

***ASSESSING IMPLEMENTATION OF INVESTMENT LAW AND POLICY IN HADIYA
ZONE OF SNNPRG; PARTICULAR EMPHASIS TO INVESTORS ENGAGED IN
MEDIUM SCALE FARMING***



JIMMA UNIVERSITY

COLLAGE OF LAW AND GOVERNANCE

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June 2015

JIMMA, ETHIOPIA

Daniel Anshebo

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Declaration

I declare that this thesis is my original work, and has not been presented for a degree in any other University, and that all sources of materials used for the thesis have been fully acknowledged.

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Abbreviations

ADF: *African development forum*

ADLI: *agricultural development led to industrialization*

AGOA: *African growth and opportunity act*

ARD: *agriculture and rural development*

Art.: *Article*

BRICS: *Brazil, Russia, India, China and South Africa*

CAADP: *Comprehensive Africa Agriculture Development Program*

CIEL: *Center for International Environmental Law*

COMESA: *common market for eastren and southern Africa*

EDRI: *Ethiopian Development Research Institute*

EPRDF: *Ethiopian people's revolutionary democratic front*

EU: *European Union*

FAO: *food and agriculture organization*

FDI: *foreign direct investment*

FDRE: *federal democratic republic of Ethiopia*

GTP: *growth and transformation plan*

HDRN: *Hadiya development and rehabilitation network*

HIPC: *Highly Indebted Poor Countries*

ICESCR: *International Covenant on Economic, Social and Cultural Rights*

ICSID: *international convention for settlement of investment dispute*

ICT: *information communication technology information*

IFPRI: *International Food Policy Research Institute*

IMF: *international monetary fund*

MAI: *multilateral agreement on investment*

MDG: *millennium development goal*

MIGA: *multi lateral investment guarantee agency*

MOFED: *ministry of finance and economic development*

NAFTA: *the North American Free Trade Agreement*

NGO: *non government origination*

No.: *number*

OECD: *organization for economic cooperation and development*

PADPR: *plan for accelerated development and poverty reduction*

PIF: *policy and investment frame work*

proc.: *Proclamation*

SAP: *structural adjustment program*

SDPR: *sustainable development and poverty reduction*

TGE: *transitional government of Ethiopia*

SNNPRG: *southern nation's nationalities people's government*

UK: *United Kingdom*

UNCTAD: *united nation convention on trade and development*

UNCTC: *United Nations Commission on Transnational Corporations*

UNDP: *United Nations development program*

US: *United States*

vol.: *volume*

vs.: *versus*

WB: *World Bank*

WTO: *world trade organization*

Abstract

In view to promote private investment, the government of Ethiopia enacted various policies and laws. Besides investment promotion, the government established investment administration organs both at federal and regional levels. Thus based on the investment objective, this research explores the level of implementation of investment law in Hadiya zone; particularly in agriculture sector.

In this research, the level of implementation of investment law in Hadiya zone is measured in terms of three standards. It includes- level of land utilization; level of technology and skill transfer and level of job creation to the community. Whenever measured based on these standards, there is problem of lack of follow up mechanisms by concerned government organs; Lack of infrastructure, low level of land utilization; limited job opportunity and technology and transfer.

Chapter one

General Background

1.1. Introduction

The question of economic self sufficiency is as old as human existence. Historically, primitive societies hunt wild animals and collect wild fruits to get daily subsistence. This attempt was made by ancient societies to answer the economic question of human needs. Thus the question of development (economic development) is not only the demand of civilized societies but also the needs of ancient and primitive societies, though their aspiration is only to satisfy their immediate daily needs.

Thus, it is the question of persons and governments at every time in the world irrespective of political, social and economic differences. However, the way government thinks to achieve development objective may depend on their policy choice. One government may adopt free market economic policy where private economic actors as an engine to economic development where as the other may follow purely command economic system and also the other may follow recently emerged developmental state approach. Whatever their difference in economic and political ideology, the base of ideological difference among other things is the question of economic development. In the history, like (but not in similar fashion) any country in the world, Ethiopia passed through different political and ideological changes with regards to investment and development policies. Menelik II¹ founded the first modern bank in Ethiopia, the Bank of Abyssinia, introduced the first modern postal system, signed the agreement and initiated work that established the Addis Ababa-Djibouti railway with the French, introduced electricity to Addis Ababa, as well as the telephone, telegraph, the motor car and modern plumbing. He brought **political and economic modernization to the country.**²

¹ The period of menelik II encompasses the period between **1844-1913**

² “Menelik II” encyclopedia of world bibliography, 2004, encyclopedia com., Available at http://www.encyclopedia.com/topic/Menelik_II.aspx accessed on 11 June 2015

During the imperial regime,³ the imperial government of Haileselesie, was the first government to exercise different development policies as Ethiopia is the first African state to attempt economic development planning.⁴ It was by this time the idea of market liberalization and private investment was emerged. During the Dergue regime (1974-1991), every economic sector falls under the command economic system. Every economic sector was controlled by the military government. But after the fall of this government in 1991, the transitional government of Ethiopia (TGE) has taken policy reform measures. It was by this time that economic reform program was initiated, which took the form of structural adjustment program (SAP) under the auspices of the WB and IMF. The reform measures include market liberalization and devaluation.⁵ Mean while TGE was replaced by FDRE government in August 1995. This government form comprehensive reform programs that shape the private sectors' role in the economy. The active involvement of Private sector is encouraged in the successive development plans.⁶ For instance, the fundamental policy directions of GTP plan is that agriculture and rural development sector focuses on are scaling up productivity of labor and land. On this basis Agricultural Development led Industrialization Strategy focuses that small holder farmers/pastoralists need to efficiently use modern agricultural technologies and increase production and productivity. Moreover, the private sector is encouraged to increase its share of investment in agriculture and other economic sectors. In this plan the broad based growth will be focusing in producing enough food for domestic supply and high value crops for export.⁷

Internationally as well as nationally the role of private investment to economic development is too numerous.⁸ It is important to investors in the one hand and to the peoples and government on

³ The imperial regime of Haileselesie period encompasses the period between 1931-1974

⁴ Addis Ababa University Department of Political Science and International Relations , Ethiopia: politics, policy making, and rural development, Department of Political Science and International Relations, Addis Ababa University, 2006 Subjects Agriculture and state Decentralization in government Democratization Land tenure Rural development, Development policies during imperial regime, Available at http://pdf.printfriendly.com/pdfs/1427184696_1773da/download accessed on 24 march 2015.

⁵ *ibid*, Policy reform during the early transitional government of Ethiopia

⁶ The successive development plans include; SDPR, PASD and GTP

⁷ FDRE Ministry of Finance and Economic Development (MOFED), Growth and Transformation Plan (GTP) 2010/11-2014/15, volume one, main text, Addis Ababa, Ethiopia, November 2010, p46

⁸ Investment proclamation, proclamation No. 769/2012, Federal Negarit Gazeta of the Federal democratic republic of Ethiopia, 18th year No. 63, ADIS ABABA, 17th September, 2012. The benefits of Investment are to

other hand. Though there are different views as to the benefit of investment, especially about the benefit of foreign investment to the investment receiving state, it is unquestionable that in one way or in another it brings economic development in a certain country.⁹ Even it has significant role in uplifting the country's economic growth if development strategies and investment regimes are properly structured. Based on this assumption, the government of Ethiopia takes a significant policy reform measures which promotes private investment in agriculture and other sectors. Nationally, the country has formulated investment promoting laws and policy. Accordingly the country have been undertaking numerous policy measures to create hospitable investment climate for domestic and foreign investment. The major policy measures are:-Liberalizing controls on foreign exchange and price, privatization of public enterprises and creating a stable macroeconomic environment.¹⁰ In addition to that, Investment laws are amended and re-amended in different times in view to encourage private sector role in development activities. At international level, the country has signed about 30 bilateral investment treaties, of which 11 are with individual European Union Member States. Significant other partners include BRICS members China, India, South Africa, and Russia (but not Brazil), and a number of regional economic partners such as Israel, Egypt, and Sudan.¹¹

One of the policy directions of the government of Ethiopia is to enhance production and productivity in agricultural sector since the sector is the back bone of the country's economy. According to CIA world fact book report, about 45% of the country's economy is highly dependent on agriculture but the sector has been buffeted for decades by drought, poor cultivation practices, and a border war with Eritrea. In 2001, Ethiopia qualified for debt relief

create job opportunity; advance technology transfer; increase foreign exchange earnings and ultimately brings country's development

⁹ M. Sornarajah, the international law on foreign investment, Second edition, Cambridge university press Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, 2004, p50-65. The proponents and opponents and the mixed approach theories of investment, foreign investment are; Classical theory, dependency theory and middle path theories.

¹⁰ Mustafa Aman, An Assessment of Challenges and Prospects of Foreign Direct Investment in Agricultural Sector in Ethiopia (with Reference to Foreign Investment in Large Scale Farmland), MA Thesis Submitted to the School of Graduate Studies of Addis Ababa University, April 2011, p2.

¹¹ African Review of Economics and Finance (Henok Assefa, Derk and Dan), Ethiopia's Investment Prospects: A Sect-oral Overview, Vol. 4, No.2, Rhodes University, South Africa, research paper, June 2013, p217, available at [http://www.african-review.com/Vol.%204%20\(2\)/Ethiopia%27s%20Investment%20Prospects.pdf](http://www.african-review.com/Vol.%204%20(2)/Ethiopia%27s%20Investment%20Prospects.pdf) accessed on 29 march 2015.

under the Highly Indebted Poor Countries (HIPC) initiative, and in 2005 the IMF voted to forgive Ethiopia's debt.¹²

Ethiopia is a federal government that comprises nine regional states.¹³ According to the federal arrangement, the Southern Nations Nationalities and Peoples' Regional State (SNNPRs) is one of the National Regional States of Ethiopia.

The region is located between 4° 27' - 8° 30' north latitude and 34° 21' - 39° 11' east longitude. It is bordered with Kenya in the south, the Sudan republic in the south west, Oromiya in the north east. The region has an area of about 110, 931.9 square kilometers which is accounting 10% of the total area of the country. The population of the region is also 3rd in rank in all over the country; the total population is 15,760,743 according to 2007 regional abstract. Administratively the region comprises 14 zones¹⁴ and 4 special Weredas¹⁵ and 22 reform towns. The region is broadly divided in to two land forms of the high and low land. The east African rift valley also bisects the high land plateaus in to two physiographic regions of east and west, in the east there are high land plateaus of Sidama, Burji, and Amaro which ranges in its height between 2300 to 3338 meters above sea level. To the west there are also major high land plateaus of Guraghe, Kafa, Dawro and Gamo Gofa that ranges its topography from 2,500 to 4,207 meters above sea level. The highest pick in the region is mount Guge in Gamo Gofa zone which is measured about 4,207 meters above sea level. Next to Guge, Guraghe Mountain takes its 2nd rank in height which is 3720 meters above sea level. Whereas the lowest area is located around lake Rudolf in Dehub Omo zone with the height only 376 meters above sea level. In the central and south western parts, the plateaus are deeply dissected by the Omo River and its main tributaries such as Gilgel-

¹² Bekezela Ncube, Ethiopia Basic information about the country, available at, <http://fic.wharton.upenn.edu/fic/africa/Eritrea%20Final.pdf> accessed on 05 April 2015, p2

¹³ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta of the Federal democratic republic of Ethiopia, 1st Year No.1, ADDIS ABABA, 21st August, 1995 art. 47. Member States of the Federal Democratic Republic of Ethiopia includes; the State of Tigray, Afar, Amhara, Oromia, Somalia, Benshangul Gumuz, Southern Nations, Nationalities and Peoples region, Gambela and Harari Peoples

¹⁴ Zone is an administrative hierarchy next to region. Every zonal structure comprises multiple wereda administrative structure of the government

¹⁵ Special wereda is and administration hierarchy next to region. This administrative structure does not comprise wereda administration. It comprises multiple Keble administration.

Ghibe, Gojeb and Mago River. The rainfall and temperature of the region on average are from 400-2000 mm. and 10⁰-30⁰ respectively.¹⁶

The Region is endowed with rich agricultural resources, large human resources and wide market potential which can be the basis for industrial and agro-industrial development. However, despite the size and variety of potential resources, there are only few resource based agro-industries whose contribution to the Region's income and employment generation is very low.¹⁷ In addition to the problems of capacity and size of the existing projects in the region, there are plenty of deep-rooted problems with regards to the enforcement of the investment law and policy by the concerned government organs at regional and zonal levels in the one hand and also there is a problem in relation to institutional arrangement of the concerned government organs. Established projects are not functioning properly and by the same approach government organs¹⁸ are not discharging their responsibilities in implementation of the policy and laws. These are the most critical problems encountered by the researcher.

SNNPRG comprises 14 zones and four special weredas'. Among 14 zones and 4 special weredas, Hadiya administrative zone is selected as the study area.

