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Administrative Powers of the Federal Environmental Protection Authority of Ethiopia in the Protection of the Environment: the Law and the Practice

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Dedicated to:

To beloved, but phsically missed, Brhan Teklemedhn

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Acronyms

AAEPA- Addis Ababa Environmental Protection Authority

APAP- Action Professionals' Association for the People

Art. - Article

CSE- Conservation Strategy of Ethiopia

DFAPP- Draft Federal Administrative Procedure Proclamation

EC- Environmental Council

EHPEA- Ethiopian Horticulture Producers Association

EIA- Environmental Impact Assessment

EIAP- Environmental Impact Assessment Proclamation

EIAP- Environmental Impact Assessment Proclamation

EISR- Environmental Impact Study Report

EPE- Environmental Policy of Ethiopia

EPOEP- Environmental Protection Organs Establishment Proclamation

FDRE- The Federal Democratic Republic of Ethiopia

FEPAE- Federal Environmental Protection Authority of Ethiopia

HPRE- House of Peoples' Representatives of Ethiopia

NGO- Non-Governmental Organizations

No. - Number

PCP- Pollution Control Proclamation

Procl. -Proclamation

REIAR-Review of Environmental Impact Assessment Reports

Abstract

This study examines into the extent of exercise of rule making, adjudication and investigative powers of the Federal Environmental Protection Authority of Ethiopia (FEPAE).The investigation has mainly focused on revealing gaps in the law and the practice of implementation of the mandates of the organization under study. Reviews of legal instruments, key informant interview, as well as documentation of prevalent realities pertaining to the institutional operation of FEPAE were the major sources of data. Qualitative analysis were employed, and the analysis were multifaceted, iterative, and simultaneous which eventually mirror out what has been intended to put into practice and what is actually being accomplished. Findings revealed that the FEPAE is not up to expected to review and approve the enabling directives, guidelines and environmental standards which are thought to be the sine qua conditions for the realization of its very mandates and that have a far reaching implication on regional environmental authorities to apply the same or formulate their own no less stringent laws. Secondly, the study uncovered that the FEPAE has no full-fledged legal and institutional machineries that guarantee the protection of the environment with regard to review of environmental impact assessment and adjudication of complaints. Thirdly, the FEPAE's act of delegation of the power to review EIAR to sector institutions is found to be subject to substantive and procedural ultra virus. Fourthly, it is learnt that the FEPAE institutional structure does not consist of environmental inspectors unit which is expected to generate up to date information that enables it to take timely action in the case of actual or potential damage to the environment. Finally, the study implied that the failure of the FEPAE to exercise its mandates up to the expected may have negative implication on the protection of the environment, and in turn in the realization of sustainable development.

Chapter One: Introduction

1.1 Background of the Study

Mankind is part of nature and life depends on the uninterrupted functioning of natural system which ensures the supply of energy and nutrients. Humans, however, can alter nature and exhaust natural resources by action or its consequences and, therefore, they must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources (Kiss,1997, p.5). That is, lasting benefits from nature depends upon the maintenance of essential ecological process and life support systems and upon the diversity of life forms. For this very reason, it a pressing need to notice that the degradation of natural system owing to excessive consumption and misuse of natural resources, as well as through the failure to establish an appropriate economic order among peoples and among states, leads to break down of the economic, social and political framework of civilization (Kiss,1997, p.5).

Ironically, since the dawn of the Industrial Revolution human demands placed upon the earth's resource have increased dramatically. Furthermore, now-a-days, it is clear that, the mad rat race competition among nations over the use of natural resources for development is increasingly jeopardizing the quality of the environment. The craze of these states resulted in over-extraction of every bit of natural resources; and this unchecked exploitation of natural resource by man disturbed the delicate ecological balance between living and non-living components of the environment (Sharma, 1998, p. 415). So much so that it is safe to say that time has been reached when we are facing challenge to our intellect and wisdom for saving the humanity from extinction (Sharma, 1998, p. 389). Put it differently, since we are at the cross-road either to overwhelm or save the environment, it is high time to devise a mechanism by which we could suppress the unwanted behavior and actions of man, and fostering those that would contribute to the maintenance and enhancement of environmental balance.

And, this is possible only when states are committed to recognize the principle of common but differentiated responsibility at the international level, and the coordinated but differentiated responsibility between and among the different organs of government at a national level.

Accordingly, the FDRE government, taking the above points for granted, has recognized the right to live in a clean and healthy environment as a fundamental human right (FDRE Constitution, Art. 44(1)). Furthermore, it clearly stipulated that all, Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the protection of the environment (FDRE Constitution, Art.13 (1)).

Practically, however, it becomes evident that managing environmental issues in sporadic and isolated efforts with different branches of the government would inevitably result in conflict of interest and duplication of efforts. For this very reason, in 2002, the government has taken the initiation to promulgate a law and to introduce institutional machinery that can avoid possible conflict of interest and duplication of efforts.

Accordingly, the government has promulgated the Environmental Protection Organs Establishment Proclamation and then, it has established the FEPAE with the necessary administrative powers which enables it to play pivotal role in avoiding possible conflict of interests and duplication of efforts in the protection of the environment (FDRE, Procl. No. 295/2002).

1.2 Statement of the Problem

1.2.1 Problem Description

The legislative branch of government may not exhaustively legislate in sufficient details to cover all aspects of the many problems in all perspectives of the legal sphere. The House of the People's Representatives, therefore, should not be expected to deliberate on every minor details of the lawmaking process. The major ones are taken care by the HPRE and others will be carried out through delegation to other branches of the executive. One of such institutions designated to exercise the rule making power through delegated legislation is the FEPAE. And, to realize this delegation the Environmental Council of the Authority is duty bound to hold its regular meeting once every six month and whenever deemed necessary to have extraordinary meeting, among other things, to review and approve .directives, guidelines and environmental standards

In the meantime, it is true that courts also could not handle all legal disputes and controversies that may arise in due process of pursuit for justice. They simply do not have the time or the expertise to handle the multitude of cases. This situation necessitates delegation of quasi-adjudicative power to institutions that have specialized knowledge and expertise to deal effectively with the detailed, specific and technical matters, which are normally beyond the competency of judges of ordinary courts. Following the same pattern, the FEPAE is one of the executive branches which are in charge of quasi-adjudicative power to handle matters related to the protection of the environment.

Finally, inspite of the fact that police officials are given the power to investigate crimes under the Criminal Procedure of Ethiopia, it does not mean that their investigation is inclusive of all arenas of inspection. So much so that, it is not uncommon to have enabling legislations that bestow administrative organs the power of investigation in their specialized areas. In the same manner, for the FEPAE needs to obtain vital information that guides its decision making about issues of environmental concern, the Pollution Control Proclamation calls it to designate Environmental Inspectors. In effect, the FEPAE is duty bound to assign Environmental Inspectors, and generate the necessary and updated information to take timely action in environmental issues.

Despite the above mandates, the operation of the FEPAE is not free of allegations to be made by different stakeholders, and facts that show potential pitfalls. For instance, the Resolution of National Workshop (Melca Mahiber, 2009) and the weekly Amharic Edition of The Reporter News Paper (Fekadu, 2010, p.10) goes on to say that the Environmental Council of the FEPAE is not in a position to convene regularly to review and approve directives, guidelines and environmental standards which are instrumental for the realization of its administrative powers. They also question the delegation of the power to review environmental impact assessment to sectoral institutions which have vested interest in the review that in turn inevitably result in conflict of interest. Moreover, a non-government environmental activist APAP, which was not satisfied with responses given by the FEPAE about the alleged pollution on Akaki and Mojjo Rivers, has initiated a case before court of law demanding the court (APAP, 1998):

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- To force the FEPAE to enact laws which are delegated to it, and to exercise its power to fulfill its duties,
- To order the FEPAE to avert the pollution on the rivers and to clean up the pollution of the rivers.

Furthermore, it is also overt that the institutional chart of the FEPAE is not in position, as per its mandate in the enabling legislations, to encompass the Environmental Inspectors Unit as integral part of it.

Finally, the problem could be aggravated for the fact that the Draft Federal Administrative Procedure Proclamation that was intended to regulate, among other things, the process of rulemaking, adjudication and investigative power of Federal Administrative Agencies has not yet adopted.

As a logical extension of the above facts and allegations, the research is aimed at evaluating the law and the practice of the rule making, adjudicative and investigative powers of the FEPAE in the protection of the environment.

1.2.2 Research Question

How does the FEPAE exercise its powers of rule making, adjudication and investigative powers in the protection of the environment?

1.2.3 Assumption

$\uparrow$ Rule making power of the FEPAE $\longrightarrow$ $\uparrow$ Protection of the Environment

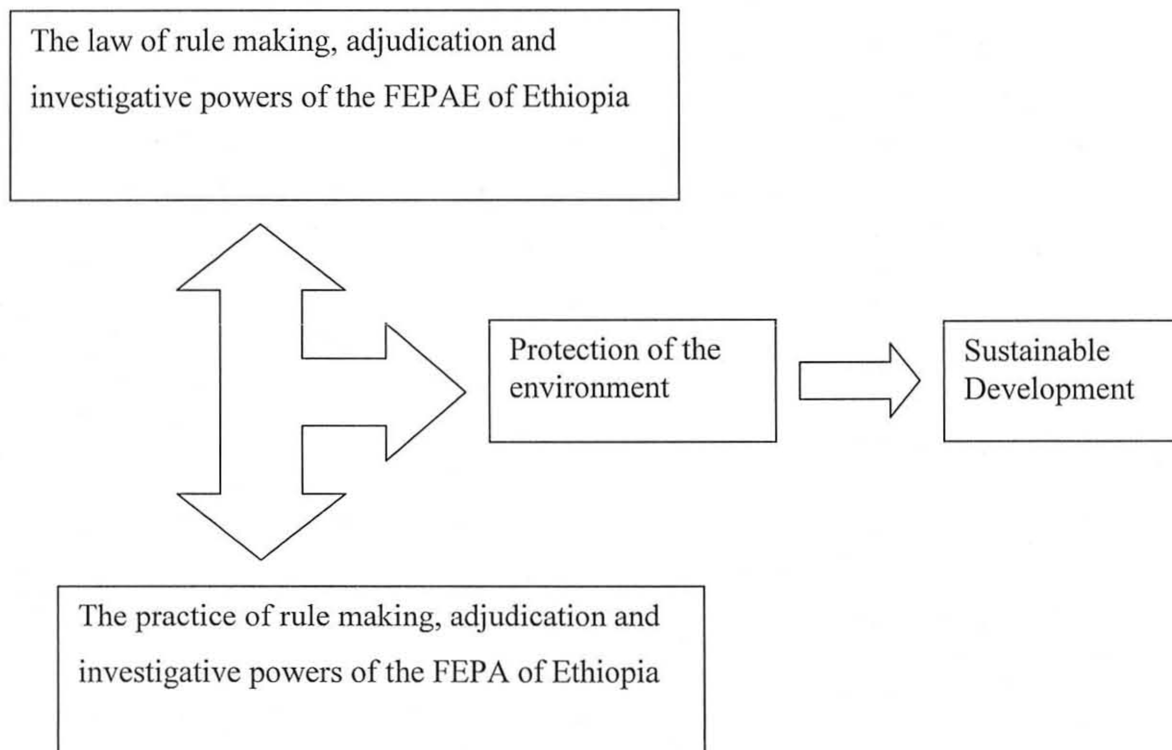
$\uparrow$ Adjudication power of the FEPAE $\longrightarrow$ $\uparrow$ Protection of the Environment

$\uparrow$ Investigatory power of the FEPAE $\longrightarrow$ $\uparrow$ Protection of the Environment

$\uparrow$ Protection of the Environment $\rightarrow$ $\uparrow$ Sustainable Development

The foregoing assumption depicts the positive relationship between an increase in administrative powers of the FEPAE and improvement of the environmental protection which in turn is believed to bring about sustainable development.

Figure No. 1: Assumption of the Integration of the Administrative Powers of the FEPAE



The above diagrammatic presentation also makes clear the presumption of the integration of administrative powers of the FEPAE and the protection of the environment which in turn is sought to be an integral part of sustainable development as an impact.

1.3 Objective of the Research

1.3.1 General Objective

- To assess the law and the practice of rule making, adjudication and investigative powers of the FEPAE in the protection of environment

1.3.2 Specific Objectives

- To examine the viability of rule making mandate of the Environmental Council of the FEPAE as vested onto it
- To assess the feasibility of EIA review and decision making arrangement of the FEPAE in the protection of the environment
- To explore the pattern of adjudication of complaints of the FEPAE in case of damage to the environment,
- To assess the potency of the investigative arrangement of the Environmental Inspectors of the FEPAE in the generation of information for timely action

1.4 Delimitation of the Study

The principal mandates of the EPAE can be broadly classified into rule making, adjudicative, investigative, prosecution, advising, and supervising administrative powers. However, this research exclusively deals with matters pertaining to the rule making, adjudication and investigative powers of the FEPAE as they are applicable in the protection of the environment. The very reason that these particular aspects are dealt with is due to the fact that there are real case allegations over the issues of this mandates of the Authority. Finally, in terms of mandate of governance, the scope of this study is confined only to analysis of perspectives within the federal jurisdiction.

1.5 General Working Definitions

Environment: the totality of all materials whether in their natural state or modified or changed by humans, their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound odor, taste, social factors, and aesthetics (FDRE, Procl. No. 295/2002, Art. 3);

Pollution: means any condition which is hazardous or potentially hazardous to human health, safety or welfare or to living things created by altering any physical, radioactive, thermal, chemical, biological or other property of any part of the environment in contravention of any condition, limitation or restriction made under this Proclamation or under any other relevant law (FDRE, Procl. No. 300/2002, Art. 2(12));

Protection: sustaining of the essential characteristics of nature and enhancing the capacity of natural resource base with a view to safeguarding the interest of the present generations without compromising the opportunity of the future (FDRE, Procl. No. 295/2002, Art. 2(6));

Sustainable Development: development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs (Rio Declaration, 1992);

Environmental Impact Assessment: the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument (FDRE, Procl. No. 299/2002, Art. 2(3));

Rule Making Power: authority's power to promulgate laws which augment or clarify their statutory mandate (Koch & Shapiro, 2002, p.2-9);

Adjudication Power: authority's power to judge whether a party is in compliance with the agency's statutory mandate (Koch & Shapiro, 2002, p.2-9);

Investigatory Power: authority's power to compel persons to turn over to them information within their possession (Koch & Shapiro, 2002, p.2-9);

Substantive Ultra Virus: when an administrative authority acts outside the substance of the power conferred to it (Stott & Felix, 1997, p.81);

Procedural Ultra Virus: when an administrative authority fails to follow a required procedure (Stott & Felix, 1997, p.81)

1.6 Justification of the Research

1.6.1 Contribution of the Research

The FDRE Constitution is one of the constitutions in the world that explicitly recognizes the right to a clean and healthy environment (FDRE Constitution, Art. 44(1)). In affirmation of this right it further stipulates that "the people of Ethiopia as a whole, and each Nation, Nationality, People in Ethiopia in particular have the right to improved living standards and to sustainable development" (FDRE Constitution, Art. 43(1)).

Corollary to these rights, the Constitution clearly spells out that all citizens, and the Federal and State legislative, executive and judiciary organs at all levels have the responsibility and duty to respect them (FDRE Constitution, Art. 13(1) & 92(4)). This is reiterated in the Pollution Control Proclamation, which states "The protections of the environment, in general, and the safeguarding of human health and well being, as well as the maintaining of the biota and the aesthetic value of nature, in particular, are the duty and responsibility of all" (FDRE, Procl. No. 300/2002, the Preamble).

The HPRE, however, with the objective to be pragmatic and to avoid possible conflict of interests and duplication of efforts, has promulgated the Environmental Protection Organs Establishment Proclamation (FDRE, Procl. No. 295/2002) and established a system that fosters coordinated but differentiated responsibilities between and among different environmental protection organs.

And, in the case of federal jurisdiction, the Proclamation equipped the FEPAE, inter alia, with rule making, adjudication, and investigative administrative powers. Inspite of this, in contradiction to the legislative intent and ambition, these days, it is not uncommon to hear that the FEPAE is not working as expected in the rule making, adjudication and investigative powers in the protection of the environment which is an integral part of sustainable development.

Thus, having the above indicative pitfalls as a spring board, the researcher believes that it is high time and a pressing need to conduct research to depict the clear picture of the law and the practice of the rule making, adjudication and investigative powers of the FEPAE in the protection of the environment.

1.6.2 Policy Implication of the Research

The overall goal of the Environmental Policy of FDRE 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 (FDRE, 1997a, p. II (2.1)). Furthermore, according to Vibhute (2008) a careful reading of the sectoral and cross-sectoral environmental policies reveals their stress on safeguarding the environment and emphasis on the sustainable, judicious, and eco-friendly use of the environmental resource (p.80).

Furthermore, in respect to policy implementation, it calls for the maximum use of the existing institutional structures (FDRE, 1997a, p. V, 5.1., c); and avoidance of conflict of interest by and thorough assigning responsibilities to separate organizations for environmental and natural resource development and management activities on the one hand, and environmental protection, regulation and monitoring on the other (FDRE, 1997a, p. V, 5.1., e).

On the basis of this instrument, the House of Peoples Representatives, among other things, promulgated Proclamation No. 295/2002 which is a benchmark for the establishment of the FEPAE. This being the case, the current research undertaking on the administrative powers of the

FEPAE is anticipated to shed light on strengthens and/or weaknesses of the authority in its endeavor to implement the EPE.

1.7 Limitation of the Study

Data were collected mainly using a key informant interview schedule. Though the respondents were selected through careful screening of their institutional responsibilities and access to reasonable and balanced information, the inherent weakness of the instrument may rarely give room for the reflection of personal bias of key informants.

1.8 Organization of the Study

The thesis is organized into five chapters. The first chapter deals with background, statement of the problem, objective of the study, significance, scope and limitation of the study. The second chapter deals with revision of conceptual as well as empirical literature pertinent to the objectives of the study. Chapter three exclusively deals with the research methodology pursued. Chapter four presents major analysis of findings and discussions. Finally, the summary, conclusion and recommendation are presented in chapter five.

Chapter Two: Literature Review

2.1 Introduction

The objective of the chapter is to review the conceptual as well as empirical literatures that are pertinent to the objectives of the study. To achieve this objective the chapter would primarily highlight the general overview of the post 1995 administrative agencies in Ethiopia, and then it will have a thorough discussion on the selected administrative powers of these respective administrative organs with the objective to shed light on the issues that could possibly be raised in the analysis part. Finally, the chapter would depict the general framework of the institutional portfolio, and administrative powers of the FEPAE in way it lays down a benchmark for the discussion and analysis on the rule making, adjudicative and investigative power of the same.

2.2 Nature of Administrative Agencies

The 1995 F.D.R.E Constitution introduced a federal structure sharing power between the federal government and the regional states. In line with this, it is clearly indicated that the federal and State government would comprise the legislative, executive and judicial branches.

In Ethiopia agencies are created with varying size, structure, functions and powers. Some of them may be established with broader powers; in charge of regulating a certain sector of the economy. Others are comparatively small in structure and are in charged with a very specific task of implementing a certain portion of government policy or programme.

