



**COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW**

LL.M PROGRAM IN COMMERCIAL AND INVESTMENT LAW

**THE IMPACTS OF FDI ON ENVIRONMENT IN ETHIOPIA: THE
CASE OF OROMIA SPECIAL ZONE SURROUNDING FINFINNE**

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Advisor: Mr. Getahun Alemeyehu (LL.B, LL.M, PHD Candidate)

By: Gonfa Atoma (LL.B)

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Acronyms

- ASEAN----- Association of Southeastern Asian Nations
- BITs-----Bilateral Investment Treaties
- COMESA-----Common Market for Eastern and Southern States of Africa
- ECOWAS-----Economic Community of Western African States
- EIA-----Environmental Impact Assessment
- EPA-----Environmental Protection Authority
- EU----- European Union
- FDI-----Foreign Direct Investment
- FDRE-----Federal Democratic Republic of Ethiopia
- FPI-----Foreign Portfolio Investment
- IGAD-----Inter-governmental Authority for Development
- IIA-----International Investment Agreements
- IMF-----International Monetary Fund
- MIGA-----Multilateral Investment Guarantee Agency
- MNE-----Multinational Enterprises
- MOFED-----Ministry of Finance and Economic Development
- NAFTA-----North American Free Trade Area
- OECD-----Organization for Economic Cooperation and Development
- SDPRP-----Sustainable development and poverty reduction Programs
- UNCED-----United Nations Conference on Environment and Development
- UNCTAD-----*United Nations Conference on Trade and Development*
- UN-----United Nations
- WB-----World Bank
- WTO-----World Trade Organization

Abstract

Foreign Direct Investment (FDI) plays an important role in economic growth host countries as an engine of employment, instrument of technology transfer, capital accumulation, productivity enhancement and the like. The government of Ethiopia is promoting FDI to make benefits accruing from it. Although it has economic benefits, there are also different problems associated with FDI such environmental problems.

The essence of this research is analyzing the impacts of FDI on the environment in Oromia Special Zone Surrounding Finfinne together with the FDI and environmental regulatory frameworks of the country.

The study employed mixed research methods where doctrinal and qualitative were used in the analysis. Interviews and questionnaires were used to gather data from experts and officials at federal, regional and zonal investment and environmental bodies.

The result of the study showed that FDI is causing major environmental problems in Oromia Special Zone Surrounding Finfinne. It also showed the failure of regulatory bodies to properly implement investment and environmental laws as the main causes for environmental damages accruing from FDI. Therefore, regulatory bodies are required to implement existing laws as effectively and efficiently as possible to reap the benefits of FDI and at the same time avoiding or mitigating its negative effects on the environment.

CHAPTER ONE

GENERAL BACKGROUND OF THE RESEARCH

1.1) Introduction

All governments have the duty to ensure economic development and improving the living standards of their citizens. Material prosperity and high quality of life are universal goals for democratic governments.¹The desire to bring development is high in developing countries especially in the least developing countries like Ethiopia.²

In order to achieve their development pursuit, countries devise different mechanisms and take measures based on their domestic conditions and priorities. However, some of the measures taken to bring about economic growth are not environmentally benign unless some precautionary measures are taken.³For instance, it is possible to bring about economic growth by destroying the environment.⁴

Economic policy designed and development measures taken by countries to bring about economic growth including allowing inflow of foreign direct investment (hereinafter referred as FDI) could result into environmental problems such as uncontrolled extraction of non-renewable natural resources and environmental pollution.

Economic growth which cannot take into consideration environmental protection is not sustainable and is destructive to the environment in the long run.Environmental economists are concerned that the long-term neglect of the environmental assets is likely to jeopardize the durability of economic growth.⁵

In order to bring about economic development in a sustainable way, policy makers need to take into due consideration environmental and social issues in their policies and economic decisions.

¹ Maryann Feldman et al., *Economic Development: A Definition and Model for Investment*, (May 28, 2014) 25

² Dejene Girma, 'The Chance to Improve the System of EIA in Ethiopia: A look at the New Investment Proclamation'(2014)Vol.3 No.1 Oromia Law Journal p 134

³ Ibid

⁴ Ibid

⁵ Thampapillai 2002

In other words, policies made and measures taken must gear towards economical utilization of natural resources and enhance social welfare and environmental wellbeing.

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (hereinafter referred as the FDRE Constitution) provides all Ethiopians the right to improved living standards and to sustainable development.⁶ It also guaranteed the right to live in clean and healthy environment and the government's duty to ensure the observance of these rights as well as to ensure that all the design and implementation of development programs and projects do not damage the environment.⁷ These constitutional provisions put two basic obligations on the government in relation to economic development and environmental protection. These are bringing sustainable development and improving the living standards of citizens on one hand and ensuring that these development activities are not destroying and damaging the environment.

In order to achieve the constitutional obligation of achieving development, the government of Ethiopia has designed different policy programs such as Sustainable Development and Poverty Reduction Program (SDPRP)⁸, Climate Resilient Green Economy Strategy⁹ and Growth and Transformation Plan (GTP I¹⁰ & GTP II¹¹) as well as other policies such as Industrial Development Strategy.¹² In these policy programs and strategies, the private sector is given due attention in the economic transformation of the country.¹³ The industrial development policy

⁶ The Constitution of the FDRE, *Federal Negarit Gazeta, 1st year No .1, 21 August 1995 Art. 43 (1)*

⁷ Ibid Art. 44 (1) together with Art. 92 (1) & (2)

⁸ FDRE Ministry of Finance and Economic Development (MOFED), *Sustainable Development and Poverty Reduction Program, July 2002*

⁹ FDRE Prime Minister's Office, the Environmental Protection Authority, and the Ethiopian Development Research Institute, *Climate Resilient Green Economy Strategy, 2011*

¹⁰ FDRE, *Ministry of Finance & Economic Development, Growth and Transformation Plan (2010/11-2014/2015)* (hereinafter referred as GTP I)

¹¹ FDRE, *National Plan Commission, Growth and Transformation Plan II (2015/16-2019/20)* (GTP II)

¹² Industrial Development Strategy of Ethiopia, August 2002

¹³ For instance, see Ibid P 1, which considers private sector as pivotal to the industrial strategy and the very principle of the policy, which provides for private sector as an engine of industrial development.

considers private sector as an engine of industrial development strategy and the strategy should be able to create conducive environments that help encourage the private sector to play its active role in this regard.¹⁴ Similarly, GTP I and II also recognized the importance of the private sector in taking forward the industrial and economic development of the country.¹⁵ To enable the private sector play its expected role in transforming the economy of the country, it is important to create enabling environment. Industrial development strategy and GTP I and II also stressed the importance of creating favorable conditions for the industry to play a key role in the economy. To this end, different laws were enacted and regulatory frameworks were put in place; for instance domestic investment laws were enacted, different bilateral investment treaties were ratified and investment-promoting agencies were established. These measures have attracted many foreign companies to the country, particularly in the capital Addis Ababa and Oromia National Regional State.¹⁶ From Oromia Regional State, East Shewa and Oromia Special Zone Surrounding Finfinne are the main recipients of many foreign companies coming into the country. However, the experience from other developing countries shows that the expansion of industries particularly FDI is the major cause for environmental damage. For instance, Feng Helen Liang found that Chinese industry is a primary source of the pollution problems and that more than 70% of pollutants are from industries.¹⁷ Jungho Baek and Won W. Koo also found that FDI inflow in China and India is found to have a detrimental effect on environmental quality in both the short- and long-run.¹⁸

1.2) Statement of the Problem

Ethiopia, as one of the least developed country, badly needs investment to strengthen its domestic production capacity in order to accelerate economic development and improve the

¹⁴ Ibid 1-2

¹⁵ GTP I (n 10) section 5.2 and GTP II (n 11) section 3.1.2

¹⁶ According to the data obtained from the Ethiopian Investment Commission Addis Ababa City Administration and Oromia National Regional State are recipients of more than 81% FDI licensed in Ethiopia. Thus from among 5,298 FDI licensed as of 2016, the two have received about 4,332 or 81.7% FDI projects.

¹⁷ Feng Helen Liang, *Does Foreign Direct Investment Harm the Host Country's Environment? Evidence from China* (Unpublished, 2006) 6

¹⁸ Jungho Baek and Won W. Koo, *A Dynamic Approach to the FDI-Environment Nexus: The Case of China and India* (2008)

living standards of its citizens.¹⁹ The country also needs to further increase the inflow of foreign capital and transfer of technology into the country to help enhance its economic transformation.²⁰ The country's eagerness to accelerate economic development has necessitated foreign capital mainly in the form of investment and pushed the government to work hard to attract FDI. This has resulted in high inflow of FDI into the country particularly in the principal focus areas of the government policy such as manufacturing sector. It is believed that the inflow of FDI to a host country benefits the country in many ways. Thus, in addition to solving capital scarcity needed for investment and technology spillovers, it contributes international trade integration (global market access), assists human capital formation, helps to create a more competitive business environment and enhances enterprise development.²¹

Accordingly, the inflow of FDI to developing countries like Ethiopia affects their economic growth positively. In particular, it contributes to transfer of capital, know-how, and technology and that it increases activities not only in FDI beneficiary firms but also the effect can spread to other firms in the country and sectors through technology spillover, human and capital formation and increasing competition, thus raising productivity for the whole economy.²² Although FDI has all these benefits, it is also regarded as the source of environmental and social problems in developing countries like Ethiopia. Various studies including the one conducted by OECD provide that favorable policies and effective regulatory frameworks are pre-requisites to reap these benefits from FDI and minimize its negative social and environmental impacts.²³

To this effect, the current government of Ethiopia has taken different measures to make favorable conditions for FDI and to create enabling regulatory framework including formulating economic and environmental policies, ratifying international investment and environmental

¹⁹ FDRE Investment Proclamation No. 769/2012, *Federal Negarit Gazeta*, 18th Year No. 63, preamble paragraph 1

²⁰ Ibid paragraph 2

²¹ OECD, *Foreign Direct Investment for Development: Maximizing Benefits, Minimizing Costs* (OECD 2002)

²² Meskerem Daniel, 'Impact of Foreign Direct Investment on Economic growth of Ethiopia: A Time Series Empirical Analysis, 1974-2011' (MA Thesis, University of Oslo 2014)

²³ OECD (n 21)

agreements, enacting investment and environmental laws and setting up investment and environmental regulatory institutions.

However, the formulation of policies, enactment of laws and setting up of regulatory bodies are not enough to protect the environment from development activities such as FDI. Formulating environmental policies, enacting environmental laws and setting up environmental authorities are not the end by themselves. They are the means to the end, the end being protecting the environment from damage by development activities and other factors affecting it. In order to achieve these objectives, regulatory bodies must implement the relevant laws properly. To this end, political commitment of the government and strong cooperation and coordination among different regulatory bodies at both federal and regional levels are paramount steps that need to be ensured. But, problems associated with inability of regulatory institutions to implement the existing investment and environmental laws are the major sources of environmental and social problems resulting from FDI in the study area.

In this paper, I would like to argue that the ineffectiveness of the regulatory frameworks related to institutions regulating the operation of FDI in the country has resulted in the environmental problems ensuing from FDI in Oromia Special Zone Surrounding Finfinne (the focal area of this research). Accordingly, the research will explore the implementation of investment and environmental laws in the study area and analyze the causes of regulatory failures pertaining to operation FDI in the Zone.

1.3) Objectives of the Study

This research has general objective and specific objectives.

The general objective of the study is to examine the environmental impacts of FDI in Ethiopia with particular emphasis on Oromia Special Zone Surrounding Finfinne and thereby analyze the investment and environmental regulatory frameworks in relation to operation of FDI in the country.

The specific objectives of the study are:

- ❖ To examine environmental problems associated with FDI in Oromia Special Zone Surrounding Finfinne;

- ❖ To analyze federal, regional and zonal environmental protection bodies so as to see whether or not they are properly discharging their obligations in relation to environmental protection;
- ❖ To examine investment and environmental laws and regulatory frameworks of the country to identify whether or not they are adequate and effective to protect the environment from the operation of FDI in Oromia Special Zone Surrounding Finfinne.

1.4) Research Questions

1.3.1) Main Research Question

The main research question that this research aims to address is: -what are the major reasons behind FDI resulting in the environmental damages in Oromia Special Zone Surrounding Finfinne?

1.3.2) Specific Research Questions

The specific research questions that this research aims to answer are the following.

- a) What are the observable environmental and social impacts ensuing from FDI in Oromia Special Zone Surrounding Finfinne?
- b) Are the available legal and institutional frameworks adequate and effective in regulating the operation of FDI in relation to environmental protection in Oromia Special Zone Surrounding Finfinne?
- c) What measures the country should take in order to capitalize on the benefits accruing from FDI while protecting its environment from pollutions resulting there from?

1.5) Significance of the Study

The findings of this research will be of great significance for different purposes.

Firstly, the findings of this research will help the government (both federal and Oromia Regional State) to take corrective measures in relation to environmental protection. Secondly, it will show the federal government to formulate guideline for the entry into and operation of FDI in the country. Thirdly, it will be used as a source of reference for further research for those interested to conduct research in the same area.

1.6) Materials and Methods

1.6.1) Data Sources

In order to conduct this research, the researcher used both primary and secondary data sources. As primary source of data, Ethiopian Laws and Policy documents as well as expert opinion were used. Accordingly, federal laws such as FDRE Constitution of 1995, FDRE Investment Proclamation No. 769/2012), and Investment Regulation No.270/2012 together with their amendments, Ethiopian Environment Authority Establishment Proclamation Proc.No.295/2002 and the new Ministry of Environment and Forestry Establishment Proclamation no.813/2013, Environmental Impact Assessment Proclamation No.299/2000) were used. In addition, different policy documents such as Ethiopian Environmental Policy of 1997, Industrial Development Policy of 2002, GTP I and II were referred as primary sources. Besides, expert opinion collected from Ethiopian Investment Commission, Oromia Regional State Investment Commission, Oromia Rural Land Administration and Environmental Protection Bureau, Investment and Rural Land Administration and Environmental Protection Offices of Oromia Special Zone Surrounding Finfinne by both questionnaires and interviews were used.

On the other hand, secondary sources of data such as books, journals, different unpublished thesis and internet sources having relevance with this study were used in conducting this research.

1.6.2 Research Methodology

In conducting the research, both doctrinal and empirical methodologies were employed. Thus, doctrinal methodology was used to analysis laws and government policies in relation to the subject matter of the research whereas empirical methodology was applied to obtain expert opinion from Ethiopian Investment Commission (EIC), Oromia National Regional State Investment Commission and Bureau of Rural Land and Environmental Protection and corresponding bodies of Oromia Special Zone Surrounding Finfinne.

1.7) Scope and Limitation of the Study

1.7.1) Delimitation

The study focuses on examining the impacts of FDI on environment in Ethiopia with special reference to Oromia Special Zone Surrounding Finfinne. The researcher purposively chose Oromia Special Zone Surrounding Finfinne as a case study area for two main reasons. Firstly, the proximity of the Zone to the capital city of the country, Addis Ababa and relatively better infrastructure attract many FDI into the Zone, which in turn results in environmental problems resulted from FDI in the Zone. Secondly, the geographical location of this Zone surrounding the capital city has complicated the environmental problems as industrial wastes from the capital city flow towards rivers of the Zone. These two factors attracted the attention of the researcher to conduct case study in this area.

Therefore, examining lack of effective implementation of investment and environmental laws of the country and that Oromia National Regional State in this area and, showing the failures of regulation of the operation of the FDI in the same in the area are the main theme of this research.

1.7.2) Limitations

In conducting this study, the researcher faced many limitations such as constraints of budget and shortage of time (because of the researcher's official duty) as well as difficulty of finding persons needed for interview and filling questionnaires.

1.8) Literature Review

The researcher has reviewed some literatures in relation to the impacts of FDI on the environment. The first literature reviewed was the work of Nick Mabey and Richard, which focus on the relationship between FDI and the environment.²⁴ This work has identified five key interactions between FDI and the environment:²⁵

Firstly, FDI overwhelms host country's regulatory capacity, resulting in inefficient and irreversible environmental destruction and even potentially a decline in overall welfare,

²⁴ Nick Mabey and Richard McNally, *Foreign Direct Investment and the Environment: From Pollution Havens to Sustainable Development*, A WWF-UK Report (1999)

²⁵ Ibid

Secondly, home country policies in subsidizing FDI through export credits and aid flows produce a bias towards more environmental damaging investment and investment agreements also limit the ability of host governments to pursue environmentally sustainable policies,

Thirdly, pollution intensive industries are relocating to areas with lower regulatory standards, and often operate to lower standards than in their home countries,

Fourthly, natural resource seeking investors have a poor record of environmental management relative to global best practice and investors often prevent host countries maximizing returns from their resources, encouraging over-exploitation and unsustainable use and

Finally, competition to attract FDI, or retain investments by international companies, has produced a chilling effect on global environmental standards.

