as construction contracting below grade 1, were included in the incentive scheme. These and other changes were made.(ibid)

⁴⁶ In this proclamation, domestic investors were redefined to include a foreign national who are Ethiopians by birth. Further, it allowed private investors to invest jointly with the Government in defense industries and telecommunication services. Further incentives upon the approval of the council of Ministers were granted. (ibid)

⁴⁷ In this proclamation, one of the stated purposes was to widen the scope of participation of foreign investors. In addition to these changes were made with regards to Reduction of minimum capital for foreign investors to 100,000 USD for sole investment projects; 60,000 USD for of a foreign investor investing jointly with domestic investors.(ibid)

⁴⁸ Some provisions of the investment proclamation n.769/2012 were amended by the new proclamation. Accordingly, the former investment agency is developed to the status of investment commission and some issues with regard to investment administration organ are modified under art 27. Furthermore, the scope power to issue directive widen and it is allowed to investment commission. Accordingly, investment commission can authorize the granting of new or additional incentives other than what is provided for under the existing regulations. This is significant amendment because it has given independent power for the investment commission. Other than these, some important modifications are made with regard to industrial development zone which also widen the scope of power of the investment commission.

the amendment has its significance to create attractive and favorable condition for investment in Ethiopia.

The overall objective of the investment is put under article 5 of the investment proclamation. Accordingly, “The investment objectives of the Federal Democratic Republic of Ethiopia are designed to improve the living standards of the peoples of Ethiopia through the realization of sustainable economic⁴⁹ and social development”⁵⁰ therefore, from this investment objective one can consider that sustainable economic and social dimension development are being given much emphasis and, ultimately, it is intended to improve the living standards of people of Ethiopia by achieving these two dimensional goal. Furthermore, specific investment objectives⁵¹ are described under the same provision and it mainly focuses on the economic dimensions. However, by critically looking up on these general as well as specific objectives, it seems that sustainable ecological dimension⁵² is missed.

⁴⁹ Accordingly, the economic dimension of sustainable development requires more than just growth in economy. Rather, it is concerned more about the role that economic activities can play in alleviating poverty and inequality. It demands economic activities to operate without affecting the environment and the livelihood of the local community. In addition, the pursuit of economic growth, unchecked by social and environmental considerations, can accelerate, among other things, topsoil losses, the scarcity of fresh water, the deterioration of grassland and deforestation. He added that, Failure to extend the required credit for natural resource conservation in economic and public policies puts economic growth efforts in conflict with natural environment In other words; Sustainability requires change in quality of growth. (taken from lecture note, Ermias Ayalew, Ethiopian investment policy and Law, sustainable development, Jimma university, school of law, postgraduate program, 18th January 2015)

⁵⁰ It constitutes a wide range of issues: poverty eradication, social wellbeing, equity, empowerment and governance and it demands development not to affect human wellbeing. Furthermore, the Copenhagen Declaration on Social Development (1995: par. 20) noted that; “the goals and objectives of social development require continuous efforts to reduce and eliminate major sources of social distress and instability for the family and for society.”(ibid)

⁵¹ Specific investment objectives are clearly put under art.5 of the investment proclamation. They are: “to accelerate the country’s economic development; to exploit and develop the immense natural resources of the country; to develop the domestic market through the growth of production, productivity and services; to increase foreign exchange earnings by encouraging expansion in volume, variety and quality of the country’s export products and services as well as to save foreign exchange through production of import substituting products locally; to encourage balanced development and integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy; to enhance the role of the private sector in the acceleration of the country’s economic development; to enable foreign investment play its role in the country’s economic development; to create ample employment opportunities for Ethiopians and to advance the transfer of technology required for the development of the country.”

⁵² Economical dimension promotes ‘a form of development that is contained within the ecological carrying capacity of the planet, which is socially just and economically inclusive. Moreover, It is concerned not just with

Art 38 is the provision dealing about environmental issues. It states that “any investor shall have the obligation to observe the laws of the country in carrying out his investment activities. In particular, he shall give due regard to environmental protection.” This is very general requirement which imposes an obligation on the investors to respect the laws of the country especially environmental protection. However, whether art.38 do requires the observance of the countries laws or not it is an obligation of the investor and the people of the country at large to respect the laws of the country (despite the existence of the art.38, it is an obligation of everybody to respect the countries laws. The existence of this provision does not result with negative effect with regards to environmental protection. But, it will have paramount importance if in addition to art.38 the proclamation contains at least pillar provisions (like requiring doing EIA to get investment permit) of environmental protection in a clear language like mining law of the country does. Of course here, one may argue that specific environmental provision should not be inserted to investment proclamation. However, considering its high importance, it would be necessary to incorporate such issues.

Among others, art.12, 13, 14, 15 and 16 of the proclamation is necessary to consider. The provisions are reading about investment permit. If one looks at the conditions prescribed in these provisions to get investment permit, it is simply dealing about the application form that are required to give information only in relation to the status of the applicant, like whether the investor is Domestic or Foreigner, whether the investment will be done by business organization or by individual and other similar issues. Consequently, after fulfillment of conditions prescribed under art.12, 13, 14, 15, the appropriate investment organ issues investment permit according to art.16.

In addition, art. 19 of proclamation is necessary to consider. The provision is about suspension or revocation of investment permit granted according to the aforementioned provisions. Sub art.2 is about revocation of investment permit. Accordingly, it reads that; “the appropriate investment organ may revoke an investment permit where it ascertains that:

environmental protection and maintenance of the ecosystem, but with creating harmony between the later and development objectives.(ibid)

- a) *The investor obtained the permit fraudulently or by submitting false information or statements;*
- b) *Incentives granted are misused or illegally transferred to another person;*
- c) *The investor has failed, without good cause, to renew the permit in accordance with Article 17 of this Proclamation;*
- d) *The investor fails to submit progress report of his project for two consecutive periods; or*
- e) *The project cannot commence operation within the period and the Agency believes the project will not be operational.”* Other than these five conditions it is hardly possible to revoke investment permit.

2.1.3.2 Investment regulation

Issuance of regulation is necessary for the effective implementation of a proclaimed law. To this end, different investment regulations are issued by council of minster to support the realization of investment proclamation. Even though, amendments are made by proclamation No.312/2014, currently, regulation No.270/2012 is a countries effective law. The regulation is issued by council of minster and it is crafted in a way to achieve the objectives specified under art 5 of the investment proclamation.

As its name indicated, the regulation is mainly enacted to provide investment incentive for selected investment sectors and has identified area of investment for domestic as well as foreign investors. Accordingly, three major kind of investment incentive is identified. The first one is for those investors who invest in preauthorized sectors like; manufacturing and agricultural sectors. The second one is for those investors who will go to invest in some selected regions and zones like; Gambella, Benshangul/Gumuz regions and South Omo zone. And, the third one is based on product destination. However, incentive scheme is not allowed to those investors who do his/her business in environmentally friendly manner (Particularly, to those investors who go beyond their obligation and give protection to the environment); for instance if an investor uses clean technology despite the fact that the laws do not oblige the investor to use it.

2.1.3.3 Mining⁵³ operation proclamation

Apart from number of population, Ethiopia has been known for large amount of hectares of lands and renewable and non-renewable natural resources. The country is blessed with finest areas for gold mineralization. ‘In addition to gold, Ethiopia is sacred with good deposits of tantalum, platinum, nickel, potash and soda ash. Included in the construction and industrial minerals are marble, granite, limestone, clay, gypsum, gemstone, iron ore, coal, copper, silica, diatomite, bentonite, etc. With regard to fossil energy resources, there are significant opportunities for oil and natural gas in the four major sedimentary basins, namely the Ogaden, the Gambella, the Blue Nile and the Southern Rift Valley.’⁵⁴ Therefore, strong commitment of the government and public is important to protect and effectively use these natural resources (especially non-renewable resource) in order to meet the countries development need. Among the other things, enacting appropriate laws and realizing their implementation is crucial to protect the natural environment.

Following the political change in the country, Private investment in general and specifically in the mineral sector of Ethiopia was opened in 1991. A new market-oriented economic policy was introduced to promote the participation of private capital in mineral prospecting, exploration and development activities, provided by new mining proclamations and regulations.

The mining operation proclamation⁵⁵ is enacted to guarantee the conservation and development of non-renewable natural resources to the socio-economic progress of all Ethiopians. The preamble of the proclamation states that, as minerals are non-renewable natural resources, hence, the Government shall ensure the conservation and development of these resources to the socio-

⁵³ “Mining” means any operation or activity directed at extracting minerals from a mineral deposit on or in the earth and water, any residue deposit or residue stockpile by any method, and any operation incidental thereto, such as storage, treatment, processing (excluding smelting and refining), transportation and disposal; the definition is taken from art. 2(18) of the Mining operation proclamation, NO.678/2010

⁵⁴ About Ethiopia, Embassy of federal democratic republic of Ethiopia, in the Russian federation, 2013, available at, http://www.ethiopiaembassy.ru/en/invest_laws , accessed on May 12, 2015.

⁵⁵ The mining operation proclamation, Proclamation No. 678/2010, Federal *Negarit Gazeta* of The Federal Democratic Republic of Ethiopia, Addis Ababa 4th August, 2010.

economic progress of all Ethiopians and protect the environment for the benefit of present and future generations and ensure ecologically sustainable development of minerals. Therefore, from preamble of the proclamation we can consider that high emphasis is given for environmental protection.

The proclamation has identified different kinds of mining licenses. They can be stated as artisanal mining license,⁵⁶ exploration⁵⁷ license, retention license, reconnaissance⁵⁸ license, large scale mining license,⁵⁹ and small scale mining license.⁶⁰ Each of these licenses has their own criteria's that is set by the proclamation. Any person or business organization shall fulfill those criterions prescribed by the proclamation before asking a license he/she wants is, to be issued by the appropriate organs of government.

In a different way than other investment laws, the mining law has incorporated significant legal regimes with regards to environmental protection. As one writer analyzed, 'The Mining Proclamation has tried to mainstream protection of the environment into the areas of regulation of mining operation rather than leaving the issue entirely to the environmental laws.'⁶¹ If we

⁵⁶ According to the proclamation artisanal mining means a mining operation carried out by individuals or cooperatives which is mostly of manual nature and that does not involve the engagement of employed workers;

⁵⁷ The proclamation defined exploration as 'searching for any mineral by means of photographs, images, geological, geochemical, geophysical and drilling methods which disturbs the surface or subsurface of the earth, including any portion of the earth that is under water, or in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value;

⁵⁸ According to the proclamation "reconnaissance" means any operations carried on in a general search for any mineral;

⁵⁹ Large scale mining means, any mining operation of which the annual runoff- mine ore exceeds the limit stated in sub-article (35) of Article 2, with the exception of precious and semi-precious stones; foot note 52 describes sub-article 35 of article 2 of the proclamation.

⁶⁰ Small scale mining means, any mining operation of which the annual run-off mine ore does not exceed: a) regarding gold, platinum, silver and other precious and semiprecious minerals: (1) 100,000m³ for placer operation; (2) 75,000 tons for primary deposit mining; b) regarding metallic minerals such as iron, lead, copper and nickel: (1) 150,000 tons for open pit mining; (2) 75,000 tons for underground mining operation; c) 120,000 tones for industrial minerals such as kaolin, bentonite, diatomite, dolomite, quartz and coal; d) regarding construction minerals: (1) 80,000 m³ for sand, gravel, pumice, ignimbrite, clay and the like; (2) 10,000m³ for dimension stones such as marble and granite; e) regarding geothermal deposit: (1) 2,000,000m³ for bathing, recreational and medicinal purpose; (2) 25 mega watt or geothermal steam capable of generating equivalent power for industrial and other purposes; f) 14,000 tons for salts extracted from brines;

⁶¹ Fikire Markos Merhnu, Green Growth, Investment, Environment and Sustainable Development in Ethiopia, IUCNAEL EJournal, P.170, available at <http://www.iucnael.org/en/documents/1155-ethiopia/file>, accessed on May 12, 2015.

consider the criteria set, except for reconnaissance license and retention license, the other mining licenses will be granted after EIA has been approved. For example, art.28 (1) (c) of the proclamation states that, in addition to other criteria set in this provision, the licensing authority shall grant an exclusive small scale mining license to an applicant where, environmental impact assessment is approved. Similar conditions are prescribed in the proclamation for large scale mining license ((art.26 (1) (c)), artisanal mining license (even if this does not need EIA, it require for environmental protection) (art.32 (2) (a)), and exploration license ((art. 18(1) (c)).