With the exception of few, almost all agencies are under the direct control and supervision of the Council of Ministers. And, the remaining very small agencies are accountable to the HPRE. Following their line of accountability, those agencies directly accountable to the Executive Branch are known as executive agencies, and those accountable to HPRE are called Independent Agencies.

The fact that executive agencies are ultimately accountable either to the Council of Ministers or to the Prime Minister is because of the fact that the F.D.R.E Constitution grants the highest executive authority to the Prime Minister and the Council of Ministers (FDRE Constitution, Art. 72(1) & 76(2)). At this juncture, it should be clear that while the Prime Minister may freely appoint the head of an agency, and dismiss him at any time, the nomination of Ministers and other Commissioners by the Prime Minister is subject the approval of the House of People's Representatives (FDRE Constitution, Art. 55(13) & 74(2)).

On the other hand, independent agencies are accountable to HPRE, and in respect to their establishment, even though they need the act of the HPRE for their material and legal existence; it is predetermined by the Constitution. This implies that their creation is not dependent on the will of the HPRE. That is, while HPRE, in general, retains exclusive right to bring a certain executive agency into existence, and to modify, increase, decrease and terminates the power and function of that agency; it is not the case with independent agencies.

In regard to the structure and internal organization of administrative agencies, it is clear that they may greatly vary depending on the government policy and the programme it is expected to accomplish. That is, while some of them may have different departments enjoying a substantial portion of power given to the agency by the enabling act, other lower organs may have specific tasks of day-to-day governing power. Even if the structure and organization of administrative agencies may depend on many factors into considerations, like budget implication, the main objective of the form of structure is aimed at ensuring efficiency and effectiveness in administration. In Ethiopia, the Constitution specifically authorizes the Council of Ministers to determine the structure and organization of the administrative agencies (FDRE Constitution, Art. 77(2). In this regard, it is important to note, however, that the HPRE provides an enabling act that simply provides the function, power, duty and rights of the agency in broader terms. This being the case, it is clear that the enabling act greatly influences the form and scope of structure and organization that an agency assumes. That is, it is inevitable that the type and scope of government programme, the extent of its power and the nature of mission to be accomplished by the agency outlined in the enabling act are factors to be taken in to consideration by the Council of Ministers before designing the appropriate structure and organization.

Finally, even if it is clear that the word "administrative agency" has been defined by different instruments in different ways, the draft Administrative Procedure Proclamation of Ethiopia defines it to mean any ministry, commission, public authorities of the FDRE, including Addis Ababa and Dire Dawa cities of administrations, which are competent to render administrative decisions and exercising regulatory or supervisory functions (FDRE, 2005, Art. 2(1)).

2.3 Powers of Administrative Agencies

Administrative agencies, in order to realize their purpose efficiently and effectively, need wider power and discretion. For this very reason, they often blend together legislative executive and judicial powers. Even though in principle the later two powers belong to the legislature and courts, granting such powers has become a compulsive necessity for an effective and efficient administration.

According to the analysis of Abera (1985), administrative agencies are created as independent regulatory bodies to develop laws and enforce them. They, inter alia, perform six functions of the three branches of government. These are rule making, adjudicating, prosecuting, advising, supervising and investigating. However, it is important to notice that these functions are not the concern of all administrative agencies at the same degree, but all are of some concern to each agency (p.144).

This section, however, in line to the delimitation of the research, would be devoted only to highlight the overall orientation of the rule making, adjudicative and investigative powers of the administrative agencies in the realization of their mission.

2.3.1 Rule Making Power of Administrative Agencies

Rule Making Power is authority's power to promulgate laws which augment or clarify their statutory mandate (Koch & Shapiro, 2002, p.2-9). Rule is akin of living policy ... it hardens an inchoate normative judgment of in to the frozen form of words ... the framing of a rule is the climatic act of policy making process (Kerwin, 1994, p.3).

In principle, laws are expected to be promulgated by the legislative organ. In reality, however, the intricacies and complexities of modern government have proved beyond doubt that the delegation of legislative powers to administrative agencies is a compulsive necessity. This is so because a statute may be inexact, incomplete, and unintelligible, and may even be misleading unless it is read with specific rules and regulations made there under. Delegated legislation also serves as a technique to relieve pressure on legislature's time so that it can concentrate on principles and formulation of polices. After this, it has to leave technical and detailed matters which are necessary to fill the gaps in the primary legislation.

Taking into account the above general justification, the factors that may be mentioned as reasons for the need for delegated legislation are limitation on parliamentary time, technicality of the subject of matter, flexibility, and emergency.

Many of their lawmaking powers, as well as the power to administer and implement the laws, are therefore, delegated to administrative agencies with the objective to provide the required quantity and quality enabling laws. In Ethiopia, delegated legislation refers to directives and regulations issued by Administrative Agencies and the Council of Ministers, respectively.

However, when legislative power is delegated to administrative agency, it has to be exercised fairly and only with a view to attain its purpose. The agency shall enact rules within the limits of delegation set by the lawmaker. The lawmaker when delegating power should simultaneously introduce controlling mechanisms to ensure that individual's liberty and freedom is not violated by the administration. Most importantly, the lawmaker, when granting power, is expected to provide specific procedure of rule making. That is, if the delegation is not supported by clear procedures and effective controlling mechanisms, it may ultimately result in arbitrariness and abuse of power, which in turn leads to injustice and violation of liberty. So much so that, lawmaking power should not be openly granted to an administrative body to be exercised under the guise of administrative discretion; rather the legislator must ordinarily prescribe a policy, standard, or rule for their guidance (Bizuneh, 2006, p.84). Accordingly, the subordinate legislations' conformity with basic procedural standards and with the constitution must be ensured. Inspite of this the practice testified that there are variations of procedures, non-

conformity to procedural due process elements, and discrepancy between the law and practice in the rule making power of administrative agencies (Bizuneh, 2006, p.84).

When we come back to the form and classification of rule making, the close scrutiny of delegated legislations reveal that they usually contain enacting clauses and that they are also detailed legislations. Enacting clause is a provision in a legislation that indicates how and from where the authority to legislate the law was derived. It is often found in the preamble part of the legislation. Delegated legislation is considered as legislated by the legislature in so far as they are enacted following the proper procedure. They are also considered as part and parcel of the main legislation under which they are issued. These legislations are detailed because they are issued to implement other superior legislations that are drafted in broader terms. In this regard, delegated legislation may assume different forms, in Ethiopia; however, the main types of delegated legislation are issued in the form of regulation and directive.

Thus, pursuant to F.D.R.E. Constitution, the Council of Ministers has the power of issuing regulations in accordance with a power vested to it by HPRE (FDRE Constitution, Art. 77(13)), and pursuant to the enabling legislations the administrative agencies have the power to issue directives.

Finally, in order to ensure power delegated by the legislature is exercised fairly and lawfully, the administrative agency is expected to follow some minimum rule making procedures. Such procedure is usually provided in a comprehensive manner applicable to every agency at all time. Administrative agencies promulgate three types of rules. These are procedural, interpretative, and legislative. Accordingly, the procedural rules identify the agency's organization and methods of operation, interpretative rules are issued to show how the agency intends to apply the law, and legislative rules are statutes enacted by Agencies only if the legislature has given them this authority.

In general there are three types of rule making procedures. These are informal rule making, hybrid rule making, and formal rule making (Koch & Shapiro, 2002, p.2-10). In general, in informal rule making most agencies use the notice and comment procedure. In hybrid rule

making some agencies use all the procedure used in informal rule making plus additional procedures that are required by the agency's enabling act, such as hearing at which interested parties may appear. Finally, a very few agencies use formal rule making which includes a hearing that has the same procedures used in adjudication. Formal rule making is required only if its enabling act clearly specifies that it is to be used. It is different from hybrid rule making because there are more procedures that an agency must use, such as permitting interested parties to cross-examine witnesses (Koch & Shapiro, 2002, p.2-10).

Finally, while administrative agencies exercising their legislative function, they are required to give notice to the public of the proposed rule and incorporate comments from the public. This ensures public participation in the administrative process. The rules issued by the agencies should also be published in a formal instrument, which is easily accessible to the public, thus, encouraging openness in the public administration.

Having the above facts on ground, the HPRE is recommended to provide administrative agencies with a legal framework by enacting an administrative law dealing with all those that are now not sufficiently addressed to safeguard society's interest from possible abuse of power by administrative agencies (Yeabsira, 2007, p.54)

2.3.2 Adjudicative Power of Administrative Agencies

Administrative Tribunals are effectively an alternative procedure to the court system for enforcement of legal rights. Enforcement of one's rights through the court is expensive, time consuming, formal and for many ordinary people, stressful. Modern tribunals developed very much alongside the increase in governmental intervention and the growth of the welfare state. It was anticipated that not only would a formal court process often be inappropriate for the resolution of such disputes between the citizens and the state, but also that the courts simply would not be able to deal with the volume of complaints and appeals likely to be generated (Sttot & Felix, 1997, p.256).

The main adjudicative functions of administrative agencies are: to maintain constitutional rights in promoting the administration of justice, to protect rights and interests of citizens from undue extension of powers and arbitrary decision s of officials (Bizuneh, 2006, p.80). Administrative agencies are given such functions because they are believed to render justice with cheaper expense, shorter time, and less formal procedural at the grass root level of the administration (Bizuneh, 2006, p.80). For this very reason, efficient and effective administration also requires that those entities in charge of implementing the law be armored with judicial power, to some extent, similar to the power of the ordinary courts.

Technically speaking, judicial power/function is the primary function of courts. The FDRE Constitution expressly vested judicial power, both at the Federal and State levels in courts (FDRE Constitution, Art. 79(1)). This goes in line with the principle of separation of state powers. However, it does not necessarily imply that only regular courts shall exercise judicial power. There are possibilities where judicial power may be delegated to other bodies falling outside the structure of ordinary courts (FDRE Constitution, Art. 37(1)). Accordingly, judicial power is usually delegated to administrative agencies/tribunals with the purpose to provide expedient, cheap, accessible, informal, speedy and specialized justice.

In review of the operation of tribunals, the Committee on Administrative and Enquiries recommended that their operation should be based upon principles of openness, fairness and impartiality in the following terms (Sttot & Felix, 1997, p.257):

> openness appears to us to require the publicity of proceedings and knowledge of essential reasoning underlying the decisions; fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have not meet; and impartibility to require the freedom of tribunals from the influence, real or apparent, of departments concerned with the subject matter of their decisions.

These principles are to be achieved, inter alia, by tribunal hearings being held normally in public, allowing legal representation, requiring that decisions be reasoned and given in writing and providing rights of appeal (Sttot & Felix, 1997, p.257).

At this juncture, the peculiar features of an agency's adjudicatory powers can be identified from the rest of other administrative functions in that if the decision has conclusive effect, binding nature, have force of law without confirmation by another body, solve questions of law or fact, the function is treated as judicial. Keeping this in mind, what follows is a definition of the term administrative adjudications given by the FDRE Draft Federal Administrative Procedure Proclamation in 2001. The Federal Administrative Procedure Proclamation does not mention the term adjudication at all instead it has used the term "Administrative Decision" is used as synonymous term for similar purpose in the draft document. Accordingly, an Administrative Decision is (FDRE, 2005, Art.2 (2)):

> any decision, order or award of an agency having as its object or effect the imposition of a sanction or the grant or refusal of relief, including a decision relating to doing or refusing to do any other act or thing of an administrative nature, or failure to take a decision....

To this effect, however, it is sine qua non for administrative proceedings to meet the basic standards of substantive and procedural due process of laws so that basic and normative values of administration can be ascertained (Bizuneh, 2006, p.80). If not, when there is substantive or/and procedural ultra virus, the decision will be subject to judicial review. That is, in case violation of substantive or/and procedural rules, courts' inherent power to correct abuses of discretion and arbitrary, illegal acts , capricious acts of administrative bodies must be duly regarded (Bizuneh, 2006, p.85).

In administrative adjudication, one of the striking features of adjudication is the existence of predetermined procedures that guide the decision-making process. That is, the decision may be preceded by full-blown formal hearings that are similar to court trials or an informal process, which is just like a summary proceeding where the participation of the parties is very minimal. In this regard, the vast majority of administrative adjudications involve informal actions. The informal mode of adjudication, although it may vary from country to country and from case to case in terms of content, tries to provide the minimal statutory safeguards for the protection of fundamental rights of individuals. It offers only the minimal statutory safeguards of notice and hearing; and hearing in the majority of cases does not involve oral hearing, but written submission of opinions, arguments, data, and so on. On the other hand, formal adjudication

involves an almost full-blown trial type hearing. Having regard to the magnitude of the individual interest at stake, the enabling legislation or other statutes may dictate the concerned administrative agencies to hold a formal hearing before passing decisions. Formal adjudication, among other things, may provide the procedural safeguard through notification of charges, notification of hearing, representation by an attorney, an impartial tribunal/administrative law judge, presentation of evidence, cross examination of the witness of the agency, and a decision based on the regulation.

To date, Ethiopia, however, has not come up with an instrument that provides uniform standards or guidelines that regulate administrative agencies' adjudication process. Both at the federal and the regional levels, there is no uniform legislative guidance that dictates administrative agencies concerning the procedural steps they must go through while adjudicating cases. So, if there are any, such procedures have to be searched in each of the pieces of enabling legislations that create the respective agencies. At the federal level, an attempt was made in 2001 to adopt a Federal Administrative Procedure Proclamation that was intended to regulate the process of rulemaking and adjudication by Federal Administrative Agencies. And, in an attempt to provide a procedural safeguard to the protection of individual rights from administrative agencies, the Draft Federal Administrative Procedure Proclamation of Ethiopia incorporates the core principles of due process of law such as notice and hearing (FDRE, 2005, Art. 24 & 26). Unless otherwise hearing is dispensed in those circumstances expressly provided under the law for different reasons, an agency is obliged to conduct a public hearing (FDRE, 2005, Art. 26 & 28). The hearing enables the party to the case voice his objections and arguments against the decision. The draft confers parties to administrative proceedings the right to submit documentary and other evidences to request agencies to summon witnesses, and to cross-examine the allegation of the other side (FDRE, 2005, Art. 28(3)). Furthermore, the draft allows parties to administrative proceedings the right to counsel and representation by a licensed advocate, or any other person (FDRE, 2005, Art. 25). Finally, in the conduct of the hearing, agencies are required to maintain the record to all proceedings carried out in rendering decision, and upon request to give the copy of the record to the parties or their representatives. To this effect the draft dictates administrative agencies to reduce their decision into a written form and to include disputed facts under consideration including the substance and source of the evidence, the findings of facts made and the evaluation

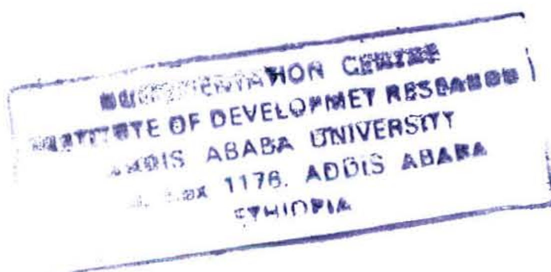
of the evidence which bases the decision, the determination of the issue and action to be taken on the basis of such decision (FDRE, 2005, Art. 32).

To date, despite the above safeguarding procedures for unknown reason, it has remained as a draft for almost a decade. For this very reason, the federal administrative agencies can refer to this draft document just like any other an unbinding legal literature at their discretion. In other words, the draft document cannot dictate the agencies decisions for it have not yet adopted in the form of law.

Inspite of the above fact, failure to have binding Federal Administrative Procedure Proclamation does not necessarily imply that administrative adjudication in Ethiopia is completely arbitrary. This is so because there are procedural requirements dispersed here and there in the enabling legislations that create and empower particular agencies. Even where the procedural safeguards provided in such particular legislations are found, inadequate to protect the fundamental constitutional rights of individuals, recourse has to be made to the principles of due process of law enshrined under the FDRE Constitution.

Coming back to the organizational structure of administrative tribunals, it is different from jurisdiction to jurisdiction. That is, on the one hand there are some countries with tribunals of general jurisdiction that are hierarchically organized in a way that corresponds to the three-tier ordinary court structure, on the other hand many other countries appear to have tribunals of special jurisdiction here and there to address specific problems.

In Ethiopia, however, there is no integrated administrative justice system, rather there are some sector wise tribunal-like adjudicating agencies/ known by different names such as disciplinary committees, boards, commissions and so on that have the first instance jurisdiction in particular aspects of the administration. There are also tribunals that exercise appellant jurisdiction in particular sphere of the administrative field. Under the draft of the Federal Administrative Procedure Proclamation No. 2001, an attempt was made to establish "Federal Administrative Grievances Appellate Court", which is a division within the Federal High Court that was intended to assume appellate jurisdiction overall final administrative decisions of all federal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agencies. However, the document remained in the status of a draft for almost a decade. Regardless of whether such general jurisdiction administrative court/tribunal be established as a special division within or as an independent body outside the structure of ordinary courts, its existence would be quite important in developing standardized and integrated administrative justice system.

Finally, it is indicated that administrative adjudication must meet the basic standards of substantive and procedural due process of laws so that basic and normative values of administration can be ascertained. To this effect it is recommended that there is a pressing need to have a standardized Administrative Procedure Code for Ethiopia (Bizuneh, 2006, p. 80 & 86).

2.3.3 Investigative Power of Administrative Agencies

Regulatory agencies are given wide powers to enable them to fulfill their functions. These powers are detailed in the relevant Command and Control framework legislation. In particular, the regulator has the following investigatory powers: entry onto premises, examination, investigation, inspection, measurement, testing recording, photography, removal of items and/or evidence, sampling, installation and operation of monitoring equipment (Wolf, White & Stanley, 2002, p. 10). If agencies are authorized to compel persons to compel persons to turn over to them information within their possession, they are authorized to engage in investigation (Koch & Shapiro, 2002, p.2-9). In line with this, in complex issues, in addition to tribunals that investigate facts and apply laws to resolve specific administrative disputes, the formation of inquires that conduct fact and/or legal findings and provide recommendation to ministers or other agency heads to take policy considered action based on the findings of facts is becoming a paramount importance. Inquires are concerned with fact-finding directed towards making recommendations on questions of policy. The statutory inquiry is the standard device for giving a fair hearing to objectors before the final decision is made on some question of government policy affecting citizens' rights or interests.

Agencies with investigatory power can compel the disclosure of evidence or testimony. Most agencies will develop the information on which they base rule making and adjudication through

investigation. To assist them the legislative organ typically gives them the authority to require reports, to conduct physical inspection and searches, and administrative subpoenas (Koch & Shapiro, 2002, p.2-14).

The investigative powers of administrative agencies are detailed in the relevant legislation framework. In line to the relevant enabling legislative framework, to realize their objective, the regulators have the power to entry onto premises, examination, investigation, inspection, measurement, testing, recording, and photography, removal of items and/or evidence, sampling, installation and operation of monitoring equipment (Wolf, White & Stanley, 2002, p. 10).

Finally, to accomplish their mission in the right way and at the right time, it is essential for inspectors to have adequate powers of entry and inspection that would enable them to ensure compliance with the licenses granted and also to identify instances where processes are carried on without the appropriate license (Wolf, White & Stanley, 2002, p. 35).