This work finally concluded that lack of adequate environmental governance in host countries is both a cause of these problems, and a result of competitive pressures to attract or retain FDI.²⁶ Therefore, lack of adequate environmental regulation in relation to the operation of FDI in host countries is the cause of environmental problems resulting from FDI.

Another work reviewed is the work of Xian Guoming, Zhang Cheng, Zhang Yangui, GeShunqi& James X. Zhan (1999) in which they analyzed the interface between FDI and the environment in China and found that FDI generates both positive and negative effects on Chinese environment.²⁷ Accordingly, they argued that large TNCs such as export-oriented and efficiency-seeking FDI tend to consider their environmental performance as part of their image-building endeavors and hence made remarkable contribution to China's environmental protection both through direct investment in environmental protection and by improving products and production processes in a number of industries.²⁸ On the other hand, those market-seeking FDI in developing countries, have fewer incentives to comply with the home country standards.²⁹

²⁶ Ibid

²⁷ Xian Guoming et al, *The Interface Between Foreign Direct Investment and the Environment: The Case of China*, (CBS Occasional Paper no.3, 1999) 29

²⁸ Ibid 30

²⁹ Ibid

The third literature reviewed is the study carried out by Organization for Economic Cooperation and Development (hereinafter referred as OECD) concerning the environmental impacts of FDI in the mining sector in Sub-Saharan Africa and find mixed results.³⁰ In some countries, it found that that FDI played significant role in minimizing environmental damages in some countries.³¹ On the other hand, lack of institutional capacity, finance & in some cases, lack of political will on the part of host countries governments and the lobbying of FDI companies are hampering the efforts of host governments to implement effective environmental regulations, thus resulted in environmental damages by FDI in some countries.³²

In relation to Ethiopian case, the researcher cannot find any research conducted on the impacts of FDI on environment in the study area. However, there are some literatures having significant connection with this research. The first is the work of Gudeta Degytnu, which concerns the socio-economic and environmental impacts of floriculture industry in Ethiopia and found that chemicals used by such factories negatively affects water, soil, air and land as well as health of workers and local communities.³³ Although the research did not mention FDI by name, foreign companies own most of flower industries in the country. It is due to this factor I have opted to review this work.

In addition, the work of Mandefro Sorecha needs to be considered. He has conducted case study on various projects in East Shewa Zone of Oromia Regional State regarding the implementation of EIA.³⁴ He concluded that lack of proper implementation of Environmental Impact Assessment Proclamation No. 299/2002 of FDRE is the major cause of environmental pollution in the study

³⁰ OECD, *Environmental Impacts of FDI in the Mining Sector in Sub-Saharan Africa* (OECD)

³¹ Ibid

³² Ibid

³³ Gudeta Degytnu, ' Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia'(MS Thesis, Ghent University 2012)

³⁴ Mandefro Sorecha, 'Implementations of EIA Laws in East Shawa Zone of Oromia National State Special Reference to Lume and Ada'a Woreda: Case Study on Various Projects'(LL.M Thesis, Addis Ababa University 2011)

area and thereby affecting the constitutional rights to live in a clean and healthy environment of local community.³⁵

Having reviewed all of these literatures, I have concluded that none of them has explored the impacts of FDI in Oromia Special Zone Surrounding Finfiine in connection with investment and regulatory frameworks of the country. This shows the existence of a knowledge gap which this research is going to explore.

1.9) Organization of the Paper

This research is organized into five chapters. The first chapter of the research focuses on the general introduction regarding the background of the study, statement of the problem, literature review, objectives of the study, significance of the study, methodology, and limitations of the study that give highlight about the research. This is followed by chapter two, which is devoted to the discussion of the general overview of FDI, legal regime governing FDI in host countries and the relationship between FDI and the environment to give general concepts and lay theoretical foundations for the thesis. In the third chapter, the legal and institutional framework of Ethiopia (investment and environmental laws and policies and implementing bodies) in relation to the entry into and operation of FDI in the country will be discussed with some consideration of Oromia National Regional State's relevant laws and institutions. The fourth chapter analyzes the environmental impacts of FDI together with the practical implementation of the relevant laws by relevant bodies in the study area. In this chapter, data collected will be analyzed in line with the practical implementation of investment and environmental laws in the study area. The final chapter provides concluding remarks and recommendations.

³⁵ Ibid

CHAPTER TWO

GENERAL OVERVIEW OF FDI AND THE RELATIONSHIP BETWEEN FDI AND ENVIRONMENT

Introduction

In this chapter, I am going to discuss the general overview of FDI such as meaning of FDI, its relation with portfolio investment and its benefits, the legal regime governing the entry and operation of FDI in host countries and the relationship between FDI and the environment in host countries. Accordingly, the chapter is organized in to three sections. In section one, the general overview of FDI is to be discussed while section two is devoted to the discussion of the legal regime governing the entry into and operation of FDI in host countries in general. In the last section, I will discuss the relationship existing between FDI and the environment.

2.1) General Overview of FDI

2.1.1. The Meaning of FDI

FDI has no direct forward and universally accepted definition as different authors and international organizations defined it differently. However, for the purpose of this paper, I opted to use the definition/meaning given by OECD and IMF. Accordingly, FDI is an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate).³⁶

The existence of the so-called lasting interest and control are the characterizing features of FDI, which differentiates it from other forms of foreign investment such as portfolio. This is to say that FDI is different from other forms of foreign investment in that the foreign investor exerts a significant degree of influence or control on the management of the enterprise resident in the other economy.

³⁶ *OECD, Detailed Benchmark Definition for FDI, 3rd Edition (OECD, 1996) and International Monetary Fund, Balance of Payment Manual, 5th Edition (IMF, 1993)*

According to OECD and IMF, a foreign investor is said to have a significant control in the management of the enterprise resident in another economy (host country) if it has 10% or more voting power in the resident company.³⁷ The phrase ‘lasting interest’, in turn, implies the existence of long-term relationship between the direct investor and the enterprise and a significant degree of influence on the management of the enterprise.³⁸

Therefore, FDI is cross-border expenditures (investment) to acquire or expand corporate control of productive assets.

2.1.2. FDI vs. Portfolio Investment

Foreign direct investment (FDI) and foreign portfolio investment (FPI) are both foreign investments having similarities and differences. As discussed above, FDI is the category of international investment in which a resident entity in one country obtains a lasting interest in an enterprise resident in another country. On the other hand, Portfolio investment includes investments by a resident entity in one country in the equity and debt securities of an enterprise resident in another country, which seek primarily capital gains and do not necessarily reflect a significant and lasting interest in the enterprise.³⁹

As explained above the so-called ‘a lasting interest’ is the characterizing feature of FDI, which implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise. Portfolio investment, however, mainly concerns investments in bonds, notes, money market instruments and financial derivatives other than those included under direct investment; in other words, investments which are both below the ten per cent rule and do not involve affiliated enterprises.

2.1.3) Benefits of FDI to Host Countries

According to OECD, FDI is a key driver of international economic integration and, with the right policy framework; it can provide financial stability, promote economic development and enhance

³⁷ Ibid

³⁸ Ibid

³⁹ OECD (n 21)

the well-being of societies.⁴⁰ Developing countries, emerging economies and countries in transition have liberalized their FDI regime and followed best policies to attract investment; due to advantages related to FDI.⁴¹

The ongoing discussion shows that countries are in competition to attract FDI because they seek to reap the benefits expected from it. They see FDI as an important contributor to their economic growth and that is what is naturally expected by any host state from FDI. The benefits of FDI from developing countries perspective will be discussed in the following paragraphs to show why they are working to attract it.

Accordingly, one of the major economic factors behind developing and least developing countries eagerness to attract FDI is that it brings foreign capital needed for investment. Capital scarcity needed for investment is one of the major problems facing these countries and thus they consider FDI as important source of capital. In connection with this, Jenkins and Thomas argue that FDI can contribute to economic growth not only by providing foreign capital but also by crowding in additional domestic investment; so it increases the total growth effect of FDI.⁴²

Another important area where FDI plays a crucial role in host country's economic growth is technology and knowledge transfer. Accordingly, economics literature identifies technology transfers as perhaps the most important channel through which foreign corporate presence may produce positive externalities in the host developing economy.⁴³ MNEs are the developed world's most important source of corporate research and development activity, and they generally possess a higher level of technology than is available in developing countries, so they have the potential to generate considerable technological spillovers.⁴⁴ Here also low level of

⁴⁰ Ibid

⁴¹ Selma Kurtishi-Kastrati, 'The Effects of Foreign Direct Investments for Host Country's Economy' [2013](Vol. 5 Issue 1, European Journal of Interdisciplinary Studies) 26

⁴² Jenkins, C. and Thomas, L., *Foreign Direct Investment in Southern Africa: Determinants, Characteristics and Implications for Economic Growth and Poverty Alleviation*. (University of Oxford ,Globalization and Poverty Project 2002)

⁴³ OECD (n 21)

⁴⁴ Ibid

education and research in developing countries is another challenge that these countries face in achieving their development pursuit. As a result, they turn their face toward FDI, the source of technological innovation, to make benefit from their technology and knowledge which is to be gained through working together with domestic firms and hiring and training of host countries' citizens.

Besides, FDI contribute to the economy of host developing countries through creation of job and thereby reducing unemployment. FDI's relevance to host country in this regard is not limited to job creation but also extends to human capital enhancement or capacity building. The major impact of FDI on human capital in developing countries appears to be indirect and their human capital is enhanced further through training and on-the-job learning.⁴⁵ Therefore, we can say that job creation and human capital enhancement are another important benefits driving from FDI in a host country.

Finally, FDI benefits host country's economy by paving a way for global market access. Developing countries usually face difficulty of penetrating into global market. Companies involved in FDI, on the other hand, have large global market networks and hence host countries work to attract the same to benefit from their global market access.

These benefits accruing from FDI are the main reasons why countries, especially developing countries like Ethiopia are working to attract it.

2.1.4. Determinants of FDI

The discussion of this section will try to show factors which attract inflow of FDI into a certain host country. There are different economic and other factors; determining the inflow of FDI to a host country. There may be a difference between developing and developed countries as to these factors, but they can be classified into two major categories; one concerns TNCs involving FDI and the other concerns the host country's conditions.

⁴⁵ Ibid

a) Factors Attributed to Companies

Transnational enterprises locate production (the operation of their firm) abroad for essentially four sets of reasons.⁴⁶

- i. They seek to serve foreign markets better (market seeking FDI),*
- ii. They seek to increase the efficiency of their operations, especially by tapping into lower labor costs elsewhere (efficiency-seeking FDI).*
- iii. They seek to access natural resources (resource-seeking FDI). or*
- iv. They seek to acquire such assets as technology or brand names (asset seeking FDI)*

Accordingly, FDI is classified into four categories: market-seeking FDI, efficiency seeking FDI, resource seeking FDI and asset-seeking FDI. Firms decide to locate the operation of their company in a country other than its home country derived by anyone or combinations of these factors.⁴⁷

b) Factors Attributed to Host Country's Conditions

The other important deriving force in determining the flow of foreign firms in to a certain country is related to economic, policy and regulatory matters of the host country. There are three principal sets of factors connected to host country's conditions.⁴⁸

a) The Economic Factors

Economic determinants are the single most important factor attributed to host country conditions. The size and growth of a market, the quality of the infrastructure and supplier base, and the cost and quality of skilled labor, other production factors, and science and technology resources are important economic determinants.⁴⁹ From among different factors determining the size and growth of a market of host country, per capital income is very important. Where the per capital

⁴⁶ Sauvart, Karl P. *The International Investment Law and Policy Regime: Challenges and Options*. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. www.e15initiative.org/

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

income of citizens of host country is higher, their buying and consumption will be higher and hence high demand for products and services. Therefore, the level of economic development of a host country is the most important factors to attract foreign firms.

b) The Regulatory Framework

Host country's regulatory framework is another important factor influencing the decision of firms to locate the operation of their companies and it must be favorable and enabling to attract FDI.⁵⁰ A sound policy and regulatory framework and efficient supporting institutions to enforce the relevant laws and regulations are imperative for FDI to enter and thrive.⁵¹ In a globalized competitive market, the difference between countries in how conducive their investment climate such as:

- a) how an investor is received,
- b) how many administrative and regulatory obstacles an investor has to overcome to enter and operate, and
- c) how commercial disputes are handled through the judiciary system have a huge impact on where the investor will go and how much contribution the investment will make to the host economy.⁵²

Therefore, conducive and enabling regulatory framework is another factor connected to host country's condition in attracting FDI.

c) Investment Promotions

The third set of FDI determinants consists of investment promotion and this set of determinants has become more important as the FDI regulatory framework has become more similar.⁵³

As mentioned in different parts of this paper, countries are in fierce competition to attract FDI. To these end they work hard to make their investment environment more favorable especially by

⁵⁰ Ibid

⁵¹ Xiaolun Sun, *How to Promote FDI? The Regulatory and Institutional Environment for Attracting FDI* (2002) 2

⁵² Ibid

⁵³ Karl P. (n 46)

setting investment promotion agencies or commissions.⁵⁴ These agencies provide a ‘one shop’ service for investors and hence contribute a lot in attracting FDI. Besides this, others authors identified various factors connected with host country determining the flow of FDI. Walsh and Yu have identified the following factors as relevant conditions connected with host country in attracting FDI.⁵⁵

- *Market size and growth potential,*
- *Openness to international trade and investment,*
- *Exchange rate valuation,*
- *Clustering effects (the existence of industrial zones),*
- *Political stability and institutional quality,*

For them large market size (huge population with higher per capital income), higher economic and technological growth, economic policy which is open to foreign investment, a weaker real exchange rate, the existence of industrial zone, political stability and quality institutions (both administrative and judicial) have positive relationship with FDI inflow.⁵⁶ In addition, Sun has underscored the importance of enabling host country’s environment for flow of FDI.⁵⁷ For him, an enabling environment for FDI has several components. Thus, political and macroeconomic stability, a sound policy and regulatory framework and efficient supporting institutions to enforce the relevant laws and regulations, and an adequate physical and social infrastructure including the quantity and quality of roads and communication systems, skilled labor, as well as the efficiency with which public services are delivered important components.⁵⁸ Finally, Niatsetski (2011) added host country’s corruption level and democratic governance as another determinant factor for flow of FDI and concluded that fair legal system, stable and

⁵⁴ Ibid

⁵⁵ Walsh and Yu, ‘Determinants of Foreign Direct Investment: A Sectoral and Institutional Approach (2010) IMF Working Paper

⁵⁶ Ibid

⁵⁷ Sun (n 51)

⁵⁸ Ibid

democratic political system and low levels of corruption as mostly prove to enhance foreign multinational activity in a recipient country.⁵⁹

In conclusion, the combination of factors attributed to the firms and that of a potential host country are taken as determinants of FDI inflow into a given country.

2.2) Theories on the Relationship between FDI and Environment

One of the most debated areas of FDI concerns its relationship with host country's environment. Thus, various theories were developed to explain the relationship between FDI and environment; pollution havens hypothesis and pollution halo (Porter) hypothesis being the main ones.

2.2.1. Pollution Haven Hypothesis

The pollution haven hypothesis asserts that multinational firms, particularly those engaged in highly polluting activities move their activities in countries with weaker environmental standards.⁶⁰ This hypothesis suggests that FDI inflows to developing countries are associated with higher levels of pollution, which may have negative effects on welfare.⁶¹ It considers environment as a factor of production where stringent environmental regulations increase production costs and accordingly, countries with weaker environmental policies will have relatively lower production costs and so they will have comparative advantage in polluting industries.⁶² Thus, TNCs move their activities from developed countries with strict environmental regulation to developing countries with weaker environmental regulation to reduce cost of production and thereby make profit.

The pollution haven hypothesis has three dimensions.⁶³ The first is the relocation of heavy polluting industries from developed countries with stringent environmental policies to

⁵⁹ Alex Niatsetski, 'The Effects of Host Country Institutions and Corruption on Foreign Direct Investment Flows: Empirical Evidence and Robustness of Indicators' (MA Thesis, Erasmus University Rotterdam 2011)

⁶⁰ Yaya Keho, 'Is Foreign Direct Investment Good or Bad for the Environment? Times Series Evidence from ECOWAS Countries' (2015) Volume 35, Issue 3, Economics Bulletin p 1916-1927

⁶¹ Ibid

⁶² Ibid

⁶³ Aliyu Aminu, *Foreign Direct Investment and the Environment: Pollution Haven Hypothesis Revisited* (2005)

developing countries where similar policies do not exist, are lax or not enforced. The second dimension is the dumping of hazardous waste generated from developed countries (industrial and nuclear energy production), in developing countries. The last one is the unrestrained extraction of non-renewable natural resources in developing countries by multinational corporations engaged in producing petroleum and petroleum products, timber and other forest resources

In any case, lack of stringent environmental regulation or the existence of stringent environmental regulation but lacks effective implementation may result in the flow of polluting foreign companies and face the probability of environmental damage.

