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**THE LAW AND PRACTICE OF THE ENVIRON-
MENTAL IMPACT ASSESSMENT IN THE FLORI-
CULTURE SECTOR**

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INTRODUCTION

The Environmental Impact Assessment (EIA for short) became a legally required procedure in recent years. It is about making better-informed decision and making sure that development proceeds with full knowledge of the environmental consequences.

The newly growing flower industry became an attractive investment sector in Ethiopia. It is contributing its share towards the country's economy by generating foreign currency and new job opportunities. It is taken as one of the focus areas of the government as a means of earning capital for economic development.

This research paper investigates how the EIA law is implemented in the floriculture sector. The paper has four parts.

The first part reflects the general background of the research paper. The statement of the problem, objectives, methodology, limitation and significance of the study. The second part includes what international instruments states about environment, environmental law and practices relevant for the flower farm industry. In the third part of the paper Environmental Impact Assessment and Flower Production Regulatory Body in Ethiopia are included. In this chapter fundamental principles of EIA and its planning, the view of Ethiopian legislation, on environmental issues, Administration of EIA system and code of practice of the Ethiopian Horticulture Producer and Exporters association will be discussed. The fourth part illustrates the practical problems with regard to EIA administration such as awareness, institutional, legal, etc. problems pertinent to floriculture sector.

Finally, the conclusion reached at and the necessary measures that must be taken in the writer's view are suggested.

Acronyms

AU	Africa Union
CSE	Conservation Strategy of Ethiopia
CEAA	Canadian Environmental Assessment Act.
EA	Environmental Audit
EC	European Commission
EHPEA	Ethiopian Horticulture producers and Exporters Association
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Authority
EPE	Environmental Policy of Ethiopia
EUREP	Euro-Retailer Produce
FFP	Fair Flowers Fair Plants
GAP	Good Agricultural Practices
ICC	International Code of Conduct.
ILO	International Labour Organization
ISO	International Organization for Standardization
IUCN	International Union for Conservation of Nature
MEA	Multilateral Environmental Agreements
MPS	Miliu Programma Sierteelt
SQ	Socially Qualified
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Program
UNEP	United Nations Environmental Program
UNFCCC	United Nations Framework Convention on Climate Change
UNITAR	United Nations Institute for Training and Research
WHO	World Health Organization

CHAPTER ONE

BACKGROUND OF THE RESEARCH PAPER

1.1 BACKGROUND OF THE STUDY

The earth is unique in the solar system in the sense that it is the only place that sustains life. Life on earth has passed many stages of dynamic evolution. Human beings represent just the latest in this evolutionary period. Starting from their evolution human being has tried to achieve progress. In their endeavor to achieve that, they have now threatened the sustainability of the earth.

Environment is the place where we live in. It includes the living things, the non-living things and the interactions that occur among these factors. It is the source of all the materials we require to survive and to improve our living standard. Environment provides us with food, shelter, suitable conditions to live, raw materials for making products, etc. A productive and healthy environment provides goods and services sufficiently for this purpose. Therefore, our existence as human beings depends on ecosystem services¹.

Environment is modified by the activity of every organism. The human species modifies it the most. Environmental modification is both natural and a necessary part of development. This does not mean that all modifications will lead to development. Unless guided by ecological, social, cultural and ethical considerations, especially the major development initiatives that use inappropriate technologies and practices will continue to have undesired environmental effects².

One of the major drawbacks of the concept of development has been that it is often equated with growth. Growth can bring financial returns to individuals. It can ensure prosperity in terms of infrastructure, transport or communication. But it never recognizes the multidimensional needs of individuals. Development is a holistic concept. Growth alone can not sufficiently define development. It has to be culturally compatible, socially just, ecologically viable, and politically participatory. Earlier, the concept of development did not probe the linkages between an individual and his environment. As a matter of fact, individual well-being is related to many things and they are interrelated. Sustainable development seeks to address those linkages with a new vision.

Increased food production, energy provision, waste and water treatment, housing, transport, communication, telecommunications and pest control have played important roles in improving the quality of human life. Nevertheless, rapid technological advances over the last century have also had diversified consequences which have been difficult to predict. This has posed irreversible damage to human beings and the environment. Therefore, the origin of many of the environmental problems is linked to unsound environmental management practices and technologies³.

In some parts of the world, the demand for increased environmental services and goods has remained very high. Massive resource use has caused loss of environmental resources in many ecosystems and has jeopardized present and future livelihoods. In particular, introduction of destructive practices and technologies have increased environmental degradation and led to deterioration of quality of life. The health impacts emanating as a result of environmental degradation is also very significant⁴.

