



**College of Development Studies**  
**Center for Environment and Development Studies**

**Exploring the State of Environmental Courts and Tribunals in  
Ethiopia: The Case of Addis Ababa City Administration**

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**February 2021**  
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## **DECLARATION**

I declare that this thesis is submitted for the partial fulfillment of the degree of Master of Art in Environment and Sustainable Development. It is my original work and has not been presented for an award of a degree in any other university.

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This is to certify that the thesis prepared by Etsegenet Tesfaye; entitled “Exploring the State of Environmental Courts and Tribunals in Ethiopia: The Case of Addis Ababa City Government” is a product of my work and that all sources of materials used for my thesis have been appropriately acknowledged. It is submitted for the partial fulfillment of the requirements for the Degree of Master of Arts in Environment and sustainable Development complies in accordance of the regulations of the University and meets the accepted standards with respect to originality and quality.

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External Examiner \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

## ABSTRACT

*The objectives of this study were to explore the implementation of environmental protection laws under Federal regular courts in Addis Ababa. The research followed mixed research approach. The data was collected using descriptive research tool, questionnaire with close and open ended questions. And for the qualitative research design, semi structured interview was used to collect feedbacks from FFIC, FHC, EFCCC legal service directorate, AEPGDC attorney, AAU law school environmental law scholars(instructors). Courts play very significant role in attaining environmental justice and thereby, contribute to sustainable development. Despite the fact that their role is indispensable, regular court functioning in Addis Ababa, Ethiopia were not implementing the existing environmental laws and regulations that are set out to protect the environment. Different factors such as, awareness of the society to bring environmental cases to court, the regular court set up how it sees environment cases, lack of experts who have specialization on environment law, non-suitable procedural outlets to bring environment cases to court of law, the very dynamic nature of environment case summed up with the country's desperate economic need let enforcement of environment law difficult. This exacerbates environment risks such as increased pollution, biodiversity loss, and lacks of implementation of Environmental Impact Assessment by giant industries. The study also assessed state of implementation of national environmental protection laws, tried to analyze the practices and the operation of regular courts in Addis regarding environment cases, assessed perception of legal experts on environmental court establishment and identified opportunities of establishment of environmental courts in Addis Ababa. Based on the analyzed data, existing environmental laws and regulations were found to be not enforced. Different factors such as non-suitability of the regular court setup, low level of societies awareness of their environmental rights, non-suitable procedural out lets to initiate environmental dispute case to court were raised. Judges and public prosecutors almost unanimously supported the establishment of a Bench under the regular court structure. While both environment protection organs, opted for having environmental tribunal accountable to FFEPC thereby have designed draft proclamation by June 2020, AAU law school environment law instructors advised on the specialization whatever modality it will have.*

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## **Acronyms and Abbreviations**

AAUELI	Addis Ababa University Environment Law Instructors
AEPGDC	Addis Ababa environment Protection and Green Development Commission
AHC	Arada High Court
AKHC	Akaki Kality High Court
APAP	Action Professionals Association for the People
BHC	Bole High Court
ECTs	Environment court and Tribunals
EFCCC	Environment Forest Climate Change Commission
EIA	Environmental Impact Assessment
FFIC	Federal First Instant Court
FHC	Federal High Court
FSC	Federal Supreme Court
IBID	In the Same Source
LHC	Lideta High Court
No.	Number
PIEL	Public Interest Environment Litigation
UNEP	United Nation Environment Program
WB	World Bank
WCED	World Commission on Environment and Development

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# CHAPTER-ONE

## 1. INTRODUCTION

### 1.1. Background

Sustainable development has been defined on many researches and publications. One of the leading understandings of it is defined as follows. According to World Commission on Environment and Development, 1987 sustainable development is defined as:

*'Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs... Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life''. (Brutsland, 1987)*

Its main concept can be interpreted in many different ways, but at its core is an approach to development that looks to balance different, and often competing, needs against an awareness of the environmental, social and economic limitations we face as a society .It is all about three pillars of development; economic, social and environmental (Justice Mensah, 2019)

When one focuses to see environmental sustainability it is about environmental protection versus the use or extraction of environmental resources for economic and social development. Environmental sustainability calls for a balance of the ecosystem services and exploitation of resources for industrialization and urbanization. In this era, the capacity of ecosystem to regenerate itself to its prior capacity after being extracted for economic uses is very low due to its being over exploited. It seems that the Brutlands earth's summit definition of sustainable development calls special emphasis to environment protection (as cited by Rachel Emas, Florida International University, 2015).

### 1.2 International Environmental Laws and Environmental Protection

Since the very nature of international environmental laws are discretionary meaning their effective ness depends on states willingness to abide by them, and the nature of environmental & ecosystem services are more of public property or commonly shared by a given group of people or society at large, environmental litigation falls under public interest litigation (Ethiopian

environmental law teaching material) In addition, environmental jurisprudence is relatively new area of law. In some researches there is an increase of environmental laws and this is one reason calling specialized court services.

There are increased quests for environmental justice; environmental concerns are raised in every corner of the world. Even international big monetary organizations are funding developing countries for the improvement of national environmental laws and regulations (World Bank: 24/2013).

### **1.3. Court specialization as a Strategy for Environment Protection**

Court specializations are means to bring improved environmental justice. Studies shows that environmental courts and tribunals have number of advantages that can be summed up and accelerate the attainment of SDGs. Ibrahim Thiaw, United Nations Assistant Secretary General and Deputy Executive Director of UN Environment Programme has also pin pointed that environmental courts and tribunals (ECT) are mechanisms for the sound environmental governance and the delivering the Paris agreement on climate change (UNEP 2016).

Though there have been different international environmental protection efforts both legally and institutionally many years ago, environmental problems/concerns are worsening globally. Most binding or nonbinding treaties remain ineffective (Indian Public Interest Litigation: Vol 100, Dec 2017 Page 59-68). But, in order to meet global SDG goals, and national development plans, there should be clear understanding of why laws fail to attain their purpose, did only having environmental laws and regulation suffice to protect the environment? Hence, member states of UN should view their development strategy.

### **1.4 Ethiopia's Environmental Protection**

When we come to the environmental protection state of Ethiopia, it is in the same status like most developing countries did give less environmental concerns with development efforts. Ethiopia's past development endeavor is criticized for not associating environmental issues with the development activities ( Damtie and Kebede, 2012), Feyisa (2016), Getu (2013), Aregawi (2014). In addition the environmental protection endeavor of Ethiopia is at policy level. The environmental policy and the FDRE constitution possess also some promising targets. However,

practices reveal that environmental concerns are policy responsibility of the Environment protection authority of Ethiopia and its allies ( Abebe Amare ,2019). It is identified that there is absence of corporate environmental responsibility.

### **1.5. Statement of the Problem**

The role of the judiciary is important especially on developing countries, such as those in Africa where the bulk of the population is poor and relies on natural resources for livelihood and sustenance. However, the judiciary is not active in Africa. UNEP started to give special focus and to strengthen the judiciary before cases go to court of law. By 1996, it had started to participate the judiciary at Mombasa, Kenya (DONALD W. KANIARU, 2012).

The same like other developing countries in Africa, Ethiopian judiciary have a great role to play in environment protection via interpreting environment rights. But In Ethiopia, environmental rights such as the right to live in clean and healthy environment, the right to development are constitutionally granted rights. Those constitutional rights are also elaborated by other laws like proclamations. For instance, undertaking of Environmental Impact Assessment (EIA) is mandatory for giant industries to prevent the potential harm to the society and the environment is also another emphasis to environmental protection. (Pro. No 299/2002 (Art.3.(1)). However where the paradox comes to scene, there is no precise procedural right to claim redress or damage where ever those rights are transgressed. Though the constitution under Art.37 (2)- (b) states as “anyone who is a member of a group/like a member of a community can bring a justiciable matter to court of law.” the civil procedure code bypass essential specificities how to show the interest to litigate. The procedure to direct lawsuit demands direct personal and proprietary relation with the subject matter of litigation (art 33 of civil procedure code of Ethiopia). Though Art. 11 of the pollution control proclamation No. 300/200 states any interested party can bring environmental pollution case to court of law. This makes those environmental rights other than pollution cases difficult to litigate and get justice under the same tunnel by the regular courts.

Another barrier to public interest litigation (e.g. environmental protection cases, consumer protection cases) is property right issue. In Ethiopia, there is no clear demarcation to which land should belong to. The constitutional phrase that says ‘...land is property of government and

people of Ethiopia...” is ambiguous. Water shade management, forest conservation and proper use, are always at stake. Some society claim ownership right from customary law. They try to make clear that their ancestors had the ownership right over the forest, grazing land etc. (Desalegn Wana, 2007). But Pro456/2005 Art.10 provides the obligation over their use right to protect the land.

As member of UN and to positively contribute to green growth, in our country Ethiopia, there should be clear and sound environmental governance. The judiciary as one organ of environmental governance should be innovative in the sphere of environmental justice to give time and situation concerned response to environmental problems. The environment protection organ of the government, while giving licenses and administrative measures for non-compliance with environmental laws and regulations should be dynamic. To the contrary, there is no corporate environmental responsibility in Ethiopia.( Abebe Amare, 2019). This let the city lose around 113 peoples at the recent Koshe land slide in 2017 as CNN reports.

In Addis Ababa, the relative change in industrialization, the construction of industrial zones and the pull for foreign direct investment specially those investing in manufacturing industry, are worsening environmental degradation .This is not because of their very existence and operation, but they start operation without undertaking environmental impact assessment for their potential harm to the environment which is failure of the executive government, and innovative judiciary. In addition they fail to take social responsibility to mitigate environmental externalities of their industries.

Due to this, environmental cases such as river pollution from point and non -point sources, sound pollution, land degradation, deforestation and chemical and particle pollution are evident environmental problems (Active and dead court cases found from Addis Ababa city administration environment protection and green development commission). Those actions are results of urbanization, unplanned settlement and non-enforceability of environmental laws and regulations.

Since the regular courts are not enough to give timely redress for environmental rights, and since environmental concerns are pressing, it would be wise to have specialized environmental

court. Unless, the practicability of Ethiopia's CRGE, GTP two plan, or any development plan will fall under question mark or will take long period of time.

On this research topic there has not been prior national research conducted as a country level. Ethiopian forest and Environment protection commission has only planned to have environmental bench side by side the regular courts proceeding. However our neighbor Kenya is shampooing enforcement of environmental protection laws under specialized environment and land court. Those courts have appraised on bringing environment justice and found to be innovative. (Lora Otino,2012)

Needless to say this research will show important environmental protection approach to stakeholders in Ethiopia. Since specialized court will decrease the regular courts case backlogs and unnecessary costs and delays, looking into only and only environmental cases with special environmental law expertise, will make environmental protection efforts fruitful.

## **1.6. Research Questions**

1. Do the existing Ethiopian environmental protection laws are addressed effectively by regular courts or not?
2. Is that necessary to establish ECT in the current situation in Ethiopia or in the near future?
3. What looks like the present regular courts functioning regarding environmental cases/suits?

## **1.7. Objective of the Study**

### **1.7.1. General Objective of the Study**

- ❖ The major objective of the study was to investigate the enforceability of environmental protection laws under Federal regular courts in Addis Ababa

### **1.7.2. Specific Objective of the Study**

1. To assess the state of implementation of environmental laws in Federal courts of Ethiopia, specifically in Addis Ababa

2. To analyze the practices and the operation regular courts in Addis regarding environment cases
3. To assess perception of legal experts on environmental court establishment
4. To identify opportunities /prospects of establishment of environmental courts in Ethiopia /Addis Ababa

## **1.8. Significance of the Study**

On this research topic there has not been prior national research conducted as a country level. Needless to say this research will anvil/show important environmental protection approach to stakeholders in Ethiopia. Since specialized court will decrease the regular courts case backlogs and unnecessary costs and delays, looking into only and only environmental cases with special environmental law expertise, will make environmental protection efforts fruitful.

As the work that is conducted on the area of Environmental Courts and Tribunals in Ethiopia is new, it will provide new insight to stakeholders of environmental protection and the judiciary so as to approach environmental protection differently. In addition it will let policy makers see the pros and cons of having ECT in Ethiopia. Moreover it will serve as a tracer study for further research on the area.

## **1.9. Scope of the Study**

The study will be specific with the establishment of environmental courts and tribunals in Addis Ababa the capital city of Ethiopia as a show case/ pilot work for the whole country. Since there are no national research works on the area, it will focus on international literatures specially journal articles and books. Especially the Federal courts, i.e. Addis Ababa, Addis Ababa city administration environment protection and green development commission will be special focus of the study. There by it tries to address issues related with the establishment of ECTs in our country.

## **1.10. Limitation of the Study**

The study has limitations such as not incorporating fully other countries practical experiences. Initially it was planned to see Environment and land courts day to day activity. Due to time and financial constraints this was not done. Chronologically environment cases are not deeply seen on each sub city of Addis Ababa. Only selected environmental laws and proclamations were assessed. In addition, the time for data collection were not done as it was planned to be done on the time break down of the proposal due to the outbreak of the Pandemic, COVID 19. As a result of this, judges were working on shift. This was a time taking. Another barrier was government officials who were working on environment protection organs were not easy to give materials. The other most important limitation is the researcher's personal experience, not having done any research before. In addition though the researcher had legal back ground, her work experience was not related with courts and environment protection. Those were the limitations that had important impact on this study.

## **1.11. Organization of the Thesis**

This paper has six chapters. Chapter one consists of background of the study, statement of the problem, objective of the study, research question ,significance of the study , the scope and limitation of the study. Whereas chapter two composed of related literature to the study. Under this chapter accepted theories and concepts used in the literature are indicated. In addition a survey literature is conducted and included. Generally conceptual framework of the study is elaborated. The third chapter is the methodology section. In this chapter study area description, choice of methods, the rationale behind the selected methods, types and sources of data, sampling design and data analysis technics are briefly discussed. Chapter four, deal with data presentation and analysis. And chapter five is discussion of finding of the research. The last part chapter six, presents conclusion and recommendation part of the research.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.1. Concepts of environment, Environmental protection and Environmental Degradation

Environment is defined differently on various documents having common interplay that could be shared. Obviously it must have clear and precise definition of terms to delineate the scope and extent of legal liabilities, application of rules and regulations when harm occurs.

**Environment;** the word environment comes from the Latin word called the ‘environnor’ meaning to encircle. This definition directs to the surrounding. Geographically it encompasses both the atmosphere and the stratosphere. Defining environment is not easy task, this is why many treaties and conventions don’t directly define it.

The 1972 Stockholm Declaration; defines it as ‘’ the natural and man-made environment essential for his well-being and enjoyment of basic human rights’’

There are researchers who discussed about environment as a term that everyone understood but no one could define it. Philippines judiciary started recognition of environmental justice and the urgent need of separate courts to adjudicate environment related cases. Their effort started by defining the word environment before they accord constitutional recognition of environmental rights. According to them environment is defined as ‘life source’ (Hilario G Davide, 2012).

#### **Environmental protection**

*“It was only in the course of the 1970’s under the additional impact of the oil crisis, that it began to dawn on governments that continued growth depended not only on capital formation or skilled manpower, but also on the long-term availability of natural resources.”* (Development Dictionary; 26)

This phrase indicates that political or governmental recognition of environmental protection. And also, the 1987 the Brutland’s report announce the inevitable marriage of the need for development and the need to protect the long term interaction with environment protection.