As studies show, countries are in a fierce competition to attract FDI and to this end; they may intentionally lower their environmental regulation to attract FDI.⁶⁴ This is to say that developing countries may try to use less stringent environmental policies to gain a comparative advantage in polluting countries and that pollution intensive industries move their operation from countries with strong environmental regulation (high pollution tax) to these developing countries (with low or no pollution tax) to make advantage of loose environmental regulation.

Nevertheless, the argument that developing countries intentionally lower their environmental standards to attract FDI is not acceptable in my opinion for two main reasons. Firstly, empirical studies did not conclusively show that FDIs are attracted by lower environmental regulation in host countries. Moreover, the empirical evidence from literatures remains controversial and ambiguous to date.⁶⁵ Secondly, the discussion of section 2.1.4 of this chapter clearly indicated that host country's market size, political and macroeconomic stability, a sound policy and regulatory framework and efficient supporting institutions to enforce the relevant laws and regulations, and an adequate physical and social infrastructure as important factors influencing FDI's decision to move its activities to a certain country. In other words, the weakness of environmental regulation is not seen as determining factor in attracting FDI.

Generally, the foregoing discussion indicates that existing empirical researches do not conclusively show that FDI is attracted by weak environmental regulation of host country. Therefore, countries need not consider pollution hypothesis as a policy measure towards FDI.

⁶⁴Mabey & McNally (n 24)

⁶⁵Keho (n 60)

2.2.2) The Pollution Halo (Porter) Hypothesis

Opposite to the pollution havens hypotheses, the pollution halo hypothesis hypothesizes that FDI to developing countries may have positive effects on environment and welfare through the transfer of cleaner technologies and more developed environmental management systems.⁶⁶ Properly designed environmental standards can trigger innovation that may partially or more fully offset the costs of complying with them.⁶⁷ Such innovation offsets can not only lower the net cost of meeting environmental regulation, but also can even lead to absolute advantage over firms on foreign countries not subject to similar regulations.⁶⁸

In general, the preceding discussion indicates that the existence of strong environmental regulation in host country does not discourage the inflow, rather encourages firms to innovate newer and cleaner technologies (which are environmental friendliest) in order to comply with the requirements of stringent environmental regulation.

Besides these two dominant theories, there are other theories, which need consideration with respect to the relationship between FDI and the environment, Environmental Kuznets Curve (EKC) and Sustainable Development being the most relevant ones.

a) The Environmental Kuznets Curve (EKC)

The Environmental Kuznets Curve (EKC) hypothesizes a sort of inverted U-shape relationship between environmental degradation and economic development.⁶⁹ According to this hypothesis, the process of economic growth is expected to improve environmental degradation after the economy has reached an adequate level of growth.⁷⁰ In the early stages of economic growth degradation and pollution increase, but beyond some level of income per capita (which will vary for different indicators) the trend reverses, so that at high-income levels economic growth leads

⁶⁶ Ibid

⁶⁷ Micheal E. Porter and Caas Van der Linde, 'Toward a New Conception of the Environment-Competitiveness Relationship' (1995) Vol.9, No.4, Journal of Economic Perspectives p 98

⁶⁸ Ibid

⁶⁹ Keho (n 60)

⁷⁰ Ibid

to environmental improvement which implies that the environmental impact indicator is an inverted U-shaped function of income per capita.⁷¹

In the view of this researcher, this has lead policy makers of some developing countries to develop the so-called growth first policy strategy. Here it is important to consider the case of China as an example where the government is accused of prioritizing economic growth over the environment. For instance, Wayne Morrison indicated that the Chinese government often disregards its own environmental laws in order to promote rapid economic growth.⁷² This has resulted in high environmental problems such as water and air pollutions.⁷³ The major consequences of these environmental problems are also shocking. In the year 2008 alone, air pollution in China caused the death of 470,649 people according to the World Health Organization.⁷⁴ In addition, a 2014 OECD report estimated the health costs of China's air pollution in 2010 at \$1.4 trillion.⁷⁵

The foregoing discussion indicates that prioritizing economic growth over the environment on the assumption that economic development could clean the damaged environment is a dangerous scenario because there are certain environmental damages, which are not reversible. Had it been reversible, China could have cleaned its environment damaged sustained due to industrial pollution. It allocates many millions of dollar for environmental pollution treatment every year. For instance, the country allocated \$24.04 billion (1.40% of the country's GDP) for environmental pollution treatment (environmental investment) in the year 2004.⁷⁶ Although, huge amount of money is invested each year on environmental treatment, the problem still

⁷¹ David I. Stern, 'The Rise and Fall of the Environmental Kuznets Curve' (2004) Vol. 32, No. 8, World Development P 1419

⁷² Wayne Morrison, 'China's Economic Rise: History, Trends, Challenges, and Implications for the United States (2015) Congressional Research Service, P 35-36

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Jing Zhang, 'Foreign Direct Investment, Governance, And The Environment In China: Regional Dimensions' (PHD Thesis, University of Birmingham 2008)

persists and is getting worse. In January 2016, British Broadcast Corporation (BBC) reported, “Beijing recently issued its first pollution 'red alert', closing schools, factories and construction sites, and ordering half of all private cars off the road.”⁷⁷ This clearly shows how the irreversible damage sustained by the environment due to industrial pollution is causing great problems to its citizens.

In this regard, I strongly believe that third world countries must learn from the mistakes of China and others who prioritized economic growth at the cost of environment. Balancing economic development with that of environmental protection must be the economic policy, which developing countries like Ethiopia need to follow.

b) Sustainable Development

This is different from the above theories and approaches because it combines economic growth with social and environmental development. It implies achieving economic growth together with the protection of environmental quality and social development, each reinforcing the other.

Sustainable development is a term widely used by politicians all over the world, even though the notion is still rather new and lacks a uniform interpretation.⁷⁸ The concept of sustainable development is still being developed and the definition of the term is constantly being revised, extended; and refined.⁷⁹

To date the authoritative definition given for sustainable development and cited mostly is the one given by the 1987 World Commission on Environment and Development (WCED), which defined it as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’⁸⁰ The conference sought to address the conflict between development and environment goals by formulating this definition of sustainable

⁷⁷ BBC News, 20 January 2016

⁷⁸ Tatyana Soubbotina, *Beyond Economic Growth: An Introduction to Sustainable Development* (2004) 8

⁷⁹ Ibid 8-9

⁸⁰ World Commission on Environment and Development (WCED, *Our Common Future*, 1987) 43

development.⁸¹ In the extensive discussion and use of the concept since then, there has generally been recognition of three aspects of sustainable development: economic, environmental and social.⁸²

Economic: An economically sustainable system must be able to produce goods and services on a continuing basis, to maintain manageable levels of government and external debt, and to avoid extreme sectoral imbalances, which damage agricultural or industrial production.⁸³

Environmental: An environmentally sustainable system must maintain a stable resource base, avoiding over-exploitation of renewable resource systems or environmental sink functions, and depleting non-renewable resources only to the extent that investment is made in adequate substitutes. This includes maintenance of biodiversity, atmospheric stability, and other ecosystem functions not ordinarily classed as economic resources.⁸⁴

Social: A socially sustainable system must achieve distributional equity, adequate provision of social services including health and education, gender equity, and political accountability and participation.⁸⁵

These three aspects are pillars of sustainable development and every development policies and programs must harmonize these if meaningful and sustainable development is to be achieved.

2.3) Legal Regime Regulating FDI in Host Countries

As will be explained below, states are sovereign under public international law having the rights to regulate everything within their territorial jurisdiction. In the context of FDI laws of home state and international laws as well as institutions together with host states relevant laws and institutions forms legal and regulatory framework regulating FDI in host countries.

⁸¹ Jonathan Harris, 'Basic Principles of Sustainable Development' (2000) Global Development and Environment Institute Working Paper, p 5

⁸² Ibid

⁸³ Ibid 5-6

⁸⁴ Ibid 6

⁸⁵ Ibid

In this section, FDI legal and regulatory framework of host state will be discussed to give highlight on how it is governed and regulated in host countries.

2.3.1) International Legal and Structural Systems Affecting FDI in Host Countries

a) Customary International Law

The importance of international customary law in the context of foreign investment is extremely limited, but there are two areas where it is considered to have potential role: area of the so-called state sovereignty and expropriation.⁸⁶

State Sovereignty: is a basic principle of customary international law and is the first instance where customary international law has significance on FDI.

The doctrine of sovereignty in the context of FDI means that a state can decide at its discretion how to regulate foreign investment and how to treat foreign investors.⁸⁷ Consequently, States can freely decide whether to establish a liberal and hospitable FDI climate, or not; they can prohibit the entry of foreign investment, establish barriers, conditions, restrictions or limits on FDI inflows.⁸⁸

Expropriation: a second area in which international customary law is considered to have a potential role is the regime of expropriation involving foreign investment.⁸⁹ Under customary international law, countries can expropriate or nationalize the property of foreign investor for the sake of public interest following due process of law and against the payment of compensation. Therefore, the areas of state sovereignty and expropriation are where international customary law comes to the fore to play its role in FDI system of host countries.

⁸⁶ Jean-Yves P. Steyt, 'Comparative Foreign Direct Investment Law: Determinants of the Legal Framework and the Level of Openness and Attractiveness of Host Economies' (2006). *LL.M. Graduate Research Papers*. Paper 1

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

b) Bilateral Investment Treaties (BITs)

BITs are another source of international investment law and consequently another international determinant of national FDI systems, playing the main roles of promoting investment in general and protection of foreign investors and their investments in particular.⁹⁰

BITs are the most widely applied international law system usually invoked by foreign investors when the dispute arises with host countries governments. Investors usually invoke them because they are the source of most of the protections which host states are obliged to extend towards foreign investors and their investments. Content wise, most BITs contain clauses:

- i. specifying the treatment to which the foreign investors of the other State is entitled (fair and equitable treatment, national treatment, and/or most-favored-nation treatment),
- ii. regulating expropriation of their assets, and
- iii. for settling disputes may it arise between the host State and the foreign investor (and which often provide for international arbitration of such dispute).

A BIT often contains provisions specifying the entry conditions as well as provisions that authorize the repatriation of profits and investment capital. The major problem with BITs as legal regime governing FDI is that they majorly provide the rights and protections extended to the investors with no or less obligation.

International investment agreements (chiefly BITs) have become a charter of rights for foreign investors, with no concomitant responsibilities or liabilities, no direct legal links to promoting development objectives, and no protection for public welfare in the face of environmentally or socially destabilizing foreign investment.⁹¹

As will be discussed in other chapters of this paper, failure to include these obligations in the BITs (the major law governing the relationship between foreign investors and host state governments) is the source of problem in regulating the negative impacts of FDI on environment, especially in developing countries.

⁹⁰ Ibid

⁹¹ Howard Mann, 'The Right Of States to Regulate and International Investment Law: A Comment' (2003/04) UNCTAD/ITE/IIA P 212

c) International Structures

International structures (organizations) such as the IMF, the OECD, the WB and the WTO may have substantial impact on the national systems in a variety of ways, depending on the specific nature, objectives and competences of each entity.⁹²

These international institutions, especially IMF, WTO and OECD, have influenced hugely the legal and regulatory evolutions towards more liberal FDI climates by:

- a) being the forum in which negotiations on FDI take place;
- b) adopting recommendations, guidelines or other instruments;
- c) maintaining statistical information;
- d) promoting development through investment liberalization;
- e) researching on the impact of FDI on development;
- f) establishing working groups or conferences to focus on specific FDI issues and the like.⁹³

Here also these institutions majorly reflects the interests of developed countries (traditionally known as North) and they have been influencing developing countries traditionally called the South) not in their best interest, but the interests of developed countries. They have been pushing these countries to change their investment regulation in way favoring investors originating from developed countries.

2.3.2) International Regional Level

At every continents of the World different economic integration were formed at different period with their own purpose having effect on the inflow of FDI into member states. European Union (EU) and European Economic Community in Europe, North American Free Trade Area (NAFTA) in North America, and Association of Southeastern Asian Nations (ASEAN) in Asia, Common Market for Eastern and Southern States of Africa (COMESSA) and Economic Community of Western African States (ECOWAS) in Africa are the major known regional economic integrations.

⁹² See Steyt (n 86)

⁹³ Ibid

Most of these integrations have abolished or loosened trade and investment barriers among their member states and thereby enabled the free flow of trade and investment.

2.3.3) National Legal Systems of Host Country and FDI

Host countries have the right to regulate FDI in their territory in accordance with their domestic laws and pertinent international law. The right to regulate discussion in the current context has two distinct elements:⁹⁴

- a) *The right to regulate foreign investment to promote domestic development priorities and linkages; and*
- b) *The right to regulate to protect the public welfare from possible negative impacts, both individual and cumulative, of foreign and domestic investments equally of developed countries.*

Host countries legal system relevant to regulation of FDI is composed of domestic investment laws, tax laws, commercial laws, anti-trust laws and the like. They can be regrouped in to four categories of provisions:⁹⁵

- ❖ the rules that apply to the entry of FDI,
- ❖ those applying to the treatment and protection of foreign investors and their investments,
- ❖ those applicable to the exit of FDI, and
- ❖ other rules.

d) Rules Applying to Entry of FDI

As explained above, countries are sovereign under customary international law and the doctrine of state sovereignty in connection with FDI means that a state can decide at its discretion to exclude or restrict foreign investment and consequently also to admit conditionally. To this end, they apply national investment laws to determine which kind of FDI to admit, to exclude or admit conditionally.

⁹⁴ See Mann (n 91) 216

⁹⁵ See Steyt (n 86) 72

Generally, FDI entry procedures can be broadly divided in two categories: notification procedures and approval procedures.⁹⁶

a) Notification

The concept of an FDI notification system is used as meaning that the foreign direct investor has the obligation to declare the investment transaction to the administrative authority designated by the national law for those purposes.⁹⁷ Therefore, foreign direct investment is required to notify the administrative authority (usually investment commissions or agencies) the kind of investment he seeks to undertake.

b) Approval

In an approval and screening system, the foreign investor cannot proceed with his projected FDI transaction before having obtained administrative approval.⁹⁸ This is to mean that the foreign direct investor's notification of his investment transaction to administrative authority of host country is not enough to proceed with his FDI, but he needs to obtain approval and licensing from the latter.

e) Rules Applying to the Treatment and Protection of Foreign Investors and their Investment

Rules applying to the treatment and protection of foreign investors and their investment are dominant in not only BITs, but also the domestic investment systems of host countries. With this regard, a distinction has to be made between rules defining the treatment of foreign investors in comparison with their local counterparts, the legal protection and guarantees on which they can prevail (which includes the issue of expropriation of foreign direct investment) and finally, the potential incentives of which they can benefit and the applicable tax regime.⁹⁹

National FDI policies and their legal translation can be distinguished based on the treatment the regulatory and legal framework of a country reserves for foreign direct investors in comparison

⁹⁶ Ibid 74

⁹⁷ Ibid 75

⁹⁸ Ibid

⁹⁹ Ibid 101

with their local counterparts.¹⁰⁰ While some systems generally treat foreign direct investors in the same manner as the local investors (national treatment), others favor the latter over the former (discriminatory treatment).¹⁰¹

On the other hand, national investment systems of countries may contain rules guaranteeing compensation in case of expropriation and different incentives such as tax holidays aimed at attracting FDI.

f) Rules Applying to Exit of FDI

These rules generally concern the transfer of profits and funds by foreign investors to their home countries. It is clear that a foreign investor desirous to invest in a particular host economy will be especially concerned with the regime applicable to transfer of funds.¹⁰²

Therefore, the domestic investment legislation of FDI needs to allow free transfer of funds and profits to the end that foreign investors able to repatriate funds they want to their home country. It is the existence of such rules, together with other protection and treatment rules, which encourages foreign investors to invest.

g) Other Rules Applying to FDI

Other rules of host countries' investment concerns the settlement of dispute between foreign investor and host country, different laws such as anti-trust law, environmental laws, tax laws and the like of host country which have impacts on FDI.¹⁰³

In conclusion, the chapter has discussed the general overview of FDI, theories on the relationship between FDI and environment, and legal regime regulating the operation of FDI in host country to shed light on the general consideration of FDI and its relation with host country's environment.