Having defined inquires as impartial fact finding devices that are established by law to assist decision makers, it deems now quite important to appreciate some of the statutory inquires operating in Ethiopia.

Some inquires are event derived that have temporary existence that remain valid until accomplishing the specific fact finding assignment given to them by law. Examples of such inquires are the Inquiry Commission established under Proclamation No.398/2004 to investigate the conflict occurred in Gambela Regional State on December 13,2003, and the Inquiry Commission established to investigate the proportionality of the measures taken by the Ethiopian security forces to control the post election crisis happened in 2005. These inquires were established by proclamation with specific mandate of fact-finding limited to space and time. Such type of inquires usually dissolve immediately after accomplishing their mandate in accordance with the terms of references.

There are also inquires that have permanent in nature. Inquires falling under this category, although they are usually with specific mandate, have permanent institutional existence. The following are prominent example of such inquires:

- The Council of Constitutional Inquiry (FDRE Constitution, Art. 84);
- The Human Rights Commission and the Institution of Ombudsman(FDRE Constitution, Art. 55(14 &15);
- Anti-Corruption Commissions (FDRE, Procl. No. 434/2005)

Furthermore, in the Criminal Procedure Code of Ethiopia, police officials are given a power to investigate crimes and most of the times investigating police officers start to investigate crimes when they reasonably suspect that crime is committed and/or when they have the opinion that the accusation, complaint or information they have received is open to doubt (Imperial Ethiopian Government, Procl. No.185/1961, Art. 23).

Finally, the FDRE Constitution stipulated that no restrictions may be placed in the enjoyment of the right to privacy except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights or freedoms of others.

Practically, however, for the acts which give rise to intrusion of a person's privacy are not fully regulated by the existing laws of Ethiopia, the protection is quite narrow and the door is open for abusive attacks on a person's privacy (Yared, 2006, p.76).

2.4 Overview of the Institutional Framework of the FEPAE

National and international standards to a clean and healthy environment are ultimately implemented at the local level, and it is, therefore, important that citizens and other persons are granted effective access to local and national legal administrative bodies to ensure that national or international standards are enforced. In this regard, access to justice requires at least four elements (Ginther, 1995, p. 197):

a. the legal rights of citizens and other persons to live in a clean and healthy environment under national and international legal systems;
b. those legal rights must be recognized by the grant of standing to institute proceedings at the national level;
c. Legal and administrative bodies must be established at the national level to allow proceeding to be brought; and
d. access to such bodies should not be subject to inappropriate barriers such as prohibitive costs and cumbersome rules.

In line the above points, the FDRE Constitution declared that all persons shall have the right to live in a clean and healthy environment (FDRE Constitution, Art. 44(1)); and government and citizens shall have the duty to protect the environment (FDRE Constitution, Art. 92(4)). Furthermore, standing is liberalized in a way it accommodate both traditional and public interest litigation (FDRE Constitution, Art. 37(2) (b)).

Having the direction in the FDRE Constitution as a benchmark, the following part is allotted to the general framework of the institutional portfolio and administrative powers of the FEPAE.

To start with the CSE, following its issuance, the rights and obligations of the ex-Ministry of Natural Resources Development and Environmental Protection are transferred to: the Ministry of Agriculture, as relating directly to forestry and wildlife; the FEPAE, as relating directly to environmental protection; the Ministry of Water Resources, as relating to water resources and methodology (FDRE, 1997b, P. 3). One of objective of the guiding principles of this document is avoiding conflict of interest by assigning responsibilities to separate organizations for environmental and natural resource development, and management activities on the one hand, and environmental protection, regulation and monitoring on the other (FDRE, 1997b, P. 4 (1.2(f))); so that there will be a clear institutional separation of natural resources development and management aspect from the regulatory aspect (FDRE, 1997b, P. 4 (1.3(a))).

Later on in 2002 the HPRE, taking the letters and sprit of the policy direction in the Conservation Strategy of Ethiopia, it has promulgated the Environmental Protection Organs Establishment Proclamation (FDRE, Procl. No.295/2002) with the objective to avoid possible conflicts of interests and duplication of efforts; and to establish a system that fosters coordinated but

differentiated responsibility among environmental protection agencies at federal and regional levels (FDRE, Procl. No.295/2002, the Preamble). Accordingly, in the case federal jurisdiction, the FEPAE is established as an autonomous public institution with the organization that has (FDRE, Procl. No.295/2002, Art. 7) an Environmental Council, a Director General and a Deputy Director General appointed by the Government; and the necessary staff.

Moreover, the HPRE bestowed the FEPAE with a wide range of administrative powers which are designed to translate the intension of the legislator in to action in the federal jurisdiction; particularly, on projects that are subject to federal licensing, execution or supervision or where they are likely to entail inter-regional impacts (FDRE, Procl. No.295/2002, Art. 6(5)) & (FDRE, Procl. No.299/2002, Art. 14)).

Having bird's eye view of the institutional portfolio, and administrative powers of the FEPAE, at this juncture, it is important to critically analyze the legal and institutional machinery of the Authority's institutional portfolio, and administrative powers in light to the literature review.

To start with the institutional set up, the FEPAE is established with an Authority portfolio. Inspite of this it has to be noted that most of the sectoral institutions, that have to be regulated by the FEPAE, are established at a Ministry level. Put it differently, it is not member of the Council of Ministers of Ethiopia that have the power, among other things, to (FDRE Constitution, Art. 77):

1) Ensure the implementation of laws and decisions adopted by the House of Peoples' Representatives;
2) It shall decide on the organizational structure and of Ministries and other organs of the government responsible to it; it shall coordinate their activities and provide leadership;
3) It shall formulate and implement economic, social and development policies and strategies;
4) It shall submit draft laws to the House of Peoples' Representatives on any matter falling within its competence, including draft laws on a declaration of war;
5) It shall enact regulations pursuant to powers vested on it by the House of Peoples' Representatives

This implies that the FEPAE is not member of the Council of Ministers of the FDRE where important decisions are made in relation to environment and development. For this very reason, the FEPAE would have minimal/no say in the promulgation cross-cutting regulations.

In line to the above discussion, the FEPAE is so lenient to regulate sectoral institutions which have higher portfolio (Anonymous, personal communication, March 3, 2010). Furthermore, in the eyes of a representative from World Bank, the FEPAE does not have the institutional capacity to manage a country with eighty million population; so it is a pressing need to have capacity building in the quality and quantity of the staff members (personal communication, March 25, 2010).

Furthermore, as it is in any administrative agency with authority portfolio, the Director General and a Deputy Director General of the FEPAE are directly appointed by the Prime Minister; whereas, in respect the Ministerial appointment, the Prime Minister's nomination shall be followed by the approval of the HPRE (FDRE Constitution, Art. 74(9) & 74(2)). For this very reason, for there is no check and balance by the HPRE in respect to the appointment Director General and Deputy Director General, it is safe, at least theoretically, to deduce that they are more amenable to the pressure of the Prime Minister than the Ministers of Sectoral Institutions. Inspite of the theoretical presumption, an official of the FEPAE, underlined the fact that the General Director and Deputy Director are directly assigned by the Prime Minister maintains the continuity in achieving environmental objectives rather than exposing it to decisions based on political wind (personal communication, March 9, 2010). Furthermore, according to a higher official from the AAEPA, even if it is not member of the Council of Ministers of the FEPAE, for it is consulted by the legislative organs when a law is to be issued in respect to environment, its portfolio would not affect it from having a say (personal communication, December 7, 2009).

On the basis of the above analysis it is possible to infer indicative pitfalls in the institutional portfolio of the FEPAE in the realization of its administrative powers; particularly in the regulation of sectoral institutions that have ministerial portfolio.

In a nut shell, the lope holes that emanate from the institutional portfolio of the FEPAE may condition it to be laissez fair on the free riders in environmental protection, as a result they may remain unbridled to the extent they jeopardized the environment. However, when there is a need to panacea the gap that emanates from the institutional portfolio of the FEPAE, it is possible to bring the case to the attention of the HPRE which has the power, at the request of one-third of its members, to discuss any matter pertaining to powers of the executive; and to take decisions or measures it deems necessary (FDRE Constitution, Art. 55(18)).

Finally, following the discussion on the institutional portfolio of the FEPAE, to have a blue print of the administrative powers, it is a pressing need to high light them in tandem with the literature review.

To start with the objective of creation of administrative agencies they are created and assigned specific tasks with the objective to address recognized problem in society. In similar way it is established with the objective to formulate policies, strategies, laws, and standards, which foster social and economic development in a manner that enhance the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of the process of their implementation (FDRE, Procl. No.295/2002, Art. 5).

Finally, as it is indicated in the literature, to be effective and efficient administrative agencies usually have wider power and discretion which often blends the three powers of government, that is, executive, legislative and judicial powers. In the same approach, the FEPAE is equipped with, among other things, rule making, adjudication, and investigative administrative powers.

To start with delegated legislation, for the legislative may not have the time, expertise and flexibility, and for the statute may be inexact, incomplete, and unintelligible, and may even be misleading unless it is read with specific made there under, the delegation of legislative powers to administrative agencies is a compulsive necessity. In the same manner, the HPRE has delegated the FEPAE to prepare directives, guidelines, and environmental standards and to be reviewed and approved by the Environmental Council of the FEPAE (FDRE, Procl. No.295/2002, Art. 6(2) & 9(3)).

Following the delegated legislation, taking advantage of expediency, convenience, accessibility, flexibility, and special skill and expertise in administrative agencies rather than ordinary courts, legislative organs often armor administrative agencies with judicial power, to some extent, similar to the power of the ordinary courts. Similarly, the HPRE has equipped the FEPAE with proactive quasi-adjudication in case of EIA, and reactive quasi-adjudication in case of complaints.

Finally, administrative agencies have fact finding investigatory power directed towards exercising their administrative powers. This enables the administrative organs to ensure compliance with the licenses granted and also to identify instances where processes are carried on without the appropriate license (Wolf, White & Stanley, 2002, p. 35). In the same manner, the HPRE have given the mandate to assign Environmental Inspectors with extra-ordinary power that goes to the extent that limits the right to privacy.

Having the above general overview of the institutional portfolio, and administrative powers, the FEPAE, is expected to exercise its mandates to their fullest extent. Inspite of this, it is not uncommon to read some literatures that indicate some pitfalls which directly or indirectly affect the operation of the FEPAE. For instance, according to Dereje (2009), the FEPAE is not in position to effectively discharge its responsibility for reasons which are partly attributable to the external matters and partly to internal problems of the FEPAE (p.103). According to Yeshitla (2007), the failure comes to be overt in that there is a gap between the policy intention and its actual implementation on the ground (p.52). This situation is further reiterated in one way or another in the following literatures that indicates:

- The Reporter News Paper indicated that the Environmental Council of the FEPAE is not in position to convene regularly to review and approve directives, guidelines and environmental standards which are a pressing need for the FEPAE to exercise its administrative powers (Fekadu, p.10);

- The absence of full-fledged EIA Department in the FEPAE, and the delegation of the power to review environmental impact assessment to sectoral institutions which have vested interest in the review which in turn inevitably result in conflict of interest (Fekadu, p.10);

- The FEPAE have no full-fledged quasi-adjudicative tribunal to take reactive measures on persons who are free riders in the environment (Anonymous, personal communication, November 25, 2009);

- The FEPE institutional chart does not encompass Environmental Inspectors as integral part of it.

2.5 Summary

Administrative Agencies are created and assigned specific tasks with the objective to address recognized problem in society. For this very reason, often they are engaged in provision of specifity, protection, and service; and their structure and internal organization is greatly depend on the government policy and the programme they are expected to accomplish. Finally, it is important to note that to be effective and efficient they usually have wider power and discretion which often blends the three powers of government, that is, executive, legislative and judicial powers. Accordingly:

Primarily, for a statute may be inexact, incomplete, and unintelligible, and may even be misleading unless it is read with specific made there under, the delegation of legislative powers to administrative agencies is a compulsive necessity. And, the rationale for the delegation of legislation to administrative agencies is limitation on parliamentary time, technicality of subject of matter, flexibility, and emergency. However, it is important to notice that to ensure power delegated by the legislature is exercised fairly and lawfully, the administrative agency is expected to follow some minimum rule making procedures.

Efficient and effective administration also requires that those entities in charge of implementing the law be armored with judicial power, to some extent, similar to the power of the ordinary courts. Furthermore, in line the rationale of delegating adjudicatory power, they are expected to have more expediency, convenience, accessibility, flexibility, and special skill and expertise than ordinary courts.

Finally, administrative agencies have fact finding investigatory power directed towards exercising their administrative powers. This enables the administrative organs to ensure compliance with the licenses granted and also to identify instances where processes are carried on without the appropriate license. For this very reason, to realize this objective, administrative organs have investigatory power to have, among other things, entry onto premises, examination, investigation, inspection, measurement, testing, recording, and photography, removal of items and/or evidence, sampling, installation and operation of monitoring equipment.

In Ethiopia, agencies are created in two ways: one is through the Constitution, and the second is through the act of the HPRE, and the structure and the organization of the administrative agencies is determined by the Council of Ministers.

In Ethiopia, even if there are no uniform standards of guidelines that regulate administrative agencies, there are procedural requirements dispersed here and there in the enabling legislations that create and empower particular agencies. Even where the procedural safeguards provided in such particular legislations are found, inadequate to protect the fundamental constitutional rights of individuals, recourse has to be made to the principles of due process of law enshrined under the FDRE Constitution.

In the same fashion, the FEPAE's mandates, and standards of guidelines that regulate its administrative powers are found here and there in different enabling environmental legislations. Furthermore, there are indicative pitfalls in the sporadic and isolated administrative powers of the FEPAE. So much so that, within the delimitation, it is high time to conduct research and to panacea the gap in the law and practice of the administrative powers of the FEPAE.

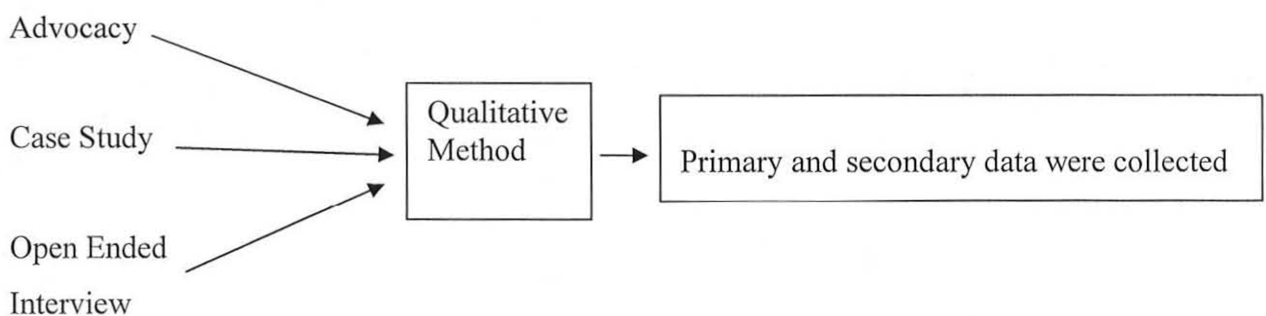
Chapter Three: Methodology of the Research

3.1 Introduction

The objective of this chapter is to depict the type, nature, and rationale of the methodology of the research. To achieve this objective the chapter covers the framework design of the research, research strategy, study area description, ethical consideration, data source and data collection, data collection instrument, data analysis and interpretation.

3.2 Research Framework Design

Figure No. 2: Research Framework Design of the Study



As indicated in the diagram, the study has tried to carry out a deep investigation into the mandates of FEPAE with particular interest in assessment of alignment of its mandates with actual practices. The study is concerned with issues pertaining to a given institution and aspects of analysis are also focused on specific mandates than dealing with the overall institutional milieu. Thus, advocacy alternative knowledge claim that is issue/ change oriented and qualitative method of research with semi-structured open ended interview that elicit the views and opinions from participants is employed for its convenience to develop themes from the data. Case by case in-depth exploration and analysis of facts and legal provisions were made in order to identify consistency of practices with laws governing each respective mandates. In further interest to refine the findings, triangulation of responses from different sources was also made.

3.3 Research Strategy

In order to realize its intended purpose, this research undertaking has employed variety of strategies in gathering pertinent data. First, key informants were contacted in order to obtain their agreement to take part in the study. Secondly, secondary data sources have been identified and sorted out on the basis of their relevance for the study. Thirdly, series of interviews were conducted with the key informants in accordance with the prior arrangements made with the respondents. Fourthly, responses from different respondents have been tallied to check their consistency with each other. Finally, data obtained from primary sources have been substantiated with facts from secondary sources.

3.4 Study Area Description

The Federal Environmental Protection Authority of Ethiopia is located in Addis Ababa. It is specifically located in the eastern part of Addis Ababa, in Yeka Zone around Gurd Sholla vicinity.

3.5 Ethical Consideration

In the process of data collection due care was taken in order to make this piece of work ethically sound. Respondents have been informed that their contribution was sought for exclusive academic purpose. Their consent was also obtained on the basis of consensus to fully respect their rights, needs, values, and desires as far as the issue of this research is concerned.

3.6 Data Sources

Primary data were collected through face-to-face in person interview with the key informants who were strategically and purposefully selected from focal institutions.

To have balanced information, the primary data were collected from key informants within the FEPAE, and from stakeholders out of the FEPAE that have direct legal and/or practical attachment with the rule making, adjudication and investigative mandates of the FEPAE .

The first category of key informants is composed of top officials who are responsible to spearhead the rule making, adjudication and investigative mandates of the FEPAE. These includes: the Director General, Deputy Director General, the Legal Department Head and the Environmental Impact Assessment Department Head of the FEPAE.

The other category of key informants is composed of different stakeholders that have direct interest the rule making, adjudication and investigative mandates of the FEPAE. These are from:

1. Addis Ababa Environmental Protection Authority, and Oromia Land and Environmental Protection Bureau have already prepared their own draft standards, guidelines and directives, and to this effect they need to have a benchmark for these laws from the FEPAE. Furthermore, inspite of the fact that FEPAE is not in position to assign environmental inspectors, the Addis Ababa Environmental Protection Authority is a pioneer in this regard. For this very reason the Director General, Legal Department Head, and Environmental Inspectors Team Leader of Addis Ababa Regional Environmental Authority, and the Environmental Protection Department Head of the Oromia Land and Environmental Protection Bureau are selected to be key informants and interviewed;

2. The Natural Resources and Environmental Protection Affairs Standing Committee have the power duty to execute, among other things, the effective implementation of policies, laws, strategies, programmes and plans adopted to preserve natural resource and protect the environment. For this very reason, the Chairperson of the standing committee is selected to be key informant and interviewed;

3. The Ethiopian Investment Agency shall act in tandem with the FEPAE' decision to suspend or cancel any authorization to implement a project, suspend or cancel the license it may have issued in favor of the project. To see the practice, the Director, Licensing and Registration Directorate is selected to be a key informant and interviewed;

4. The Development Bank of Ethiopia and the World Bank are fund raising institutions which require the confirmation letter from FEPAE regarding impact assessment on the

surrounding environment. For this very reason, the Credit Managers of both are selected to be key informants and interviewed;

5. Non Governmental Organizations that are engaged in environmental issues. Specifically, the key informants selected and interviewed are:

    A. The Director of Forum for Environment which is the only representative of local environmental non-governmental organizations in the Environmental Council of the FEPAE;
    B. The Director of MELKA Mahiber which is a pioneer in the submission a draft proclamation for a review;
    C. The Director of APAP which is a pioneer in public interest litigation in relation to environmental proceeding; and

    D. The Public Relation and Resource Center Officer of the Ethiopian Horticulture Producer Exporters Association which has prepared the Code of Practice for Sustainable Flower Production, and submitted to the Council of Ministers of the FDRE.