Principle 4 of Rio declaration gives greater emphasis to environmental protection for sustainable development; it says;

“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

Generally though Rio declaration mention the word environment, environment protection, environment degradation at many points, but there is no place where those phrases found defined directly as it is mentioned on Ethiopian environment law teaching material.

### **Environmental Degradation:**

Environmental degradation is the exhaustion of the world's natural resources: land, air, water, soil, etc. Individuals are disposing of wastes that pollute the environment at rates exceeding the wastes' rate of decomposition or dissipation and are overusing the renewable resources such as agricultural soils, forest trees, ocean fisheries, etc. at rates exceeding their natural abilities to renew themselves. Therefore, the environment's capacity to withstand the negative impacts due to human activities has diminished and environmental degradation has become a threatening issue (Olaniran, 1995)

### **2.1.1 Concepts of Environmental Courts and Tribunals**

Environmental courts and tribunals are specialized forums for resolving environmental, natural resource and land use and related disputes. (George Pring & Catherine Pring, 2009: Greening Justice; Creating and improving environmental courts). George and Catherine Pring, who are spouse lawyers, on their paper ‘*specialized environmental courts and tribunals: the explosions of new institutions to adjudicate environment, climate change and sustainable development in 2010*’ emphasize that, the rapid growth of environmental crisis including the manmade climate change risks throughout the world coupled with increase in the public awareness of environmental crisis demands the growth in development of specialized environmental forums.

The well known the Land and Environment Court of New South Wales Australia Chief Judge & one of the leading expert on the development of ECTs in the world, Judge Preston has written that ‘successful environmental courts/tribunals are better to address the pressing, escalating and pressing environmental problems including climate change risks.’ He added, ECTs, as judicial

organ has the power and ability to serve rule of law. Doing their judicial review they can restrict actions of both the executive and legislative organ of the government.

In order to have sound environmental governance it is argued that three pillars of rights should be met. Those are access to information, access to public participation and access to justice (Greening Justice, 2009). These three pillars are emphasized by the first earths summit, that come up with 1992 Rio declaration, underscoring on its principles. Specially, principle 10 of RIO precisely expressed the three access pillars.

#### PRINCIPLE 10

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Environmental courts are one mechanism to meet those access rights by providing the playing ground for all in relation to environmental cases. The first and prior right that will be attained by ECTs is access to justice. Needless to say, citizens of a country need the substantive right to enjoy and the enabling procedural outlets that guide how to exercise their rights. Studies shows that both substantive and procedural laws stating or constituting right should be in place ( Greening Justice, 2009). This seems our neighbor Kenya wanted to incorporate environmental rights in her constitution by 2010 and establish the institution, Kenyan environment and land courts/tribunals.

## **2.2. Historical Development of ECTs in the World**

The creation of ECTs dates back almost two centuries before. Denmark’s Nature protection board that was established to preserve the natural environment was created in1917. Followed by Sweden’s Water Court, focused at first on water rights issues, was created a year later (George Pring & Catherine Pring,2009)

Furthermore the 1970's environmental movement brings fundamental changes in environmental justice reform. New environmental public laws, natural resource laws enacted. The second occasion that brings new reform and explosion of ECTs was 1990 and 2000. This brings the need for special expertise of the judiciary on the dynamic, complex and ever increasing environmental jurisprudence.

Environmental law as a distinct discipline emerges after the Stockholm conference in 1972. Before that environmental law takes its root from general international law (Environmental law teaching material, 2008). It is noted that there were no peculiar environmental law making and distinct future of environmental law relatively speaking with the rest laws such as property law, succession law, and criminal law alike.

### **2.2.1. Is there separate/distinct International environmental law or Is it part of public International law?**

Studies show that there was hardly any self-contained international environment law. It has been part of public international law instead (Tsegai Birhane , Merhatibeb Teklemedhin, 2008). The entire international law be it public or private, that is convenient to environment law International economic law, public international law, international human rights law used to fill this disciplinary gap (ibid)

The traditional legal order of environment law is also essentially a *laissez-faire* system oriented toward the unfettered freedom of states. This resulted inactions by state to take the appropriate measure towards environmental protection. It is sought that the root cause could be result from perspectives that are non-environmental. This is evident in adequacy of the legal jurisprudence (legal philosophy of environment law itself).

### **2.2.2. Environmental law versus Human rights**

As it is already indicated above environmental law is recently developed compared to human right whose development dates back to the England bill of rights and French enlightenment. Its official recognition dates back to Universal Declaration of Human Rights in 1948.

That was followed by the Covenant on Civil and Political Rights<sup>8</sup> and the Covenant on Economic, Social, and Cultural Rights, both in 1966. Multiple efforts have followed, elaborating the so called "first generation" human rights (civil and political rights), the "second generation" human rights (social, economic, cultural rights), and the expanding "third generation" human rights (to a safe and quality environment, natural resources, development, sustainability, intergenerational equity, self-determination, etc.).

These two bodies of law have developed a substantial and synergistic confluence, or overlap, in the last twenty years. Today, environmental rights are considered by many to be enforceable human rights and are specifically included in newer national constitutions and international human rights instruments that proclaim a right to "life" in various manners.

### **2.2.3. Institutional reform for Environmental justice: Why Specialization?**

Environmental rule of law is indicated that emerging justice relative to other substantive law i.e. contract law, family law, succession, commercial and other laws.

Important point worse mentioning will be who will bring environmental cases/suits to court of law? This is regarding the capacity of standing to get remedy or claim due to failure to enjoy, or inability to access natural resources or ecosystem services in general. Or suit of avoidance of nuisance or pollution. FDRE constitution Art 37, Sub article 2(b) states any person or group of persons who are member of a group of people who have similar interest with can bring suit. According to this statement access to get environmental justice, distributive justice, procedural justice and corrective justice has wider room to be accessed.

However as stated on the statement of the problem, the civil procedure code of Ethiopia under article 33 states there should be an interest to bring law suites to the court of law. This is one impediment for environmental access to justice from regular courts. Those and additional causes calls for ECTs.

#### **2.2.4. Empirical review Countries experience on environmental courts**

Research shows that establishment of Environmental courts and tribunals are exploding from time to time.

‘There has been a ‘world-wide “explosion”’ of tribunals and courts focusing on lawsuits involving environmental issues, according to the world’s pre-eminent experts, Professors George (Rock) Pring and Catherine Pring, who for more than a decade have studied the development of these institutions. According to the Pring’s, this development is ‘dramatically changing the playing field for environmental justice around the world’ (Smith, 2018).

According to this journal, there are 1500 ECTs in the world, as of March 2018. Different factors push forward for the existence and proliferation of those courts. One is the need from the general public/society to get environmental redress in more successful way than the conventional regular courts remedy. The other factor raised is the changing and improvement of international environmental laws. The other emphasis that had got accord by international environmentalists and environmental justice experts is the link between environmental rights and human rights.( Pring partners)

Many literatures show that judiciary from the three organs of government would take the lions share on environmental protection and sustainable development endeavors. The very nature of the judiciary; its neutrality, ability to mediate between two conflicting interests and constitutionally granted independence make them more appropriate body to protect the environment and be champions for sustainable development.

The domain of environmental courts are as the name itself is self-explanatory, it is a specialized or ad hoc courts. Those courts are always established with specific mandate, and operate by experts of certain field of specializations. For instance in Ethiopia, FDRE constitution Art. 78(4) show a room for the establishment of specialized courts. The only necessary thing to be seen is legally prescribed procedures and legal basis of establishment.

The conventional model of litigation system which was based on having two adversaries (plaintiff and defendant) has become obsolete nowadays. Public interest litigation is wider and does not depend on the existence of two parties with different interests.

## **2.3. Countries Experience with ECTs**

### **1. Philippines:**

Its protection and conservation [will be] imbued with an invigorated sense of purpose and urgency. Philippines is the first country in the world to enshrine in its Constitution the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, and the correlative duty of the State to protect and advance that right. The supreme court of Philippines ruled and give meaning to the constitutional right of the people' the right to a balanced and healthful ecology' considering unborn generation around 70s and 80s.

By 2008 this country had 117 specialized environment courts. They had also enacted enabling procedural rules by 2009. After they had promulgated simplifies and streamlined rules of procedures that let courts to have speed in environmental litigation hierarchy of superior court of record with exclusive right on environmental matters. This court has experienced judicial review of government decisions. This court has both civil and criminal jurisdiction. It can give compensation, injunction, criminal sanction. Types of cases that are entertained in this court include environmental, planning, development and land cases. In this court standing is open case loads of environmental issues had increased. Generally, in Philippines the history of environmental laws and environmental jurisprudence is easy for litigants of environments. They have also active environment movements, sensitized legal practitioners. As a result, climate change cases are also being seen.

Even victims of climate change risks, can claim compensation in the Philippines legal system, standing is liberalized, and procedural rules are easy and clear.

### **2. Environmental and Land Court of New South Wales of Australia**

According to Justice, M.L. Perlman, the first specialized environment and land court in Australia was established by 1979, with the. Any person can bring case for any breach of statute if the act is probably would bring environmental harm. This shows people can bring even for a case that would probably have environmental risk! They are not obliged to proof the certainty of the harm, instead expected to show the potential harm that action/inaction will have.

There are twelve main indicators of successful ECTs as per Justice Brian J Preston Chief Justice of NSW. Those are; Status and authority, Independent from government and impartiality, Comprehensive and centralized jurisdiction, Judges and members are knowledgeable and competent, Operates as a multi-door courthouse , Provides access to scientific and technical expertise, Facilitates access to justice, Achieves just, quick and cheap resolution of disputes, environmental problems and relevant, Develops environmental jurisprudence, Underlying ethos and mission, Flexible, innovative and provides value-adding function. His experience is from the successful NSW environmental and land court.

### **1. Environment and land court of India**

Indian perspective on the sustainable development focuses from the preliminary stage that is the relation of development and environment. India, shows the horizon of expanding environmental law, as new socioeconomic strategy i.e. sustainable development.( Journal of the Indian Law Institute, Vol. 52, No. 3/4, Special Issue on Climate change & Environmental Law (JULY-DECEMBER 2010), pp. 435-452) cite this

In India the idea of Green tribunal arose starting from 1996, when the existing regular court decides, the existence of those tribunal will enhance expediency of justice, will create panel of experts discussing highly technical environment issues, and will reduce case -loads on the regular courts( Law Commission of India, 2003), 186th Report on Proposal to Constitute Environment Courts, New Delhi. Then after 14 years green tribunal acts were passed In India, which enable emergency of nation-wide green tribunals.(UNDP, 2003).

### **2. The Land and Environment Court of Kenya**

By 2010, the Kenyan constitution under art.162 creates the specialized environment and land court in Kenya having status of the high court. They give land and environment issues to this specialized court constitutionally. They have also other subordinate enabling acts so that the newly created specialized forum operates fully. As Nora A. Otineo presented in his paper entitled ‘’ Appraisal of environment and land court of Kenya; 2012’’ those environment courts can also see the environment planning and protection issues, climate case tenure, land management. In exercising its jurisdiction, the court is guided by principles of sustainable development.

‘‘In exercise of its jurisdiction under this Act, it shall be guided by the following principles- (a) the principles of sustainable development, including;

- (i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;
- (ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written law;
- (iii) the principle of international co-operation in the management of environmental resources shared by two or more states;
- (iv) the principles of intergenerational and intergenerational equity;
- (v) the polluter-pays principle; and
- (vi) the precautionary principle;

In addition to the court, there are many environment tribunals in each district with their founding statutes that defines their specific jurisdiction in Kenya. The new constitutionally established environment and land court will see appeals from those tribunals. The high court of Kenya will never see any appeal case of environment case since it is exclusively denied its power. (Art.162 (2) (b) of Kenyan Constitution).

Hence, having laid the ground of the courts and tribunals under their constitution, Kenya be able to create robust judiciary that can guarantee environment protection and strong environmental jurisprudence. Even the judiciary be able to control accountability of government via undertaking of environment impact assessment( Caiphas B Soyapi : 2019).

## **2.4. Relevant Legislations and Policy Review: National Legal Framework**

### **2.4.1. FDRE Constitution:**

When we see our national environmental legal frame work, our constitution has a provision regarding the substantive environmental right under article 44 and the right to development under article 43.

#### Article 43 The Right to Development

1. The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.
2. Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.
3. All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.
4. The basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs.

#### Article 44 Environmental Rights

1. All persons have the right to a clean and healthy environment.
2. All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.

Those are substantive rights that needs procedural rights how to access those rights. On the same document on the other leaf let page 12, article 37 gives everyone the capacity to bring cases to courts of law.

#### Article 37 Right of Access to Justice

1. Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.
2. The decision or judgment referred to under sub-Article 1 of this Article may also be sought by:
  - a) Any association representing the Collective or individual interest of its members; or
  - b) Any group or person who is a member of, or represents a group with similar interests.

As it is clearly stated, sub article one of this provision indicates the potential existence of Environmental courts or tribunals saying '...any other competent body with judicial power.' This is of course for any legally established tribunal including environment tribunals. Hence ECT will be sources of environmental justice taking into consideration other factors.

## **2.4.2. Environmental Policy of Ethiopia 1997**

Ethiopian environment policy was formulated by 1997 after the establishment of Ethiopian Environment Protection Authority (EPA) in 1995. The policy was as a response for Rio declaration Agenda 21 in 1992. (Evaluation of Ethiopian Environment policy and Environment Impact Assessment, 2010) . This policy articulates the requirement for integrating environment and development at policy, planning and management levels for improved decision-making. Its legal framework is given by the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) (Proc. 1/1995), where the concept of sustainable development and environmental rights are enshrined. The policy discourses were three. These are the Green Revolution discourse to overcome food insecurity, the Environmental Rehabilitation discourse to ameliorate degradation of natural resources, and a Participatory Natural Resource Management discourse (Keeley and Scoones, 2000). Its 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.

But though it had good foundation and discourse, there was no any subsidiary legislation which will have binding effect on the environment protection. The EIA proclamation was the following proclamation after the policy; it was enacted by 2002 that means after five years of having only environment policy.

### **2.4.3. Environment Impact Assessment proclamation EIA Proclamation No. 299/2002**

There are different binding and non-binding legislations and policies that are bases for Ethiopian environment impact assessment proclamation. Such as the Rio declaration, that establish principles of sustainable development, legal conventions and treaties related to environmental protection which establishes obligation to signatory countries that may be meet through EIA arrangements. The principles of sustainable development, specifically precautionary principle and requirement of international donor organizations such as World Bank, African Development Bank to undertake EIA to lend money.

Undertaking of EIA for certain development activities is mandatory requirement on this proclamation. Art 3(1) of the proclamation strictly put that no development activities be commenced without undertaking environment impact assessment.

The steps to be followed and specific details of EIA undertakings are also stipulated. EIA basic principle worse to be mentioned here is public involvement on the EIA steps starting from screening to implementation and follow up. Public involvement is based on the different basic objectives. Those includes; to get indigenous knowledge and experiences and to incorporate them, to get more appropriate alternatives for mitigation measures, not to overlooked important impacts of the planed project and to maximize benefits, reduce conflict at early stage, to ensure transparency and accountability and a like.