¹⁰⁰ Ibid 102

¹⁰¹ Ibid

¹⁰² Ibid 113

¹⁰³ Ibid 115

CHAPTER THREE

FDI AND ENVIRONMENTAL REGULATORY FRAMEWORK IN ETHIOPIA

Introduction

As it is common for all developing countries, Ethiopia needs investment to achieve its economic development pursuit. Domestic investment in Ethiopia has increased rapidly since the introduction of liberal policies in 1992.¹⁰⁴ However, the gap between domestic investment and savings has remained wide, thereby reinforcing the need for FDI in the development of the economy.¹⁰⁵ Realizing the roles of FDI, most African countries including Ethiopia have undertaken numerous policy measures to create hospitable investment climate for FDI. The major policy measures are liberalizing controls on foreign exchange & price, liberalizing investment regulations & privatization of public enterprises and creating a stable macroeconomic environment.¹⁰⁶ These governmental measures coupled with the desire of foreign companies to exploit the natural resource endowments of the country, has attract many FDI companies to the country in the past few years. According to the Public Relation Directorate of the Ethiopian Investment Commission, the Commission has issued new investment licenses to 667 foreign projects in one year alone.¹⁰⁷ In this chapter, the general overview of FDI in the context of Ethiopia and the existing FDI and environment regulatory frameworks of the country will be discussed to highlight the country's environmental protection stance.

3.1 General Overview of FDI in Ethiopia

As pointed out in the introduction of this chapter, Ethiopia desperately needs FDI to finance its growth and development. To this end, it has been taking different measures to make conducive environment for private investment in general and that of FDI in particular. In 2002, the Country's Industrial development Strategy was formulated. In addition, various investment proclamations and regulations were enacted and repealed so many times. The recent investment

¹⁰⁴ UNCTAD, *Investment And Innovation Policy Review Ethiopia* (2002) 1

¹⁰⁵ Ibid

¹⁰⁶ Tadesse Demissie, 'Determinants of Foreign Direct Investment Inflows in Ethiopia' (MA Thesis, Addis Ababa University 2016)

¹⁰⁷ This data covers from July 7, 2013 to June 8, 2014 and can be found at <http://www.investethiopia.gov.et>

law of the country is composed of investment Proclamation No. 769/2012 (with its amendment Proclamation No.849/2014) and Regulation No.270/2012 (with its amendment Regulation No. 312/2014). And, investment promotion body was established as Ethiopian Investment Agency and re-established as Ethiopian Investment Commission. In additions several BITs were signed with more than 30 countries¹⁰⁸ and multilateral investment treaties including a treaty to establish Multilateral Investment Guarantee Agency (MIGA)¹⁰⁹ were also ratified.

Furthermore, the industry development strategy of the country has laid the foundation for the investment in general and foreign investment in particular. It has provided principles that primarily focus on the promotion of agricultural-led industrialization, export-led development and expansion of labor-intensive industries. The strategy considers the private sector (investment by private investors) as an engine of the country's industrial development strategy and one of its fundamental principles.¹¹⁰

Ethiopia, like many developing countries, has been liberalizing trade and attempting to create enabling environment so as to attract FDI. In the last two decades, it has liberalized trade and macroeconomic regime and introduced some measures aimed at improving the FDI regulatory frameworks. Derived by these and other economic factors, many foreign companies have relocated their operation in Ethiopia. Since the start of structural adjustments in 1992, about 5,298 FDI obtained investment licenses in Ethiopia, as provided in table I below.¹¹¹

¹⁰⁸ Ethiopian Investment Agency, *Overview of Ethiopian Investment Policy* (2013)

¹⁰⁹ Ibid

¹¹⁰ See Industrial Strategy (n 12)

¹¹¹ This data is obtained from Ethiopian Investment Commission Documentation Department

Table 1 Summary of Licensed All Foreign Direct Investment (FDI) Projects by sector and investment status since August 22, 1992 - May 24, 2016 G.C

Sector	Total No of Projects	Pre-Implementation	Implementation	Operation
		No of Projects	No of Projects	No of Projects
<i>Agriculture</i>	822	333	218	271
<i>Manufacturing</i>	2,332	789	483	1,060
<i>Mining</i>	32	8	6	18
<i>Electricity (Generation, Transmission and Distribution)</i>	4	3		1
<i>Education</i>	120	34	32	54
<i>Health</i>	105	15	35	55
<i>Hotels (Including Resort Hotels, Motels and Lodges) and Restaurants</i>	296	105	65	126
<i>Tour Operation, Transport and Communication</i>	131	42	24	65
<i>Real estate, Machinery and Equipment Rental and Consultancy Service</i>	981	266	129	586
<i>Construction Contracting Including Water Well Drilling</i>	388	131	96	161
<i>Others</i>	87	11	21	55
<i>Grand Total</i>	5,298	1,737	1,109	2,452

Source: Ethiopian Investment Commission Documentation Department

3.2 FDI Regulatory Frameworks of Ethiopia

3.2.1) FDI Legislative Framework

According to the current investment legislative framework of Ethiopia, foreign investors (FDI) can invest on their own or in partnership with domestic investors in areas open for FDI;¹¹² are required to have investment permit from Ethiopian Investment Commission and other relevant government organs;¹¹³ and are required to allocate minimum capital.¹¹⁴ FDI legislative framework also provides rights, incentives, privileges and guarantees for foreign investors aimed at promoting FDI. These includes-

- i. the guarantee against expropriation or nationalization;¹¹⁵
- ii. privilege to full repatriation (remittance) of profits, dividends, principal and interest payments on external loan out of Ethiopia in convertible currency;¹¹⁶
- iii. the right to employ expatriate managers and expert;¹¹⁷
- iv. tax holidays¹¹⁸ such exemption from the payment of customs duty on imported capital goods, construction materials; exemption from the payment of customs duty on imported spare parts worth up to 15% of the value of the imported capital goods income tax exemption (up to 9 years) and loss carry forward (for half of income tax exemption period granted).

In addition to these domestic investment legislations, BITs signed by Ethiopia with different countries also provide similar protections for foreign investors and their investments in the country. For instance, the 2009 BIT signed between UK & Northern Ireland and the government

¹¹² Invest. Proc. (n 18) Art. 4 (1) (a) & (b)

¹¹³ Ibid Art. 12 (1) (a) & (b)

¹¹⁴ Ibid Art. 11 (1), (2) & (3)

¹¹⁵ Ibid Art. 25

¹¹⁶ Ibid Art. 26

¹¹⁷ Ibid Art. 37

¹¹⁸ FDRE Council of Ministers Regulation No. 270/2012, *Federal Negarit Gazette 19th Year No.4, Addis Ababa 20th November 2012* Art. 5 -15

of Ethiopia provides the right to fair and equal treatment as well as full protection and security,¹¹⁹ the right to compensation of losses,¹²⁰ protection against expropriation,¹²¹ and the privilege of expatriation of investments and returns (funds).¹²² At the same time, the domestic investment legislation of Ethiopia obliges investors to protect the environment. In relation to this fact, the investment proclamation of the country allocated one provision, which reads as follows: “Any investor shall have the obligation to observe the laws of the country in carrying out his investment activities. In particular, he shall give due regard to environmental protection”,¹²³ This provision stipulates that every investor (both domestic and foreign) have the obligation to protect the environment in carrying out his investment activities. With this regard, the governing law would be the environmental laws of the country and the investor is duty bound to observe these laws in carrying out investment activities. However, almost none of the BITs signed by Ethiopia impose any obligation on foreign investors rather than providing protections and rights of these investors. Especially, in relation to environmental protection, there is no or little obligation in these BITs imposed on foreign investors.

3.2.2) FDI Institutional Framework

The government of Ethiopia has established the Ethiopian Investment Commission¹²⁴ to promote, coordinate and facilitate investment including foreign investment. Promoting, coordinating and enhancing investment activities as well as giving one-stop service are among the power and duties of the Commission.¹²⁵ The primary purpose of the so-called ‘one-stop shop service’ is to provide various services at one point so that investors can get services they want very easily.

¹¹⁹ BIT between the Governments of UK& Northern Ireland and Ethiopia (2009) at Art. 2

¹²⁰ Ibid Art. 4

¹²¹ Ibid Art. 5

¹²² Ibid Art. 6

¹²³ Invest. Proc. (n 18) Art. 38

¹²⁴ Re-established by FDRE Council of Ministers Regulation No. 313/2014, *Federal Negerit Gazette* 20th Year No. 63 Addis Ababa 14 August, 2014

¹²⁵ Invest. Proc. (n 19) Art. 28 and 30

Originally, these activities are powers and duties of different bodies but the Commission is entrusted to carryout them representing the concerning organs to facilitate efficient delivery of these services.

In general the foregoing discussion indicates that the power and duties of the Commission are limited to facilitating and coordinating different activities aimed at making favorable investment climate for investors so that they can carry out their investment activities in Ethiopia as easily as possible. In relation to environmental protection, the law is silent as to what kind of relationship should exist between the Commission and environmental protection bodies at both federal and regional states levels.

3.3) The Environmental Regulatory Frameworks of Ethiopia

3.3.1) The Environmental Policy and Laws of Ethiopia

In order to protect its environment from damage, Ethiopia has taken environmental policy measures as reflected in the 1995 FDRE Constitution and the 1997 Environmental Policy of the country. In addition, various environmental legislations were enacted at both federal and regional states levels. Environmental policy and laws of Ethiopia are highly influenced by the principles of the three global mega conferences, namely, the UN Conference on Human Environment (UNCHE, 1972), the UN Conference on Environment and Development (UNCED, 1992) and the World Summit on Sustainable Development (WSSD, 2002).¹²⁶ These conferences have led to the emergence of a couple of global prescriptive and normative environmental policies and principles such as the precautionary principle (including the environmental impact assessment), the polluter-pays principle, sustainable development and common but differentiated responsibility.¹²⁷ In the following few pages, therefore, the environmental policy and laws of Ethiopia will be discussed together with these three international environmental conferences.

¹²⁶ Khushal Vibhute, 'Environmental Policy and Law of Ethiopia: A Policy Perspective', Vol.22 No.1 ,Journal of Ethiopian Law P 75

¹²⁷ Ibid

3.3.1.1. The Three International Mega Conferences on Environment Influencing Ethiopian Environmental Policy and Laws

The discussion of these conferences here is justified on two basic grounds. Firstly, Ethiopia has participated in all of these conferences and signed the declaration of each of them. Secondly, as pointed out above, the principles of these conferences have influenced the environmental policy and laws of Ethiopia. Hence, I will discuss some important aspects of these conferences in relation to this research.

The first of these conferences is the UN Conference on human environment held in Stockholm from June 5-16 1972.¹²⁸ The meeting was convened because of growing international concern for the preservation of nature and of the dissatisfaction among various sectors of society with regard to the impact of pollution on the quality of life.¹²⁹ The concern of public opinion and political pressures were mostly seen in industrialized countries, where the scientific community and a growing number of non-governmental organizations were attracting substantial attention to disseminate their accusations and warnings.¹³⁰ The Conference introduced some concepts and principles that, over the years, would become the foundation for the evolution of diplomacy in the environmental area.¹³¹

At the end of the conference, participants have reached on an agreement commonly called Stockholm Declaration, which encompasses 26 principles regarding the relation between human well-being and the environment.¹³² In relation to environment and human well-being, the declaration provides “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”¹³³ Besides, it provides that states need to adopt an integrated and

¹²⁸ UN Conference on Human Environment (UNCHE, 1972)

¹²⁹ André Aranha Corrêa do Lago, *Stockholm, Rio, Johannesburg: Brazil and the Three United Nations Conferences on the Environment* (2009) 17

¹³⁰ Ibid

¹³¹ Ibid

¹³² Declaration of the UN Conference on the Human Environment (Stockholm, 1972)

¹³³ Ibid principle 1

coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the environment for the benefit of their population.¹³⁴ Finally, it also asserts the importance of rational planning as constituting an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.¹³⁵

The second international environmental conference to be considered here is the United Nations Conference on Environment and Development (UNCED) held Rio de Janeiro (Brazil) from June 3-14, 1992.¹³⁶ At this conference, more than 178 nations committed themselves to the principles of sustainable development; Rio Declaration and its agenda 21.¹³⁷ The Rio Declaration proclaimed 27 basic principles of sustainable development, all of which recognize the importance of achieving economic development together with environmental preservation.¹³⁸ Principles of inter-generation equity concerning the right to development, precautionary approach, the polluter-pays and common but differentiated responsibility are at the hearts of the Rio Declaration.¹³⁹ Concerning the relationship between human and the environment, this Declaration provides that “human beings are at the center of concerns of sustainable development. They are entitled to a healthy and productive life in harmony with nature.”¹⁴⁰ In addition, it is also declared that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”.¹⁴¹ Besides, it requires states to enact effective legislations; the standards,

¹³⁴ Ibid principle 13

¹³⁵ Ibid principle 14

¹³⁶ UN Conference on Environment and Development (UNCED, 1992)

¹³⁷ Freedom Advocates, *Understanding Sustainable Development-Agenda 21*, (5th edition 2012) p.3

¹³⁸ UNCED (n 136)

¹³⁹ Ibid principles 3, 7, 15 and 16

¹⁴⁰ Ibid principle 1

¹⁴¹ Ibid principle 5

management objectives and priorities of which should reflect the environmental and development context to which they apply.¹⁴²

The third and important international environmental conference to be seen here was held from 26 August to 6 September 2002 in Johannesburg, South Africa.¹⁴³ The intention of this conference was not to develop new conventions or renegotiate agenda 21, but the mandate of implementing existing promises and commitments, such as those made in Rio and in the Millennium Development Goals.¹⁴⁴ Hence, the Johannesburg Conference produced the Plan of Implementation, which was designed to generate a set of targets, and timetables, concrete action plans that would make sustainable development happen.¹⁴⁵

The official summit achieved seven main successes:¹⁴⁶

- a) a sanitation target
- b) the acceptance of the need to delink economic growth from environmental degradation,
- c) the reaffirmation of the principle of access to information,
- d) participation and justice;
- e) the launching of some key initiatives and partnerships on sustainable development;
- f) the recognition of community and indigenous people's rights;
- g) acknowledging the importance of ethics; and
- h) the promotion of greater corporate responsibility and accountability.

Besides these three international mega conferences on environment, Ethiopia a party to other conferences on environment and climate change. The first one is the UN Framework Convention on Climate Change (UNFCCC, 1997) held in Kyoto, Japan and the participating countries has agreed to Kyoto Protocol, aimed at reducing greenhouse emissions.¹⁴⁷ The second is the

¹⁴² Ibid principle 11

¹⁴³ World Summit on Sustainable Development (WSSD, 2002)

¹⁴⁴ Antonio Viña, Gretchen Hoff, and Anne DeRose, 'The Outcomes Of Johannesburg: Assessing the World Summit on Sustainable Development' (2003), Volume XXIII, Number 1, Journal of International Affairs

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ UN Framework Convention on Climate Change, held in Kyoto, Japan December 1997.

UNConference on Climate Change (UNCCC, 2009) held in Copenhagen, Denmark.¹⁴⁸ This conference has produced an agreement called Copenhagen Accord, which contains the seeds for a new, country-driven, ‘bottom-up’ approach to tackling climate change that could potentially offer an effective route to accelerated global emission reductions.¹⁴⁹ On this conference, Ethiopia not only participated, but also has represented Africa for negotiating the accord. The third international climate conference was held as recently as 2015 in the capital city of France, Paris.¹⁵⁰

In general, these international conferences on environment and development recognized the importance of considering environmental protection in planning and implementing development programs. They adopted basic environmental principles, which through time have influenced environmental laws and policies of many countries including Ethiopia. As reflected in the 1995 FDRE Constitution, the 1997 Environmental Policy and other relevant policy documents and laws, the declarations of these Conferences have highly influenced Ethiopian Environmental laws and policies. The incorporation of citizen’s rights to clean and healthy environment and to sustainable development in the Constitution, the inclusion of precautionary and polluter-pays principles in the Environmental policy and environmental legislations and the like shows how the principles of international environmental and climate change conferences influenced environmental the policy and laws of the Ethiopia.