The zone has a total area of 3,850.2km² and for administrative purpose; it is structured in to 10 woredas'¹⁹ namely; Lemo, East Badewacho, west Badewacho, Sorro, Shashago, Misha, Dunna & Gibe, Anelemo and Gombora weredas'. Topographically the zone lies within an elevation

¹⁶ SNNPRG investment expansion work process, Tamra Tsega, Hawassa, 2008, p36, Ametawi matsiet (yearly magazine)

¹⁷ See SNNPRS investment expansion web site, or it is available at <http://www.southinvest.gov.et/potentials.htm>, accessed on 22 march 2015

¹⁸ Concerned government organs refer to investment administration organs at all level in the region. according to SNNPRG investment administration reenactment proclamation; investment administration organs includes regional trade, industry and urban development coordination bureau, investment agency, investment board, zonal/special wereda investment committee and zonal/special wereda investment expansion work process

¹⁹ Wereda is an administration hierarchy next to zonal administration. It comprises multiple Keble administration

range of 1500 to 3000 meters above sea level. The slope in general declines east to west with most drainage being Direct to the Gibe River.²⁰

The total population of the zone is estimated about 1,412,347 (2007 abstract) and it has a population density of 366 inhabitants per km². The zone has three agro- ecological / zones Dega (23.7%), Weynadega (64.7) & Kolla (11.6%). The annual average temperature of the zone is 22.02⁰ Celsius & the mean annual rainfall is 1,260 mm. With regard to land use, the largest area (57%) of the zone is intensively cultivated for annual crops, 12% is covered with tree crops, 7% is a grazing land, 6% is forest land, 16% is covered by others and the remaining 2% is cultivable land.²¹

This zone is selected as the study area because large scale crop (specially, wheat) production, large number of unemployment²² and traditional agriculture is being practiced extensively. Furthermore, the Zone is selected because many people get their livelihood from agricultural activity, particularly from farming. More importantly, majority of investors in the zone keep the land either vacant or use for the purpose other than large scale farming purpose.

Thus, having identified the selected problem as key problem, the researcher decided to undertake a research on the title: *assessing Implementation of investment law and policy in Hadiya Zone of SNNPR: with Special emphasis to investors engaged in medium scale farming.*

This study is aimed at exploring and analyzing the practical applications of investment Laws and Policies, and their harmony with development objectives. And also the study encompassed evaluation and assessment of legal frame work and institutional arrangements in light with the suitability to implement investment policy.

During this study, the researcher conducted interview with SNNPRG investment agency head and one investment expert; vice head of SNNPRG bureau of agriculture; Hadiya zone trade and

²⁰Potentials of Hadiya zone- SNNPR investment expansion process, available at <http://www.southinvest.gov.et/potentialHadiya.htm>, accessed on 23 may 2015

²¹ Ibid

²² Hadiya zone labor and social affairs office, zonal unemployment rate study report, 2013/14, p8, See also SNNPRG bureau of labor and social affairs, unemployment rate rapid assessment in central zones of the region, 2008/9, p27. According to these studies, Unemployment rate is high relative to total population of the zone and the highest among central zones of the region.

industry department head, investment expansion work process coordinator and two investment experts; head of Hadiya zone agriculture department; former coordinator of investment expansion work process of Hadiya zone, four investors; four local farmers; totally 17 respondents were interviewed.

1.2. Statement of the problem

Hadiya zone is located in SNNPRG. It is one of the 14 zones in the region. In this zone a lot of investors are engaged in agriculture and other investment activities. But the number of investor engaged in medium scale farming is 19.

In order to facilitate and protect investors and their activities, federal as well as regional governments have enacted their respective investment laws. However there are laws and policies to that effect, there are deep-rooted practical problems in implementation of the laws to the extent that the policy requires. The problems are problems related with investors, legal framework, and concerned government organs.

With respect to investors: except few investors the rest are simply using the land to produce crops for household purpose and surprisingly some use the land to grow grass for sale and grazing animals. In the zone, the existing investment projects that are engaged in medium scale commercial farming are not in a position to create employment opportunities and they are not transferring farming technology to the local agrarian communities.

Legal framework problem: in the regional investment law, there is no legal obligation on investors as to submission of project status report to concerned government (investment administration) organs. Institutional arrangement is another basic problem: that means; the bureau of trade and industry at regional level and trade and industry department of the zone are structurally not convenient to properly enforce investment law. Absence of investment administration structure at wereda level is another problem.

With respect to government: the concerned government organs are reluctant to discharge their responsibility. They do not undertake effective and periodic supervision and technique support. They also lack effective cooperation with stakeholders.

1.3. Objectives of the study

The study of the listed problems here in above has both general and specific objectives.

The general aim of doing this piece of work is to assess the level of implementation of investment law and policy on medium scale agriculture investments in the Hadiya zone with the view to identify gaps and to come up with possible solutions.

In addition to this, the thesis has the following specific objectives;

- To explore the implementation capacity of department of trade and industry of the Hadiya zone and recommend possible solution that will help to enhance institutional capacity.
- To explore the relationship between implementation of investment law and the right to development, particularly economic development.
- To assess the level of implementation of investment law, and the convenience of legal and institutional framework to that effect and to recommend better institutional arrangement.
- To explore the level of cooperation between and among regional and zonal authorities with stake holders through the implementation of investment laws and policy.

1.4. Research question

General question;

How far the investment laws are being implemented in the Hadiya zone?

Specific questions;

1. How far the existing legal and institutional framework is suitable to implement investment policy in the Hadiya zone?
2. How far investors are discharging their duties, particularly in relation to technology transfer and job opportunity?
3. How far the SNNPRG bureau of trade, industry and urban development and Hadiya zone department of trade and industry discharging their duties in supervising and providing technique support?
4. How effective the cooperation between stakeholders has been?

1.5. Significance

The proper Implementation of investment law plays a significant role to accelerate socio-economic development of the country.

1. The research findings will be helpful to come up with possible solution that will be relevant to enhance implementation of investment law in Hadiya zone.
2. The research findings will be one of the source of information to SNNPRG bureau of trade and industry and Hadiya zone department of trade and industry so that to improve implementation assessment mechanism.
3. The findings, moreover, will serve as a source of reference for researchers and other professionals and non professionals who would like to know more about level of implementation of investment law and policy in agriculture sector.
4. The research findings are believed to help the Regional state to enact their own detail implementation directives and allocate adequate budget to provide necessary technique support. Moreover, research finding will help to enact laws that establish and govern separate investment agency in the regional levels and lower level in the same line.

1.6. Review of related Literatures

In the international and national domain, the issue of investment has been recognized as a means of ensuring development and an important tool or means to achieve development objectives. However, in the practical implementations of investment laws, there are gaps and challenges to realize the constitutional rights to development of the peoples. Those implementation gaps will be assessed in this piece of work in close analysis with its cause and ultimate consequences.

Both at national and international levels there are only limited research works in this area. But there have been two studies conducted to assess implementation of investment law at country level and regional level.

Specific to the Ethiopian case, one institutional study has been conducted on the title, “An assessment of Operation and performance of commercial farmers in Ethiopia.”²³ This research

²³ UNDP, An assessment of Operation and performance of commercial farmers in Ethiopia, 2013, summary of commissioned report, UNDP Ethiopia, No.4/2013.

was conducted by UNDP which assessed the entry stages challenges created by government organs; particularly in relation to informal payments (corruptions). The study also shows that low utilization of the land was seen- the cause for low utilization was the size of land is being large.²⁴ In relation to incentive scheme, the incentive extended for tax exemption is time consuming; consume lengthy time. Import duty free tax incentive does not exempt all equipments and machinery required to assist farmers provide critical on-farm services such water supply and electricity. There is not much clarity in a number of tax and customs laws and provisions nor uniform interpretation and application of these provisions by government officials. Banks are not willing to provide loan accepting leased land as collateral.²⁵

SNNPRG investment expansion work process potential study expert, Ato Bishew Belay conducted rapid implementation assessment in March 2015. In his study, he listed out some of the problems seen in the region during operation of investment projects. According to his study, the cause for low performance as per investment contract and law is related with government and investors. Problems related with government includes; budget deficit, low level of rural infrastructure (specially road), lengthy process to get bank loan, water resource management problem, investment data handling problem, land utilization problem, boundary dispute, absence of guide map for the investment land, third party interference in to investment land and government organs reluctance to take legal actions.²⁶ Whereas problems with respect to investors include; land utilization problem, lack of professional employees, engaging in different activity (trade), using duty free imported equipments other than investment activity, and transferring the land to third party without notifying the concerned organ. This study is conducted on all investment sectors at regional level.²⁷

My study is very unique that explores the level of implementation of investment law and policy in terms of job creation and technology transfer to local community. And the assessment is made to check the convenience of institutional and legal frame work in light with law enforcement capacity of concerned government organs. In the earlier studies, the concerned government

²⁴ Id., p2

²⁵ Id., p3

²⁶ Ato Bishew Belay, implementation assessment of investment laws and policy, SNNPRG investment agency, Hawassa, 2015, pp9 & 10.

²⁷ Id.,p1

organs reluctance to follow up and give technical support is not considered. And also my assessment is made in view to explore the level of cooperation between concerned government organs in order to enforce investment law. The two researches I mentioned here above did not use these as the criteria to measure level of implementation of investment law and policy.

Yet, however, they are not much more related with my research topic, the existing ones are researches and institutional evaluation reports. Those studies are conducted by different scholars and institutions in the topic ‘Risks (challenges) and Opportunities of Large-scale Land based Investments.’ But none of these studies have made assessment of detail practical problem in implementation of investment law and policy in Ethiopia. The basic objectives of the previously conducted researches were based on theoretical discourse to find out the gaps in the policy, guidelines and programs of the government. So it was Based on the mentioned objectives that the scholars and research institutions have conducted different researches to examine legal and policy gap whenever private investment in agriculture sector is allowed and its impact on economic and social life of the society not specifically in relation to practical problem in implementation of investment law and the constitutional right to development of the government, society and individuals.

As it is briefly discussed here above, there is no directly similar literature in this issue but there are ideal researches in the topic, challenges and prospects of agriculture investment in Ethiopia.²⁸ Accordingly, Different scholars and research institutions have conducted different researches to assess legal and policy gap of private investment in agriculture sector and its impact on economic and social life of the society. For instance, The previous researches ideally examine challenges that made difficult for the country to easily drive the due benefits from investment in large scale farmland. Among which; The research undertaken by Mustafa Aman²⁹, tries to explore problems in relation to financial capacity of investors, environment protection, government responsibility to follow up the investment project, amount of incentive extended to investors in light with increasing revenue of the country, taking small holders farmland to

²⁸ Issues Paper 2, a paper prepared for Eighth African Development Forum (ADF-VIII), Land and Africa’s Development Future: Governing the Risks and Opportunities of Large-scale Land based Investments, Addis Ababa, Ethiopia, 23-25 October 2012, available at http://www.uneca.org/sites/default/files/uploaded-documents/adfviii-land-issues-paper_en.pdf accessed on 29 March 2015

²⁹ supra note 10

investment, job creation, food security and technology transfer to local farmers. His research tries to address problems related to foreign investment in large scale agriculture and it is very general that address different issues. Tadesse Kuma³⁰, in his research, explore the limited contribution of small scale agriculture to the growth of national economy and then come up with the solution that promote large scale private investment of rural land. As to practical implementation of the private investment, he examined nothing. Rather He develops an idea that benefits the policy makers to enact policy which invite private foreign and domestic investors in large scale agriculture investment along with small scale farmers. In addition to the above research works there is another institutional study made by African development forum to assess opportunities and risks of investing in large scale farming in Africa.³¹ Yet this issue paper focused on the challenges and opportunities of large scale land based farming in Africa. In this issue paper the assessment was made to identify the right balance that maximizes gains and minimizes the risks associated with large-scale farming land acquisitions, to ensure that the expected equitable economic growth occurs, community livelihoods are protected or enhanced and environmental impacts minimized.³² Generally this issue research was with a view to providing guidance on policy options and mechanisms for engaging in land investments that lead to win-win outcomes for African Governments and local communities on the one hand, and private investors on the other.³³

In general the whole assessment was made in order to come up with policy recommendations, to guide how the policy will be formulated to achieve both goals - Investment protection and question of economic development.

But in the one hand, my research is not to explore ideal (theoretical) challenges but practical problems already created in the case study area and its cause and final consequence against the objective of economic development. Because the previous researches attempt to test the challenges in relation to general rights to social economic and cultural rights of the peoples, but

³⁰Tadesse Kuma, Private Investment in Commercial Agriculture in Ethiopia: Opportunities and Constraints, A paper prepared for the EDRI/IFPRI policy forum on "The State of Food Security and Agricultural Marketing in Ethiopia.", Ghion Hotel, Addis Ababa, Ethiopia, 15-16 may 2003. EDRI= Ethiopian Development Research Institute. IFPRI= International Food Policy Research Institute.

³¹ supra note 28

³² Id., p1

³³ Ibid

not specifically in relation to the constitutional right to economic development of the peoples specifically and the whole country in general.

In the other hand my study will be detail assessment of level of implementation of existing law and policy. But it is not about the future fate of policy and law. But this does not mean that my research will focused only on assessment of problem on the ground. To some extent my study analyze legal and institutional gap in relation to implementation of investment policy.

1.7. Methodology

The research method employed is an exploratory, which looks into the implementation of investment laws on the projects found in the study area pertaining to the development rights, as recognized by FDRE Constitution and investment objectives of the country in general and SNNPRG in particular.

In this research, the case study of Hadiya Zone of SNNPRG is adopted based on the pre observation of the researcher and recommendation made by SNNPRG trade and industry bureau.

In addition, the zone is selected because large scale crop (specially, wheat) production, large number of unemployment³⁴ and traditional agriculture is being practiced extensively. Furthermore, the Zone is selected because many people get their livelihood from agricultural activity, particularly from farming. More importantly, majority of investors in the zone keep the land either vacant or use it for the purpose other than medium scale farming. The magnitude of the problem is very high relative to other zones in the region.

