



Addis Ababa University School of Law Graduate Studies

**Implementations of EIA Laws in East Shawa Zone of Oromia National State Special
Reference to Lume and Ada'a Woreda: Case Study on Various Projects**

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**A Thesis Submitted to School of Law Graduate Studies in Partial Fulfillment of the
Requirements for the Master of Law (Degree LL.M)**

NOVEMBER 7, 2011

Declaration

I, **Mandefro Sorecha Wedajo**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation.

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Table of Contents

Declaration	i
Acknowledgement	v
Approval sheet.....	vi
Abbreviations.....	vii
Abstract	viii
Chapter One.....	2
General Background.....	2
1. Introduction	2
2. Statement of the Problem	5
3. Literature Review	6
4. Objectives of the study	8
5. Significance of the Research	8
6. Methodology.....	9
6.1. Data sources	9
7. Scope of the study	9
7.1. Delimitation	9
7.2. Limitation of the study	9
8. Ethical Consideration.....	10
9. Arrangement of the Chapters	10
Chapter Two	12
Theoretical and Legal Framework of Environment and Environmental Rights.....	12
2.1. General overview	12
2.2. Definition of Environment and Environmental Rights to a Clean and Healthy Environment	14
2.3. The Scope of Environmental Rights.....	16
2.4. International Legal Framework for Environmental Rights.....	18
2.5. Environmental Law relevant to Environmental Rights	19
2.6. International Human Rights Instruments Accords To Environmental Rights.....	21
2.6.1. Introduction.....	21
2.6.2. The Universal Declaration on Human Rights(UDHR (1948)).....	21
2.6.3. International Covenant on Economic, Social and Cultural Rights (1966) ICESCR).....	22

2.6.4.	Convention on the Elimination All Forms Of Discrimination Against Women (1979)	22
2.6.5.	Convention on the Rights of the Child	22
2.6.6.	ILO Convention Concerning Indigenous and Tribal Peoples In Independent Countries	23
2.6.7.	Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters	23
2.6.8.	United Nations Declaration on the Rights of Indigenous Peoples	23
2.6.9.	The African Charter on Human and People’s Rights (Banjul charter)	24
2.6.10.	American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)	24
Chapter Three		26
Theoretical and Legal System of EIA		26
3.1.	Introduction.....	26
3.2.	Binding and non Binding Instruments.....	27
3.3.	Environmental Policy and EIA Proclamation in Ethiopia	31
3.4.	Legal Instruments concerning EIA in Ethiopia	33
3.4.1.	Institutions Concerned About EIA in Ethiopia.....	36
3.4.2.	The Powers and Responsibilities of Environmental Protection Authority (EPA) ...	37
3.4.3.	Powers and responsibilities of Regional Environmental Agencies	38
3.4.4.	The Oromia Regional State Environmental Legislation.....	40
3.4.5.	Stages of EIA process.....	42
Chapter Four		45
Analysis of the Legal and Theoretical Perspective of EIA Laws		45
4.1.	General Background.....	45
4.2.	Factors Attributable to Ineffective Implementation of EIA Laws	48
4.2.1.	Failure to Apply the indicated Mitigation Measures.....	49
4.2.2.	Institutional Problem.....	50
4.2.3.	lack of Effective and Detailed EIA Laws.....	52
4.2.4.	Absence of patterned list of projects which undergone EIA	52
4.2.5.	Lack of Cooperation among the Institutions	52
4.2.6.	lack of Public Participation in EIA Process	53
4.2.7.	Ineffective Means of EIA Follow Up	55

4.2.8. Lack of Efficient way of Dispute Resolution ,and Mode Of Compensation or Relocation	57
4.2.9. Lack of awareness about EIA	61
4.3. Consequences of Ineffective Implementation of EIA Laws	62
4.3.1. Impacts on the health and Environment.....	62
4.3.2. Encroachment on constitutional environmental rights	66
Chapter Five.....	68
Conclusion and Recommendation	68
4.1. Conclusion	68
4.1. Recommendation	69
Bibliography.....	74
5.3. Books and Articles.....	74

Acknowledgement

My greatest thanks go to my advisor, **Ato Mekete Bekele**, who has been a constant source of encouragement and for his excellent supervision thorough out the process of this study. In effect, this paper could have not appeared in this form had it not been for his valuable consultation and correction of the whole draft thesis.

Finally, my special thanks also go to my family and friends for their unfailing support. I am truly grateful for everyone who in one way or another contributed to this study.

Approval sheet

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Abbreviations

- CBD.....Convention on Biological Diversity
- EA.....Environmental Authority
- EIAEnvironmental Impact Assessment
- EIAP.....Environmental Impact Assessment Proclamation
- EPAEnvironmental Protection Authority
- EPA.....Environmental Protection Authority
- FEA.....Federal Environmental Authority
- REAs.....Regional Environmental Agency
- UNCED.....United Nation Conference on Environment and Development
- UNECE.....United Nations Environmental Conference
- UNEP.....United Nations Environmental Protection
- IAPs.....Interested and Affected Parties

Abstract

The importance of Environmental Impact Assessment (EIA) is clearly recognized under the FDRE constitution. The constitution also recognizes certain rights concerning the environment in the interest of the general public. In order to facilitate the practical implementation environmental objectives and enforcement of environmental rights to a clean and healthy environment, the government enacted certain EIA proclamation and guidelines. The guidelines contain certain EIA processes and objectives that the federal EPA and regional environmental agencies are expected to follow. The implementation of these requirements requires the application of the mitigation measures, participation of the Public, the preparation of EIA study report and review by the Proponents, monitoring and evaluation of EIA study report by the competent authorities. The study area of this paper is East Shawa Zone of Oromia Regional State.

Where the essential requirements of EIA, like preparation of EIA study report by the proponents, and review of EIA, public participation, absence of EIA follow up mechanisms, such as evaluation and monitoring are not implemented as prescribed in the EIA guidelines and proclamation. Lack of effective observation of these laws became the cause for violations of environmental rights to a clean and healthy guaranteed in the constitution. Thus, unless the concerned officials and the government give due attention to the matter, the rights of the local people and the next generation will be in danger.

The study divided into five chapters ranging from background of the study to recommendations.

Key terms: Environmental Impact Assessment, environmental protection, the right to a clean and healthy environment, and human rights.

Chapter One

General Background

1. Introduction

In the world, the development of International law on protecting the environment so as to guarantee human health from disaster has developed only few years ago. Although the development has got a few years history, there are various Declarations, Conventions and Agreements that contain various provisions dealing with a clean and healthy environment.¹ Because of the reason that international environmental law has very essential merit in protecting the environment from any act of disastrous consequences, many states in the world have ratified these instruments. In spite of ratifying these environmental laws, some of these Declarations, Conventions and Agreement do not have a binding effect upon the states that ratified them.² Consequently, Environmental Impact Assessment (EIA), which is a new concept, has been just introduced to protect the environment and guarantee human wellbeing from environmental catastrophes. Since the major purpose of EIA is identifying the unconstructive consequences against the fundamental human wellbeing and the environment, environmental law and human rights are gaining a status of maturity and omnipresence at a global level.³ This clearly suggests that human rights and environmental protection are strongly interdependent and mutual, and that it has also been recognized by international and regional human rights instruments.

¹ Declaration of the United Nations Conference on the Human Environment (DUNCHE) ,(Stockholm) UN Doc A/Conf/48/14/Rev.1 Principle 1, DUNCHE, Rio Declaration on Environment and Development, Principle 1. States as Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature, in a similar concept with that of Stockholm Declaration, and etc.

² Subin Nijhawan, '*A human right to clean and healthy environment?*' School of Oriental and African Studies London Spring 2nd Term 2004 Faculty of Law and Social Sciences Centre for International Studies and Diplomacy, MA thesis , 2004, [unpublished]

³ Ibid

The International and regional human rights systems directly or indirectly emphasize the protection of environment in order to realize the right to a clean and healthy environment. For instance, the International Covenant on Economic, Social and Cultural Rights (hereinafter called ICESCR) provides the obligation to the member states to recognize environmental rights, which states the enjoyment of the highest attainable standard of physical and mental health including the improvement of all aspects of environmental and industrial hygiene.⁴ Similarly, the African Charter on Human and People's rights (The Banjul Charter) which is a regional human rights instrument imposes an obligation on Member States that they should recognize and maintain these standards with respect to the right to live in a clean and healthy environment for their citizens.⁵ Thus, the cumulative notion of these legal instruments implies that, Member States are both individually and universally obliged to take appropriate practical measures on environmental protections so as to realize these rights.

Ethiopia one of the member state has ratified both the relevant International and Regional human and Environmental instruments and declarations. Specifically, the FDRE Constitution domesticates the International Instruments as part and parcel of the law of the land.⁶ Based on these normative frameworks, the Ethiopian environmental laws, policies and practices have to comply with these international instruments mentioned hereinabove. Accordingly, Ethiopia has taken legislative and institutional measures to comply with these instruments and to realize the peoples' right to a clean and healthy environment as provided under the International and Regional human rights instruments.⁷ To this effect, the country has taken in article 44 of the FDRE Constitution which states that all persons are entitled to live in a clean and healthy environment. Besides, Article 43 of the constitution empowers people to live improved living standards, and hence grants the right to be consulted with respect to policies and projects affecting their community. Moreover, under chapter ten, articles 92 of the constitution proclaims that the design and

⁴ Article 12 of The International Covenant on Economic, Social and Cultural Rights (ICESCR); General Assembly resolution 2200A (XXI) of December 16, 1966 Entry into force on January 3, 1976

⁵ Art. 24 of the African [Banjul] Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5 of June 27, 1981 Entry into force October 21, 1986

⁶ Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia (hereafter FDRE constitution), Federal Negarit Gazeta, 1st year No .1, 21 August, 1995

⁷ Article 2(2) of the ESCR and article 1 of the Banjul charter impose the tripartite kind of obligations

implementation of programs and projects shall not damage or destroy the environment.⁸ To attain these constitutional ends, Ethiopia has endorsed environmental protection proclamation; policy to address the problems associated with environment and achieves sustainable development.

Despite the ratification of International and Regional instruments as well as enactment of proclamations and Environmental Policy measures taken by Ethiopia; with the view to protect human environment, to secure clean and healthy environment for the people, they have got problems in implementation. The study area, East Shoa zone of Oromia Regional State selected by the government as one of the industrial areas of the country, the findings shows that are implementation problems of the international and national environmental laws. Moreover, the EIA laws and guidelines are not critically considered and applied on the projects located around the study area as the wastes released from the industries have been seen to be the root cause to infringe the Environmental Right of the local community. To state in specific terms, the Environmental Rights of the local people that are guaranteed under the Constitution⁹ are not secured mainly due to the improper implementation of Environmental Impact Assessment on the Projects that established within the study area. Additionally, toxic substances released from these industries / factories have polluted the environment and causing harm to the health of the local community gave initiation for the researcher.

Thus, having considered the issue as key problem, the researcher decided to undertake a research on the : title *Implementation of EIA Laws in East Shoa Zone of Oromia Regional state with Special Reference to Lume and Ada'a Woreda: Case Study on Various Projects*. It was aimed at exploring and analyzing the practical applications of International and National Environmental Laws and Policies, and their harmony with international human rights instruments at this specific area.

To this end, the research was conducted through structured questionnaires for the community, conducting interviews with Oromia Land and Environmental Protection

⁸ Supra note at 6, Arts.43,44 and 92 (1&2)

⁹ Supra note at 6, Art. 44

Bureau Authorities, federal EIA experts, chief local governmental officials, and with local communities.

2. Statement of the Problem

The Regional state of Oromia has a number of zones among which East Shawa Zone is one of them. In this zone, a lot of projects are developed. The development of projects can cause a negative impact to the environment. Thus, in order to protect the environment from unexpected disaster and to ensure a clean and healthy environment for all persons, the Federal government has enacted environmental proclamations including EIA in 2002. The government has also made EIA to be a mandatory legal prerequisite for the implementation of major development projects, programs and plans.¹⁰ The proclamation is a central controlling tool to harmonizing and integrating environmental, economic, cultural and social considerations into a decision making process in a manner that promotes sustainable development *vis a vis* clean and healthy environment for the people.¹¹ Based on this, it can be said that, both Federal Environmental Authority (EPA) and Regional Land and Environmental Protection Bureau (hereinafter called the Bureau) (horizontally and vertically) must discharge their respective responsibilities in line with the provisions of the above laws.

There are, however, practical problems in implementing EIA laws and guaranteeing the right to clean and healthy environment in the study area; because the Federal or Regional Bureau did not discharge their responsibility sufficiently on development projects. To put it specifically; problems such as the Regional State has no effective Environmental policy to achieve the existing Environmental Standards of the Federal Government, lack of coordination among FEPA and Regional Environmental Agency, Investment Commission and other concerned Units(agricultural sector, industrial commissions, etc) , lack of continuous supervision and control by the regional Land and Environmental Protection Bureau on the projects, absence of concrete environmental auditing , lack of public participation in giving their experience /decisions or opinion on projects designed

¹⁰ See Article 5 of Environmental Impact Assessment Proclamation No.299/2002, came into force as of the 3rd day of December 2002; as per this proclamation there are categories of projects that requires EIA which have or likely to have impacts, and those do not need EIA because they presumed that lack impacts on human health and environment.

¹¹ Ibid

to be carried out in the study area. These problems are the root causes for violation of the rights to a clean and healthy environment. In short, the regional Land and Environmental Protection Bureau have failed to implement the federal EIA laws in the study area properly.

Thus, in order to address the above problems, the researcher has forwarded the general questions as “Did the EIA laws implementation on the projects situated in the study area help to achieve right to clean and healthy environment for the local people? “. There were additional research questions addressed by the researcher to substantiate the general questions like:

1. Are the existing legal and institutional frameworks adequate to ensure effective EIA in Ethiopia in general and in East Showa in particular?
2. Are EIA evaluation and monitoring mechanisms undertaken on projects found in the East Shawa Zone is adequate?
3. Does the Regional Land and Environmental Protection Bureau or concerned authorities discharging their duties in ensuring a clean and the healthy environment to the local community?
4. Do EPA or regional Land and Environmental Protection Bureau do repetitive follow up and assess the activities of the industries and other projects?
5. How and to what extent local people participate in the decision/ opinion while projects are established or EIA process?
6. Do the toxic substances released from the industries affect the health of the residents or do not?

3. Literature Review

Despite the recent development of environmental laws, and that the status of the Constitutional Environmental rights of People is still debatable, Environmental protection has been given due attention in international and national laws. In the international and national domain, the issue of EIA has been recognized as a means of ensuring sustainable development and a tool to achieve environmental objectives. However, in the implementations of these laws, there are gaps and challenges in realizing the constitutional environmental rights of people.

Although a limited number of field based researches have been undertaken on Environmental Impact Assessment, to find out the gap in the policy, guidelines and programs of the government, most of the works were based on the theoretical discourse. Thus, the researchers did not make the affected parties part and parcel of the research so as to perceive their attitude towards the project found in the study area, and realize the impact caused on them. By their methodologies many of the researchers, who conducted research on EIA to understand the problems, involved subjects only from the EIA implementing organs.