3.3.1.2. Environmental Issues in the 1995 FDRE Constitution

As discussed in chapter one of this research, the 1995 FDRE Constitution of Ethiopia has incorporated some fundamental rights, objectives and policy direction in relation to environment. As fundamental rights, it guarantees all Ethiopians the right live in a clean and healthy environment, the right to livelihood, and the right to improved living standards and to sustainable development. The right to live in a clean and healthy environment signifies citizens’ right to access to clean water, clean and healthy air and generally unpolluted environment that allows Ethiopians to live a decent and quality life. On the other hand, the right to improved living

¹⁴⁸UN Conference on Climate Change, held in Copenhagen, Denmark from 7-18 December 2009 (Copenhagen Summit)

¹⁴⁹ The Climate Group, the *Copenhagen Climate Summit: A Climate Group Assessment* (2010)

¹⁵⁰UN Climate Change Conference, held in Paris , France from 30 November to December 12 2015 (Paris Conference)

standard implies access to the better quality of life in terms of environmental quality and basic needs as well as comforts. The right to sustainable development, as explained in chapter two, refers to development that meets the needs of the present generation without compromising environmental needs of future generation, which in turn requires rational and prudent use of environmental resources.

This same Constitution obliges the government to ensure that all Ethiopians live in a clean & healthy environment, and that the design and implementation of programs and projects of developments not damaging and destroying the environment. It also imposes the obligation to protect the environment on the government and citizens.

The incorporation of citizens' rights to live in a clean and healthy environment and the corresponding obligation of the government to ensure its observance in the law of the land is a big step in protecting the environment from development activities and other things damaging the environment. By recognizing the right to live in a clean and healthy environment, and the right to improved living standard and to sustainable development, the Constitution clearly indicates that the only way to bring about economic growth is through sustainable development. It obliges the government to protect the environment from development activities and protects to be carried out by public or private entities, or by domestic or foreign investors. The constitutional environmental policy objective of Ethiopia is one of the country's national policy principles and objectives, by which all government organs are obliged to be guided in implementing the Constitution, other laws and public policies.¹⁵¹

3.3.1.3. Environmental Policy of Ethiopia

Following the coming into force of the 1995 FDRE Constitution, Environmental Protection Authority of Ethiopia has formulated the national environmental policy in 1997.¹⁵² Before 1997, the country did not have a comprehensive environment policy. This Environmental Policy was formulated to provide overall guidance in the conservation and sustainable utilization of the country's environmental resources in general.

¹⁵¹Constitution (n 6) Art.85 (1) and Art. 92

¹⁵² FDRE Environmental Protection Authority, Environmental Policy of Ethiopia (EPA, 1997)

In a similar fashion with the Constitution, the environmental policy of the country prioritizes improving the wellbeing and quality of life of Ethiopians and the promotion of sustainable development. Thus, the policy is destined to improve and enhance the health and quality of life of all Ethiopians, and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment.¹⁵³ In other words, the overall policy goal of the country's environmental policy is two-fold. The first one is the improvement and enhancement of the health and quality of life of Ethiopians while the second is promotion of sustainable development. Hence, improving and enhancing the health and quality of life of Ethiopians through bringing sustainable development is the overall policy goal of Ethiopian Environmental Policy. It is the reflection of the Reo Declaration and the constitution in that it gives due attention to sustainable social and economic development to enable both current and future generations to get their equitable share from natural resources of the country including the environment.

Besides setting overall policy goals, the policy also sets specific objectives, which sets comparatively more specific policy goals for environmental laws. All of these specific policy objectives concern policy directions, which enables prudent and rational utilization of the country's renewable and non-renewable resources in way satisfying the current development needs without affecting the needs of the future generation.¹⁵⁴

In order to achieve these overall policy goal and objectives, the policy provided key guiding principles.¹⁵⁵ These guiding principles help policy makers in shaping subsequent environmental policies, strategies and programs together with their implementations. They also help them in ensuring consistency in the sectoral and cross-sectoral environmental policies dealt with under the environmental policy of the country.

The Policy also formulates a set comprehensive sectoral and cross-sectoral environmental policy, which makes the environmental policy more effective. From the sectoral and cross-sectoral policies provided by the Ethiopian Environmental Policy, it is important to shade light on the two

¹⁵³ Ibid Section 2.1

¹⁵⁴ Ibid Section 2.2

¹⁵⁵ Ibid section 2.3

most relevant ones: control of hazardous materials and pollution from industrial wastes, and environmental impact assessment.

In relation to control of hazardous materials and pollution from industries, the Policy adopts the precautionary principle of minimizing and where possible preventing discharges of hazardous wastes from industries and appliances.¹⁵⁶ It also provides the principle of polluter-pay principle where pollution occurs to clean the polluted environment.¹⁵⁷ In addition, the Policy also promotes waste minimization process, and to maintain regular environmental audits to ensure the adoption of environmentally sound practices in all public and private development activities including industrial and mining operations.¹⁵⁸ On the other hand, the environmental impact assessment policies provide the need to recognizing any impacts of development programs and projects early and incorporating controlling mechanisms into development design process.¹⁵⁹ It also provides policy direction, which ensures that environmental impact assessment always includes mitigation plans for environmental management problems and contingency plans in case of accident.¹⁶⁰ These sectoral and cross-sectoral policies provide important policy tools to mitigate and control the negative impacts of development activities on the environment. Environmental impact assessment, if implemented properly, is the best precautionary tool to prevent environmental damages by development projects. A policy concerning pollution control, on the other hand, provides policy tools used to control hazardous wastes from industries. In general, the foregoing indicates that Ethiopia formulated a comprehensive (goal oriented) environmental policy with clear objectives and guiding principles, which are tools to protect its environment from negative impacts of development activities, particularly industries.

3.3.1.4. Domestic Environmental Legislations of Ethiopia

In order to implement environmental protection policy directions incorporated in the 1995 FDRE Constitution and the 1997 Environmental Policy, Ethiopia has enacted various environmental

¹⁵⁶ Ibid section 3.8

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Ibid section 4.9

¹⁶⁰ Ibid

legislations. From the domestic environmental legislations, the relevant ones are discussed as follows.

a) Environmental Pollution Control Proclamation and Implementing Regulation

Nearly five years after the formulation of the environmental policy, Ethiopia has enacted environmental pollution control proclamation in 2002.¹⁶¹ This Proclamation provides that it is the duty of all to protect the environment in general and safeguard the health and wellbeing.¹⁶² It advocates a “polluter pays” principle, and authorizes the EPA (Ministry of Forestry and Environmental Protection) or relevant regional environmental bureaus to close or relocate any initiative if the activity being carried out poses a risk to human health or to the environment.¹⁶³

It also obliges the EPA to formulate practicable environmental standards based on scientific and environmental principles.¹⁶⁴ The minimum requirements that the standard needs to fulfill includes standards for the discharge of effluents into water bodies, air quality standards and allowable amount of emissions, standards related to soil and waste management standards specifying the levels allowed and the methods to be used in the generation, handling, storage, treatment, transport and disposal of the various types of waste.¹⁶⁵ In addition, it also authorizes the EPA or relevant regional environmental body to assign environmental inspectors, which ensure the observance of these environmental standards and related requirements.¹⁶⁶ Finally, it empowers the Council of Ministers to issue Regulation necessary for the effective implementation of the proclamation.¹⁶⁷

¹⁶¹ FDRE Environmental Pollution Control Proclamation No. 300/2002, *Federal Negarit Gazeta*, 9th Year No. 12, Addis Ababa, 3rd December 2002

¹⁶² Ibid preamble paragraph 2

¹⁶³ Ibid Art. 3 (1) (2) and Art. 4 which prohibit any one from polluting the environment, and where pollution occurs obliges the polluter to clean or pay cost of cleaning up and also allows environmental authorities to take appropriate measures.

¹⁶⁴ Ibid Art. 6 (1)

¹⁶⁵ Ibid

¹⁶⁶ Ibid Art. 7 (1) and 8 (1) (a)

¹⁶⁷ Ibid Art. 20

Based on this, the Council of Ministers issued the Regulation in 2008, nearly six years after the coming into force of the Proclamation.¹⁶⁸ This Regulation obliges factories to:¹⁶⁹

- a) *minimize the generation of every pollutant to an amount not exceeding the limit set by the relevant environmental standard and dispose of it in an environmentally sound manner;*
- b) *handle equipment, inputs and products in a manner that prevents damage to the environment and to human health and*
- c) *notify the competent environmental organ of a potentially dangerous pollutant, input or product, which is out of its control.*

Complementary to the Environmental Policy of Ethiopia and the EIA Proclamation, which require developmental activities to provide a number of guiding principles that require adherence to principles of sustainable development; these legislations require ongoing activities to implement measures that would reduce their degree of pollution to a set limit or quality standard.

b) Environmental Impact Assessment Proclamation

As explained above, environmental impact assessment is the most important tool and precautionary approach to prevent environmental damage before it materializes. It pre-determines the potential negative impacts of development projects on the environment and devises mechanisms to contain them. The government of Ethiopia, by recognizing its importance and environmental policy direction of the country, has issued Environmental Impact Assessment Proclamation in 2002.¹⁷⁰ The Proclamation recognizes the use of environmental impacts assessment as a means to predict and manage environmental effects of development activities.¹⁷¹ It also considers assessment of possible impacts as an effective tool of harmonizing and integrating environmental, economic, cultural and social considerations into a decision making

¹⁶⁸ FDRE Council of Ministers, Industrial Pollution Prevention Regulation No. 159/2008, *Federal Negarit Gazeta*, 15th Year No. 14, Addis Ababa, 7rd January 2009

¹⁶⁹ Ibid Art. 4 (1-4)

¹⁷⁰ FDRE Environmental Impact Assessment Proclamation No.299/2002, *Federal Negarit Gazeta*, 9th Year No. 11, Addis Ababa, 3rd December 2002

¹⁷¹ Ibid preamble paragraph 1

process in a manner that promotes sustainable development.¹⁷² As such, it makes environmental impact assessment a mandatory requirement for the implementation of major development projects, programs and plans in Ethiopia.¹⁷³

The law clearly defines why there is a need to prepare an EIA, what procedure associated with undertaking an EIA, the depth of environmental impact studies required in an EIA, which projects require the undertaking of a full EIA study, which projects need partial or no EIA study and to whom the report has to be submitted.¹⁷⁴ It furthermore provides things, which needs to be considered when assessing the environmental impacts of the projects. These includes the size of the project, its location, its nature, its duration, its trans-regional impacts and other related impacts of the project.¹⁷⁵ Therefore, this proclamation provides important legislative tools to protect the environment from negative impacts of development projects including the operation of FDI in Ethiopia. However, as the analysis of the next chapter will show, there is wide gap between the requirements of the law and the practical application on the ground.

Generally, pollution control proclamation, industrial pollution prevention regulation and environmental impact assessment proclamation are the three most important environmental laws of the country having direct relationship with the main theme of this research. However, they are not the only environmental laws of the Country by any means. Various environmental laws were enacted to protect and preserve biodiversity, administer national parks, to administer land and other natural resources, and the like.¹⁷⁶ They have little significance to this research, the main

¹⁷² Ibid preamble paragraph 2

¹⁷³ Ibid Art. 3 (1) which prohibits anyone from commencement of implementation of any project that requires environmental impact assessment without prior authorization from the EPA or corresponding regional bodies.

¹⁷⁴ Ibid Art. 3-10

¹⁷⁵ Ibid Art. 4 (1)

¹⁷⁶ These other environmental laws of Ethiopia include: Awash National Park Establishment Order No. 54/1969, Simien National Park Establishment Order No. 59/1970, and similar other establishment documents; Institute of Biodiversity Conservation and Research Establishment Proclamation No. 120/1998 (later renamed the Institute of Biodiversity Conservation by Proclamation No 381/2004); Water Resource Management Proclamation No. 197/2000; Public Health Proclamation No. 200/2000; Proclamation on the Establishment of Environmental Protection Organs No. 295/2002; Directive Issued to Determine Projects Subject to Environmental Impact Assessment (“EIA”) No. 2/ 2008, EIA Guideline Document (May 2000), EIA Procedural Guideline Series 1 (2003),

concern of which is environmental problems resulting from FDI (industrial pollution), and as a result I opted not to discuss them.

Besides these federal laws, Oromia National Regional State has also enacted environmental laws to protect the region's environment. Let me discuss some of them to shed light on environmental legislative framework of the regional government.

a) The Regional State's Environmental Impact Assessment Proclamation

In 2012, Oromia National Regional State government has enacted its first environmental impact assessment proclamation.¹⁷⁷ The proclamation provides environmental impact assessment as a public instrument aimed at harmonizing and integrating environment with economic, cultural and social consideration into a decision making process in a manner that promotes sustainable development.¹⁷⁸ It also obliges any person not to commence implementation of projects that requires environmental impact assessment without prior authorization of Bureau of Rural Land Administration and Environmental Protection.¹⁷⁹ It authorizes this bureau to validate or reject the environmental assessment report submitted to it by the concerned project after taking into account public opinion and expert comments.¹⁸⁰ After authorization, the bureau shall monitor and evaluate implementation of the authorized project to assess its compliance with all commitments made by and obligation imposed during the authorization.¹⁸¹ It can cancel license

Guideline Series Documents for Reviewing EIA Reports (2003), EIA Guidelines on Irrigation (2004) and on Pesticides (2004); Regulation and Directives for Emission Standards of Selected Industries (2008); Criminal Code of Ethiopia No. 414/2004 [penalizes pollution and related offenses]; Federal Rural Land Administration and Land Use Proclamation No. 456/2005; Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006; Solid Waste Management Proclamation No. 513/2007; Development Conservation and Utilization of Wildlife Proclamation No. 541/2007; Forest Conservation, Development and Utilization Proclamation No. 542/2007; Radiation Protection Proclamation No. 571/2008; Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation No. 575/2008; and Biosafety Proclamation No. 655/2009.

¹⁷⁷ Oromia National Regional State Environmental Impact Assessment Proclamation No. 176/2012, *Megeleta Oromia*, 21st Year No.2/2012, *Finfinne* November 30, 2012

¹⁷⁸ *Ibid*, Preamble

¹⁷⁹ *Ibid* Art. 5 (1)

¹⁸⁰ *Ibid* Art. 11

¹⁸¹ *Ibid* Art. 16 (1)

of authorization after warning by letter where the proposed project failed to comply with commitments of environmental protection.¹⁸²

b) The Regional State's Rural Land Use and Administration Proclamation

The regional government also issued rural land use and administration proclamation to administer the regional state's rural land.¹⁸³ According to this Proclamation, private investors (both domestic and foreign) who take rural land for investment is required to plant indigenous trees on at least on 2% of the land given for them for that purpose.¹⁸⁴ It also obliges any land user in Oromia to manage, conserve and properly use land.¹⁸⁵

c) The Regional State's Pollution Control Proclamation

The regional state government legislated pollution control proclamation in 2012 to control environmental pollution.¹⁸⁶ Content wise, this proclamation is very similar with the corresponding legislation at federal level discussed above and hence no need of further elaboration.

In conclusion, the discussion of this section indicated that Ethiopia has incorporated environmental issues in the Constitution (one of few countries in doing so), formulated comprehensive environmental policy and enacted domestic environmental legislations. Taking these measures clearly indicates the country's concern to environmental protection and preservation. Nevertheless, they are not enough to achieve the ultimate end of protecting the environment. They need proper implementation by environmental protection bodies at all levels and other concerned bodies, which in turn require strong commitment and cooperation.

¹⁸² Ibid Art. 16 (1-2)

¹⁸³ Oromia National Regional State Proclamation No. 130/2007, a proclamation to amend proclamations No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration, *Megeleta Oromia*, 15th Year No.12-138/1999, *Finfinne* July 29, 2007

¹⁸⁴ Ibid Art. 12 (2)

¹⁸⁵ Ibid Art. 19

¹⁸⁶ Oromia National Regional State Pollution Control Proclamation No. 177/212, *Megeleta Oromia*, 21st Year No.3/2012, *Finfinne* December 1, 2012

However, as the result of this research will go to show in the next chapter, there is huge gap between what the law provides and the practice on the ground.

3.3.2) Institutional Framework for Environmental Protection in Ethiopia

There are various bodies responsible for the implementation of the country's environmental laws and policies at both federal and regional states level. In this section, I will discuss some of the most important institutions responsible for environmental protection in Ethiopia at federal level and Oromia National Regional State.