Though there is well documented EIA proclamation, its implementation is very low. There are different giant foreign direct investments which had started operation without undertaking EIA and even without communicating to Ethiopian Environment protecting authority(Solomon,2003)

#### **2.4.4. Ethiopian Pollution Control Proclamation**

This proclamation has important effect on environment protection by protecting pollution or mitigating impact of pollution. As it is clearly stated on its preamble it shows some development activities meaning industries and manufacturing enterprise might inflict wastes that will “make the development activities counterproductive” (pro.300/2002). This shows the emphasis that is given to protect the environment by giving the same wait with the development activity. This is appraisable one.

Its environment protecting effect with the EIA proclamation stated above will have complementary protecting effect if proper implementation exists.

As stated on Dereje Damte’s paper, 2009, this proclamation has lifted one main procedural barrier stated under the civil procedure code of Ethiopia, art 342, the requirement to show vested interest to file a case to court of law. Art.11(1) of this proclamation states ;

*“Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.”*

## 2.5. Conceptual Framework

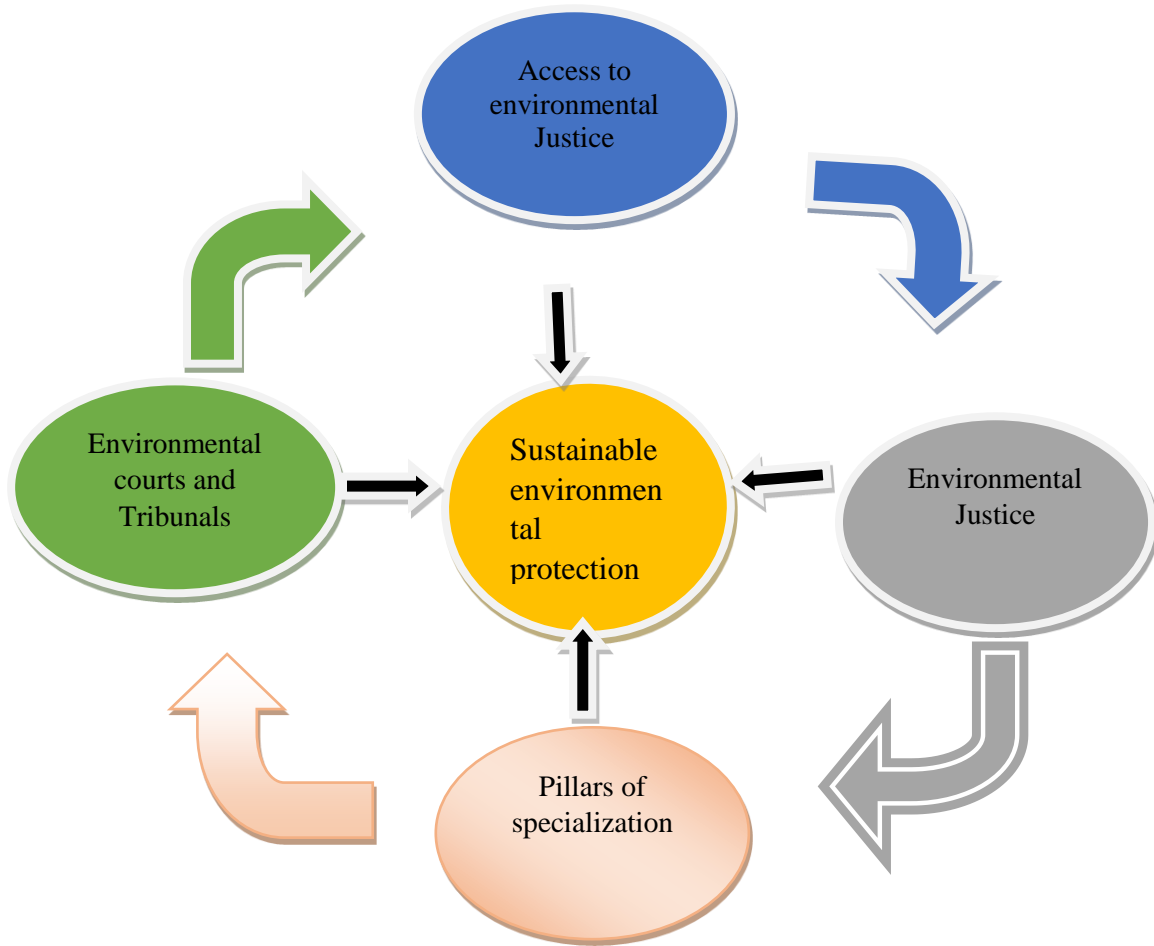


Figure 2.1 conceptual frame work

Source: Author

The concept underpinnings on the specialized forums to see environment cases are access to environment justice, the need to have clear and effective environmental jurisprudence, faster and efficient disposal of environmental litigation matters and expertise and efficiency on the area of environment adjudication. Regular courts most of the time have case back logs, scarcity of human resource specially judges. And as a matter of fact environment injustices are increasing in Ethiopia in general and expanding in Addis in Particular. Hence in order to have effective environmental protection via implementing environmental laws and regulations by giving expeditious and quicker decision those factors necessitate establishment of environment court and tribunal in Ethiopia/Addis Ababa. The established forum will bring prevalence of

environmental justice on one side and also access to sustainable environment protection on the other hand. This will create robust environmental jurisprudence, active environment protecting organs and participating society on environmental issues finally this all will have total effect of bringing sustainable development.

## **CHAPTER THREE**

### **RESEARCH DESIGN AND METHODOLOGY**

#### **3.1. Research Methodology**

The researcher has undertaken mixed research method. This is because the topic under the study requires in depth reading to have detail understanding on the quest of “will of courts specialization is a real and amenable solution to bring about environmental justice in Ethiopia, Addis Ababa’’, what specialization modality will be appropriate on one hand. On the other hand how many legal experts will be in favor of specialization, what pre conditions should be met, how academicians perceive to the need for specialization and like quests were answered by questioners’. In this regard the research type is mixed research, with semi structured interview and questionnaires.

Semi structured interview is chosen because of its capability to be flexible depending upon the respondents answer.

#### **3.2. Research design**

The researcher has used interviews with semi structured questions and questionnaires to grasp how much number of legal experts and instructors are in favor of the establishment of ECTs.

Since the researcher uses facts of other countries that have already established ECTs, and wants to incorporate court experts and environmental protection expertise experience freely, semi structured interview was used.

#### **3.3. Population and Study Area Description**

The entire Federal courts of Ethiopia, located in Addis, Federal Attorney General’s, from Attorney General organization, the Federal Environment Forest and climate change commission (EFCCC), Addis Ababa City Administration Environment Protection and Green Development Commission(AEPGDC) and Addis Ababa University (AAU) law school environmental law course instructors were target population of the study.

The Federal Courts have three levels; The Federal First Instant Court (FFIC), the Federal High Court (FHC) and the Federal Supreme Court (FSC). The FFIC and the FHC are located on each ten sub city of Addis Ababa. The ten sub cities were targeted. Five sub city high court judges who are deployed to see environment and other cases were purposively selected. Those were, the Lideta High Court , Akaki Kality High Court, Bole Sub city High Court, Kolfe Keranyo and Arada High Court.

The Federal Supreme Court Judges were targeted to give their insights though there found to be no environmental case.

At those court levels there are Benchs of cases and based on those categories, judges are deployed to see cases that are referred to be seen by the court registrar. Accordingly there are 12 benches, and environment cases is seen under “miscellaneous” Bench. According to The Federal Judges Administration Human Resource, there are 27 total numbers of judges who are trying under this miscellaneous bench. Therefore, the study focuses to deal with those 27 FIC judges since the questionnaire demands the judge who had tried environment case.

The federal attorney’s number is 75 who are working under The Federal Attorney General Attorney office. Out of the total population based on random sampling method 64 of them were asked. Unlike judges there is no special deployment of attorney based on case category.

For the Environment protection organs the legal service unit head of both the FFEPC and AEPGDC was interviewed. Finally, AAU environment law instructors whom are four in number were targeted to be interviewed.

Figure 3.2. Study Area description

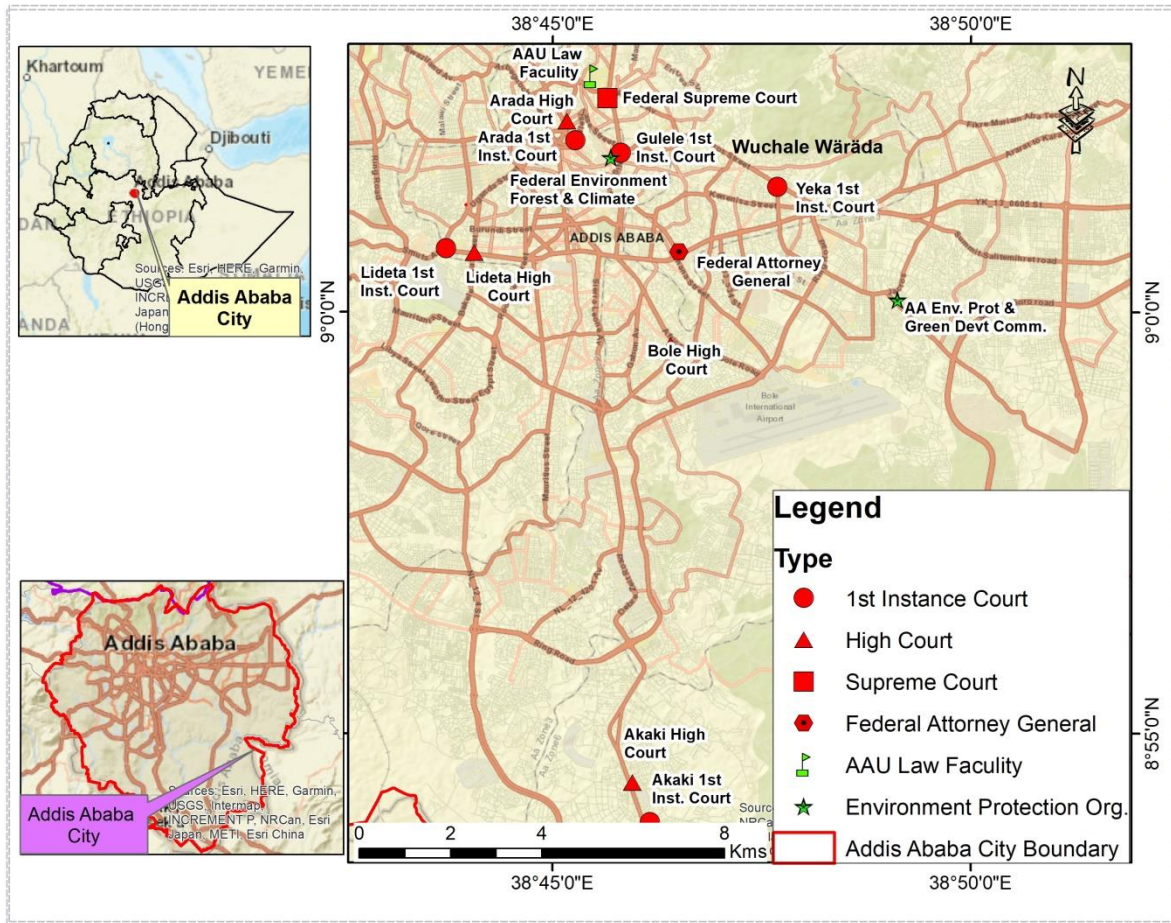


Fig xx: Location Map of Courts Visited

Source: ESRI, ARCGIS 10.7 and CSA (2007)

### 3.4. Sampling Techniques

According to Bryman (2012), Purposive sampling is defined as “a type of sampling in which particular settings, persons or events are deliberately selected for the important information they can provide that cannot be gotten from other sources”. Therefore, among different types of non-probability sampling techniques, purposive sampling techniques was employed to select the respondents from the target group of study, the Federal forest and environment protection legal unit head , AA city administration environment protection and green development legal service head. First instant and High court Judges.

Based on the Ethiopian Federal Attorney General Human Resource office, the total number of Federal public prosecutors who are working in the Federal Courts of Addis Ababa are 75. Out of the total population subject to the study, 64 of them were asked based on conventional sample size formula. Which is  $n = N(1 \div (n - e^2))$ . Where  $e = 0.005$ . Those attorneys have the power to file a suit in every hierarchy of the courts. Hence those public prosecutors are the objective samples to ask about environmental dispute cases. This was done based on the random sampling techniques.

Hence, the main reason behind selecting the above sampling technique was because of its very helpful contribution to gather firsthand rich environmental concerned information.

### **3.5. Sources of Data**

Important data for this research were collected from both primary and secondary sources. The primary data were obtained from members of Addis Ababa Federal courts experts, from the ten sub cities first instant court environment case entertaining judges, environmental protection officers specially the legal and environmental impact officers, and also environmental law experts in AAU. Whereas, Secondary data sources was included both published and unpublished materials such as books, articles, journals, thesis and dissertations from countries that has ECTs.

### **3.6. Data Analysis Procedure**

Thematic and Content analysis together with SPSS based analysis for the questionnaire was used. Content analysis and narrations is used for the data collected through the qualitative research tools.

### **3.7. Data Quality Assurance**

Reliability and validity test together with trustworthiness and authenticity test are made use of. The researcher attempted to minimize mistakes while conducting interviews. Due attention had been given when data were coded and categorized. Interview summary sheet is used.

### **3.8. Ethical Considerations**

All the required ethical consideration was employed according to the research ethics. Prior to the actual data collection, the researcher had communicated with the Court Administration, with Environment, Forest and Climate Change Commission legal unit head, and with Addis Ababa City Environment protection and Green Development. In addition Individual formal consent was obtained prior to data collection. The researcher had tried not to take photography indiscriminately and tape records without obtaining prior permission. Participants had the right to participate or not to participate. The respondent's information will be kept confidential by the principal investigator. The notes taken during interviews were kept by the researcher secretly. Finally, the researcher will try to avoid any situation leading to physical and emotional harm to any of the participants.

## CHAPTER FOUR

### DATA PRESENTATION AND ANALYSIS

#### INTRODUCTION

This chapter deals with the presentation, analysis and interpretation of data to investigate the need to establish environment court or tribunal, to see why specialized is opted. The research's sources of data are from the judiciary, the executive and the academia. Legal experts, the judges, attorneys, law instructors have been asked. The quantitatively collected data is analyzed first and followed and combined with the qualitative data.

#### 4.1. Discussion of the Data from Federal public prosecutors

Table 4.1 Table showing availability of national environmental laws

<b>Are there national environmental protection laws you are making use of?</b>		Frequency	Percent
Valid	Yes	38	59.4
	No	21	32.8
	I am not sure	5	7.8
	Total	64	100.0
<b>If your answer is yes, which proclamation, can you name it?</b>		Frequency	Percent
Valid	did not remember exactly	7	10.9
	EIA proclamation, Pollution control proclamation and others	10	15.6
	Others	11	17.2
	pollution control proclamation	8	12.5
	Total	64	100.0

Sources: Own survey Data(2020)

As per table 4.1, 59.4 % of the total respondents agree on the availability of national environmental laws. This shows that the existence of laws and regulations which is one primer factor to have environmental rule of law. Whereas 21 % of the respondents said, there are not national environment laws. Some respondents specify the specific laws, but 43.8%) of the total respondents did not remember the exact environmental laws or regulations though they are aware

of the promulgation of the national environmental laws. Out of the remaining 56% respondents, 17 % of the respondents enumerate forest conservation proclamation, environment protection policy, the Federal constitution of Ethiopia, internationally ratified laws, investment proclamation. Compared to the rest national environmental regulations, Environment Impact Assessment Proclamation and Pollution Control Proclamation take 15% share of the lists. And again, when the result for EIA and pollution control is weighed, pollution control proclamation is mostly indicated by the respondents, it has 12.5% share.