The researcher reviewed the existing legal documentation, government reports, media information and undertook qualitative interviews with relevant investment officers and their stakeholders at regional and zonal levels. To the extent that qualitative data was available it was included to triangulate conclusions. Field trips were carried out in two projects found in different weredas’.

³⁴ Supra note 22

Data sources

The researcher used multiple source of data collection mechanism relevant to this study. Accordingly, the major data source of this study was both primary and secondary data sources. For the purpose of collecting primary data, qualitative methods like: interview was conducted with concerned government officials, investors, some agents (employees) of investors, local farmers and stake holders. Accordingly the interview was made with three regional government officials, six zonal experts, four investors and four local communities. Moreover, Official documents, statistical source, and official reports are reviewed. In addition, the researcher conducted field observation on various projects found in the study area, to compare and see whether the land they receive is properly cultivated or not in a way that it will achieve development objective. Whether they are productive or not? Regarding secondary sources, books, journals, internet sources, and other publications are reviewed.

The determination of the respondents was based on the closeness to information and positions related to investment administration.

Table: Summary of the Respondents

No	Respondent Group	No. of respondents	Title of respondents
1	SNNPRG bureau of trade and industry Investment Agency	2	Agency Head and expert
2	SNNPRG bureau of agriculture	1	Vice head
3	Hadiya zone trade and industry department	5	Department head, coordinators and experts
4	Hadiya zone department of agriculture	1	Department head
5	Investors or their agents	4	Private investors

6	Local agrarian community	4	Farmers
	Total		17

1.8. Scope of the study

This study does not encompass the whole investment sectors and investment activities located anywhere in the country. Rather, it is limited to discussion on investment projects engaged on the agricultural sector; i.e. medium scale land based agricultural investment in SNNPRG particularly in Hadiya zone.

Accordingly, the case of investment projects engaged in medium scale farming was taken from Hadiya zone. The study focused on the assessment of the implementation of investment laws on those projects located in the study area. And relevant data were collected from concerned regional and zonal offices.

In this study, legal and institutional suitability of department of trade and industry is assessed in light with SNNPRG investment administration reenactment proclamation No. 81/2004 with close analysis to FDRE investment proclamation No. 769/2012 and its amendment, proclamation No. 849/2014.

1.9. Limitations of the study

While conducting this research, the researcher encountered the following major challenges like:

- The government officials were not interested to show the performance evaluation undertaken to check performance status of the projects. Some of the official documents were not comprehensive and organized to get conclusive information. Perhaps, the entire investment projects and some government offices lack organized and documented data that shows performance status, number of regular employees, operation and training schedule. Furthermore, investors or their agents were not willing to show the list of regular employees of their projects.
- Both concerned government organs and investors fear to give genuine and honest information during the researcher interview.

- It was too difficult to conduct long time or extended discussion with respondents (especially with concerned government officials) due to their official task and short time schedule.
- Remoteness and transportation problem to make field observation on several investment projects.
- Lack of adequate resource and time was the major limitations encountered by the researcher. The time allocated to this research was very limited, not more than three months, which was very short time.

However there were limitations that hindered the realization of this study, the researcher conducted interview not only with investors and the concerned government organs but also with stake holders, some local farmers and agents of the investors. This way of conducting interview with different organs assisted the researcher to crosscheck and got genuine information because the source of information was diversified (several). Moreover, the researcher was allocated time to conduct field observation on some investment projects.

1.10. Ethical Consideration

In order to conduct research on the selected title, cooperation of the officials of the concerned government institutions, investors and employees of the investment projects were highly important to get relevant data. During data collection process, friendly approach and confidentiality to the respondent, from whom the information is obtained, was highly considered. To this effect, the key respondents were informed that they are free to cooperate for the study objectives or not. Except some higher officials and investors who reside abroad, Face-to-face method of inquiry was made so as to give the interviewer a chance to assess the sincerity of the respondents. On top of that, the key respondents and officials were informed both orally and in writing about the objectives of the study.

1.11. Arrangement of the Chapters

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

The second chapter discusses about the theoretical and legal foundation of investment in relation to rights to development. In this chapter definition, scope, objective, international legal framework of investment law, relevance of investment to development and several other concepts are discussed in depth. The discussion in this chapter demonstrates linkage between improper implementation of the investment law and policy, and their consequences to the right to development.

Third chapter discusses about the legal and theoretical background of investment in general and medium scale land based agricultural investment in the context of Ethiopian Laws and policy situation.

The fourth chapter examines the implementation of investment laws and policies in the selected projects which are located in the study area (Hadiya Zone of SNNPRG) in order to ensure the right to development to local community.

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

Chapter two

Theoretical and Legal Foundation of investment

2.1. General overview

2.1.1. Definition of investment

Currently, countries of third world are in big competition to attract investment by creating favorable playing field to investment. One of the condition that contributes to attract investment to one's country is the way how the term 'investment' is defined in the domestic investment legislations matters,³⁵ however, there is a freedom of the countries to put their own definition in BITs or adopt model BITs.

Definition of the term: investment

A comprehensive and universally acceptable definition of an investment is difficult to get. The definitions, however, provided in line with different BITs, ICSID awards and federal and regional laws.

The term investment is also defined either broadly or narrowly depending on National Investment Policy Guidelines or according to the countries BITs.

Basically investment is two types; domestic investment and foreign investment. Most of the time the content and scope of foreign investment is determined by BITs whereas the content and scope of domestic investment is determined in domestic laws.

Definition of investment in BITs:

Every BIT does not contain the same content in defining investment. Its content varies depending on the agreement of the countries.

US model BIT

US model BIT defines investment in the following way;

³⁵ Supra note 8, Art.2(1), Ethiopia stipulates different incentive mechanisms to encourage and attract investors

“Investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”

In BIT between UK and Ethiopia

In BIT between UK and Ethiopia the term investment is defined in the following manner;

“Investment means every kind of asset. A change in the form in which assets are invested does not affect their character as investments and the term “investment” includes all investments, whether made before or after the date of entry into force of this Agreement.”

According to both US model BIT and BIT between UK and Ethiopia, broader definition is provided for the term investment. They are crafted in a way that encourages investment.

They define It in a way that incorporates the following elements:-

- Movable, immovable, tangible and intangible property and any other property rights such as mortgages, liens or pledges;³⁶
- Shares in stock and debentures of a company and any other form of participation in a company;³⁷
- Claims to money or to any performance under contract having a financial value;³⁸
- Business goodwill, technical processes and Know-how;³⁹
- Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;⁴⁰
- Licenses, authorizations, permits, and similar rights conferred pursuant to domestic law.⁴¹

³⁶ See 2012 U.S. Model Bilateral Investment Treaty, art.1, definition of investment. See also an agreement between the government of the United Kingdom of Great Britain and Northern Ireland and the federal democratic republic of Ethiopia for the promotion and protection of investments, art.1, Definition of investment.

³⁷ Ibid

³⁸ Ibid

³⁹ See an agreement between the government of the united kingdom of great Britain and northern Ireland and the federal democratic republic of Ethiopia for the promotion and protection of investments

⁴⁰ Id., art.1(a)(v)

Notion of investment in ICSID awards:

ICSID defined investment, in terms of host state economic contribution. In *Malaysian Salvors vs. Malaysia* case, the Tribunal observed that the activity should, inter alia, “promote some form of positive economic development for the host State,” so that to qualify as an investment.⁴²

In *Bayindir vs. Pakistan* case, ICSID entertain the case based on nature of investment. The Tribunal stated that it could not be “seriously disputed that Bayindir’s contribution in terms of know-how, equipment and personnel clearly has an economic value and falls within the meaning of “every kind of asset.”⁴³

In *salini vs. morocco* case, ICSID tribunal creates four criteria based on which investment is to be defined. It defines investment in terms of these criteria (four salini tests).⁴⁴ They include;

- 1) a contribution;
- 2) a certain duration of performance of contract;
- 3) participation in the risks of the transaction; and
- 4) Contribution to the economic development of the host state of the investment.

Definition of investment according to this definition is based on the benefit that the project created to host state.

Definition of investment in Ethiopian law:

In Ethiopian legal system, the investment Proclamation defines the term investment as:⁴⁵

“expenditure of capital in cash or in kind or in both by an investor to establish a new enterprise or to expand or upgrade one that already exists”

⁴¹ See 2012 U.S. Model Bilateral Investment Treaty, art.1(g)

⁴² See *Malaysian Salvors vs. Malaysia* case, ICSID award, paragraph 68

⁴³ See *Bayindir vs. Pakistan* case, ICSID award, 14/11/05, paragraph 116

⁴⁴ See *salini vs. morocco* case, ICSID award,

⁴⁵ Supra note 8

Definition of investment according to scholars:

In addition to the above definitions of investment, different scholars also provided various definitions for the term investment. Accordingly, Thomas Walcott defined investment in three approaches depending on purpose of treaty. He categorizes in the following ways: asset based definition of investment; enterprise based definition; and Tautological definition of investment.⁴⁶

First, the asset based (open ended) definition of investment includes the following things;⁴⁷

- Movable and immovable property
- Various types of interest in companies
- Claims to money and claims under a contract having a financial value
- Intellectual Property Rights
- Business concessions, including natural resources concessions

Second, according to Enterprise based (close list) definition of investment;⁴⁸ it includes-controlling interests in a business enterprise and the establishment or acquisition of a business enterprise, as well as a share in a business enterprise, which gives the investor control over the enterprise.⁴⁹

Third, Tautological definition, According to this categorization, ‘investment’ is defined in economic terms. Covering every asset that an investor owns and controls, directly or indirectly, that has the characteristics of an investment. Approach complemented by explicit exclusion of several kinds of assets.⁵⁰

It can be concluded from the above definition that investment comprises various kinds of assets, activities rights, claims, enterprises, license, business good will, tangible and intangible properties, and the like. From the above definitions of investment, it is possible to understand the

⁴⁶ Thomas Walcott (Legal Advisor, UNCTAD), International investment agreements: key issues and features, power point

⁴⁷ Ibid

⁴⁸ Supra note 46

⁴⁹ ibid

⁵⁰ ibid

non existence of uniform criteria to define the term ‘investment’. Countries are free to determine content of definition of investment in their domestic legislations and BITs. It is the choice of countries either to adopt enterprise based definition or asset based definition.

2.2. Investment proclamation No.769/2012

2.2.1. The Scope of investment proclamation No.769/2012

Investment proclamation, proclamation No.769/2012, governs any investment activities undertaken in Ethiopia except activities involving prospecting, exploration and development of minerals and petroleum resources.⁵¹ Such activities are governed by separate law in Ethiopia. Accordingly, exploration and development of minerals is governed by mining operation proclamation and petroleum resources operation is governed by petroleum operation proclamation.⁵²

2.2.2. Objectives of investment proclamation in Ethiopian

The first paragraph in the Preamble of Ethiopia’s Investment Proclamation (Proclamation No.769/2012) states that “...*the encouragement and expansion of investment, especially in the manufacturing sector, has become necessary so as to strengthen the domestic production capacity and thereby accelerate the economic development of the country and improve the living standards of its peoples.*” These twin objectives are also embodied in Article 5 of the Investment Proclamation which reads: “The investment objectives of the Federal Democratic Republic of Ethiopia are designed to improve the living standards of the peoples of Ethiopia through the realization of sustainable economic and social development.” The specific objective of investment law of Ethiopia includes;

- “To accelerate the country’s economic development”
- “To exploit and develop the immense natural resources of the country”
- “To develop the domestic market through the growth of production, productivity and services”

⁵¹ Supra note 8, art.3

⁵² Mining Operations proclamation, proclamation No. 678/2010, Addis Ababa 4th August, 2010 and See also petroleum Operations proclamation, proclamation No. 295/1986, Addis Ababa, 26th March, 1986.

- “To increase foreign exchange earnings by encouraging expansion in volume, variety and quality of the country’s export products and services as well as to save foreign exchange through production of import substituting products locally”
- “To encourage balanced development and integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy;
- To enhance the role of the private sector in the acceleration of the country’s economic development”
- “To enable foreign investment play its role in the country’s economic development”
- “To create ample employment opportunities for Ethiopians and to advance the transfer of technology required for the development of the country”

To sum up, the aim of investment law of the country is targeted in enhancing the role of private sector in economic development activity, hence, to raise production and productivity, employment opportunity and transfer of technology required to accelerate the development of the country. The ultimate objective is to improve the living standard of the peoples.

In this sense, peoples represent collective name which can includes individuals, families, neighbor hoods and larger communities.⁵³

2.3. The Powers and Responsibilities of investment commission

Investment commission is important organ that is entrusted with the powers and responsibility to implement investment laws.

So what are the powers and responsibilities of investment commission in Ethiopia?