3.3.2.1) At Federal Level

In order to coordinate the efforts of environmental protection at national level, the government of Ethiopia has established the Environmental Protection Authority in 1995.¹⁸⁷ As per this Proclamation, the Authority was made accountable to the Council of Ministers and given the mandate to manage, protect, conserve and sustain the environment and the natural resources of the country. The primary objective of the Authority was to ensure that all matters pertaining to the country's social and economic activities are carried out in a manner that will protect the welfare of human beings as well as sustainably protect, develop and utilize resource base on which they depend for survival.¹⁸⁸ It was charged with the responsibility of preparing environmental protection policies and laws, preparing environmental standards, enhancing environmental protection awareness and rendering advice and technical support to Regions on environmental protection.¹⁸⁹

Although the Authority was charged with these obligations, its powers and duties were not compatible with the newly enacted legislations of the time. As a result, the government re-structured the Authority in 2002¹⁹⁰ with renewed philosophy and assigned it much more extended and varied roles to translate the constitutional rights to a clean and healthy environment

¹⁸⁷ FDRE Proclamation No. 9/1995, a proclamation to provide for the establishment Environmental Protection Authority, *Federal Negarit Gazet 1st Year No.9 Addis Ababa, 24th August 1995*

¹⁸⁸ Ibid Art. 5

¹⁸⁹ Ibid Art. 6

¹⁹⁰ Re-established by FDRE Proclamation No. 295/2002, a Proclamation Provided for the Establishment of Environmental Protection Organs, *Federal Negarit Gazet 9th Year No.7 Addis Ababa, 3rd October 2002*

as well as sustainable development, and the environmental policy objectives into reality. According to this re-establishing Proclamation, the accountability of the Authority was transferred to the Prime Minister.¹⁹¹ The main objective of the re-structured Authority was to formulate policies, strategies, laws and standards, which foster social and economic development in a manner that enhance the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of the process of their implementation.¹⁹²

This is to mean that the authority has two major objectives: one is to formulate, policies, strategies, laws and standards aimed at bringing sustainable development; the other is playing the leading role in the implementation of these policies, strategies and laws and policies as well as standards.

This authority was the federal government body discharging the above environmental protection obligation until 2013 when all its powers (rights) and duties are completely transferred to the Federal Ministry of Environment and Forestry.

In 2013 the government has upgraded the status of environmental body from authority to Ministry by Proclamation No.803/2013. The enactment of this proclamation was to revise the proclamation defining the powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010 and in that, the previous environmental authority was re-structured at ministry level as Ministry of Forestry and Environmental protection.¹⁹³ As per this proclamation, the Ministry of Forestry and Environmental Protection has overtaken all the rights and obligations of the Federal Environmental Authority (as re-established by proclamation no 295/2002 discussed above).¹⁹⁴

Therefore, this organ of the federal government is the most important institution in formulating environmental policies and works towards the implementation of environmental objectives and works towards the protection and preservation of the environment. It is the commitment and

¹⁹¹ Ibid Art. 3 (2)

¹⁹² Ibid Art. 5

¹⁹³ FDRE Proclamation No. 803/2013, *Federal Negarit Gazet* 19th Year NO.61 Addis Ababa 29th July, 2013, Art. 4

¹⁹⁴ Ibid Art. 6

coordinating role of this body, which has a decisive role in preserving and protecting the country's environment.

3.3.2.2) At Oromia National Regional State Level

At Oromia National Regional State level, the mandate to manage, protect, conserve and sustain the environment and the natural resources of the region was formerly given to the regional government organ called Oromia Environmental Protection office. This office was established by the regional government's regulation no. 28/2002. This office was in charge of formulating and implementing the regional state's environmental laws and policies until 2009. In 2009, the Regional Government has established Oromia Bureau of Rural Land Administration and Environmental Protection by Proclamation No. 147/2009.¹⁹⁵

According to this proclamation, all powers of Environmental Office are transferred to this newly established organ.¹⁹⁶ These powers of the bureau include formulating land and environmental policies and strategies, administering land, following up and regulating development activities in relation to environmental protection, undertaking environmental auditing, promoting and developing public awareness on land use and environmental protection and the like.¹⁹⁷

By closely examining these powers and duties of the Bureau, one can understand that it has a great responsibility to preserve and protect the region's environment. The full commitment and determination of environmental bodies at both federal and regional states level are very crucial to protect our environment from damage.

In concluding the chapter, Ethiopia has put in place regulatory and institutional framework to regulate the operation of FDI in the country in relation to environmental protection. There are policies, laws and institutions, which on one hand encourage and promote FDI, and protect the environment from the damages caused by the latter on the other hand.

¹⁹⁵ Oromia National Regional State Proclamation to Provide for the Establishment of Oromia Bureau of Land and Environmental Protection No. 147/2009, *Megeleta Oromia*, 17th Year No.5/2009, *Finfine March 5, 2009*, Art. 3

¹⁹⁶ Ibid Art.6

¹⁹⁷ Ibid Art. 5

However, the basic question here is this: Are these laws and institutional mechanisms effective? The next chapter of this research with analyzes this question with regard to the practical implementation of these laws in relation to the operation of FDI in the study area.

CHAPTER FOUR

ENVIRONMENTAL PROBLEMS RESULTING FROM FDI IN OROMIA SPECIAL ZONE SURROUNDING FINFINNE

Introduction

Environmental problems are among the greatest challenges of our time, which raise concerns not only about the life of the present but also about the very existence of future generations.¹⁹⁸ Leaders of the World are speaking about this problem on almost daily bases because it is becoming a great threat to the very existence of humankind. By realizing this problem, these leaders called various international environmental conferences such as Stockholm Conference on Human Environment, Reo de Janeiro Conference on Environment and Development and Johannesburg Earth Summit, discussed in chapter three. Still international conferences and negotiations on environment and climate change continued including the 2009 Copenhagen Climate Change Conferenceon which Ethiopia represented Africa and the 2015 Paris Climate Change Conference. Global climate change is the result of environmental problems mostly associated with air polluting emissions from industries. These latest global climate change conferences were aimed at the reduction of such emissions to mitigate the challenge of this concurring problem.

Ethiopia, as a member of global community, is not free from the challenge of climate change resulting from environmental problems. It has one of the most degraded environments in the world and among the worst affected ones in terms of climate change vulnerability.¹⁹⁹ There are many factors for the deteriorating state of the country's environment including overgrazing, deforestation, indoor and outdoor wastes and the like. However, the main concern this research is not dealing with all factors attributing to environmental problems. Rather it concerns environmental problems resulted from activities of FDI in Oromia Special Zone Surrounding Finfinne.

¹⁹⁸ Yenehun Mamo, 'Law for the Future: the Legal and Policy Foundation for Intergenerational Environmental Justice in Ethiopia'(2012), Vol. 4 No. 1, Jimma University Journal of Law p 110

¹⁹⁹ Ibid 110-111

In this chapter, therefore, the basic environmental problems associated with FDI in Oromia Special Zone Surrounding Finfinne together with their causes and consequences will be analyzed. Accordingly, the chapter is divided into four main sections. In section one the general overview of the study area is explained followed by section two in which the basic environmental problems associated with FDI in the study area are discussed. Section three explore reasons behind why FDI operation in the study area is causing damages to the environment and in section four the consequences of these environmental problems are discussed.

4.1) General Overview of the Study Area

Oromia National Regional State is one of the nine regions forming the Federal Democratic Republic of Ethiopia.²⁰⁰ Geographically, it located at the center of the country and this has attracted the attention of many FDI. According to data obtained from the Ethiopian Investment Commission, it is the largest recipient of FDI among regional states forming the federal government and the second largest next to Addis Ababa as shown by in the following table.²⁰¹

Table II *Summary of Licensed All Foreign Direct Investment (FDI) Projects by Region and Investment Status since August 22, 1992 - May 24, 2016 G.C*

Region	Total No of Projects	Pre-Implementation	Implementation	Operation
		No of Projects	No of Projects	No of Projects
Addis Ababa	2,704	749	453	1,502
Afar	25	7	7	11
Amhara	213	86	60	67
B.Gumze	36	17	11	8

²⁰⁰Constitution (n 6) Art. 47 (1)

²⁰¹ Ethiopian Investment Commission (n 111)

Dire Dawa	59	27	19	13
Gambella	34	25	3	6
Harari	10	6	3	1
Multiregional	306	85	72	149
Oromia	1,628	616	411	601
SNNPR	173	75	37	61
Somali	26	16	8	2
Tigray	84	28	25	31
Grand Total	5,298	1,737	1,109	2,452

Source: Ethiopian Investment Commission Documentation Department

For administrative purpose, the region is divided into 18 zonal administrations among which Oromia Special Zone Surrounding Finfinne one. This zone was created in 2008 from parts of [North Shewa](#), [East Shewa](#), [Southwest Shewa](#) and [West Shewa](#) Zones to ease the co-operation with and development of surrounding areas of Addis Ababa City Administration. Currently, the Zone is subdivided into different weredas and city/town administrations such as SebetaAawasWereda, AkakiWereda, MuloWereda, WalmaraWereda, Barak Wereda as well as Sululta, Sebeta, Dukem, Gelan, Lagatafo-Legadadi, Sandafa city/town administrations and the like. The proximity of these woredes/towns to the capital city of the country, Addis Ababa, and relatively better infrastructures has attracted the attention of many foreign companies to move the operation of their industries to these towns and weredas.

Many of these companies are engaged in focus areas set by the federal government mainly the manufacturing sector such as textile, flower and horticulture, tannery and leather products and the like. The researcher has decided to conduct the study in this zone for two main interrelated reasons. The first one is the existence of many foreign companies in the zone and, secondly, the special location of the zone surrounding the country's capital has complicated pollution problems especially in connection with FDI.

4.2) Environmental Problems Associated With FDI in the Study Area

As briefly pointed out above, Ethiopia is facing the challenge of environmental problems, as do many countries of the World. Greenhouse effect, warming (rising of atmospheric temperature), loss of biodiversity, air, water and soil pollution, soil degradation, reduction of surface water and fresh water problem, an increase number of crop failures, wind and ice damage to crops, erosion, industrial pollution, hazardous chemicals and pesticides, coastal and marine pollution and general climate change etc. are major environmental problems in Ethiopia.²⁰²

Although all these environmental problems persist, the concern of this section is analyzing environmental problems associated with FDI such as industrial pollution and hazardous chemicals and pesticides (in relation to flower and horticulture industries) in the study area. Industries generate pollutants into the environment in different forms. Generally, the pollutants from industries are divided into three major categories, namely gas, solid and water.²⁰³

In order to identify the actual impacts of FDI on the environment in the study area, the researcher collected data from relevant officials and experts of the Federal Government, Oromia National Regional State and Oromia Special Zone Surrounding Finfinne by interviews and questionnaires. Accordingly, officials and experts from Ethiopian Investment Commission, Oromia National Regional State Investment Commission and Bureau of Rural Land Administration and Environmental Protection as well as corresponding bodies of Oromia Special Zone Surrounding Finfinne were involved.

These officials and experts agreed that FDI is negatively affecting the environment and the life of the local community in many ways. Especially, experts at Regional and Zonal levels explained the existence of environmental damages associated with FDI in the study area. They stressed that FDI engaged in leather processing, textile, paper and paper products, flower and horticulture, and cement production are the major sources of environmental problems in the Zone. For example, an expert from Oromia National Regional State Bureau of Rural Land Administration and Environmental Protection listed FDI causing environmental problems together with the type of

²⁰² Yared Beyene, 'Environmental Problems and Solutions in Ethiopia Generally and in Africa Specifically: a Case Study on Ethiopia' (2009) (can be found at keynote.confrences-services.net)

²⁰³ Xianghua Wen, *Industrial Pollution*, Encyclopedia of Life Support System (ELOSS)

the problem and the specific area in which the damage occurred.²⁰⁴ Accordingly, he listed Jaffar Enterprise PLC (Blue Nile Tannery), HAFDE Leather Products Processing PLC, Capital Cement PLC and Ayka Addis Textile in Sebeta Town, Dangote Cement Factory in WalmaraWereda, and China-Africa Overseas Tannery and Leather Products Share Company in Sululta Town as major FDI causing major environmental problems in the study area.²⁰⁵ Concerning the extent of the environmental damage caused by these firms, he explained that the liquid waste product from China-Africa Overseas Tannery and Leather Products Share Company has been polluting the nearby river and grazing land, resulting in the death of hundreds of cattle of the local community living in three Kebeles adjacent to Sululta Town.²⁰⁶ In a similar way, untreated liquid wastes from HAFDE, Jaffar and Ayika Addis are polluting River Sebeta, thereby affecting the life local community who use the water of this river for different purposes, including cultivating of different vegetables and drink water for their cattle.²⁰⁷ What is more worrying here is that the effects of this problem is not only limited to Sebeta area, rather this polluted river flows towards River Akaki where it affects the life of people living surround this river in AkakiWereda.²⁰⁸ In addition, grinding mills used by FDIs engaged in producing cement such as Dangote and Capital are releasing chemical dusts into the surrounding air, thereby polluting air.²⁰⁹ Besides, the bad odor and smell from tannery and leather processing FDIs, and chemicals and pesticides used in flower industries are causing great deal of health problems in Sebeta, Holota and Sululta Towns and adjacent rural areas.²¹⁰

In a similar way, an expert from Regional State's Investment Commission also reiterated the same fact and goes as far as indicating that the life of local communities are in danger in some

²⁰⁴ Interview with Bekele Wagari, expert of project follow up and environmental protection at Oromia Rural Land Administration and Environmental Protection Bureau (Addis Ababa, Ethiopia 12 May 2016)

²⁰⁵ Ibid

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ Ibid

²⁰⁹ Ibid

²¹⁰ Ibid

places that such as those living around China-Africa Overseas Tannery and Leather Products Share Company in Sululta Town.²¹¹

As the discussion of chapter three showed, all Ethiopians have the constitutional rights of improved quality of life, the right to live in an unpolluted, clean and healthy environment as well as the rights to a sustainable development. These rights of Ethiopians impose the corresponding obligation on the government to design and implement development programs that bring about sustainable development, and to ensure that development projects carried out by public and private enterprises (including FDI) not damage the environment.

However, as the opinion of these officials proves, development projects undertaken by many FDI are causing environmental damages in the study area and denying citizens the right to live in a clean and healthy environment. Citizens living in towns and rural areas of the Zone are forwarding their complain to the Regional State to take corrective measures against these FDI as the untreated waste products they discharge are damaging the quality of the environment and thereby their right to live in a quality environment. Residents of Sululta Town and farmers living outside of the town have repeatedly complained and requested the Regional Government to take corrective action or close China-Africa Oversea Tannery and Leather Products on the ground that development projects should not affect their health and quality of life.²¹²

In responding to local community's complain, the regional government has closed China-Africa Overseas Tannery and Leather product as of March 2017 and this shows the magnitude of environmental problems accruing from FDI in the study area.²¹³ The government said it take this measure because the firm has been polluting the environment for the last six years and also failed to take corrective measures although required to do so on various occasions.²¹⁴ It also reported

²¹¹ Interview with an expert at Oromia National Regional State Investment Commission, who requested not to mention his name (Addis Ababa, Ethiopia 4 May 2016)

²¹² Ibid

²¹³ Oromia National Regional State, Government Affairs Communication Office (March, 2017)

²¹⁴ Ibid

that more than 230 cattle of local community have died of drinking polluted water of the nearby river this year.²¹⁵

The opinion of legal expert at Oromia National Regional State Investment Commission²¹⁶ also proves the fact that environmental problems resulted from FDI is affecting the health and quality of life of Ethiopians living in the Zone. He indicated that environmental problems are affecting the health of the children of local community and blamed failure of implementing Federal and Regional investment and environmental laws, and failure of enforcing treaty and concessional obligations of foreign investors as causes of the persisting environmental problems associated with FDI in the Zone.²¹⁷ The Commissioner of the Commission²¹⁸ also admitted the existence of the problem, but defended that the duty to follow up and control the problem is not the duty of his commission, rather the responsibility of the Regional State's Bureau of Rural Land Administration and Environmental Protection.²¹⁹

Experts at Investment Office²²⁰ and Rural Land Administration and Environmental Protection of Oromia Special Zone²²¹ reiterated the prevalence of environmental problems associated with the operation of FDI in the zone, which experts at the Regional level explained.

Finally, an official from the Ethiopian Investment Commission also admitted this fact and stressed that the environmental regulation of FDI in the country is a failed one and due to this FDI is becoming the major cause for environmental problems in Ethiopia.²²²

²¹⁵ Ibid

²¹⁶ Interview with BirhanuYadesa, Legal Department Officer at Oromia Investment Commission (Addis Ababa, Ethiopia 4 May 2016)

²¹⁷ Ibid

²¹⁸ Interview with Elias Mahaammad, Commissioner of Oromia Investment Commission (Addis Ababa, Ethiopia, 4 May 2016)

²¹⁹ Ibid

²²⁰ Interview with Muluneh Bekele, expert of project follow up at Special Zone Investment Office (Addis Ababa, Ethiopia, 11 May 2016)

²²¹ Interview with Bekele Yadu, expert of environmental protection at Special Zone Rural Land Administration and Environmental Protection Office, (Addis Ababa, Ethiopia, 11 May 2016)

Having seen the existence of environmental problems in connection with the operation of FDI in the study area, the next basic question would be why is this problem occur in the country where the level of industrial development is at its low level? This is the concern of the next section and the main theme of this research.