However, many scholars who have conducted different researches focused on the area related particularly to the impact caused on economic, social, and cultural aspects rather than the benefits that EIA has to realize the rights to a clean and healthy environment. Waressem, for instance, argues that EIA procedures provide a unique opportunity to identify and then to avoid and mitigate the potentially significant adverse environmental impacts so as to better integrate long and short term environmental, economic, and social concerns.¹² Most of his findings are much related to EIA's social phenomena, not focused EIA as means of realizing environmental rights to a clean and healthy environment. He further states in his conclusion that EIA requirements are achieved if the administration of environmental law is changed.¹³

Specific to the Ethiopian case, various researches have been conducted on the implementation of EIA laws as of the authorities of the Federal Environmental Authority. One of these is the research conducted by Mellese Damtie and Mesfine Bayou which deals with the overview of environmental impact assessment in Ethiopia, Gaps and Challenges. The study sorts out the problems, which are the major factors for ineffective implementation of EIA proclamation: Lack of awareness, political commitment of the government, and the application of EIA laws, and the likes, in general.¹⁴ Besides, there are other researches on this title which emphasised on particular projects.¹⁵ Moreover,

¹² Waressem?

¹³ ibid

¹⁴ Mellese Damtie and Mesfine Bayou, *Overview of Environmental Impact Assessment in Ethiopia*, Gaps and Challenge , Melca Mahiber, (Unpublished thesis 2008) , Addis Ababa , Ethiopia

¹⁵ See Abebe,W.B, McCartney, M., Douven, W.J.A.M. Leentvaar J, Environmental Impact Assessment Follow-up in the Koga Irrigation Project, Ethiopia: available at www.ifwf2.org/addons/download-presents(last retrieved on July 19/2011)

these researchers' findings conclude that the EIA proclamation application is ineffective in relation to EPA and the projects found in Addis Ababa.¹⁶

4. Objectives of the study

The general objectives of the study is to examine the nature and implementation of EIA laws in ensuring the rights to a clean and healthy environment as specified under the FDRE Constitution, and the aim indicated under Environmental EIA guidelines and to forward possible recommendations. In addition to this, the thesis has found the specific objectives of the study. These include:-

- To distinguish problems associated with projects.
- To examine problems related to FEPA, and Land and Environmental Protection Bureau to identify people who suffer from, and give appropriate remedies.
- To investigate problems caused on the Environment
- To explore the relationship between application of EIA guidelines and proclamation and, environmental rights to a clean and healthy environment.

5. Significance of the Research

1. The research findings are very relevant to play their own role in the promotion and protection of human right to a clean and healthy environment in the country in general and to Oromia regional state in particular.
2. The research findings help, the EPA, REA (Land and Environmental Protection Bureau) and Investment and other Commission give due consideration health impact assessment, and protection of environment while designing development projects
3. The findings, moreover, serve as a source of reference for others who would like to know more about the human rights to clean and healthy environment.
4. The research findings are believed to help the Regional state to enact their own detail EIA laws.

¹⁶ See Supra note at 14

6. Methodology

In this research, the case study of two woredas namely Lume and Ada'a woreda in East Shoa Zone of Oromia regional state is taken as sample. The research method employed is an explanatory, which looks into the implementation of EIA laws on the projects found in the study area pertaining to the environmental rights, as recognized by FDRE Constitution. The two Woredas were selected because the Zone is selected as an industrial area among the Zones found in the state, and that these projects are located where many people use to live. More importantly, the numbers of projects, which pollute the environment, are found in Lume and Ada'a woredas.

6.1. Data sources

The data collection depends on both primary and secondary sources. For the purpose of collecting primary data, qualitative methods like: interview with key informants, and field observation were used. The Interview made with key informants was carried out using unstructured questionnaire. In addition, the researcher conducted field observation on various projects found in the study area, to compare and see their impact on the on right to a clean and healthy environment, and human health. Regarding secondary sources, books, journals, internet sources, official statistical source and other publications were reviewed.

7. Scope of the study

7.1. Delimitation

The study is limited to the case of projects find in East Shawa Zone of Oromia regional state with special emphasis to lume and Ada'a woredas. Accordingly, the study focused on the implementation of EIA laws on projects located in the study area by the Oromia Land and Environmental Protection Bureau and EPA (where the projects are under its jurisdiction) so as to achieve the environmental objectives underlined under environmental guidelines and policy, and environmental rights to a clean and healthy environment enshrined in the FDRE constitution, respectively. Thus the data will be collected from the federal and regional environmental authority.

7.2. Limitation of the study

While conducting the research, the researcher encountered with some major challenges like:

- Officials were not interested to show the EIA study report as well as EIA review documents, except of giving some highlight information as to the implementation of EIA laws on these projects.
- It was found to difficult to get registered victims due to toxic waste products from projects around people's residents
- It was found to be difficult to conduct long time or extended discussion with key informants due to their official task and short time schedule.
- The proponents of the projects were not interested to give data, which disclose the general mechanisms of wastes disposal and their compliance to regulations.
- Lack of getting documented profile of development projects which undergone EIA or not.

8. Ethical Consideration

In order to conduct research on the selected title, coordination of the officials of the concerned institution, victims and local community were found to be highly important to get relevant data. During data collection procedure, sensitive approach and confidentiality to the subjects, from whom the data was obtained, was highly considered. To this effect, the key respondents were informed that they have the right to cooperate for the study objectives or not. Face-to-face method of inquiry was preferred so as to give the interviewer a chance to assess the sincerity of the respondents. On top of that, the key respondents and officials were informed both orally and in written about the objectives of the study.

9. Arrangement of the Chapters

This research is organized into five chapters. The first part of the research focused on the general introductory regarding the background of the study, statement of problem, literature review, purpose of the study, significance of the study, methodology, scope of the study and ethical consideration that give highlight about the research.

The second chapter deals about the theoretical and legal background of environment and the rights to a clean and healthy environment in international perspective. Within this chapter definition of environment, the approaches to environmental rights. This chapter

is added in this study paper in order to create the linkage of improper implementation of the EIA laws and their consequences to environmental rights.

Third chapter discuss about the legal and theoretical background of Environmental Protection and Environmental impact Assessment in general and in particular to Ethiopian Laws and policy situation.

The fourth chapter examined the implementation of Environmental Impact assessment on projects and issues of health impact assessment design in the study area (East shawa zone of oromia regional state) in order to secure the right to clean and healthy environment to local community.

Finally, the research ended up by providing conclusion, vital recommendations, and bibliography under chapter five.

Chapter Two

Theoretical and Legal Framework of Environment and Environmental Rights

2.1. General overview

There is no consensus as to the definition of environment and environmental rights in any international law. But, there are different approaches to the rights to clean and healthy environment. The first approach integrates the right to life and health with a clean and healthy environment because environmental protection is essential for the enjoyment of those fundamental rights.

¹ This approach implying that human rights obligation of states should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights. Thus, according to this approach environment is a prerequisite for the enjoyment of human rights. However there are different ways to integrate environmental concerns within the human rights framework.

The human right to a clean environment may be expressed as a separate codified right. It can also be procedural right (human right to environmental information, participation in decision making , and access to justice in environmental matters , as essential to good environmental decision making) or substantive (human right to a clean environment). A substantive right comprises problems of definition whether this could be a human right to a *clean* or to a *healthy* environment.² There are currently no international norms and standards to reach a consensus.

The second human rights approach declares that environmental protection is a means to realize the existing human right to an end. It calls for environmental protection since environmental degradation became the cause for the violation of the current recognized fundamental human rights in the national and global perspective. This approach does not create a new substantive human right to a clean environment instead strengthens the need

¹ <http://www.righttoenvironment.org/default.asp?pid=81>(last retrieved on 10/04/2011)

² Ibid

for environmental protection in order to excuse the violation of other fundamental rights.³ According to Dinah Shelton, this consists of selecting the rights most relevant to the aims of environmental protection from among existing human rights. The approach emphasises procedural rights which enable NGOs to argue for the enforcement of environmental protection to realize the existing human rights into operation. Thus this approach calls for freedom of association for NGOs for this purpose. This approach paved the way for NGOs and the group as they defend peoples' rights when the violations of fundamental rights are due to environmental degradation. By reading environmental protection into some of the existing rights, some argue that there is no need to draw up new ones and that their enforcement could benefit and protect the environment.⁴

The third approach to human rights framework admits the reinterpretation of the existing human rights so as to include the environmental issues into consideration. A reinterpretation of a human right in line with environmental concerns means that the environment can be understood as being part of other constitutionally and internationally recognised human rights. This could mean for instance that the right to life would be infringed if the State does not solve the problem of polluted air, and toxic products in drinking water because the right to life or health can be interpreted to include the right to a healthy environment.⁵ Here, the right to a clean and healthy environment becomes vital for the enjoyment of other internationally recognised human rights. 'Some argue that there is a limit to this approach because it cannot solve threats to other species or to problems linked to the environment *as such* they are not directly linked to human well-being.'⁶

As we understood from the reading of these three approaches, though the approaches seems different in their nature and content , they revolve around the same ideas about the necessities of a clean and healthy environment for the realization of the internationally recognized human rights. In the same vein they call for reinterpretation of the current

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

human rights with that of environmental matters because at that time we comprehend the necessity of environmental protection to secure the fundamental human rights properly.

2.2. Definition of Environment and Environmental Rights to a Clean and Healthy Environment

A comprehensive and universally acceptable definition of an environment is difficult to get. The definitions, however, have been provided in line with different international treaties, federal and regional laws.⁷ The term environment linked with the old French term ‘*environner*’, meaning to encircle, the aggregate to natural, social and cultural conditions that influences the life of an individual or community.⁸ Most treaties, code of conduct, guidelines, declarations and other instruments do not define the word in direct ways.⁹ For instances, the Declaration of 1972 Stockholm conference on human environment simply define environment to one side to man’s environment adding that ‘*both aspects of man’s environment, the natural and man-made, are essential for his well-being and enjoyment of basic human rights.*’¹⁰

The World Commission on Environment and Development (WCED) provides the meaning in a summary form; it remarks that ‘*the environment is where we live*’.¹¹

The 1992 Rio Declaration on Environment and Development refers at many points to environmental needs, environmental protection, and environmental degradation and so on, but nowhere identifies what these include. Interestingly it eschews the term entirely in principle 1, declaring instead that human beings ‘*are entitled to a healthy and productive life in harmony with nature.*’¹²

The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines the environment as including¹³;

⁷ Tsegaei and Merhatbeb Teklemedhn, *Environmental Law Teaching Material*, Ministry of Justice (2009),

p 1

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

Natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape

In Ethiopian legal system, the Environmental Protection Organs Establishment Proclamation defines the environment as¹⁴:

The totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected 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.

Thus, in its formal way, environment means the surrounding of external conditions influencing development or growth of people, animal or plants; living or working conditions ...etc.¹⁵ This definition comprises various concepts which includes living objects in general and human being in particular, the attributes what surround this human environment consists of an environment.¹⁶

In addition to these, different scholars also provided various definitions for the term environment. Accordingly, Boring stated that 'A person's environment consists of the sum total of the stimulation which he receives from his conception until his death.'¹⁷ It can be concluded from the above definition that Environment comprises various types of forces such as physical, intellectual, economic, political, cultural, social, moral and emotional. Environment is the sum total of all the external forces, influences and conditions, which affect the life, nature, behaviour and the growth, development and maturation of living organisms.¹⁸ Likewise Douglas and Holland put the meaning of the term as similar as provided above. As per their definition , The term environment is used

¹⁴ Environmental Protection Organs Establishment Proclamation, Proclamation No. 295/2002, Negarit Gazeta, 9th Year, No.7, 2(3) and See also Article 2 of Environmental Impact Assessment Proclamation No. 299/2002

¹⁵ Environmental Science: Definition, Scope and Importance (last accessed on April 28/04/2011), available at www.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

to describe, in the aggregate, all the external forces, influences and conditions, which affect the life, nature, behaviour and the growth, development and maturity of living organisms.’¹⁹

Therefore from the definitions provided above by scholars and legal instruments, we can conclude that, the term environment refers to surroundings that encompass land, minerals, plants, air and animals life in a general manner.

2.3. The Scope of Environmental Rights

There are different mechanisms of formulation of environmental rights in the growing numbers of authoritative and binding legal instruments that provide environmental rights to limit the substance of the right. ²⁰Some wordings of the constitution imply the constitutional environmental rights to mean clean or healthy environment. Others articulate the constitutional environmental rights to represents ecological balance to sustainable development mostly as an objective of state rather than the substance of rights. More importantly, others made reference to environment ‘suitable ‘for development of the person.’²¹

The constitutional environmental rights reference to ecological equilibrium is an arguable concept for many scholars because it is difficult to determine ‘certainly for what exactly it means for an ecosystem to be in equilibrium, and what makes one equilibrium ‘better’ than another, are questions about which there is both uncertainty and disagreement among ecologists.²² The most obvious way to reduce disagreement, if not uncertainty, is to take the yardstick for a favourable ecological equilibrium to be its conduciveness to human flourishing: but this is, in effect, to treat the objective as that of securing an environment adequate for health and well-being.²³

A number of binding instruments recognize the link between environmental protection and development.²⁴ In relation to sustainable development, a constitutional environmental right introduces considerations that go beyond environmental concerns,

¹⁹ Ibid

²⁰ Tim Hayward , *Constitutional Environmental Rights* , oxford university press (2005) , p 28

²¹ Ibid, pp 29-30

²² Ibid, pp31-33

²³ Ibid pp34-36

²⁴ African Charter on Human and Peoples’ rights ,Article 10

and also beyond feasibly justiciable individual rights.²⁵ The idea of sustainable development, on Brundtland's formulation, comprises environmental right as just one of the three main components.²⁶ The idea of sustainable development is, of course, richly contested, in both its parts and its whole, and that in itself makes it an unpromising objective of enforceable rights. The idea of sustainable development represents something that states may strive to realize, but when, and to the extent that, they fail to realize that ideal, it is far from clear against whom, or on what basis, any individual could make any rights claim.²⁷

Some addresses rights to decent environment in a clear and distinct manner by encompassing social and cultural aspects into account the suitability of a given environment to an individual or a people according to its social and cultural needs and thus acknowledge the interdependence of all elements of the human environment.²⁸ Thus, the meaning of constitutional environmental rights relating to suitability tied in the right to an environment adequate for (human) health and wellbeing. A substantive environmental right involves the promotion of a certain level of environmental quality and this is to be understood by reference to a substantive environmental right.²⁹

The draft principles of the UN Sub-Commission on Human Rights and the Environment, includes a number of interpretative elements, the extent and mix of which could best be determined at the stage of deciding on actual implementation of the instruments.³⁰ Among these : rights of all persons to freedom from pollution, environmental degradation and activities that adversely affect the environment, or threaten life, health, livelihood, well-being or sustainable development; protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems; the highest attainable standard of health free from environmental harm; safe and healthy food and water adequate to their well-being; a safe and healthy working environment; adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment; not to be evicted from their homes

²⁵ Supra note at n. 21 above

²⁶ Ibid

²⁷ Ibid

²⁸ Philippe cullet ,*Definition of an Environmental Rights in Human rights context*,(1995) available at [http://www.ielrc.org/content/a9502.pdf\(last](http://www.ielrc.org/content/a9502.pdf(last) accessed on 8 June 2011)

²⁹ Ibid

³⁰ Supra note at n. 25 above

or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means; timely assistance in the event of natural or technological or other human-caused catastrophes; benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes.³¹ This includes ecologically sound access to nature; preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area. As well as these rights which would be held by 'all persons', the draft declaration also mentions, following on from the qualification made with regard to the last of them, group rights of indigenous peoples to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence. To protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.³²

Generally, though different formulations of constitutional environmental rights are recognized by different names in various constitutions of the countries, the purpose appear to provide healthy, safe and clean environment for human beings or natural things. Underline as degradation of the environment is the main factor for the violation of these rights. Therefore, the scope of constitutional environmental rights of the people is not restricted in one single term because in order to provide environment which is suitable for human being, it is a must to keep ecological equilibrium of the environment, and then sustainable development of the countries will be enhanced.