1. **Promote investment**⁵⁴-the first step the investment commission should do is promotion. In this regard the commission may organize exhibitions, trainings and seminars that help to promote investment. In addition, it is duty bound to give appropriate advice and support to investors.⁵⁵

⁵³ Elias Nour, The Investment Promotion and Environment Protection Balance in Ethiopia’s Floriculture: The Legal Regime and Global Value Chain, PhD thesis, 2012, p10, available at http://wrap.warwick.ac.uk/56244/1/WRAP_THESIS_Nour_2012.pdf, accessed on 08 may 2015

⁵⁴ Supra note 8, at article 28(1)

⁵⁵ Tesfaye Abate, Investment Law Teaching Material, 2009, p152. Material Prepared under the Sponsorship of the Ethiopian Justice and Legal System Research Institute

2. **Coordinate**⁵⁶-investment commission is responsible organ to facilitate investment.
3. **Enhancing**⁵⁷-One of the important powers and duties given to the Investment commission is enhancing investment in Ethiopia. The first step the commission should take is to promote and coordinate investment activities. In addition, it is required to serve as a liaison between investors and public offices, Regional Governments and other relevant organs to enhance investment.⁵⁸
4. **Issuing investment license**⁵⁹ –in order to follow up implementation of investment, it is essential to issue investment permits.
5. **Monitoring**⁶⁰ -the commission is duty bound to inspect investment projects in view to evaluate whether they are performing as per the law and investment contract. in other words it is empowered to monitor the implementation of investment projects that are given permission⁶¹
6. **Render technical support to investors**- the commission is empowered to provide advisory service, information and technical support to investors and assist in the provision of information to ensure existence of supply chains among investment projects. It also provide advisory service support which help strengthen regional investment organs.⁶²
7. **Disseminate information**-the commission shall collect, compile, analyze, update and disseminate any investment related information.⁶³
8. **Initiate Policy**-The commission is empowered to initiate policies and implementation measures that are necessary to create conducive investment climate. Then, it should follow up the implementation of same.⁶⁴
9. **Register technology transfer agreement**-investment commission is supposed to register technology transfer agreement related to investment and follow up its implementation.⁶⁵

⁵⁶ Supra note 8, at article 28(1)

⁵⁷ Ibid

⁵⁸ Supra note 55, at p152

⁵⁹ Supra note 8, at article 28(8)

⁶⁰ Id., article 28(11)

⁶¹ Supra note 55, at p152

⁶² Supra note 8, at article 28(12)&(14)

⁶³ Id., article 28(6)

⁶⁴ Supra note 8, article 28(2)

⁶⁵ Id., article 28(9)

10. Negotiate BITs-the commission is empowered to negotiate bilateral investment promotion and protection treaties with other countries where potential investment is likely to flow in to the country.⁶⁶

2.4. FDI and growth

The pursuit of FDI as an engine of growth is a formula prescribed by mainstream economic theory, as well as the IMF and other global development organizations. The overall benefits of FDI for developing country economies are well documented, claims a 2002 report undertaken for the Organization for Economic Co-operation and Development (OECD)'s Committee on International Investment and Multinational Enterprises.⁶⁷ Based on consultations with OECD member governments and business, labor and NGO advisors, the report, entitled Foreign Direct Investment for Development, Maximizing Benefits, Minimizing Costs,⁶⁸ nicely sums up conventional wisdom about the promise of FDI:

“Given the appropriate host-country policies and a basic level of development, a preponderance of studies shows that FDI triggers technology spillovers, assists human capital formation, contributes to international trade integration, helps create a more competitive business environment and enhances enterprise development. All of these contribute to higher economic growth, which is the most potent tool for alleviating poverty in developing countries.”

In addition, the report goes on, FDI may help to improve environmental and social conditions in the host country by, for example, transferring “cleaner” technologies and leading to more socially responsible corporate policies.⁶⁹

2.5. International perspective of investment in relation to development

There are different opposing views as to the relationship between investment and development in international perspectives. They include classical theory, dependency theory, and middle path theory.

⁶⁶ Supra note 8, article 28(3)

⁶⁷ Lyuba Zarsky, International Investment for Sustainable Development: Balancing Rights and Rewards, Earthscan, UK and USA, 2005, p21

⁶⁸ Ibid

⁶⁹ Ibid

1. Classical theory: according to this theory FDI and development have positive correlation. In addition, FDI was seen as a catalyst to host state economic development.⁷⁰ Hence, it has a tendency to create job opportunity, transfer technology and improve infrastructure in the host country.
2. Dependency theory: according to this view, FDI and development have no positive correlation. FDI and economic development are negative correlation. Dependency theorists believe that, rather than promoting development, foreign investment keeps developing countries in a state of permanent dependency on the central economies of developed states.⁷¹ Thus, unless a developing state can break out of the situation of dependency economic development becomes impossible in that state.⁷²
On this view, foreign investment is exploitative too. Thus, there cannot be development unless the people as a whole are freed from poverty and exploitation.⁷³
Furthermore, the proposition as to this view is that the subsidiary company (foreign investor) devises its policies in the interests of its parent company and its shareholders in the home state. As a result, multinational corporations come to serve the interests of the developed states in which they have their headquarters.⁷⁴
3. The Middle path: the proponents of middle path theory believe that there is no automatic positive or negative effect of FDI, on host state development. Their effect is determined by the host state investment policy and regulatory mechanism.⁷⁵

The reduction of hostility towards multinational corporations was furthered by the studies of the United Nations Commission on Transnational Corporations (UNCTC). While supporting the view that foreign investment through multinational corporations could have harmful results in certain circumstances, these studies showed that, properly harnessed, multinational corporations could be engines that fuel the growth of the developing world.⁷⁶

⁷⁰ Ermias Ayalew, Jimma university, school of law, Jimma, lecture note, June 2014

⁷¹ Supra note 9, p53

⁷² Ibid

⁷³ Id., p54

⁷⁴ Supra note 9, p53

⁷⁵ Supra note 70

⁷⁶ Supra note 9, p55

Chapter Three

The Legal Framework for Agricultural investment in Ethiopia

3.1. Development Policy and investment laws in Ethiopia

Ethiopia passed through several ups and downs with respect to development policy in the successive political (imperial, Dergue and EPRDF) periods. Accordingly, an agricultural development policy of Ethiopia was also reviewed in these periods.⁷⁷

3.1.1. Agriculture development policy before 1974

The imperial government of Haileselesie was the first government to exercise different development policies as Ethiopia is first African state to attempt economic development planning.⁷⁸

During this time three five-year plans were prepared for the development of the economy with different targets and area of priorities. They were:

- **The first five year plan (1957-62);** in this period high attention was given for infrastructure and social transformation (raising the level of education and the training of technical personnel). Some attention was given for agriculture.⁷⁹
- **The second five year plan(1963-67);** in this period the focus was given industry (manufacturing), minerals and electric power development, but, unlike the first five year plan some attention was given for agricultural sector.⁸⁰
- **The Third five year plan (1968-73);** it recognized the importance of the agricultural sector and charted out a relatively clear and well articulated agricultural development strategy. This being the strategy, two main approaches for the development of Ethiopia

⁷⁷ Supra note 4

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

agriculture were indicated in the third five-year plan. These were the package program and the development of large-scale commercial farms.⁸¹

The Development of Large Scale Commercial Farms⁸²

At that time the objectives in establishing large-scale commercial farms were to achieve rapid gains in output both to domestic consumption and the availability of surpluses for investment, to get an increase in agricultural exports or substitution for imports, to create new employment opportunities this is because of the fact that such farms require big investment which was not available from internal sources, the implementation of the strategy necessitated a heavy dependence on foreign capital. To attract foreign investment a number of incentives were provided.⁸³

3.1.2. Agriculture Development Policies during the Dergue Regime (1974-1991)

After the 1975 land reform by the Dergue has been considered by many as a radical measure that has abolished tenant - landlord relationships in Ethiopia.⁸⁴

The agricultural development strategy of the Dergue period was what was known as "socialist transformation of agriculture"; that of transforming agriculture along socialist lines. This was to be implemented through the establishment and consolidation of state farms and producers' cooperatives.⁸⁵

3.1.3. Agriculture development policy in FDRE government

Agricultural Development-led Industrialization Strategy focuses that small holder farmers/pastoralists need to efficiently use modern agricultural technologies and increase production and productivity. Moreover, the private sector is encouraged to increase its share of investment in agriculture.⁸⁶

The broad objective of agriculture and rural development (ARD) policy in the GTP period is to achieve accelerated and sustained growth that contributes to poverty reduction on the basis of

⁸¹ Supra note 4

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Supra note 7, p47

outstanding results and experiences gained from the implementation of the programs hitherto as well as to pave the groundwork for the attainment of the MDGs by 2015.⁸⁷

During GTP period large scale agricultural investment allowed to be undertaken by private investors.⁸⁸ In this sub-sector, the necessary support will be given to encourage the participation of Ethiopian investors. Domestic investors are highly encouraged to engage in large scale agricultural investment.⁸⁹ Side by side, efforts are made to attract foreign investment in a manner that will be beneficial for Ethiopia's agriculture sector development.⁹⁰

In respect to investment and development policy; FDRE government has sectors development policy like; industrial development policy, agricultural policy, and the like. But it has no structured and organized development policy document. It is just incorporated in sectors policy documents. Moreover, the government has no separate investment policy. Its policy is incorporated in development policies of the country. Agricultural policy of the country contains small scale farming and large scale agriculture investment policy guidelines.

Ethiopia incorporated rights to development in its 1995 constitution. To realize the constitutional rights to development a number of steps have been taken by the government. Among these steps, the government has enacted development policy investment promoting laws.

Investment rules and principles are stipulated in investment proclamation and regulation.

But the new investment proclamation do not incorporate ministry of trade and industry as investment administration organ.

3.2. Investment opportunities in Hadiya zone

In terms of investment incentives, Hadiya zone has the same investment opportunities as with the region, SNNPR. The zone is also gifted with Availability of Industrial raw materials, ample land

⁸⁷ Supra note 7

⁸⁸ Id., p54

⁸⁹ Ibid

⁹⁰ Ibid

for irrigated agriculture and Infrastructure facility, especially road network, Telephone service, Electricity, Financial service.⁹¹

In addition to these, the zone has abundant and technical labor force with fair labor cost; active cultural working behavior of the community; and proximity to central market, i.e. proximity to Addis Ababa, the capital city of the country.⁹²

3.3. Investment opportunities in SNNPRG

3.3.1. Legal framework

Investment activities in SNNPRG are governed by a separate proclamation called SNNPRS investment administration proclamation No. 81/2004. Its lower government structures have no separate laws that regulate investment activities run in their jurisdiction. They are governed by regional laws. Powers and responsibilities of the lower investment administration organs of the government are defined in this proclamation.⁹³ In this proclamation, various investment promotion and protection strategies are incorporated. They include the following:

- Investment protection and guarantee⁹⁴
- Rendering investment service under “One stop shop service⁹⁵”
- Allocation of land: priority of delivering investment land for some selected projects⁹⁶
- Investment incentive: for example; exemption from payment of custom duties and tax holidays for some kind of development projects⁹⁷

3.3.2. Resource potential in the region

Along with the convenience of legal framework to private investment, the economy of the region is highly based on agriculture. It is the back bone of the regional economy accounting for more

⁹¹ Potentials of Hadiya zone- SNNPR investment expansion process, available at <http://www.southinvest.gov.et/potentialHadiya.htm>, accessed on 23 may 2015

⁹² Hadiya zone trade and industry department investment expansion work process, brochure (information sheet), Hossana, 2014 & 2015

⁹³ SNNPRS investment administration proclamation reenactment proclamation, proclamation No. 81/2004, Dehub Negarit Gazeta of southern nations, nationalities, and peoples regional state, 9th year No. 14, Awassa, 18th August, 2004, article 14.

⁹⁴ Id., article 25

⁹⁵ Id., article 26

⁹⁶ Id., article 27

⁹⁷ Id., article 28

than 90 percent of the total employment. The region is endowed with wide-ranging climatic conditions and resource bases which support several farming systems. Due to this all types of Cereals, Fiber crops, Oilseeds, Fruits, Vegetables, peas, Beans, Groundnuts, Sunflowers, Beverage Crops (Tea and Coffee) Spices, Clove, Cardamom, Ginger, Black pepper, Hell and Herbs, Horticulture: Citrus, Banana, Mango, Papaya, Avocado, Pineapple, and industrial crops like Cotton are widely grown in the region.⁹⁸

Energy potential; Omo river only has potential to produce 36,560 mega watt electric power. Moreover, there are 26 small rivers with the potential of more than 111.5 mega watt electric potential.⁹⁹

Livestock potential; according to regional statistical abstract of 2007, the livestock population has been estimated 29,017,551, out of it cattle accounted to 11,285,450, sheep 3,618,802, goat 3,927,205 and 7,806,800 poultry.¹⁰⁰

Market size; it is the third populous region in the country with a population of 15,042,531, apparently being populous regional state in the country and that makes it largest market area.¹⁰¹

3.3.3. Infrastructure

Infrastructure development is another opportunity to investment in the region. Main infrastructure development includes road, telephone service, financial service, and electricity.

Regional road network: the international high way from Addis Ababa to Moyle-Kenya crosses the region through Hawassa. Moreover there is asphalted road in the region which is 669.3km in length and the rest 3463.9 km and 12406.3 km are gravel and partial gravel respectively.¹⁰²

Telephone service: the telephone service of the region has a standard from pay station to digital, which are 7 digital, 17 semi automatic and the rest 59 are pay stations.¹⁰³

⁹⁸ Supra note 16, p 39

⁹⁹ Id., p38

¹⁰⁰ Supra note 16, pp37&38

¹⁰¹ Id., p41

¹⁰² Id., p36

¹⁰³ Supra note 16, p37

Electricity: 274 towns and villages of the region have electric service delivered by interconnected system and diesel generator of Ethiopian electric power corporation.¹⁰⁴

Financial service: Different financial institutions in Ethiopia provide short, medium and long-term development credits.