- This result shows that the main actors in bringing environmental cases are not experienced working with or using the existing national environmental laws. This is an indicator of the less or non-implementation of environmental laws.

Table 4.2 Factors that may affect implementation of environment law

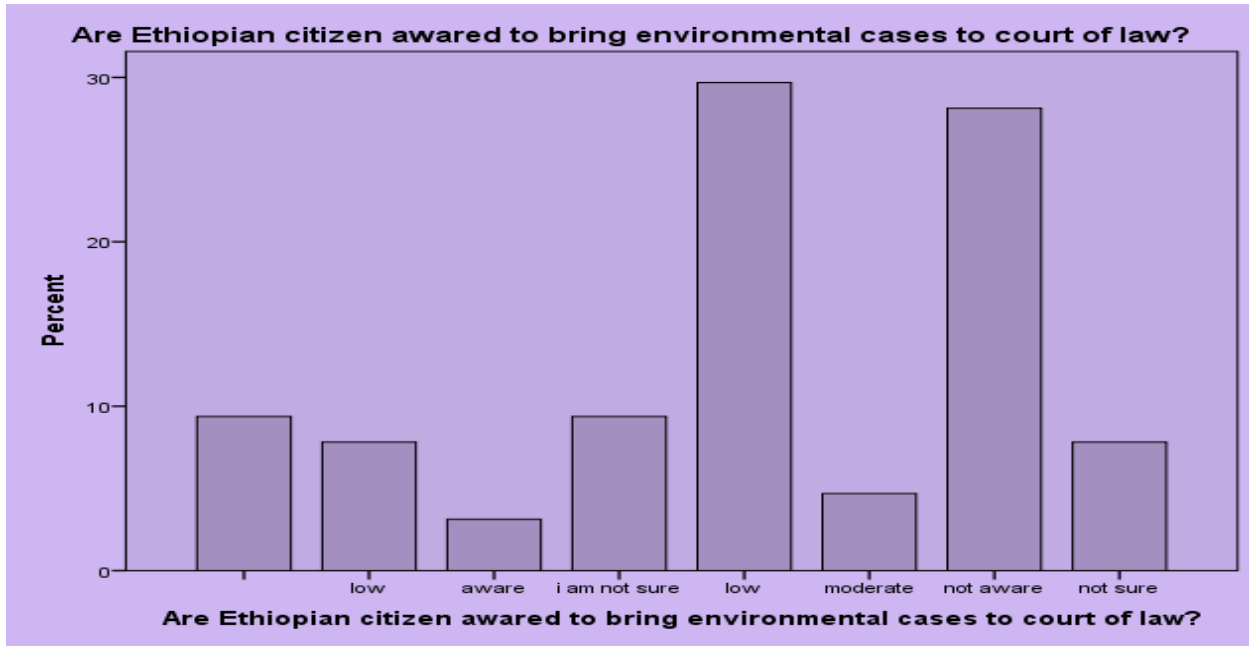
Questionnaire items		Frequency	Percent
<b>Federal Court structure</b>	yes	13	20.3
	no	40	62.5
	I am not sure	10	15.6
	reason	1	1.6
	Total	64	100
<b>Resources to give timely decision</b>	yes	6	9.4
	no	37	57.8
	I do not know	7	10.9
	I am not sure	13	20.3
	reason	1	1.6
	Total	64	100
<b>Equal attention To environmental cases</b>	yes	2	3.1
	no	48	75
	i am not sure	6	9.4
	I am not sure	8	12.6
	Total	64	100
<b>Environmental courses</b>	Yes	19	29.7
	No	28	43.8
	I do not know	11	17.2
	I am not sure	6	9.4
	Total	64	100
<b>procedural laws consistency with the constitution</b>	Yes	16	25
	No	36	56.3
	I do not know	3	4.7
	I am not sure	8	12.5
	Reason	1	1.6
	Total	64	100
<b>Both civil and criminal procedure laws are easy to initiate suit</b>	Yes	11	17.2
	No	41	64.1
	I do not know	6	9.4
	I am not sure	6	9.4
	Total	64	100

Sources: Own survey Data,2020

Based on the survey data, 62.5% of the total respondents replied, as the structure of federal courts of Ethiopia (Addis Ababa) are not suitable to sue environmental cases. More than half of them (58.7%) uncover resource is not enough to give timely decision to environmental cases. And 75% of the respondents conclude environmental cases are not given equal attention like other cases are given. 44% of the attorneys did not take environmental law course. Whereas, 56.3% of the respondents said, the procedural laws that are used to retaliate environmental rights and obligations are not consistent with the constitution that talks about the right to live on clean and healthy environment and talks about access to justice Art.37 (1) b. More specifically to the question about civil and criminal procedures of Ethiopia, 64.1% of respondents replied, procedural laws are not easy to initiate environmental dispute cases.

- The total effect of the factors that might hinder implementations indicates that, those existing environmental laws are not being implemented due to different factors. To raise one renown environmental dispute case that was brought to Federal First Instance court by non by civil societies, called APAP(Action Professional's Association for the People) end up without having effect of environment protection. The procedural out let that can be cited as enabling Art.11 of Pro.300/200(pollution control proclamation) for APAP to bring public interest case, was ruled out by the Federal Supreme Court as it could not let anyone to bring environmental dispute case to court of law using this out let. This is clear indicator of the disregarded environmental cases even by the court and the environment protection organs by themselves.

Figure 4.3 Addis Ababa Society Awareness



According to Figure 4.3 the level of awareness of Addis Ababa city urban population is very low. Out of the total respondents, 42 persons replied as the society in Addis have low awareness which is represented by 37.5 % (7.8%+29.7%) whereas, 28.1 % of the respondents conclude the societies are not aware of environmental matters. In addition to this the frequency of the respondents which give positive response for this question as moderately aware and aware is three and two respectively.

- Hence this is the other indicator to conclude that the urban society, who are living in the capital of Ethiopia are not aware of environmental issues. The public right to get adequate information on governments development work and citizens write to participate on public policy is not good. This result shows practical gap from the protecting organ and other responsible organs to let the society be informed citizens. This is against the cumulative reading Art 42, 43 and Art 93 FDRE constitution.

As shown from the prior table, most of the respondents agree on the inconveniency of procedural laws to bring environmental cases to court of law 64% of them. And 56.3% of respondents said procedural laws are not consistent with the constitution and other internationally ratified laws. This response correlates with the quest which was aimed to get their advice on the general

environmental substantive and procedural laws of Ethiopia. Out of the total respondents 43 did not give their advice. Only 33% of them give their feedback on the laws. Most of them opted amendment of environmental laws in general and even codification of the scattered environmental laws and regulations has been indicated.

Sub topic 2 Factors that Might Affect Establishment of Environment Court/Tribunal

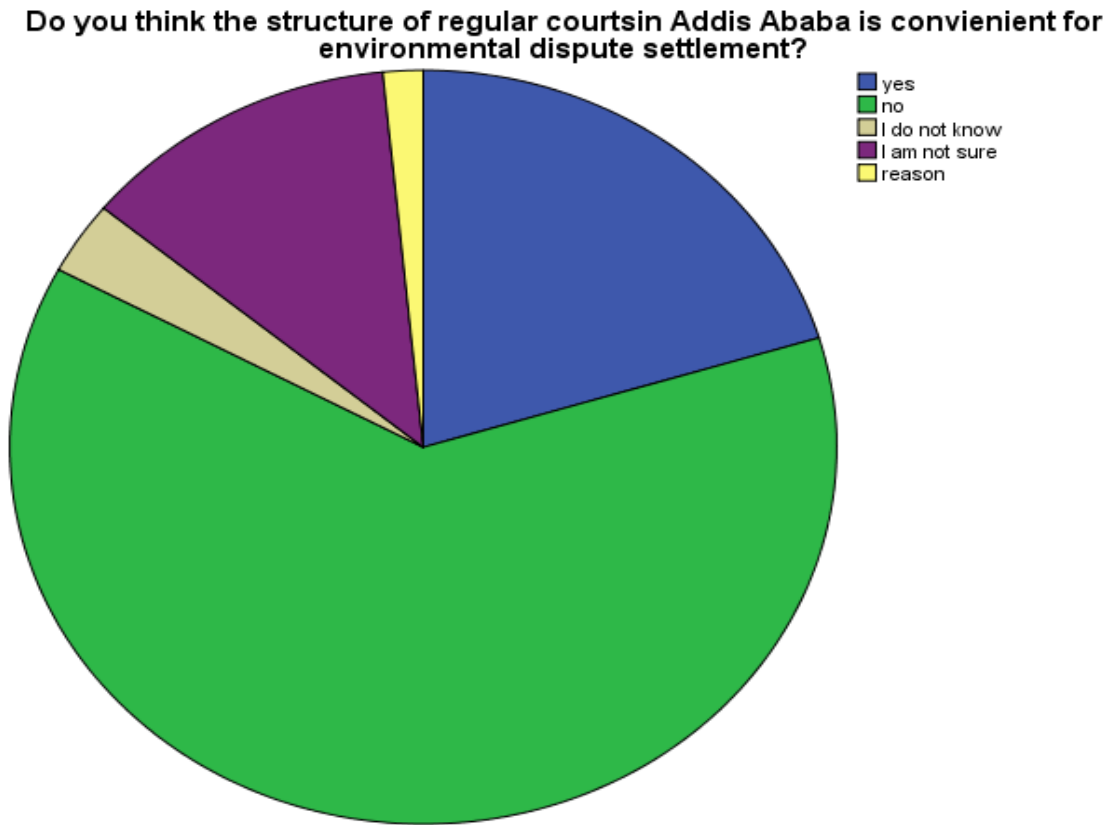
Table 4.3 Have you make use of environment protection policy of Ethiopia?

<b>Weather the respondents engage in Environmental Protection or not</b>		<b>Frequency</b>	<b>Percent</b>
<b>Valid</b>	Yes	6	9.4
	No	37	57.8
	I am not sure	21	32.8
	<b>Total</b>	<b>64</b>	<b>100</b>

Sources: Own survey Data, 2020

Almost all the respondents did not use or see Ethiopian environment protection policy. Only six respondents replied yes to the quest. As it is indicated from the table above, 57.8% of them, did not use it and 32.8% of them are not sure whether they refer the policy or not. One can say, 90% of them are not using the policy document. Surprisingly those respondents, who refer the policy, could not state how it is related with the rest environmental laws and regulations they are making use of.

Figure 4.4 Do you think the regular court set up is appropriate to give timely and effective remedy for environmental issues?



As the shown from Figure 4.5 above, more than half of the respondents (62.5%) indicated as the regular court set up is not appropriate to give timely and effective decision to environmental dispute cases. Twenty (20%) of them are not sure whether the court set up is convenient or not.

Table 4.5 Are you familiar with the daily activities discharged by regular courts on environmental issues?

Familiarity of respondents with regular activities of courts		Percent
Valid	Yes	7.8
	No	92.2
	Total	100

As shown from the table above 92.2% of the respondents are not familiar with environmental issues that are handled by the court. Only five of the respondents replied as they are familiar with the courts activity.

Table 4.6 Are there attorneys who have specialized environmental justice/laws at your work place?

Weather participants specialize in environmental justice		Frequency	Percent
Valid	Yes	5	8.1
	No	38	61.3
	i do not know	19	30.6
	Total	62	100.0
Missing	System	2	
Total		64	

As per the table 4.6, 61.3% of the respondents replied that there is no specialization on environmental laws. This was followed by 30.6% did not know whether there are attorneys who have specialized on environmental law. This shows that there is also professional gap even between the legal experts.

Table 4.7 If you get a chance to sue environmental dispute cases will you prioritize it or will you accord the same status with other cases?

Ways to treat environmental case		Frequency	Percent
Valid	Yes	27	42.2
	No	27	42.2
	I am not sure	10	15.6
	Total	64	100.0

Sources: Own survey Data, 2020

As shown from the table above, 42.2 % of respondents will not prioritize it and the same percentage of them will prioritize. 15.6% of the respondents are not sure whether to prioritize or not. Hence, the researcher uses their reason as important indicator which variable have more weight. Thirty of the respondents raise the special and dynamic nature of environmental dispute cases as a reason, some of them reason out that due to its harsh impact on the society and its public nature and Trans boundary ness of environmental pollution taking as example. Therefore, other indicators should be taken into account such as nature of the case, the emphasis that is given to environmental dispute cases and alike. This question uncover the experts perception and knowledge of environmental laws which will be interpreted here below.

### Sub topic 3. Attorney's' perception on the Establishment of Environment Court/Tribunal

The following part uses Likert's scale to see how attorneys understood establishment of environmental courts or tribunals.

Table 4.8 Perception of Legal Experts towards establishment of (ECTs)

<b>Establishment of ECTs in Addis is necessary and timely</b>		Frequency	Percent
Valid	strongly disagree	1	1.6
	Disagree	5	7.8
	Neutral	6	9.4
	Agree	29	45.3
	strongly Agree	23	35.9
	Total	64	100.0
<b>Establishment of ECTs will bring uniform decision for same environmental cases</b>		Frequency	Percent
Valid	strongly disagree	2	3.1
	Disagree	7	10.9
	Neutral	3	4.7
	Agree	32	50.0
	Strongly agree	19	29.7
	Total	63	98.4
Missing	System	1	1.6
Total		64	100.0

Sources: Own survey Data, 2020

As it is shown from table 4.8, 45.3% of the respondents agree on the establishment of environment courts and tribunals. They have agreed that specialized courts or tribunals are timely and necessary in Addis Ababa. More than this 35.9 % of the respondents strongly agree on the timeliness and necessity of ECTs establishment in Addis. On the effect specialized court/tribunals they will bear, 50% of the respondents, agree that ECTs will bring uniform decision for same environmental dispute cases.29.7% of them strongly agree for this variable. Hence one can conclude that 79.7% of the respondents will argue for establishment.

Table 4.9 Opportunity to Establish to (ECTs)

<b>Establishment of ECTs in Addis will require environment protection authorities' commitment and protectionist view.</b>		Frequency	Percent
Valid	strongly disagree	3	4.7
	Disagree	3	4.7
	Neutral	5	7.8
	Agree	31	48.4
	Strongly Agree	21	32.8
	Total	63	98.4
Missing	System	1	1.6
Total		64	100.0
<b>ECTs require specialization in environmental laws and mix of various expertise such as economists, foresters and environmentalists.</b>		Frequency	Percent
Valid	Strongly Disagree	3	4.7
	Disagree	2	3.1
	Neutral	4	6.3
	Agree	28	43.8
	Strongly agree	27	42.2
	Total	64	100.0

Sources: Own survey Data, 2020

As shown from table 4.9, 49.2% of the respondents clarify(agree), environment protection authorities commitment is required to establish ECTs. Whereas, 33.3% of them strongly agree on this point. Almost 80 % of the total respondents are in favor of environment court/tribunal establishment which is of course the growing trend in the globe today.

Table 4.10 Environmental court strengthens environmental justice system.