The other very important provisions are art.34⁶² and art.44 of the proclamation. Suspension or revocation of license is an important tool to shape an investor to go in line with prescribed laws of the country. Art. 44 of the proclamation has provided significant value for environmental protection. As stated in aforementioned discussion, this was a big question that art.19 of the investment proclamation failed to answer. The title of the provision is about suspension and revocation of mineral rights. Under sub-article 1 the power to suspend mineral rights, either partially or fully, is granted to licensing authority. One of the pre-condition to suspend license is if the activity of the licensee is likely to become an imminent danger to the environment. Furthermore, sub-article 2 of the proclamation also has set additional points, in the event of them; the Licensing Authority may revoke any license. Among other things, violation of environmental standards can be the ground for suspension. Accordingly, sub-article 2(e) clearly states that the licensing authority can revoke the license in cases of breach of the approved environmental impact assessment.

The last, but not the least, important points are included under part seven of the proclamation. It deals about EIA, rehabilitation fund and community development. Art. 60 sub-2 of the proclamation require the licensee, except the holder of reconnaissance license, retention license or artisanal mining license to allocate fund in order to cover the costs of rehabilitation of environmental impact. This is an essential provision to guarantee the environment and the concerned community.

⁶² The provision prescribes general and additional obligation of the licensees. Sub-art.1(c) states that, 'a licensee shall have the obligations to conduct mining operations in such a manner as to ensure the health and safety of his agents, employees and other persons, and comply with the applicable laws pertaining to environmental protection.'

2.1.3.4 Proclamation to regulate petroleum operations

Currently, generally in the world and in Ethiopia as well, the consumption of petroleum products such as petrol, diesel and kerosene has been significantly growing. Consumption of lubricants and lubrication oil has also been growing from time to time. For most oil rich countries, the sector has played significant role on providing large number of employment opportunities, solving the problem of foreign currency and ultimately it has taken the lion's share contribution to their current status of economic growth.

In order to regulate the exploitation of petroleum resources of the country, around three decays ago, Petroleum Operations Proclamation No. 295/1986 was enacted by the military government of Ethiopia. Despite of earlier enactment, it is no yet amended or modified. Hence, it is currently working proclamation to regulate 'petroleum operation'⁶³ in the country. The preamble of the proclamation has described the necessity of the proclamation. Accordingly, it has identified three main ends. They are; economic growth and welfare of Ethiopian broad mass, to stimulate modern technology on the sector and accordingly provide a better knowledge of the petroleum potential of the nation, and to develop domestic petroleum infrastructure.

The proclamation did not cover adequate things which are relevant to sustain the countries development. For example, the environmental dimension of development is not sufficiently covered by the proclamation. Of course at time the proclamation was enacted environmental dimensions were not as such known concept. It is in recent time, by which the concept of environmental dimension has got wide acceptance in developing countries. However, there are two provisions incorporated in the proclamation with regard to environment. These are art.9 (11)⁶⁴ and art.14⁶⁵ of it. The proclamation also allowed the Petroleum Agreement may be entered into between the Government and any person. As it is known in contract law, the contract or an agreement made between two parties can be considered as a law, and bind thereof. Therefore,

⁶³ the proclamation defined petroleum operation as 'the operations involving and related to the exploration, development, extraction, Production, field separation, treatment (but excluding refining), storage, transportation up to the point of exportation or entry into a system for domestic consumption, and marketing of Petroleum, excluding refining of Crude Oil, but including the processing of Natural Gas,' Art.2(9).

⁶⁴ Infra note 112

⁶⁵ Infra note 113

important things with regard to environmental protection can be incorporated during the establishment of petroleum production sharing agreement.

Historically, the idea of the state sharing production of oil and gas with companies as part of a commercial enterprise was first developed in Bolivia in the 1950s⁶⁶. Later on, the Production Sharing Contract (PSC) was introduced in Indonesia in 1966 and PSCs are now used broadly to record arrangements for oil and gas exploration and production, particularly in developing countries and LDCs; today, they are used in over 40 countries, including in Africa, Central Asia and South-East Asia.⁶⁷ Even though, it is recent move, the Ethiopian government signed a PSA with Canadian energy company Epsilon energy Ltd for the exploration of petroleum.⁶⁸ And, now Ethiopia has established model petroleum production sharing agreement.

The model has several sections. Among the others; general rights and obligations of contractor, general rights and obligations of government and minister, and other number of issues which are dealing about different topics are included. For example under section III, environmental protection measures are inserted. Generally, this section is reading about general rights and obligations of contractor. Under sub-section (3.7), different obligations are imposed on the shoulder of the contractor with respect to environment protection.

For instance, under 3.7.1, general obligation for the contractor is established. Accordingly, it states that; the contractor shall conduct Petroleum Operations in a safe and proper manner in accordance with generally accepted international petroleum industry practice and shall not cause damage to the general environment. In addition to this general obligation, other several specific

⁶⁶ World bank institute governance for extractive industries program, Guide to executive industries documents, available at <http://www.eisourcebook.org/cms/Jan%202014/Guide%20to%20Petroleum%20Documents.pdf>, accessed on May 13, 2015, p.3

⁶⁷ ibid

⁶⁸ Ross P. Buckley, Debt-for-Development Exchanges: History and New Applications, Cambridge university press, 2011 Available on line at, https://books.google.com.et/books?id=dZf_o3Dm5ecC&pg=PA278&lpg=PA278&dq=overview+of+petroleum+production+sharing++agreement+in+ethiopia.pdf&source=bl&ots=Ftx4n-nVgl&sig=igZL048K9IVNB-bxhP8HzB7aPZk&hl=en&sa=X&ei=Hv5SVcGDNYnwULugLAK&ved=0CFcQ6AEwCQ#v=onepage&q=overview%20of%20petroleum%20production%20sharing%20%20agreement%20in%20ethiopia%2Cpdf&f=false, accessed on May, 13,2015, p.278.

obligations are included. Inter alia; Contractor shall comply with the applicable laws, regulations, and directives relating to the environment, to avoid the damages the Petroleum Operations may cause on the human and natural environment; pay strict attention to the prevention of pollution. Therefore, it can be analyzed that significant environmental protection measures are integrated in the model.

2.2 General overview of environmental laws in Ethiopia

2.2.1 Introduction

As environment has wide scope, defining it may not be an easy task. Caldwell remarked that “environment is a term that everyone understands and no one is able to define”.⁶⁹ However, despite of its ambiguousness, different authors and legal provisions has tried to define it in different points of view. Historically, the term environment was originated from an ancient French word *environner*, meaning to encircle.⁷⁰ Since the definition given by ancient French is very vague, there should be need of other clear meaning.

In legal point of view, different laws such as environmental protection establishment proclamation, environmental pollution control proclamation, environmental impact assessment proclamation, and other laws dealing about environmental issues defined environment in nearly the same fashion. According to EIA proclamation; “Environment” means the totality of all materials whether in their natural state or modified or changed by human; their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.”⁷¹ Therefore, as the definition given for

⁶⁹ Tsega berhane and Merhatbeb Teklemedhn, Environmental Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009, available at <https://chilot.files.wordpress.com/2011/06/environmental-law-teaching-material.pdf>, accessed on May 8, 2015, p.1

⁷⁰ *ibid*

⁷¹ *Supra* note 23, art.2

environment in EIA proclamation is very wide, it can include every things surrounding as an environment including human being.

Environmental protection is pillar for human development and poverty reduction. Environmental agenda is highly related with development of human being. As one writer described, the environmental agenda is not an impediment to human development but it is, in fact, integral to the development process.⁷² Therefore, with the due care of environment it is possible at least to minimize poverty. Poverty reduction and environmental conservation are not opposing goals and that they are, in fact, totally dependent on each other. In other words, investing in sound environmental management is essential for successful, long-term poverty reduction and conversely, environmental goals cannot be achieved without parallel development gains.⁷³ Furthermore, according to Millennium Ecosystem Assessment [MA], human beings can gain four kind of advantage (service) by protecting environment⁷⁴. These are; (1) Provisioning services,⁷⁵ (2) Regulating services,⁷⁶ (3) Cultural services,⁷⁷ and (4) Supporting services.⁷⁸ Hence, the health of environment can be considered as fundamental to lasting economic and social goal achievement of the world and Ethiopia at large.

⁷² Paolo Galizzi, *The Role of the Environment in Poverty Alleviation*, Fordham University Press, New York 2008, available at http://www.rainforest-alliance.org/sites/default/files/publication/pdf/environment_role.pdf, accessed on 20 March 2015, P.3

⁷³ *ibid*

⁷⁴ *Id*, p.12

⁷⁵ They can be considered as food, fresh water, wood, fiber, and fuels. These services comprise the production of basic goods such as food crops and livestock, drinking and irrigation water, fuels, fodder, timber, and fiber such as cotton and wool.

⁷⁶ Such as regulation of climate, floods, disease, and water purification; these services include flood protection and coastal protection supplied by mangroves and reefs, pollination, regulation of water and air quality, the modulation of disease, the absorption of wastes, and the regulation of climate.

⁷⁷ Such as aesthetic, spiritual, and recreational values, these are the nonmaterial benefits people obtain from ecosystems through spiritual enrichment, recreation, and aesthetic experiences.

⁷⁸ Such as photosynthesis, soil formation, and production of atmospheric oxygen; these are the services that are necessary for the production of all other ecosystem services.

2.2.2 Environmental protection policies in Ethiopia

In history, Ethiopia has been known with deep rooted poverty and starvation. Among the other causes, environmental damage may be considered as significant one. Ethiopia's economy and ecological system are weak and may be easily vulnerable to climate change.⁷⁹ Basic Environmental challenges in Ethiopia include climate change, soil degradation, deforestation, loss of biodiversity and ecosystem services, and pollution of land, air and water.⁸⁰ Over the last two decades, the Ethiopian government has put in place a number of policies, strategies and laws that are designed to support sustainable development and the country is set to move towards a greener economy.⁸¹ These policies are put in different policy documents⁸² including FDRE constitution.

2.2.2.1 FDRE Constitution

As constitution is a pillar of all laws of the country; it has incorporated important environmental protection policy frame works. Hence, environmental protection has got important place of recognition. Accordingly, article 43⁸³ of the Constitution incorporated essential environmental protection concepts. In here, sustainable development is being considered as the right of the Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia.

Furthermore, as community participation in every economic activity of the country has significant role in overall development of the country; it is well recognized under the same provision and has given nationals of the country the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.

⁷⁹ Emelie César and Anders Ekbohm, Ethiopia Environmental and Climate Change policy brief, 2013, available at <http://sidaenvironmenthelpdesk.se/wordpress3/wp-content/uploads/2013/05/Ethiopia-Environmental-and-Climate-Change-policy-20130527.pdf>, accessed on 20 March 2015, p.3

⁸⁰ Ibid

⁸¹ ibid

⁸² They can be considered as the Environment Policy of Ethiopia (April 1997), Health Policy (1993), energy policy (1993), Forest Development, and Conservation and Utilization Policy (2007), are to mention some.

⁸³ Supra note 13 art.43

This is the pillar to ensure environmental protection in particular and sustainable development at large. One more essential point is put under sub- art.3 of the same provision. It is known that Ethiopia has concluded different international agreements and relations with different countries in the world; however, this all international agreements, and relations shall be made to protect and ensure Ethiopia's right to sustainable development.