6. Mekelle University and Ethiopian Civil Service College Environmental Law Instructors are selected to be key informants and interviewed;

Secondary data were collected from public and private documents. These were national and international legal instruments, circular and letters to/from of the FEPAE, legal cases, draft laws, books, journal, periodical, resolutions, senior essays, and theses.

3.7 Data Collection Instruments

The study has employed two major data collection instruments. These were semi-structured interview schedule and checklist. The semi-structured interview contained a number of questions that were responded by three groups of the key informants. The checklist was developed by the

researcher to be able to take notes of any discrepancies regarding the law and the practice while review of documents as secondary data sources.

3.8 Data Analysis and Interpretation

Qualitative analysis was employed. The analysis was multifaceted, iterative, and simultaneous. The process of data analysis involved making sense out of data. It involved preparing the data for analysis, conducting analysis, moving deeper and deeper in to understanding the data, representing the data, and making an interpretation of the larger meaning of the data.

Interpretation of data was made on the basis of identification of prevailing practices and the law governing that particular practice in view to come up with consistency between the law in book and the law in action.

Chapter Four: Results and Discussion

4.1 Introduction

The right to live in a clean and healthy environment and the right to sustainable development are part and parcel of the Fundamental Rights of the FDRE Constitution (FDRE Constitution, Art. 43 & 44). For this very reason, primarily the Federal and the State's legislative, executive and judicial organs have the responsibility and duty to respect and enforce them (FDRE Constitution, Art. 13), and being Fundamental Rights, they can be amended only (FDRE Constitution, Art. 105):

> a) When all state Councils, by majority vote, approve the proposed amendment;
> b) When the House of Peoples' Representatives, by a two-thirds majority vote, approves the proposed amendment; and
> c) When the House of Federation, by two-thirds majority vote, approves the proposed amendment.

Taking the above Constitutional direction for granted, the overall policy goal of the EPE (FDRE, 1997a, p.3) stipulated that:

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

Moreover, the HPRE has been reiterating the principle of sustainable development in a number of enabling environmental laws, and finally, to be pragmatic and to avoid possible conflict of interests and duplication of efforts, it has committed to promulgated a Proclamation for the establishment of a system that fosters coordinated but differentiated responsibilities between and among different environmental protection organs (FDRE, Procl. No. 295/2002). And, ultimately, as a logical extension of the policy and legal commitment, the FDRE government, in respect to the protection of the environment in the federal jurisdiction, has established the FEPAE with, inter alia, rule making, adjudication, and investigative administrative powers.

However, for the FEPAE is not free of allegation in exercising its rule making, adjudication, and investigative administrative powers in the protection of the environment, and for the failure or success in these administrative powers would have positive or negative implication on the realization of sustainable development, the research is conducted on the law and practice of these administrative powers of the FEPAE.

In the opinion of the researcher, to verify the possibility of having positive or negative implication of the success or failure of the rule making, adjudication, and investigative of the FEPAE on the realization of sustainable development, it is a pressing need to have a passing remark that reveals the fact that protection of the environment is an integral part of sustainable development.

To this effect, initially, it is pivotal to pin point the definition of protection of the environment under the FDRE which means "Sustaining of the essential characteristics of nature and enhancing the capacity of natural resource base with a view to safeguarding the interest of the present generation without compromising the opportunity for the future" (FDRE, Procl. No.295/2002, Art. 2(6)).

Furthermore, for "All international agreements ratified by Ethiopia are integral parts of the law of the land", and "The fundamental rights and freedoms....shall be interpreted in a manner conforming to the principles of Universal Declaration of Human, International Covenants on Human Rights and international instruments adopted by Ethiopia" (FDRE Constitution, Art. 9(4) & 13(2)), and for the Rio Declaration is one of the international instruments that are ratified by Ethiopia, it is part and parcel of the law of the land. So much so that, for the Rio Declaration consecutively stipulated that "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", and "Peace, development and environmental protection are interdependent and indivisible" (Rio Declaration, 1992), it is safe to infer that the FDRE has given cognizance to the fact that protection of the environment is an integral part of sustainable development.

In a nut shell, from the above discussion, it is safe to conclude that failure or success in the protection of the environment would in turn have possible positive or negative implicatn on the realization of sustainable development.

So much so that, for the discussion and analysis of the research is on the law and practice of the rule making, adjudication and investigative powers of the FEPAE in the protection of the environment, in the opinion of the researcher, they would ultimately have indicative findings that highlight possible positive or negative implication on the realization of sustainable development.

4.2 Rule Making Mandate of the Environmental Council of the FEPAE: the Law and the Practice

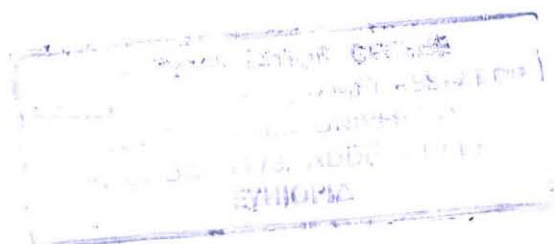
In line to the specific objectives of the research this section is devoted to the law and practice of rule making mandate, institutional framework, and procedure of the Environmental Council of the FEPAE.

4.2.1 Institutional Arrangement of the Environmental Council of the FEPAE

For the nature of the composition of the EC of the FEPAE will have a grain of contribution in the evaluation of the rule making mandate of the Environmental Council of the FEPAE, it is selected to be the first section as follows.

To start with the position of the Conservation Strategy of Ethiopia, the EC shall be chaired by an official delegated by the government, and memberships shall be at the Minister or Commission level (FDRE, 1997b, P.29). Taking this policy direction, legally the HPRE promulgated a law for its establishment in 2002, and practically it is established in 2008 under the Organization of the FEPAE (FDRE, Procl. No. 295/2002, Art.7) with the following members (FDRE, Procl. No. 295/2002, Art.8):

a) The Prime Minister or his designate (Chairman)
b) Members to be designated by the Federal Government
c) A representative designated by each National Regional State



d) A representative of the Ethiopian Chamber of Commerce
e) A representative of local environmental non-governmental organizations, and
f) A representative of the Confederation of Ethiopian Trade Unions, and
g) The Director General of the Authority

From the very reading of this article it is clear that the chairperson of the Environmental Council is the Prime Minister or his designate, and most of its members are higher political officials from the Federal Government and Regional States. This implies that most of the members are not technocrats.

Furthermore, an official from the FEPAE indicated that the local environmental non-governmental organizations are currently represented by Forum for Environment (personal communication, March 9, 2010). And, a key informant from Forum for Environment manifested that the representation of the organization is the outcome of a free and merit based selection by the local environmental non-governmental organizations (personal communication, December 4, 2010). According to him, if strategically acted, the representation would have a grain of positive contribution in rule making process by and through reflecting the interest of the public at large. That is, the participation would create the vital opportunity to reflect vital and lucrative experiences of the local environmental non-governmental organizations, and to display different perspectives in weighing the cost and benefit of the rule making processes of the Environmental Council. However, in his opinion, to inform and lobby at a large scale, it is advisable to have more than one representation of local environmental non-governmental organization.

Having the above institutional arrangement, the Rules of Procedure for the Meetings of the Environmental Council stipulated that (FEPAE, 2008b, Art. 5):

1. The Council may designate a subsidiary body to submit expert opinion to it,
2. The question that the subsidiary body established under sub-article 1 of this Article will answer shall be determined by the Council

According to this article, even if it has not yet established, any question will be initiated only by the Environmental Council, and the final say will be with the Environmental Council. So much so that it is safe to say the role of the Subsidiary Body in the EC is nominal.

4.2.2 Rule Making Powers of the Environmental Council of the FEPAE

Given the multi-sectoral nature of the Policy with a number of government agencies involved, overall coordination and policy direction have to be provided by the Environmental Protection Council (FDRE, 1997b, P.29 (4.2.1)). Accordingly, the Environmental Council would have the mandate to ensure coordination of the overall implementation of the Federal Policy on Natural Resources and the Environment, and to provide policy guidance and undertake policy review (FDRE, 1997b, P.29 (4.2.1)).

Following the issuance of the Environmental Policy, the HPRE has promulgated the Environmental Protection Organs Establishment Proclamation. According to this Proclamation, primarily, the FEPAE shall have the powers and duties to prepare, review, and update, or as necessary, cause the preparation of environmental policies, strategies and laws in consultation with the competent agencies, other concerned organs and the public at large and upon approval, monitor and enforce their implementation; and then the Environmental Council shall have the responsibility to review proposed environmental policies, strategies, and laws, and issue recommendations to the government, and to review and approve directives, guidelines and environmental standards prepared by the FEPAE (FDRE, Procl. No.295/2002, Art. 6(2), 9(1) & (3)).

Furthermore, the Bio-safety Proclamation and EIA Proclamation bestowed the FEPAE to issue the necessary directives and guidelines for the effective protection of the environment (FDRE, Bio-Safety Procl., Art 22(2)), and EIA Proclamation, Art. 13(2), 8(3) and (20)).

Finally, the Rules of Procedure for the Meeting of the Environmental Council (FEPAE, 2008b, Art. 3), stipulated that the EC shall:

1. Review any report submitted to it by the Authority on the activities carried out to implement the Environmental Policy of Ethiopia and the Conservation Strategy of Ethiopia and give appropriate advice,
2. Evaluate the draft policies, strategies and laws submitted to it and recommend action to be taken by the government,

3. Review and approve environmental standards and directives submitted to it by the Authority

For the EC mandate in the Environment Conservation Strategy is limited only to ensure coordination of the overall implementation of the Federal Policy on Natural Resources and the Environment, and to provide policy guidance and undertake policy review (FDRE, 1997b, p.29 (4.2.1)), it is pressing need to evaluate the appropriateness of the extension of its mandate to the extent it encompass the power to review and approve directives, guidelines and environmental standards prepared by the FEPAE (FDRE, Procl. No.295/2002, Art.9(3)).

In respect to the discrepancy of the mandate of the Environmental Council between the Conservation Strategy of Ethiopia, and other enabling Environmental Laws, a higher official of the FEPAE (personal communication, April 5, 2010) depicts the fact that the participation of higher political officials in the current mandate of the EC is calculative; it is done with the objective to give weight to the acts and outputs of the EC. Similarly, another official of the FEPAE (personal communication, March 9, 2010), has reiterated the above line of argument, and appreciated the composition of the EC for:

1. It creates conducive environment for the exchange of knowledge and skill between and among the different stakeholders;
2. It gives sense of ownership and develops commitment on sectoral institutions; and
3. Review and approval of directive, guidelines and environmental standards is quite detail and difficult than policy, proclamations and regulations to be exercised by the FEPAE alone

Furthermore, it is important to note that the final version of the Draft Business Processing and Re-engineering document has not yet indicated a change in respect to the rule making mandate of the EC of the FEPAE (FEPAE, 2010, BPR).

In the opinion of a key informant from the academia (personal communication, March 3, 2010), even if the representation of high portfolio officials both from the federal and regional states may emanate from good faith, however, it is quite difficult to convene these officials at a time; and to engage them on detail matters which have to be addressed by technocrats.

Following the above discussion, the appropriateness or not of the extension of the rule making mandate of the EC would be unavoidable issue that has to be addressed in line to the principle delegation which is instrumental in striking the proper mandate of administrative organs.

According to this principle, delegated legislations are too detail and technical, and as a logical extension to their nature, the rationale of the delegation to administrative agencies is want of technocrats, dynamics, and flexibility.

Having the rationale behind the principle of delegation, at this juncture it is high time to revisit the arrangement of the EC as a litmus paper in the evaluation of the appropriateness or not of the extension of the mandate. Accordingly, the assessment of the composition of the EC indicates that it is chaired by the Prime Minister or his designate, and its members are higher political officials from the Federal Government and Regional States. Furthermore, even if it has not yet established, legally speaking, for the final say is with the EC; the Subsidiary Body of the EC has nominal say in the rule making process.

For this very reason, it is possible to infer the fact that most of the members of the EC are non-technocrats with nominal Subsidiary Body. As a logical extension to this arrangement, and for directives, standards, and guidelines are too technical to be understood, it is high likely they face difficulty in having holistic understanding of the subject matter on issues that would possibly raised in the due course of rule making.

Taking the principle of delegation as a litmus paper, while the current arrangement of the EC is proper when it provides policy guidance and undertakes policy review in line to the political will of the government; it is inappropriate to extend it mandate to encompass the review and approval of directives, guidelines, and environmental standards which are too technical, and have nothing to do with political will. This technical nature could be corroborated from the very reading of the Pollution Control Proclamation that calls the FEPAE, in consultation with competent agencies, to formulate practicable environmental standards based on scientific and environmental principles (FDRE, Procl. No. 300/2002, Art. 6(1)).

Finally, to have a clear stand on the issue of the appropriateness or not of the extension of the mandate of the EC, it is important to revisit the practice of its rule making power. Accordingly, practically, in the last seven years, it has convened only twice and issued two directives; and as a result it has not been in position to review and approve the necessary directives, guidelines and environmental standards which sine quà non condition for the FEPAE to exercise its administrative powers in the realization of the environmental provisions in the FDRE Constitution, the EPE, and other enabling environmental laws.

Furthermore, for Regional Environmental Agencies shall ensure the implementation of federal environmental standards or, as may be appropriate, issue and implement their-own no less stringent standards (FDRE, Procl. No. 295/2002, Art. 15(2)); it is a must case for them to have a benchmark from the EC of the FEPAE. This position is further reiterated in the Pollution Control Proclamation which spelt out that (FDRE, Procl. No. 300/2002, Art. 6(4)):

> National Regional States may, based on their specific situation adopt environmental standards that are more stringent than those determined at the Federal level. However, they shall not adopt standards which are less rigorous than those determined at the Federal level.

And, ultimately, this position is manifested when the FEPAE issued a directive that calls any Regional Environmental Agency may issue another directives based on this directive (FEPAE, 2008a, Art. 3).

In line with the above points, officials from FEPAE (personal communication, March 17, 2010), Addis Ababa Environmental Protection Authority (personal communication, December 9, 2009), and Oromia Land and Environmental Protection Bureau (personal communication, April 22, 2010) indicated that the FEPAE is not in position to promulgate the necessary directives, guidelines and environmental standards which are sine qua non condition for the regional environmental agencies to ensure the same or issue their own no less stringent one.

Having the above facts at hand, the law calls the Natural Resources and Environmental Protection Affairs Standing Committee shall follow up, supervise and execute the following functions (FDRE, Regulation No. 3/2006, Art. 167):

1. the development and utilization of energy as well as the supply, development and distribution of electric power;
2. to preserve and conserve the nation's natural resources;
3. to ensure sustainable development while preserving environmental integrity;
4. the effective implementation of policies, laws, strategies, programmes and plans adopted to preserve natural resources and protect the environment.

Following the above stipulation, the FEPAE submits quarterly report to the Natural Resources and Environmental Protection Affairs Standing Committee; however, an official from this Standing Committee revealed that the Authority has never submitted a report which manifest any actual and/or potential problem in respect to its rule making mandate (personal communication, January 20, 2010).

Finally, for the FEPAE have the duty to prepare, review and update, or as necessary cause the preparation of environmental policies, strategies and laws in consultation with the competent agencies, other concerned organs and the public at large and upon approval, monitor and enforce their implementation (FDRE, Procl. No. 295/2002, Art. 6(2), it is a pressing need to take practical cases and give a passing remark on it. In this regard, even if it is unusual for Civic Society Organizations to prepare draft laws and submit it to the FEPAE, currently the researcher found two attempts. The first one is MELCA Mahber's a pioneer attempt in the preparation and submission of a draft EIA Proclamation to the FEPAE to be evaluated by the Environmental Council. Inspite of this, it is indicated that practically three months have been lapsed even without any letter of response. According to a key informant from Melca Mahiber, the draft is not welcomed possibly because it was done at the time the power to review EIA has been delegated to sectoral institutions, or it is because they felt as if it is taking their mandate(personal communication, March 3, 2010). And the second one is the attempt made by the preparation of a draft Code of Practice for Sustainable Flower Production (EHPEA, 2007). According to an interviewee from EHPEA the objective of this document is to have continuous and responsible management of the environment (personal communication, March 12, 2010). Furthermore, he indicated that it is on process to be approved by the Council of Ministers of the FDRE.

In a nut shell, the theoretical and practical analysis indicates the extension of the mandate of the EC to the extent of review and approval of directives, guidelines and environmental standards is

not in line to the principle of delegated legislation which requires, among other things, technical expertise than political will, availability of time and flexibility. Furthermore, for the rules made by the EC are backed by the laws promulgated by the HPRE, they can be enforced without expecting any calculated weight that emanate from the very composition of the EC.

4.2.3 Rule Making Procedure of the Environmental Council of the FEPAE

The Environmental Council has the power to review and approve directives, guidelines and environmental standards prepared by the FEPAE and to realize these responsibilities (FDRE, Procl. No 295/2002, Arts 9(3) & 10):

1) The Council shall hold its regular meetings once every six months, but it may also, at any time, hold extraordinary meetings whenever deemed necessary.
2) There shall be a quorum when a simple majority of the members are present
3) Decisions of the Council shall be passed by a majority vote and, in case of a tie, the Chairperson shall have a casting vote
4) Without prejudice to the provisions of this Article, the Council may draw up its own rules of procedure

In line with the Environmental Protection Organs Establishment Proclamation, it is important to note that the Conservation Strategy of Ethiopia calls the EC to meet at least twice a year (FDRE, 1997b, p.29).

Following the above policy and legal commitment, the Environmental Council, on the basis of its mandate (FDRE, Procl. No.295/2002, Art. 10(4)), has issued the Rules of Procedure for the Meetings of the EC (FEPAE, 2008b, Art. 3). Generally speaking most of the provisions are in conformity to the direction set in the policy and Environmental Protection Organs establishment. Inspite of its general conformity, the provision in respect to regular meeting of the EC is anomalous with the time bound in the Environmental Protection Organs Establishment Proclamation and Environmental Policy. That is, while (FDRE, Procl. No 295/2002, Art. 10(1)) the policy and the Environmental Protection Organs Establishment Proclamation calls the Council shall hold its regular meetings once every six months, but it may also, at any time, hold extraordinary meetings whenever deemed necessary, the Environmental Council has issued Rules of Procedure that limits the Environmental Council to have regular meeting only once a year, but

it may also, at any time, convene extra-ordinary meeting whenever deemed necessary (FDRE, 2008b, Art. 7(1)).