2.4. International Legal Framework for Environmental Rights

Environmental rights can be derived from existing environmental law; human rights law which is recognized internationally and nationally. In this part the relevant international human rights documents, and environmental declarations, resolutions, agreements and conventions pertaining to environmental rights will be discussed.

³¹ [Draft Principles on Human Rights and the Environment, E/CN.4/Sub.2/1994/9, available at http://www1.umn.edu/humanrts/instree/1994-dec.htm](http://www1.umn.edu/humanrts/instree/1994-dec.htm) (last accessed on 23 July 2011)

³² Ibid

2.5. Environmental Law relevant to Environmental Rights

Since the second half of the twentieth century, the environment has become an important issue at the global level. An attempt is made to control the intense environmental degradation resulting from disorganized contemporary economic and social development, which produced ecological imbalance. This interest in the environment has typically featured in the successive international conferences convened to deliberate on environmental issues. The first global conference on Human Environment, which was held in Stockholm in 1972, was followed by the creation of the United Nations Environment Programme (UNEP). Many gatherings have taken place since then, culminating in the United Nations Conference on Environment and Development, which convened in Rio de Janeiro in 1992, which became known as the Earth Summit. This landmark event saw the introduction of several international environment-based conventions, including the adoption of Agenda 21. Despite this apparent world interest in environmental issues, most of these issues still remain effectively unresolved. Consequently, the international community held a Third World Conference on Environment and Development in Johannesburg, South Africa, ten years after the Rio Conference. The international community felt that it was on the threshold of a drastic fate determining crisis if the global environmental situation was not addressed as promptly as necessary.

A necessary provision was that the redress must be conclusive to involve sustainable development, reconstruction, poverty reduction, pollution- combating, conservation of natural environmental resources and ecological balance. The world realized that scientific and technological expediences alone would provide the necessary protection neither for the environment nor its resources, unless binding controls were applied to ensure the application of protection. Controls should also exist to obligate individuals and groups to steer clear of environmentally harmful practices and show commitment to protect environmental safety and resources. For a legislation to be become functional, it has to be sufficiently flexible and dynamic to prove congruent with rapid development and keep pace with new and advanced scientific and technological innovations. These systems will otherwise remain ineffective and sluggish, creating a recipe for failure to accomplish

environment protection and development goals. In addition, for legislation to be observed in a given society, its requirements must be in conformity with the needs and unique character of the society in question. That is, the legal text must be seen as the product of research, testing and experience to cope with the social, economic and environmental circumstances of the society. In short, it must be relevant.

In light of these considerations, and as the international community has been perfectly aware of the importance of introducing legislative systems as an essential component of environmental protection, it took the lead to envisage international legislative tools (conventions, treaties, protocols) aimed at mobilizing international efforts to address environment issues of general nature.

By the time of the 1972 (Stockholm) United Nations Conference on the Human Environment, the idea that an acceptable environment might constitute a precondition for the enjoyment of certain human rights no longer seemed controversial³³:

*Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. , and habeas a solemn responsibility to protect and improve the environment for present and future generations*³⁴

Twenty years later and following the next conference of a similar stature, environmental quality had acquired the status of a ‘fundamental’ human right:

*All human beings have the fundamental right to an environment adequate for their health and well-being.*³⁵

The declaration which emerged from the United Nations (Rio de Janeiro) Conference in 1992 was framed in less explicit terms: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.³⁶

³³ Christopher Miller, environmental rights critical perspective,(2002) , New York, pp 1-2

³⁴Declaration of United Nation Conference on the Human Environment (Stockholm, June 20, 1972), principle 1

³⁵ Declaration of United Nation Conference on Environment and Development (Rio De Janeiro June 20, 1992), Principle 2

³⁶ Ibid

But the full blooded language of ‘rights’ is amply apparent in the (1994) Draft Principles on Human Rights and the Environment produced by the UN Sub Commission on Prevention of Discrimination and Protection of Minorities. Many of these are what Raz⁶ has described as ‘derivative’ (as distinct from ‘core’) rights; whether the General Assembly will accept so extensive a ‘wish list’ remains to be seen. If, as the Sub Commission proposes, these principles are to form a new and distinct addition to international law, a skeptic might point to the mutual antagonism between many of the listed rights and to the enormity of the task facing any state which strives to pay them all more than lip-service.³⁷

2.6. International Human Rights Instruments Accords To Environmental Rights

2.6.1. Introduction

Nearly many human rights treaties were drafted and adopted before environmental protection became a subject matter of international concern. Consequently, there are certain international human rights instruments which recognize expressly or implicitly the environmental rights to a clean and healthy environment.

In a similar vein, there are also certain binding and non binding environmental instruments addressing environmental protection and environmental rights directly and indirectly. Therefore under the preceding two consecutive parts the writer will highlights these two concepts.

2.6.2. The Universal Declaration on Human Rights(UDHR (1948))

Despite the non binding nature of the UDHR instrument, many of its provisions counted as customary international law.³⁸ The UDHR does not expressly deal with the environment, particularly with the rights to a clean and healthy environment for human being, but, indirectly shed light on environmental rights (the right to clean and healthy environment) in a specific provision. Specifically, Article 25 of the declaration states the rights of every one to standard of living adequate to their health and wellbeing for

³⁷ Supra note at 19

³⁸Shaw N. Malcolm, International law, (2008 6th ed) pp.848-49

himself and his family, including ... social services.³⁹ In order to attain and live the standard of living conditions which secure the health and wellbeing of the people in general, it is must to have a clean and healthy environment. Thus, the notion of the provision indicates the interdependence of human rights and the environment to fulfill the above objectives. Hence, one can argue that satisfying the standards of the Declaration necessitates the environment to be of sufficient quality to maintain human health and well-being.”⁴⁰

2.6.3. International Covenant on Economic, Social and Cultural Rights (1966) ICESCR)

This covenant guarantees the right to safe and healthy working conditions and the right of children and young person’s to be free from work harmful to their health (Article 10-3). The right to health within the Covenant expressly calls on States parties to take steps for the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.⁴¹

2.6.4. Convention on the Elimination All Forms Of Discrimination Against Women (1979)

This covenant obliges States parties to eliminate discrimination against women, particularly in rural areas, and to ensure that women "enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”⁴²

2.6.5. Convention on the Rights of the Child

This covenant refers to aspects of environmental protection in relation to the child's right to health. It obligates parties (States) to take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Information

³⁹ Article 25 of The Universal Declaration of Human Rights (UDHR), adopted 10 December 1948, G.A. Res 217A, UN, 3rd sess., at 71, UN Doc A/810 (1948)

⁴⁰ Ibid at 1

⁴¹ Ibid

⁴² Article 14 of the Convention on Elimination of Discrimination Against Women; **General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981**

and education is to be provided to all segments of society on hygiene and environmental sanitation.⁴³

2.6.6. ILO Convention Concerning Indigenous and Tribal Peoples In Independent Countries

This convention contains numerous references to the lands, resources, and environment of indigenous peoples. Part II of the Convention addresses land issues, including the rights of the peoples concerned to the natural resources pertaining to their lands. To a greater extent, governments are expected to ensure adequate health services are available or provide resources to indigenous groups "so that they may enjoy the highest attainable standard of physical and mental health." It also requires governments make known to the peoples concerned their rights and duties.⁴⁴

2.6.7. Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters

Also known as the Aarhus Convention, this convention takes a comprehensive approach to the many international agreements; utilizing procedural human rights to achieve better environmental protection in order to protect human health.⁴⁵ Thirty-five States and the European Community have signed it already.⁴⁶ The Convention builds on prior texts, especially Principle 1 of the Stockholm Declaration, which it incorporates and strengthens. The Preamble directly proclaims, "Every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."⁴⁷

2.6.8. United Nations Declaration on the Rights of Indigenous Peoples

The UN General Assembly on 7 September 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples. It's the first General Assembly Declaration on Human Rights which recognises the conservation and protection of the environment and

⁴³ Article 24 of the Convention on the Rights of the Child (CRC), United Nations General Assembly resolution 44/25, enter into force 2 September 1990

⁴⁴ Article 2, 6, 7, 15, 25 and 30 of ILO convention to **Indigenous and Tribal Peoples In Independent Countries**

⁴⁵ Supra note at 1

⁴⁶ Supra note at 29

⁴⁷ The preamble of the Stockholm declaration

resources as a Human Right. For indigenous people, that is. Article 29 of the Declaration declares:

1. *“Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection without discrimination.*
2. *States shall take effective measures to ensure that no storage or disposal hazardous materials shall take in the lands or territories of indigenous peoples without their free prior and informed consent.*
3. *States shall also take effective measures to ensure as needed, that programmes for monitoring, maintaining and resorting the health of indigenous peoples, as developed and implemented by the peoples affected by such materials are duly implemented.’⁴⁸*

2.6.9. The African Charter on Human and People’s Rights (Banjul charter)

The distinction between individual and people’s rights is not made clear. This charter contains both a right to health and a right to environment. Article 16 of the Charter guarantees the right to enjoy the best attainable state of physical and mental health to every individual.

Article 24 declares that all peoples shall have the right to a general satisfactory environment favourable to their development.⁴⁹

2.6.10. American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

Article 11 of the Additional Protocol to this convention is named: "Right to a healthy environment" and declares (1.) Everyone shall have the right to live in a healthy environment and to have access to basic public services and (2.) The States parties shall promote the protection, preservation and improvement of the environment.⁵⁰

⁴⁸ Article 29 of the **United Nations Declaration on the Rights of Indigenous Peoples (2007)**

⁴⁹ Article 16 and 24 of the African [Banjul] Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5 of June 27, 1981 Entry into force October 21, 1986

⁵⁰ Article 11 of the Additional Protocol on the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Nov. 14, 1988), 28 I.L.M 156, 168

The Protocol provides for both a right to environment and a right to health. Article 10 provides that (1.) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.⁵¹ (2) In order to ensure the exercise of the right to health, the States Parties agree to recognise health as a public good and, particularly, to adopt the following measures to ensure that right: (a) Primary health care, that is, essential health care made available to all individuals and families in the community; (b) Extension of the benefits of health services to all individuals subject to the State's jurisdiction; (c) Universal immunisation against the principal infectious diseases; (d) Prevention and treatment of endemic, occupational and other diseases; (e) Education of the population on the prevention and treatment of health problems, and (f) Satisfaction of the health.

⁵¹ Ibid article 10

Chapter Three

Theoretical and Legal System of EIA

3.1. Introduction

In pursuit of the 1972 Stockholm Conference the concept of EIA was first recognized in different national environmental instruments. Since then EIA became the established means for incorporating the environmental considerations into socio-economic development and decisions making process. It is a process which provides the written statement to enable decision makers to evaluate the activities, policy and programs proposed that would cause environmental problems, make as the decisions be influenced through information provided on the statement and give necessary information whether the potentially affected persons are involved in the decision making process or not.¹

The swift industrialization and urbanization in the western countries were the main factors for environmental degradation before and after the first and second world wars consequently. These continued trends became the cause for pollution, decreased quality of life, and became the factor for environmental stress in the western countries. As a result in the early 1960s, investors and the public realized that the projects they were undertaking were affecting the environment, natural resources, raw materials and human health. Consequently, pressure groups were formed with the aim of getting a means to protect the environment in any development. The US is the first country to respond and incorporate EIA in its domestic laws as environmental issues by introducing the national Environmental Policy Act in 1970; to consider its goal in terms of environmental protection.² This was the first time that EIA became the official tool to be used to protect the environment. Then after, the United Nations Conference on the Environment in Stockholm in 1972 and subsequent conventions formalized EIA. At present, all developed countries have environmental laws whereas most of the developing countries

¹ p. Sands, *Principles of International Environmental Law*: Cambridge: Cambridge University Press (2003)

² <http://www.os.is/gogn/unu-gtp-sc/> (last retrieved on 2011/05/24)

are still adopting it. Multilateral and bilateral lenders also included EIA requirements in their project eligibility criteria.³

In the preceding sections various universal, regional, binding and non binding EU Conventions and Declaration which are will be discussed.

3.2. Binding and non Binding Instruments

The United Nations Conference on the Human Environment, which was held at Stockholm from 5th to 16th June (1972) was intended to create unanimous agreement regarding the common principles towards the preservation and enhancement of the human environment. However, the principles included in the declaration do not refer to environmental impact assessment as a mandatory requirement in development projects, plans and development strategy either at national or international level.⁴ Though specific principles are silent about the need of EIA, principles 14 and 15 of the declaration could shed light about the necessity of EIA so as to harmonize development and environmental needs.⁵ The principle provided that:

*Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.*⁶ It states that EIA is basic to minimize any negative effects on the environment.

In a similar vein principle 15 of the declaration reaffirms the rational planning to be applied to human settlements and urbanization in order to reduce the adverse effects that would result on the environment. The effective way of planning will enhance common benefits for all.⁷

³ Ibid

⁴ Supra note at 1

⁵ Ibid

⁶ See principle 14(June 16, 1972) of Declaration of the United Nations Conference on the Human Environment, Having met at Stockholm from 5 to 16 June 1972, 21st Plenary Meeting 16 June 1972

⁷ Ibid, see principle 15 that states: Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.

In addition to this, during the 1992 Rio Earth Summit UNCED recognized EIA as an essential tool to promote sustainable development and to protect the integrity of the global environment.⁸ As regards this the Rio Declaration provides that:

*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.*⁹

This principle requires states to make EIA for environmentally harmful activities which have transboundary consequences. It also imposes an obligation on states to make EIA mandatory for the projects proposed that are likely to cause intended or unintended consequences to the environment. It is the duty of states to make certain about the projects proposed whether they cause bad effects to the environment or not. Nevertheless, this Declaration is vague concerning the minimum conditions expected from member states; because the principle put the general obligations required from the states.¹⁰

The United Nations Environment Programme (UNEP) is the agency for the environment in the United Nations system. Activities of the United Nations began in 1982, with the adoption of World Charter for Nature at the United Nations General Assembly.¹¹ This Charter supports the 'exhaustive examination' and 'assessment' of activities likely to pose a significant risk to nature or which may disturb nature, and requires that activities should not proceed or should minimise potential adverse effects on the basis of the findings of the assessment or examination.¹²

In recent years, environmentally sustainable development has become one of the most important problems facing development institutions like World Bank and the regional development banks which now have well-established EIA procedures, and apply to their lending activities and projects undertaken by borrowing countries. Because of the reason

⁸ Mohammed A. Bekhechi, etel ' the legal and regulatory framework for environmental impact assessment : a study of selected countries in Sub-Saharan Africa', the World Bank , Washington D.C [unpublished paper], 2002 , P-9

⁹ Rio Declaration on Environment and Development principle 17(August 1992),< available

¹⁰ Ibid

¹¹ Govind Singh,< *To Study the Inception and Evolution of Environmental Impact Assessment in the World and in India and to Analyze and Comment upon the Environmental Clearance Process in the Country*> Delhi of University , Delhi , School of Environmental Studies, LLM thesis ,[2007, unpublished]

¹² Article 11 of convention on the world charter for nature , United Nations General Assembly Resolution 37/7, of 28 October 1982

given, the World Bank has introduced a variety of instruments into its lending and advisory activities. Environmental assessment (EA) is one of the most important of these tools.¹³ In 1989, the Bank adopted Operational Directive (OD) 4.00, “Annex A: Environmental Assessment.” EA became standard procedure for Bank financed investment projects. In 1991 the directive was amended as OD 4.01. It is in the process of conversion to an Operational Policy, OP 4.01. EA is designed to be a flexible process that makes environmental considerations an integral part of project preparation and allows environmental issues to be addressed in a timely and cost-effective way during project preparation and implementation; since Borrowing countries are responsible for the preparation of the EIA, and this requirement possibly more than any other has influenced the introduction and development of EIA in many developing countries. The EIA policies and arrangements of the development banks remain important, especially in countries that have weak or non-existent domestic arrangements.¹⁴

The purpose of EIA is to enhance projects by helping to prevent, minimize, mitigate, or compensate for any adverse environmental and social impacts. Development institutions and many developing countries have introduced EIA requirements and regulations into their development activities. Their experience to date shows that EAs often do provide these benefits.¹⁵ The primary responsibility for the EIA process lies with the borrower. The Bank’s role is to advise the borrower throughout the process, to confirm that practice and quality are consistent with EA requirements, and to ensure that the process feeds effectively into project preparation and implementation.