Human impacts on the environment have entailed growing concerns. Atmosphere, land and water resources are spoilt, some beyond reparation. Persistent organic pollutants and toxic substances have accumulated in living organisms. Species have been lost and ecosystems are being degraded. Social and ecological systems are being subjected to natural and anthropogenic (man-made) hazards and catastrophes. Over all, the activities of human beings have reached a scale where they are entailing severe impact on the entire planet⁵.

The problem is not only unsustainable consumption or overdevelopment. There is equally a large problem associated with the dilemma of the poor. Each human being requires housing, schooling, employment, health care and other facilities in the course of life. When population grows more rapidly than the society can afford to invest on these, the existing ones will be forced to accommodate more thereby reducing the average quality of life. The President of the FDRE in his opening speech on the occasion of the first African Environmental day in 2005 stressed that poverty and environmental degradation are pushing people from subsistence life-style into a vicious circle of overcrowding, malnutrition, unacceptable water, housing and sanitation⁶.

Governments that lack economic capacity are less able to protect ecological systems in a sustainable way. People who go without basic necessities will make short-term economic decisions that could lead to long-term ecological problems. Environmental degradation impedes economic development. Water, air and soil pollution, for example, impose extra cost on industry, on households and public services. In terms of impact, it is always the poor who suffers the most although the lives and health of all other people are affected. The cost for the environmental and social pressure can be debilitating to developing countries⁷.

In contrast, conservation and targeted investment in degraded ecosystems can have excellent rate of return. “Every dollar invested to fight land degradation may generate over three dollars in economic benefits helping to fight poverty among the millions living on fragile lands.”⁸

Ethiopia is one of the nations that are in serious danger of losing their environmental assets because of a degrading environment. One instance is the possible environmental degradation in connection with the newly emerging flower farming sector. The sector consumes large quantity of water, energy and agrochemicals throughout its production course⁹. Unless proper action is taken, the result will be a disruption of the social and ecological components of the sustainable development. This justifies the urgency to strengthen actions to enhance the quality of life of the current generation without compromising the opportunity of the future generations to use environmental resources.

Ethiopia attaches special importance and has made a clear commitment to maximize the carrying and assimilative capacity of its resource base. This is justified by the environmental concerns enshrined under the FDRE constitution. The national EIA system helps to translate this commitment into action. The EIA system deals with the social, economic and ecological objectives of development. Its mission is to find out the best option, both in ecological and socio-economic terms, under a particular situation. Its proper application ensures the protection of the healthy state of the resources based on which economics and social systems are anchored. Despite these, the trend of compliance with and enforcement of the national EIA system is said to be “ineffective”. So examining the source of the problems that have hampered its effectiveness are very essential.

1.2 STATEMENT OF THE PROBLEM

Ethiopia has taken significant measures to reverse the trend in environmental degradation and address the challenges of unsustainable development. These measures include incorporation of environmental issues in to the supreme law of the land which uplifted environmental concerns to the level of fundamental human rights. The current constitution of Ethiopia has also incorporated other provisions relevant for sustainable use of environmental resources. The other measure was formulation of the Environmental Policy of Ethiopia (EPE) and the Conservation Strategy of Ethiopia (CSE). These documents address Environmental issues in a holistic manner. Ethiopia has also ratified a number of Multilateral Environmental Agreements (MEAs). There are about 13 MEAs to which Ethiopia is a party. These are made part of the body of laws of the land (Article 9(4) of the FDRE constitution)¹⁰. Formulation of Environmental laws was also another measure taken to implement the objectives fixed by the Constitution, EPE, CSE and the MEAs to which Ethiopia is a party. One of the pertinent laws that have been issued is the Environmental Impact Assessment (proclamation No.299/2002).

Ethiopia has put in place an EIA regime since 2002. This includes an Environmental Impact Assessment proclamation and institutional set up to implement the law. The purpose of this proclamation is to bring about the intended development by predicting and managing the environmental impacts of a proposed development activity, promoting sustainable development by providing an effective means of harmonizing and integrating environmental, economic, cultural and social considerations.

Another development is that licensing agencies are prohibited by law to grant an operational license to a proponent that has not obtained an environmental clearance. Moreover, environmental protection organs both at the Federal and Regional levels, the Standing Committee on Natural Resources and Environmental Protection of the House of Peoples Representatives of the FDRE, and environmental units in some public agencies have been established. The object of these institutional measures is, among other things, to ensure compliance with and enforcement of the national EIA system.