Having the discrepancy, the literature review indicate that to assert the existence of quality in rule making, the rules have to reflect perfectly the statutory purposes they are to implement and to promote these legislative objectives in the most effective and efficient manner possible (Kerwin, 1994, p.96). Therefore, it is a pressing need to verify whether the act of the EC have quality of rule making to limit the regular meeting or not. To address this issue primarily it is important to note that the time bound for regular meeting in the policy and Environmental Establishment Proclamation are mandatory provisions rather than optional. So much so that, for they are at the highest hierarchy of laws and for the provisions are mandatory, they would necessarily prevail over the directive of the Environmental Council. For this very reason, legally speaking, the limitation set on the regular meeting of the Environmental Council ultra virus.

Practically, inspite of the fact that environment is dynamic and demanding, the Environmental Council has convened only twice in the last seven years and it have not ever called extraordinary meeting (Anonymous, personal communication, March 3, 2010).

When we come back to the nitty-gritty of the Rules of Procedure for the Meeting of the Environmental Council, the Council may designate a subsidiary body to submit expert opinion to it (FEPAE, 2008b, Art. 5(1)). Practically, it has not yet designated a subsidiary body with technocrats.

In case of public participation, the Directive nowhere addressed the issue of mechanism of public participation in the rule making of the Environmental Council; practically, however, public participation is done through in-house-review, and workshop which may not be full-fledged to have meaningful grass root public participation. Inspite of this, it is important to notice that the credibility and standing a rule enjoys with those who will be regulated by it or enjoy the benefits it bestows depends heavily on the accuracy and completeness of information on which it is based; and this is possible only when agencies relay on the public for much of the information they need to formulate rules. Therefore, if participation is hampered by hostility, intransigence, secrecy, or

incompetence on the part of the agency, the rule will be deprived of information that is crucial in establishing its authority with the affected community (Kerwin, 1994, p.96). As a result, this approach may result in top-down rule making which could ultimately lack legitimacy and legal penetration (Anonymous, Personal Communication, March 17, 2010).

In respect to formal requirements in the issuance of directives, practically it is witnessed that the Directive Issued to Determine Projects Subject to EIA have not yet signed by the Chairperson, and have no effective date (FEPAE, 2008a); and the Rules of Procedure for Meetings of the Environmental Council have effective date but not the signature of the Chairperson (FEPAE, 2008b). Furthermore, in both cases, it is clear that publication is unacknowledged problem (Anonymous, Personal Communication, March 17, 2010).

Taking cognizance of the problems of the Environmental Council, the National Workshop on Institutional Linkage of Sectoral Environmental Units at Federal and Regional Level has issued a resolution that calls for the exertion of pressure on the Environmental Council by the concerned parties to exercise its mandate which is pivotal in the protection of the environment (Melca Mahiber, 2009)

In a nut shell, the FEPAE is delegated to review and approve directives, guidelines and environmental standards. And, to realize this mandates the EC of the FEPAE is bound to hold its regular meeting once every six month and whenever deemed necessary to have extraordinary meeting. Practically, however, the Environmental Council hardly respects the time and procedure set in the rule making power and, in turn, it has failed to have the necessary directives, guidelines and environmental standards.

4.3 Environmental Impact Assessment Review Mandate of the FEPAE: the Law and the Practice

In line to the specific objectives of the research, this section is devoted to the law and practice of Environmental Impact Assessment mandate, institutional framework, and procedure of the FEPAE.

4.3.1 Environmental Impact Assessment Review Power of the FEPAE

The preamble of the EIA Proclamation primarily indicate that EIA is used to predict and manage the environmental effects which a proposed development activity as a result of its design setting, construction, operation, or an ongoing one as a result of its modification or termination, entails and thus helps to bring about intended development. Secondly, it depicts that assessment of possible impacts on the environment prior to the approval of a public of a public instrument provides an effective means of harmonizing and integrating environmental, economic, cultural and social considerations into decision making process in a manner that promotes sustainable development. Thirdly, it reveals that the implementation of environmental rights and objectives enshrined in the Constitution would be fostered by the prediction and management of likely adverse environmental impact, and the maximization of their socio-economic benefits. Finally, it pin pointed that EIA serves to bring about administrative transparency and accountability as well as to involve the public and, in particular, communities in the planning of and decision making on development which may affect them and its environment (FDRE, 2002, Procl. No. 299/2002, the Preamble).

As a reflection of the preamble, Environmental Impact Assessment means the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument (FDRE, 2002, Procl. No. 299/2002, Art. 2(3)).

In line with the definition, the primary objective of EIA is to ensure that impacts of projects, policy and programs, etc are adequately and appropriately considered and mitigation measures for adverse significant impacts incorporated when decisions are taken (FEPAE, 2004, p.6).

Consequently, EIA serves to bring about administrative transparency and accountability, popular participation in planning and decision taking on development that may affect the communities and their environment, and sustainable development (FEPAE, 2004, p.6).

And, the core values of EIA are (FEPAE, 2004, p.6):

1. Sustainability: the EIA process should result in sustainable development by establishing long-term environmental safe guards
2. Integrity: the EIA process will confirm to agreed and established requirements.
3. Utility: the EIA process will provide balanced, credible information for decision making.
4. Equity: the EIA ensures fairness in the distribution of costs and benefits

To realize these core values, in addition to the offences and penalties are provided in the EIA Proclamation, the Criminal Code of the FDRE (FDRE, Procl. No. 414/2004, Art. 521) stipulated that:

> Whosoever, without obtaining authorization from the competent authority implements a project on which an environmental impact assessment is required by law, or makes false statements concerning such assessment, is punishable with simple imprisonment not exceeding one year

In line to its objective and mission, the FEPAE, being sector neutral (FDRE, 1997b, p.30 (4.2.1(70))), is bestowed with the power and duty to (Procl No 295/2002, Art. 6(3)) establish a system for EIA of public and private projects, as well as social and economic development policies, strategies, laws, and programmes.

Parallel to the establishment of EIA system, the law clearly spelt out that no person shall commence implementation of any project that requires EIA without the authorization of the FEPAE (FDRE, Procl. No. 299/2002, Art. 3(1)). To realize this objective, the FEPAE reviewing is conducted at various stages in the EIA process. This includes reviewing of:

1. Screening of Report
2. Scoping Report
3. Terms of Reference
4. Environmental Impact Assessment Report
5. Performance (Monitoring or Audit) Reports at different stages in the project cycle

Following this mandatory provision, the FEPAE, after evaluating an EIAR by taking in to account any public comments and expert opinions, with in fifteen working days have the power to (FDRE, Procl. No.299/2002, Art. 9(2)):

1) Approve the project without conditions and issue authorization if it is convinces that the project will not cause negative impacts;
2) Approve the project and issue authorization with conditions that must be fulfilled in order to eliminate or reduce adverse impacts or reduce adverse impacts to insignificance if it is convinced that the negative impacts can be effectively countered, or
3) Refuse implementation of the project if it is convinced that the negative impacts cannot be satisfactorily avoided

Furthermore, if an unforeseen fact of serious implication is realized after the submission of an environmental impact study report, the FEPAE, as may be appropriate, order the EIA to be revised or to be redone in order address the implication (FDRE, Procl. No.299/2002, Art. 11).

Finally, the FEPAE have the mandate to monitor the implementation of an authorized project in order to evaluate compliance with all commitments made by, and obligations imposed on the proponent during authorization (FDRE, Procl. No.299/2002, Art. 12(2). Accordingly, when the proponent fails to implement the authorized project in compliance with the commitments he entered into or obligations imposed upon him, the FEPAE may order him to undertake specified rectification measure (FDRE, Procl. No.299/2002, Art. 12(2)).

In respect to review arrangement, the Draft EIA Proclamation provides an option for expedient review process. According to this Draft law (Melca Mahiber, 2010, Art. 19(2)):

a) The Authority or the Regional Environmental Agency may use or recruit an independent and eligible party or establish a panel of experts drawn from key sector agencies, non governmental agency or civil society as deemed necessary and appropriate in order to expedite the review process;
b) The Authority or the Regional Environmental Agency will determine the cost of review on a case by case basis. All the costs necessary to review the report shall be borne by the proponent;
c) The Authority or the Regional Environmental Agency shall prepare detail guidelines for the review, the determination of the cost and recruiting of reviewers.

Having the above general orientation of EIA, currently the Reporter News Paper issued the controversial nature of the delegation of the power to review EIA to sectoral institutions by the FEPAE (Fekadu, 2010, p.10). Moreover, the Draft Business Processing and Re-engineering of the FEPAE follows the same direction (FEPAE, 2010, BPR). For this very reason, it high time to have a passing remark on the issue of delegation in the next section.

4.3.2 Environmental Impact Assessment Review Power Delegation of the FEPAE

The provisions in EIA Proclamation explicitly and implicitly depicted the fact that FEPAE, being sector neutral (FDRE, 1997b, p.30 (4.2.1(70))), is the one that has the mandate to review EIAR within its jurisdiction. Currently, starting from November 14/2009, however, the FEPAE, on the basis of the decision of the Council of Ministers of the FDRE, has delegated the power to review EIAR to Sectoral Institutions (FEPAE, 2009, Letter of Delegation), particularly to:

1. Ministry of Water Resources
2. Ministry of Agriculture
3. Ministry of Trade and Industry
4. Road and Transport Authority
5. Ministry of Mines and Energy
6. Ministry of Transport
7. Ministry of Health

For the act is novel, it is a pressing need to verify the viability of the delegation by going through the nitty-gritty of following issues:

1. Whether the Power to Review EIAR by the FEPAE is Delegable or not

To start with the literature, certain can be carried out by others, but the same is not true when it comes to judicial or quasi-judicial functions, the delegation of which could be undermining the purpose of the statute (Leyland & Woods, 2003, p.308).

Having the above points as a benchmark, initially, it is important to note that one of objectives of the guiding principles of the CSE, and the preamble of the Environmental Protection Organs Establishment Proclamation is avoiding conflict of interest by assigning responsibilities to separate organizations for environmental and natural resource development, and management activities on the one hand, and environmental protection, regulation and monitoring on the other. Accordingly, the FEPAE, being sectoral neutral (FDRE, 1997b, p.30 (4.2.1(70))), has been given the mandate on environmental protection, regulation and monitoring.

Furthermore, this position is reiterated in the EPE which clearly stipulated that (FDRE, 1997a, V, 5.1., f, p.26):

> Where government's own development activities are controlled by laws and regulations, the monitoring of such laws and regulations to ensure compliance of specific ministries and other government entities should be carried out by the government organization responsible for environmental protection and regulation.

Taking the above policy direction as a benchmark, the EPE, and the EIA Proclamation clearly stipulated that the key objective of EIA is bringing about sustainable development (FDRE, Procl. No 299/2002, the Preamble); and as a logical extension of this objective, the FEPAE, for being it is sector neutrality, has been given the mandate to review EIAR and, when working out a compromise, to err on the side of caution, with the objective to bring about the intended development (FDRE, Procl. No 299/2002, Art. 4(2).

When we come back to the issue of delegation, in principle the FEPAE is expected to exercise its powers and duties; however, it has the power and duty to delegate some of its powers and duties, as it may be deemed appropriate, to other agencies (FDRE, Procl. No.295/2002, Art.6 (24)). Having this in mind, the issue that has to be addressed at this juncture is whether the delegation the power to review EIAR falls within the exceptional discretion of the FEPAE to delegate its power or not?

According to one official of the FEPAE the power to review EIAR is core power of the FEPAE, so much so that by its very nature the power to review EIAR is not delegable (personal communication, November 4/2009). In contradiction to this position, another official of the FEPAE, argue that the power to review EIAR is Constitutional mandate of the sectoral institutions, for this very reason it is even unconstitutional for the FEPAE to review EIAR (personal communication, March 9, 2010).

Inspite of different dimensions of understanding the subject matter, for it is no where indicated in the FDRE Constitution and for it will be a delegation a power of what it does not have, the argument does not hold water.

Finally, it can be safely said, for sector neutrality is the rationale for the delegation of the power to review EIAR to the FEPAE; the delegation of the power to review EIAR to sectoral institutions that have vested interest would anomalous to the intension of the HPRE.

2. The Legality of the Procedure of Delegation of the Power to Review EIAR to Sectoral Institutions

Literatures indicate that the decision maker upon whom the discretion is conferred must also be the one to exercise the discretion. The exercise of the discretion may not be sub-delegated to an authorized third party; nor effectively surrendered by being exercised at the instruction of a third party. To do so would be a surrender of the discretion itself (Sttot & Felix, 1997, p. 60).

In line the literature review, the Environmental Protection Organs Establishment Proclamation has given the FEPAE the powers and duties to delegate some of its powers and duties, as it may be deemed appropriate, to other agencies (FDRE, Procl. No. 295/2002, Art. 6(24)).

Practically, however, the FEPAE has delegated the power to review EIAR to Sectoral Environmental Units of competent Agencies on the basis of the decision of the Council of Ministers of the Federal Democratic Republic of Ethiopia. According to one official of the FEPAE, the delegation is made by the Council of Ministers of the Federal Democratic Republic of Ethiopia to exert pressure on Sectoral Institutions which may not be willing engage in this activity (personal communication, March 9, 2010).

This means the FEPAE, inconsistent with Article 16(2) of the EIA Proclamation (FDRE, Procl. No 295/2002), has surrendered its discretion to the Council of Ministers of the FDRE.

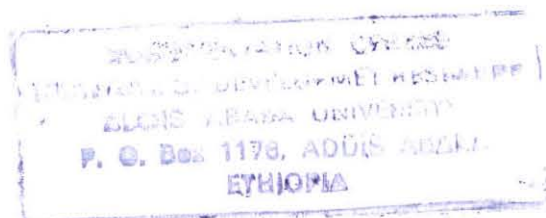
3. The Appropriateness of the Delegation of the Power to Review EIAR to Sectoral Environmental Units

To verify the appropriateness or not of the delegation of the power to review EIAR to Environmental Units, it is a pressing need to deal with their mandate.

To start with the mandate of Sectoral Environmental Units, the Environmental Protection Organs Establishment Proclamation stipulated that (FDRE, Procl. No 295/2002, Art. 14):

> Every competent agency shall establish or designate an environmental unit that shall be responsible for coordination and follow-up so that the activities of the competent agency are in harmony with this Proclamation and with other environmental protection requirements.

The very reading of this article clearly indicates that mandate of the environmental units is internal auditing of sectoral institutions rather than review of EIAR. Accordingly, the coordination and follow-up of Sectoral Environmental Units shall be subject to external auditing by the FEPAE (Anonymous, personal communication, November 4, 2009).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Furthermore, it is important to note that the Environmental Policy of Ethiopia, with the objective to avoid conflict of interest, calls for an EIA procedure to have an independent review before a consideration by decision makers (FDRE, 1997a, p. 23 (4-9 (C)). So much so that, the delegation would be contradictory to the policy in that the delegation is to Sectoral Environmental Units which are part and parcel of the sectoral institution that have vested interest and inevitable conflict of interest.

4. The Present Output of the Delegation of the Power to Review EIAR to Sectoral Environmental Units

Following the issuance of the letter of delegation to specified sectoral institutions with a scope of the power of review of EIAR, the sectoral institutions have forwarded a number issues that have to be provided and elaborated by the FEPAE which in one way or another reveal the fact that there is absence of clarity, and preparation to that effect (Ministry of Mines and Energy, 2009, Response Letter).

In the letter of delegation, the respective Sectoral Environmental Units of sectoral institutions are bound to send copy of the reviewed EIAR quarterly to the FEPAE (FEPAE, 2009, Letter of Delegation, Art. 1(4)). Practically, following the delegation, it is comes to be overt that inspite of the fact that some sectoral institutions start to act in line to the delegation, currently, it is witnessed that there is no sectoral environmental unit which has yet reported the review of EIAR to the FEPAE. Furthermore, in case it is requested by international organizations, the sectoral institutions directly send the EIAR to be reviewed by the FEPA (Anonymous, personal communication, November 4, 2009).

In this regard according to the Representative of World Bank, for it is technical, the delegation of the power to review EIAR to environmental units of sectoral institutions should gladden the people's heart. In his understanding this is so if the delegation of the power to review EIAR by environmental units of sectoral institutions is only to take advantage their specialization, by maintaining a post review case by case approval by the FEPAE. If not, for sectoral institutions it

would be just like "playing football and being themselves a referee", and in turn it would be subject to conflict of interest (personal communication, March 25, 2010).

According to another key informant from the World Bank, since the Environmental Impact Assessment Proclamation clearly stipulates a duty on proponents to undertake EIA and submit to the FEPAE, the letter of the FEPAE is a reminding letter to sectoral institutions rather than delegation (personal communication, March 25, 2010)..

Furthermore, in the opinion of a key informant from the World Bank, what the Bank is not happy with is that while the delegation should have gone parallel capacity of the sectoral institutions, it is made to sectoral institutions, with the exception of EPCO and the Ethiopian Road Authority, which have no even environmental units, and zero capacity on the side of the sectoral institutions. So much so that, to have effective EIAR, the final say on each case, that is, the post review approval should be maintained in the FEPAE rather than the sectoral institutions which have vested interest in the case that would inevitably result in conflict of interest (personal communication, March 25, 2010).

Furthermore, it is important to note that any law or practice inconsistent with this Proclamation is inapplicable regarded matters provided therein (FDRE, Procl. No. 299/2002, Art. 21).

Finally, inspite of the fact that the objective (FEPAE, 2009, Preamble of the Letter of Delegation) of the delegation of the power to review EIA to sectoral institutions is to inculcate facilitated EIAR mechanism, the above issues are evident indicatives for the need to fine tune the mechanism.

In a nut shell, the delegation of the power to review EIAR to sectoral institutions that have vested interest could in one way or another have negative externality in the protection of the environment which is an integral part of sustainable development.

4.3.3 Institutional Arrangement of Environmental Impact Assessment Review in the FEPAE

The FEPE with the objective to realize its mandates in the EIA Proclamation and other legal instruments have established EIA Department with EIA Team. Furthermore, to have an effective EIAR, it is a must to have a team with interdisciplinary composition.

In the Environmental Impact Assessment Team arrangement is expected to be composed of the head of the department, industrial expert, agricultural expert, mining expert and civil engineer. Currently, however, no engineer has yet assigned; and the position of mining expert, at the moment, is vacant (Anonymous, personal communication, November 4, 2009).

Institutional wise, according to him, the EIA Department of the FEPAE to gather reflections from different perspectives distribute hard copies and an electronic copy of EIA Studies to the:

1. Pollution Department
2. Eco-system Department
3. Legal and Policy Department
4. Social and Economic Department [Currently there is no]
5. Gender [Currently there is no]

Furthermore, he indicated that, when there is a need, the EIA department distributes a copy of the environmental impact assessment to:

- Civil Society Organizations
- Regional Environmental Agencies
- Ministry of Agriculture
- Institute of Biodiversity Conservation

Finally, according to a key informant from the FEPAE, to have a full-fledged Environmental Impact Assessment Team, the composition should encompass (Anonymous, personal communication, November 4, 2009):

1) Environmental Economist;
2) Risk Assessment Expert;
3) Environmental and Health Expert;
4) Environmental and Policy Law Expert;
5) Technological Impact Assessment Expert
6) Laboratory Expert

According to him, the gap in the EIA Team of the FEPAE could be practically alleviated by and through designing a lee way in the institutional arrangement that accommodates the out sourcing of EIAR to panel of experts (Anonymous, personal communication, November 4, 2009).