Art. 44⁸⁴ is the other essential provision of the constitution with regards to environmental protection. It has given all people the right to healthy and clean environment. Since healthy and clean environment is vital for the survival of human being, FDRE constitution has guaranteed it. Furthermore, it has guaranteed the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance if displaced or livelihoods have been affected as a result of state programs.

In addition, under FDRE constitution, there are also important provisions that have been dealing about environmental protection and sustainable development. Under the chapter seven of the constitution which is dealing about national policy principles and objectives; economic objectives and environmental objectives are included. Under the parts of economic objectives⁸⁵ essential issues with regard to environmental protection and sustainable development is incorporated. For example, Government shall take measures to prevent and avoid any natural and man-made disasters, and, in the time of disasters, to provide timely assistance to the victims. Therefore, the government has duty to protect and conserve natural resources from different kind of man made losses like deforestation, land degradation, and biodiversity⁸⁶loss (to mention a few) which are the main causes of environmental damage and finally results in death of living things.

Moreover, Government has obligation to promote the participation of the People in the formulation of national development policies and programmes. It also has obligation to support the initiatives of the People in their development endeavors. In here, participation of the people and their decision with regard to investment projects are vital to consider. The provision allows

⁸⁴ Id. Art, 44

⁸⁵ Id. Art .89

⁸⁶ The existence of large number of different kinds of animals and plants which make a balanced environment

the people of the country to decide on the investment projects whether it becomes realized or not. This constitutional power of the people also highly connects with EIA. Before an investment project started investment activities, it is constitutional right of the people to be consulted, and finally decide the fate of the investment activity (either accept or reject).

The other very essential issue with regards to environment is described under the part of environmental objectives of the constitution⁸⁷. Consequently, Government shall make an effort to ensure that all Ethiopians live in a clean and healthy environment. Therefore, it is an obligation of the government to ensure clean and healthy environment for its society. As it is already described in the aforementioned discussion, the People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly. The provision also obliges the government not to participate on the projects in which the design and implementation of programmes and projects of development damage or destroy the environment. Last but not least, the constitution has put an obligation on the Government and citizens of the country to protect the environment.

Therefore, the constitution of FDRE has come up with important environmental protection provision and consequently which opened wide door for environmental protection than before. However, besides the incorporation of environmental issues in the supreme law of the country; effective implementation measures are necessary to realize the goals specified under the constitution. The Constitution in many places underscored consultation and community participation as very important elements of development activities, but these still require subordinate legislation to put effective mechanisms in place and such legislation should oblige government agencies to effectively reach out to the community, handle and respond to their concerns, communicate findings, and provide access to judicial review.⁸⁸

⁸⁷ Id. Art, 92.

⁸⁸ Mlugeta Getu, the Ethiopian environmental regime versus international standards: policy, legal, and institutional frameworks, Haramaya law review volume one, available at <http://www.ajol.info/index.php/hlr/article/download/98570/87835>, accessed on 20 March 2015, p.58

2.2.2.2 Growth and transformation plan

After the lapse of the period of PASDEP⁸⁹ the FDRE government came up with the new strategic plan called GTP. As it is known, GTP had contained ambitious plan with regards to different scopes like economic, social and environmental dimensions. When we look its vision or objective parts it does not include environmental protection. The overall long-term vision of Ethiopia is *“to become a country where democratic rule, good-governance and social justice reigns, upon the involvement and free will of its peoples; and once extricating itself from poverty and becomes a middle-income economy as of 2020-2023.”*⁹⁰

However, the non-inclusion of environmental protection in the GTP’s visions or objectives may not mean that the GTP does not recognize the significance of environmental protection to the attainment of its goals.⁹¹ Having cognizance of the fact that environmental conservation and protection play a significant role in sustainable development, it had become part and parcel of GTP.

Building green economy and continuing implementation of environmental law were among the key strategic directions to be pursued during the plan period.⁹² To succeed with environmental protection and to build green economy, the GTP had emphasized on two issues (adaptation to climate change and mitigation of gree house gases).⁹³ Despite her less contribution on gree house gas emission, Ethiopia has made an effort to minimize it. On top of all, there were attempts during GTP period to formulate and implement policies, strategies, laws, and standards which fostered social and green economy development so as to enhance the welfare of citizen and environment sustainability as the main objective of environment and climate change initiatives of GTP.⁹⁴ Therefore, from these one can consider that, with regards to environmental protection, Ethiopia has made an attempt to formulate policies and made it part of GTP.

⁸⁹ Dejene Girma Janka, the place of environmental protection in the growth and transformation plan of the federal Democratic republic of Ethiopia, Oromia law journal volume 2 no 2, p. 2

⁹⁰ *ibid*

⁹¹ *Id.* p 1

⁹² *Supra* note 43, p. 119-120.

⁹³ *Ibid*

⁹⁴ *ibid*

2.2.2.3 Sectoral Environmental Policy of Ethiopia

Apart from the aforementioned environmental policies, in Ethiopia, there are also sector specific environmental policies. The need to these sectoral environmental policies is multidimensional. Among others, it is mainly based on the right to live in a health and clean environment and to make possible sustainable environmental condition and economic production systems through the acquisition of power by communities to make their own decisions on matters that affect their life and environment.⁹⁵ Accordingly, sectoral environmental policies of Ethiopia are described as:-

- ❖ Policies on Soil Husbandry and Sustainable Agriculture
- ❖ Policies on Forest, Woodland and Tree Resources
- ❖ Policies on Genetic, Species and Ecosystem Biodiversity
- ❖ Policies on Water Resources
- ❖ Policies on Energy Resource
- ❖ Policies on Mineral Resources
- ❖ Policies on Human Settlement, Urban Environment and Environmental Health
- ❖ Policies on Control of Hazardous Materials and Pollution from Industrial Waste
- ❖ Policies on Atmospheric Pollution and Climate Change
- ❖ Policies on Cultural and Natural Heritage

Each of these sectors has their own specific policies. For example, 'Policies on Atmospheric Pollution and Climate Change'⁹⁶ are:-

- To promote a climate monitoring programme as the country is highly sensitive to climatic variability;

⁹⁵Environmental policy of Ethiopia, available at <http://www.mfa.gov.et/docs/ENVIRONMENT%20POLICY%20OF%20ETHIOPIA.pdf>, accessed on May 07, 2015, p.4

⁹⁶ id p.17-18,

- To recognize that even at an insignificant level of contribution to atmospheric greenhouse gases, a firm and visible commitment to the principle of containing climate change is essential and to take the appropriate control measures for a moral position from which to deal with the rest of the world in a struggle to bring about its containment by those countries which produce large quantities of greenhouse gases;
- To recognize that Ethiopia's environmental and long-term economic interests and its energy prospect coincide with the need to minimize atmospheric inputs of greenhouse gases as it has a large potential for harnessing hydro-, geothermal and solar energy, none of which produce pollutant gases in significant amounts and to develop its energy sector accordingly;
- To actively participate in protecting the ozone layer since, as the highlands of Ethiopia already have a thin protective atmosphere and are liable to suffer agricultural losses and adverse health effects from exposure to ultraviolet rays;
- To recognize that the continued use of biomass for energy production makes no net contribution to atmospheric pollution as long as at least equal amounts of biomass are produced annually to compensate this and to maximize the standing biomass in the country through a combination of reforestation, agro forestry, the rehabilitation of degraded areas, a general re-vegetation of the land and the control of free range grazing in the highlands and to seek financial support for this from industrialized countries for offsetting their carbon dioxide emission;

2.2.3 Environmental protection laws in Ethiopia

Throughout the world, a separate enactment of environmental laws is a recent phenomenon in the history of making of laws.⁹⁷ In Ethiopia, there were laws which more or less incorporated issues of environmental protection. The famous *Fetha Nagast* (The Law of Kings) of the thirteenth century had rules which dealt with environmental matters.⁹⁸ However, due to various

⁹⁷ Sue Edwards, *Ethiopian environment review*, Forum for Environment, Addis Ababa, Ethiopia, 2010, p.1, available at, http://www.ffe-ethiopia.org/pdf/Ethiopian_Environment_Review.pdf, accessed on May, 07, 2015.

⁹⁸ *ibid*

reasons, it was not as such significant to consider. Apart from this, especially after the coming in to power of EPRDF government, large amount of environmental protection laws are enacted both at federal and regional level of the government. Some of the current environmental laws are discussed here in below.

2.2.3.1 EIA proclamation

Now, the world is in the era of industrialization. Globalization has catalyzed trade and investment more than before. Different countries in the world have been in competition to create attracting environment for FDI. As a result, fastest economic growths are emerging on developing and LDCs. However, if not adequate environmental protection measures are not taken on time, this economic development can have major impacts on the environment by degrading soils, polluting bodies of water, altering landscapes and threatening biodiversity, in some cases driving species into extinction. In turn, environmental impacts can impose significant economic and social costs on society, especially with regard to human health.⁹⁹ Hence, if properly used, 'EIA can be used as one of the significant tool'¹⁰⁰ to solve these problems.

Proclamation No 9/1995, was enacted to establish EPA. After the establishment of the agency, the 1997 environmental policy laid a foundation for environmental administration in Ethiopia, and consequently this provided for the integration of environment and development at policy, planning and management levels for an improvement of decision-making¹⁰¹. Furthermore, the EPA established an EIA guideline, which was considered as legal basis with the adoption of the EIA Proclamation No. 299 of 2002 by the House of Peoples' Representatives. EIA then became

⁹⁹ Supra note 11.

¹⁰⁰ EIA has multi dimensional importance. For example, it can be used to predict the environmental consequences of a proposed major development project and it can provide a forum for public involvement in the decision-making process. Furthermore, it can be used as methodology for identifying and evaluating in advance any effect – be it positive or negative that results from the implementation of a proposed project or public instrument.(see, an overview of EIA in Ethiopia, gaps and challenge, Mesfin Bayou and Mellese Damite, p.2)

¹⁰¹ Netherlands commission for environmental assessment, available at, <http://www.eia.nl/en/countries/af/ethiopia/eia>, accessed on May, 14, 2015.

a legally obligatory procedure. Later, the EPA was re-established through the EPA proclamation No 295/2002 which gave it a legal mandate in EIA¹⁰². In order to facilitate the effective implementation EIA the draft directive was issued in 2008. Even though, until recently, it does not pass the deliberate process of law making, it has incorporated a list of projects that require EIA. Currently, EPA is developed into the level of Ministry called ministry of Environmental Protection and Forestry.

When we look at on the currently working EIA proclamation (299/2002), it has set obligations and requirements on investors. For example, under art.7 of the proclamation, duties of proponent are described. These include, inter alia; he/she shall do EIA and report to the appropriate government authority, EIA shall be done by competent professionals, and the cost of EIA shall be covered by the proponent. Further obligations and 'liabilities' are set for investor under art.18 of the proclamation. The title of the proclamation is about offences and penalties. Therefore, penalties will be followed if environmental wrongs will be done by the investor.

Consequently, sub-article one of the provision put criminal liability. In here, the sub-provision is recognizing the criminal liabilities prescribed in penal code (the current criminal law) on one hand, and imposing additional penalties on another hand. Sub-article 2 set the civil liability of 50,000 up to 100,000 Ethiopian birr on that investor who make false presentation on EIA study report or who work without obtaining authorization from appropriate organ of government. These are maximum liability and other sub-provisions set a fewer amount of penalty. Sub-art 5 of the provision seems good, but it gives discretionary power to the court. Therefore, whether the penalties prescribed for environmental wrong doings are sufficient or not is one of the big question the writer will going to answer in chapter three of this paper.