Strength of environmental courts	Frequency	Percent
Valid Strongly Disagree	6	9.4
Neutral	5	7.8
Agree	21	32.8
Strongly Agree	32	50.0
Total	64	100.0

Sources: Own survey Data,2020

The result from the above table shows also, legal experts perception on the establishment of ECTs. 50% of the total respondents strongly agree that ECTs will strengthen environment justice system. Followed by 32.8% of respondents agree that specialization of courts will bring strong justice system for access to environmental justice. This result shows that the researchers theory of justice on the access environmental justice which is one pillar like social justice, political justice an economic justice.

To conclude on the perception of Ethiopian Federal Attorney perception on the establishment of ECTs is positive. They are proponents of specialized courts/tribunals in Addis.

#### Sub topic 4. Opportunities to establish Environmental Courts/Tribunals (ECTs) in Addis

Table 4.11. Do you think the global alignment for environmental protection will be an opportunities for the establishment of environment court in Addis?

Weather there are opportunities or not	Frequency	Percent
Valid Yes	41	64.1
No	3	4.7
i do not know	3	4.7
i am not sure	17	26.6
Total	64	100.0

Sources: Own survey Data, 2020

As shown from table 4.11, 64.1% of the respondents thought that global alignment for environment protection is one opportunity to establish here in Addis. On the other hand , 26.6% of them replied that they are not sure about the effect of global alignment for environment protection on the ECTs establishment in Ethiopia(Addis Ababa). This shows that the quarter of the respondents are not aware themselves regarding global alignments for environment protection. In other words, they are not aware of stakeholder’s participation for sound environment governance.

Table4.12 The UN environment program is in favor of providing guide for the improvement of environment justice. Does this have contribution for the establishment of ECTs in Addis

UN programs on environmental justice		Frequency	Percent
Valid	Yes	43	67.2
	No	5	7.8
	i do not know	3	4.7
	I am not sure	12	18.8
	Reason	1	1.6
	Total	64	100.0

Sources: Own survey Data, 2020

As shown from the table 4.12, 67.2% of the respondents see UN Environment Programe endeavor on the improvement of environmental justice by providing technical and financial guidance as one opportunity to establish ECTs here in Ethiopia(Addis)

Table 4.13. Do you think there are enough attorneys that could be assigned to a specific environment case?

Adequacy of attorneys to handle environmental case		Frequency	Percent	Valid Percent
<b>Valid</b>	Yes	8	12.5	12.7
	No	35	54.7	55.6
	i am not sure	19	29.7	30.1
	Total	63	98.4	100
<b>Missing</b>	System	1	1.6	
<b>Total</b>		64	100	

Sources: Own survey Data, 2020

As shown from table 4.13 above, 55.6% of the respondents indicate that there are not enough attorneys to deploy for environmental dispute cases. 30.1 % of them are not sure about the experts deploying. This indicates that there are not enough experts in general. The trend , at Federal Attorneys office in Addis, there is no special allocation of experts or attorneys case specifically.

- To sum up what is found based on the survey data from attorneys and depending on the researcher’s observation via informal interviews, considerable numbers of attorneys are in favor of amendment of laws and regulation to have access for environmental rights. They are cognizant of environment damage will bring irreversible impact to the victim where of course the victim is the public at large. They call for society’s awareness, the judiciary should create aware society and side by side the establishment of specialized courts, they advised for court administration to see case flow and have bench instead of separate tires of courts/tribunals.

#### **4.2. First Instant Court Judges Result Interpretation:**

The researcher employed survey and interview data collection tools to get judge’s feedback. Based on the Federal Judges Administration counsel Office, human resource department; there are 27 judges who are deployed to see miscellaneous cases. Miscellaneous bench consists of Environment dispute case, RTD and others. Therefore, those judges who are employed to work on this bench are the target of this research. In addition there are 14 sub cities of Addis Ababa where the Federal First Instant, Federal High court are located. The researcher tried to address all

the sub cities though there are some constraints that hinder to get representative judges from each sub city.

For the high court judges, four representatives were purposively selected. Those were from Lideta High Court, Akakai Kality High Court, Arada High Court, Bole High Court. And finally, the quantitatively analyzed data will followed by the qualitative one.

Table 4.2.1 National environment protection laws utilized by regular courts

		Frequency	Percent
Valid	Yes	24	88.9
	do not know	3	11.1
	Total	27	100.0
<b>Name of proclamation</b>		Frequency	Percent
Valid		10	37.0
	did not remember the exact proclamation	7	25.9
	EIA pro and pollution pro	6	22.2
	Others	1	3.7
	the constitution and others	3	11.1
	Total	27	100.0

Sources: Own survey Data, 2020

As per table 4.2.1, above 88.9% of the total respondents (judges) are aware of the existence of national environment laws and regulations. Only 11.1 % of the judges are not aware national environmental laws. In addition 37% of the total respondents did not remember the exact proclamation. But 25% of them list out Environment Impact assessment proclamation, pollution control proclamation, and both pollution control proclamation and other regulations. Others stand for; forest development conservation proclamation, investment proclamation, environment protection policy and other international protocols which Ethiopia has ratified. This result shows national environmental laws are not clearly known by most Federal court judges.

Table 4.2.2 Number of environmental related cases

		Frequency	Percent
Valid	0	23	85.2
Missing	System	4	14.8
Total		27	100.0

Sources: Own survey Data, 2020

As per table 4.2.2. 85.2% of the total respondents did not see environment related cases. Only 23 respondents give their feedback regarding this question. They added, environmental dispute cases are rarely come to court of law. They said the society is not aware of the cases, even the environment as important thing is not given value for clearly unknown reason.

Table 4.2.3 How Many of Those Cases Have You Concluded

		Frequency	Percent
Valid	0	19	70.4
	1	1	3.7
	Total	20	74.1
Missing	System	7	25.9
Total		27	100.0

According to table 4.2.3, only 19 respondents give their feedback and 95% of them, said no environmental cases are concluded. This variant is complemented by their reason why they fail to see cases. Due to rarely the case came to court. Depending the observation the researcher had while collecting their feedback, first instant court judges were, in difficulties to answer how many of environmental cases had they conclude during their stay at the miscellaneous bench. They added most of the time; this bench is occupied by ‘disturbance cases’.

Table 4.2.4 How Long Does It Take After A Matter Filed In A Court

Length of the case takes		Frequency	Percent
Valid	within a year	2	7.4
	1-2years	6	22.2
	3-5 years	1	3.7
	Total	9	33.3
Missing	System	18	66.7
Total		27	100.0

Sources: Own survey Data, 2020

As shown from table 4.2.4, above, the total numbers of judges who have responded for this question were only nine. The rest 18 respondents did say nothing regarding the time one environmental dispute case would probably takes. Out of those nine respondents, 66.7 % of them replied, one environmental case would be finalized within one up to two years. Whereas 22.2% of them conclude it will be finalized within a year.

Table 4.2.5 Reason Time Taken to Conclude Environment Cases

Please give your reason	Frequency	Percent
Other caseloads & backlogs	11	40.7
limited environmental cases	11	40.7
Nature of the case	4	14.8
not sure	1	3.7
Total	27	100.0

Sources: Own survey Data 2020

As shown from table 4.2.5, 40.7% of the respondent’s reason out that, they have the difficulties to cut right how much time would environmental dispute case probably takes due to other cases load and cases backlogs. They clarify that there are lots of cases that are adjourned even for more

than one year to 10 years under this miscellaneous bench. In addition, 40.7% of respondents, reason out their inability to state the time taken by environmental cases at the regular court due to very limited cases are entertained there. Whereas 14.8% of the respondents state that time taken depends on due to nature of the case, evidence it demands alike. Having in mind the qualitatively analyzed data below, judges are aware of existence of environmental dispute cases and their response show environmental disputes are not being entertained fully under the regular courts.

Table 4.2.6 Are there sufficient remedies for environmental disputes

Presence of sufficient remedies for environmental disputes		Frequency	Percent
Valid	Yes	16	59.3
	No	4	14.8
	i am not sure	6	22.2
	Total	26	96.3
Missing	System	1	3.7
Total		27	100.0

Sources: Own survey Data, 2020

As shown from table 4.2.6, 61.5% of the respondents agree with the availability of sufficient redress (remedy) for environmental dispute cases. Whereas 23% of them are not sure or do not know whether remedies are sufficient or not. On the other hand, 15.4% of them argue against availability of sufficient remedies.

**Sub topic 2 Factors that will affect establishment of Environmental Courts/Tribunals (ECTs)**

Table 4.2.7 Have you make use of environmental protection policy of Ethiopia?

Reference made to environmental policy of Ethiopia		Frequency	Percent
Valid	Yes	6	22.2
	No	11	40.7
	i am not sure	9	33.3
	Total	26	96.3
Missin g	System	1	3.7
Total		27	100.0

Sources: Own survey Data, 2020

As shown from the figure above, only six judges have used environment protection policy of Ethiopia in line with other environmental laws and regulations. Those have 23.1% of the total share. The rest 20 respondents replied as the have the experience of cross referring the environment policy. To state it depending on their respective share, 42.3% of respondents did not refer the policy, 34.6% of them are not sure about whether they had refer the policy or not and one respondent bypasses the question. It would not be hasty generalization if one concludes that almost 75% of judges did not know environment policy of Ethiopia taking the above table.

Table 4.2.8 If your answer is yes, how do you see it in relation to the environment protection provisions that you are making use of?

Linkage with environmental protection		Frequency	Percent
Valid		25	92.6
	clear policy	1	3.7
	very good	1	3.7
Total		27	100.0

As it is shown from table 4.2.8 above, only two respondents give their feedback on the policy. This has very clear implication that, almost all judges who were targets of this research were not referring the policy or are not aware of the policy.

### Sub topic three: Perception of Judges on the establishment of Environment Courts/Tribunals In Addis

Table 4.2.9 I am very happy handling environmental dispute cases.

Handling environmental case		Frequency	Percent
Valid	Neutral	3	11.1
	Agree	6	22.2
	Strongly Agree	18	66.7
	Total	27	100.0

Sources: Own survey Data, 2020

As shown from table 4.2.9, 66.7% of respondents strongly agree that they would be happy to handle environmental dispute cases. 22.2% of them agree with idea that they would be happy to handle environmental case. The total respondent has given their feedback to this quest. And, their rate starts from neutral to strongly agree which shows positive graph. This implies that legal experts will not disregard environmental cases if they get the chance to see. Therefore, it would be concluded that they have could have very good perception on the establishment of specialized court and tribunal.

Table 4.2.10 I have participated in environmental risk management trainings.

Participation in environmental risk management		Frequency	Percent
Valid	Strongly Disagree	19	70.4
	Disagree	4	14.8
	Neutral	1	3.7
	Agree	2	7.4
	Strongly Agree	1	3.7
	Total	27	100.0

Sources: Own survey Data, 2020

As shown from table 4.2.10, 70.45 of the respondents did not participate on environmental risk management trainings. Followed by 14.8% of respondents dis agree with the quest that enquires

to get their feedback on the environment training participation. Hence, judges had not taken any awareness raising trainings on environmental problems as important stakeholders to protect natural resources or to minimize environment pollution. However, judicial officers and other legal professionals are demanded to have up to date environmental knowledge. UNEP guidelines 25, puts obligation on governments to ensure appropriate capacity building programs in environmental law for judicial officers, lawyers and other relevant stakeholders. The above result shows government's failure to capacitate the legal machinery to respond to the increasing concern of environment.

And also International Judges Symposium held at Johannesburg in 2002, states

“The deficiency in the knowledge, information and important skills in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, enforcement and development of environmental law.” Johannesburg, 2002

Table 4.2.11 Advocating for environment protection will bring sustainable development.

Advocating environmental protection		Frequency	Percent
Valid	Disagree	1	3.7
	Neutral	3	11.1
	Agree	4	14.8
	Strongly Agree	19	70.4
	Total	27	100.0

Sources: Own survey Data, 2020

As shown from the table 4.2.11, 70.4% of respondents strongly agree on the idea of advocating for environment protection will bring sustainable development. And 14.8% of them agree with this idea. Adding the results together, 85.2% of the respondents respond positively for this question. Hence first instant court judges have positive perception towards court specialization.

Table 4.2.12 I read international environmental case handlings to get more insights on environmental cases in Ethiopia.

Various Cases		Frequency	Percent	Valid Percent
Valid	Strongly Disagree	5	18.5	18.5
	Disagree	2	7.4	7.4
	Neutral	6	22.2	22.2
	Agree	7	25.9	25.9
	Strongly Agree	7	25.9	25.9
	Total	27	100.0	100.0

Sources: Own survey Data, 2020

As per the table above (4.2.12), 25.9% of the respondents strongly agree with the idea. They read international environment case handlings. And 25.9% of them agree and 22.2% of them were neutral. A relatively lower percentage of them disagrees and strongly disagree. To weight their response by taking neutral value as fence to see the positive and negative feedbacks; the total sum of strongly agree and disagree is 25.9% whereas, the total sum of strongly agree and agree is 51.8%. The value for respondents who are neutral to this idea is 22.2%. Therefore, more than half of the respondents read and take international environmental case handlings to get more insight on the area. This shows that, almost half of the judges have positive perception towards specialized environmental forums.

Table 4.2.13 I am interested in following up cases that are environmental.

Following up case		Frequency	Percent
Valid	Strongly Disagree	1	3.7
	Neutral	5	18.5
	Agree	10	37.0
	Strongly Agree	11	40.7
	Total	27	100.0

Sources: Own survey Data, 2020

As per table 4.2.13, 40.7% of the respondents strongly interested to follow environmental cases. Followed by 37% of respondents who are interested following environmental cases.18.5% of them are neutral, that means they did not want to differentiate or give special attention to environmental cases. 77.7% of respondents have positive perception towards specialization of environment forum.

#### Sub topic four: Opportunities to establish Environment Courts/Tribunals

Table 4.2.14 Do you see any fertile condition/ ground that will let environmental courts grow in Addis Ababa?

Fertile ground for the growth of environmental cases in Addis Ababa	Frequency	Percent
No	8	25.9
not sure	1	3.7
Yes	19	70.4
Total	27	100.0

Sources: Own survey Data, 2020

As per table 4.2.14, 70.4% of respondents said there are fertile conditions or good opportunities to establish ECTs in Addis. 25.9% of the respondents did not see any fertile /good opportunity for ECTs establishment in Addis. Hence more than half of them stated that there are **opportunities, fertile conditions to establish specialized forum for environmental dispute case.**

Table 4.2.15 If your answer is yes, what are the opportunities that will let the establishment of ECTs?

Opportunities to establish ECTs	Frequency	Percent
Valid both proactive and preventive	13	48.1
Preventive	6	22.2
Proactive	8	29.6
Total	27	100.0

Sources: Own survey Data, 2020

The researcher tries to categorize answers which are similar to one umbrella. Some respondent's reason out opportunities as a push factor for the establishment using different expressions, others see opportunities as pull factor meaning if specialized ECTs established they will be opportunities to bring environmental justice. Others see the prevalence environmental pollution in the city, the disregarded environment while being a life source as a reason to take reactive measure. As a result, there are three categories of opportunities based on the effect they will have

those are preventive, reactive and both. Hence, 48.1% of the respondents express both proactive and preventive factors will let the establishment of ECTs.

Table 4.2.16 International NGOs and bilateral development cooperation can be used as additional source of finance for the establishment and operation of ECTs in Addis.