Even though all these measures are taken, implementation of many provisions of this proclamation, particularly as regards regulating the floriculture sector has a problem. Due to this problem the environment where flower farming activities carried out and inhabitants living there are greatly affected. One can easily estimate the magnitude of the

problem by comparing with the current growth rate of the flower farming industry. Pollution of air and soil by different chemicals used in the process of flower production, and exposure of employees and residents of the area to some diseases caused by chemicals¹¹ are problems occurred due to lack of effective prior assessment before the implementation of the project.

In the view of competent environmental agencies and non-state actors, licensing agencies are the root of the problem. A number of proponents are issued with investment license and implement their projects without obtaining environmental clearance. Complaints lodged by public agencies, citizens and civil society often request the Environmental Protection Authority (EPA) to oblige the concerned proponents to make good the damage they cause while implementing their respective projects. Inefficiency in evaluating Environmental Impact Study Reports because of shortage of efficient professionals in EPA, absence of coordinated monitoring mechanism regarding EIA, non- issuance of detailed regulations and directives, non- approval of those implementation guidelines and assessment guidelines prepared by EIA at regional council, shortage of time for assessment to undertake public participation which is required by the law, lack of awareness about the negative effect of the sector and considering EIA as an obstacle for development, etc. are some of the existing problems.

Infact, awareness programs and various consultative meetings have been undertaken by the competent environmental agencies. However, these measures could not even sufficiently minimize the trend of non-compliance with the EIA system.

Therefore, this research aims at investigating the variance between the law and practice of EIA in flower farming sector and proposing a better alternative solution to the problem.

1.3 OBJECTIVES OF THE STUDY

1.3.1 General Objectives

The general objective of this research is to analyze the provisions of the EIA proclamation (No.299/2002) and identify the shortcomings and problems of the said proclamation and the current EIA administration on the floriculture sector. It also investigates the variance between the law and practice of EIA in the flower farming

sector with the view to proposing a better alternative solutions for the enforcement, amendment or issuance of a better law.

1.3.2 Specific Objectives

The specific objectives of this study is to:

- Identify and discuss the problems associated with the flower farming activity.
- Find out those provisions of EIA which are not practically implemented.
- Address the solution to the proponents, government officials at different level and the local community.
- give a proposal for the amendment of the law and institutional set up.

1.4 METHODOLOGY

The major area and source of the research paper is the EIA proclamation No. 299/2002. So finding out the provisions and articles that have legal impacts on the development of flower sector is one method.

The research uses analytical and critical approaches to deal with this legal issue as sociological legal research. These methods allow me to interpret the legal question and look analytically into the content of the proclamation.

Information will be gathered through literature review, desk interview with concerned authorities, employees of the sector.

Then based on the information gathered analysis will be made on the concept and provision of laws especially on the provision of the EIA proclamation and its effectiveness and application of the floriculture sector.

Other legal instruments like the FDRE constitution, environmental policy, and environmental protection organs establishment proclamation will be used to interpret the content of EIA proclamation gathered and shortcomings of the provisions of the law. Then commenting the solution to the problem will be provided at the end.

1.5 LIMITATION OF THE STUDY

There is limitation on getting the necessary information especially from the proponent's side. Individually who are engaged in this investment sector and their management staff may not be willing to provide the information on how and by whom they undertake

environmental impact study, how they get investment license, etc. There is also time limitation.

1.6 SIGNIFICANCE OF THE STUDY

The floriculture industry in Ethiopia is demonstrating dynamic growth in recent years because of the country's market orientated policy reforms which aimed to attract Foreign Direct Investment. It has become a significant contributor to the economy as a whole. Supportive policy and incentives provided by the government stimulated this investment sector. As a result many foreign and domestic investors are involved in this sector.

The importance of the flower investment is not ensured solely by the number of incentives that the government endorses but also by the regulations that would make the "Permanent Face of Ethiopia" it has to come up with legislative measures that are beyond just facilitation but also have regulation role.

The FDRE government has committed it self to sustainable development that means achieving development without environmental declaration. The application of EIA makes it possible to determine how Ethiopia should balance its economic growth with the protection of its environment. Occupational safety of the employees the health and socio economic status of the local community have to be considered.

Hence, this study is relevant to find out the implementation problems of EIA in this sector and recommending the solutions to the problem.