2.2.3.2 Environmental Pollution control proclamation.

As we know each and every kind of human activity takes place in the environment. A healthy environment is a precondition of healthy life. Conversely, if this environment is polluted, the fate

¹⁰² ibid

of survival of human being will be endangered. As source of studies indicate, until recent time, in the history of human being, where pollutions are existed, it had primarily been local problem¹⁰³. However, latter on the industrialization of society, the introductions of motorized vehicles, and the explosion of the human population, have caused an exponential growth in the production of goods and services which ultimately resulted with environmental pollution.¹⁰⁴

Despite the large amount contribution of developed countries, Environmental pollution is causing massive damage to the overall world's ecosystem that organisms depend upon the health of this environment to live in. in addition, Air and water pollution can cause death of numerous organisms in given ecosystem, including humans. Therefore, the increasing pollution levels must be controlled at all the time if we want to keep our environment safe and healthy. Without proper pollution control, the environment soon becomes unhealthy and nothing will be able to live in it. Currently, in many developed countries laws have been introduced to regulate different types of pollution and its adverse effects.

Ethiopia, as member of LDCs, has started journey to enact environmental pollution¹⁰⁵ laws so as to prevent pollution. Proclamation No. 300/2002 is a law enacted by HPR to control environmental pollution. The proclamation, in its preamble states that, some socio-economic developments may result with environmental health damage and this may cause negative effect on the countries eco-system. To protect the ecosystem in general and human being specifically are issues which need urgent response. Therefore, these are basic reasons that necessitated HPR to enact environmental pollution control law in the country.

¹⁰³ The Ethiopian herald, Efforts against environmental pollution, Available at, <http://www.ethpress.gov.et/herald/index.php/herald/society/258-efforts-against-environmental-pollution>, accessed on May 15, 2015

¹⁰⁴ *ibid*

¹⁰⁵ Proclamation No.300/2002, in its art.2 (12) defined pollution as, "Pollution" means any condition which is hazardous or potentially hazardous to human health, safety, or welfare or to living things created by altering any physical, radioactive, thermal, chemical, biological or other property of any part of the environment in contravention of any condition, limitation or restriction made under this Proclamation or under any other relevant law." Therefore, the proclamation defined pollution in a wider scope by extending its meaning to other laws of the country.

Art. 10 of the proclamation is dealing about incentive. Accordingly, incentives will be provided for those undertakings which introduce methods that enable prevention or minimization of pollution. Sub-article 2 of the provision also added that, custom duty will be freed on those goods imported for pollution control purpose. Despite its insufficiency, without doubt, this provision can contribute significant importance to achieve the objectives of pollution control. Because, in order to get incentives, investors are motivated to introduce methods, that enable the prevention or minimization of pollution.

Furthermore, part five of the proclamation is important to consider. It is dealing about the offence and penalties. The penalties prescribed under this part of the proclamation ranges from one thousand birr to hundred thousand birr and an imprisonment of minimum one year and maximum ten years.

2.2.3.3 Solid waste management proclamation.

Historically, humans and animals have used the resources of the earth to support life and dispose of wastes. In early times, the disposal of human and other wastes did not pose a significant problem. This is due to the fact that the population was small and the amount of land available for the assimilation of wastes was large.¹⁰⁶ Now a day's world populations become large in number, and as a result the availability of land for absorption of waste significantly decreased.

Different parts of the nature are becoming polluted due to the reluctant usage of solid wastes. Although, nature has the capacity to dilute, disperse, degrade, absorb, or otherwise reduce the impact of unwanted residues in the atmosphere, in the waterways, and on the land, ecological imbalances have occurred where the natural absorptive ability has been exceeded.¹⁰⁷ Therefore, proper management of wastes is not the question of choice; rather it is the issue of survival of human being.

¹⁰⁶Takele Tadesse, lecture notes for environmental and occupational health students, University of Gondar,2004, available at, http://www.cartercenter.org/resources/pdfs/health/ephti/library/lecture_notes/env_occupational_health_students/ln_solid_waste_final.pdf, accessed on 15th May of 2015, p.1

¹⁰⁷ ibid

The problems in relation to solid waste disposal have mainly been seen in rural areas as well as in cities. Due to problems associated with the lack of resources in terms of manpower and particularly finances, in Ethiopia city councils and municipalities have insufficient means to solve the problems of solid waste management.¹⁰⁸ In Ethiopia, it is hardly to say that there is a cost recovery structure in relation to solid waste management, as a result, there is an extremely low level of returns for efforts put into dealing with solid waste. The institutions working on the solid waste management not only lack funds, but their capacity to work in partnership with the local communities is also limited.¹⁰⁹ Among the other efforts the government has done, enactment of law which governs solid waste management is a one to consider.

A proclamation No.513/2007¹¹⁰ is enacted by HPR in order to achieve the objective¹¹¹ described under art.3. The objective of the proclamation is drawn from the preamble of the proclamation. On one hand it has been necessary to promote the community participation so as to prevent the adverse effects of solid waste, and on the other hand to enhance the benefit gain from solid wastes. Communities at lower administrative level have invaluable contribution on the effective management of solid waste. Because, without active involvement of the community and business men, it will be hardly possible for the government organs to achieve the objectives specified under the proclamation.

The proclamation put obligations on different stakeholders, i.e.; government officials, business men, and community. For example, art.10 and art.12 of the proclamation put an obligation on food industries and restaurants, and construction enterprises respectively. Accordingly, restaurants and food industries have an obligation to collect, store, and dispose solid waste in

¹⁰⁸ Supra note 98, p.67

¹⁰⁹ *ibid*

¹¹⁰ Solid waste management proclamation, proclamation No.513/2007, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, Addis Ababa, 12th February, 2007

¹¹¹ According to art.5, "the objective of the proclamation is to enhance at all levels capacities to prevent the possible adverse impact while creating economically and socially beneficial assets out of solid waste" therefore, from this objective we can understand that in addition to managing the solid waste in appropriate place and time, there will have a chance to get further economic benefit. This may be by re-cycle use of the solid waste.

environmentally friendly manner. Furthermore, construction companies, together with urban administrators, have an obligation to arrange appropriate place for waste disposal. Hence, it is put as a pre-condition for issuance of construction permit.

Finally, one point that must not be left unmentioned is the matter concerning penalty in relation to solid waste management. Part five of the proclamation sets important provisions, which reads about civil as well as criminal liabilities. However, the liabilities are prescribed in general manner which require issuance of subordinate laws to implement the proclamation. A specific amount of penalty either in money or in duration of year of imprisonment is not incorporated. But, the proclamation simply refers to the criminal code, so as to punish a person who implements solid waste management that require special permit, without obtaining authorization.

2.2.3.4 The new Criminal code of Ethiopia

The new criminal code of Ethiopia is enacted in order to amend the old penal law of the country. Its amendment was necessitated due to various basic reasons. Among the others; to incorporate those changes made by the constitution and international agreements in which Ethiopia is party, and to address crimes born by advance in technology and the complexity of life¹¹². Apart from these, other important changes were integrated in the code.

The code has contained general and special provisions which are divided in several parts. Provisions dealing about crime against environment wrong doings are placed under title 8 of the code. Art.519 prescribes penalty for environmental pollution. Accordingly, the provision sets the maximum limit of penalty of rigorous imprisonment not exceeding ten years in cases where pollution has resulted in serious consequences on the health or life of persons or on the environment. And the minimum amount of penalty is less than or equal to ten thousand birr. But sub-article three lays down the principle of application of concurrence of crimes.

¹¹² Supra note 24, p. ii,

Another point which must be raised in connection with penalty to environmental wrong doing is an act contrary to EIA. Accordingly, art.521 of the code put a penalty of simple imprisonment not exceeding one year in case where if whoever, without obtaining authorization from the competent authority, implements a project on which an environmental impact assessment is required by law, or makes false statements concerning such assessment. However, the penalty prescribed in EIA proclamation, with regard to the same environmental wrong doing is monetary penalty up to one hundred thousand birr.

The last but not the least, provision to consider is art.520 of the code. The provision prescribes the amount of penalty, in case of mismanagement of hazardous waste and other materials. It states that, whoever fails to manage hazardous wastes or materials in accordance with the relevant laws of the country; or whoever, fails to label hazardous wastes or materials; or whoever, illegally transfers hazardous wastes or materials, is punishable with a fine not exceeding five thousand birr or rigorous imprisonment not exceeding three year or with both as a condition determines.

2.2.3.5 A proclamation No. 803/2013¹¹³

This is an amendment proclamation, which has enacted to define the power and duties of executive organs of Federal Democratic Republic of Ethiopia. Among others, the basic reason to amend proclamation No.619/2010 (the earlier proclamation which defined the power and duties of executive organs of federal government of Ethiopia), and consequently establish the new proclamation No.803/2013, is to incorporate legal provisions which determine the power and duty of environment and forestry.

¹¹³ Supra note 25

Accordingly, art.33 of this amendment proclamation has incorporated several provisions which deal about the powers and duties of the ministry of environment and forestry. To begin with art.33 sub-art.1 (a), Ministry of environment and forestry shall have the power and duty to coordinate measures which are important to achieve environmental objectives which are set under constitution and environmental policies of the country. Furthermore, sub-art.1 (b) of it also gives power to the ministry to establish a system EIA of public and private projects, as well as social and economic development policies, strategies, laws and programmes.

Besides, significant issue is established under art.33 sub-art.1 (e) of the proclamation. It reads that; *“the ministry of environment and forestry have a power and duty to establish a system for the evaluation of the environmental impact assessment of investment projects submitted by their respective proponents by the concerned sectoral licensing organ or the concerned regional organ prior to granting permission for their implementation in accordance with the Environmental Impact Assessment Proclamation.”* Thus, this sub provision has established essential element with regard to environmental protection. It further affirms the issues under EIA. The other essential issue can be gathered from art.33 (1) (n) of the proclamation. It gives power to the ministry of environment and forestry to enter any land or premises to inspect anything and take sample as deemed necessary so as to ascertain compliance with environmental laws of the country.

In addition to these, proclamation (803/2013) has permitted some provisions of proclamation No .295/2002 (a Environmental Protection Organs Establishment Proclamation). Accordingly, from art.3 to article 13 of the Environmental Protection Organs Establishment Proclamation No. 295/2002 are added under sub-art.1 of art.36 of the proclamation No.803/2013.

Under proclamation No. 295/2002, from art.3 to art.13 there are several provisions which has mainly dealt about powers and duties of the prior environmental protection agency (current ministry of environment and forestry. Art.6 sub-art 5 reads that, *“where projects are subject to federal licensing, execution or supervision or where they are likely to entail inter- regional impacts, review environmental impact study reports of such projects and notify its decision to the concerned licensing agency and, as may be appropriate, audit and regulate their implementation*

in accordance with the conditions set out during authorization” this sub-provision has come up with better expression as it gives power to ministry of environment and forest to audit and regulate implementation of projects.

Among others; sub-art. 26 of art.6, has established general provision, which states that, Ministry of environment and forestry shall have the power and duty “*to carry out such other activities as are necessary for the fulfillment of its objectives.*” Since its articulation is in broader sense, it would be vital to analyze this sub provision to get the appropriate intention of it. Above all, it is necessary to look at the objectives of ministry of environment and forestry. Art.5 of the proclamation, proclamation No.295/2002, prescribes that, “*The objective of the ministry is to formulate policies, strategies, laws and standards, which foster social and economic development in a manner that enhance the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of the process of their implementation.*” Therefore, ministry of environment and forestry has the power to carry out such other activities as are necessary for the fulfillment of these objectives. However, whether the provision has unequivocally given the power to ministry of environment and forestry, to compel investors in line with environmental laws of the country will be discussed in the next chapter of this paper.

CHAPTER THREE: ANALYSIS OF INTERACTION BETWEEN INVESTMENT LAWS AND ENVIRONMENTAL LAWS

3.1 Recognition of environmental protection under investment laws.

Some relevant issues with regard to selected investment laws of the country are generally discussed under chapter two of this paper. Now, in this chapter, the researcher is going to make a critical analysis of how environmental interests are accommodated under the selected investment laws of the country. Hence, the adequacy of recognition of environmental protection will be discussed to reveal if there is any gap.