Bilateral Operations		Frequency	Percent
Valid	Disagree	3	11.1
	Neutral	3	11.1
	Agree	10	37.0
	Strongly	11	40.7
	Agree		
Total		27	100.0

Sources: Own survey Data 2020

As per table 4.2.16, 40.7% of the total respondents strongly agree with the idea that says, international NGOs and bilateral development cooperation's can be source of finance for the establishment and operation of ECTs in Addis if established. While 37% of respondents agree with this issue, 11.1% of them dis agree with the issue. Therefore, 77.7% of respondents have positive perception or support to ECTs establishment.

Table 4.2.17 Establishment and operation of ECTs will have contribution to Ethiopian emphasis to be middle income country by 2025.

Linkage with making middle income country		Frequency	Percent
Valid	Disagree	2	7.4
	Neutral	4	14.8
	Agree	9	33.3
	Strongly Agree	11	40.7
	Total	26	96.3
Missing	System	1	3.7
Total		27	100.0

Sources: Own survey Data, 2020

As per table 4.2.17, 42.3% of respondents strongly agree on the positive impact of ECTs to Ethiopian endeavor to be middle income country by 2025. While 34.6% of them agrees on this 15.45% were neutral to the raised idea. Totally, 76.9 % ( 42.3%+34.6%) of the respondents strongly agree and agree. Therefore, judges have very good perception.

## **Qualitative analysis of Data**

### **Introduction**

The researcher use interview schedule with four main open ended questions that fit with the research questions. Those questions are general one that let respondents add their ideas beyond what was asked and adds their own understanding and feelings thereof. In doing so, the interviewer has tried to grasp what main points were raised that could be relevant to answer the general hypothesis.

The researcher had interviewed five judges from Federal High court. Their feedback is analyzed using content that focuses on interpreting understandings and thematic analysis technics (Braun, V., Clarke, V. & Weate, (2016). There were four high court judges from four sub cities randomly selected. Those were from Lideta High Court labeled as (LHC) from the table below, Akaki kality High Court (AKHC), from Bole High subsidy (BHC and from Arada High Court Judges labeled as (AHC).

As a result, the researcher has thoroughly analyzed the data from the four respondents using both content and thematic analysis method.

Based on the research question “Are there sufficient remedies in our country for environmental dispute cases?” the contents the researcher wanted to analyze includes;

- Sufficient remedy( implementations of laws and regulations)
- Nature of environmental dispute case

Four question number two; ‘‘is the regular court structure suitable for environmental dispute cases?’’

- Court structure suitability
- Environmental dispute case

Question number three; “ would that be luxuries to have environmental court or tribunals that will see only environmental cases in Addis?”

- Timeliness of ECTs
- Resource regular courts have

Question number four that says; please add anything you want to add on environmental laws, environmental justice, and environmental jurisprudence

- Environmental laws in Addis
- Environmental Jurisprudence
- Environmental justice

Themes are screened out as follows and used with the contents that are selected from each questions together.

No	Contents	Codes	Themes
1	Sufficient remedy Nature of environment dispute case	There are laws but not sufficient Lacks implementation, lack of awareness from society, even from lawyers, lack of belongingness and commitment	Lacks implementation
2	Court structure suitability Environment dispute case	Not that much, not suitable Lack of emphasis, lack of commitment, irreversible impact, foundation cases	Disregarded
3	Timeliness of ECTs Regular courts resource	Necessary instead, need of the time, necessary and timely, ridiculous but bench is preferable Human resource shortage	Bench
4	Environment laws Environment justice Environment jurisprudence	Lack of commitment , inactive environment protecting organ, lack of environment sensible society, lack of implementation Forgotten environmental jurisprudence environmental injustices	Great lack of commitment, lack of awareness

The author mean by themes that the words or phrases that accurate and useful representation of the data (Braun, V., Clarke, V. & Weate, P. (2016).Those are **Lack of implementation, disregarded, bench, lack of commitment and lack of awareness**. Some of the themes are combined together, some of them splited and some others are one representation for each code. Let's redefine the themes;

**Lack of implementation:** stands for the availability of environment laws and regulation, their status of implementation and laws and regulation as remedies for environmental injustices.

**Disregarded:** stands for suitability of regular courts for environmental dispute settlement and also the very nature of environmental cases and the status that is being given at the regular federal courts of Addis Ababa.

**Bench:** The respondents created theme; instead of establishing separate tire of court or tribunal separate environment bench under the regular court structure is brought as a solution.

**Lack of commitment:** Stands to represent respondent's idea of expressing the government organs commitment to environmental dispute cases.

**Lack of awareness:** stands for representation of Addis Ababa's society's environmental case awareness and their inability to bring environmental cases to court of law and to take environment belongingness.

**Finding:** The first question that was aimed to assess the state of implementation of environmental laws and regulations in Addis Ababa Federal courts is represented by lack of implementation. Almost four of high court judges answer this quest affirmatively. They respond availability of laws and regulations, however, all of them scrutinize (pointed out) different reasons of lack of implementation of laws and regulations of environmental disputes. Among the reasons mentioned, procedural outlets insufficiency, society's lack of awareness to bring environment cases and enforcement organs failure to take measures for environmental injustices, were raised.

The interview with the Judge of Lideta High Court mentions with more emphasis to both societies and enforcing body lack of commitment to bring environment cases to court of law saying;

*“Though there are ample environmental laws and remedies on the books (proclamations, regulations, treaties), the question is who will bring environment cases with sense of belongingness and who will persist till last phase of the trial and get the remedy?” (Ato Tesfaye Neway, Vice president of Lideta First Instant Court and High Court Judge, personal communication, Aug,11, 2020 )*

The second question that was asked to see whether the existing regular court structure is suitable to handle environmental dispute case has disclosed that the regular court set up is not suitable to see environment cases. And also environmental dispute cases have not get room like other civil or criminal cases. This theme was represented by **Disregarded**. At the high court level, like the first instant and supreme court environment cases are being seen at a bench called ‘others’. Almost no case is brought to high court that is environmental. But all respondents expressed that environmental cases are at pressing condition, needs quicker decisions than other matters. The Arada sub city high court judge indicates that;

*“No justice unless it is timely, no remedy unless it is proportionate” he added, ‘we will end up with irreversible impact of environmental injustices unless we create active judiciary, questioning and caring society about the environment and committed environment protecting organ.”(Anonymous 2, Personal communication, Aug 6, 2020)*

This shows that the principle of sustainable development that are participation, stakeholders cooperation and precautionary principle. In spite of the fact that implementation of environment laws were sought all those judges expressed they had never tried environment cases at a high court level.

The third question which was asked to grasp the timeliness of ECTs establishment and perception of high court judges on the establishment was represented by the theme called **Bench**. The specific question was “ would that be luxuries to have environmental court or tribunals that will see only environmental cases in Addis at this time?” The research has tried to answer the hypothesis by either establishment of separate environment court or separate environment

tribunal. But the respondents like the Federal attorneys and Federal First Instance court judges, two of the Federal High Court judges also reveal that bench should be established.

To put the exact word he said

*“Having separate court that have its own layers is ridiculous in our country. This is because the Federal courts have severe shortage of human resource i.e. judges, high case backlogs and also the society is not active to bring cases. Hence Bench will answer the disregarded environmental and increased environmental injustices.” (Anonymous 3, personal communication, Sep 9, 2020)*

This respondent was Bole sub city high court judge who wanted not to mention his name. The other two agrees on the creation of separate tunnel that will give special emphasis and quicker decision/remedy to environment dispute case. They all respond the court have to take the lion share to have environmental rule of law in the country in general at Addis Ababa in particular.

The fourth and the last question were represented by the theme called **lack of commitment and awareness**. Respondents were asked to add their ideas on the ECTs establishment and its impact on Ethiopian environment justice and environment jurisprudence in general. They tried to start with the problem and come up with the solution they propose. On disclosing the current environment situation, all of them mention society’s low level of environment protection awareness and enforcement organ of government’s lack of commitment and action to protect the environment. And they add stakeholders starting from the public, to the judiciary and the executive have to understand well the nature of environmental protection and the harsh impact that will entail and the societal cost that will incur unless we stop disregarding.

Hence based on the feedbacks collected from high court judges, establishment of environment court/tribunal is best answered that by establishment of Bench. It is of course that timely and necessary.

### **Environment Dispute cases at Federal Supreme court Level**

The researcher tried to see environment dispute cases at the Supreme Court level. But there was hardly any environment dispute case that reaches at the Federal Supreme Court level. It had been

tried to refer/see cases at the Supreme Court registrar and repository department. Accordingly, there are 12 case blogs those are contract blog, civil blog, criminal blog, employment blog, commercial law blog, family blog, tax blog, administrative blog, and miscellaneous blog. Environment dispute cases are put under the miscellaneous blog. And no environmental found were initiated from Addis Ababa come as appeal from Addis instead they were from regions. Hence the researcher found Supreme Court judges and Attorneys feedback for this thesis irrelevant.

## Environment Protection organs Feedback Analysis

Addis Ababa Environment protection and Green Development commission

The research tool that was used to collect primary data from this organ was interview with open ended questions. The target of the quest was the legal department unit of the commission. The attorney of the commission Ato Tamene Getachew was willing to be interviewed. In addition to the interview cases were seen to substantiate the feedback. For the analysis of the feedbacks, thematic and discourse analysis were used.

The questions were open ended and general questions.

No	Codes	Themes
1	Positive, necessary and timely, we are late, tribunal	Affirmative & tribunal
2	Laws and regulations, increasing urbanization, increasing pollution and very tight procedure of courts and competitive political demands	Opportunities
3	We gave administrative measures, injections, banns, license removal	Administrative measures
4	Tribunal establishing draft proclamation by Federal Environment Commission is under way	Tribunal establishing draft proclamation

According to the table above there are four themes depending on each question. The first one is **Affirmative and tribunal** the second one is **opportunities**, the third one is **administrative measures** and the fourth one is **draft proclamation**.

The first question was “Do you think establishment of environment court or tribunal is necessary and timely in Addis Ababa?” and represented by affirmative and tribunal theme. The respondents strongly expressed;

*“There should be separate organ out of the regular court that could see only environment cases. He mentions increasing economic transaction in the city, increasing unplanned urbanization, centrally located factories and improper waste management tools that summed up creating river water pollution, dust particles pollution, air pollution, sound pollutions and many unforeseen environment created health crisis in Addis demands separate, specialized environmental dispute handling organ. ”* (Ato Tamene Getachew, AEPGDC legal service head (attorney), personal communication Oct 6, 2020)

As per his feedback, regular courts are not seeing environment cases as far as the extent of environmental problems. The procedure for environment case should be better toll to bring environment justice due to their irreversible impact on health, property and total development needs of the society in general. Hence to give more emphasis to environmental dispute cases there should be separate tire of environment tribunal. The respondent prefers tribunal than courts to give emphasis and not to waste time handling other political maters while giving decision at the court. He also mentions that the commission was at some hassle to whether to initiate environment cases to Addis Ababa City court or to the Federal First Instant Court.

He mentioned there were times AEPGDC had got in to conflict of interest with Addis Ababa City first instant and appellate court. He understood that if environment tribunal is established, no power overlap with the city court.

According to his feedback, environment dispute cases were also a scape goat of political rivalry among government organs which is unfortunately another barrier for environment cases.

The second theme was opportunities; it stands for a question that “what are the possibilities if one is in favor of ECTs establishment?” The existing Federal environment laws and regulations, the nature of the city and unplanned urbanization all are mentioned as a pushing factor to have separate specialized environment organ.

The third theme represents the data found to answer the quest ‘‘what measures did the commission being taken to protect the environment in Addis?’’ As per his response, administrative measures are the primary taken remedies. Those include licensee removal, sustention of activities, banns and a like. They go to court of law as a last resort.

The fourth theme is tribunal establishing draft proclamation. This feedback was given for the question that aims to collect additional further plans that the commission plan to do this year to protect the environment’’. The respondent answer was short and precise in this regard. He discloses the Federal Environmental protection Commission (EPC) has drafted to establish tribunal. This shows that the hypothesis of the research is already on the way to be answered. But still which organ best answers the hypothesis still is a pending question; bench or tribunal.

### **The Federal Environment, Forest and climate Change Commission**

Open ended question which was more general one was asked to the legal service unit of the Federal Environment commission. Since already they have drafted proclamation to establish environment tribunals the only relevant question that the researcher found to get answer was why you decided to have separate tribunal? Why not bench under the regular court. The legal officer Ato Wondwessen Tadesse was willing to give his feedback. He said

*‘‘Though the commission had its institutional arrangement problems, the sense of ownership the expertise and well understanding of environment matters is at the Federal commission than the busy, regular court judges. There will not be lack of independence of the judges and so far as it are ad hoc courts and which establishment has constitutional basis. In addition the primer responsible organ to protect the environment is EFCCC.’’ (Wondwessen Tadesse, EFCCC legal service team member, personal communication, Oct 6,2020)*

As the respondent mentions above the commission stepping environment organ at Federal level had passed changing name, power and duties and responsibilities within short period of time. The primary environment protecting organ was Environment Protection Organ (EPA) which was established by pro no. 9/1995. It was accountable to the prime minister. This organization was responsible for the environment protection stipulations under FDRE constitution and

Environment policy of Ethiopia. This was restructured again to Ministry of Environment and Forest in 2002 by Pro. no. 295/2002(environment protections organ establishment proclamation). This ministry was given wider power and responsibilities by the amendment proclamation no.803/2013. This organization was also restructured for the third time, renaming to Ministry of Environment, Forest and Climate Change by 2015 with new proclamation 916/2015. Now finally it is found at a commission level renamed as Environment, Forest, and Climate Change Commission. Therefore, as the respondent stated, the structuring and restructuring of this giant environment protection organ has its own negative implication on the environment protection.

For the rest questions the annexed draft environment tribunal establishing proclamation has answered.

### **Analysis of responses of Addis Ababa University law school Environment law Instructors**

There are four environment law course instructors in the campus that are giving environment law courses. The researcher tries to reach all of them but ends up to conduct interview with only three of them. Those instructors were taken as neutral organ to see what to establish either Court or tribunal. Open ended general questions were used to collect their feedbacks.

For the qualitative analysis discourse and thematic analysis was used. Discourse analysis was used due to instructors' expression of Ethiopian general political, social and economic affairs and their figurative way of explanation.

Do you think the regular court set up/structure is suitable to handle environment cases?

Who will share the lion share in protecting the environment the judiciary or the executive organ?

How do you see establishment of ECTs in Addis Ababa?

Please add your recommendation if any?

No	Codes	Themes
1	Suitable, lack of active judiciary, lack of belongingness, no specialization, no training, needs emphasis, expertise	Lacks emphasis
2	The executive, judiciary to maintain independence of judges and power balance	Fifty% plus
3	In favor of establishment, will create awareness by itself, contribution to environment justice& jurisprudence,	Needed
4	Continuous training to judges, seminars on environment issues, incorporating environment issues on every development projects and training to judiciary.	Knowledge management

As shown from the table the theme **lacks emphasis** stands for the question that says ‘‘ Do you think the regular court set up/structure is suitable to handle environment cases?’’. As per the three respondents the regular court structure is suitable to handle environment case keeping specialized experts and active and conscious society that brings cases to those courts. But respondents shows that nature of environment cases needs emphasis and more than any other cases due attention should be given to culminate the reversible impact they will brought. One of them said ‘‘ environment cases are more than any human right case. The philosophy to protect environment rights should be seen more than human rights.’’ Hence according to them, protecting of the environment should be seen with greater sense of belongingness and professionals should be backed by specialization.