Article 4(1) of 1992 the United Nations Framework Convention on Climate Change under its commitment part stipulates that "All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and

¹³ See Para 1 of the World Bank , *Pollution Prevention and Abatement Handbook World Bank Group: The Environmental Assessment Process*,(Effective July 1998)

¹⁴ Ibid

¹⁵ Ibid

determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.

Moreover, United Convention on the Law of Sea¹⁶, Convention on Environmental Impact Assessment in a transboundary¹⁷, CBD¹⁸ and EU directive¹⁹ recognized the significance of EIA international perspective.

The *Espoo Convention* is the first multi-lateral EIA treaty. It stipulates the responsibilities of signatory countries with regard to proposals that have transboundary impacts, describes the principles, provisions and procedures to be followed, and lists the activities, content of documentation and criteria of significance that apply.

CBD stress the need of EIA on various biological diversities like fauna, flora, human health and safety to be made.²⁰The convention requires EIA be made procedurally by involving public participation in the process.²¹

The EIA Directive (EU legislation) on Environmental Impact Assessment of the effects of projects on the environment was first introduced in 1985. This directive required a defined EIA to be implemented prior to official authorization for projects with potential significant environmental impact and required member countries to introduce formal EIA

¹⁶ Article 206 of United Nations Convention on the Law of the Sea states that; When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205 , entered in to force on Nov. 16, 1994

¹⁷ Article 2 of Convention on Environmental Impact Assessment in a transboundary context done at Espoo (Finland), On 25 February 1991

¹⁸ See Convention on Biological Diversity [CBD]: treaty doc. No. 103-20, 1760. U.N. T.s. 79, entered in to force on Dec. 29, 1993

¹⁹ See the Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, article 7 states that ; Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia.

²⁰ Article 14 of CBD

²¹ *ibid*

systems by 1988 in order to realize the above. From 1985, the provision of EIA systems in European countries has been progressed centering on the EU member countries.

3.3. Environmental Policy and EIA Proclamation in Ethiopia

In 1994, Ethiopia incorporated environmental rights for first time in the history of the country in its 1994 constitution. To realize the constitutional environmental rights to a clean and healthy environment a number of steps have been taken by the government. Among these steps, the government has enacted environmental policy in 1997.²²

The 1997 environmental policy is divided into various parts in order to protect and manage the effects that would occur to the environment. It starts by discussing resource bases and the need for policy, the general and specific objectives, and finally discusses the sectoral environmental policies.²³ In the policy, the general objectives are declared precisely as;

*The overall policy goal is to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.*²⁴

In addition to the general objectives, the specific objectives of the policy are stated as; ‘Improving the environment of human settlements in order to satisfy the physical, social, economic, cultural and other needs of their inhabitants on a sustainable basis²⁵; preventing the pollution of land, air and water in the most cost-effective way so that the cost of effective preventive intervention would not exceed the benefits’;²⁶ ensuring the empowerment and participation of the people and their organizations at all levels in

²²See paragraphs 2.1-2.3 the Environmental Policy of the Federal Democratic Republic of Ethiopia (EPE), Council of Ministers, April 1997

²³ Ibid, see section 2.1 & 2.2 p 3.

²⁴ Ibid

²⁵ Ibid, see (e)

²⁶ Ibid, see (f)

environmental management activities; and raise public awareness and promote understanding of the essential linkages between environment and development²⁷

The issue of EIA is also indicated in the policy. As regards EIA the policy needs certain matters to be considered in case of effectuation.

Generally , the policy requires certain conditions to be fulfilled when EIA is designed to be carried out , for example - to ensure not only physical and biological impacts but also address 'social, socio-economic, political and cultural conditions; public and private sector development programmes and projects recognize any environmental impacts early and incorporate their system into the development design process; recognize that public consultation is an integral part of EIA and ensure that EIA procedures make provision for both an independent review and public comment before consideration by decision makers; ensure an environmental impact statement always includes mitigation plans for environmental management problems and contingency plans in case of accidents; ensure at specified intervals during project implementation, environmental audits regarding monitoring, inspection and record keeping take place for activities where these have been required by the Environmental Impact Statement; ensure that preliminary and full EIA's are undertaken by the relevant sectoral ministries or departments, if in the public sector, and by the developer, if in the private sector; to create by law an EIA process which requires appropriate environmental impact statements and environmental audits for private and state development projects; to establish the necessary institutional framework and determine the linkages of its parts for undertaking, coordinating and approving EIAs and the subsequent system of environmental audits required to ensure compliance with conditionality; and to develop detailed sectoral technical guidelines in EIAs and environmental audits. ²⁸Therefore, the proper utilizations of these conditions are the means for putting the environmental rights of people on the ground.

In order to achieve these objectives, there are certain institutions and protection of law to the recognition of EIA in Ethiopia.

²⁷ Ibid ,see (i)

²⁸ Ibid, see section 4.9 (a-i) page 24

3.4. Legal Instruments concerning EIA in Ethiopia

Unlike most international Conventions, and Agreement, the 1995 FDRE constitution is the binding instrument discerns EIA in Ethiopian legal system to be considered on various development projects, plans and programs designed to be established in Ethiopia for the first time in history.

The FDRE constitution under chapter ten titled as ‘National policy principles and objectives’²⁹ provides EIA as a legal framework. It make EIA a prerequisite for any policy, programs and projects designed in the country taking into considerations their impacts have on the environment.³⁰ It also stresses the need of public participation to be fully consulted and expressed their views at the time of planning and implementation of environmental policies and projects that would affect them directly or indirectly.³¹

With the primary goals of protecting the environment and enforcing environmental rights and objectives enshrined³² in the constitution, the government also adopted Environmental Impact Assessment proclamation which is the means of predicting and managing the likely harm that would result on the environment, and maximization of their socio-economic benefits in 2002. As we understood from the reading of the preamble ,EIA is used to predict and manage the environmental effects ; which a proposed development activity as a result of its design setting, construction, operation, or an ongoing one as a result of its modification or termination, entails and thus helps to bring about intended development³³; enable assessment of possible impacts on the environment prior to the approval of a public instrument provides an effective means of harmonizing and integrating environmental, economic, cultural and social considerations into a decision making process in a manner that promotes sustainable development.³⁴ Thus, EIA in Ethiopia has a legal basis to be incorporated in any plan, programs and project development that would be accomplished in the country.

²⁹ See chapter of the FDRE constitution

³⁰ Ibid, see article 92(2)

³¹ Ibid, see article 92(3)

³² See Paragraph 3 of Preamble of Environmental Impact Assessment Proclamation of Ethiopia, Proclamation No. 299/2002 which came into force in 2002

³³ Ibid, see Para 1

³⁴ Ibid, see Para 2

The Authority³⁵ and owners³⁶ of the projects are duty bound to consider the issues of EIA for the development projects they intended to grant license, and they want to establish in the country respectively.

The proclamation imposes certain obligations on the opponents.³⁷ Among these, the owners of the projects are duty bound: to undertake an environmental impact assessment, identify the likely adverse impacts of his/her 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; to ensure that the environmental impact of his project is conducted and the environmental impact study report prepared by experts that meet the requirements specified under any directive issued by the Authority; the cost of undertaking an environmental impact assessment and preparing an environmental impact study report shall be borne by the proponent; when implementing his project, a proponent shall fulfill the terms and condition of authorization.³⁸

The environmental study report made by the owners of the projects, among many must provide sufficient information for the decision makers to ascertain whether the proposed projects are to be implemented or not. It is not only the information, but also the minimum description of the impact on the environment should be disclosed in the report.³⁹

³⁵ Ibid, see Article 3 (3), under its general provisions stated that any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project; ensure that the Authority or the relevant regional environmental agency has authorized its implementation. Thus, it is the duty of the licensing agency to ascertain whether the environmental agency or units authorize the applicability of the likely projects on the intended place or site. This provision implies the coordination and mutual responsibility of the licensing agency and environmental agency or units.

³⁶Ibid, see Art.3 (1), as per this provision, any person is responsible not to start projects which need environmental impact assessment as per article 5 of the Directives. Meaning the owners of the project is allowed to implement the projects in accordance with the environmental Directives adopted by the country.

³⁷ Ibid, see Art. 7

³⁸ Ibid, see Art. 7 (1)-(4)

³⁹Ibid, see Art. 8(1) & (2), the information provided on the report will enable the authority or relevant regional environmental authority to ensure the impacts of that project on the environment. In addition to this , the report has disclose : the nature of the project, including the technology and processes to be used, the content and amount of pollutant that will be released during implementation as well as during operation , and source and amount of energy required for operation, among many listed under the provision.

The EIAP does not restrict itself to imposing obligation on the owners of the projects; it also demands public participation when the projects cause disaster to the environment.⁴⁰ The Authority and the regional environmental agencies are under obligation to make reports available to the people.⁴¹ It is also the duty of the Authority to ascertain whether the incorporated comments are affected while the projects are implemented in the place.⁴²

The Regional Environmental Agency or the Federal Environmental Authority is at liberty to give authorization to the projects which requires EIA as per the Directives made in line of article 5 of this proclamation.⁴³ Article 5 of this proclamation refers to Directives which determine the projects which need EIA. As we understand from the reading of this provision, there are certain projects which pass through EIA processes.

As indicated under article 5 of EIAP; environmental impact Directive was issued in 2008 by the environmental council as per article 9(3) of the Environmental Protection Organs Establishment Proclamation No. 295/2002. In this perspective, certain development projects are subject to EIA. Accordingly ,mine exploration that is subject to Federal Government Permit, dam and reservoir construction(Dam height 15 meter or more, or reservoir storage capacity 3 million cubic meter or more, or power generation capacity 10 MW or more), irrigation development (Irrigated area of 3000 ha or more) , construction of roads (Design Standard DS1, DS2 and DS3) with a traffic flow of 1000 or more(railway construction) , taking Fish from Lakes on a commercial Scale, Horticulture and Floriculture Development for export Textile Factory, Tannery, Sugar Refinery, Cement Factory, Tyre Factory with Production Capacity of 15 000 Kg/day or more, Construction of urban and industrial waste disposal facility, Paper Factory, Abattoir Construction with Slaughtering Capacity of 1 000/Year or more, Hospital Construction, Basic Chemicals and Chemical Products Manufacturing Factory, Any project planned to be implemented in or near areas designated as protected, Metallurgical Factory with a Daily Production Capacity of Equal or More Than 24 000 Kilogram, Airport Construction, Installation for

⁴⁰ Ibid, see Art. 8

⁴¹ Ibid, see Art. 15(1)

⁴² Ibid, see Art. 15(2)

⁴³ Ibid, see Art.3(1)

the Storage of Petroleum Products with a Capacity of 25,000 Liters or more, Establishment of Industrial Zone, Condominium construction ⁴⁴require mandatory EIA.

In addition to the above binding instruments, ‘the Environmental Protection Authority (EPA) has taken major action and prepared a draft EIA system, including Procedural Guidelines, which is used for all types of development projects in any sector (e.g. Agriculture, Industry, and Transport)’.⁴⁵ The main purpose of this procedure is that, it is to be used as a tool for planning and decision making, with the objective of ensuring that potential problems with projects and other development activities are foreseen and addressed at an early stage in the project cycle or other planning process.⁴⁶

3.4.1. Institutions Concerned About EIA in Ethiopia

Since 1991 Ethiopia has been under the federal system.⁴⁷ Hence, there are nine regional states and two city administration units in the country as whole. Division of powers among the federal and regional states is commonly used in federal system in order to avoid conflict of interest. In a Similar vein this principle is applicable in Ethiopia in many respects. With the objectives of ‘environmental development and management, in one hand and, environmental protection, regulation and monitoring, on the other hand,’ the Ethiopian government shared the EIA administration to federal and regional level.⁴⁸ Though the head (the federal government has taken the lion share responsibilities in the country, there are also sectoral units and regional environmental agencies who share powers of environmental protection and EIA.⁴⁹

⁴⁴ See Directive Issued to Determine Projects Subject to Environmental Impact Assessment, Directive No.1/ 2008

⁴⁵ Yonas Teklemichael, *Current Status of the Environmental Impact Assessment System in Ethiopia: Case Studies from Developing Countries*, UNEP EIA Training Resource Manual (2006) , p

⁴⁶ Ibid

⁴⁷ See Mellese Damtie and Mesfine Bayou, *Overview of Environmental Impact Assessment in Ethiopia: Gaps and Challenges* [Overview of EIA in Ethiopia], MELCA Mahiber (January 2008)

⁴⁸ See the preamble of the Environmental Protection Organs Establishment Proclamation No. 295/2002 entered into force as of the 3rd day of October, 2002

⁴⁹ Supra note at 32

3.4.2. The Powers and Responsibilities of Environmental Protection Authority (EPA)

The re-established EPA proclamation has enumerated a number of functions that would be carried out by the Federal Environmental Authority (FEA). The functions of the authority should be in line with realizing and ensuring the environmental objectives guaranteed under the constitution and principles set out in the environmental policy of Ethiopia. Regarding the constitutional objectives, it is the duty of EPA to ensure all Ethiopians live in a clean and healthy environment and to make sure that Environmental Impact Assessment is done for all projects that are likely to have adverse impact on the environment.⁵⁰

Among many, the EPA has powers and duties:

- to prepare, review and update, or as necessary, cause the preparation of environmental policies strategies and laws in consultation with the competent agencies, other concerned organs and the public at large and upon approval, monitor and enforce their implementation;
- Establish a system for environmental impact assessment of public and private projects, as well as social and economic development policies, strategies, laws, and programmes;
- 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;
- prepare directives to implement environmental protection laws and, upon approval, ensure their implementation;
- advise and, as feasible and subject to the consent of the Environmental Council, provide financial as well as technical support to any organization or individual having as its objective the management and protection of the environment;

⁵⁰ See Article 92 (1) & (2) of the FDRE constitution

- provide advice and support to regions regarding the management and protection of the environment;
- Provide advice to competent agencies regarding the discharge of their obligations under this Proclamation or under other laws pertaining to environmental protection and, as appropriate, give recommendations to the government regarding measures necessary to ensure compliance;
- Delegate some of its powers and duties, as it may be deemed appropriate, to other agencies.⁵¹

3.4.3. Powers and responsibilities of Regional Environmental Agencies

As indicated under Environmental Protection Organs establishment proclamation, the Regional Environmental Agencies or their equivalent Competent Authority is also duty bound in protecting the environment. This proclamation requires regional states to set up or designs their own independent environmental agency in line with the Ethiopian environmental policy and conservation strategy.⁵² The regional environmental agencies are responsible for coordinating the formulation, implementation, review and revision of regional conservation strategies, environmental monitoring, protection, regulation and also ensuring the implementation of federal environmental standards or, as may be appropriate, issue and implement their own environmental laws in no less stringent standards.⁵³

Despite the binding nature of EIA procedural guidelines, the responsibilities of REAs are discussed in detail. Among its responsibility, it says that, in the Environmental Impact Assessment Process the Regional Environmental Agencies or their equivalents are responsible to adopt and interpret federal level EA policies and systems or requirements in line with their respective local realities, establish a system for EA of public and private projects, as well as social and economic development policies, strategies, laws, or programs of regional level functions; administer, oversee, and pass major decisions regarding impact assessment of:

- project subjects to licensing by regional agency

⁵¹ Supra note at 41, see Art. 6

⁵² Ibid, see Art.15

⁵³ Ibid

- project subjects to execution by a regional agency
- project likely to have regional impacts

3.4.3.1. Sectoral units

The third basic organ accountable for the regulation and administration of environmental impact assessment is sectoral environmental unit. This organ is stranded by the regional environmental agency to ensure, bring into common action and go through the activities of the competent agency are incompatible with the objectives and principle of the environmental protection proclamation and other environmental protection requirements.⁵⁴

3.4.3.2. Sectoral institutions set up for EIA

There are a number of institutions which recognize EIA as a prerequisite in their operations.⁵⁵ Among this, investment institution has been discussed here.