3.4. Institutions Concerned About investment administration in SNNPRG

SNNPRG investment agency is established to promote, protect, license, assist, monitor and administer investment activities in its jurisdiction. But it is not the only organ to administer investment activities established in the region. There are other organs that are responsible for administration of investment law. SNNPRG investment administration reestablishment proclamation reads; “the investment administration bodies include; investment board, trade and industry coordination bureau, investment agency, zonal and special weredas’ investment expansion work process and zonal/special weredas’ investment committee.” Such proliferation of investment administration organs creates reluctance of duties.

3.4.1. SNNPRG investment Agencies

As indicated under investment administration Organs establishment proclamation, the Regional investment Agencies or their lower structure; Zonal and special Wereda investment office, are also responsible bodies to administer investment activities.¹⁰⁵

This proclamation requires regional states to set up or designs their own investment administration organ in line with the Ethiopian investment policy. The regional investment agencies are responsible for coordinating, encouraging, monitoring, facilitating investment in the regions.¹⁰⁶ The following are some of the duties and responsibilities of SNNPRG investment agency;

1. **Encouraging**-the agency encourage and promote investment activity by serving as the investment hub of the region.¹⁰⁷ It officially promotes investment activities by organizing workshops, seminars, training and exhibitions.¹⁰⁸

¹⁰⁴ Supra note 16, p37

¹⁰⁵ Supra note 93, article 4

¹⁰⁶ Id., article 11

¹⁰⁷ Supra note 93, article 11(1)

¹⁰⁸ Id., article 11(5)

2. **Issue, renew, suspend and revoke**-the agency is empowered to issue, renew, suspend and totally revoke the investment permit in accordance with the relevant laws.¹⁰⁹
3. **Initiate policy**-it is responsible to initiate and implement policies and executioner measures for creating conditions conducive to investors.¹¹⁰
4. **Disseminate information**-the agency is duty bound to undertake research and potential study and disseminates and advertize the same information to potential investors and other stake holders.¹¹¹
5. **Register agreements**- the agency is responsible to register agreements that are related with investment activity.¹¹²
6. **Monitor and Follow-up**-the agency is eligible organ that facilitate, coordinate, issue investment permit and in the meantime monitor and follow up implementation of investment law and contract.¹¹³
7. **Render technical support**-the agency is responsible to provide pre and post investment technical support and counseling service to investors who engaged in the region's investment.¹¹⁴
8. **Prepare possession map**- the agency Cause to measure and prepare possession map of rural land which is given and prepared to investors in the region and provide.¹¹⁵
9. **Collect report**-the agency is empowered to collect investment report from respective lower structures.¹¹⁶

3.5. Legal Instruments concerning investment in Ethiopia

The 1995 FDRE constitution is the binding instrument dealing with investment and development. The constitution under article 43 and 89 contain provisions that stresses on economic development.¹¹⁷

¹⁰⁹ Supra note 93, article 11(2)

¹¹⁰ Id., article 11(3)

¹¹¹ Id., article 11 (4)&(6)

¹¹² Id., article 11(10)

¹¹³ Supra note 93, at article 11(8)

¹¹⁴ Proclamation No 133/2010 Issued to Re-determine the Powers and Duties of the Southern Nations, Nationalities and Peoples Regional State Executive Organs, proclamation No.133/2010, Debub Negarit Gazeta

of the southern nations, nationalities and peoples regional state, 2010, article 33(4)

¹¹⁵ Id., article 33(10)

¹¹⁶ Supra note 93, at article 11(15)

The Commercial Code of 1960 provides the legal basis to carry out business activities. Numerous proclamations and regulations have added further detail over time related to business and labor requirements.¹¹⁸

With the primary goals of promoting the investment and enforcing development rights and objectives enshrined in the constitution, the government also adopted investment proclamations and regulations which is the means of maximization of their socio-economic benefits.¹¹⁹ Accordingly, investment proclamation and its amendment: proclamations No. 769/2012 and 849/2014 respectively; investment incentives and investment areas reserved for domestic investors council of ministers regulation and its amendment: regulation No. 270/2012 and 312/2014 respectively, and different directives are enacted by FDRE government in view to encourage private investment.

As we understood from the reading of the preamble of the proclamation, investment is used to strengthen the domestic production capacity and thereby accelerate development of the country and improve the living standard of its peoples.¹²⁰

Investment proclamation requires certain responsibility from investors. Among these, the owners of the investment projects are responsible to create job opportunity and transfer technology.

The investment proclamation does not restrict itself to imposing responsibility on the investors only; it also demands government responsibilities. Accordingly the proclamation requires certain responsibility from concerned government organ¹²¹ (investment agency) This organ is responsible to monitor investment projects for which it has issued investment permit and thereby it ensure that the terms of investment permit are complied with and incentive granted to investors are used for the intended purposes.¹²²

¹¹⁷ Supra note 13

¹¹⁸ The Oakland institute The Oakland institute, Understanding Land investment deals in Africa, Country report: Ethiopia, Oakland institute, 2011, p15, available at http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Ethiopia_Land_Investment_report.pdf, accessed on 16 may 2015

¹¹⁹ Supra note 8, article 5

¹²⁰ Id., see its preamble

¹²¹ Supra note 8, article 28

¹²² Id., article 28(3)

Perhaps, based on investment proclamation and regulation, Ethiopian investment commission has enacted directive called, Ethiopian investment board Duty free import of vehicles (amendment) directive, directive number 3/2003. This directive is enacted to give tax incentive to investors engaged in manufacturing, agriculture, tour service, star hotels, lodges, construction, and ICT technology in the country.¹²³

3.6. Rational for land investment in Ethiopia

Agricultural land investment is critical for Ethiopia's development.¹²⁴ Hence, it creates;

- Job opportunity, in fact not only agricultural investment but also all investment accelerates and be accompanied by large scale employment generation¹²⁵
- Potential for transitioning farmers to modern farming techniques¹²⁶
- it brings new technology¹²⁷
- used to ensure food security

3.7. Legal Basis for Land Investment in Ethiopia

The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution is the base for all land investment-related legislation and policy¹²⁸ because it is the supreme law of the land.¹²⁹

The 1995 rewriting of the Constitution reaffirmed state ownership of all land. It also affirmed the right of peasants to obtain free land, protection from eviction, gave rights to pastoralists, and enabled compensation in case of expropriation.¹³⁰

The Federal Rural Land Administration and Use Proclamation (Proclamation 456/2005) give right to hold and use rural land to private investors.¹³¹ It also enables regional governments to

¹²³ Investment board Duty free import of vehicles reenactment directive, directive No.3/2003, FDRE investment agency, 28th February, 2003, article 3

¹²⁴ Supra note 118, p20

¹²⁵ Nepal, Human Development Report 2014, Nepal, United Nations Development Program, 2014, p3, available at http://www.np.undp.org/content/dam/nepal/docs/reports/hdr/UNDP_NP_Nepal_Human_Development_Report_2014.pdf, accessed on 03 April 2015

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Supra note 118, p14

¹²⁹ Supra note 13, article 9(1)

¹³⁰ Supra note 118, p14

make laws to manage and administer their rural lands. The proclamation outline the processes for land redistribution and expropriation, require compensation for expropriation (limited to improvements), enable the renting out of land and allow for the provision of communal, group, and individual holding rights. They also provide the basic enabling framework for land use planning to be undertaken.¹³²

3.8. Institutions Concerned About investment law in Ethiopia

Since 1991 Ethiopia has been under the federal system. Hence, there are nine regional states and two city administration units in the country as whole. Division of powers among the federal and regional states is commonly used in federal system in order to avoid conflict of interest.¹³³ In a Similar vein this principle is applicable in Ethiopia in many respects. With the objectives of ‘bringing development, in one hand and, investment monitoring, protection and promotion, on the other hand,’ the Ethiopian government shared the investment administration to federal and regional level.¹³⁴

Though the Ethiopian investment commission has taken the lion share responsibilities in the country, there are also investment administration board¹³⁵ and regional investment agencies who share powers of investment administration. In the previous investment proclamation; i.e. proclamation No. 280/2002, investment administration shall be carried out by ministry of trade and industry, investment board, investment Authority, and respective Regional investment

3.9. Investment opportunities and challenges in agriculture investment in Ethiopia

3.9.1. Opportunities

There are various investment opportunities in Ethiopia so that to invest in agribusiness, mining and oil and gas, economic infrastructure, manufacturing, tourism, and health services.

¹³¹ Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, proclamation No. 456/2005, federal Negarit Gazeta of the federal democratic republic of Ethiopia, 11th Year No. 44, ADDIS ABABA, 15th July, 2005, article 5(4)

¹³² Id., article 7(3)

¹³³ Supra note 13, articles 51&52

¹³⁴ Investment amendment proclamation, proclamation No. 849/2014, federal Negarit Gazeta of the federal democratic republic of Ethiopia, 20th Year No. 52, ADDIS ABABA, 22nd July , 2014, article 27

¹³⁵ Supra note 8 &23

With regards to Agribusiness; Ethiopia is the 27th largest country in the world by land size and has significant agricultural resources. Historically, Ethiopia has produced large amounts of maize, sorghum, barley, and wheat along with the Ethiopian staples of *Teff* and Coffee. However, given its diverse topography and geographical location, Ethiopia is suitable for growing a commensurately diverse range of crops depending on local factors such as suitable soil conditions, surface characteristics (e.g., slope), rainfall, temperature (while it is in the tropics, temperatures range from a mean annual high of 30°Celsius to a mean annual low of 10°Celsius), and supporting economic infrastructure. Options are further being expanded by new technologies.¹³⁶

Approximately 80% of Ethiopia's workforce is employed in agriculture. The policy environment for development of the private sector's role in agribusiness is also supportive. The GTP continues to rely on agriculture as a major source of economic growth.¹³⁷

Commercialization of smallholder farming continues to be the major source of agricultural growth under the GTP, supported by policies to increase productivity of smallholders.¹³⁸

Meanwhile, the GTP's Agriculture Growth Program emphasizes shifting to high value crops and developing large-scale commercial agriculture is possible (e.g., in the lowlands). Thus, concerted support is to be given to increase private investment in large commercial farms, including through public investment in relevant infrastructure, such as water supply for irrigation. Also, the GTP emphasizes the development of intensive agricultural production in the highlands and where basic infrastructure is available.¹³⁹

Under the GTP, the Government of Ethiopia plans to maintain an organized land bank, which will make land available for lease for commercial agriculture. In the plan; cotton, date palm, tea, rubber, and similar agricultural products as desirable, although food crop production will be

¹³⁶ Henok Assefa, Derk , and Dan, Ethiopia's Investment Prospects: A Sectoral Overview, Vol. 4, No.2, Rhodes University, 2013, p225, available at [http://www.africanreview.com/Vol.%204%20\(2\)/Ethiopia%27s%20Investment%20Prospects.pdf](http://www.africanreview.com/Vol.%204%20(2)/Ethiopia%27s%20Investment%20Prospects.pdf), accessed on 29 march 2014

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Supra note 136,p226

encouraged in a double cropping system. The GTP also indicates preparedness by the government support private investors to enhance their commercial agricultural investment.¹⁴⁰

Internationally, Ethiopia has signed multilateral and bilateral investment promotion and protection agreements with many countries. The country is the member and signatory of the World Bank affiliate multilateral investment guarantee agency (MIGA) and a signatory of the international convention on settlement of investment disputes (ICSID) as of Sep. 21, 1965. It has also signed about 30 BITs with different countries. Furthermore, it is a member of COMESA, and beneficiary of AGOA and Cotonou Agreement with the EU.¹⁴¹

With respect to legal frame work, the Commercial Code of 1960 provides the legal framework for undertaking business activities in Ethiopia.

Perhaps, Economic policy and investment laws of the country are crafted in a way that promotes private investment. Accordingly, one of the reasons for the amendment and re-amendment of the early investment law is to further encourage and expand investment.¹⁴² Different investment incentives, guarantees and protection are extended to attract investment.¹⁴³

In general we can say that Ethiopia's attractive investment climate makes the country an ideal destination for foreign investment. Many investors suggest that the low input costs (e.g. labor), relaxed regulations, the streamlined process, abundant/suitable land, strategic location, preferential trade agreements, and abundant water resources are among the reasons why doing business in Ethiopia is lucrative.¹⁴⁴

3.9.2. Challenges

The major challenges encountered in large scale agricultural investment are related with government, investors and countries economy.

¹⁴⁰ Supra note 136

¹⁴¹ FAO, Foreign Agricultural Investment Country Profile, Ethiopia, 2011, p21, available at http://www.fao.org/fileadmin/user_upload/tcsp/docs/ETHIOPIA_COUNTRY_PROFILE.pdf, accessed on 20 March 2014.

¹⁴² Supra note 8, See its preamble

¹⁴³ Id., part six

¹⁴⁴ Supra note 118, p20

3.9.2.1. Challenges related with government organs

The first problem is lack of professionally and ethically trained experts in the investment offices.¹⁴⁵ This problem is highly related with lack of knowledge and skill to provide technical and professional support to investors.¹⁴⁶ It is also related with corruption and bureaucracy problem. Thus, investment organs need to train their personnel to upgrade their knowledge and skill so that to render quality professional support and thereby to regulate investment projects effectively.¹⁴⁷ The second problem concerns failure to formulate strategies for regulations and follow-up investment projects.¹⁴⁸ The third problem relates to data. There is lack of experience to systematically gather data and make it available for the required purpose and goal.¹⁴⁹ Fourth, there is also a problem in the coordination among investment organs. The organs are not properly coordinated in regulating investment.¹⁵⁰ It also lacks coordination with concerned government organs.