The second theme 50 % plus stands for the question ‘‘ which organ of government should take the lion share to protect the environment?’’. This question was further elaborated and included modals of specialization. This means is bench, tribunal or court with its three layers, which will be appropriate? Two of the respondents indicate that executive organ should be active to protect the environment. However, they also raised issue of captive ness of those specialized courts/tribunals unless there is strong political commitment. This shows that independence of the judiciary will be at stake if the specialized room will be under the control of the executive organ.

The third theme ‘‘needed’’ represents respondents feedback on the establishment of specialized ECTs in Addis Ababa. Both respondents are in favor of establishment. They expressed their argument by the positive impact it will have on the environment justice in the country.

The theme knowledge management stands to represent respondent’s feedback on the specialization. Two of the respondents firmly agreed on the creating specialized environment court/tribunal. But they also expressed that the political will of government is more than any factor that urge or dragged back decisions of specialization. And they tried to reconcile their argument by having very knowledgeable lawyers and judges on environment dispute case. One of the respondent expressed with great sorrow that ‘‘as a country level, there is very low specialization environment law. He added, ‘‘till this year Ethiopia have less than 30 students that has specialized on Environment law, and they are not also working with the judiciary.’’ The third respondent who strongly disagreed on the establishment of specialized ECTs on the other hand agrees with boosting the knowledge of the legal machinery, judges should keep getting trainings and environment law courses should be given to all trainees at the Judicial training center.

Finally, analysis of the data from one opponent of specialization is provided here below. Instructor Dereje Damte was against the idea of creating specialized court/tribunal. He rose

*“Proliferating of institutions is a sickness in this country! I am against this trend! It will create fractured judiciary. Taking specialization as a solution should come as a last resort. Instead of going to specialization is better to work on what is the best thing to make courts play the basic role for environment protection? To work on creating publicly trusted courts, independent judiciary. No need of experts do with the judges, calling expert witness will suffice even to see environment cases. ” ( Ato Dereje Damte, AAU environment law instructor, personal communication Oct 5,2020)*

His idea is if we have well trained judiciary, they can catch up and they must catch up. His expression and focus was on the very existing democracy and the countries desperate need of economic development. He advised that there should be practical problem that the special room will curtail.

As per this respondent's feeling, curricular intervention and integration of environment protection on every development activities practically will bring solution.

This respondent argues against the advantages ECTs that many researchers mention. For example participation of different expertise due to nature of environment dispute cases was firmly opposed. He said, " why not calling the appropriate expert witness hearing under regular courts? Is there any practical difficulties that Federal courts of Addis face in doing so?" His conclusion was public resource needs stewardship. Establishing separate bench, court or tribunal will create fractured judiciary.

- Hence, as per the analysis of the data from three instructors, establishment of separate specialized court/tribunal as a solution for ever increasing environmental problems in the city will bring prevalence of environment rule of law, attainment of environmental justice and robust environment protecting organ. But still researches should be done regarding which modality should be followed bench, court or tribunal. The other basic thing to bring environment protection or to create corporate environmental governance is political commitment.

## **CHAPTER FIVE**

### **DISCUSSION OF FINDINGS**

#### **Introduction**

This chapter presents the finding of the study and shall relate the major findings with the existing literatures. The focus of the research is mainly to see implementation of environmental laws and regulations, and to see establishment of separate Environment Court or Environment Tribunal for the ever increasing environment problems in Addis Ababa. The three research questions will be discusses referring with the data collected and analyzed. The research questions are;

- I. Do the existing Ethiopian environmental protection laws are addressed effectively by regular courts or not?
- II. Is that necessary to establish ECT in the current situation in Ethiopia or in the near future?
- III. What looks like the present regular courts functioning regarding environmental cases/suits?

#### **5.1. State of Implementation of Environmental Laws in Addis**

The data used to answer this question was collected from attorneys, judges, environment protection and green development commission legal service unit, Federal environment protection commission legal department officer and from Addis Ababa University Environment Law Instructors.

Implementation starts from the very existence and awareness of the existing laws. The nature of the laws, political commitment given to address those laws and the available institutional arrangements might be barriers not to implement laws and regulations. It is also argued that the goal that was set to be attained by a given law might hinder its application/implementation.( Jan G. Laitos and Lauren Joseph Wolongevicz, (2014). According to UNEP report, 2019, Ethiopia is listed under countries which have national environment framework laws. This is supported by the study results. Hence Ethiopian environment rule of law can be seen from implementation perspective it is at its infant stage.

According to the data gathered from each seven categories of respondents, Ethiopian environment laws and regulations are not being implemented. To put it clearly, 92.2% of the Federal attorneys are not familiar with environment laws, environment policies and environment regulations; only 59.4% of them have the awareness of existing environmental laws and regulations. However, 82.5% of federal first instance court judges had not tried any environmental dispute cases. Surprisingly 88.9% of those judges are aware of availability of environment laws and regulations. The federal high court judges had also reasoned out that the failure of implementation of environment laws saying lack of conscious society that could bring environment cases to court, lack of enforcement from executive environment protecting organs. Ethiopia's environment justice is not in line with principle 10 of the Rio declaration that states three environment justice access pillars. Those are; access to information, access to public participation and access to justice.

Both leading environment protection executive organs Addis Ababa environment protection commission and Federal environment protection commission demands separate environment tribunal to respond to the environment pollutions and hazards in the city. The preamble of draft proclamation of the Federal commission , states that due to increasing in environmental pollution, degradation and the need to protect the environment separate tribunal establishment proclamation is drafted.’’ This substantiated the respondent's feedback of lack of implementation of environment laws by the existing regular court set up.

The academicians who looks environment law as discipline closely and who are machines who produce experts with specialization, also expressed that environmental protection organs are not working well and the judiciary is not taking its own role as basic actor of environment protector.

## **5.2. Factors Affecting Establishment of Environment Courts/Tribunals**

George and Catherine Pring, who are spouse lawyers, on their paper ‘specialized environmental courts and tribunals: the explosions of new institutions to adjudicate environment, climate change and sustainable development in 2010’’ emphasize that, the rapid growth of environmental crisis including the manmade climate change risks throughout the world coupled with increase in the public awareness of environmental crisis demands the growth in development of specialized environmental forums. Accordingly, rapid growth of environmental

problems, increased in the public awareness of this crisis can be seen as a push factor. Lack of Addis Ababa society's awareness of the nature and impact of environment crisis summed up with very weak corporate environment governance and political commitment will be pushing factors to have separate environment court or tribunal.

### **5.3. Perception of Legal Experts on the Establishment of Environmental Courts/Tribunals in Addis**

Legal experts such as judges, public prosecutors, executive organ legal officers and law and governance instructor's perception found to be mandatory to incorporate. UNEP has lunched judge's seminars to increase their awareness level (Johannesburg Principles on the Role of Law and Sustainable Development,". Judges from different countries participated and share their experiences. They had established judicial task force to deal with role of ECTs for environment justice.

According to the data analyzed both based on SPSS and the qualitative analysis method all respondents found to be proponents of establishment of separate environmental court/tribunal. 79% of the public prosecutors are in favor of establishment, all first instant court judges found to be in favor of establishing environment bench which is accountable for the judiciary under the regular court set up. Judges and public prosecutors prefer to see separate environment bench.

On the other hand, environment protecting organs found to be on the way of establishing environment tribunal after the draft proclamation is approved by the parliament. Specialist tribunals also provide opportunities for innovation, and for development of flexible procedures and remedies ( Robert Carnwath, (2012). However, unless the democratic culture of the respective country is reliable those tribunals might end up being captives of the enforcement organs. As studies uncover that some indicator of democratic culture includes; balanced government organs power, independent judiciary, respected minority right and majority vote etc. If we see Ethiopian democratic culture the power balance between executive and the judiciary for the purpose of this study, the judiciary is being weakened and lacked its independence by the executive organ of government (Chi Mgbako, Sarah Braasch, Aron Degol, Melisa Morgan, Felice Segura, and Teramed Tezera, 2010). This is ascertained by non-judicial constitutional review we have. As it is obvious, the constitution which is the supreme law of the land

hierarchically is subject to be interpreted by House of the Federation (HOF). This will weaken the judiciary and prolong incompetent and inefficient system that impedes access to justice.

Two of Addis Ababa University environment law instructors out of three of them, were in favor of establishment. Modality of specialization according to their view depends on political decision. But they disclosed that they have a fear of losing independence of the judiciary if tribunal is established.

One instructor firmly disagreed with having separate court/tribunal. His point of view was different. He recommended taking measures that will let regular courts play the very basic role to protect the environment that make them robust and reliable institutions. As per his view, curricular intervention, continuous judicial training to legal experts is mandatory.

#### **5.4. Opportunities to Establish ECTs in Addis**

The very increasing environment crisis though it could not be seen as opportunity, it is a push factor to have separate environment adjudicating organ. Global alignment for sustainable development and the principles of sustainable development demands innovative institutional reform than the traditional regular court set up.( UNEP A guide for policy makers 2016).

As per the analyzed data, existence of national environment laws, regulations and Ethiopia ratified environment conventions such as; The Vienna Convention for the Protection of the Ozone Layer, The Rotterdam Convention on the Prior informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the global stewardship to environmental protection was seen as opportunities.

Generally, Federal environment laws and regulations are not being implemented by the existing Federal Court structure. This shows that the existing environment dispute cases are disregarded by the judiciary and the leading federal environment protecting organ EFCCC and AEPGDC are not enforcing their environment protecting responsibilities that is given to them by law. The APAP case that was denied at all levels of judiciary is one indicator of disregarded environmental cases from both government organs.

This has its own contribution to exacerbate environmental risks at the city, environment rights of the society and development endeavors of government will be negatively affected/at stake. This summed up to hinder the concept of sustainable environmental protection. Unless holistic, comprehensive and multi stakeholder protection and action to protect the environment is done urgently, environmental risks will worsen.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATION

#### 6.1. Conclusion

This research is the first time that a study of this nature carried out in Ethiopia/Addis Ababa. The study aims to answer the research questions with establishing separate environmental court and tribunal as a means to enhance access to environmental justice. The hypothesis was to overcome the ever increasing river pollution, air pollution, and to enhance environment protection in general by responding via institutional reform on the judiciary.

This was affirmatively answered by the study target groups. Institutional reform found to be mandatory, timely and necessary. The research has two type of specialization modality but in doing the course of the research new theme was created that was establishing ‘‘bench’’ which is accountable for the regular courts. Establishing Environment Bench found to be wise option keeping level of awareness of the society be increased, to save resource specially the shortage of judges.

Surprisingly environment Case flow irrespective of environment risks in Addis Ababa found to be almost none. Judges from first instant court and High court revealed that courts need to see environment case flow management. Very weak environment governing organs are trying to establish environment tribunal which is accountable for the executive. The researcher is against this move though it is appraisable start. Establishing tribunal with the same licensing organ will be against the constitutional principle of separation of power and check and balance. Their start might end up on being against the functions of the rule of law. One main function of the rule of law is; limiting government power. ‘No one is above the law’ one maxim of the concept tries to limit arbitrary power of the government organ. The ultimate power on the relation between people and state resides on the hands of the people not the governing organ. Hence if the executive organ of government, in this case the environment protection organs of Ethiopia who are deem to establish environment tribunal, under less developed democratic culture of Ethiopia, could be another futile endeavor and time taking measure to bring robust environment enforcing body in Addis and will perpetuate non-implementation of environmental laws and regulations.

The second function of rule of law is protecting citizen's lives, and safeguards their properties (Adriaan Bedner, 2010). Those two functions will be meeting, where there is infringement of rights by each fellow citizen or even by the government organ. It seems worth mentioning the denial of environmental justice to APAP who had brought expeditious environmental pollution case to court of law demanding the executive organ of government as a defendant. However, the court decides in favor of the sued government organ, EPA. This is against the constitutional provision Art.37 (2) and against the rule of law in general. Things will far worsen if environment protecting forum is established under EFCCC or AEPGDC which let independence of the established environment organ under question mark. What if conscious Addis Ababa's society wants to sue the commission itself? Will the presumed to be established tribunal decide against the organization for which it is accountable for?

## **6.2. Recommendation**

Based on the study finding the below recommendation is given to regular courts, to Addis Ababa environment protection & green development commission , to Federal environment protecting commission and to the academia .

To Federal Attorney General

- Have to amend procedural environmental laws, ensure both procedural and substantive environmental laws are consistent with the constitutional provisions
- Have to give trainings to law enforcing organ of governments, to judges, lawyers, public prosecutors on the basics of environment laws and see their implementations
- Compile and codify existing environmental laws together
- FAG Work with (E) EFCCC and Addis Ababa Attorney General Office should work with AEPGDC to arrange trainings to increase public awareness of their environmental rights and increase

To Regular Courts:

- Since there is lack of implementation of environment laws under the regular court set up the court management or the research organ have to conduct analysis on the case flow management and be able to establish separate environment bench.

- As the judiciary is assumed to be leading organ to protect environment and maintain sustainable development, the legal experts should have to get environment law trainings
- Amendment of procedural outlets to have faster , efficient and uniform remedy to environmental dispute cases is mandatory
- Courts should follow purposive interpretation on environmental cases like on the interpretation of who is ani-interested party to bring a case to the court in light of art.37/2/ of the FDRE constitution.

#### To The Environment protecting commissions

- They have to increase public access to have environment related information. In doing so the institutions can work with other stakeholders such as Federal Attorney General, Addis Ababa Attorney General Office, the court and the academia.
- They have to initiate amendment of laws that are overlapping and create clear and succinct playing ground to protect the environment.

#### To The Academia (Addis Ababa University)

- Initiate and motivate Environment laws be given to all undergraduate students on each university on a wider level than being given currently
- As AAU law school is the premier academic center, it has to show its contribution to environment protection by asking to give training to the judiciary and environment protecting organ experts.

#### To other researchers

- Further Research should be done on the practicability and need of specialized tribunals in Addis Ababa or as a country level.