3.4.3.3. Investment institutions

The Ethiopian Investment Agency is the government agency established to promote, encourage and facilitate private investment in general and foreign investment in particular in Ethiopia.⁵⁶ This is to enable peoples of the country change their living standard through realization of sustainable economic and social development, among many goals specified in proclamation.⁵⁷ To achieve the objectives of the Proclamation, and other related objectives, the Environmental Impact Assessment Proclamation under its general provisions (Art. 2) declares that it is the duty of licensing Authority to make sure whether the federal environmental authority or the regional environmental agency or competent body has permitted the implementation of projects, before giving investment permit or a trade or an operating license for any project.

⁵⁴ Supra note at 33, see Art. 14

⁵⁵ Supra note at 32. Institutions like: licensing institutions which include Ministry/Bureau of Trade and Industry Ministry/Agency of Mines and Energy, natural resource management institutions such as Ministry/Bureau of Agriculture and Rural Development Ministry/ Bureau of Water Resources, and financial institutions required EIA as mandatory requirements.

⁵⁶ <http://www.ethioinvest.org/> (last retrieved on 7/July /2011)

⁵⁷ See Article 4 of Investment Proclamation No. 280/2002, entered into force of the 2nd day of July, 2002.

Therefore, the ‘Ethiopian investment Authority’ which has been reestablished under Proclamation No.280/2002 renamed as ‘the Ethiopian investment commission’,⁵⁸ is the federal institution provided with the power and authority to approve and issue investment permits, trade registrations, operating license to foreign investors and to facilitate acquisition of land by foreign investors.⁵⁹

The Oromia regional state Investment agency also gives license to projects under its jurisdiction.

3.4.4. The Oromia Regional State Environmental Legislation

Since environmental pollution, disturbance of ecological balance and environmental degradation in the region is fundamentally at an alarming stage; the Oromia Environmental Office was established in 2002.⁶⁰ The aim was to establish a body responsible for the protection of nature and environment to leave to the future generation and monitoring of proper implementation government policies laws on the environment.⁶¹ It has been provided with the new structure and nominated as the Oromia Land and Environmental Protection Bureau in 2009.⁶² This bureau is established to conduct certain activities. As indicated in the preamble of the Proclamation, the Bureau is established to administer, regulate the urban and rural land and preparation of land use planning⁶³ of the region by the executive organ, with the aim of regulating the

⁵⁸ See Investment Proclamation No. 375/2003, (amended) entered into force as of 28th day of October, 2003.

⁵⁹ Ibid at p.33

⁶⁰ Regulation for the establishment of Oromia Environmental Protection Office, No. 28/2002, entered into force on 26th June, 2002, article 6 of the regulation reads the powers and duties of the office as: formulation of policies, strategies, programs or guidelines pertinent to environmental protection and follow up its implementation upon approval; regulates and follow up any development activity is planned and implemented without damaging the environment and disordering its balance; initiate laws and guidelines pertinent to the environmental protection for the government and upon approval reregulates, follow up and evaluates their implementation; monitor any damaging effect on the habitants and diverse living organisms; undertake environmental auditing on the manner of liquid and toxic wastes disposal management by factories and industries so that it may not damage the environment; respecting other laws, regulates and supervise wastes disposal from different industries and urban pollutants not affect the environment and the ecosystem and take corrective measures; prepare environmental standards and regulates its implementation by the respective bodies; and promote public and concerned organs awareness on the environmental issues.

⁶¹ Ibid, see the preamble

⁶² A proclamation to provide for the establishment of Oromia Land Environmental Protection Bureau (hereinafter called the Bureau), proclamation No. 147/2009, entered into force on March 5th of March 2009.

⁶³ Ibid, See Article 2 (5) of the, defined [Land use planning] as a practice whereby the options that greater economic benefits without causing land degradation and environmental pollution are determined and

implementation of any development activities with the knowledge of land use⁶⁴ planning and environmental protection, and design to establish an organ that organizes and manages data of land administration, use and environmental protection.⁶⁵

The proclamation states that, the land and environmental protection Bureau is the head organ established with the aim of formulating policies and strategies pertinent to land and environmental protection.⁶⁶ It implements and follows up its implementation. Currently, the Bureau conducts allocation of lands for different development work and services, which was the responsibility of the investment commission.⁶⁷ Taking into consideration the situations of the region, the Bureau prepare environmental standards; and submit for approval, and upon approval regulates and follow up its implementation. Regulation of the EIA is the basic responsibility conferred to this Bureau, regulate and follow up any development activity planted in the region.

The bureau is responsible for the following acts. According to this proclamation the Bureau has Amongst its power and duties: based on the situations of the region prepare environmental standards ; regulates and follow up its implementation by the concerned bodies, regulate and follow up whether any development activity is planned and implemented without damaging the environment; regulate and follow up whether development activity conduct EIA prior to project implementation; regulates the disposal of different pollutants and waste materials from factories and industries; undertake environmental auditing on the manner of liquid and toxic wastes disposal management by factories and industries so that it may not damage the environment; communicate and establish a relation with concerned bodies on issues related to land environment; monitoring damage effects on habitants and diverse living organisms if so happened and take corrective measures.⁶⁸

implemented from among the different use options a land can give on the basis of physical ,economic and social information. ‘

⁶⁴ Ibid, See Article 2 (3) of the proclamation defined [Land use] as a process by which the land is sustainably used to give better out puts through proper management and conservation’.

⁶⁵ See Preamble of the Oromia Land and Environmental Protection Bureau, a Proclamation that is provided for the establishment of the Bureau, Proclamation No. 147/2009; enter into force on March 5, 2009.

⁶⁶ Ibid , see Art.5(1)

⁶⁷ Ibid, see Art. 5(10)

⁶⁸ Ibid, see Art. 5[1-20]

3.4.5. Stages of EIA process

The EIA processes are different depending upon the interest and requirements that a country needs. Even if the need and requirements of a country are different, however, there are common methods of EIA process globally. In Ethiopian context, the EIA processes are indicated in the EIA guidelines as follows:

Screening: this is the initial stage, which establishes whether the proposed project, requires an EIA and if it requires EIA; then the level of assessment required. At this point the owner of the project provides; the project outline or the first environmental examination report for the EPA or regional environmental authority. The outline of the initial environmental must elaborates; for instance: the proposed activities and its potential impacts, characteristics of the location (sensitivity of the area), size (small, medium and large scale), and degree of public interest, institutional requirement, Environmental enhancement and monitoring considerations.

Scoping: this stage distinguishes the key issues like: description of the project, all alternatives and issues rose by IAPs, description of public participation and impact that should be further investigated. This stage also defines the boundary and time limit of the study. Its main objectives is to participate potentially affected groups, consider reasonable alternatives, evaluate concerns expressed, understand local values, determine methodologies and establishes the terms of references.

The EIA study Report: This stage of EIA study predicts likely environmental and social impacts of the proposed project and evaluates their significance. This step in EIA recommends the actions that reduce and avoid the potential adverse and environmental consequences of development activities. In a similar vein, the EIAP imposes an obligation on the owners of the project as they prepare EIA report supported by the specialized expert. The EIA process requires the preparation and review of an EIA study report.⁶⁹ The report is a document planned to draw the ultimate decision- making process concerning project viability and ease of implementation. It is generally prepared by the project's proponent, or by a competent consultant (preferably independent).⁷⁰ Many authors recommend that in the final phase of the EIA system, developers should be

⁶⁹ Supra note at 27, see Arts. 8 and 9

⁷⁰ Supra note at 68 , see p-31

encouraged to use any capacity at their disposal to prepare EIAs for their projects, without being obliged to hire an outside consultant, with a view of developing some kind of environmental awareness and self-compliance with environmental standards.⁷¹

In Ethiopia, the EIAP defines the content of the environmental impact study report in the manner which should include for instance: the nature of the project, comprised of the technology and processes to be used; the content and amount of pollutant that will be released during implementation as well as during operation; source and amount of energy required for operation; information on likely trans-regional impacts; characteristics and duration of all the estimated positive or negative impacts; measures proposed to eliminate, minimize, or mitigate negative impacts; contingency plan in case of accident; and procedures of self auditing and monitoring during implementation and operation.⁷² Therefore, the proponent is duty bound to make EIA study report which indentify the likely negative impacts of his project that includes the means of mitigation or prevention or system with its cost.⁷³ He is also responsible to ascertain whether the report is prepared by the experts in line with the any directives adopted by the federal environmental Authority.⁷⁴ Hence, this implies that, it is necessary to adopt the Directives which determine the report made by the owners of the project. Therefore, the Authority is responsible to issue guidelines that determine the elements necessary to prepare as well as evaluate an environmental impact study report.⁷⁵ Thus, non compliance of these requirements will entail bad consequence against the owners of the project.⁷⁶

Review of EIA: It examines the adequacy and effectiveness of the EIA report and provides information necessary for the decision-making. The purpose of the review is to obtain an impartial judgment of the particular and often conflicting interests of the various parties involved, and to avoid unnecessary costs and delays. This is a very important issue as there is a need to proceed as quickly as possible with development projects and to reduce their costs. It is usual for a review to be undertaken by the

⁷¹ Ibid

⁷² Supra note at 67, see Art. 8(2)(a-h))

⁷³ Ibid, see Art. 9(1) & (3)

⁷⁴ Ibid, see Art. 9(2)

⁷⁵ Ibid, see Art. 8 (3)

⁷⁶ Ibid, see Art. 8(4)

concerned Competent Agency. The concerned Competent Agency is also responsible for reviewing and approving the Initial Environmental Examination reports and ToRs of the proposed projects.⁷⁷

Auditing is a term borrowed from accounting to describe a systematic process of examining, documenting and verifying that EIA procedures and outcomes correspond to objectives and requirements.⁷⁸ As stated under the guidelines this stage comes into play once the project has given official approval. It checks whether the impacts of the project do not exceed the legal standards and implementation of the mitigation measures are in the manner as described in the EIA report.

⁷⁷ Supra note at 45 , see p -23

⁷⁸ EIA Training Resource Manual, *implementation and follow up*, second edition , 2002

Chapter Four

Analysis of the Legal and Theoretical Perspective of EIA Laws

4.1. General Background

Oromia Regional State is divided into various Zones, Woredas and City Administrations. One of the Zone is East Shoa Zone which is sub divided into different Woredas and City administrations, such as Adaama, Ada'a, Bora, Baatuu, Dugda, Libanchukala, Gimbichu, Bosat, Bootee, Bulbula, Wanji, Fanatale, Lume, Dukem and Baatuu Jiddu Kombolcha.¹

Different from other Zones found in the region , East Shoa Zone is suitable for investment due to different factors like the availability of various investment areas , suitable climatic and natural resources, the existence of dry port, proximity to the capital city of the country, efficiency of the transport system and availability of abundant and cheap labor.²

Several projects are found in this Zone, ranging from small scale to large scale, like industry, floriculture ...etc ,that require full, partial and no EIA in general. The data obtained from Zonal Investment Office show that from the year 1984 to 2000 as per Ethiopian calendar, the regional investment office permits two hundred seventy nine projects. Among these, one hundred seventy nine, and ninety five of them are operational and one is on construction in the indicated years.

Due to the growth of industry, environmental matter also became the central issue in the country and in the world as well. And to this effect the country has taken some legislative measures in order to comply with the commitments; however, among the projects found in this Zone, eighty of them under gone EIA proposal in order to mitigate unexpected

¹ The data is gathered from Newspaper written by Oromia regional state East Shoa Zone Investment Office, *East Shoa Zone investment week*, Ebla 2002, p5

² Ato Lammessa Janbaree Budee, head of East oromia zone investment office, interview held on 05/01/2004, in his office at 3:00 am

consequences to environment.³ As a direct observant, the researcher viewed some of the EIA proposal submitted to Woredas, and Zonal Land and Environmental Protection Offices. As observed some of the proponents submitted their EIA proposal to unconcerned bodies; where there are no qualified EIA experts to review EIA study reports and have no jurisdiction to see the EIA study report.

As examined in chapter three, an Environmental Impact Assessment (EIA) is an assessment of the possible impacts – positive or negative – that a proposed project may have on the environment consisting of the natural, social and economic aspects. EIA is mandatory prior to the approval of industrial and new construction projects by the EPA or regional environmental authority / their equivalent authority.

In order to evaluate the effectiveness of EIA several factors will be taken into consideration among which-the quality of EIA laws, their implementation and follow-up of EIA recommendations provided under the EIA study report.⁴

Environmental Impact Assessment (EIA) requirements are perhaps the most widely adopted environmental requirements by both individual countries and international organizations.⁵ In its simplest terms, for projects subject to EIA requirements, proponents must identify, assess, and publicly disclose project details, predicted impacts on physical, biological and socio-economic environments, alternatives for avoiding and mitigating adverse impacts, and plans for mitigating and monitoring impacts. This documented assessment is then subjected to independent review and public comment procedures; the outcome of which is either rejection or approval of the project and/or EIA document with a commitment to carry out the project; mitigation and monitoring as proposed and accepted.⁶ EIA procedures are also intended to provide a unique opportunity to identify, avoid and mitigate potentially significant adverse environmental impacts and; to better integrate long and short term environmental, economic, and social concerns. However,

³ See the annexes attached to back of the paper, from the projects found in this Zone, the researcher identified the projects that made EIA, until this research is completed.

⁴ Abebe, W.B, McCartney, M., Douven, W.J.A.M. Leentvaar J, Environmental Impact Assessment Follow-up in the Koga Irrigation Project, Ethiopia: available at www.ifwf2.org/addons/download-presents(last retrieved on July 19/2011)

⁵ http://inece.org/conference/9/papers/Wasserman_USEPA_Final.pdf(last retrieved on July 19/2011)

⁶ Ibid

full realization of the environmental, social and economic benefits of Environmental Impact Assessment requirements cannot be achieved without significant improvements in environmental governance.⁷

There are various environmental laws that recognize the concepts of EIA in binding and non binding instruments globally. Ethiopia has also ratified and became party to the following conventions and protocols: the Basel Convention and Protocol, Rotterdam Convention, the Kyoto Protocol, the Stockholm Convention, Convention on Environmental Impact Assessment in a Transboundary Context, World Charter for Nature, Convention on Biological Diversity (1992), United Nations framework on Climatic Change (1992) and United Convention to Combat Desertification (1994) are the basic one. It also requires ensuring that all other environmental policies and laws of Ethiopia are respected including international conventions and treaties of environment to which the country is a signatory. All these instruments were adopted by the international community to avoid or minimize adverse impacts that would occur to human and natural environments.