4.3) Reasons Why FDI is Causing Environmental Problems in the Study Area

As explained in chapter three of this research, Ethiopia has been taking different steps towards the preservation and protection of the environment. It has enshrined the citizens' right to a clean and healthy environment, to a livelihood, and to sustainable development as fundamental rights in the 1995 FDRE Constitution. It also inculcated environmental objectives as one of the guiding constitutional principles and government's duty to protect the environment in the same Constitution. Besides, it has formulated a comprehensive environmental policy with the overall policy goal of improving and enhancing the health and quality of life of Ethiopians through sustainable development. In order to implement these constitutional provisions and environmental policy of the country, various environmental legislations were enacted.

Although these measures have been taken, the country is facing the challenge of environmental problems as witnessed in the study area. This shows that formulating environmental policies and enacting laws are not enough to protect the environment from development projects. Laws need to be properly implemented to meet the end for which they are enacted. To this end, environmental regulatory bodies at all levels needs to discharge their obligations properly and in collaboration with others concerned with implementing the relevant laws effectively.

When we come to the practical aspect, there is a significant gap between the official commitments and objectives, and practices on the ground as observed in the study area. Accordingly, the following problems were identified as the major causes of environmental regulatory failure in relation to operation of FDI in the study area, which, in turn has resulted in environmental damages discussed above. There is environmental regulatory failure for different reasons including but not limited to the following factors.

- Lack of effective screening mechanisms of FDI entering the country,

²²² Interview with Niguse Gurmu, Director of Investment Projects Plan and Policy Research Institute at FDRE Investment Commission (Addis Ababa, Ethiopia, 8 January 2016)

- Lack of cooperation and collaboration among different regulatory bodies,
- Prioritizing economic growth
- Lack of operation guideline of FDI in the country,
- Organizational/structural problem of regulatory bodies

a. Lack of Effective Screening Mechanism of FDI

As can be understood from the FDRE Constitution, the country needs to allow those FDI, which are not jeopardizing its right to sustainable development.²²³ Achieving sustainable development requires the designing and implementation of development policies and programs which take into due consideration environmental and social (the welfare of the community). To this end, the country needs to be selective on FDI entering the country, which in turn requires effective screening mechanism. It is this mechanism, which screen the FDI that are to be admitted based on their benefits and the technology they use towards the environment and their overall contribution towards the achievement of sustainable development and reject others those damaging the environment and social welfare.

Regarding the entry procedure, the investment regime of the country requires FDI to enter and operate in the country after obtaining approval from the Ethiopian Investment Commission.²²⁴ This is to mean that any foreign investor (FDI) cannot operate in the country without getting investment permit from the commission. However, there is no screening mechanism provided in our law through which the Commission screens FDI to be admitted in the country. It is the duty of this Commission to prepare guidelines needed to screen the incoming FDI.

In addition, experts and officials involved expressed that the problem is not limited only to lack of this mechanism, but also lack of knowledge and expertise to screen the technologies that FDI brings in and other aspects.²²⁵ Due to this, the country admits FDI without screening the technology that the incoming FDI use towards the environment. Therefore, admitting FDI without screening is one of the reasons why FDI is polluting the environment in the study area.

²²³Constitution (n 6) Art. 43 (3)

²²⁴ Invest. Proc. (n 17) Art. 12 (1) (a)

²²⁵ Interview with Bekele (n 221) and Niguse (n 222)

b. Lack of Cooperation among Regulatory Bodies at All Levels

Due its cross-boundary nature, the work of one body or organization cannot achieve the work of environmental protection. It needs cooperation and collaboration among different environmental protection bodies and others concerned. Regarding Ethiopia's case, we have Federal Ministry of Forestry and Environmental Protection and Investment Commission at Federal level and Regional States corresponding bodies such as Oromia National Regional State Investment Commission and Bureau of Rural Land Administration and Environmental Protection, which are directly involved in the regulation of investments in relation to environmental protection. Hence, there should be strong horizontal relationship among different bodies at the same level and vertical relationship between different bodies at different levels. These bodies at federal level need to work with their counterparts at regional level and the regions' bodies needs to work with their counterparts at lower administrative levels.

The Proclamation establishing the Ministry of Forestry and Environmental Protection empowers the Ministry to coordinate measures to ensure that the environmental objectives provided under the Constitution and the basic principles set out in the environmental policy of Ethiopia are realized.²²⁶ It has the duty to coordinate and spearhead activities of environmental protection to realize environmental objectives and policies enshrined in the FDRE Constitution. To this end, it is expected to support and coordinate environmental protection activities of environmental protection bodies of Regional States and other concerned bodies.

In practice, however, there exist gaps and misunderstandings among these bodies and the Ministry is not playing the coordinating roles expected from it by the law. Officials and experts, who responded to questionnaires and interviews, expressed the existence of this problem in different ways. An official at Ethiopian Investment Commission has said Ministry of Forestry and Environmental Protection is new and not well organized to regulate environmental damages by development activities and stressed lack of strong cooperation between the important bodies

²²⁶ See FDRE Proclamation No. 813/2013, A Proclamation to Amend the Proclamation on the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazette* 19th Year No. 61, Addis Ababa 29th July 2013 Art. 4 (1) (a)

is one of the major causes of environmental problems resulting from FDI in the country.²²⁷ He even said that the country's state of environmental problem is getting worse for factors attributed to the Ministry.²²⁸ In addition, experts at Regional and Zonal levels criticized the Ministry for its weakness in coordinating their efforts of environmental protection from FDI.²²⁹ According to these experts, it is the duty of the Ministry to follow up and regulate the activities of projects licensed by the federal government to ensure that these activities are not damaging the environment.²³⁰ However, it neither discharges its obligations nor delegates the Regional State's environmental protection body to carry out the task, and it is not supporting the efforts of environmental protection at lower levels²³¹

In addition to these interviewed experts and officials, experts involved in this research by filling questionnaires recognized this problem of cooperation. Accordingly, three out of four experts from federal, regional and zonal levels who filled the questionnaire agreed that the cooperation and work relationship existing between different bodies are not strong enough to protect the environment from development activities.

At this point, it is important to mention the success of the previous environmental protection body, Environmental Protection Authority, in relation to the support it gave to regional environmental bodies. Accordingly, it produced rural environmental management planning and trained 1450 experts from all Regions on how to develop their respective management plan;²³² produced a manual for solid waste management plan, and trained 65 experts from urban administrations on how to use the manual to plan and implement solid waste management in their urban areas;²³³ and prepared a manual for developing a system of auditing and management

²²⁷ Interview with Niguse (n 222)

²²⁸ Ibid

²²⁹ Interview With BekeleWagari (n 204) and Bekele (n 221)

²³⁰ Ibid

²³¹ Ibid

²³² FDRE Environmental Protection Authority, *Environmental Management Program of the Plan for Accelerated Sustainable Development to Eradicate Poverty 2011-2015* (2010) 3

²³³ Ibid

of industrial pollutants and trained 100 experts from factories representing various sectors and all Regional environmental protections offices.²³⁴

On the other hand, the researcher's attempt to approach the Ministry of Forestry and Environmental Protection for the purpose of this study did not succeed. The researcher repeatedly (six times) requested the Office of State Minister for Environmental Protection to provide data in the form of questionnaire and interview. However, experts at the office refused to cooperate on the ground that they need to obtain permission of the State Minister to do so. I have forwarded the letter from Law School to the State Minister through his Executive Secretary to refer it to the concerned experts. Nevertheless, he failed to do so on the ground of 'work load' and I have gone there for six times in the period of one and half month and obtained the same reason. This shows that they are not willing to cooperate and this in turn proves for me the existence of the problem that the above experts raised in relation to discharging their legal duties.

c. Prioritizing Economic Growth

As explained in chapter three of this research, FDRE Constitution and the 1997 Environmental Policy of Ethiopia provides sustainable development as the way to bring about the country's development. In addition, different economic programs designed by the government in the last two and half decades such as sustainable development and poverty reduction program, Climate Resilient Green Economy Strategy, Growth and Transformation Plan (I & II) and the like all recognize sustainable development as the country's development policy direction. Investment and environmental legislation of the country also provides the same.

However, the practice on the ground does not justify this policy direction of the country. The government is admitting any FDI as long as it is contributing to the economic growth irrespective of the technology they use towards the environment. An official at the Ethiopian Investment Commission goes as far as claiming that the country is not in position to choose the kind of FDI to be admitted since it is poor and desperately needs foreign direct investment for its economic growth pursuit.²³⁵

²³⁴ Ibid

²³⁵ Interview with Niguse (n 222)

It is a fact of common knowledge that our country is poor and desperately needs to bring about economic growth and thereby eradicate poverty. It is also true that the country's Constitution requires the government to bring about economic growth, which takes into due consideration environmental protection and the overall wellbeing of our citizens. This in turn requires proper implementation of the country's laws and policies towards the achievement of sustainable development.

Where the country's constitution, policies and laws provides for sustainable development as the country's development policy, why is the government admitting any kind of FDI, which use old and backward technologies that damage the environment? It shows that the government is paying little attention to the protection of the environment in contradiction with the country's economic and environmental policy direction stipulated in the Constitution.

d. Lack of Guideline for FDI

Under customary international law, countries have the right to admit or prohibit FDI based on their domestic policies and economic priorities. They can admit those FDI they consider enhance their development pursuit and reject those they consider as social or environmentally dangerous ones.²³⁶

To this end, some countries formulated guidelines for FDI, which clearly provides for FDI to be encouraged, discouraged and prohibited as well as provide guidance for policy implementation agencies in screening FDI with a view to maximizing its benefits to the development process and minimizing its negative effects, while protecting the legal rights of foreign investors.

For instance, China promulgated Interim Provisions for Guiding Foreign Investment and The Guiding List of Industries for Foreign Investors in 1995, which divides FDI projects into 4 categories: those that are encouraged, permitted, restricted and prohibited.²³⁷ Chinese regulatory framework encourages FDI in new agro-technology and agricultural development, energy, telecommunications and essential raw-material industries.²³⁸ It also encourages FDI which use

²³⁶ See Steyt (n 86)

²³⁷ CBS, 'The interface between foreign direct investment and the environment: The Case of China' (1999) Occasional Paper no.3

²³⁸ Ibid

new advanced technology of production, investment in new materials, products in which the domestic supply capacity is far from adequate, and products that are export oriented.²³⁹ On the other hand, it prohibits projects that jeopardize national security, adversely affect social and public interests, and pollute the environments.²⁴⁰ Finally, it restricts investments in which production facilities that lead to excess-supply capacity in the domestic market, industries that are not yet fully liberalized, and the exploration and exploitation of rare and valuable mineral resources new technologies for the comprehensive utilization of resources and environmental protection.²⁴¹

When we come to the Ethiopian case, there is no such guideline, which helps investment regulatory body (Ethiopian Investment Commission) to screen FDI to be admitted and others to be rejected in a transparent manner as well as expressly provides FDI, which the country encourages, restricts, or prohibits. It is the duty of Environmental Protection Authority (currently the Ministry of Forestry and Environmental Protection) to prepare such guidelines. Yet we have no such guidelines, and as a result, we are simply admitting FDI provided that requirements in the Investment Proclamation and Regulation are fulfilled.

Even prohibitions provided in the Investment Proclamation and Regulation are of economic nature aimed at protecting infant domestic industries and not concern the environment. Therefore, lack of FDI guideline is another factor attributed to environmental problems associated with FDI in the country (including the study area).

e. Organization/Structural Problems of Environmental Regulatory Bodies

As discussed in chapter three of this research, the environmental regulatory bodies of the country comprises Federal Ministry of Forestry and Regional Environmental Authorities. In case of Oromia Regional State, it is Bureau of Rural Land Administration and Environmental Protection, which is in charge of protecting the region's environment. From organizational point of view, it is not a wise decision to organize environmental bodies together with other bodies responsible

²³⁹ Ibid

²⁴⁰ Ibid

²⁴¹ Ibid

with other but related bodies. For instance, the Oromia Regional State Environmental Protection body is organized together with the body responsible for rural land administration.

The work of environmental protection by itself is a big task and organizing environmental bodies together with other bodies does not help the cause of environmental protection. An expert at the Bureau explained that organizing environmental protection body in such away is not helping the cause of environmental protection because the main concern is administering rural land, environmental protection being the secondary activity.²⁴² He also stressed that the efforts of environmental protection was better when the former body, Environmental Protection Office, was in charge of the Region's environmental protection.²⁴³

In concluding this section, problems listed and discussed above are the major reasons behind environmental problems resulting from FDI in the study area.

4.4) Consequences of Environmental Problems in the Study Area

As discussed in chapter three of this research, the constitution of FDRE guarantees all Ethiopians the right to clean and healthy environment, the right to improved living standard and the right to sustainable development.

However, the analysis of section 2 and 3 of this chapter shows the prevalence of environmental problems and their causes in the study area. These problems have resulted in many environmental and social consequences. I will discuss some of these problems as follows.

The first one is the pollution of water bodies. As discussed in section two of this chapter, liquid wastes from textile and tannery and leather processing factories (FDI) are flowing directly to nearby rivers. Accordingly, untreated liquid wastes from Ayka Addis Textile, HAFDE and Jaffar (Blue Nile Tannery) factories in Sebata flows directly towards River Sebata and then joins River Akaki. Experts at Regional and Zonal levels told the researcher that these two rivers are polluted and are becoming useless.²⁴⁴

²⁴² Interview with BekeleWagari (n 204)

²⁴³ Ibid

²⁴⁴ Interview with BekeleWagari (n 204), Muluneh (n 220) and Bekele (n 221)

The second is connected with air pollution. In the study area, there are two big FDI factories engaged in the production of cement. The first is Capital Cement found in Sebeta Town while the second one is Dangote Cement operating in WalmaraWereda. These factories use big grinding mills to grind stones to produce cement. In this process, they discharge untreated dust materials in the form of emissions towards the surrounding air thereby causing air pollution according to the concerned experts.²⁴⁵

The third critical problem is social problem. Environmental problems affect the life of local community in many ways. As discussed in section two of this chapter, environmental problems associated with FDI has affected the health and wellbeing of local communities in the study area. Accordingly, environmental problems in the study area has resulted in death of hundreds of cattle in Sululta area, rivers such as River Sebeta and River Akaki become useless due to pollution thereby affecting the life of local communities who use them for different purposes including drink water for their cattle and irrigation.²⁴⁶ In addition, bad odor and smell from these industries are affecting the health of thousands of our citizens living in the study area.

Thus we can say that the environmental problems associated with FDI have resulted in deterioration of biodiversity and health as well as the overall welfare of the local community in the study area.

²⁴⁵Ibid

²⁴⁶ Ibid

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1) Conclusions

Developing and least developed countries desire to bring about economic development and to this end takes different measures including considering FDI as engine of their economic growth pursuit.

Ethiopia, as developing country, is also working to achieve economic growth and become the middle-income country and to achieve this, the country has designed different policies and programs such as industrial development policy, sustainable development and poverty reduction program and growth and transformation plan to mention few. In the industrial policy of the country, special attention is given to the private sector and this has laid down the foundation for private investors to participate in the economic development of the country. It also opened the door for foreign companies (FDI) to come and invest in the country and thereby help to enhance its economic development.

FDI contributes to the economic development of a host state through different channels such as capital formation, job creation and human capital development, and technology spillover. Nevertheless, if not regulated properly, it also carries with itself negative impacts such as environmental problems. To maximize benefits of its and minimize its negative impacts, it is important formulate enabling policies on one and put in place effective regulatory framework such as strong laws and implementing institutions on the other.

On our case, the government has taken different measures aimed at making the playing ground favorable for FDI on one hand and formulated environmental policies and enacted laws as well as established regulating institutions to protect the environment from development activities including FDI on the other hand. Nevertheless, formulating policies, enacting laws and setting up institutions are not enough to avoid or minimize the negative impacts of FDI on the environment. It needs effective implementation of laws in line with the constitutional objective of achieving sustainable development.

However, this research found that FDI is causing damage to the environment in the study area. As shown in the chapter four, pollution of water bodies such are rivers and air pollution are the

main environmental problems accruing from manufacturing FDI in focus area of the study. The study also showed that lack of effective regulation of FDI such as lack of effective screening mechanisms of FDI entering the country, lack of cooperation and collaboration among different regulatory bodies, prioritizing economic growth on the part of the government, lack of guideline for the operation of FDI in the country, and organizational/structural problem of regulatory bodies as the major causes of environmental damage resulting from FDI. It is also shown that pollution of water bodies such as rivers, pollution of air, dying of cattle, and health problems of local communities and the like as consequences of these environmental problems in the study area.