End notes of chapter one

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CHAPTER TWO

ENVIRONMENT AND ENVIRONMENTAL INSTRUMENTS IN GENERAL

Given that the purpose of environmental assessment is to identify, evaluate, and mitigate, where possible, the potential environmental effects of a proposed initiative before development is undertaken, it is clear that the definitions of environment and environmental impact are important.¹

2.1 DEFINITION OF THE ENVIRONMENT

Environment may be considered as everything that surrounds us. It is composed of both living and non living things. The living things form the biotic factors of the environment and the non living things form the abiotic factors of the environment. There are continuous and interrelated interactions between the biotic and abiotic factors. If all life forms are to exist in the environment these complex interactions should not be interrupted. Hence, Environment comprises the living things, the non living things and the interactions that occur among these factors.²

The Canadian Environmental Assessment Act, 1992, Article 2(1) defines environment as the components of the Earth, and includes,

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms,
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).³

Different environmental proclamations of Ethiopia define the word environment as “the totality of all materials whether in their natural state or modified or changed by humans, their eternal spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.”⁴

According to the above definition, all naturally existing things are parts of the environment. The definition is not only limited to naturally occurring things. It also includes those things made or modified by man.

All naturally existing things or those things modified by man, undergo complex interactions and such interactions affect the quality and quantity of these things. Such interactions also affect the well being of man and other species. These complex interactions are parts of the environment, for instance, the amount of rainfall, average temperature, the amount of sunlight, wind conditions, etc. determine the quantity and quality of the human population and that of other species.⁵

The definition contains some point as social factors and aesthetic. Social factors may include the culture of man. Aesthetics may include natural amenities such as beauty of the landscape.

Generally, environment consists of biotic (living components) and abiotic (non-living components) factors, which together form a dynamic biological, chemical, and physical system. Within any biological community the environment's influence results from the interactions of many biotic and abiotic factors.⁶

2.2 DEFINITION OF ENVIRONMENTAL EFFECT/IMPACT

According to Canadian Environmental Assessment Act (CEAA), 1992, Art 2(1) 'environmental effect' means, in respect of a project,

(a) any change that the project may cause in the environment, including any effect or any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of land and resources for traditional purposes by aboriginal persons, or any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance and

(b) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada.

The environment Act, (S.N.S. 1994 – 95, C.1), 3(v) defines 'environmental effect', in respect of an undertaking.

- (i) Any change, whether negative or positive, that the undertaking may cause in the environment, including any effect on socio-economic conditions, on environmental health, physical and cultural heritage or on any structure, site, or thing including those of historical, archeological, paleontological or architectural significance, and

- (ii) Any change to the undertaking that may be caused by the environment, whether the change occurs inside or outside the province.

In the case of CEAA, an assessment must consider the potential biophysical impacts of a proposed project as first order impacts. Socio-economic and cultural changes are considered as second order impacts. This means that only those socio economic and cultural impacts that are directly related to first order biophysical impacts are directly addressed.

The Environment Act (S.N.S 1994 – 95, c. 1), however, has a broader definition of environmental effect, stipulating that an assessment carried out under the terms of this legislation must consider the biophysical, socio-economic, health and cultural impacts of a proposed project at first-order impacts.⁷

Environmental Impact Assessment Proclamation No. 299/2002 of Ethiopia defines “impact” as any change to the environment or to its components that may affect human health or safety, flora, fauna, soil, air, water, climate, natural or cultural heritage, other physical structure, or in general, subsequently alter environmental, social, economic or cultural conditions.⁸ However, the Ethiopian definition does not make classification of impact based on biophysical, socioeconomic, health and cultural impacts like CEAA does.

2.3 ENVIRONMENTAL LAW

2.3.1 Features Of Environmental Law

Environmental law is a very young branch of law and it did not complete its formation stage until now. That is, it is in its infantile stage. It has both domestic and international law aspects. In many countries there is no comprehensive environmental law. Instead there are sectoral laws such as forest protection laws, wildlife conservation laws, pollution control laws, etc. In Ethiopia also, there is no standalone environmental law, although we have an environmental policy.⁹

2.3.2 The need for Environmental Law

The functioning of communities would not be effective if the only control mechanism is voluntary compliance to set moral guidelines. In addition to the moral guidelines, legal

rules are necessary to control the behavior of members of the community. Law is just not abstract set of rules imposed on society but is an integral part of that society deeply rooted in the social and economic order in which it functions and embodying traditional value systems which confer meaning and purpose upon the given society. Law is meant to solve social and economic problems of the community.¹⁰

Each one of the numerous relationships between people needs to be managed. If the rules were not organized properly, access to them would be chaotic, if not impossible. Lawyers categorized the rules into logical branches, each dealing with a separate identifiable topic. Although the categorization was done mainly for the sake of convenience, it has some legal significance to have separate branches of law. In Ethiopia, laws that affect man's relationship with his environment were made a century ago. Since then many laws were enacted in the area of environmental law, although they were not organized to regulate the environment as a distinct sector. We do not have a comprehensive environmental law even today. But many countries at present have environmental laws. Previously there was no reason to bring together all environmental law rules in one convenient branch. The management of environment was not dealt within an integrated and overarching manner. It was only recently that an integrated environmental management was accepted as an important discipline. With the proliferation and growing sophistication of environmental rules, it has now become necessary to collect all rules and laws applicable to or affecting environmental management and to arrange them under the convenient heading of environmental law. It is not generally accepted that environmental law has become a full-fledged branch of law. The main aspect of environmental law is to manage the relationship between humankind and the earth. Now environmental law is emerged as a branch of public law.¹¹

There are a number of advantages in the development of environmental law as a separate branch of law.