Among these international environmental instruments, that is, Convention on Biological Diversity (1992), United Nations Framework on Climatic Change (1992) and United Convention to Combat Desertification (1994) contains EIA provisions that require the member states to act according to certain accepted standards when the new developments are established in their countries; to protect the environment from negative consequences. The issue of environmental rights to a clean and healthy environment is a recent development in the area of human rights despite the adoption of international human rights before environmental laws.

Compliance with these commitments would result in securing the constitutional environmental rights to a clean and healthy environment even if there are arguments⁸ among scholars concerning the advancement of a clean and healthy environment.

⁷ Ibid

⁸ See Laura Horn, *The implications of the concept of common concern of a human kind on a human right to a healthy environment*, MqJICEL (2004) Vol 1, in this article, some argue that the development of a human right to healthy environment is due to the development of international environmental laws, and they argue

Although Ethiopia has ratified both the international human rights and other environmental treaties, the commitments are not fulfilled due to the non implementation of EIA laws on the projects being planned in the study area. This inturn became a factor for violation of constitutional environmental rights.

In this chapter the researcher identifies the challenges and gaps in the implementation of EIA laws in the study area by the data obtained through interviews and structured questionnaire from the federal and regional EIA experts.

4.2. Factors Attributable to Ineffective Implementation of EIA Laws

In order to appraise the problems associated with improper enforcement of EIA laws in the study area two Federal EIA experts and five Oromia land and environmental protection experts were purposively selected for fulfilling the structured questionnaire. In addition, two EIA experts from the regional and one from the federal government were selected for interview. The data obtained from these experts revealed; there are various factors for ineffective implementation of EIA laws on projects found in the study area.⁹

Among these:-

- the proponents' failure to construct /implement the said projects as per the implied technology or Applying the recommended mitigation measures
- lack of EIA follow up
- institutional problem
- lack of awareness about EIA
- weak political commitment of the government
- absence of effective public participation in decision making

that this is appropriate in national jurisdiction, but impossible in global perspective. And others relate their argument to the failure of having proper definition to this right, like problems to the anthropocentric approach and procedure to enforce it. P,238

⁹ As per the results obtained from questionnaire filled by the regional and federal Environmental Impact Assessment experts has confirmed that almost above 75 of the experts believe that ineffective implementation of EIA laws in the study area were due to the problems listed above. So as to substantiate the challenges faced for effective enforcement of EIA laws and guidelines; two of other experts from the region and federal government were selected, but they were not willing to give the data; these were the challenge to get full and essential data regarding its implementation.

- Lack of effective EIA study report and review of EIA study report, are the main challenges to have effective environmental impact assessment laws on the projects situated in Ethiopia in general and in the study area in particular.

Most of the experts agree upon the factors listed above. However, some experts argue that the main challenges to implement the standards recognized in the federal environmental laws are lack of knowledge and skilled expertise in the area (qualified in EIA), inadequate human resources and institutional instability and the mandate to deliver and exercise their duties.¹⁰

I selected and discussed some of the factors listed above as follows:-

4.2.1. Failure to Apply the indicated Mitigation Measures

According to EIA proclamation, it is the duty of the proponents of the projects to make environmental impact study before the projects commence their operation.¹¹ The main objective of EIA Study is to find better ways of doing things like minimizing or eliminating the negative impacts, enhance benefits, and protect public and individual rights to compensation.¹² Thus, when the proponents conduct EIA study recommend mitigation action for each impact identified. As regards this issue; the key respondents informed the researcher that; the proponents of the project would not apply the technology, and other necessary measures.¹³ For instance, Huangshan cement PLC found in Lume woreda, Kurmafatole kebele, has proposed certain mitigations measures that would minimize the dusts released from the projects, but they did not apply as prescribed in the EIA study report.¹⁴ In a similar manner the expert added that, most of the leather factories found in the Lume woreda were established before the federal EIA proclamation was enacted by the government. Even if, they were established before this proclamation was adopted, it is their duty to conduct environmental self auditing:-that minimize

¹⁰ Two of the regional land and environmental protection experts, and one of the federal EIA expert in addition to the above listed factor; they added that the main challenges to implement the federal EIA standard were lack of sufficient knowledge about EIA by the experts, who review and evaluate the EIA documents.

¹¹ Federal Democratic Republic of Ethiopia Environmental Protection Authority Environmental Impact Assessment Procedural Guideline Series 1, November, 2003 Addis Ababa, section 5.2.4

¹² Ibid

¹³ Ibid

¹⁴ Interview with Ato Ahmed Hussein senior EIA expert of the oromia land and environmental protection, conducted on July 26, 2011 in his office at 7: 30 am

impacts cause on the environment and human health. However, the project proponents found in this study area did not submit the said report that shows they conduct environmental auditing. The expert also states that, it is the duty of Oromia Land and Environmental Protection Bureau to monitor and evaluate whether these activities are done, since there are expert lacuna to do this activities the proponent owner fails to apply what they prescribed in the proposal.¹⁵

4.2.2. Institutional Problem

As discussed earlier, environmental protection is not the duty of single institution, either the Federal or Regional environmental agency but also the responsibility of all institutions concerned to cooperate. On the basis of this objective, the Ethiopian environmental policy, guidelines disseminates the responsibilities among different Sectors and environmental units at Regional and Federal levels.

The Federal Environmental Authority is responsible to establish the system of EIA for the public and private projects functioning at the federal levels, review and make decisions and ; monitor its implementation of impact study report of projects, as well as social and economic development programs or plans subject to federal licensing, executions or supervisions, proposed activities subject to executions by federal agency, etc.¹⁶ likewise, auditing and regulating the implementations of the conditions attached to the decisions ,to provide advice and technical support to the regional environmental agencies, sectoral institutions and the proponents, and resolving all complaints and grievances in good faith and at the appropriate time.¹⁷

As regards projects subject to the Regional Environmental Agency / competent authority, that is in case of Oromia, the Oromia Land Environmental Protection Bureau is responsible to oversee, and make major decisions regarding Environmental Impact Assessment.¹⁸ However, having the power given to FEA, the Federal Environmental Authority has given delegation to certain sectoral units (for ministry of trade, ministry of industry , ministry of agriculture) as they ensure and review EIA study report before the

¹⁵ Ibid

¹⁶ Ibid, see at Section 6.1.1

¹⁷ Ibid

¹⁸ Ibid ,see section 6.1.2

project proponents get license for their projects to start the operations.¹⁹ But, what has been seen in practice does not reveal the fact because the data obtained from regional experts shows that, almost all projects found in the study area, the Oromia Land and Environmental Protection Bureau review EIA study report, conduct the monitoring and the evaluation process without skilled man power in EIA .

Regarding the operations of the newly delegated sectoral units (the industrial sector), the federal expert has said that, the sector is not involved into the operation though they were delegated to review the EIA study report. Thus, land and environmental protection bureau are being responsible to conduct this responsibility (translation mine).²⁰ As noted from this interview, there are institutional gap in order to implement the EIA laws in the study area.

Concerning the complaints made by the people, the data obtained from the people reside in the vicinity of the established projects shows that the complaint raised did not get answer without the mere promise made by woreda health, and Land and Environmental Protection Bureau.²¹ This implies that the people do not know where they apply to enforce their rights. Some residents who refused to mention their name said that, we (residents of Ada'a people kebele 02) sued the project owner to woreda land and environmental protection but the case has failed by the court (translation mine) without knowing the reason.

After the Oromia land and environmental protection has been reestablished in 1991, a number of activities have been carried out by the institution. However, the findings of the study show that, since the bureau comprised of double responsibilities (that is, land administration and environmental protection); it is difficult to properly implement federal EIA laws on projects found in the study area.

¹⁹ As per the delegation letters from EPA to SEUs written on

²⁰ Interview with Ato Dereje Agonafir, Environmental Units Program Directorate director (EPA), in his office, Addis Ababa (22 July. 2011)

²¹ Residents of Bishoftu 02 kebele, responded that we raised our complain to municipal authority since we do not know the place where we enforce our rights, and in a similar way, the residents of lume woreda, kurmafatole kebele, said that we raised our complain in group, but, the dusts came out the cement factory has been reduced for week, but do not fully implemented by the concerned body because the dusts are currently released out through six pipelines. See also the petition written on 14/06/2006, and 01 -6-98

4.2.3. lack of Effective and Detailed EIA Laws

Ethiopia has issued the EIA proclamation and the EIA guidelines at federal level. As the data obtained from the regional experts, the region has no EIA laws but they are carrying out their responsibility as per the federal EIA proclamation, guidelines, directive and policy. Most of these experts responded that the federal EIA proclamation is not as self standing as the binding laws because it is difficult to implement the proclamation; because most of the EIA guidelines are not binding (they are draft). But, the Bureau is doing its monitoring, evaluation, and reviewing of EIA study report by providing certain guidelines from the non binding EIA guidelines, which is difficult to argue against the proponents of the projects if they failed to fulfill the requirements.

4.2.4. Absence of patterned list of projects which undergone EIA

It is the duty of the Oromia Land and Environmental Protection Bureau to monitor and evaluates EIA study report, and keep the data regarding these projects. But, there is no data that indicates project lists which have undergone EIA and those made EIA study report and environmental auditing report in Woredas, East shoa Zone and Oromia Land and Environmental Protection Bureau. The data collected from the questionnaire filled by EIA experts of the region all confirmed the absence of patterned kind of list which indicates projects that made EIA before starting the production and; those undergone environmental auditing for measures promised to mitigate the consequences that will result in environmental degradation. These factors caused problem in the identification and evaluation the EIA laws' implementation on the projects found in the study area.

4.2.5. Lack of Cooperation among the Institutions

Environmental protection could not be guaranteed by the sole operation of independent Environmental Units, Bureaus or Institutions but also through integration of all these bodies; which are concerned about these activities because they cause serious threats to the health and socio-cultural values of the community. The EIA proclamation has given powers of delegation to the regional bureaus to conduct EIA on projects found under their jurisdictions, but this should not be totally left to the regions as a mandatory duty. Instead it should be supported by the EPA through finance and technical assistance in order to preserve environmental protection and guaranteed constitutional environmental

rights of the community. However, as per the discussion held with the regional EIA expert, the region does not have sufficient experts, who are qualified in EIA to enforce the environmental laws of the country, but they fail to give support on due date.²² Some of the woreda environmental Bureau experts said that, the Oromia land and environmental protection bureau failed in supporting the woreda bureaus with technical man power, and extensive training concerning environmental matters. Thus, from the data obtained from these experts, the researcher concluded that, there is no institutional cooperation among the federal and the Oromia bureaus at different levels.

4.2.6. lack of Public Participation in EIA Process

As discussed above under chapter three, Proclamation No. 299/2002, Environmental Policy of 1997, 2003/04 EIA guidelines and the FDRE constitution make public participation a requirement during scoping and review of the environmental impact study report and after EIA (follow up activities) . However, on both semi-structured and structured questionnaires distributed to local people in the study area, and interviews conducted with certain experts of the Regional Land and Environmental Protection, and Federal Environmental Protection, various results were found.

Subject to the result obtained from key respondents of the regional and federal experts, the public is not properly addressed to take part in EIA process. Among five experts of the Oromia Land and Environmental Protection Bureau, all of them have admitted that public participation did not take place at the time of scoping and review of EIA study report. Though these experts provided different explanation, similar factors were mentioned by all of them. Among the factors : the reluctance of proponents to discuss the nature of their projects with the public , lack of responsibility of the independent consultants, absence of the concerned body to check and review the EIA study report on the ground, and proponents worry about their implantation costs are the major one .

Pertaining to the issue discussed above, one of the federal experts responded that the public is involved in the decision making process both when the EIA study report is prepared and when the review is made without providing justifiable ground; that means the expert responded without mentioning the way and how the members of the public are

²² Supra note 11

selected in the process of decision making. Contrary to this, another federal EIA expert answered that the public will not take part in the decision making of EIA process especially in the EIA study report. The reason mentioned was that the proponents' independent firm worries about the costs being incurred on public participation. As regards review of EIA study report, the expert states that either the regional land and environmental protection bureau or federal environmental authority or sectoral units, faced capacity limitations to consult and involve affected person or the local community in the decision making process.

Similarly, the same question was forwarded to Deputy of Oromia Land and Environmental Protection Bureau Head and environmental protection core process owner in the form of interview, the same results were found. Concerning public participation, the Bureau head said that the proponents of the projects usually attach the names of certain people for the simple reason that they involve people in the early stages of EIA.²³ He also said that proponents of the project conduct such activities, because public is not aware of the concept of environmental impact assessment.²⁴ The head of the bureau explained what is currently being done by their bureau regarding 'creation of awareness about EIA' to the public. He said that, 'through woreda and Zonal Land Environmental Protection Bureau experts', they started teaching about environmental protection and prevention in *kebele* and related area and this will help the people to take part and give opinion while the involve in the decision making process (translation mine).²⁵

Therefore, based on the result obtained from questionnaire filled by the local communities, experts of the Bureau and Directorate of the Bureau it could be deduced that there is no genuine public participation in the environmental impact assessment study report and review of the study of the report. The consultants/ experts write only the names of certain persons for formality requirements despite the environmental policy, guideline and proclamations that clearly state public participation and public consultation as the basic requirements of the EIA process. These activities then widen the operation of

²³ Interview with Ato Mohammed Ibrahim, Deputy of Oromia Land And Environmental Protection Bureau head and environmental protection core process owner, conducted on July 9, 2011, in his office at 10:00am

²⁴ Ibid

²⁵ Ibid

the interdependent consultant in ignoring the vital roles of the people which share their experience from previous projects and knowledge they had.

4.2.7. Ineffective Means of EIA Follow Up

As it has been stated earlier, EIA is a process taking into account the potential environmental consequences of a proposed action during the planning, design, decision-making and implementation stages of that action. Follow-up is also an integral part of this process. Thus, the effective means of EIA is decided by the outcomes of the proposals.²⁶

The expression of the term follow up in the EIA process is a generic term which encompasses various EIA activities like monitoring, auditing, ex-post evaluation, post-decision analysis and post-decision management.²⁷ EIA follow up can also be defined as the item which includes four elements such as monitoring (baseline data collection, impact monitoring, compliance monitoring, state of the environment monitoring); evaluation (i.e. appraisal of monitoring results against established benchmarks); management (i.e. making decisions and implementing appropriate project and environmental management actions in response to monitoring and evaluation findings); and communication (i.e. informing all stakeholders in the EIA process of EIA follow-up outcomes).²⁸

As explained in chapter three, before the project starts its operation, it is the duty of the proponent of the project to pass through the EIA process, in consulting the EIA documents by specialized experts. Moreover, the federal or the regional land and environmental protection bureau are also duty bound to evaluate and confirm EIA documents after observing the requirements of EIA process are fulfilled in line with the EIA guideline and proclamation. However, as the researcher observed and data obtained from Woredas, Zone and Oromia Bureau reveals, from 280 projects found in the study area, more than three fourth of them did not undertake EIA proposal. Instead of writing

²⁶ Angus Morrison-Saunders, *Exploring the Dimensions of EIA Follow-up*, [unpublished paper] presented at IAIA'04 Impact Assessment for industrial Development whose business is it? (IA follow up stream), 24th annual meeting of the International Association for Impact Assessment, 24 -30 April 2004, Vancouver, Canada

²⁷ Ibid

²⁸ Ibid

warning letters to the proponents of the projects nothing will force them as they make EIA proposal. Not only this, they do not bind by the laws because it is their duty to make environmental auditing in order to see whether the proponents are committed their responsibility expected from them. But, these were not accomplished by them. Thus, from these facts one can see that the attention given to EIA laws and environment protection is not taken into concern on behalf of the proponents.