In better way than investment proclamation, various express requirements with regards to environmental protection are incorporated under mining operation proclamation. To begin with the preamble of the proclamation; third paragraph states that, “it is the obligation of the Government to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable development of minerals.” Therefore, even though, the proclamation did not come up with the procedure how and whom to sue the government for its failure to protect the environment, it imposes an obligation on the shoulder of the government to protect the environment for the benefit of future and present generation.

Further important point to figure out is, the eligibility criteria for mining investment permit. Art.11 of the proclamation requires everyone to satisfy requirements set out in the proclamation and other subordinate laws before getting license. Among the others, fulfillment of environmental criteria is considered as basic one. For example, art.18 (1) (c), sets approval of EIA as a criteria to get exploration license. Besides, art.26 (1)) (c) and art.28 (1) (c), requires the approval of EIA for large scale mining license and small scale license respectively. These means, it is hardly possible to get mining license without getting approval of EIA from relevant authority.

Another important area of law that will be discussed is petroleum operation law. The law governing petroleum operation is enacted in 1986, by military government of Ethiopia. Despite of its old establishment, the proclamation is not yet amended. When we look at to the proclamation, there are some provisions which are dealing with regard to environmental protection. For example, art.9 (11)¹¹⁴ and art.14¹¹⁵ of this proclamation are consist environmental issues. However, there is reluctance in the side of the government, to amend the proclamation in order to incorporate some other pillars of environmental protection measures such as doing EIA as a requirement to get investment permit.

¹¹⁴ Among the others, The proclamation requires petroleum agreement to contain requirements in relation to environmental protection

¹¹⁵ The provision deals about Operating standard; accordingly it states that “Contractors shall conduct Petroleum Operations in accordance with generally accepted international Petroleum industry standards and practice and in a manner, which is computable with the conservation of petroleum and other resources and the protection of human life, property and the environment.”

Nonetheless, the government has established model petroleum production sharing agreement in 2011. The model can be used as a law because a contract or an agreement that is made between two or more parties will govern them accordingly. If Ethiopian government make a contract with a company based on the rights and obligations specified under the model, both Ethiopian government and the company will be obliged to fulfill their respective duties.

Apart from some limitations, the model has included important concepts with regard to environmental protection. Environmental and safety measures are inserted in section 3.7 of the model. However, apart from obligations of contractor to protect environment during conducting of petroleum production, no requirement is set with regard to EIA as one criterion to get license or to make a contract. The proclamation to regulate petroleum operation is also silent to this point. But, one important thing we should notice is, as stated here in above, one of the pre-condition to get mining license is doing EIA. However, it seems that, this important environmental protection standard is missed in petroleum operation proclamation as well as model prepared for petroleum production sharing agreement.

With respect to this issue, it would be important to look at directive No. 2/2008 and draft EIA procedural guideline of 2003. It would not be a problem if the directive as well as the EIA procedural guide lines were come up with sufficient and binding requirements of EIA. Under the schedule one of the procedural guideline, there are lists of petroleum projects which are required to pass full EIA. However, the procedural guideline is not binding due to the following reason. As one writer¹¹⁶ described both EIA procedural guideline of 2003 and the 2008 directive are not binding due to non fulfillment of procedural law making process.¹¹⁷

¹¹⁶ *Supra* note 33, p.82

¹¹⁷ *Ibid.* in here, the author (Dejene Gima) added that, the guide lines are not yet approved by council of minster and this means, in legal sense, the Guidelines cannot be used by the concerned organs including FEPA and REAs. In addition to this, even assuming that they were approved, the Guidelines lack force of law (because they are not law) like proclamations or regulations or directives, because, they are organizational rules that can be used as rules of conduct. Hence, proponents may not be forced to obey them because they can avoid dealing with environmental protection organs so long as a law that deals with actions that are subject to EIA is not issued. Nevertheless, if the Guidelines were approved, FEPA or REAs can make them operative by refusing to issue ECC to those proponents

Furthermore, it is interesting to analyze whether investment proclamation has incorporated doing EIA as pre-condition in order to get investment license. Proclamation No.769/2012, is currently working investment proclamation. Even if it is insignificant, the new investment proclamation tried to come up with environmental protection issues when compared to the predecessor investment proclamation (proclamation No.280/2002), which did say nothing about environmental issues.

The new investment proclamation inserted art.30 (4) (d) and art.38; which respectively, reading about one-stop shop service and duty to observe other laws and protection of environment. The statement under art.30 (4)(d) put an obligation on investment commission to facilitate execution of investors requests for approval of environmental impact assessment studies conducted on their investment projects. In here, one thing we should notice is that, the commission work on behalf of the investor to speed up the administrative process. The provision does not compel investors to do EIA. Therefore, apart from speeding up administrative procedures by granting investors one-stop service, there is tiny to do with environmental protection.

In addition to this, art.38 of the proclamation put an obligation on investor to observe the laws of the country in general and give due regard to environmental protection in particular during carrying out his investment activities. The provision put an obligation on investor to observe environmental laws of the country. This is simple reference. In here it is important to raise one question. Is that not the obligation of everybody including investor to observe the law of the country? The answer must be in affirmative. One writer in connection to this provision stated that, “However, important as these provisions appear given their direct reference to the environment, are nonetheless formulated in a weak language, and it is not clear if they in fact add any meaningful obligation related to the environment in the context of investment.”¹¹⁸

seeking ECC from environmental protection organs until they comply with the Guidelines. But, there is also possibility that proponents may not come to environmental protection organs to obtain ECC unless environmental protection organs work closely and cooperatively with licensing bodies to ensure that they are not bypassed and ECC is also used, when required, as a condition to issue investment or business or other operating licenses. Apart from this, the directive is ineffective due to the fact that they have not yet been signed by the Chairperson of the Council (who is the Country’s Prime Minister) whose signature is necessary for the directives to be issued on one hand and they have not been published by *Negarit Gazeta* of the country.

¹¹⁸ Supra note 61

Furthermore, the writer supplemented that, the provision does not add anything because of two reasons; (1), as I have already said, it is the obligation of an investor to respect the laws of the country where he/she operates regardless. Secondly, the way the obligation is formulated to investor ('give due regard to environmental protection') is constructed in a weak manner and it does not explicitly state that an investor must respect the environmental laws of the country.¹¹⁹ Therefore, for stronger reason, the aforementioned provisions of investment proclamation dealing about environmental issues hardly add significant value on environmental protection.

Since investment law is more of economic, it is not an obligation to establish specific environmental protection laws. Even though, there are myriad of environmental laws in the country which specifically articulated to protect environment, it seems appropriate if investment proclamation put in clear language at least doing EIA as one criterion to get investment license. Because, incorporating the issue of doing EIA in investment proclamation as one of the criteria to get investment license do not restrict investment law to achieve its objective, neither it make investment inefficient, rather it highly foster sustainable development.

Moreover, it could be important to analyze whether investment laws of the country has incorporated other environmental issues apart from doing EIA as a criteria to get license. To begin with mining proclamation; it lays down environmental wrong doings as a ground to suspend or revoke license. Accordingly, art.44 (2) (e) states that, breach of approved EIA, and safety and health standard is one of the grounds to suspend or revoke mineral rights. Further ground of suspension or revocation is seen under art.44 (2) (f). Accordingly, the licensing authority can suspend or revoke mining license or right, if the licensee has submitted false or fraudulent information in relation with any matter required to be submitted under this Proclamation, regulations or directives. For example, if a licensee hides the real negative impact of the project on the environment and fraudulently took the licensee from the concerned authority, this can be the ground to suspend or revoke mining permit.

¹¹⁹ *ibid*

The further interesting point is incorporated under art.11 (4). It states that, “licensee whose license is revoked due to fraudulent misrepresentation or the presentation of a false statement may not be granted another license for five years starting from the date of revocation of the previous license.” This is an appropriate remedy to shape the licensee to go in line with environment friendly activity. Since EIA and other relevant issues with regard to environmental protection are well incorporated in the proclamation, fraudulent misrepresentations will bar the chance of getting another license. Therefore, it can be concluded that mining operation proclamation, proclamation No.678/2010, with regard to mining sector, has come up with more opportunities to improve and strengthen the system of EIA in Ethiopia.

Conversely to the mining proclamation, there is lack of enthusiasm in sides of other investment laws of the country. For example, art.19 of the investment proclamation deals about suspension or revocation of investment permit. Sub-art.1 states that, “*Where an investor violates the provisions of this Proclamation or regulations or directives issued to implement this Proclamation, the appropriate investment organ may suspend the investment permit until the investor takes due corrective measures.*” This sub- provision is all about suspension of investment license. The issue with regard to revocation is described under sub-art.2 of the same provision. It states that, the appropriate investment organ may revoke an investment permit where it discovered that; inter alia, “*the investor obtained the permit fraudulently or by submitting false information or statements.....*” critical analysis should also be necessary to identify whether Environmental concerns are incorporated in these sub-provisions or not.

There are various reasons, to argue that aforementioned provision did not establish the environmental wrong doing as a condition to suspend or revoke investment permit. First, investment proclamation, proclamation No.769/2012 is enacted after enactment of mining proclamation, proclamation No. 678/2010. Despite of its earlier enactment, the mining proclamation has unequivocally incorporated huge amount of significant issues with regard to environmental protection including suspension and revocation of license in case of environmental wrongs are done. However, the law maker intentionally skipped to integrate environmental issues in a clear language as it is put in mining proclamation. Second, the provision under sub-article 2 of art.19 specifically put exhaustive list which are grounds for

revocation of investment license. In here, if it were an intention of law maker to incorporate environmental concern, it would be very easy to insert a single paragraph in clear word which is dealing about environment (as it is incorporated in mining proclamation). Third, Even if one argue to incorporate environmental issues in these provisions by applying extended interpretation principle of law, the word “.....may.....” which is seen in the provision puts a discretionary power on investment commission. Fourth, even one argues that the sub-provision allowed investment commission to revoke the investment permit; investor has the right to get investment permit after lapse of one year. But, as stated here in above, the mining law ban investment permit until lapse of five year. This has good deterrence effect for other investors to respect environmental laws of the country. Therefore, on one or another hand, it would be difficult to conclude that environmental wrong doings are among the grounds to suspend or revoke investment permit.

The other investment law of the country to investigate is petroleum operation proclamation, proclamation No.295/1986 and model petroleum production sharing agreement. As it is not expected much from 1980's law, the proclamation do not say sufficient thing as to environmental concern. However, there are some provisions which are incorporated in the proclamation with regard to environmental concern. Apart from this, the model has tried to insert environmental issues as a ground to terminate a contract. This can be inferred from the cumulative reading of 2.5.2(b) and 3.7. Section 2.5.2(b) put general obligation on a contractor. It states that; *“The Minister may terminate this Agreement by giving the Contractor prior written notice for a period specified in Section 2.5.3, if any of the following termination events shall occur: (b) If the Contractor fails to comply with any other material obligation that it has, assumed under this Agreement;”* section 3.7 about environmental standard hence it is a duty of contractor to comply with it unless the minster can terminate the contract.

In addition to these, it is also important to notice how friendly our investment laws are to the environment, with regard to incentive schemes for those investors who environmentally friendly investing. To start with mining operation proclamation; there is no incentives specifically provided for those investors whose invest environmentally friendly. Art.73 of the proclamation

put the chance of exemption from custom duties and taxes. Five grounds¹²⁰ are identified in order to get custom duty free tax incentive. Apart from these, there is no ground specified in the proclamation to provide incentive for environmentally friendly investors.