## REFERENCES

### BOOKS

1. Kutay, N. and Tektufekci, F., 2016. A new era for sustainable development: a comparison for sustainability indices.
2. Haibo, C., Ayamba, E.C., Agyemang, A.O., Afriyie, S.O. and Anaba, A.O., 2019. Economic development and environmental sustainability—the case of foreign direct investment effect on environmental pollution in China. *Environmental Science and Pollution Research*, 26(7), pp.7228-7242.
3. Ermas, R., 2015. The concept of sustainable development: definition and defining principles. Brief for GSDR, 2015.
4. Flayyih, N.T.N., 2019. Specialized Judiciary and its Role in the Development of the Judicial System. *Journal of Law*, 16(2).
5. Gramckow, H. and Walsh, B., 2013. Developing specialized court services. International experiences and lessons learned,” *Justice and Development Working Paper Series*, 24.
6. Zhang, Q., Yu, Z. and Kong, D., 2019. The real effect of legal institutions: Environmental courts and firm environmental protection expenditure. *Journal of Environmental Economics and Management*, 98, p.102254.
7. The impact of environmental regulation efficiency loss on inclusive growth: Evidence from China *Journal of Environmental Management*, Volume 268, 2020
8. Gill, G., 2019. The national green tribunal: evolving adjudicatory dimensions. *Environmental Policy and Law*, 49(2-3), pp.153-162.
9. Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts
10. *American Journal of Comparative Law*, 61 (1) (2013), pp. 101-138

11. Abebe Amare (2019) Corporate environmental responsibility in Ethiopia's case study of the Akaki River Basin, *Ecosystem Health and Sustainability*, 5:1, 57-66, DOI:10.1080/20964129.2019.15731
12. Deribew, K.T., Dalacho, D.W. Land use and forest cover dynamics in the North-eastern Addis Ababa, central highlands of Ethiopia. *Environ Syst Res* 8, 8 (2019)
13. Stern, R.E., 2014. The political logic of China's new environmental courts. *The China Journal*, (72), pp.53-74.
14. Soyapi, C.B., 2019. A Multijurisdictional Assessment of the Judiciary's Role in Advancing Environmental Protection in Africa. *Hague Journal on the Rule of Law*, pp.1-26.
15. Lewis, B., 2018. Constitutional Environmental Rights. In *Environmental Human Rights and Climate Change* (pp. 41-58). Springer, Singapore.
16. Prieur, M., Mekouar, M.A. and Daly, E., 2019. An International Covenant on the right of human beings to the environment. In *Elgar Encyclopedia of Environmental Law* (pp. 49-67). Edward Elgar Publishing Limited.
17. Law Commission of India (2003), 186th Report on Proposal to Constitute Environment Courts, New Delhi. (September 2003)
18. UNDP, Environmental Justice: Comparative experience in Legal Empowerment page;12-13)
19. Nora A. Otineo , 2012. Appraisal of Environment and Land Court of Kenya
20. Caiphias B Soyapi : 2019 ; Environmental Protection in Kenya's Environment and Land Court)
21. Nyssen, J., Haile, M., Moeyersons, J., Poesen, J. and Deckers, J. (2004) "Environmental policy in Ethiopia: a rejoinder to Keeley and Scoones," *The Journal of Modern African Studies*, Cambridge University Press, 42(1), pp. 137-147.
22. Bryman, A. (2012). *Social Research Methods* (4th ed). USA:Oxford University Press

23. Dillard, C. (2012). The primary right. *Pace Environmental Law Review*,
24. Robinson, N. A. (2012). Ensuring access to justice through environmental courts. *Pace Environmental Law Review*
25. Preston, B. J. (2012). Benefits of judicial specialization in environmental law: The land and environment court of new south wales as case study
26. Amirante, D. (2012). Environmental courts in comparative perspective: Preliminary reflections on the national green tribunal of india. *Pace Environmental Law Review*,
27. Carnwath, R. (2012). Institutional innovation for environmental justice. *Pace Environmental Law Review*, 29(2)
28. Kaniaru, D. W. (2012). Environmental courts and tribunals: The case of kenya. *Pace Environmental Law Review*, 29(2),

## **Proclamations**

1. The Federal Democratic Republic of Ethiopia. 1995. A proclamation for the Establishment
2. EPA (proclamation No. 9 of 1995). *Negarit Gazeta of the FDRE*, Addis Ababa.
3. The Federal Democratic Republic of Ethiopia. 1995. Constitution of Federal Democratic Republic of Ethiopia. Proclamation No. 1/1995.
4. The Federal Democratic Republic of Ethiopia. 1997. Environmental Policy of Ethiopia.
5. The Federal Democratic Republic of Ethiopia. 2000. Environmental Impact Assessment guideline document. Environmental Protection Authority of Ethiopia, Addis Ababa, Ethiopia.
6. The Federal Democratic Republic of Ethiopia. 2002. A proclamation for the Environmental Protection Organs Establishment (EPOE) Proclamation No. 295/2002.

7. The Federal Democratic Republic of Ethiopia. 2002. EIA Proclamation No.299/2002.
8. The Federal Democratic Republic of Ethiopia. 2002. Environmental Protection Organs Establishment Proclamation No. 803/2002. Amendment proclamation to Power and Duties of the Executive Organ of Government
9. Federal Courts Proclamation 25/96 Federal Negarit Gazetta of The Federal Democratic Republic Of Ethiopia, 2nd Year No. 13 Addis Ababa - 15th February, 1996)
10. The Federal Democratic Republic of Ethiopia. 769/2012. Ethiopian Investment Proclamation
11. The Federal Democratic Republic of Ethiopia. 1065/2015 Forest Development, Conservation and Utilization Proclamation
12. The Federal Democratic Republic of Ethiopia. 943/2016 Federal Attorney General Establishment Proclamation
13. The Federal Democratic Republic of Ethiopia. 15 /1960 Civil procedure code of Ethiopia
14. The Federal Democratic Republic of Ethiopia. Pro.456/2005 Rural Land Administration and Land Use Proclamation

## JOURNALS

1. Journal of the Indian Law Institute, Vol. 52, No. 3/4, Special Issue on Climate change & Environmental Law (JULY-DECEMBER 2010), pp. 435-452)
2. UNDP, Environmental Justice: Comparative experience in Legal Empowerment page;12-13)
3. Fordham International Law Journal , Vol. 32, No.1 :Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights

## Appendix

Addis Ababa University

College of Development Studies

Environment and Sustainable Development Department

MA Programme

Research questionnaires to be filled by Federal Court Judges in Addis Ababa

Dear participants,

First, I would like to thank you for your participation. This questioner is prepared to collect primary data from Federal court Judges and Attorneys of Addis Ababa on research entitled “Exploration of Establishment of Environmental Courts and Tribunals in Addis Ababa” for the partial fulfillment of Post Graduate Studies in **Environment and Sustainable Development**.

The responses are to be kept confidential and will be used only for research purpose. In addition, all personal data shall be treated collectively rather than on personal level.

Your participation represents a valuable contribution to the study, and I thank you again for your cooperation.

Sincerely,

Etsegenet Tesfaye

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### Instructions

- No need of writing your name, if possible please state the **Sub City** you are working in
- Please use “√” or “×” mark on the appropriate response category from the choices given.

.Questions for Federal Court Judges in Addis Ababa: General

### Questions

1. Are there national environmental protection laws utilized by regular courts?

a. Yes

b No

C Do not know

If your answer yes, which proclamation can you name them?.....

2. How many environmental related cases do you handle per day?.....  
.....

3. How many of these cases have you concluded?.....  
.....

4. How long does it take after a matter is filed for it to be concluded?  
a. Within a year    b. 1 to 2 years    c. 3 to 5 years    d. above five years

Please give reason for your answer?.....  
.....

5. Are there sufficient remedies for environmental disputes?  
a. Yes            b. No            c. Do not know    d. I am not sure

**A.STATE OF IMPLEMENTATION OF ENVIRONMENTAL LAWS AND REGULATIONS UNDER FEDERAL COURT OF ADDIS ABABA**

1. Do you think the structure of the regular courts in Addis Ababa is convenient to manage for environmental dispute settlement?

.....  
.....  
.....

2. Are there adequate procedural laws to give timely decision to environmental disputes?.....

.....  
.....

3. Did environmental disputes given equal concern with other litigations such as succession, crime, contract etc. like civil matters?

.....  
.....

Do you think there is adequate human resource to see environmental disputes?

.....  
.....

4. Are you informed about international environmental crisis?

.....  
.....

5. Do you have other non-legal staff such as environmentalists who assist you when you are handling technical environmental matters?

.....  
.....

6. Do you want to balance the economic benefit, social values and environmental impacts of development work related environmental case?

.....  
.....  
.....

**B.FACTORS THAT AFFECTS ESTABLISHMENT OF ENVIRONMENTAL COURTS**

1. Have you make use of the environment protection policy of Ethiopia?

- a. Yes    b. No    C. Do not know    D.I am not sure

2. If your answer is yes, how do you see it in relation to the environment protection provisions that you are making use of?

.....  
.....

3. Are there judges who have specialized in environmental justice/laws?

.....  
.....

4. If you get chance to decide environmental dispute case, will you prioritize it?

Why?.....  
.....

**C.PERCEPTION OF JUDGES ON THE ESTABLISHMENT OF ENVIRONMENT  
COURTS IN ADDIS ABABA**

1. You as a federal court judge, how do you see the establishment of environmental courts in Addis Ababa?

.....  
.....  
.....

2. If your answer is in favor of establishment, for whom will it be accountable for?.....

.....  
.....

3. Have you ever take part on environmental dispute handling dialogues.....

.....  
.....  
.....

4. Are you interested in public interest cases handlings?.....

.....  
.....  
.....

5. Have you ever taken environment law courses, trainings, alike?

.....  
.....

No	Questions	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1	I am very happy handling environmental dispute cases.					
2	I have participated in environmental risk management trainings.					
3	Advocating for environment protection will bring sustainable development.					
4	I read international environmental case handlings to get more insights on environmental cases in Ethiopia.					
5	I am interested in following up cases that are environmental.					

**D.IDENTIFY OPPORTUNITIES FOR THE ENVIRONMENTAL COURT ESTABLISHMENT IN ADDIS ABABA**

1. Do you see any ground/fertile condition that will let environmental courts grow in Addis Ababa?

.....  
 .....  
 .....

If your answer is yes, what are the opportunities that will let establishment of environmental courts in Addis?

.....  
 .....

No	Question	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1	I see the enactment of global treaties, pacts and protocols for environmental protection, as a fertile ground to establish environmental courts in Addis Ababa.					
2	International NGO and bilateral development cooperation can be used as additional source of finance for the establishment and operation of environmental courts in Addis.					
3	Establishment and operation of environment court will have contribution to Ethiopian emphasis to be middle income country by 2025.					

Addis Ababa University  
College of Development Studies  
Environment and Sustainable Development Department  
MA Programme

Research questionnaires to be filled by Federal Public Prosecutors in Addis Ababa

Dear participants,

First, I would like to thank you for your participation. This questioner is prepared to collect primary data From Federal Court judges and public prosecutors of Addis Ababa on research entitled “ **Exploration of establishment of Environmental courts and Tribunals in Addis Ababa**” for the partial fulfillment of post Graduate Studies in **Environment and Sustainable Development**.

The responses are to be kept confidential and will be used only for research purpose. In addition, all personal data shall be treated collectively rather than on personal level.

Your participation represents a valuable contribution to the study, and I thank you again for your cooperation.

Sincerely,

Etsegenet Tesfaye

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+ 251 910- 30- 94-79 /+251 911 32 03 67

#### Instructions

- No need of writing your name, if possible please state the **Sub City** you are working in
- Please use “√” or “×” mark on the appropriate response category from the choices given.

## QUESTIONS FOR Public prosecutors

No	A.STATE OF IMPLEMENTATION OF ENVIRONMENT LAWS					
	Questions	Yes	No	I don't know	I am not sure	Why? any reason
1	Are there national environmental protection laws you are making use of?					
2	If your answer is yes which proclamations, can you name them?					
3	Do you think the structure of the regular courts in Addis is convenient for environmental dispute settlement?					
4	Is there adequate resource to give timely decision for environmental disputes?					
5	Did environmental disputes given equal attention like other civil matters such as succession, contract etc.?					
6	Are there attorneys who have taken environment law course at your working place?					
7	Are the procedural laws in line with the constitution provisions that talks about the environment?					
8	Are both civil and criminal procedure laws easy to initiate environmental disputes to court of law?					
9	How do you see the awareness of Ethiopian citizens to bring environmental cases to court of law (standing issue)?					
10	Will you have you have any advice on the environmental substantive and procedural laws of Ethiopia?					

<b>B.FACTORS THAT AFFECT ESTABLISHMENT OF ENVIRONMENTAL COURTS</b>						
<b>NO</b>	<b>QUESTIONS</b>	<b>Yes</b>	<b>NO</b>	<b>I don't know</b>	<b>I am not sure</b>	<b>Why? any reason</b>
1	Have you make use of the environment protection policy of Ethiopia?					
2	If your answer is yes, how do you see it in relation to the environment protection provisions that you are making use of?					
3	Do you think the regular court set up is appropriate to give timely and effective remedy to environmental disputes?					
4	Are you familiar the daily activities discharged by regular courts on environmental issues?					
5	Are there attorneys who have specialized in environmental justice/laws at your work place?					
6	If you get chance to sue environmental dispute, case will you prioritize it or will you accord the same status with other cases?					

**C. PERCEPTION OF LEGAL EXPERTS ON THE ESTABLISHMENT OF ENVIRONMENT COURTS IN ADDIS ABABA**

No	Question	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1	Establishment of environmental courts in Addis Ababa is necessary and timely.					
2	Establishment of environmental courts will bring uniform decision for same environmental cases.					
3	Establishment of environment courts in Addis will require environment protection authorities' commitment and protectionist perspective.					
4	Environmental courts require specialization in environment laws and mix of various expertise such as, economists, foresters, environmentalists.					
5.	Environmental court strengthens environmental justice system.					

N O	QUESTIONS	Yes	No	I don't know	I am not sure	Why?any reason
1	Do you think the Global alignment for environment protection be opportunity for the establishment of environment courts in Addis?					
2	The UN environment program is in favor of providing guide for the improvement of environment justice. Does this have contribution for the establishment of environment court in Addis?					
3	Do you think there are enough attorneys that could be assigned to a specific environment case?					
4	Please state your recommendation on the opportunities to establish environment court in Addis?					

Addis Ababa University  
College of Development Studies  
Environment and Sustainable Development Department  
MA Programme

Research interview questions for Environment ,Forest and Climate Change Commission (EFCCC)

Dear participants,

First, I would like to thank you for your participation. This interview schedule is prepared to collect primary from AAU environment law scholars in Addis Ababa on research entitled “**Exploration of the Establishment of Environmental Courts and Tribunals in Addis Ababa**” for the partial fulfillment of Post Graduate Studies in Environment and Sustainable development.

The responses are to be kept confidential and will be used only for research purpose. In addition, all personal data shall be treated collectively rather than on personal level.

Your participation represents a valuable contribution to the study, and I thank you again for your cooperation.

Sincerely,

Etsegenet Tesfaye

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Addis Ababa University  
College of Development Studies  
Environment and Sustainable Development Department  
MA Programme

Research interview questions for Federal High Court Judges in Addis Ababa

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Research interview questions for Addis Ababa University Law and Governance Instructors in Addis Ababa

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Environment and Sustainable Development Department  
MA Programme

Research interview questions for Addis Ababa Environment Protection and Green Development Commission in Addis Ababa, FHC, AEPGDC, EFCCC, AAU, environment law scholars

Dear participants,

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## Interview Questions for the Federal High Court Judges.

- 1- Are there sufficient remedies in our country for environmental dispute cases?(FHC)
- 2- Would that be luxuries to have environmental court or tribunals that will see only environmental cases in Addis?’’
- 3- “Is the regular court structure suitable for environmental dispute cases?’’
- 4- “Please add anything you want to add on environmental laws, environmental justice, and environmental jurisprudence

## Interview Questions for the AEPGDC

1. Do you think establishment of environment court or tribunal is necessary and timely in Addis Ababa?(AEPGDC)
2. What are the possibilities if one is in favor of ECTs Establishment?
3. What measures did the commission being taken to protect the environment in Addis?
4. Additional further plans that the commission has going to do this year to protect the environment’ ’

## Addis Ababa Environment Protection and Green Development Commission in Addis Ababa

1. Why you decided to have separate tribunal?(EFCCC)

## Interview Questions for the AAU Environment Law Scholars (Instructors)

1. Do you think the regular court set up/structure is suitable to handle environment cases?(AAU)
2. Who will share the lion share in protecting the environment the judiciary or the executive organ?
3. How do you see establishment of ECTs in Addis Ababa?
4. Please add your recommendation if any?

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