3.9.2.2. Challenges related with economy

In Ethiopia, the problems or challenges of investment is mostly connected with lack of infrastructure development. The major source of low level of infrastructure development in the country is its being a least developed nation. In different time's government attempt to improve infrastructure development, however, the problem is not settled. There is great network problem in telecommunication service; power fluctuation in electric service and quality and distribution problem in roads.¹⁵¹

¹⁴⁵ Supra note 55, p170

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Ibid

¹⁵¹ Supra note 55, pp171&172

Chapter Four

Analysis of the Legal and practical Perspective of investment Laws

4.1. General Background

SNNPRG is divided into various Zones, special Woredas and City Administrations. One of which is Hadiya Zone, and further the zone is sub divided into different Woredas and town administrations, such as Gibe Wereda, Misha, Gombora, Soro, Lemo, Shashogo, East Bedawacho, West Bedawacho, Duna, Ana Lemo, and Hosanna town administration.¹⁵²

Hadiya Zone has suitable climate and soil for production of coffee, oilseeds, cereal crops, (wheat, teff, maize), proximity and efficient transportation facility that connect the zone with capital city of the country, and availability of abundant labor.¹⁵³ Furthermore, the zone is known for large amount of wheat production in the region as well as in the country.¹⁵⁴ It is one of nine reform and development area selected in the region.¹⁵⁵

Several investment projects are found in this Zone, ranging from small scale to large scale. They are engaged in agriculture, industry and general service sector having investment license.¹⁵⁶ The data obtained from Hadiya Zone Investment expansion work process shows that till 2006 Ethiopian calendar, 122 investment projects are licensed and of which some are fully operational and some others are at pre operation stage.¹⁵⁷ Among these 122 investments; 78 engaged in industry sector, 25 engaged in service sector and 19 engaged in agriculture. These projects are supposed to create job opportunity to 9680 peoples.¹⁵⁸

¹⁵²Hadiya development and rehabilitation network (HDRN), available at <http://hadiya.org/zone.html>, accessed on 23 may 2015

¹⁵³ Supra note 92

¹⁵⁴ Hadiya zone investment expansion work process, Zena hadiya zone investment, Hossana town investment results, 2014, p10

¹⁵⁵ Id., p9

¹⁵⁶ Id., p5

¹⁵⁷ ibid

¹⁵⁸ Supra note 154, p6

With respect to agriculture investment; from 25 licensed projects in agriculture sector, six investors resign the projects by their own.¹⁵⁹ Currently only 19 projects are operational, however, their productivity and contribution to the community is very low. Based on productivity and contribution to the society, the projects are grouped in to the rank of high, middle and low performance. Accordingly, four projects are ranked as high performing; nine projects are ranked as middle performing and six projects are ranked as low performing projects.¹⁶⁰ In other words, about 30% of the projects are in low performance situation.

Due to the growing need of economic development, investment became the central choice of the Country and of the world as well. And to this effect the country has taken some legislative measures in order to guarantee and promote investment; however, established investment projects found in this Zone does not achieved the required goal in terms of job creation, technology advancement and production and productivity.

In order to evaluate the suitability of institutional arrangement and legal frame work, several factors will be taken into consideration among which-the content and quality of investment laws, particularly contents and quality of SNNPRG investment administration reenactment proclamation. In addition to that, institutional suitability of Hadiya zone trade and industry department investment expansion work process to follow-up projects will be evaluated.

At global level, there are various international instruments that recognized the concepts of investment. Ethiopia has also become party to the following conventions and agreements: MIGA, ICSID and several BITs. It also requires ensuring that all other development policies and laws of Ethiopia are respected along with international conventions and treaties of investment to which the country is party. All these instruments were adopted to promote and protect investment and investment activities any where irrespective of its origin.

In this chapter the researcher identifies the challenges and gaps in the implementation of investment laws in the study area by the data obtained through interviews from the regional and zonal investment experts, investors and local farmers.

¹⁵⁹ Supra note 154, p6

¹⁶⁰ Ibid

4.2. Factors Attributable to Ineffective Implementation of investment Laws

In order to evaluate the problems associated with implementation of investment laws in the study area: SNNPRG investment agency head and one investment expert; vice head of SNNPRG bureau of agriculture; Hadiya zone trade and industry department head, investment expansion work process coordinator and two investment experts; head of Hadiya zone agriculture department; former coordinator of investment expansion work process of Hadiya zone, four investors; four local farmers, totally 17 respondents were purposively selected for interview. In addition, the researcher conducts field observation on two projects located in different weredas'. Furthermore, some regional and zonal official documents were evaluated to diversify information source.

The data obtained from document evaluation, interview and field observation revealed; there are various factors for ineffective implementation of investment laws on projects found in the study area.

4.3. Implementation problem of investment law according to interview and document evaluation

◆ *Note: the identity of investors and their project's performance status is kept unanimous because they require the researcher to do so while giving information.*

19 projects are currently engaged in medium scale farming in the zone, however, majority of them do not bring the required outcome. The study conducted in these projects shows that there is a problem of professional skill.¹⁶¹ The following are lists of problems according to this study, other documents and interview conducted by researcher.

Project management problem is one of the implementation problems in the study area. Except four projects, the remaining 15 projects operation and management is run by non professionals.

¹⁶¹ Hadiya zone trade and industry department investment expansion work process, training manual, 2013, p5, the training manual is prepared to investors to create awareness on the agriculture and manufacturing investment. This rapid assessment contains list of challenges and identified implementation impediments in the study area. The interview with Ato Minilshewa wubishet, investment expert, Hadiya zone trade and industry department, Hossana, 29 April 2015

Investors do not want to expend extra cost to hire professionals. And also they produce less than local farmers.¹⁶²

Lack of new technology is the other problem of the projects. They lack farming technology and they do not use improved seeds and fertilizer. Except few, the remaining used very traditional farming instruments. For this reason, some produce the same amount with local farmers and even some produce less than local farmers.¹⁶³

Land is the most expensive natural resource, however, its management and utilization is very low in the study area. Large number of investors produces less than local farmers and very surprisingly some of the investors left the land uncultivated.¹⁶⁴

Infrastructure development facilitates investment productivity. But there is serious infrastructure problem in the study area. The most common infrastructure problem is Lack of rural road. Among 19 investment projects only one investment project is beside asphalt road, whereas the remaining projects have no access to road. In this regard, the role of the government is limited and it is too costly to investors to construct by their own because they are very long and topographically difficult.¹⁶⁵

Land dispute and property destruction is often committed in some investment projects. Land dispute with local farmers¹⁶⁶ ; for example; due to this problem, 68 hectare land is not yet cultivated in Duna wereda wegebeta kebele and also in gibe agro farm, it is common that fruits and vegetables are destroyed and taken away by local community. Government organs are very

¹⁶² Ibid. see also Ato Bishew Belay, implementation problem of investment laws and policy, Hawasa, 2015, p10, this is rapid assessment conducted by regional investment potential study expert, Ato Bishew Belay, to explore implementation problem of investment laws and policy in SNNPRG.

¹⁶³ Supra note 161. The Interview with Ato Germame Gama, vice head of bureau of Agriculture, SNNPRG bureau of agriculture, Hawassa, 22 april 2015. The interview also with Ato Abas Mohammed, head of investment agency, SNNPRG bureau of trade and industry investment agency, Hawassa, 21 April 2015

¹⁶⁴ Ibid, And also interview with Temirat Beyene, agriculture department head, Hadiya zone agriculture department, Hossana, 30 April 2015. And also interview with Germame Gama

¹⁶⁵ Ato Bishew Belay, implementation problem of investment laws and policy, Hawasa, 2015. Interview with Ato Tarekegn Erbelo, former coordinator of Hadiya zone investment expansion work process, Hadiya zone trade and industry department, Hossana, 28 April 2015 and Interview with Ato Tamirat Gizaw, head of Hadiya zone trade and industry departmen, Hadiya zone trade and industry department, 29 April 2015

¹⁶⁶ id., p9 see also Ato Bishew Belay and Interview with Ato Abas Mohammed

reluctant to address security problem of investors and investment projects; specially land dispute and property destruction.

Investors hire low number of employees than in the project proposal.¹⁶⁷ One of the problems for low number of employees is in view to produce at minimum cost. The other problem for this reason is capacity problem of investors.¹⁶⁸

There is serious problem of monitoring of projects by the government organs. The problem is related with both Inadequacy and quality of investment follow up.¹⁶⁹ But in the other way, Government is responsible to license, assist and follow up the project and ensure implement of investment laws. In addition, there is Lack of professional and technical support from the concerned government organs: particularly from department of agriculture and trade and industry.

Investors are supposed to organize permanent office (site office) near project. The existing investors have neither organized office nor document that talk about the project.¹⁷⁰ Effective project follow up and technical support is rendered if there is organized office and documents near the project.

Water resource management problem is encountered in some investment projects. They use irrigation technology which abuses water resource.¹⁷¹

Location selection; majority of projects use traditional rain feed farming system. As to one of the investor, the main reason for this is location selection problem. During location selection for large scale farming, accessibility of water (river) is not taken in to consideration.

¹⁶⁷ Ato Abas Mohammed, head of investment agency, SNNPRG bureau of trade and industry investment agency, Hawassa, 21 April 2015

¹⁶⁸ Ibid

¹⁶⁹ Ato Germame Gama, vice head of bureau of Agriculture, SNNPRG bureau of agriculture, Hawassa, 22 April 2015

¹⁷⁰ Ato Adamu Jenbere, Hadiya zone investment expansion works process coordinator, Hadiya zone trade and industry department, Hossana, 29 April 2015. See also Hadiya zone trade and industry department investment expansion work process, training manual, 2013, performance evaluation document of zone

¹⁷¹ Supra note 26

Investment administration organs need to have well organized office and professionals. According to the information of one of the interviewed investor there is Office organization problem; in regards to expertise quality, the officers have no required expertise quality.

The established investment projects are creating limited job opportunity to local community both in terms of number and payment. The number of regular employees is very low as the majority of activities are performed by non regular workers. Furthermore, the payment situation of the workers is very low; the average daily payment of unskilled worker is not more than 30 EB still today.¹⁷²

There is no awareness as to investment by local communities. For this reason, they do not care about the project security and existence.¹⁷³

The purpose of investment incentive is to encourage investment and investment activities. Accordingly investors are permitted to import vehicles and equipments duty free but some investors use these equipments for the purpose other than project target.¹⁷⁴

Lastly, Investment data handling and management is poor.¹⁷⁵ This is the problem of both investors and investment administration organs in the study area according to interview and document analysis.

The information forwarded by different respondents here above is an indicator of problem in implementation of investment law and policy; however, there is some kind of bias. Some of respondents, particularly these from government organs and investors hide some problems pertaining to their institution or project in fear of responsibility/liability. It was common limitation to get honest information from government organs and investors that make them liable/responsible. For such kind of misinformation, the researcher try to diversify information source in the one hand and crosscheck the data collected from several sources in the other hand.

¹⁷² Mekebo fikire and Bogale Lenkamo, farmers, Gibe woreda, 01 may 2015

¹⁷³ Ato Minilshewa wubishet, investment expert, Hadiya zone trade and industry department, Hossana, 29 April 2015

¹⁷⁴ Supra note 167

¹⁷⁵ supra note 161, p6

Accordingly, the researcher list out the most common problems that hinder implementation of investment law and policy in the study area in the following manner:

- Majority of Investors lack new technology
- Government organs reluctance to follow up the projects. One of the reasons for this is lack of financial (budget) capacity.
- Remoteness of projects from zonal center, Hossana.
- Institutional arrangement problem
- Wereda administrative structure and local community¹⁷⁶ Lacks of awareness as to investment projects.
- Lack of document that shows performance detail of investment project in the concerned government office.
- Investors do not have permanent office where the projects are located. In addition they do not have well organized documents that shows performance status of the project
- None of The project owners have professional skill and even they do not hire professionals. Their projects are managed and assisted by non professionals; most of the time by the relatives of investors or their agents.
- Nothing is being done to local farmers to transform traditional farming system to modern farming system. There is absence of technology transfer to farmers.
- Some projects hire limited regular workers and some other totally do not create job opportunity to the community.
- Land dispute from local farmers.

Furthermore, the researcher list out the most **Sevier** and tangible problems among the listed common problems based on data collected from relatively independent sources like; local agrarian community, bureau of agriculture, and researcher site observation in addition to other sources of information¹⁷⁷. Broadly the problems are classified in to three groups. These are; problems related with investors, problems related with institutional arrangement and problems related with concerned government organs.

¹⁷⁶ Local community means the local agrarian community resides around and near where the investment projects are located

¹⁷⁷ Other sources of information includes; the information obtained from investment administration organs and investors or their agents or their employees

4.3.1. Problem related with Investors

4.3.1.1. Use back ward technology

The effectiveness of production and productivity is directly related with the type of technology used. As discussed in the preceding sections, except few projects, majority of the project use traditional farming and harvesting technology. As to one of the respondent of hadiya zone agriculture expert; even some investors use oxen to plough the land which is directly similar farming style with local farmers.