4.3.4 Environmental Impact Assessment Review Procedure of the FEPAE

The purpose of review is to examine and determine whether the EIA-report is an adequate assessment of the environmental effects and of sufficient relevance and quality for decision making in line to the principle of sustainable development.

In line to the above indicated objective, initially a proponent is required to appoint an eligible independent consulting firm who shall seek to undertake environmental impact assessment (FEPAE, 2004, p.7). The Consulting Firm has to be an institution that command the required qualified professional working group that has demonstrated the ability to under EIA, and meets the requirements specified under the relevant law. In line with this they have to fulfill that they are legally registered and licensed to conduct environmental impact assessment (FEPAE, 2004, 6.3, p.17-18). Practically, there is no law which governs the registration and licensing of impact assessment consulting firms (Anonymous, personal communication, November 4, 2009).

The FEPAE in case of consulting firms, to avoid conflict of interest, has issued a circular that prohibits the participation of the Federal and Regional Environmental Agencies in environmental impact assessment study (FEPAE, 2008, Circular). Furthermore, this position is reiterated in the delegation letters of review of EIA to sectoral institutions by adding the workers of the sectoral institutions (FEPAE, 2009, Letter of Delegation, Art. 1(2)).

Five hard copies and an electronic copy are submitted to the relevant reviewing authority. Then after, the EIA Department distributes these copies to Pollution Department, Eco-system Department, Legal and Policy Department, Social and Economic Department [Currently there is no], and Gender [Currently there is no] (Anonymous, personal communication, November 4, 2009).

Furthermore, when there is a need, the Environmental Impact Assessment Department distributes a copy of the environmental impact assessment to NGO's, Regional Environmental Agencies, Ministry of Agriculture, and Institute of Biodiversity Conservation.

Once the proponent prepares the EIA, it shall ensure that the environmental impact of his project is conducted and the environmental impact study report prepared by experts that meet the requirements specified under any directive issued by the FEPAE (FDRE, Procl. No 299/2002, Art.7 (2)).

Furthermore, to bring about the legal penetration of Public Participation the FEPAE shall make any environmental impact study report accessible to the public and solicit comments on it. Following this, it shall ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated by in to the environmental impact study report as well as in its evaluation (FDRE, Procl. No 299/2002, Art. 15).

Finally, an environmental impact study report that is submitted to the FEPAE for review shall include a brief statement summarizing the study in non-technical terms as well as indicating the completeness and accuracy of the information given in the study report And, the FEPAE shall,

after evaluating an environmental impact study report by taking in to account any public comments and expert opinions, within 15 working days approve without/ with condition or refuse the implementation. (FDRE, Procl. No 299/2002, Art. 9).

In line to any of the decision of the FEPAE, any other authorizing or licensing agency shall, in tandem with the its decision to suspend or cancel any authorization to implement a project, suspend or cancel the license it may have issued in favor of the project (FDRE, Procl. No 299/2002, Art. 12(3)). However, if an unforeseen fact of serious implication is realized after the submission of an environmental impact study report, the FEPAE may, as may be appropriate, order the EIA to be revised or to be redone in order to address the implication (FDRE, Procl. No 299/2002, Art. 11).

At this juncture, it is important to notice that approval of an environmental impact study report or the granting of authorization by the FEPAE does not exonerate the proponent from liability for damage (FDRE, Procl. No 299/2002, Art. 3(4)). That is, there is strict liability and the proponent, in case when there is damage to the environment, would not be subject to criminal liability but to civil liability. However, if the proponent the one who does not initially conduct EIA, he would be subject to both civil and criminal liability (FDRE, Procl. No 299/2002, Art. 18(1)). However, exemption from liability shall be granted only when it is verified that it is the victim himself or a third party for whom the proponent is not responsible that has caused the damage (FDRE, Procl. No 299/2002, Art. 3(5)).

Furthermore, it is important to note that the authorization of an environmental impact study report shall expire if the project has not been implemented according to the time frame set during its authorization. However, any proponent, who wishes to challenge the appropriateness of this provision to his project, may submit an application to that effect to the FEPAE, as may be appropriate. And the FEPAE, within 30 days from the receipt of an application, shall, unless special circumstance so dictate, decide whether to extend the validity of the report or to order the revision or the redoing of the EIA (FDRE, Procl. No 299/2002, Art. 10).

To cross-check the realization of EIA, the FEPAE shall monitor the implementation of an authorized project in order to evaluate compliance with all commitments made by, and obligations imposed on the proponent during authorization. When the proponent fails to implement the authorized project in compliance with the commitment he entered into or obligation imposed upon him, the Authority may order him to undertake specified rectification measure (FDRE, Procl. No 299/2002, Art. 12).

Finally, following the decision making process, in case when any person dissatisfied with the authorization or monitoring or any decision of the FEPAE regarding the project may submit a grievance notice to the head of the FEPAE, as may be appropriate. And, the decision of the head of the FEPAE shall be issued within 30 days following the receipt of the grievance (FDRE, Procl. No 299/2002, Art. 17).

4.3.5 FEPAE's Environmental Impact Assessment Review, and its Functional Linkage with Licensing, and Fund Raising Institutions

In this section issues in respect to the institutional linkage of the FEPAE in the realization of EIAR as a precondition for investment permit and fund raising will be addressed taking in to consideration specific cases that have drastic legal and practical implication on the fate of EIA in the protection of the environment.

A. Functional Linkage of the FEPA and the Investment Agency of Ethiopia in the Realization of Environmental Impact Assessment

Any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that the Authority or the relevant regional environmental agency has authorized its implementation (FDRE, Procl. No 299/2002, Art. 3(2)).

Furthermore, when the proponent fails to implement the authorized project in compliance with the commitment he entered into or obligation imposed upon him, the Authority or the relevant regional environmental agency may order him to undertake specified rectification measure.

Accordingly, any other authorizing or licensing agency shall, in tandem with the Authority's or the relevant environmental agency's decision to suspend or cancel any authorization to implement a project, suspend or cancel the license it may have issued in favor of the project (FDRE, Procl. No 299/2002, Art. 12(2) & (3)).

In line with the above stipulation, any person engaged in a commercial activity shall submit to the appropriate Authority application for business license by completing the application form prescribed by the Regulation. On the basis of the requirements set by the directives of the relevant government institution for the commercial activity for which the license is applied for, the applicant shall submit as appropriate, all or part of the information indicated below together with his application referred to under sub-Article (1) of this Article: Certification of professional qualification and statements related to the commercial activity's health and sanitary conditions, environmental protection and safety measures from the concerned government institutions. Furthermore, a statement signed by the applicant regarding his compliance with all other requirements pertaining to the business license (FDRE, Procl. No 67/1997, Art. 22(1&2)). And, in respect to suspension of business license (FDRE, Procl. No 67/1997, Art. 26(a)):

> 1) The Appropriate Authority may, until such time as the shortcomings indicated below are rectified, suspend a business license, where the license holder:
>
> a) has failed to maintain the standards of health and sanitary conditions, environmental protection, safety measures and the quality of his product or service, as confirmed by the concerned government; institution

In the past, according to a key informant from the FEPAE, the Investment Agency in its one window shopping was facilitating the fulfillment of environmental conditions by taking prior opinion of the Environmental Protection Authority as an agent of the investor (personal communication, November 4, 2009). According to an official from the Investment Agency, however, the checking power was given to the Investment Agency and the Investment Agency were reviewing projects by its Project Evaluation Team which has, among other things, environmental experts. And, finally, even if the FEPAE had no power, it had the tradition to request comment from the FEPAE (personal communication, January 8, 2010). This

understanding, however, directly contradicts with the Environmental Impact Assessment Proclamation which stipulates (FDRE, Procl. No. 299/2002, Art. 3 (3)):

> Any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that the Authority or the relevant regional environmental agency has authorized it

Following the above practice, the HPRE has promulgated the Investment Amendment Proclamation which stipulates (FDRE, Procl. No. 373/2003, Art. 7):

> 1. The appropriate investment organ shall, after examining the intended investment activity in light of the Proclamation, Regulations and Directives issued there under within five working days:
>
> a) Issue investment permit upon receipt of the appropriate fee, where the application is found acceptable;
>
> b) Notify to the investor its decision and the reason thereof in writing, where the application is found unacceptable.
>
> 2. The appropriate investment organ shall, after issuing the investment permit, notify the concerned government institutions so that the latter could conduct the necessary follow up.

In line to the Investment Amendment Proclamation, the Investment Agency issued Investment Application Form which calls (Investment Agency, Investment Permit Application Form, Art. 4):

> Every investor is required to abide by the laws and regulations of the country. An investor who submits an application for investment permit will therefore be automatically taken for unconditional commitment to all laws, regulations, directives and specifically those related to the specific investment area.

Furthermore, the Investment Agency in undertaking the business license the person who applied to get business license is bound to respect the relevant laws of the land and in particular (Investment Agency, Business License Application Form):

> 1. The Investment Law,
> 2. The Commercial Code and, Commercial Registration and Business Licensing Proclamation, and
> 3. The requirements set by the relevant government institutions for the commercial activity for which the license is applied for, pertaining to:

- Professional qualification/ Certificate of competence
- Health and sanitary conditions
- Environmental protection
- Safety measure, and
- Other requirements

Following the enactment of the Investment (Amendment) Proclamation, and the issuance of Investment and Business Application Forms, a presumption is taken by the Investment Agency that the investors know and comply with the legal preconditions of the law of the land. However, according to key informant from the Investment Agency for the sake of necessary follow up the Investment Agency after issuing the investment permit notify the concerned government institutions (Anonymous, personal communication, January 8, 2010). Furthermore, it has to be noted that the role of the Investment Agency culminates at the Investment Phase, and the permit is all about the intent of the investor to invest in priority areas there is no way by which the Investment Agency could suspend or cancel the license it has issued in tandem with the decision of the FEPAE. Put it differently, even if the FEPAE have not yet raised such practical case, since the Investment Agency's issuance of investment permit is nothing but simply the legalization of political promise to investors in priority area, there is no way to cancel the investment permit (Anonymous, personal communication, January 8, 2010).

Practically, in contradiction to the letter and spirit of the Investment Permit and Business Licensing Form, which calls for the fulfillment of the necessary legal requirements in the law of the land, it is evident that the Investment Agency is not in position to cross-check the compliance or non-compliance of the investors (Anonymous, personal communication, November 4, 2009). For this very reason and the weak monitoring and implementation institutional machinery of the Environmental Protection Authority, the environmental impact assessment fails to be a precondition to the issuance of an investment permit or a trade or an operating license for any project (Anonymous, personal communication, November 4, 2009).

B. Functional Linkage of the FEPAE with the Development Bank of Ethiopia, and the World Bank in the Realization of the Environmental Impact Assessment

The EIA Proclamation provides nothing in respect to the roles and responsibilities of national and international financial institutions (FDRE, Procl. No.299/002). However, the Draft EIA Proclamation (Melca Mahiber, 2010, Art. 9) stipulates that national and international institutions:

a) Shall include in their credit and financial policies the requirements of this proclamation and other applicable laws;
b) Shall release the fund on a phase by phase basis by evaluating the environmental performance of their clients or evaluating the environmental performance of track records of expansion projects;
c) Shall involve in the monitoring and evaluation of the environmental performance of their clients and make the report available to the public;
d) Shall communicate and solicit comments from key stakeholders in financing any development initiative that require the undertaking of environmental assessment;
e) Shall not finance any development initiative that requires the undertaking of Environmental Assessment without prior approval or consent for the implementation by the Authority or Regional Environmental Agency;
f) Shall include as a precondition environmental management and capacity building cost in the credit package

Practically, however, even if there is no binding law to that effect, exceptionally the Development Bank of Ethiopia and the World Bank sets EIA as a precondition for the grant of their fund.

To start with the Development Bank, it is the only local bank which requires EIA as a precondition for project financing. The Policy of the Bank in its Loan Process of Customers sourcing and selection clearly stipulated that (Development Bank of Ethiopia, 2009, Internal Memo) the Bank accepts application form both requited and walk in customers if they fulfill the Bank's loan requirements.

In line with this the Document Required from Applicant to Establish a New Project calls a confirmation letter from concerned government body regarding impact assessment on the surrounding environment ((Development Bank of Ethiopia, 2008, Document Required from Applicant to Establish a New Project).

In line with the above Policy and Checklist, a key informant from the Bank indicated that EIAR is set as a mandatory precondition by the Research Wing and Appraisal Department, and that of the FEPAE (personal communication, March 22, 2010). That is, the bank considers EIA as one of the project viability. In practice, the project financing on the establishment of the project will be released when EIAR is conducted by the Research Wing and Appraisal Department and a confirmation letter is sent from the FEPAE. However, when there is lack of clarity and hesitation on the letter of confirmation by the FEPAE the Bank will have direct contact with the FEPAE. In this regard, in some cases, it happens that the FEPAE fails to have the necessary legal and institutional machinery for EIAR.

Similar to the Development Bank of Ethiopia, a key informant from the World Bank asserted that their bank also set EIA as a mandatory precondition for both private and public projects (personal communication, March 25, 2010).

According to an official from the World Bank, the government (client) shall have the necessary policy, legal and institutional machinery to exercise EIAR (personal communication, March 25, 2010). And, to verify this, the Bank raises three key issues. These are: questioning whether they have the capacity, open space for other partners in doing environment management; and commitment in enforcing what is described in the policy and legislations or not.

On the basis of the above three criteria's, in the opinion of the key informant, the FEPAE (personal communication, March 25, 2010):

1. Does not have the necessary staff to manage EIA for a country with a population more than 80 million and large area coverage. To be efficient they need to have the necessary training and capacity building on the quantity and quality of the staff members.
2. In respect to partnership he is not seeing many actors engaged in environmental management. In short, all the actors do not have serious space in the environment management.
3. In case of enforcement he is not aware of any prosecution by the FEPAE in the last two years. As to me somebody should be in default. So this is one proxy that possibly shows things are not in the right truck.

4.4 Complaints Adjudication of the FEPAE: the Law and the Practice

This section is devoted to the mandate, institutional arrangement, and procedure of adjudication of complaints of the FEPAE in case when there is actual/potential damage to the environment. To this effect practical cases are consulted with the objective to have full-fledged picture of the law in book and the law in action of the same.

4.4.1 Complaints Adjudication Power of the FEPAE

In principle no person shall pollute or cause any other person to pollute the environment by violating the relevant environmental standard (FDRE, Procl. No 300/2002, Art. 3(1)).

To realize this, in general, the Criminal Code of the clearly stipulated that (FDRE, Procl No.414/2004, Art. 519):

1) Whosoever, in breach of the relevant law, discharges pollutants in to the environment, is punishable with fine not exceeding ten thousand Birr, or rigorous imprisonment not exceeding five years.
2) Where the pollution has resulted in serious consequences on the health or life of persons or on the environment, the punishment will be rigorous imprisonment not exceeding ten years.

And, in particular, Article 3 of the Pollution Control Proclamation stipulate that in case when there is any violation of the enabling environmental laws, the FEPAE may take administrative or legal measures against a person who, in violation of the law, release any pollutant to the environment. Accordingly, any person engaged in any field of activity which is likely to cause pollution or any other environmental hazard shall, when the FEPAE so decides, install a sound technology that avoids or reduces, to the required minimum, the generation of waste and, when feasible, apply methods for the recycling of waste. Similarly, any person who cause any pollution shall be required to clean up or pay the cost of cleaning up the polluted environment in such a manner and with in such a period as shall be determined by the FEPAE. Ultimately, when any activity poses a risk to human health or the environment, the FEPAE shall take any necessary measure up to the closure or relocation of any enterprise in order to prevent harm.

Practically, with the exception of the case APAP (APAP, 1998), neither the FEPAE nor any person has been invoked violation of the relevant environmental standards. For this very reason, the FEPAE have never been entertained a case and employed its administrative powers to take corrective measures (Anonymous, personal communication, March 17/2010).

In line with the above facts, a representative from the World Bank also witnessed that he is not aware of any prosecution by the FEPAE in the last two years. This does not mean that no one is in default in the last two years; rather it is a proxy/indicative that things are not going right in the regulation of free riders in the pollution of the environment (personal communication, March 25/2010).

4.4.2 Institutional Arrangement of Complaints Adjudication in the FEPAE

The FEPAE may take an administrative or legal measure against a person who, in violation of the law, releases any pollutant to the environment (FDRE, Procl. No 300/2002, Art. 3(2)). Furthermore, when there is potential or actual damage to the environment, any person, without the need to show vested interest, have the right to lodge a complaint to the FEPAE (FDRE, Procl. No 300/2002, Art. 11(1)). The close reading of these provisions is demanding for the FEPAE to have an institutional arrangement to adjudicate the complaints.

In respect to the case APAP vs. the FEPAE, complaints are submitted by APAP to the FEPAE. Following this on the basis of the assignment of the Deputy Director the legal department gave its response to the complainant. This implies that in the FEPAE have no institutionalized administrative tribunal rather than adjudication at adhoc basis (Anonymous, personal communication, March 17/2010). This fact is reiterated by an official of APAP (personal communication, November 25/2009). So much so that, the FEPAE is not acting in line to the rationale of delegation, and as a result, it would vulnerable to substantive and procedural ultra virus.

For this very reason, to panacea the gap in the adjudication of complaints, lessons could be taken from the Indian National Environmental Tribunal Act which enacted to attain the following objectives (Shanthakumar, 2007, p. 353):

- To provide strict liability for damages arising out of any accident occurring while handling any hazardous substance;
- To establish a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident;
- To give relief and compensation for damages to persons, property and the environment; and
- To implement the decisions taken at the Rio Conference (UN CED) 1992, to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages

Furthermore, in respect to procedure for claiming compensation, the Act allows application by, among other things, any representative body or organization recognize by central government, functioning in the field of the environment.

Inspite of this the Draft Business Processing and Re-engineering of the FEPAE nowhere indicates the objective to establish quasi-adjudicative tribunal that could handle adjudication of complaints in case when there is actual or potential damage to the environment(FEPAE, 2010, BPR).

4.4.3 Procedure of Complaints Adjudication in the FEPAE

Many national constitutions acknowledge the right to live in a clean and healthy environment. The FDRE Constitution, similarly, stipulated that the government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment (FDRE Constitution, Art. 92(1)). Furthermore, it does provide individuals with a personal right to a clean and healthy environment (FDRE Constitution, Art. 44(1)). It also brings the government and citizens together as having the duty to protect the environment (FDRE Constitution, Art. 92(4) cum 91(2)). In line with the constitutional provisions, the Environmental Pollution Control Proclamation also provides that the protection of the environment in general, and the safeguarding of human health and well-

being, as well as the maintaining of the biota and the aesthetic value of nature in particular, is the duty and responsibility of all (FDRE, Procl. No. 300/2002, Preamble).