5.2) Recommendations

Based on the findings of this research, I have forwarded the following recommendations.

- (i) Firstly, the federal government of Ethiopia needs to act sooner than later to design the system and mechanism by which the FDI is screened and admitted in the country based on their economic benefit and at the same time the cleaner technology they use towards the environment. The finding of the research reveals that FDI is being admitted into the country without screening in relation to environmental protection due to lack of system or mechanism of screening. Therefore, the federal government of Ethiopia needs to put in place FDI Screening mechanism which enable investment and environmental regulatory bodies to admit FDI or reject FDI based on the technology they use toward the environment and their overall economic benefits.
- (ii) Environmental bodies at both federal and regional level must discharge their legal obligations to protect the environment from development activities like FDI and thereby ensure sustainable development. Particularly the Ministry of Forestry and Environmental Protection must spearhead the works of environmental protection at all levels and coordinate the activities of concerned bodies in this regard.
- (iii) The federal government needs to formulate Guideline for FDI, which clearly stipulates areas in which FDI is encouraged, restricted and prohibited based on not only economic merits but also environmental protection merits and the quest for sustainable development.

- (iv) At Oromia Regional State level and its lower constituencies, the body which is responsible for environmental protection needs to be organized in its own and not together with bodies responsible with other duties and to this end the regional government needs to make structural adjustments.
- (v) And Finally FDI companies coming into the country have to formulate their own corporate code of conduct and must discharge their corporate social responsibility of protecting the environment and the wellbeing of the local community.

Bibliography

1. Laws

- FDRE Environmental Impact Assessment Proclamation No.299/2002, *Federal NegaritGazeta, 9th Year No. 11, ADDIS ABABA 3rd December 2002*
- FDRE Environmental Pollution Control Proclamation No. 300/2002, *Federal NegaritGazeta, 9th Year No. 12, ADDIS ABABA 3rd December 2002*
- FDRE Industrial Pollution Control Regulation No. 159/2008, *Federal NegaritGazeta*
- FDRE Proclamation No. 295/2002, *a Proclamation provided for the Establishment of environmental Protection Organs, Federal NegaritGazet 9th Year No.7 Addis Ababa-3rd October, 2002*
- FDRE Proclamation No. 803/2013, *Federal NegaritGazet 19th Year NO. 61 Addis Ababa 29th July, 2013*
- Oromia National Regional State Proclamation to Provide for the Establishment of Oromia Bureau of Land and Environmental Protection No. 147/2009, MegeletaOromia, 17th Year No.5/2009, Finfine March 5, 2009
- Oromia Regional State Proclamation No. 130/2007, a proclamation to amend proclamations No. 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration, MegeletaOromia, 15th Year No.12-138/1999, Finfinne July 29, 2007
- Oromia Regional State Regulation No. 151/2012
- The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. 1st Year No.1 Addis Ababa – 21st August, 1995
- The FDRE Council of Ministers Investment Incentives and Investment Areas Reserved for Domestic Investors Regulation No.270/2012, *Federal NegaritGazeta, 19th Year No. 4, ADDIS ABABA 29th November 2012*
- *The FDRE Council of Ministers Regulation No. 313/2014, Federal NegaritGazeta, 20th Year No. 63, ADDIS ABABA 14th August 2014*
- The FDRE Investment Proclamation No. 769/2012, *Federal NegaritGazeta, 18th Year No. 63, ADDIS ABABA 17th September 2012*

1. Books, Articles and Theses

- Aliyu Mohammed Aminu (2005), *Foreign Direct Investment and the Environment: Pollution Haven Hypothesis Revisited*
- André AranhaCorrêa do Lago (2009), *Stockholm, Rio, Johannesburg: Brazil and the Three United Nations Conferences on the Environment*
- Bread For All (2009), *Climate Risks and Development Projects Assessment Report for a Community-Level Project in Guduru, Oromiya, Ethiopia*
- CBS (1999), *The interface between foreign direct investment and the environment: The Case of China* (Occasional Paper no.3)
- David I. Stern (2004): *The Rise and Fall of the Environmental Kuznets Curve, World Development Vol. 32, No. 8*
- DejeneGirmaJanka (PHD), *The Chance to Improve the System of EIA in Ethiopia: A look at the New Investment Proclamation, Oromia Law Journal Vol.3 No.1* (2014)
- Feng Helen Liang, *Does Foreign Direct Investment Harm the Host Country's Environment? Evidence from China* (2006)
- Göteborg University (2008), *Ethiopia Environment and Climate Analysis*
- GudetaDegytnuTilahun, *Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia* (2011-2012, P.47-48)
- Howard Mann (2003/04), *The Right Of States to Regulate and International Investment Law: A Comment (UNCTAD/ITE/IIA/*
- *International Monetary Fund, Balance of Payment Manual, 5th Edition (IMF, 1993)*
- *James P. Walsh and Jiangyan Yu (2010), Determinants of Foreign Direct Investment: A Sectoral and Institutional Approach, IMF Working Paper*
- Jean-Yves P. Steyt(2006), *"Comparative Foreign Direct Investment Law: Determinants of the Legal Framework and the Level of Openness and Attractiveness of Host Economies" LL.M. Graduate Research Papers. Paper 1*
- Jenkins, C. and Thomas, L. (2002): *Foreign Direct Investment in Southern Africa: Determinants, Characteristics and Implications for Economic Growth and Poverty Alleviation. Globalization and Poverty Project. University of Oxford.*

- Jennifer A. Elliott (2006), *An Introduction to Sustainable Development, 3rd Edition*, Routledge, London and New York
- Jing Zhang, *Foreign Direct Investment, Governance, And The Environment In China: Regional Dimensions (2008)*
- KhushalVibhute, *Environmental Policy and Law of Ethiopia: A Policy Perspective*, Journal of Ethiopian Law (Vol.XXII No.1)
- MandefroSorechaWedajo, *Implementations of EIA Laws in East Shawa Zone of Oromia National State Special Reference to Lume and Ada'aWoreda: Case Study on Various Projects (2011, P.69)*
- Micheale.Porter and Caas Van darLinde (1995), *Toward a New Conception of the Environment-Competitiveness Relationship*, the Journal of Economic Perspectives Vol.9, No.4
- Nick Mabey and Richard McNally, *Foreign Direct Investment and the Environment: From Pollution Havens to Sustainable Development (1999)*
- OCED, *Foreign Direct Investment for Development: Maximizing Benefits, Minimizing Costs (2002)*
- OECD, Detailed Benchmark Definition for FDI, 3rd Edition (OECD, 1996)
- OECD, *Environmental Impacts of FDI in the Mining Sector in Sub-Saharan Africa (2002)*
- Sauvant, Karl P., *The International Investment Law and Policy Regime: Challenges and Options. E15Initiative*. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. www.e15initiative.org/
- Selma Kurtishi-Kastrati (2013), *The Effects of Foreign Direct Investments for Host Country's Economy*, European Journal of Interdisciplinary Studies Vol. 5 Issue 1
- Tatyana P. Soubbotina(2004),*Beyond Economic Growth: An Introduction to Sustainable Development*
- UN Conference on Environment and Development (Rio de Janeiro, 1992)
- UN Conference on Human Environment (Stockholm, 1972)
- World Commission on Environment and Development (WCED 1987)

2. Policy and Strategy Documents

- Ethiopian Investment Agency, *Overview of Ethiopian Investment Policy (2013)*
- FDRE Environmental Policy (EPA, 1997)
- Federal Democratic Republic of Ethiopia (FDRE) Ministry of Finance and Economic Development (MOFED), *Sustainable Development and Poverty Reduction Program, July 2002*
- Federal Democratic Republic of Ethiopia, *Climate-Resilient Green Economy strategy (2011)*
- Federal Democratic Republic of Ethiopia, Growth and Transformation Plan (2010/11-2014/15), volume I
- Industrial Development Strategy of Ethiopia, August 2002

3. Interviews

- BekeleWakgari, *expert of project follow up and environmental protection at Oromia Rural Land Administration and Environmental Protection Bureau*, interviewed in his office on May 12, 2016 2:30 PM
- BekeleYadu, *expert of environmental protection at Special Zone Rural Land Administration and Environmental Protection Office*, interviewed in his office on May 11, 2016 3 PM
- BirhanuYadesa, *Legal Department Officer at Oromia Investment Commission*, interviewed in his office on May 4, 2016 9:00 PM
- Elias Ahmad, *Commissioner of Oromia Investment Commission*, interviewed in his office on May 4, 2016 2:45 PM
- Expert at Oromia Investment Commission, who requested not to mention his name and interviewed in his office on May 4, 2016 2:30 PM
- MulunehBekele, *expert of project follow up at Special Zone Investment Office*, interviewed in office on May 11, 2016 3:45 PM
- NiguseGurmu, *Director of Investment Projects Plan and Policy Research Institute at FDRE Investment Commission* interviewed in his office on January 8, 2016 at 3 PM

Appendix

Part One

Questionnaires to Experts of Ethiopian Investment Commission

I. General Overview

The person requesting you to fill these questionnaires is **Gonfa Atoma** and he has been studying his LL.M in Commercial and Investment Law at Jimma University for the past two years. He is conducting a research entitled **“The Impacts of FDI on Environment in Ethiopia: The Case Oromia Special Zone Surrounding Finfinne”** for his thesis. These questionnaires are prepared to collect necessary data to conduct the study. The information you provided here plays crucial role for the success of the study and hence he requests you to genuinely fill the questions on the blank space provided. Finally he likes to extend in advance his gratitude thanks for your cooperation.

II. Information About the Respondent

- Sex _____
- Age _____
- Educational background _____
- Title/position _____
- Years of service at the commission _____

III. Questionnaires

1. Why do you think is the Ethiopian government working to attract FDI?

2. To maximize the benefits to be expected from FDI and minimize its negative effects putting in place strong and effective regulatory framework is very essential. With this regard what can we say about FDI regulatory framework of Ethiopia? Can we say Ethiopia had strong and effective FDI regulatory framework?

a) Effectiveness in relation to laws and regulation governing FDI

If there exist gaps exist in relation to laws please explain the gap and the particular law having the gap and the solution you may propose with this regard.

b) In relation to institutional framework regulating FDI

3. What are the negative impacts of FDI in general?

4. How is Ethiopia regulating and controlling the negative effects of FDI on environment in Ethiopia?

5. Does the Investment Commission oblige FDI companies to come up with environmental impact assessment of their future project to license them?

a) yes b) no

If the answer for this question is no, what could be its justification?

6. Do we have strong cooperation and collaboration between environmental authorities (Ministry of Environmental Protection) and Investment Commission at federal level on one hand and corresponding bodies at regional states level on the other hand? Please explain.

Part Two

Questionnaires to Be Filled By Relevant Experts of Oromia Investment Commission

I. General Overview

The person requesting you to fill these questionnaires is **Gonfa Atoma** and he has been studying his LL.M in Commercial and Investment Law at Jimma University for the past two years. He is conducting a research entitled **“The Impacts of FDI on Environment in Ethiopia: The Case Oromia Special Zone Surrounding Finfinne”** for his thesis. These questionnaires are prepared to collect necessary data to conduct the study. The information you provided here plays crucial role for the success of the study and hence he requests you to genuinely fill the questions on the blank space provided. Finally he likes to extend in advance his gratitude thanks for your cooperation.

II. Information About the Respondent

- Sex _____
- Age _____
- Educational background _____
- Title/position _____

- Years of service at the commission _____

III. Questionnaires

- 1) What is the role of the commission in environmental protection with respect to the operation of FDI companies in the region?

- 2) How do you regulate the negative impacts of FDI on environment in the region?

- 3) At regional level do we have strong cooperation and collaboration among different bodies such as investment commission and environmental protection bodies to protect our environment damage from negative impacts of FDI?

Part Three

Questionnaires to Be Filled By Relevant Experts of Oromia Regional State Rural Land Administration and Environmental Protection Bureau

IV. General Overview

The person requesting you to fill these questionnaires is **Gonfa Atoma** and he has been studying his LL.M in Commercial and Investment Law at Jimma University for the past two years. He is conducting a research entitled **“The Impacts of FDI on Environment in Ethiopia: The Case Oromia Special Zone Surrounding Finfinne”** for his thesis. These questionnaires are prepared to collect necessary data to conduct the study. The information you provided here plays crucial role for the success of the study and hence he requests you to genuinely fill the questions on the blank space provided. Finally he likes to extend in advance his gratitude thanks for your cooperation.

V. Information About the Respondent

- Sex _____

- Age _____
- Educational background _____
- Title/position _____
- Years of service at the commission _____

VI. Questionnaires

1) How do you control the damage caused to the environment by FDI companies operating in Oromia?

2) From among FDI companies operating in Oromia, which ones are suspicious of causing environmental damage?

3) Do foreign companies come up with environmental impact assessment of their project before they start operation in the regional state? Please explain relevant facts below.

4) Does the bureau conduct a follow up on the waste management and pollution emissions of FDI companies operating in the region? a) Yes b) No

5) If the answer for question number 4 is yes what do you observed? What measures have been taken on companies not complying with the country's environmental laws and thereby damaged the environment?

If the measures taken are up to closure, how many companies are closed to date?

6) Do we have strong cooperation and collaboration between the bureau and other relevant authorities such as Oromia Investment Commission, Ministry of Forestry and Environmental Protection, Federal Investment Commission? Please explain.

7) Who is responsible to follow up and control the operation of FDI companies with regard to environmental protection on Oromia? The Ministry of Environmental Protection or the bureau? Please explain the relevant facts.

Part Four

Questionnaires to Be Filled By Relevant Experts of Oromia Special Zone Surrounding Finfinne Investment Office

I. General Overview

*The person requesting you to fill these questionnaires is **Gonfa Atoma** and he has been studying his LL.M in Commercial and Investment Law at Jimma University for the past two years. He is conducting a research entitled “**The Impacts of FDI on Environment in Ethiopia: The Case Oromia Special Zone Surrounding Finfinne**” for his thesis. These questionnaires are prepared to collect necessary data to conduct the study. The information you provided here plays crucial role for the success of the study and hence he requests you to genuinely fill the questions on the blank space provided. Finally he likes to extend in advance his gratitude thanks for your cooperation.*

II. Information About the Respondent

- Sex _____
- Age _____
- Educational background _____
- Title/position _____
- Years of service at the commission _____

III. Questionnaires

1. Are FDI (foreign direct investment companies) operating in your zone environmental friendly or are they damaging the environment?

2. How do you follow and control the environmental impacts of these companies in the zone?

3. What are the roles of the office with respect to environmental protection from the damages of FDI companies?

If the measures taken are up to closure, how many companies are closed to date?

4. Does the office have strong work relationship and collaboration with relevant bodies at regional level?

5. In general what is the basic problem that you are facing with respect to environmental protection and preservation in the zone with respect to operation of FDI in your zone? Please explain.

Part Five

Questionnaires to Be Filled By Relevant Experts of Oromia Special Zone Surrounding Finfinne Rural Land Administration and Environmental Protection Office

IV. General Overview

The person requesting you to fill these questionnaires is **Gonfa Atoma** and he has been studying his LL.M in Commercial and Investment Law at Jimma University for the past two years. He is conducting a research entitled **“The Impacts of FDI on Environment in Ethiopia: The Case Oromia Special Zone Surrounding Finfinne”** for his thesis. These questionnaires are prepared to collect necessary data to conduct the study. The information you provided here plays crucial role for the success of the study and hence he requests you to genuinely fill the questions on the blank space provided. Finally he likes to extend in advance his gratitude thanks for your cooperation.

V. Information About the Respondent

- Sex _____
- Age _____
- Educational background _____
- Title/position _____
- Years of service at the commission _____

VI. Questionnaires

1) How does your office regulate and control the negative impacts of the operation of FDI (foreign direct investment) companies operating in the zone?

2) 2)

2) From among FDI companies operating in the zone which ones are suspicious of causing environmental damage?

3) Does the office conduct a follow up on the waste management and pollution emissions of FDI companies operating in the zone? a) Yes b) No

4) If the answer for question number 4 is yes what do you observed? What measures have been taken on companies not complying with the country's environmental laws and thereby damaged the environment?

If the measures taken are up to closure, how many companies are closed to date?

5) What can we say about the role of the office, Oromia Regional State Bureau of Rural Land Administration, Federal Ministry of Forestry and Environmental Protection with regard to the regulation of FDI companies operating in your zone with respect to environmental protection?

6) In general what is the basic problem that you are facing with respect to environmental protection and preservation in the zone with respect to operation of FDI in your zone? Please explain.

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▪ David I. Stern (2004): <i>The Rise and Fall of the Environmental Kuznets Curve, World Development Vol. 32, No. 8</i>	74
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