The use of backward technology for farming and harvesting is highly labor intensive and time consuming. It is not efficient way of production since it consume large amount of labor and capital to produce more.

The following photos (one and two) shows labor intensive harvesting technology of Teff; taken from one of the project engaged in Teff production in the study area.

Photo one:

Source; taken during researcher field observation



Photo two:

Source; taken during researcher field observation



4.3.1.2. Land utilization problem

Land is one of the most expensive resources among agricultural input. At the entry stage before giving land to a certain investment project; land demand of the project, investor financial capacity, number of project implementation phase, and technology availability, will be considered. However, the evaluation result of Hadiya zone investment expansion work process shows, investors and their employees have problem of professional skill and lacks financial capacity so that to properly manage and utilize the land they receive.¹⁷⁸ As a result production and productivity objective of investment law and policy is not achieved in majority of the project according to the study.

The objective of production and productivity will not be achieved unless the land given is properly utilized by the investor. According to the information of SNNPRG vice head of bureau of agriculture and other respondents of department of trade and industry of Hadiya zone; other

¹⁷⁸ Supra note 161, p6

than few projects the remaining investors utilize the land not better than local farmers and some others even keep it totally uncultivated.

The following photo evidence is obtained from researcher site observation; it shows one of the totally uncultivated investment projects in the study area.

Photo three:

Source: taken during researcher field observation, photo evidence which is taken from one of the investment project engaged in crop production in Hadiya zone



In addition to total cultivation problem, there are also project which are partial land utilization problem. According to information of Hadiya zone investment expert, this project is required to cultivate more than 65% of the land, however, the amount of cultivated land is only 30%. The next photo also shows 30% cultivated land in one of the investment project in the zone.

Photo four:

Source; taken during researcher field observation



4.3.1.3. Create limited employment opportunity

Investment, whether it is foreign or domestic, required creating ample employment opportunity to the community.¹⁷⁹ In this regards the researcher conduct interview with different respondents including investors as to whether the existing (operational) project are creating required number of employment opportunity to the community or not. One of the interview conducted with two investors with the rank of high performance in the zone, shows that the number of actually employed workers is less than they are required to employ in accordance with project proposal and investment contract. Furthermore, investors with the rank of low and middle performance, some actually employed much less than they are required and some others does not totally employ. As to the respondents information; Investment projects do this because they want to get profit with very minimum expenditure.

The information collected from local farmers through interview reveals that not only problem of creating job opportunity but also there is the problem of fair payment and problem of work guarantee. They said that ‘most of the projects hire non regular workers in their projects; in the rainy season for farming and in the winter season for harvesting.

¹⁷⁹ Supra note 8, Art.5(8)

In addition, Unemployment rate is very high in the zone; the zone has 53,310 unemployed peoples according to 2013/14 unemployment study report of Hadiya zone labor and social affairs office.¹⁸⁰ This number is very large relative to total population of the zone. Unemployment is even highest relative to the central zones of the region. It is indicated in the unemployment rate study report conducted by SNNPRG bureau of labor and social affairs on central zones of the region.¹⁸¹

Having the mentioned facts, it is possible to conclude that the investment projects established in the study area did not create job opportunity to the community. For this reason we can say that one of the objectives of investment law is not achieved whenever evaluated in terms of creating employment opportunity. Consequently, one can say that there is problem in implementation of investment law and policy in the zone in terms of creation of job opportunity.

4.3.2. Problem related with Institutional arrangement and legal framework

As discussed earlier, investment promotion and protection is not the only duty of Federal investment commission but also the responsibility of all lower structures¹⁸². On the basis of this objective, the Ethiopian investment policy, guidelines, and laws disseminate the responsibilities among Regional states.

The Federal investment commission is responsible to promote, license, assist, and supervise investment projects functioning at the federal levels.¹⁸³ It also provides advice and technical support to the regional investment agencies.¹⁸⁴

One of the legal frame work problem which hinder implementation of investment law in the study area is absence of obligation to submit progress report to concerned government organs. According to FDRE Investment proclamation, investors are required to submit progress report on the implementation phase of his project to the appropriate investment organ at the end of every

¹⁸⁰ Supra note 22, p8

¹⁸¹ SNNPRG Bureau of labor and social affairs, unemployment rate rapid assessment in central zones of the region, 2008/9, p26

¹⁸² A lower structure means regional and zonal organs accorded investment administration power. In SNNPRG case, it is SNNPRG bureau of trade industry and urban development investment agency and departments of trade and industry investment expansion work process of its respective zones and special weredas'.

¹⁸³ Supra note 8, Art.28

¹⁸⁴ Ibid

three months.¹⁸⁵ Progress report is one of the best ways to follow up projects performance status. It also used as one of the information source that will enable to follow up projects. However, this provision is not incorporated in SNNPRG investment administration reenactment proclamation.

As regards to projects subject to the Regional investment Agency, that is in case of SNNPRG, the bureau of SNNPRG trade and industry is responsible to oversee, and make major decisions because Structurally the SNNPRG investment agency is within the bureau of trade and industry. Structurally the agency (investment bureau) is accountable to trade and industry coordination bureau.¹⁸⁶ Thus, administratively the institution is not fully independent in order to discharge its responsibility independently since it is considered as one branch of activity in the bureau along with other tasks. For one thing, different sectors are jointly treated as one sector both at the regional and zonal level. In the other hand, the organ that is directly concerned about investment is only one category or work process within one vast bureau along with various sub processes.

Trade and industry coordination bureau of SNNPRG contain different work process with in it. Enterprise development, industry development, trade practice and consumer protection and other work processes are all the branches of tasks in the bureau. Hence the coordination bureau share budget and other logistics among this work processes including the regional investment agency. There is no separate administrative structure.

Along with zonal and special wereda investment expansion work process, this organ is responsible to implement investment law, however, what has been seen in practice does not reveal the fact because the data obtained from regional experts and investors shows that almost all projects found in the study area are not properly monitored and assisted by both zonal and regional concerned government organs. Such Improper monitoring and evaluation of investment project is due to lack of financial (budget) capacity of the institutions as to some of the zonal respondent's information. So this arrangement of the office weakens the supervisory capacity of the institution due to limited financial and human resource.

¹⁸⁵ Supra note 8, art.20(1)

¹⁸⁶ Supra note 93, Art.8(2), SNNPRG investment agency is responsible to three organs such as SNNPRG bureau of trade and industry coordination bureau, investment board and regional council and its respective zones and special weredas' investment expansion work process is for all administrative and professional purpose is responsible to its respective trade and industry department.

The other structural and legal problem is that, there is no formal investment administration structure at wereda level to follow up the implementation of investment law in the wereda where the projects are located. According to Hadiya zone investment experts' information, the responsibility is informally given to wereda administration and non concerned organs of the wereda.¹⁸⁷ Thus, one of the reasons for ineffective follow up of investment projects is related with this structural problem (translation mine). Investment projects are highly politicized in some wereda according to the information of some investors and zonal experts. The intervention of executive organs in investment activity is very common. This is because the law (SNNNRG investment administration reenactment proclamation) does not establish investment administration organ at wereda level. (Translation mine)

After the SNNPRG investment agency has been reestablished in 2004, a number of projects have been licensed. However, the findings of the study show that, since the agency and zonal and special weredas' investment expansion work processes lacks required capacity¹⁸⁸ and independence; it is difficult to properly implement investment law in terms of its objectives (production and productivity, job creation, technology transfer and food security) in the projects established in the study area.

As discussed in the preceding chapter, the organ that is responsible to administer investment in SNNPRG and its lower structure is not single organ. Its administration power is accorded to several organs like; investment agency, regional investment board, trade industry and urban development coordination office, zonal/special woredas' investment expansion work process and zonal/special woredas' investment committee.¹⁸⁹ Such proliferation of administrative organs paves the way to escape responsibility. It also reduces commitment level from single government organ to implement investment law in the study area.

¹⁸⁷ Non concerned organs of wereda include; executive organs of the wereda and their respective Keble administration. Investment activities are politically motivated in some of the weredas' of the study area as the data shows during project observation of the researcher.

¹⁸⁸ Capacity has to do with institutional autonomy and it is evaluated in terms of office arrangement, man power, finance and logistics administration

¹⁸⁹ Supra note 93, Art.4

4.3.3. Problem related with concerned government organs

4.3.3.1. *Lack of Effective and Detailed performance evaluation directives*

Ethiopia has enacted investment proclamation, regulation, different directives guide lines, and performance status report form at federal level. As the data obtained from the regional experts, the region has no investment regulation and directives but they are carrying out their responsibility as per the federal investment regulations, guidelines, directives and policy. But, the Bureau and its lower subsequent structures are conducting its monitoring and evaluation based on certain guidelines which is not binding by its nature. This way is very difficult to argue against the projects if they failed to fulfill the requirements.

Thus, every monitoring and evaluation of project performance status needs uniform evaluation guide line. Performance evaluation criteria should be incorporated in a clear language based on the objective of investment. In the researcher assessment, there is no detail and uniform performance evaluation directive even at regional level. The government structure itself allow, Zonal/special wereda investment expansion work process even can issue their own performance evaluation uniform guideline. But this does not mean that zonal and special weredas' investment administration organs have power to enact investment directives.

4.3.3.2. *Lack of Cooperation among the Institutions*¹⁹⁰

Implementation of Investment law and policy could not be achieved by the sole operation of independent investment commission, agency, Bureaus or its subsequent lower structure but also through integration of all these bodies; which are concerned about these activities because lack of actual cooperation with stake holders and concerned government organs can be one of the cause of ineffective implementation of investment law as stipulated by vice head of SNNPRG bureau of agriculture during interview.

The cooperation of bureau of trade and industry with the bureau of agriculture at regional level and the cooperation of their respective lower structure is very relevant to effectively implement investment law and policy in agriculture sector. However, as per the interview held with the regional investment head and agriculture department head of Hadiya zone, other than meeting of

¹⁹⁰ To undertake effective performance evaluation, the cooperation of the concerned organs is essential. Especially the cooperation of the bureau of trade and industry and bureau of agriculture and rural development is important to monitor and evaluate performance of investors engaged in agriculture investment.

investment committee once in a year, there is no mechanism to assist and monitor investment projects jointly. The data shows that investment board/committee functionality is very limited.

4.3.3.3. Ineffective Means of investment follow up

Ineffective means of investment follow up leads to ineffective implementation of investment law.

In this study, the major reason for ineffective means of investment follow up are problem of cooperation, duration, professional skill and lack of uniform criteria (standard).

Duration; it is the time interval allocated to evaluate projects. In the study area, the time allocated to follow up projects is not sufficient.¹⁹¹ According to regional and zonal investment experts, the projects are supposed to be monitored four times in a year; however, due to facility problem and various official duties they are being inspected ones in a year. Within this very limited time interval, it is impossible to conduct effective and detail evaluation of the projects since the time actually allocated is not adequate.

Cooperation; as discussed here above in this chapter, there is no mechanism which invites stake holders' cooperation during project follow up.

Professional skill; Investment experts are not generalist. They may have business or management professional background but they may not have agricultural background. Thus, they should be supported by agriculture experts during project monitoring.

Criteria; binding and uniform performance evaluation criteria should be there to undertake effective project follow up. Unless there is uniform standard to make project monitoring and evaluation, it will be unlikely to conduct scientific project evaluation.

There is no formal communication mechanism with investors. As discussed, the law itself did not incorporate such provisions that oblige investors report submission to concerned organs. According to FDRE Investment proclamation, investors are required to submit progress report on the implementation of his project to the appropriate investment organ at the end of every three months. This provision is not incorporated in SNNPRG investment administration reenactment

¹⁹¹ Supra note 167 & 170

proclamation. Progress report is one of the best ways based on which the project performance is to be monitored.

In general, whether it is foreign or domestic, one of the significant objectives of agriculture investment is creation of job opportunity, enhancing land utilization system and ensuring technology transfer.

Thus, the researcher used these three criteria's (standards) to measure implementation of investment law in the study sector and area.

As the data collected from several sources indicates, the existing projects are not creating job opportunity, transferring farming technology and utilizing the land allocated to the investment projects. Based on this fact the researcher concluded that there is ineffective implementation of investment laws in the study sector and area.

Several impediments were identified by the researcher for ineffective implementation of investment law.

The data collected from several sources shows that the existing projects are not effectively functioning. They are not creating job opportunity, properly utilizing the allocated land, transferring farming technology. Whenever the level of implementation of investment law is measured in terms of such standard there is big failures in the study area and sector.

For Such failure or ineffective implementation the ultimate responsible organ is government. Government does not respond for complain of investors, improve facility problem, undertake effective and periodic follow up and technique support, made institutional cooperation, institutional arrangement and legal problems are all government problems. But this does not mean that there is no contribution of investors and local community for failure of the existing investment projects in terms of job creation and technology transfer in the study area. Community raise dispute and destruct investment project. Investors lack commitment and some of them take investment permit to be benefited from incentives extended to investors. But the entire problem created by either investors or community should be solved by government because it is responsible to enact and enforce the law. That is why the ultimate responsibility goes to government organs.

4.4. Consequences of Ineffective Implementation of investment Laws

Every investor, whether it is domestic or foreign, required to work in conformity with investment law and contract and collaborate for effective implementation of investment law. Perhaps, concerned government organs are also required to play their role for its implementation.