The other important investment law of the country which needs to be analyzed is investment regulation, regulation No.720/2012. The regulation is basically enacted to achieve the objectives¹²¹ specified under art.5 of investment proclamation (proclamation No. 769/2012). Hence, it has come up with several kinds of investment incentives, which is provided for identified investors. Three basic criteria are pinpointed to provide incentive for investors. These are; 1/ based on the sector¹²² of investment 2/ based on the place¹²³ of investment and 3/ based on product destination.¹²⁴

Now, it is necessary to scrutinize incentive schedule of the regulation to analyze if there are incentive schemes for investors other than mentioned here in above, especially for those investors who protect environment responsibly and give due care of it in general, and for those investors who protect environment further than their obligation. The schedule identified different 15 main economic and social sectors. And, other several sub- sections. Minimum amount of incentive is one year income tax exemption, provided for economic sector like manufacture of

¹²⁰ Art.73 of the proclamation states the ground for exemption from custom duties and taxes. these are; /1/ any consumables, equipment, machinery and vehicles that any holder of an exploration license or his contractor may import into Ethiopia and required for its operations in accordance with the approved work program shall be exempted from customs duties and taxes. /2/ any equipment, machinery and vehicles that any holder of a small scale or large scale mining license or his contractor may import into Ethiopia and required to start the mining operation in accordance with the approved work program shall be exempted from customs duties and taxes. 3/ the holder of a small scale or large scale mining license may import free of customs duties consumables required to start and sustain commercial production for the first three months. / 4/ The holder of a small scale or large scale mining license who wishes to embark on a major mine production expansion shall have the right to import free of customs duties and taxes equipment and machinery needed for the expansion provided that the Licensing Authority has approved the expansion program. /5/ The holder of artisanal mining license, small scale mining license or large scale mining license shall be entitled to export free of customs duties and taxes minerals produced according to the license.

¹²¹ Supra note 51

¹²² There are selected sector of investment like, manufacturing and agriculture which have more economic importance for the countries development.

¹²³ The regulation under art.5 (2) put the place of investment, which are identified to give income tax deduction. For example, an investor who is going to establish new enterprise in Benshangule/Gumuz, in state of Gambella, South Omo zone, and other places identified in the provision are entitled to an income tax deduction of 30%.

¹²⁴ Art.7 of the regulation provided additional income tax exemption for those investors who export or supply at least 60% of product or service are exempted from two year income tax.

alcoholic beverages and maximum amount of incentive is 9 years income tax incentive, which is provided for forestry. There are also some sectors like printing industry which are not eligible for income tax exemption.

In here, we can raise two important questions. (1), is it an obligation of investment laws or environmental laws to stipulate incentive scheme for environmentally friendly investors? (2), as we know, respecting environmental laws are duty of every one. So, should someone be given incentive for discharging his obligation or for someone who protect environment by going beyond their duty? Getting solution to these questions is vital to strengthen the necessity of incentive for such investors. Accordingly, with regards to the first question, even though it would be main obligation of environmental laws to provide incentive scheme, it is also important if investment laws of the country provide incentive for those investors. Therefore, it would be an obligation of both laws or at least incentive scheme should be inserted in one of the laws of the country.

With regard to the second question, even though it is an obligation of every one including investors to respect countries environmental laws, it is advantageous if there are incentive mechanism to those investors who respect the laws and work environmentally friendly manner. In addition to its advantage to environmental protection, providing incentive for environmentally friendly investors will enhance good environment for attraction of FDI. For example, an investor who is investing in Kenya or other country, in which incentive scheme for such behavior is not provided, will prefer countries which provide incentive for such conduct.

Apart from these, incentive scheme should mainly be provided for those investors who go beyond their duty to protect environment. For example, if investors use solar energy sources, or use wastes in a recycling manner though using it is not investor's legal obligation and consequently the technology foster environmental protection, it is logical to guarantee incentive for such activity. Of course, while providing incentive there is a loss of economic benefit from the countries income. However, protecting environment will endow with better benefit than the loss of income due to tax or other incentives.

Despite of the fact that providing incentive for those investors highly ensure environmental protection and caring environment has multidimensional importance for the countries sustainable economic as well as social development and it can be used as a means to attract FDI, the investment laws as well as environmental laws of the country failed to incorporate sufficient incentive with regard to environmental issue. Investors, who are investing environmentally friendly in general and those investors who protect environment going beyond their duty are not eligible for different sort of incentives.

In here, it is very interesting to include the interview which is made with expert¹²⁵ of Federal investment commission. Accordingly, the expert stated that, it is necessary to incorporate the incentive scheme in the investment regulation so as to encourage those investors who are sensitive for environmental protection. He also added that, investors, such as who use renewable energy sources, solar energy sources, and use wastes in a recycling manner should not go bare handed without getting incentive for their good work. Therefore it may be safely argued that, granting incentive for those investors who protect environment responsibly does not result with negative impact on investment promotion; rather it would be advisable, if law makers of the country insert the incentive scheme either in the investment regulation or environmental laws, to encourage environmentally friendly investors.

Additionally, it will be significant if one analyzes the countries investment laws with regard to availability of requirements for investors to use clean technology. First of all, it would be important to explore the literal meaning of “clean technology.” Accordingly, ‘Clean technology (clean tech) is a general term used to describe products, processes or services that reduce waste and require as few non-renewable resources as possible.’¹²⁶ Furthermore, The, defines it as: ‘A broad base of processes, practices and tools, in any industry that supports a sustainable business

¹²⁵ Mr.Habtamu Mamo, expert on investment policy study, federal investment commission, Addis Ababa, 4th may of 2015.

¹²⁶ Clean technology (clean tech), Part of the Business terms glossary, Available at, <http://whatis.techtarget.com/definition/clean-technology-clean-tech>, accessed on 19th May, 2015

approach, including but not limited to: pollution control, resource reduction and management, end of life strategy, waste reduction, energy efficiency, carbon mitigation and profitability.¹²⁷

Further important definitions are given by OECD. Accordingly, cleaner technology is “Technologies that extract and use natural resources as efficiently as possible in all stages of their lives; that generate products with reduced or no potentially harmful components; that minimize releases to air, water and soil during fabrication and use of the product; and that produce durable products which can be recovered or recycled as far as possible; output is achieved with as little energy input as is possible”.¹²⁸ There is also other definition that is identified by European commission.¹²⁹

Hoping that readers have got good understanding about the meaning of clean technology and its importance, now it would be essential to scrutinize if Ethiopian investment laws have come up with this significant concept. Unfortunately, the requirement of use of clean technology is not clearly incorporated under Ethiopian investment law. But, it should not be understood in way that, the researcher has only been appreciating environmental protection, and neglecting importance of investment for a countries development and change. However, attempts have been made to balance mutual benefit, since both are equally important issues for sustained development.

Having this in mind as a brainstorming point, let raise two important questions. Firstly, did the objectives of investment were missed if at least incentive schemes were inserted in investment laws for those investors who will use clean technology? Secondly, didn't environmental protection were strengthened if at least incentive scheme are incorporated in investment laws for those investors who will use clean technology? With regard to the first question, the answer would be in negative. Because, investment objective will not be lost due to provision of incentive

¹²⁷ Ibid

¹²⁸ Markus Knigge, Nicole Kranz, Anneke Klasing, and Benjamin Görlach, Job Creation Potential of Clean Technologies, Ecologic - Institute for International and European Environmental Policy, Germany, 2004, available at, <http://www.ieep.eu/assets/201/jobcreationcleantechnology.pdf>, accessed on 20th May of 2015 P.3

¹²⁹ European commission defined it as; “End-of-pipe solutions do not usually result in efficiency or productivity gains, therefore representing a pure cost to the firms. Cleaner technology on the other hand, improves process efficiency. Furthermore, cleaner technology usually reduces polluting emissions to all media instead of shunting them from one to the other.”(ibid)

for those investors who use clean technology. Rather, as one writer revealed, promoting clean technology stimulates innovation on a broad scale, which is likely to result in economic growth and job creation as well.¹³⁰ With regard to second question, the answer must be in positive. It has great importance to environmental protection since clean technology promotes using primary energy and raw materials more efficiently, methodically recycling products and waste, and other related concepts.

The last, but not the least, important issue to be discussed, is whether our investment laws oblige cooperation to be made between organ of environmental protection and investment commission. To achieve the expected objective of sustainable economic, social as well as environmental development, it is highly imperative to work in cooperation. And, the requirement of this institutional cooperation should be supported by investment law. Unless, the necessity to cooperate is inserted as an obligation in to the investment law, it is doubtfully to expect that both institutions are working in collaboration.

The current investment proclamation and regulation of the country has chosen silent to deal about this important issue. The only provision in the investment proclamation that deals about cooperation is art.20. However, it rather deals about the cooperation of investor and investment organ. Moreover, other investment laws of the country also prefer to keep silent with regard to this issue. . However, art.21 is one of the important provision under EIA proclamation, proclamation No. 299/2002. It put duty on any person to cooperate in the implementation of EIA proclamation. But, the provision seems very general, and due to this reason practical link is not created between investment commission and ministry of Environmental protection and Forestry. Smooth relationship will be created if there is particular provision which require cooperation between these two organs of government.

According to Mr, Habatmu Mamo, “Currently, there has been poor relationship between federal investment commission and environmental protection organ or (ministry of environmental protection and forestry).”¹³¹ He added also that, we have arranged bureau for the environmental

¹³⁰ Supra note 128, p.1

¹³¹ Supra note 125,

protection experts and requested them to come to our office so as to work jointly. However, they have not yet come to the office to work together with us. Therefore, there is high reluctance in side of environmental protection organ to make collaboration with investment commission in matters connected to environment.

Conversely, ministry of environmental protection and forestry also claim on federal investment commission. Mr. Tesfaye Ayele,¹³² stated that, we need cooperation and it can be used as a tool to succeed environmental objectives. He disclosed that, despite of its importance, there has been poor cooperation between the two institutions (ministry of environmental protection and forestry, and federal investment commission). Furthermore, he stated that; currently, Investment commission requested us to go to their office and work together. However, it is not logical to go to their office; rather they must come to our office and work together with us.

In addition, I asked mr. Tesfaye Ayele¹³³ that, what do you think is the solution to create strong cooperation between the two organs of government. Accordingly, He responded to me that; apart from other solutions, and in addition to art. 21 of EIA proclamation, proclamation No. 299/300, there should be specific legal requirements in both investment and environmental laws that compel the two institutions to cooperate and work together. Not only that, directives and manuals should be enacted to make cooperation more effective.

Therefore, from these interviews, we can easily conclude that, there has been poor collaboration between the two institutions. Hence, it is responsibility of law maker to enact laws that not only require cooperation but also compel them to work together.

3.2 Environmental laws and investment in Ethiopia

Currently, excluding oil and gas exporting country, Ethiopia is one of the world's fastest growing countries. The country has greatest ambition to eradicate poverty by further booming up the

¹³² Tesfaye Ayele, expert on implementation, supervision and evaluation of law, Ministry of environmental protection and forestry, Addis Ababa, 4th May of 2015.

¹³³ *ibid*

current economic growth. To achieve these goals, the country has opened wide door for private investors to invest in different economic as well as social sectors. Domestic as well as foreign investors have been doing their investment in large commercial farms, in construction of roads including railways, power generating (including dam construction), and on other mega projects. For example, as it is easily understandable, Ethiopia's decision to construct the Grand Ethiopian Renaissance Dam, which is expected to produce about 6000 MW of electric power, is a manifestation of how desperate the country is to bring about (economic) development.¹³⁴ Ethiopia, being as a one of the world's poorest country, the commitment and move she has done to this significant economic growth can be considered as necessary measure.

However, these alone can't be the solution to eradicate poverty from the country and ultimately to end up with overall development. There is one important pillar that need to be considered; which is environmental concern. To achieve the goal of environmental protection is, as equally important as bringing economic development. Hence, both economic growth and environmental protection concerns are the pillars for a countries sustainable development. For example, investors who are investing in large scale commercial farm, if uses a type of chemical which currently increase the productivity and increase economic growth, however, after lapse of time, the chemical may end-up with environmental damage and destructions. Therefore, it would be unquestionable to protect environment, still to keep sustainable economic growth up.