It is the duty of Oromia Land and Environmental Protection Bureau to Monitor and evaluate the impacts caused by the projects on the environment. However, I reviewed the annual report of the Oromia Land and Environmental Protection Bureau; the bureau did not give much attention to the monitoring, evaluation and environmental auditing of the projects found in the region.²⁹ Much of the attention is paid to preparation of land use planning.

In relation to the fulfillment of EIA processes in the EIA document or proposal, the data obtained from both the federal and regional land and environmental protection showed that, few of the proponents submitted their EIA documents according to EIA guidelines and proclamation. The following question was raised to the informants: - , “Do the EIA proposal submitted to the bureau fulfill the requirements of the EIA guideline?” – The key informants responded that, it is not the problem of fulfilling the EIA processes which EIA guidelines required, but the problem lies in the implementations of the measures provided in the proposal (translation mine).³⁰ In addition, the expert explained that the proponents of the projects are not interested to incur the costs of the technology indicated in the proposal. The expert, in his explanation cited, as an example, the Huangshan Cement PLC located near Mojoo town (which made EIA proposal after commencements of production) has not yet applied the mitigation measures except taking temporary action as it is clearly shown in the project proposal. Generally, concerning the mitigation measures taken by the owners of the projects, the expert summarizes that the proponent

²⁹ The researcher has noticed three consecutive annual report of the Bureau whether in order to evaluate their commitment towards responsibility, however, the report is defined in general terms, one of regional EIA expert said that since there is no sufficient experts, it is difficult for Bureau to undertake environmental auditing as per the plan of the bureau. See, the report attached to the annexes

³⁰ The oromia land and environmental protection Bureau Expert, Supra note at 3

wants to incur costs which affordable less costly instead of applying what is indicated in the proposal (translation mine).³¹

Projects that were established before the coming into force of the EIA laws, like Mojoo Tannery, Pittards Tannery PLC, China Leather Industry, and Gojje Leather Factory, the expert affirmed that they have undergone EIA for their projects. And when asked about the protection of the constitutional rights of the local people, the expert confirmed that, among the leather factories situated in the Region, nearly ninety percent (90%) of them are found in East Shawa Zone, in Lume woreda, and most of them were established before the enactment of EIA proclamation (translation mine).³² The constitutional environmental rights the local people are somewhat disregarded due to bad odor released from these industrious.³³ But, he did not deny the existence of problems related to their waste product disposal mechanisms. He stated that this is due to lack of < effective laboratory > which identifies the wastes which indicates the bad odor of the wastes released to the environment.

4.2.8. Lack of Efficient way of Dispute Resolution ,and Mode Of Compensation or Relocation

As the data obtained from the structured questionnaire filled by the Peoples who reside in the study area, especially, in Lume Woreda [kebele 02, kurmafatole, Ejersa 02 and Dhungugi Bakele], and Ada' a Woreda indicates, they made petition to the city administration (before the establishment of environmental protection office in the region) in the written and oral form about the pollution of the projects to the environment, and their consequences to their health. Accordingly, most of the people responded that the city administration failed to give enforceable solution to the problem they raised. For instance, the Bishoftu 02 kebele residents (traditionally called GTZ residents more than 3000 people) first made petition to Bishoftu environmental office in 1998 against the Alema pig production project claiming that the project without making environmental impact assessment caused environmental pollution due to the bad odor released from the project and this is against the constitutional environmental rights to a clean and healthy

³¹ Ibid

³² Ibid

³³ Ibid

environment which is guaranteed under the FDRE constitution. In their claim they added that, their children are also affected by health problems due to the bad odor released from the project. They complained that before submission of the written petition to the environmental office; different complaints were logged to the kebele and city administration in written and oral form repeatedly by petition written on 01/08/98 date on 01/6/98. Taking into consideration the application made to the administration city, the administration of the city by observing the serious effects of this project , send the issues to the (earliest social and economic affair bureau) in order see the claimed issues on the ground ; this bureau established a team comprised of different experts ; and this team conducted a research and submitted the report by mentioning the existence of complaints to the city administration with possible remedies (file number 13056/4575) on 30/6/98. The report reveals that, the project is located in a middle the habitants holdings. However, though the people wait for the decision of the city administration, they failed to give decision. Due to this, all residents of this place made their second application to the city administration (translation mine).³⁴ Since the decision is made by the city administration did not answer the claim of the people, the residents of this kebele made their claim to Oromia environmental protection office on 26/11/98, after two months (file number 01/08/98/019). In this application similar issues are being raised. In addition to this; the people claimed that the wastes released from this projects has bad odor and this created respiratory problems, especially among 3000 people residing in the region, 40 % of them are being affected by these problem. As per the application issued to Bishoftu Environmental Protection Office by file number/01/08/98 on 01/08/98; considering the problems occurred to the public, the office passed a decision as the project is relocated to another place or by remaining in the place completely demolishes the bad wastes that pollutes the environment and cause problems to the local community.³⁵ However, the proponents of the projects are failed to respect the decisions passed by the worda environmental protection office. The worda environmental protection office has affirmed the problems on the ground by observing the problems and non enforcements of the decisions passed by the office, for this the people appealed to

³⁴ See the petition written on 07/09/98, by the file number 01/08/98, attached to the annexes, this obtained from Bishoftu Land and Environmental Protection Bureau , record and file office

³⁵ See the annexes attached to back of the paper, petition made on 26/11/98, by the file number 01/08/98/019

Oromia Environmental Protection Office in order the bureau give them immediate decisions (translation mine).³⁶ After investigating and searching for the existence of the complained problems by these residents, the Oromia environmental protection office has passed similar decision that the woreda environmental protection office has passed (translation mine).³⁷

When the researcher saw the applications of the people and the decisions given by both Woreda and Oromia environmental protection Offices, their decisions were in compliance with article 3(5) of the Environmental Pollution Control Proclamation No. 300/2002. But, as per the data obtained by the community the projects have still continued their operations without making EIA, and mitigating the environmental pollutions of the environment. From the data obtained; the people said that since they are affected by the waste products from the project, they requested the reestablished land and environmental protection bureau for reallocations of the place with proper monetary compensation but, as per their response the bureau keep silent about this issue.

As indicated in the constitution, persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.³⁸ However, the data obtained from the key respondents in the study area around Bishoftu 02 kebele (where the Alema farm, abattoir and pig production projects are find), and Lume, Kurmafatole woreda where Huanghuang cement factory is found the people filled the structured questionnaire saying that they requested the municipal administrator to relocate them or the projects, but they failed to make it. Most of the residents said that, the question was raised in group by citing the immense bad effects that came out of the projects near their houses (translation mine).

Concerning this issue one of the regional experts said that, none of the residents claimed about the relocation or compensation, but he affirmed that the bad odor has polluted the environment. The researcher also posed a question to the proponents of the projects whether they release waste products as per the country's regulation that set about

³⁶ Ibid

³⁷ Ibid

³⁸ Article 44(2) of the FDRE constitution

standards of emission to the air and water, but they responded that the projects have no any laboratories that evaluate the extent of waste products to the environment.³⁹ Concerning the emission of waste products to air or water as specified under the emission regulation, an expert said that while the projects was established in this area, five years grace period is permitted despite the effluent wastes that this project may emit as per the standard stipulated in the draft regulation. Regarding pollution of the environment the expert said that, environmental pollution is a known fact while the grace period is permitted to work for the project owners.⁴⁰ As per the expression of the expert, he said it is difficult to say all the project owners release waste products as per the standards of the regulation, because some projects may release more than the standards.⁴¹ Thus, he said that ‘, i’ can say that, the Mojoo river seems to be a dead one due to waste products released from the projects established near the river.⁴²

Though the opinions of the residents and public authority are different, there are factual things that are clearly seen in the study area because most of the residents are living in the vicinity of the projects by protecting the polluted environment through what they think proper.

Therefore, since the bureaus are failed to execute the decisions they passed through, it is the constitutional rights of the people to be reallocated and get proper compensation for the damage they sustained due to environmental pollution caused by these projects.

Another claim is also raised by residents and owners of certain projects in vicinity of the project. This is the claim by residents of Lume woreda, especially Kurmafatole kebele residents. Accordingly, they complained about the environmental pollution caused by the Huangshan Cement PLC; they mentioned in their petition that the particles that came out of the factory have caused serious environment pollution and health problems to their children and themselves. Like that of the decision passed above, the oromia Land and environmental protection, decided the closure of the projects till they apply sophisticated technology that minimize the waste products came out of the project. However, as the

³⁹ Interview made with Ato Misganawu w/ Giorgis, QMS and Environmental Management System [Management Representative] , conducted in his Office(Kolba Tannery) , at 4:00 am on 06/01/2004 EC

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

data acquired from the residents of the kebele reflect, despite of the measures taken by the bureau, the pollution of the environment is not minimized instead they intensified the way the waste products to be released to the environment.

Thus, the decisions given by the Oromia land environmental protection was temporary, it is not safe or guarantee environmental protection to secure a clean and healthy environment for the community because, the decision has to comply with the laws of the country, that is , relocation of the lands (house) of the residents from the polluted environment with proper compensation.

4.2.9. Lack of awareness about EIA

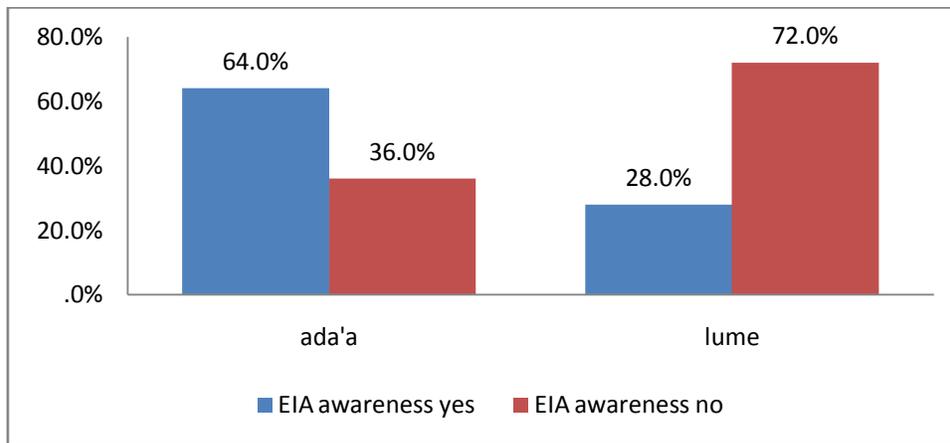


Fig: 1 Public EIA awareness

In order to call for the public in EIA decision making, it is necessary to make the people aware about the concepts of EIA. It is also the duty of EPA ‘to promote and provide the non –informal environmental education programs, and cooperate with the competent agencies with the view to integrate environmental concerns in the regular educational curriculum.’⁴³ In order to understand the knowhow of the public about EIA, hundred (100) people are selected purposefully from the study area to know their feelings regarding EIA. Out of 25 people, from Ada’a woreda kebele 02 of Bishoftu that filled the questionnaire, 65 percent of the people do not know what EIA means. One of the residents of this kebele informed the researcher that, he simply understands the concepts from the reading of different magazines, and from radio about EIA, despite the fact that

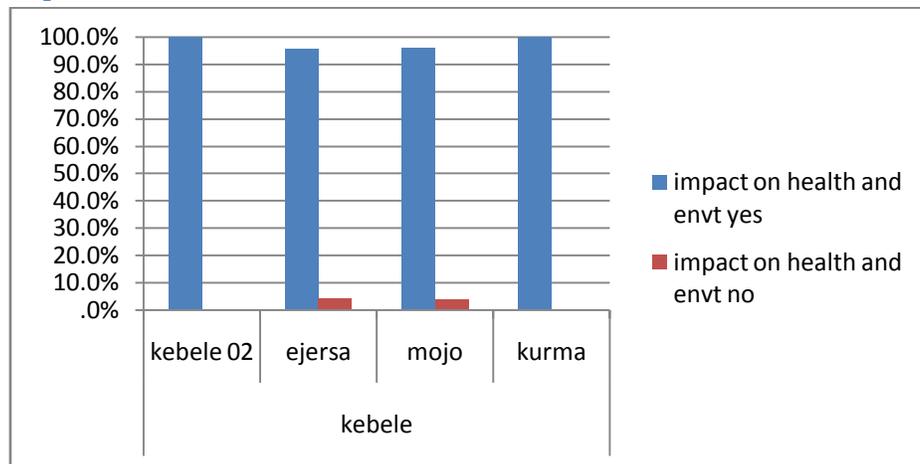
⁴³ See Article 6(18) of the FDRE Environmental Protection Organ Establishment Proclamation

he did not get the chance to participate in EIA follow up activities.⁴⁴ Similarly, among the residents of Lume woreda's selected kebeles (75 People, from each kebele) who filled the structured questionnaire, seventy percent of the local people know nothing about EIA. Some of the residents of this woreda said that, when the cement factory was given the license, the farmers from whom the land was taken were informed about the situations of the projects established in the study area.⁴⁵

In relation to experts knowledge about EIA) - who evaluates the EIA study report and review follow up activities - the regional land and environmental protection bureau experts, who filled the questionnaire responded that , lack of EIA awareness is the main factor for ineffective implementation of EIA laws on the projects situated in the study area. As regards this issue senior expert and head of the bureau stated that the region has various environmental offices in each zone and woreda, that supervise and regulate the activities of the projects around them, but they have qualification in different professions.⁴⁶ As noted from the discussion held from these experts and data obtained from the people, most of the local people did not know about EIA. However, some EIA documents listed the name of certain local people, which is contrary to the responses of the people and experts.

4.3. Consequences of Ineffective Implementation of EIA Laws

4.3.1. Impacts on the health and Environment



⁴⁴ As a limitation an individual who was selected in order to conduct interview fear and refused to mention their name, that is way , I leave their name , in order to keep the principles of confidentiality

⁴⁵ Ibid

⁴⁶ See , Supra note at 14 & 15 , on page 7

Fig 2: Public View Regarding the Impacts of the Projects

In order to evaluate the impacts of the projects on the health and human environment, two woredas and four kebeles are purposely selected from the Zonal administration. Prior to the discussion about the impacts caused to the health and human environment, the sample size taken from these kebeles are put as follows.

The study put emphasis on the place where the projects are situated. The selected Zone comprised of various woredas, but the writer has selected the key woredas purposely. Some of the problems, in the study area include improper implementation of environmental laws as to the projects established before and after the laws came into force.

In order to analyze the main problems, the study has selected three kebele from Lume Woreda, where a number of projects like Luna Slaughtering House, Gelan Tanning industry, Masaco–global tanning industry, Modern Slaughtering Houses, East African Tanning Industry, Ethio Layen Textile Industry, Pittards PLC leather factory, , Shawa leather factory and Huangshan cement factory are found. In case of key respondents, the study takes twenty five (25) residents from each kebele, and one kebele from Ada'a woreda with similar criteria to assess the reaction of the people towards the projects found in the vicinity of their house.

As highlighted under chapter three, the FDRE constitution has guaranteed the environmental rights to live in a clean and healthy environment for the public and sustainable development. The environmental policy of the country states that public health and socio-cultural aspects of the public have to be taken into consideration, while plans and strategies are planned by the government officials. No doubt that, these rights of the public would be respected if and only if the means, policy and laws regarding environments have been properly implemented.