Effective implementation of investment law will result in job opportunity, economic efficiency, high productivity and ultimately economic and social development. Where as ineffective implementation to some extent will result in resource extravagance, unemployment, and low productivity.

Resource extravagance

Investment projects especially, those engaged in large scale farming will be given large size of land after they get investment permit from concerned government organ in view they to be productive. Despite such expectations, the required outcome will not be achieved due to various reasons. One of such reasons is reluctance of investors and/or concerned government organs to discharge their respective obligations which helps for the achievement of required goal. For this reason the resource (including land) collected by the investor will not become productive because it is just kept idle. This way of resource management and administration is a kind of resource extravagance and wastage because the desired outcome would not be achieved due to such management. This situation happens widely in the study area as the site observation result of the researcher shows. In the study area, Land is one of the most expensive resources, however its management and utilization is very low as observed by the researcher in the study area.¹⁹²

4.5. Summary

At government level, Ethiopian government; enact economic development policies and laws to encourage and create suitable working conditions to private economic actors. Accordingly, FDRE government; in its investment proclamation and SNNPRG; in its investment administration reenactment proclamation, proclaim their respective investment laws based on economic development policy of the country/region in view to strengthen the domestic production capacity and thereby accelerate the economic development of the country/region and

¹⁹² See photo taken and attached here above, the photos, to some extent shows level of cultivation of the investment land in the study area, taken from two investment projects during field observation of the researcher

improve the living standards of its peoples.¹⁹³ In this articulation one way to ensure the objective of development is expansion of investment. And furthermore, investment enable to enhancing the quality of life of people by creating ample employment opportunity, enhancing production and productivity, and bringing technological advancement.

The data obtained from the local peoples indicate that, their farming technology is not yet improved. They rely on traditional farming technology and as a result they cannot produce sufficient amount of crops even for domestic purpose. In regards to farming knowledge and skill transfer, other than government attempt, the role of private investors on how to use agricultural input is limited. Furthermore, the access to get improved seed even for consideration is very much limited. The investors produce and sold the improved seeds to an organization they don't know. This is common problem of all projects which used improved technology and seed. This reluctance of investors violates the very purpose of investment law and policy since an investor is supposed to transform the local farmers through technology and knowledge transfer.

¹⁹³ Supra note 8 & 93, preambles

Chapter five

Conclusion and recommendations

5.1. Conclusion

Due to the growing need of economic development, investment became the central choice of the Country and of the world as well. And to this effect Ethiopia at country level and SNNPRG at regional level has taken some legislative measures in order to guarantee and promote investment.

At global level, there are various international instruments that recognized the concepts of investment. Accordingly, Ethiopia has also become party to the following conventions and agreements: MIGA, ICSID and several BITs. It also requires ensuring that all other development policies and laws of Ethiopia are respected along with international conventions and treaties of investment to which the country is party. Tow

All domestic legislations and international instruments were adopted to promote and protect investment and investment activities; however, the commitments are not fulfilled in medium scale land based investment in Hadiya zone. Both investment administering government organs and investors did not discharge their respective obligations as per the law and policy.

Broadly, the root cause for ineffective implementation of investment law in the selected sector and area are grouped in to three categories. First, the concerned government organs are reluctant to render technical and professional support is the major cause for its ineffective implementation of the law. Second, investors are not committed to discharge their obligation stipulated in the law and policy. Third, local community takes its share for ineffective implementation of investment law.

Whether it is foreign or domestic, one of the significant objectives of agriculture investment is creation of job opportunity, enhancing land utilization and ensuring technology transfer.

Thus the researcher used these three criteria's (standards) to measure implementation of investment law in the study sector and area.

As the data collected from several sources indicates, the existing projects are not creating job opportunity, transferring farming technology and utilizing the land allocated to the investment

projects. Based on this fact the researcher concluded that there is ineffective implementation of investment laws in the study sector and area.

For ineffective implementation of investment law the researcher identified several impediments.

However the data collected from several sources shows that the existing projects are not effective. They are not creating job opportunity, land utilization problem, transferring farming technology. Whenever the level of implementation of investment law is measured in terms of such standard there is big failure in the study area and sector.

For Such failure the ultimate responsible organ is government. Government organs does not respond for complain of investors, facility problem, follow up and technique support, institutional cooperation, institutional arrangement and legal problems are all government problems. But this does not mean that there is no contribution of investors and local community for failure of the existing investment projects in terms of job creation and technology transfer in the study area. Community raise land dispute and destruct investment project. Investors lack commitment and some take investment permit to benefit from incentive. But the entire problem created by either investors or community can be solved by government. The ultimate responsibility goes to government organs.

5.2. Recommendations

The analysis of this study lies in the implementation of the investment laws by the Hadiya zone department of trade and industry, and has identified the legal and practical loopholes and gaps in enforcement of the investment laws.

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

- ◆ With regards to institutional and legal gap:- SNNPRG bureau of trade and industry in collaboration with other concerned regional government organs, should create or made to be created investment administration structure at Wereda level and it has to strengthen the office with skilled man power that are qualified in investment and related fields.
- ◆ SNNPRG investment administration reenactment proclamation should incorporate provision that insist on project status report from investors in the same manner that is incorporated in FDRE investment proclamation No.769/2012.

- ❖ Investment expansion work process should be restructured independently having independent budget and man power administration structure both at regional and lower level,
- ❖ The power to administer investment activities operating in SNNPRG is given to several organs of the government. This power should be independently given to each level investment expansion work process.
- ❖ With Regards to Enforcement of investment Laws: - effective implementation of investment laws requires concerted efforts of all stakeholders such as FDRE investment commission, investors, Regional investment Agencies and other Sectoral Units. However, lack of cooperation among regional bureau of agriculture and investment agency at regional level and lack of cooperation among Hadiya zone trade and industry department and department of agriculture. Thus, Cooperation between government bodies at regional and local levels, and across sectors, should be improved. One mechanism to improve their cooperation can be through strengthening the investment committee to discharge their responsibility properly. The other mechanism is ensuring investment committee functionality.
- ❖ Cooperation between government bodies at regional and local levels, and across sectors, should be improved. Institutional cooperation with the department of agriculture and rural development and other stake holders is limited. Investment Committee/board functionality should be ensured.
- ❖ Monitoring and evaluation of investment projects should be based on certain objective standards. So SNNPRG trade and industry bureau should enact specific implementation assessment directive and trade and industry department of Hadiya zone should, according to zonal context enact Implementation assessment schedule and standards in addition to regional directive.
- ❖ Governments should allocate separate and adequate budget for implementation of investment law. Furthermore, government should support investment administration organ with adequate logistics and facilitate the office with professional and skilled man power.
- ❖ Performance status of investment projects must be evaluated mandatorily quarterly in a year and this requirement should be incorporated in performance evaluation directive.

- ◆ To avert possible conflict with local farmers and pastoralists, Community discussion is also important concerning the proposed investment project and Public meetings should be commenced before establishing certain project.
- ◆ Security situation around investment area should be strengthened. In this regard, Keble administration and police members should discharge its responsibility to secure and protect investment projects from possible theft and destruction.

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- W/ro Menbere Asneke, investment expert, SNNPR investment Agency, Hawassa, in her office, 21 April 2015
- Ato Minilshewa Wubishet, investment expert, Hadiya zone trade and industry department, Hossana, in his office, 29 April 2015
- Ato Temirat Beyene, head, Hadiya zone agriculture department, Hossana, in his office, 30 April 2015
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- Ato Tamirat Gizaw, head, Hadiya zone trade and industry department, in his office, 29 April 2015
- Ato Adamu Jenbere, coordinator, Hadiya zone trade and industry department investment expansion work process, Hossana, in his office, 29 April 2015
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- Ato Abera Ersulo, agent & v/manaager, gibe agro farm, Gibe Wereda Olawa kebele, at Hossana, 24 April 2015
- W/t Asegedech worku, investment monitoring officer, Hadiya zone trade and industry department investment expansion work process, at her office, 29 April 2015
- Ato Solomon Afework, investor, east Badewach Gagera kebele, at Hossana, 23 April 2015
- A/adar Bogale Lenkamo, farmer, gibe Wereda Gamoja, at project site, 04 may 2015
- A/adar Makebo Fikire, farmer, gibe Wereda Gamoja Keble, at project site, 04 may 2015
- A/adar Haile tuke, farmer, duna Woreda wagebeta keble, at project site, 01 may 2015
- A/adar Lombaso takiso, farmer, duna worda wagebeta kebele, at project site, 01 may 2015

ANNEXES:

ANNEX I

Interview Guides Prepared for SNNPR bureau of Trade and industry and for Hadiya zone trade and industry department

Prepared by: Daniel Anshebo

Type of the Study: A Master in Law (LL.M Thesis)

Research title: assessing implementation of investment law and policy in Hadiya zone of SNNPRG; particular emphasis on investors engaged in medium scale farming

Objective of the research; the primary objective of this research is to assess the level of implementation of investment law and policy; particularly on investors engaged in medium scale farming in Hadiya zone and ultimately come up with a possible solution that will used as a source of information which will help the concerned government organ to improve its implementation capacity.

So, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Personal detail of Respondent

Name (if he or she consented) -----

Sex: male female

Position or Job title in the bureau-----

Age

Guiding Questions: (for SNNPR bureau of trade and industry and Hadiya zone trade and industry department)

1. Bureau/department of trade and industry, being one of the institutions entrusted with enforcement of the investment law, has duty to conduct supervision and render technique support in connection with the implementation of the law and policy, power to issue implementation assessment directives. What measures or actions have the Bureau/department has taken or is being taking so far for fulfillment of the above duties?
2. Bureau/department of Trade and industry, as one of institutions entrusted with enforcement of investment law, power to inspect (supervise) level of implementation with respect to job creation and technology transfer to local agrarian community, duty to facilitate and work closely with concerned government organs to provide necessary facility, like road. What measures or actions has the Bureau/department taken or is being taking so far for fulfillment of the above duties or powers?
3. What is the role of the Bureau/department in relation to rendering road and other necessary facility to investors? What the Bureau/department has so far done in these respects?
4. What is the role of the Bureau/department to work in cooperation with Bureau/department of agriculture and within each other in the same structure?
5. Has there been any challenge faced during evaluation of implementation? Yes No
if yes, what are the challenges and what counter measures have been taken to overcome such challenges?
6. Which of the following enforcement options do you think least or most effective as the enforcement strategies or remedies for non-compliance with investment law?
 - A. License revocation/criminal penalty/closing down of the project of violating investors/
 - B. Warning (oral or written)

D. Education/Persuasion/Advocacy/

ANNEX II

Interview Guides Prepared for SNNPR bureau of Agriculture and Hadiya zone agriculture department

Prepared by: Daniel Anshebo

Type of the Study: A Master in Law (LL.M Thesis)

Research title: assessing implementation of investment law and policy in Hadiya zone of SNNPRG; particular emphasis on investors engaged in medium scale farming

Objective of the research; the primary objective of this research is to assess the level of implementation of investment law and policy; particularly on investors engaged in medium scale farming in Hadiya zone and ultimately come up with a possible solution that will used as a source of information which will help the concerned government organ to improve its implementation capacity.

So, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Personal detail of Respondent

Name (if he or she consented) -----

Sex: male female

Position or Job title in the bureau-----

Age

Guiding Questions: (for SNNPR bureau of agriculture and Hadiya zone agriculture department)

1. Bureau/department agriculture, being one of the stakeholder to work in cooperation with bureau/department of trade and industry so that to implement investment law in the agriculture sector and has the duty to render technical and professional support in connection with the implementation of the law. What measures or actions have the Bureau/department has taken or is being taking so far for fulfillment of the above duties?
2. What is the role of existing investment projects in terms of job creation and technology transfer to local agrarian community? In this regard, what measures or actions has the Bureau/department taken or is being taking
3. What is the role of the Bureau/department to work in cooperation with Bureau/department of trade and industry?
4. Has there been any challenge faced during evaluation of implementation? Yes No
if yes, what are the challenges and what counter measures have been taken to overcome such challenges?

ANNEX III

Interview Guides Prepared for investors and their agents

Prepared by: Daniel Anshebo

Type of the Study: A Master in Law (LL.M Thesis)

Research title: assessing implementation of investment law and policy in SNNPRG; particular emphasis on investors engaged in medium scale farming

Objective of the research; the primary objective of this research is to assess the level of implementation of investment law and policy; particularly on investors engaged in medium scale farming in Hadiya zone of SNNPRG and ultimately come up with a possible solution that will

used as a source of information which will help the concerned government organ to improve its implementation capacity.

So, you are kindly requested to respond to the interviews as your information will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Personal detail of Respondent

Name (if he or she consented) -----

Sex: male female

Position or title in the project-----

Age

Guiding Questions: (for investors engaged in medium scale farming in Hadiya zone)

5. Investment projects are supposed to create job opportunity to the community. What is the role of your project in this regard? For how many employees the project is supposed to create job opportunity? How many regular and how many seasonal workers are there in your project currently?

6. Investment projects are supposed to transfer technology to local farmers. In this regard if there are any contribution made, explain briefly. If it is planed, what kind of technology and in which way you plan to transfer to local farmers?

7. What is the level of productivity of your investment project? Briefly explain it in light with your project proposal

8. What are the major challenges that hinder the productivity of the project?

9. Has there been any challenge faced during operation stage of the project? Yes No if yes, what are the challenges and what counter measures have been taken to overcome such challenges?

10. Among the challenges which one is more serious and common?