Therefore, to protect, or not to protect the environment is a question of life and death. There are different mechanisms to protect the environment. Among the others, enactments of sufficient environmental protection laws and inserting appropriate penalty to punish environmental wrong doers are vital to mention. Ethiopia has enacted myriad of environmental laws. And, which shows the motive of the country to protect the environment. However, still there are gaps that need to be revisited by the law maker. Therefore, this section is devoted to explore the legal gaps if any, in the chosen environmental laws of the country.

¹³⁴ Supra note 30,p.134

In most of cases, environmental damages cannot be substituted by monetary values.¹³⁵ For example, if micro-bacteria will die or human lives will pass away due to environmental damage, we cannot substitute them by monetary value. He also added that, in Ethiopia there is no appropriate environmental economics model to calculate the value of consequence of environmental damage.¹³⁶ Notwithstanding these facts, even the existing penalties which are set under environmental laws of the country to punish environmental wrong doers are inappropriate in the current market value.¹³⁷

When EWDs occur, three possible remedies will come into picture¹³⁸. These are civil remedies¹³⁹, criminal remedies¹⁴⁰, and administrative remedies¹⁴¹. Despite of their inappropriateness Ethiopian environmental laws incorporated these remedies. Furthermore, even though Ethiopia's environmental laws seem adequate with regard to the recognition of different administrative remedies that can be used when EWDs occur, they have failed to set up a provision which mandate environmental protection organs to take some important administrative measures by themselves whenever necessary or imposing duties on other bodies to take such measures when requested by environmental protection organs.¹⁴²

Almost all of the environmental laws of the country have tried to incorporate penalties for EWDs. To begin with EIA proclamation, proclamation No.299/2002, under art.18, the maximum¹⁴³ as well as minimum¹⁴⁴ penalties prescribed are, 100,000 Ethiopian birr and 5000

¹³⁵ Supra note 125.

¹³⁶ *ibid*

¹³⁷ *ibid*

¹³⁸ Supra note, 29

¹³⁹ Such as compensation, which refers to financial remedy that aims at granting a plaintiff monetary relief for the harm he has sustained with a view to restoring him to the position he was in prior to the occurrence of the harm. Injunction is other an extremely effective remedy because it leads to the prevention of imminent EWDs from happening. Restitution and remediation are also other civil remedies.(*ibid*)

¹⁴⁰ the main criminal penalties that can be used are fine and jail even if other criminal sanctions such as community service can be applied.(*ibid*)

¹⁴¹ such as specific performance orders, restoration orders, conservation orders, and compliance orders to bring violators of environmental regulations into compliance with them.(*ibid*)

¹⁴² *Id*, p.21

¹⁴³ The maximum penalty is set in cases where, any person commences the investment activities without obtaining authorization or brings false information with regard to EIA study report. see, art.18(1)

¹⁴⁴ In this proclamation minimum penalty is set for managers of the legal person when they failed to exercise their responsibilities in due diligence.

Ethiopian birr consecutively. Environmental pollution control proclamation¹⁴⁵ also put remedies for EWDs. The provision dealing about it starts in art.12 and ends at art.17. In each of these provisions, no more than 100,000 birr penalty is set; being the lower level of penalty is 1000 birr in some cases. And, criminal penalty of maximum 10 year and minimum 1 year for natural persons, depending on the circumstances specified in the provisions.

In solid waste management proclamation¹⁴⁶, the amount of penalty for EWDs is set under art.16 and art.17. Accordingly, the provision refers to the relevant provisions of criminal code of Ethiopia. Hence, the criminal code¹⁴⁷ sets the amount of penalty of a fine not exceeding five thousand Birr, or rigorous imprisonment not exceeding three years, or with both. In addition to this, the code has incorporated penalties with regard to EWDs. In here maximum penalty in cases of environmental pollution is rigorous imprisonment of ten years. However, it is only one year simple imprisonment in cases where, whoever, without obtaining authorization from the competent authority, implements a project on an EIA is required by law, or makes false statements concerning such assessment.¹⁴⁸

Most of the penalties included in the countries environmental laws for EWDs, are not adequate in current market value. Currently, the value of money (birr) is decreasing from day to day, and conversely, the value of dollar is increasing. Accordingly, one dollar amounts to more than twenty Ethiopian birr. However, at the time, these environmental laws were enacted, the value of birr were not insignificant. Most of the environmental laws discussed here in above (such EIA proclamation, pollution control proclamation, and provisions of the new criminal code of Ethiopia dealing about environment WDGs) were enacted between 2002 and 2004. At the time, one dollar was exchanged with less than 7 Ethiopian birr. And, currently, the value of birr dropped off around three times, when compared with the current value of the USA dollar.

¹⁴⁵ Supra note, 105

¹⁴⁶ Supra note, 110

¹⁴⁷ Supra note, 24

¹⁴⁸ Id.p307

The criminal penalties which are set in current environmental laws are, also not adequate in some circumstances. For example, the penalty which is set in the art.520 of the new criminal code, with regard to mismanagement of hazardous waste and other materials is not more than three years rigorous imprisonment. In here, the hazardous waste due to mismanagement may cause serious harm either in the life of human being or other environment. Hence, the remedies set are inadequate and cannot compensate the damage.

The other area of discussion should be the mandate of ministry of environmental protection and forestry. Accordingly, it is important to analyze if ministry of environmental protection and forestry is mandated to compel investors to respect environmental laws. As it is discussed in chapter two of this paper, among other powers; proclamation No. 295/2002, under its art.6 sub-art.26 has given broader power to ministry of environment and forestry. It allowed ministry of environment and forestry to carry out such other activities, as are essential to for the fulfillment of objectives specified under art 5 of the proclamation (proclamation No.295/2002).

In here, it is important to analyze whether this provision allowed ministry of environment and forestry to compel investors to respect environmental laws of the country. For example, does this provision guarantee the power to the ministry to revoke investment permit if investor failed to comply environmental laws of the country? do the provision has clearly given power to ministry so as to compel and take appropriate measure if investment commission give investment permit without requiring investors to come up with EIA? These and other similar issues should get solution in order to know clear mandates of the ministry.

Of course, the provision is very broad and if interpreted liberally, it can include each and every legal measure that can be taken by the ministry so as to achieve its objective specified under art.5 of the proclamation No.295/2002. But, sometimes, its broad articulation makes the provision vague. And as a result, Ministry of environment and forestry has not been considering this provision as it has given power to shape investors in line with environmental laws of the country.

In here it is important to insert the interview made with Tesfaye Ayele¹⁴⁹ (Expert on ministry of environment and forestry). He asserted that, of course the proclamation No.803/2013 has given various powers to ministry of environment and forestry. But, despite its importance, the proclamation in some of cases established vague articulation. For example, art. 6 (26) of proclamation (295/2002) is a very broad provision. In this sub-provision, the phrase.....other activities as are necessary.... is unclear particularly in practical application. Therefore, the proclamation should insert the power of ministry in clear language so as to compel investors to respect countries environmental laws.

On other hand, it could be possible to argue that, the proclamation has given sufficient authority. Because, the phraseOther activities as are necessary....is very broad, and as a result to accomplish the objectives of ministry specified under art.5 of the proclamation (proclamation No.295/2002), the ministry can revoke investment license if an investor commit environmental damage, or they can do appropriate measures to compel investors to go in line with environmental laws of the country. But, to avoid ambiguity, it would very important if the law maker clearly establish the mandate of ministry of environment and forestry, particularly to revoke investment license in cases where environmental damages are happen, or oblige investment commission not to give investment permit in the absence EIA report on those investment projects where, the law require them to come up with EIA before they began investment activity.

3.3 Area of incompatibility

There are various requirements environmental laws oblige investors to fulfill, before investment activities begin. Art. 3(1) of EIA states that, investors cannot commence implementation of investment activities without getting authorization from appropriate federal or regional environmental authorities. Therefore, it is an obligation of the investor or proponents to do

¹⁴⁹ Supra note 132

IEA¹⁵⁰ and later on to bring environmental clearance certificate (ECC). In addition to these, a proponent of an investment has an obligation to revise or redo the EIA, if an unforeseen fact of serious implication is realized after the submission of an environmental impact study report.¹⁵¹

Apart from these, the proclamation also sets penalty on those investors who began investment activity without doing EIA. It states that, “Any person who, without obtaining authorization from the Authority or the relevant regional environmental agency, or makes false presentations in an environmental impact assessment study report commits an offence and shall be liable to a fine of not less than fifty thousand birr and not more than one hundred thousand Birr”¹⁵². Moreover, the provision also put an obligation on the licensing agency, not to issue an investment permit or a trade or an operating license for any project, and to ensure that the Authority or the relevant regional environmental agency has authorized its implementation before granting an investment permit.¹⁵³

Solid waste management proclamation obliges any person to obtain permit/license/ from concerned urban administration prior to his engagement in the collection, transportation, use, or disposal of solid waste.¹⁵⁴ It is also obligation of the urban administration to give license for those investors who would like to engage in solid waste management activities. Related issues are seen under pollution control proclamation. Accordingly, it states that, ‘the generation, keeping, storage, transportation, treatment or disposal of any hazardous waste without a permit from the Authority or the relevant regional environmental agency is prohibited.’¹⁵⁵ Therefore, unless license is granted by appropriate organ of government, it is hardly possible to begin investment, including solid waste management activities.

¹⁵⁰ See Art.7 (1) of EIA, proclamation No.299/2002, which states that “A proponent shall undertake an environmental impact assessment, identify the likely adverse impacts of his project, incorporated the means of their prevention or containment, and submit to the Authority or the relevant regional environmental agency the environmental impact study report together with the documents determined as necessary by the Authority or the relevant regional environmental agency.”

¹⁵¹ Id. Art.11(1)

¹⁵² Id.art.18(2)

¹⁵³ Id. art.3(3)

¹⁵⁴ See art. 4(2) of solid waste management proclamation, proclamation No.513/2007

¹⁵⁵ See art.4(1) of pollution control proclamation, proclamation No.300/2002

On the other hand, part two of investment proclamation, proclamation No.769/2012, talks about investment permit. Art.16 of the proclamation is about issuance of investment permit or license. Consequently, investment license will be granted to the investor after fulfillment of conditions prescribed in article 13¹⁵⁶, article 14¹⁵⁷, or art 15¹⁵⁸ of the proclamation. In addition, the appropriate investment organ before giving the permit, examine the intended investment activity in lights of the proclamation, regulation and directives of investment. The application form are required to give information in relation to the status of the applicant like whether the investor is Domestic or Foreigner, whether the investment will be done by business organization or by individual and information about their personal identity. Apart from these, the investment application form does not clearly oblige presentation of an EIA or any information related to the environmental impact of the intended investment project.

By critically looking the aforementioned discussions we can identify that there is incompatibility/conflict/ between investment proclamation and environmental laws. Because, on one hand the environmental laws of the country require doing EIA before commencement of any investment activity and must get authorization from concerned federal as well as environmental organ. On the other hand, investment proclamation grant investment permit only after fulfillment of criteria set in art.13, art.14, or art.15, without taking in to consideration doing EIA as criterion to get investment license. Therefore, it is essential to reconcile these two laws. We cannot reconcile them even by using rule of interpretation. Therefore, the appropriate remedy to reconcile them can be amendment. Accordingly, the law maker should insert the requirement of doing EIA as a criterion in investment proclamation so as to get investment license.

¹⁵⁶ The provision is about application for investment permit by a domestic investor. It states that; An application for investment permit by a domestic investor shall be made in a form designed for such purpose and submitted to the appropriate investment organ together with the following documents in one copy: inter alia; where the application is signed by an agent, a photocopy of his power of attorney; where the investment is to be made by an individual person, a photocopy of his identity card or a photocopy of the identity card evidencing his domestic investor status and his recent two passport size photographs; and other similar conditions, not including environmental issues as a criteria, are included.