The FDRE Constitution provides that (FDRE Constitution, Art. 37):

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 under sub-article 1 of this article may also be sought by:
   B. Any group or person who is a member of, or represents a group with similar interests

The article [37 (2) (b)] is construed to mean the door is wide open for the public to satisfy its needs of access to justice. What this means is that the constitution is in favor of broad, social-issue-oriented employment of the law and its institutions rather than a narrow legalistic approach that makes the law distant from the everyday concern of the society and difficult to access (Fasil, 1997, p.150).

In this way the constitution would work for making the law and the court truly people's law and people's court rather than merely lawyers' law and lawyers' court. Beyond the traditional issues the law and the courts would interest themselves and actively engage in broad social issues, such as ensuring a clean and healthy environment (Fasil, 1997, p.150).

Having the above legal grounds, this researcher believes that, even though the government has the duty to hold, on behalf of the people, land and other natural resources and to deploy them for their common benefit and development (FDRE Constitution, Art. 89), personal action would certainly help in implementing and enforcing environmental laws and could be vital in cases where the government is unwilling to claim damages for injury to the environment.

Accordingly, by stressing the importance of compliance with duties and not only rights, this expansion of the ability to sue will paradoxically build a stronger framework for the protection of individual rights, such as the right to live in a clean and healthy environment.

In line with the above stated conditions of access to justice, principle 10 of the 1992 Rio Declaration and Agenda 21 to which Ethiopia is party supports a role for individuals in enforcing national laws and obligations before national courts and tribunals (Rio Declaration, Principle 10).

According to the Rio Declaration environmental issues are best handled with the participation of all concerned citizens at all levels. At the nation level, each individual shall have appropriate access to information concerning the environment that is held by public authorities and the opportunity to participate in the decision-making process. 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 should, likewise be provided for (Rio Declaration, Principle 10).

In a similar manner to the Rio Declaration, the Environmental Policy of Ethiopia calls for the development of effective method of popular participation in the planning and implementation of environment and resource use and management projects and programmes (FDRE, 1997a, p. 4 (2.2(h))). Furthermore, it calls for the development of necessary legislation, training and financial support to empower local communities so that they may acquire the ability to prevent the manipulated imposition of external decisions in the name of participation, and to ensure genuine grassroots decisions in resources and environmental management (FDRE, 1997a, p. 19 (4.2.(d))).

In respect to the right of access to justice through courts of law, it is clearly spelled out under the 1995 Constitution, where it is specifically provided that every person has the right to bring justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power (FDRE, Procl. No 1/1997, Art. 37(1)).

Furthermore, on the basis of the recently enacted environmental law "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" (FDRE, Procl. No. 300/2002, Art. 11(1)).

On the basis of this provision, the central question for citizen standing is whether a sufficient public injury had taken place as has been alleged to support the claim that the petition was brought in the public interest. So, the citizen suit provision should be read as doing away with the necessity for the normal injury in fact standing allegation. That is, the restrictive view of locus standi and person aggrieved has been supplemented by representative standing and citizen standing.

In environmental proceeding, one of the forces that impelled the liberalization of standing stemmed from the need to check the abuse of environmental authorities in a modern welfare state. In Ethiopia, the objective of environmental authorities is to formulate policies, strategies, laws and stakeholders, which foster social and economic development in a manner that enhances the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of their implementation (FDRE, Procl. No. 295/2002, Art. 5). In line with this, it has also the duty to coordinate measures, to ensure that the environment objectives provided under the constitution and the basic principles set out in the Environmental policy of Ethiopia are realized (FDRE, Procl. No. 295/2002, Art. 6). On the basis of the above objectives and duties of the environmental authorities, we can infer the fact that the authorities are vested with enormous regulatory powers.

In spite of the above regulatory powers vested to the environmental agencies, however, they could delay, miss deadlines, convert mandatory standards to discretionary ones, create loopholes, water down strict statutes, in the regulatory process, or simply refuse to use their enforcement powers when faced with blatant violations (Futel, 1993, p.34).

To curb such instances of environmental authorities lawlessness with diffused impacts, therefore, the HPRE expanded the standing in environmental proceeding to enable every citizen to challenge such environmental authorities inaction or abuse in the interest of the public, though the citizen has not yet sustained personal injury (FDRE, Procl. No. 300/2002, Art. 11(1)).

The Environmental Pollution Control Proclamation, which is the first and prototype for citizen suit, provides that (FDRE, Procl. No. 300/2002, Art. 11(2)):

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> [w]here the authority or regional environmental agency fail to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with decision, he may institute a court case within sixty days from the date the decision was given or the deadline for decision has elapsed.

The article proposes to grant public interest groups a secondary right of standing. Only in cases where the public authorities do not act at all, or not properly, do alert citizens or public interest groups have the right to take legal action. Alert citizens or public interest groups thus must respect the waiting period of thirty days during which the environmental authorities have the exclusive right to take action and decide on the necessity of restoration measures and the extent of measures. In other words, the notice provisions are intended to afford the authority an opportunity to do its job, it is not to frustrate the citizen action's with procedural trickery, and should be construed flexibly and realistically to advance the essential purpose. Finally, when the FEPAE fails to give decision within thirty days or when the person who has lodged the complaint is dissatisfied with in sixty days from the date the decision was given or the deadline for decision has elapsed.

In line with the above points, a vital issue that needs to be understood by any individual or group considering bringing a judicial review is timing. The rule is that an application for judicial review in environmental proceeding must be brought promptly and in any event within sixty days from the date the decision was given or the deadline for decision has elapsed.

Practically, however, with the exception to the case APAP vs. the FEPAE, in the opinion of the researcher, the wide range of administrative powers of the FEPAE and the liberalization of standing in environmental proceeding to public interest litigation remains to be paper tiger. Thus, it could have negative implication in the protection of the environment and in turn in the realization of sustainable development.

4.5 Investigative Mandate of the Environmental Inspectors of the FEPAE: the Law and the Practice

In line to the specific objectives of the research this section is devoted to the law and practice of investigative mandate, institutional framework, and procedure of the Environmental Inspectors of the FEPAE. In this section to properly weigh the practice of investigation of the FEPAE on the ground, at most endeavor is made to have comparative analysis.

4.5.1 Investigative Powers of Environmental Inspectors of the FEPAE

The Environment Protection Organs Establishment Proclamation clearly indicated that the FEPAE have the power and duties to (FDRE, Procl. No 295/2002, Art. 6(15)):

> In accordance with the provisions of the relevant law, enter any land, premise or any other place that falls under the federal jurisdiction, inspect anything and take samples as deemed necessary with a view to discharging its duty and ascertaining compliance with environmental protection requirements.

Furthermore, the Pollution Control Proclamation clearly indicated that the FEPAE shall have the access to all environmental data and information (FDRE, Procl. No. 300/2002, Art. 19(2)).

In other words, the FEPAE has the responsibility to monitor the implementation of an authorized project in order to evaluate compliance with all commitments made by, and obligations imposed on the proponent during authorization (FDRE, 2002, Procl. No. 299/2002, Art. 12). Moreover, when a complaint on pollution has been submitted, it has the responsibility to investigate the case and take measures and notify to the complaint within 90 days (FDRE, 2008, Regulation No. 159/2008, Art. 10(2)). For this very reason, it is a pressing need for the FEPAE to have an institutional arrangement that handles investigation in respect to environmental matters.

The FDRE Constitution clearly stipulated that everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession. Furthermore, the constitution clearly spelt out that

everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunication and electronic devices. Accordingly, public officials shall respect and protect these rights, that is, no restriction may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others (FDRE Constitution, Art. 26).

In 2002, taking the letter and spirit of the FDRE Constitution as a benchmark and giving cognizance to the public interest nature environmental issues, the HPRE promulgated a law which empowers the FEPAE to compel persons to turn over to them information within their possession through assignment of Environmental Inspectors who can enter any land or premises at any time which seems appropriate to them without prior notice or court order, that is, when notification to the proprietor is prejudicial to the efficient performance of their duty (FDRE, Procl. No.300/2002, Art. 8(1) (b) & (6)).

As a logical extension of the above legal orientation, primarily any person engaged in an activity shall provide any information on his activity as required by the FEPAE and the FEPAE shall have access to all environmental data and information (FDRE, Procl. No.300/2002, Art. 19). To have pragmatic application of this mandate, inspectors are legally empowered to enter any land or premises at any time which seems appropriate to them without prior notice or court order. However, when an inspector visits an undertaking, he shall notify the proprietor unless he considers that such notification may be prejudicial to the efficient performance of his duty.

It is essential that inspectors have adequate powers of entry and inspection in order to ensure compliance with licenses granted and also to identify instances where processes are being carried on without the appropriate license; and to have the power to take corrective measures up to the immediate cessation of the activity (FDRE, Procl. No.300/2002, Art. 8(1) (b) & (3) (6)).

At this juncture, to have a clear picture of the scope of the power of Environmental Inspectors, it important to give a passing remark on the search power of police under the Ethiopian legal

system. In this regard, the Criminal Procedure Code envisages that no premise may be searched unless the police officer of members is in possession of a search warrant (Imperial Ethiopian Government, Procl. No.185/1961, Art. 32). And for the search warrant is issued by any court, no search warrant is issued unless the court is satisfied that the purpose of justice or of any inquiry, trial or other proceedings will be served by the issuance of the warrant (Imperial Ethiopian Government, Procl. No.185/1961, Art. 33(1)). Furthermore, it is important to note that every search warrant issued specifies the property to be searched for and seized. So much so that no investigating police officer or member of the police may seize any property other than those specified in search warrant (Imperial Ethiopian Government, Procl. No.185/1961, Art. 33(2)). The two exceptions to the rule are when the investigation related to offenders in hot pursuit, and when information is given to a police that shows there is reasonable cause for suspecting that articles which may be material as evidence in respect of which an accusation or complaint has been made and the offence is punishable with more than three years of imprisonment are concealed or lodged in any place and the police has good grounds for believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed (Imperial Ethiopian Government, Procl. No.185/1961, Art. 32(2)(b)). Finally, in case of investigation, the Criminal Procedure Code stipulated that unless otherwise expressly ordered by the Court, searches shall be carried out only between 6 A.M. and 6 P.M. (Imperial Ethiopian Government, Procl. No.185/1961, Art. 32(2) (5)).

From the above facts, it is possible to infer that the Environmental Inspectors are bestowed with extra-ordinary power with the objective to have pivotal role in the generating the necessary information, and to take corrective measures on the basis of the information in the protection of the environment.

4.5.2 Institutional Arrangement of Environmental Inspectors in the FEPA

The FEPAE has investigative power to compel persons to turn over to them information within their possession. To realize this it is duty bound to assign Environmental Inspector and enter any land or premises at any time which seems appropriate to them without prior notice or court order. In contradiction to this it have not yet assigned Environmental Inspectors; and as a result it failed

to collect full-fledged source of information to develop prima facie fact and to take corrective measures on free riders in the protection of the environment (Anonymous, personal communication, November 4, 2009).

According to one official of the FEPAE the non-existence of Institutional Arrangement of Environmental Inspectors in the FEPAE primarily emanate from the fact that there are no full-fledged enabling directives for environmental inspectors (personal communication, March 9, 2010). Practically, however, according to him, this is the case, not because the FEPAE have a problem to issue the enabling directives for investigation by environmental inspectors rather it is because primarily it is a must case to bring about change of mind set in the society before the FEPAE embark on taking corrective measures. Moreover, the Draft Business Processing and Re-engineering of the FEPAE does not clearly indicate the assignment of Environmental Inspectors as what is indicated in the law (FEPAE, 2010, BPR).

The issue that has to be addressed at this juncture is, therefore, whether the FEPAE have the power to rationalize for the suspension of the mandatory will of the HPRE that requested the assignment of Environmental Inspectors by the FEPAE or not. In addressing this issue, one has to initially aware of the fact that administrative agencies could defeat the intension of the HPRE either by their act or omission.

The law in black and white terms provides that "Environmental Inspectors shall be assigned by the FEPAE" (FDRE, Procl. No.300/2002, Art. 7). So much so that the assignment of Environmental Inspectors by the FEPAE is mandatory rather than optional.

Practically speaking, in the opinion of the researcher, the justification invoked by the FEPAE for not assigning Environmental Inspectors is the need primarily to inculcate change of mind set of the society; this seems, however, an overlook of the contribution of Environmental Inspectors in bringing about lucrative information which has a grain of contribution in the change of mind set of the society. In line with this argument, a key informant from the academia pin pointed the fact that the issuance of the directives by itself has a grain of contribution in social engineering. (personal communication, March 20, 2010).

Furthermore, for any law or practice inconsistent with the Proclamation is inapplicable (FDRE, Procl. No.300/2002, Art. 21), any act or/and omission of the FEPAE that is managed to avoid the assignment of Environmental Inspectors defeats the intension of the legislature.

In line to the above line of argument, recently, inspite of challenges invoked by the FEPAE, the assignment of Environmental Inspectors is practically exercised by the Addis Ababa Environmental Authority. So much so that, despite the challenges it has become a pioneer in the establishment of a fairly interdisciplinary composition of Environmental Inspectors Unit. That is, according to a key informant from the Environmental Inspectors Unit, with the absence of Environmental Economist, it has established an Environmental Inspectors Unit that encompass experts in Chemical Engineer, Biology, Environmental Health, Metrology, and Environmental Science (personal communication, January 6, 2010).

According to him, one member of the Environmental Inspectors Unit, the inspection has three approaches. These are random monitoring system, cross-checking of the internal audit of different sectors, and inspection when there is complaint (personal communication, January 6, 2010). Despite of this, practically, while pollution could potentially happen both at the day time and/or night, and the law allows investigation by inspectors any time, currently the practice of inspection is limited to the day time. This time limitation may let polluters to take advantage of it, and the result of the inspection could ultimately be half baked (Anonymous, personal communication, January 6, 2010).

The Environmental Inspectors Unit is in a big difficulty in respect to the issue of jurisdiction with the FEPAE. That is, in case of investigation the proprietors often resist the Environmental Inspectors Unit invoking that they are within the jurisdiction of the FEPAE. In this regard, Awash Wine Share Company is a typical example in resisting the entrance of the Addis Ababa Environmental Inspectors by and through invoking the issue of jurisdiction. Following this incidence, however, the FEPAE has written a letter which states that, in respect to environmental protection, the factories in each region accountable to their respective regional environmental agencies (FEPE, 2010, Letter to Addis Ababa Environmental Authority). Inspite of this arrangement, it is important to notice that the law has already provided different jurisdiction for

the FEPAE and Regional Environmental Agencies. Accordingly, in the opinion of the researcher, Regional Environmental Agencies are regulatory organs in their jurisdiction and they could take administrative remedies as per their mandate; whereas, in respect to the federal jurisdiction for they are not regulators but stakeholders, they can bring complaint to the FEPAE.

In general, the FEPAE have not yet assigned environmental inspectors and as a result it is not taking advantage of their extra-ordinary powers in developing prima facie fact on the free riders in the environment. Furthermore, for not assigning Environmental Inspectors, it creates loop hole for persons in the federal jurisdiction to invoke the issue of jurisdiction as a lee way to escape from any investigation in case when there is actual or potential damage to the environment that could ultimately have negative implication in the realization of sustainable development.

4.5.3 Procedure of Investigation of Environmental Inspectors of the FEPAE

In the case of investigation by Environmental Inspectors, primarily every inspector shall have an identity card issued by the Authority or by the relevant regional environmental agency, bearing its official seal and show it when requested (FDRE, Procl. No. 300/2002, Art. 8(4)). And, when inspectors on duty visit an undertaking, they shall notify the proprietor unless they consider that such notification may be prejudicial to the efficient performance of his duty (FDRE, Procl. No. 300/2002, Art. 8(6)).

Fulfilling the above conditions, inspectors shall exercise due diligence and impartiality in the discharge of their powers and duties under this proclamation (FDRE, Procl. No. 300/2002, Art. 7). And, to ensure compliance with environmental standards and related requirements the environmental inspectors have the power to (FDRE, Procl. No. 300/2002, Art. 8(1):

a) Question any person alone or in the presence of witnesses;
b) Check, copy or extract any paper, file or any other document related to pollution;
c) Take, free of charge, samples of any material as required and carry out or cause to be carried out tests to determine whether or not it causes harm to the environment or to life;
d) Take photographs, measure, draw, or examine any commodity, process or facility in order to ensure compliance with this proclamation and with any other relevant law;

e) Seize any equipment or any other object which is believed to have been used in the commission of an offence under this proclamation or any other relevant law.
f) Whenever a sample is to be taken, the proprietor has the right to be present or to send his representative and he shall be informed accordingly.

Following the above activities, when a person contravenes any of the provisions of this proclamation or of any other relevant law, the inspector on duty shall specify the matter constituting the contravention and may also specify the measures that shall be taken to remedy the contravention within a given period of time (FDRE, Procl. No. 300/2002, Art. 8(2)). Furthermore, when the inspectors on duty suspects that any activity may cause damage to the environment, they shall order the taking of corrective measures up to the immediate cessation of the activity (FDRE, Procl. No. 300/2002, Art. 8(3)).

However, if any person dissatisfied with any of the measures taken by the inspector may appeal to the Head of the Authority or the relevant regional environmental agency, as the case may be, within ten days from the date on which the measure was taken (FDRE, Procl. No. 300/2002, Art. 9(1)).

Finally, following exhaustion of administrative remedies, any person dissatisfied because no decision has been given as provided under Sub-article (1) of this Article, or feels that the decision given is inappropriate, may institute a court case within thirty days from the date on which the decision was given or the deadline for decision has elapsed (FDRE, Procl. No. 300/2002, Art. 9(2)).

Chapter Five: Summary, Conclusion and Recommendation

5.1 Summary

The objective of the FEPAE is to formulate policies, strategies, laws and standards, which foster social and economic development in a manner that enhance the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of the process of their implementation. For this very reason, it is established as an autonomous authority with the mandate, among other things, of the rule making, adjudication, and investigative administrative powers. However, for there are allegations that indicate it is not working up to expected, this research is conducted, and reached at the following implications.

In respect to the rule making power, initially the CSE had bestowed the EC of the FEPAE with the mandate to provide policy guidance and undertake policy review. Later on, however, the EPOE Proclamation further extended this mandate to encompass, among other things, the review and approval of directives, guidelines, and environmental standards. In this regard, despite some key informants argue that the participation of higher political officials in the current mandate of the EC is calculative and is done with the objective to give weight to the acts and outputs of the EC, the study, taking the principle of delegation as a litmus paper, indicated that the extension of the mandate is inconsistent principle of delegated legislation. Furthermore, the study revealed that legally the EC has the duty to hold its regular meeting once every six months and extra-ordinary meeting when a need arise, practically, however, it is found that the EC has issued an anomalous directive that limits the regular time bound of meeting, and is not in position to convene regularly, and have never been called extra-ordinary meeting to exercise its mandate up to the expected. Finally, as a logical extension of the above discussion, the EC of the FEPAE, with the exception of two directives that do not even fulfill the formal requirements, is not in position to exercise its mandate of review and approval of the necessary directives, guidelines and environmental standards which are sine qua non condition for:

- the FEPAE to exercise its administrative powers in the implementation of the environmental rights and duties which are enshrined in the FDRE Constitution, EPE, and other enabling environmental laws; and
- the Regional Environmental Agencies to ensure the implementation of the federal environmental standards or, as may be appropriate, to issue or implement their own no less stringent standard.