In order to realize these rights, the government has adopted different environmental laws, policies, guidelines, directives and proclamations at different times. However, as I understand from the front page of the EIA guidelines, these instruments are not binding to the proponents of the projects. Concerning the question about the role and nature of the guideline, the Federal EIA expert answered that, it is not necessary for the guidelines to

be binding because the nature of these instruments emanates from the EIA proclamation and guidelines serve as guide for the experts to evaluate EIA documents only.⁴⁷ From the responses of the interviewee, the researcher strongly believes that the experts who evaluate the EIA documents are duty bound to see and accordingly reject the EIA documents if it does not fulfill the requirements of EIA process indicated under this guidelines. However, it is not logical to reject the EIA document without making EIA guideline binding; since the proclamation says nothing to the binding nature of the guidelines.

The EIA guideline requires environmental auditing to be made as the projects planned before EIA proclamation has been adopted. The main significance of environmental auditing is to reduce the impacts caused on the health and environment of the people.⁴⁸ As the data obtained reveals, the project located around Lume and Ada'a woredas became the root cause for the pollution of the Mojoo river which inturn resulted in the death of their domestic animals and infertility of farm land), and pollution of the air (almost all of the respondents which filled the structured questionnaire (see fig1. above) affirmed this fact.

Based on the data obtained from the public and warning letters written by the woreda land and environmental protection office that indicates inspection result about the projects, and as the researcher personally observed, the Huangshan Cement PLC and the above mentioned projects situated in East Shawa Zone of Lume woreda (Kurmafatole kebele), the factory which is found on the east direction on the vicinity of the main road, released out waste products through six pipes in to the air, which makes it difficult to see the vehicles that pass on both directions (left and right sides). As regards the wastes released from this cement factory 'one of the farmers, who resides in this place, said that the wastes released out from the factory became the cause of health problems for himself and his family members.'⁴⁹ He also stated that the particles that came out of this project has become the problems for their eyes, colds(cough) , and in doubt he stated that this

⁴⁷ Dajene , senior EIA expert

⁴⁸ The residents were not willing to give their name while they gave this interview that is way I let the name

⁴⁹ Ibid

particles would be the factor for cancer because he said that while he and his family visited the clinic for cold, the health professionals said that it is typhoid and typhus.⁵⁰

Concerning the impacts of the these waste products on the environment, a respondent said that, “the farmers, who previously plough land near the projects have left their farmland in this year (2003/04) fearing that the particles would cover the plough.”⁵¹ What the researcher understood from the responses of the interviewees is that, all of them are happy because of the establishment of the industries. But, for fear of the negative health impact that is caused due to the waste products from the factory, they seek the necessary assistance of the concerned body.

Concerning the waste products released from the factory (Pittards leather factory) the residents of Ejersa 02 and Dhungugi Baqqale (Lume Woreda) especially the farmers stated that the land that previously used to give good production has lost its productivity because of the wastes released- because they contain some acidity. The people claimed that the factory released the waste products during mid night and pollute the environment and the pollution caused bad odor to the residents which also causes cold (cough), and the children suffered to transpiration problems. In response to the structured questionnaire, the residents also confirmed that the domestic animals are seriously affected due to the waste products released from the industry (the domestic animals like the oxen, cow, etc drink the polluted water released from the factory).

Ada'a woreda is located in East Shawa of Zone Oromia Regional State. Like that of the previous woreda this woreda is also selected as an industrial zone and contains various projects like floriculture, leather industry projects, abattoir projects and etc. from around 12 kebeles the writer selected the 02 kebele as the study area. In this kebele there are certain projects in the vicinity of certain houses (traditionally the place is called GTZ area, one of the residents who refused to give his name said that the place was taken by GTZ and a minimum of 150 houses established for at least 190 residents who now live here) . Beside to the houses of the residents certain projects like Blue Nile factory which produce certain rubber, abattoir, and Pig projects are located.

⁵⁰ Ibid

⁵¹ Ibid

As per the data obtained from the questionnaire filled by the residents, the bad odor released from these projects polluted the environment. As a result of the polluted air caused by these projects the health of their family is affected. Most of the residents which filled the questionnaire responded that their babies are affected by diseases such as cold, cancer and **sinus**. Most of the mothers complain that their newly born children greatly suffer from respiratory problems due to the bad odor released from these projects.

The residents of the community did not deny the prior establishments of the projects before they established their houses. However, they stated that projects like (Alema horticulture) were previously established in the area to produce different kinds of fruits, but through time the project changed its production from horticulture to the production of abattoir and pig production. The people stated that in order to avoid this bad odor they preferred to seat in their houses closing the windows and doors as a means to minimise the bad odor released from these projects. About projects which need EIA, the guideline or directive lists exhaustively. And as regards abattoir, the directive states that in order to make EIA the abattoir construction has to have Slaughtering Capacity of 10,000/Year or more.⁵² The senior EIA expert of the region in the interview stated that he does not know about the project and has no information whether EIA is conducted or not.⁵³

Regarding this project, I asked the EIA expert of the federal government as to the jurisdiction of the institution, but he responded that the project has to be under the jurisdiction of the regional land environmental protection. He stated that, this has to be supervised and monitored by the Oromia Land and Environment Protection Bureau using their delegation authority.⁵⁴

4.3.2. Encroachment on constitutional environmental rights

The concept of sustainable development was for the first time emerged on the global sphere during the environmental debate in 1980s so as to indicate the mutual beneficial of economic development, the natural environment and the people.⁵⁵ The most widely accepted definition of *sustainable development* describes as ‘development that meets the

⁵² Directive issued in order to determine projects subject to Environmental impact assessment, No. 1/ 2008

⁵³ Supra note at 3

⁵⁴ Deraje federal EIA expert

⁵⁵ Alex Weaver ,*EIA and sustainable development : key concepts and tools* (available at <http://publications.iwmi.org/pdf/H040550.pd> last retried on June 20, 2011

needs of the present without compromising the ability of future generations to meet their needs and aspirations'.⁵⁶ In this articulation, sustainable development seeks to establish a path along which development can progress while enhancing the quality of life of people and ensuring the viability of the natural systems on which that development depends.⁵⁷ This newly developed concept being developed in many parts of the world including Ethiopia.

As discussed in chapter two the country has recognized various international human and environmental rights that gave due effect to the basic human rights. The FDRE constitution also recognized the constitutional environmental rights to clean and healthy environment, however, the protection accorded to the human environment by the mere fact of the sustainable development were less as observed in the study area and the data collected from the residents' indicated.

the data obtained from the local people indicates, for instance in Lume woreda as discussed above, there are leather factories and abattoir project in the vicinity of the house, the bad odor released from these projects caused environmental pollution, which is contrary to the rights recognized in the constitution, and international human rights because it violates the basic rights to life too.

⁵⁶ Ibid

⁵⁷ Ibid

Chapter Five

Conclusion and Recommendation

4.1. Conclusion

Environmental protection is a general concept that is mostly recognized in international environmental laws. It is a broad concept that gives attention to the protection of the environment from disastrous consequences. Protecting the environment from the negative impacts will enable one state to enhance and achieve the commitment expected from it. It is the means to have ecological balance, sustainable development and it helps to secure the rights to a clean and healthy environment of the public. These rights of the people are recognized directly in environmental laws and impliedly indicated in the international human rights instruments.

International human rights instruments such the ICCPR , ICESCR , the UDHR , the American Bill of rights, the African Charter on the Rights and Welfare of the Child (ACRWC), American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), the African Charter on Human and People's Rights, **United Nations Declaration on the Rights of Indigenous Peoples (2007) , Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, ILO Convention Concerning Indigenous and Tribal Peoples In Independent Countries, Convention on the Elimination All Forms of Discrimination Against Women (1979)** impliedly or expressly shown environmental rights to a clean and healthy environment. In addition to these international human rights instruments, certain international environmental laws such as the Stockholm Declaration, the Rio Declaration strongly suggests the need for the promotion and protection of environment rights to a clean and healthy environment impliedly and directly by relating to the fundamental human rights like the rights to life, etc.

The FDRE constitution domesticates these international instruments as part and parcel of the law of the country. And hence, it is the duty of Ethiopian government to protect the environment and give due attention to environmental right to a clean and healthy environment internationally and nationally recognized.

The FDRE constitution also made EIA the mandatory requirement in any programs and strategies accomplished in order to protect the environment, and respect clean and healthy environment for the people. It is for the first time when, it became the requirement in Ethiopian history. Not only this but also, 1997 environmental policy of the country substantiated the purpose and objectives through providing mechanisms for the implementation of the EIA laws. Significantly the Environmental Impact Assessment Proclamation № 299 of 2002 has subjected development projects and public instruments in the country to pass through an EIA process prior to commencement of operation that are likely to affect the environment. Since the country is in a federal system, the duty to protect the environment is shared among the federal and regional governments through EPA and REAs respectively.

In line with EIA guidelines and Proclamation No. 295/2002, the regional Environmental Agency has been delegated to make EIA upon the projects under its jurisdiction. However, there are challenges for the proper implementation of EIA laws in the region especially in the study area due to: lack of public involvement in ESSR and EIASRR, lack of cooperation between EPA and Oromia Land and Environmental Protection Bureau, lack of effective means of EIA monitoring and follow up, lack of skilled man power in general, and effective means of integration , lack of awareness about EIA by the public and experts themselves, institutional problem, absence of EIA study report as per the categories of the projects, failure of the project proponent to apply the mitigation measures indicated in the proposal were the factors for non implementation of EIA laws in the study area.

4.1. Recommendation

The analysis of this study lies in the implementation of the federal EIA laws by the Regional Land And Environmental Protection Bureau and other bodies , that is application of the Federal EIA proclamation, EIA guidelines and Environmental Policy of the federal government in accomplishing its respective commitments , like ensuring the constitutional environmental rights of the local community, has identified the legal loopholes and gaps and in enforcement of the EIA laws in respecting the environmental commitment that the country clearly recognized in the constitution and other policies.

Thus, based on the key findings of this study, the following recommendations are forwarded:

- **With Regard to Enforcement of Laws:** - effective implementation of EIA laws requires concerted efforts of all stakeholders such as EPA, proponents of projects, Consultants, Regional Environmental Agencies and Sectoral Units. However, lack of cooperation among regional land and environmental Bureau, and EPA failed to secure environmental protection and sustainable development on equal footing. Even if the EPA is the supervisory body at the top, it is a must to strengthen or support woreda environmental office with skilled man power that, are qualified in EIA and related fields.
- It should be noted that public participation in the decision making process is considered as a vital mechanisms to secure a sound environmental protection. The country's EIA proclamation and EIA guidelines require public participation in the EIA decision making process as one essential requirement. This must be made in the EIA study report and EIA review process by giving the chance to the local people taking into consideration the concepts of EIA and the experience they had to achieve environmental sought by the laws of the country.
- The independent consultants / owners or the government fear the costs they incur while they engage public in the EIA study report and review respectively. But, this can be possible to Regional Land Environmental Protection Bureau to involve people and receive their comment about the project established in their locality by informing the people through local newsletters which are usually the easiest and a relatively inexpensive way to inform the public, Use of media must be based on the assumption that the given periodical has an appropriate readership level and distribution method. In the case of more complicated projects, stand-alone printed materials are safe to use (flyer, brochure, invitation to a planning event, etc).
- In addition to the above, Community discussion is also important concerning the proposed project and Public meetings.
- Not only these, EIA requires the involvement of experts in the review, monitoring and evaluation of EIA development projects. Generally, a qualified EIA expert is essential in EIA follow ups. However, as discussed in discussion part, in the study

area, the EIA follow up is evaluated and monitored by non qualified experts in EIA. Thus, it is essential for regional and federal environmental authority to make its EIA review, monitoring and evaluation with ‘concerned experts’, that is, those trained and passed through academic process and know about the chemicals, and waste products monitored. To have these, it is possible to employ and train environmental staffs with related fields such chemists, biologists, etc.

- Review of the EIA Report is part of a comprehensive monitoring and auditing process. In practice, many significant obstacles exist that limit the use of monitoring and auditing in the study area. The EA delegates this power to sectoral units, but they did not start operation. But, instead of delegating this power to federal sector units, if this power is given to the regional sectors as a mandate and strengthened with qualified EIA experts; the impacts that would result on the environment would be reduced because they can effectively monitor and review EIA study reports of these development projects regularly. The need to ensure a credible EIA review is still to be correctly and fully taken into account in EIA-related laws and regulations by setting the period when the environmental auditing to environment be accomplished within a year.
- As usually made in different parts of the world, Seminars, workshops and discussions must be commended for government officials and the public to create awareness about EIA. Therefore creating awareness as to the government officials and experts is mandatory to improve the system’s practical implementation through using the above means.
- A public awareness about EIA can easily be made in addition through media, by teaching the people on the public meetings, and by officials, who are engaged for different activities to countryside or cities to accomplish different activities.
- EPA must provide access to public to participate in giving comment on the EISR. The authority at least should use introduction of a system of publication and announcement about the development proposal and its possible impacts, and invite public in interest and experts to comment, which will help the authority to review the EISR effectively.
- The federal and regional governments are intensively engaged in development activities. However, I find out from discussion, inconsistencies between

sustainable development and environmental protection in study area; because the habitants and development projects are located besides, due to this the pollution came out of the these projects have caused environmental pollution and caused negative impacts on the environment . If the rapid developments these projects and the conditions are increased in this manner in the study area, the fate of the next generation will be questionable. The regional and federal government must think about the allocation of investment area and permanent residents of the people. Therefore, it should be the responsibility of the government to protect the environment through enacting laws which have a binding effect upon the owners of the projects if they are located beside their holders. It should also make the sector units that found in the region be responsible and aware about environment and environmental rights in general perspective. So , concerning this problem, it necessary to have laws which are binding to owners of the project, creates coordination among the governmental organs , licensing the independent consultants if and if they fulfill the experts from ecological to chemists while the prepare EIA document for the owners .

- In Relation to Legal Framework: - The EIA system including legislation, administrative framework, and technical capacity has been established and widely applied in the Region.
- The legal framework does not sufficiently protect the environmental rights of the public from environmental pollution acts unless such improper implementations of EIA laws on project are covered with binding laws of the country such as the rights of the victim to claim restitution or compensation from the harm doer before courts of law did not clearly put in place under the Ethiopian procedural laws. Hence, the remedial procedures for the victims should become more accessible. In these regards, the development of public litigation through NGOs and group action by the public are potential for the purpose of enhancing their rights. The existing environmental rights of the public demonstrate that some of the basic international and regional child rights principles, norms and standards are part and parcel of the law of Ethiopia. So, in order to provide efficient protection for environmental rights of the public, it is important to consider and explicitly apply the relevant international norms and standards as it enshrined in

the international environmental laws, aiming at the promotion and protection of the environmental rights of the public while they apply EIA laws on projects licensed in the region.

- The procedural legal frameworks available to protect environmental rights are not indicated in any laws of the country. Hence, adopting specific and comprehensive procedural laws that deals with the environmental rights of the public is heavenly essential.
- The Federal and Regional Land and Environment Protection Bureau are expected to have data bases which disclose projects under gone EIA and those who are engaged in the operation.
- The exhaustive of lists of projects that need EIA under existing directive should be revised in the manner to include projects that are expected to bring and negative consequences on the health of the people if they are beside the houses of people , it should not be related to the amount of exports like that of abattoir and the like.
- Governments should allocate separate budget for implementation of ES.
- Coordination between government bodies at central and local levels, and across sectors, should be improved. Authorities for national environmental administration and EIA implementation and approval generally require further strengthening and clarification of their legal mandate.
- The responsibilities of sector ministries on environmental issues should be clarified.
- In order to make the systems more effective many of the proclamation need further strengthening.
- Proponents need to have common treatment of effluents
- Environmental must be made mandatorily quarterly in a year

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