¹⁵⁷ The provision is about Application for Investment Permit by a Foreign Investor.

¹⁵⁸ It is about Application requirements for Investment Permit for Expansion or Upgrading.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

Promoting Investment activities in a country has a paramount importance on the overall economic growth of the country. On the other hand, it may also end up with negative impact on the countries sustainable development if it is not well administered. Therefore making a balance between investment promotion vis-à-vis environmental protections is a critical issue to consider. In this paper an attempt has been done to show the place of Ethiopia's investment law with regard to environmental law and criteria that are set under Ethiopian environmental laws with regard to investment activities. And, the necessity and importance of protecting environment even to sustain economic growth are discussed.

In history, attempts were made to establish both environmental protection laws and investment laws. During the regime of the H/selassie, market economy was started to modernize the country and consequently to promote private investments. However, economic ideology was changed due to political change made by the military government. Market liberalization and privatization was substituted by command economic system and as a result, the doors for private investment were narrowed. But, later on in 1991, the military rule was overthrown by the current government. Following this change, the market again economy has been changed from command economic system to liberal market. Hence, in 1992 investment proclamation was enacted to promote private investment and open the door for FDI. In addition to these, the constitution was enacted in 1995, and consequently it has put guarantee to private property and used as corner stone of free market economy.

Apart from these, due to the high motive, the government has to attract investment (especially, FDI); investment proclamations were amended more than six times within two decays. Investment regulations are enacted to provide incentive for domestic as well as foreign investors. Furthermore, institutional arrangements were made (Federal investment agency is developed to

investment commission). Currently, it seems that, the government is turning every stone to promote investment by creating smooth environment for FDI and domestic investors and ultimately to bring about development.

In other hand, there had been some attempts made to protect environment during the regime king. Different environmental protection laws such as; forest laws (proclamation no. 225 of 1965 and wild life laws are important to mention. After the overthrow of king, the Derg Regime were also enacted some environmental protection laws. Accordingly, it incorporated the issue of environmental protection under art.55 (3) of PDRE Constitution and under proclamation no.192 of 1980(a proclamation to provide for the conservation and development of forest and wild life resource). Currently, the EPRDF government has come up with several environmental protection laws. Pillar legal provisions are incorporated in the 1995 constitution so as to guarantee the clean and health environment to everyone. Myriad of environmental protection laws have been enacted. *Inter alia*; environmental impact assessment proclamation, proclamation No.299/200, environmental pollution control proclamation, proclamation No.300/2002, and solid waste management proclamation, proclamation No. 513/2007, to mention few.

It is very important to scrutinize the place of environmental protection in the current investment laws of the country in one hand and, analyze how much environmental laws put requirements on investment activities. As it is stated here in above, investment is one of the basic pillars for a countries development. Hence, no one can hesitate, its encouragement. However, investment promotions and economic growth, which are not backed by environmental protection, may probably end with destruction. Therefore, appropriate environmental due cares are expected from sides of government organ, law maker, and the public at large.

Nonetheless, the current investment laws of the country failed to incorporate some pillar issues, which are very crucial to sustain environmental protection. For example, the new investment proclamation, failed to set doing EIA as a criteria to get investment license. However, there are also laws to promote sustainable development of mineral resource, which require doing EIA as a basic criterion to get investment license. Furthermore, investment regulation which are enacted to provide investment incentive, failed to give incentive for those investors who invest

environment friendly. Despite of its large significance, investors who are using clean technology are lucky enough to get investment incentives.

Moreover, despite its large importance, there has been lenient cooperation between federal investment commission, and ministry of environmental protection and forestry. Both investment as well as environmental protection laws did in clear language not required them to cooperate. Making cooperation between these two organs of government can be an additional tool to promote both sided development (investment promotion and environmental protection). In the end, environmental laws of the country in most case failed to put appropriate remedy for EWDs. Currently, the value of money has been devaluating from day to day, and the cost of building environmental damage is becoming high. Even it is impossible, because some times, we can't calculate the value of ecological damage in pecuniary value or by sending the environmental wrong doers to the jail.

4.2. Recommendations

The right to live in clean and healthy environment is guaranteed under our current constitution. And to achieve this goal the government shall make an effort to guarantee this important right. Furthermore, it is also expected that, the plan of the project and its execution, or projects of development shall not damage or destroy the environment. It is also undeniable that, investment and economic growth is one of the pillars to end poverty and finally to become one of the world's highly developed country.

However, realizing these constitutional rights of citizen to leave in clean and health environment in one hand, and promoting investment and economic growth in another hand need some significant legal measures to be done. Among the others, the following are recommended.

First, current investment regulation, regulation No.270/2012, is mainly designed to provide investment incentive. Basically, incentive mechanism is provided based on the contribution of investment activities for a countries economic development and to create fair distribution of

economic activities in the country. That's why; the incentive mechanism has played paramount importance to encourage investors to engage in prioritized investment sectors. Apart from these, despite of its importance to encourage environmental protection on one hand and to attract FDI, investment incentive mechanism is not provided for those investors who are investing environmentally friendly in general, and specifically for those investors who protect environment going further than their obligation. Environmental laws of the country also failed to do it. Therefore, taking its high importance into consideration, the legislature should incorporate the incentive mechanism either in the investment regulation or in other environmental laws of the country.

Secondly, an investment proclamation, proclamation No.769/2012 under art.19 (2) of it, has exhaustively listed grounds for revocation of investment permit. The lists in the provision do not seem to incorporate environmental wrong doings as a ground to revoke license. Apart from this, even though art.6(26) of proclamation No.295/2002 has tried to set broad power to ministry of environment and forestry, it do not unequivocally mandated ministry of environmental protection and forestry to revoke the license of investor if the investor damages environment or commit environmental wrong. Therefore, the legislature either clearly insert environmental wrong doings as a ground to revoke investment permit in investment proclamation, or the law maker should include a provision in one of the environmental law (basically under proclamation No.803/2013, a proclamation to define power and duty of executive organs), which authorize ministry of environmental protection and forestry to revoke investment permit if investors commit environmental wrong or damage it.

Third, even though, sometimes, compensating environmental damage is difficult, it is necessary to invent compensating measures. Currently, in Ethiopia, Environmental laws have included civil, criminal and administrative remedies to punish environmental wrong doers. Most of the environmental laws of the country were enacted before ten years ago. The penalties prescribed in these laws are not capable to compensate environmental damage within today's market. When compared with the value of dollar, the value of money has been devaluated in international market from time to time. Therefore, the law maker should establish general standard to solve this problem. For example, with regard to those penalties prescribed in money value, the law

should set minimum amount of penalty and should give discretionary power to the court to fix maximum amount depending on the circumstances of value of birr in the international market at the time environmental damage is occurred. In addition even, some criminal penalties are relaxed, and cannot compensate environmental damage. Therefore, the law maker should revise environmental laws, so as to prescribe adequate criminal remedies for Environmental wrong doings.

==*THE END*==

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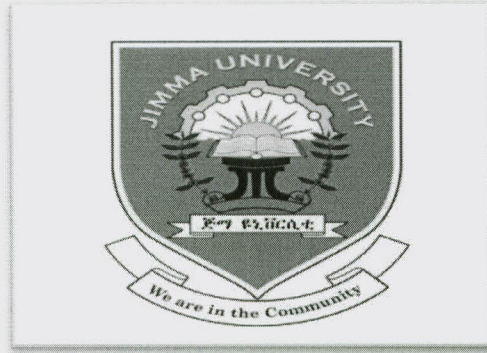
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APPENDIXES

Questioner No.1



JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

LL.M PROGRAM ON COMMERCIAL AND INVESTMENT LAWS

INTERVIEW PREPARED FOR FEDERAL INVESTMENT COMMISSION OF ETHIOPIA

Type of study: LL.M

Research title: *“interplay between investment laws and environmental laws in Ethiopia with regard to environmental protection”*

Objectives of the research: among others; primary objective of the research is to examine the relationship between investment laws and environmental law with regards to environmental protection, and evaluate the necessity of incorporating sufficient environmental laws in Ethiopian legal system to protect the environment and ultimately to sustain development.

As a result, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study. Therefore, feel free to give information as I do not disclose your personal identities and name without your free, full and expressed consent.

Personal details of the interviewee

Name -----

Sex-----

Job description/position-----

Age -----

Questions that are prepared for interview

Q.1. Basically, investment regulation, regulation No. 270/2012 has been established to provide different kinds of incentives for those investors who are illegible according to the law. However, if we consider the regulation as well as other environmental laws of the country, there is no incentive scheme for those investors who are environmentally friendly, or who protect environment going beyond their duty. Do you think that providing incentive for environmentally friendly investors in general, and particularly for those investors who protect environment going beyond their duty will have positive impact on overall development and environmental protection of the country?

If Yes how?-----

If No, how?-----

Q.2 both investment commission and ministry of environment and forestry has their own objectives. It is true that, the realization of the objectives of both institutions will play vital role on countries sustainable development. It is also undeniable that, without having cooperation between these institutions, it is hardly possible to achieve the goal of sustainable development. Do you think that the law required the two institutions to cooperate and work together? -----

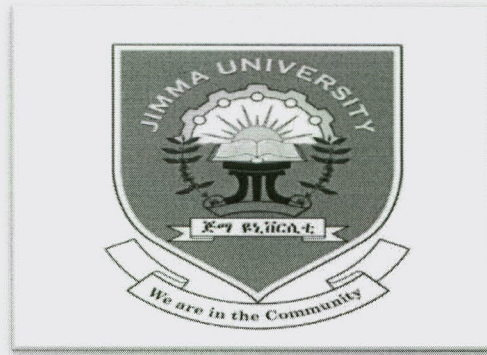
Do you think that both institutions have been working in collaboration?-----

Q3. Art .19 of the investment proclamation, proclamation No.719/2012 reads about suspension and revocation of investment permit. Besides, art.19 (2) of it exhaustively listed grounds for revocation of investment permit. Do you think that the provision clearly allowed investment commission to revoke investment permit in cases where investors commit environmental damage

If your answer for question No. 3 is in negative, what do you think would be the solution?-----

Q/4 if we look at investment laws of the country, there are several provisions, after fulfillment of which investment permit will be granted by appropriate investment organs. Among others; do you think that current investment laws of the country require doing EIA before getting investment license? If not, is it not important to incorporate it in investment laws of the country?-

Questioner No.2



JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

LL.M PROGRAM ON COMMERCIAL AND INVESTMENT LAWS

INTERVIEW PREPARED FOR MINISTRY OF ENVIRONMENT AND FOREST

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Personal details of the interviewee

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Job description/position-----

Age -----

Questions that are prepared for interview

Q1/ EIA proclamation, under its art.3 (1) obliges every person to do EIA before commencing implementation of any project that requires environmental impact assessment. Do you think that investment permits have been issued according to this provision and other laws of environmental protection? -----

Q/2 Is there approved directives or guidelines in Ethiopia to facilitate the implementation of environmental protection proclamations and regulations? If No. what would be the effect on the realization of environmental objectives?-----

Q/3 Current environmental laws of the country have tried to establish criminal, civil, and administrative penalties for environmental wrong doers. Do you think that the remedies established under these laws are adequate to compensate environmental damage? -----

Q/4 If your answer to question No. 3 is in negative what do you think is the appropriate solution to compensate environmental damage?

Q/5 Do Ethiopia has a model to calculate environmental damage? If yes explain-----

Q/6 Do your institution works in cooperation with federal investment commission? If no why?---

Q/7 Do you think that, ministry of environment and forest has given sufficient mandates to compel investors to go in line with countries environmental laws (for example, can the ministry revoke investment license if investors commit environmental wrong ,and consequently damage environment)?-----



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