In case of EIA, on the one hand, the study indicated that the FEPAE is in position to establish the EIA Department, and on the other hand, the study uncovered the fact that:

- the Team of the EIA Department of the FEPAE have not yet equipped with the necessary human resource,
- the delegation of the power to review EIA, on the basis of the decision of the Council of Ministers of the FDRE, to sectoral institutions is subject to substantive and procedural ultra virus.
- EIA is not practically a precondition for the issuance of investment permit. That is, the issuance of investment permit by the Investment Agency is not preceded by a confirmation letter of EIA from the FEPAE rather it merely depends on the presumption that the investors know and comply with the legal preconditions of the law of the land.
- the Development Bank of Ethiopia and World Bank do have green policy that recognizes EIA as a precondition for project financing, and they practically request a confirmation letter of EIA from the FEPAE.

As to adjudication of complaints, the study revealed that the FDRE is committed to accommodate public interest litigation in environmental proceeding, and the FEPAE is equipped with the mandate to adjudicate complaints in case when there is potential/actual damage to the environment, and take wide range of administrative remedies that goes to the extent of closure or relocation. Practically, however, the study uncovered that the FEPAE has not yet established quasi-adjudicative tribunal which is expected to have more expediency, convenience, accessibility, flexibility, and special expertise than ordinary courts. Rather, the study uncovered that the FEPAE has ever entertained a single complaint and managed at adhoc basis. Finally, for

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complaints are handled in the FEPAE at adhoc level, and for Ethiopia has no yet promulgated Administrative Procedure Code Proclamation, the study implied that there is high probability for adjudication of complaints in the FEPAE to be amenable to substantive and procedural ultra virus.

In regard to environmental inspectors' investigation, the study pin pointed that legally the FEPAE have the duty to assign environmental inspectors who can enter any land or premises, at any time which seems appropriate to them without prior notice or court order, as deemed necessary with a view to discharging its duty and ascertaining compliance with environmental protection requirements, and ultimately to take corrective measures up to the immediate cessation of an activity. Inspite of this, practically, the study assessed that the FEPAE have not yet assigned environmental inspectors, and is not in position to take advantage of their extra-ordinary powers in the development of prima facie fact on the free riders in the environment. Furthermore, for Regional Environmental Agencies are stakeholders rather than regulators in the federal jurisdiction, the failure of the FEPAE to assign Environmental Inspectors is found to have negative implication on the jurisdiction of regional environmental agencies.

Finally, the study on the law and practice of the rule making, adjudication and investigative powers of the FEPAE indicated that these administrative powers are pivotal in the protection of the environment. Nevertheless, the study uncovered that the FEPAE have legal and practical limitations to exercise these mandates up to expected in the protection of the environment. Thus, for environmental protection is an integral part of the sustainable development process and cannot be considered in isolation from it, the failure of the FEPAE to exercise these mandates up to expected would have negative implication on the protection of the environment, and, in turn, in the realization of sustainable development.

5.2 Conclusion

In 1995 the FDRE government has recognized the right to live in a clean and healthy environment and the right to sustainable development as fundamental human rights. Furthermore, it clearly stipulated that all, Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the protection of the environment. Following the Constitutional commitment, the government is committed to issue the Environmental Policy Ethiopia, and other enabling environmental legislations. Finally, as an extension of the above legal commitment, the government established the FEPAE with administrative powers to play pivotal role in the protection, regulation and monitoring of the environment.

Inspite of the above major policy, regulatory and institutional commitment of the government, the finding arrived at the following implications:

1. Taking the principle of delegation, as a litmus paper, the extension of the mandate of the EC of the FEPAE to review and approve directives, guidelines and environmental standards is not in line to the principle of delegated legislation.

2. For the delegation of the power to review EIAR is bestowed to sectoral institutions that have conflict of interest in the review, and for it is acted on the basis of the decision of the Council of Ministers of the FDRE, it is amenable to substantive and procedural ultra virus;

3. The issuance of investment permit by the Investment Agency of Ethiopia without having a confirmation letter from the FEPAE; rather on the basis of mere presumption that investor know and comply with it, is anomalous with the EIA Proclamation;

4. The fact that the FEPAE have not yet established quasi-adjudicative tribunal, which is expected to have more expediency, convenience, accessibility, flexibility, and special

expertise than ordinary courts, may expose the FEPAE to substantive and/or procedural ultra virus;

5. The FEPAE have not yet assigned Environmental Inspectors who are expected to play pivotal role in the generation of updated information; thus, it is hardly possible for it to develop prima facie fact on free riders and take timely action in the protection of the environment.

5.3 Recommendations

To spearhead the protection of the environment, the FEPAE is equipped with; inter alia, the rule making, adjudication and investigative administrative powers. And, to translate these mandates into action, the study recommends the following points:

1. To have pragmatic review and approval of directives, guidelines and environmental standards, the FEPAE have to revisit the composition of the EC in line to the principle of legislative delegation;

2. To have expedite and reliable EIA review process, the FEPAE have to primarily avoid delegation of the power to review EIA to entities that have conflict of interest; secondly, it has to fine tune the institutional arrangement of the EIA Department, and; finally, it has, when it deems appropriate, complement the EIA Department via recruiting an independent and eligible panel of experts who are drawn from different stakeholders;

3. To inculcate institutional guarantee that alleviates possible substantive and/ or procedural ultra virus, and to be more expedient, convenient, accessible, and flexible than ordinary courts, the FEPAE have to establish quasi-adjudicative tribunal and issue administrative procedural guideline;

4. To generate genuine information and take timely action on free-riders in the environment, the FEPAE have to designate Environmental Inspectors as per the law.

References

Books and Journals

Abera Jembere. (1985). *Material on administrative law.* Addis Ababa University, Faculty of Law (Unpublished Teaching Material).

Fasil Nahom (1997). *Constitution for nation of nations: the Ethiopian perspective.* Asmara: Red Sea Press, Inc.

Futel, J.W. (1993). *Environmental law from resource to recovery.* "n.p.p": West Publishing Co.

Ginther, K. (1995). *Sustainable development and good governance.* "n.p.p": Martinus Nijhof Publisher

Kerwin, C.M. (1994). Rule making: *How government agencies write law and make policy.* Delhi: Universal Book Traders.

Kiss, A. (1997). *Introduction to international environmental law.* Geneva: The United Nation for Training and Research.

Koch, C. K., & Shapiro, S. A. (2002). *Administrative Law: Case note law outlines.* Santa Monica: Case Notes Publishing Co.

Leyland, P. & Woods, T. (2002). *Text book on administrative law* (4th ed.). New York: Oxford University Press.

Shanthakumar, S. (2007). *Introduction to environmental law* (2nd ed.). New Delhi: Wadhwa and Company.

Sharma, P.D. (1998). *Ecology and environment.* India: Pakesh Kumr Rastogi.

Stott, D., & Felix, A. (1997). *Principles of Administrative Law.* Sydney: Cavendish Publishing Limited.

Vibhute, K. (2008). "*Environmental policy and law of Ethiopia: A policy perspective". Journal of Ethiopian Law, XXII No. 1,* (3), 75-101.

Wolf, S., White A. & Stanley, N. (2002). *Principles of environmental law* (3rd ed.). Sydney: Cavendish Publishing Limited.

Legal Instruments

Imperial Ethiopian Government. (1961). *Criminal procedure code of Ethiopia* (Proclamation No. 185/1961, Neg. Gaz., 21th Year, No.7). Addis Ababa: Published by Authority of the Ministry of Pen.

Imperial Ethiopian Government. (1965). *Civil procedure code of Ethiopia* (Decree No. 52, Neg. Gaz., 25th Year, No.3). Published by Authority of the Ministry of Pen.

FDRE. (1995). *The Constitution of the Federal Democratic Republic of Ethiopia* (Proclamation No. 1/1995, Negarit Gazeta, 1st Year No. 1). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (1997). *Commercial registration and business licensing proclamation* (Proclamation No. 67/1997, Negarit Gazeta, 3rd Year, No. 25). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2002). *Environmental impact assessment proclamation* (Proclamation No. 299/2002, Negarit Gazeta, 9th Year, No. 11). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2002). *Environmental pollution control proclamation* (Proclamation No. 300/2002, Negarit Gazeta, 9th Year, No. 12). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2002). *Environmental protection organs establishment proclamation* (Proclamation No. 295/2002, Negarit Gazeta, 9th Year, No. 7) Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2003). *Investment (Amendment) proclamation* (Proclamation No. 373/2003, Negarit Gazeta, 10th Year, No. 8). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2004). *The criminal code of the FDRE,* (Proclamation No. 414/2004, Negarit Gazeta, 9th Year) Addis Ababa, Ethiopia: Berhanena Selam Printing Enterprise.

FDRE. (2005). *Federal administrative procedure proclamation of Ethiopia.* (Draft)

FDRE. (2005). *Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation* (Proclamation No. 434/2005, Negarit Gazeta, 11th Year, No. 19). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2006). *The House of Peoples Representatives of the Federal Democratic Republic of Ethiopia rules of procedures and members code of conduct regulation* (Regulation No. 3/2006, Neg. Gaz., 12th Year, No. 3). Addis Ababa: Berhanena Selam Printing Enterprise.

FDRE. (2008). Prevention of industrial pollution Council of Ministers regulation, (Regulation No. 159/2008, Negarit Gazeta, 15th Year, No.14) Addis Ababa, Ethiopia: Berhanena Selam Printing Enterprise.

FDRE. (2009). *A proclamation on bio-safety*, Addis Ababa Ethiopia (Draft).

FEPAE. (2004). *Environmental impact assessment procedural guideline series 1*. Addis Ababa, Ethiopia. (Daft).

FEPAE. (2007). *Circular of ethics in the preparation of environmental impact assessment of development projects*. Addis Ababa, Ethiopia. (Ref.no. 2/መጽ-አፕ-3/21, 11/42007). (In Amharic)

FEPAE. (2008a). *A directive issued to determine projects subject to environmental impact assessment* (Directive No. 1/2008).

FEPAE. (2008b). *Rule of procedure for the meetings of the Environmental Council* (Directive)

Melca Mahiber. (2010). *Environmental impact assessment proclamation*. Addis Ababa, Ethiopia. (Daft).

United Nations. (1992). *Rio declaration on environment and development*. (3-14/6/1992).

Policies

FDRE. (1997a). *Environmental Policy of Ethiopia*. Addis Ababa: Berhanena Selam Printing Press.

FDRE. (1997b). *Conservation strategy of Ethiopia* (Volume III). Addis Ababa: Berhanena Selam Printing Enterprise.

Working Documents and Institutional Correspondences

Development Bank of Ethiopia. (2008). *"Document required from applicant to establish a new project"*. Addis Ababa, Ethiopia.

Development Bank of Ethiopia. (2009). *"Internal memo, PO/MEMO/09"*. Addis Ababa, Ethiopia.

Ethiopian Horticulture Producers Exporters Association. (2007). *"Code of practice for sustainable flower production"*. Addis Ababa, Ethiopia (Version 1.0, Issue Date June 2007).

Ethiopian Investment Agency. *"Application for business license"*. Addis Ababa, Ethiopia.

Ethiopian Investment Agency. *"Notes on investment permit application form"*. Addis Ababa, Ethiopia.

FEPAE. (2009). *"Letters of delegation of the power to review EIA to sectoral institutions"*. Addis Ababa, Ethiopia (14/11/2009).

FEPAE. (2009/10). *"Business Processing and Re-engineering (BPR) Document of the FEPAE"* Addis Ababa, Ethiopia. (Draft) (In Amharic)

FEPAE. (2010) *"Letter in respect to environmental inspection to Addis Ababa Environmental Protection Authority"*. Addis Ababa, Ethiopia. (Ref. No. 3/3.8.15) (In Amharic)

Ministry of Mine and Energy. (2009) *"Response letter to the delegation of the power to review EIAR"*. Addis Ababa, Ethiopia (29/1/2009).

Resolutions

Melca Mahiber. (2009). *"Resolution on the institutional linkage of sectoral environmental units at federal and regional level"*. Excerpt from a National Workshop Held at Addis Ababa, Ethiopia, from December 28th -29th, 2009.

Periodical

Brhanu Fekade. (2010). "Research indicated the delegation of the power to review environmental impact assessment to sectoral institutions would jeopardize the existence of the FEPE", in the weekly *Reporter News Paper, Issue No. 15*, (18/1012), January 10/2010.

Case

APAP. (2006). *"A case of public interest litigation in environmental proceeding"*. A Case presented to Arada Federal First Instance Court. (Ref.No. AP/3.APN/045/98).

Theses and Senior Essays

Bizuneh Beyene. (2006).*Protection of individual rights in administrative proceedings: A survey based on some agencies.* (Addis Ababa University, Faculty of Law). Unpublished LL.B Senior Essay.

Dereje Damte. (2009). T*he role of environmental protection authority in guaranteeing and protecting environmental rights in Ethiopia*, Addis Ababa University School of Graduate Studies. Unpublished LL.M Thesis.

Yared Zewdu. (2006). *The right to privacy and power of police under the FDRE Constitution a critical analysis*. Addis Ababa University, Faculty of Law. Unpublished LL.B Senior Essay.

Yeabsira Getachew. (2007). *Rule making by administrative agencies*. Addis Ababa University, Faculty of Law. Unpublished LL.B Senior Essay.

Yeshewas Admasu. (2008). *Legal and institutional problems to regulate industrial pollution in Addis Ababa, Ethiopia.* Addis Ababa University School of Graduate Studies. Unpublished LL.M Thesis.

Annex I: Key Informants Interview Questions

Addis Ababa University

School of Graduate Studies and Research

Environment and Development Studies

The purpose of this interview is to collect first hand information about rule making, adjudication and investigation powers of the FEPAE. This study is believed to result in generating new ideas and approaches towards well-informed decision making regarding issues of environmental protection. Your honest responses will play a significant role in making this study a success. Therefore, you are kindly requested to make remarks on the following questions as freely and frankly as possible.

Thank you in advance for kind cooperation

A. Questions Related to the Rule Making Mandate of the FEPAE

1. What is the mandate of the FEPAE in the rule making?
2. What is the institutional framework of rule making in the FEPAE?
3. What are the procedures of rule making of the EC of the FEPAE?
4. Does the members of the EC of the FEPAE expected to reflect political will in the rule making?
5. Is there any actual/potential conflict of interest between and among the members of the EC of the FEPAE who are from sectoral institutions, and the Environmental Protection Organs which are regulatory organs?
6. Is there any problem in understanding technical matters in relation to environment by the members of the EC of the FEPAE? If so, is there any move to encompass techno craft participation in the rule making process by the Council?

7. The members of the Council have high political profile, so is that not difficult for the Council to meet as it is set in the law?
8. Is there techno craft participation in the rule making [think-thank-group]?
9. Does the EC of the FEPAE have guideline of rule making?
10. Does the EC of the FEPAE practically exercising its mandate? If not, why?
11. What is the implication of the success or failure of rule making mandate of the EC of the FEPAE on Regions Environmental Agencies?
12. What are the possible solutions to the Legal and Institutional Limitations of the EC of the FEPAE?

B. Questions Related to the EIAR Mandate of the FEPA

1. What is the mandate of the FEPAE in respect to EIAR?
2. What are the procedures of EIA in the FEPAE?
3. What is and what ought to be the composition of the EIA Department?
4. Does the FEPAE have any functional linkage with other authorizing/ licensing institutions?
5. What is the mechanism of controlling conflict of interest between the ethical and professional responsibility of the employee of the FEPAE, and the private consultancy service of the same in EIAR?
6. Is the delegation of EIAR to sectoral institutions in line to the substantive and procedural mandate of the FEPE?
7. What are the administrative remedies in respect to EIAR by the FEPAE?
8. What are the possible solutions to the legal and institutional limitations of the FEPAE in regard to EIAR?

C. Questions Related to the Complaints Adjudication Mandate of the FEPAE

1. What is the mandate of the FEPAE in the adjudication of complaints in case when there is damage to the environment?
2. Does the FEPAE have full-fledged enabling legal instruments to realize its mandate of complaint adjudication?
3. What is the institutional framework of the adjudication of complaints?
4. Does the FEPAE practically exercising its mandate of complaints adjudication?
5. What are the available administrative remedies in the adjudication of complaints?

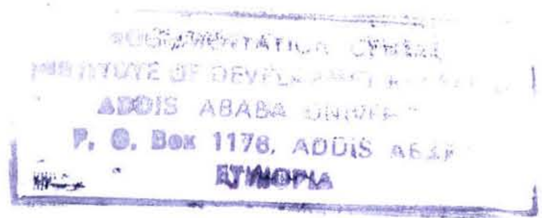
6. What are the possible solutions for the legal and institutional limitations in regard to adjudication of complaints?

D. Questions Related to Investigative Mandate of the FEPAE

1. What is the mandate of the Environmental Inspectors of the FEPAE?
2. Does the Environmental Inspectors of the FEPAE have full-fledged enabling legal instruments?
3. What is the framework of the institutional arrangement of Environmental Inspection?
4. Does the FEPAE have yet assigned Environmental Inspectors to conduct investigation? If not, why?
5. What is the expected composition of environmental inspectors of the FEPAE?
6. Is there any practical investigation ever taken by the FEPAE?
7. Does the Environmental Inspectors of the FEPAE practically exercising their mandate?
8. What are the possible solutions for the legal and institutional limitations in regard to investigative power of Environmental Inspectors?

Annex II: List of Key Informants

Name of Key Informant	Institution	Position
Dr. Teweldebrhan Gebrezgabiher	FEPAE	General Director
Dessalegne Mesfin	FEPAE	Deputy Director
Solomon Kebede	FEPAE	Head of EIA Department
Wendwesen Sintayehu	FEPAE	Legal Department Head
Alemnew Getnet	The Natural Resource Development and Environmental Protection Standing Committee	Chairperson
Sirag Bekli	Addis Ababa Environmental Authority	Director General
Mekonnen Shibeshi	Addis Ababa Environmental Authority	Legal Department Head
Tesfaw Wondu	Addis Ababa Environmental Authority	Environmental Inspector
Ahmed Hussen	Oromia Land and Environmental Protection Bureau	Deputy Head
Gerawork Tefera	Investment Agency of Ethiopia	Licensing and Registration Directorate
Negusu Aklilu	Forum for Environment	Director
Wengel Abate	APAP	Director
Million Belay	MELCA Mahiber	Director
Dawit Ketem	Ethiopian Horticulture Producers Exporters Association	Public Relation and Resource Officer
Dereje Awgchew	Development Bank	Credit Process Mgr
Edward F. Dwumfour	World Bank	Representative
Memberu Allebachew	World Bank	Representative
Melese Damte	Civil Service College of Ethiopia	Environmental Law Instructor
Tsegai Brhane	Mekelle University	Environmental Law Instructor



Declaration

I, the undersigned, declare that the thesis is my original work, has not been presented for a degree in any other university and that all sources of material used for the thesis have been duly acknowledged.

Declared by:	**Confirmed by**:
MERHATBEB TEKLEMEDHIN	____________________
____________________	____________________
Candidate	Advisor