The first advantage is environmental law will be more accessible to people who need to know what the applicable rules are. It will also become easier to coordinate and integrate the different environmental legal structures, laws and rules. Moreover, it will become easier to develop structures for the effectiveness and coordination of environmental measures.

The second advantage of development of environmental law as a separate branch of law is that lawyers or other people who are involved in environmental work will find it easier to study existing rules and to develop new ones. It will enable one to look at gaps and fill or amend them. The improvement of environmental management will be facilitated by the fact that the rules are conveniently grouped together.

The third advantage is it will encourage the teaching of environmental law as a separate subject at educational institutions. Such training courses develop the capacity of people such as government officials applying environmental legislation to do their work effectively.¹²

It has to be noted here that, however, environmental law has emerged, as a branch of law does not mean that it should be considered in isolation from other branches of law. In fact, many principles forming part of property law, administrative law, criminal law, the law of tort, constitutional law and other branches of law also make the basis for environmental law. Particular care should, therefore, be taken not to compartmentalize environmental law.¹³ An effort should rather be exerted to mainstream environmental values into other sectoral laws.

For effective environmental management it is necessary to bear in mind that no other branch of law interacts quite as extensively and regularly with other legal and non-legal disciplines, as environmental law does.

2.4 INTERNATIONAL ENVIRONMENTAL INSTRUMENTS

The International community has given a growing attention to the issues of the environment since 1970s. Since then many international instruments have been made, although majority of them have remained still soft laws. The international community considers the present century as the century of the environmental concerns. This is partly explained by the fact that “Agenda 21” was developed in 1992 incorporating many issues in 40 chapters, which require the commitment and cooperation of states of the world.¹⁴

2.4.1 General Trends of International Environmental Law

International environmental law is manifested by the extent to which it increasingly influences the business, cultural, recreational and other activities of the members of the

international community in their capacity as subjects of state. Globalization has resulted in the creation of many trade, cultural, academic, research, theological, recreational, political and other relationships between the subjects of different states, and has conferred the freedom to pursue it. These and other factors have contributed a lot in the proliferation of international instruments in the area of environment.¹⁵

Recent years have witnessed an appreciable growth in the level of understanding of the dangers facing the global environment and an extensive range of environmental problems is now the subject of international concern. The international concerns include the loss of biological diversity, global warming, atmospheric pollution, etc. Such problems have an international dimension in two obvious respects. The first one is pollution generated from within a particular state often has a serious impact upon other countries. The prime example would be acid rain, whereby chemicals emitted from factories rise in the atmosphere and react with water and sunlight to form acids. These are carried in the rain, often thousands of kilometers away from the origin of the pollution.

The second aspect is that it is now clear that environmental problems cannot be resolved by states acting individually. Accordingly, cooperation between the polluting and polluted state is necessitated. However, the issue becomes more complicated in those cases where it is quite impossible to determine from which country a particular form of environmental pollution has emanated.¹⁶

The initial conceptual problem posed for international law lies in the state-oriented nature of the discipline traditionally, a state would only be responsible in the international legal sense for damage cases where it could be clearly demonstrated that this resulted from its own unlawful activity. This has proved to be an inadequate framework for dealing with environmental issues for a variety of reasons, ranging from difficulties of proof to liability for unlawful activities and the particular question of responsibility of non state offenders. According to the principle of international law, the law of state responsibility is concerned with the determination of whether there is a wrongful act for which the wrongdoing state is to be held responsible, what the legal consequences are (e.g. an obligation on the part of the wrong doing state to restore the previous situation or to pay compensation), and how such international responsibility may be implemented (e.g. through counter-measures adopted by the victim state, such as reprisals).¹⁷

From this it is evident that a state is responsible towards another state only for its criminal acts. This is an old approach and replaced by the principle of strict liability. In other words, states are under an absolute obligation to prevent pollution and are thus liable for its effects irrespective of fault. It has been argued that there exists an International human right to a clean environment. There are, of course, range of general human rights provisions that may have relevance in the field of environmental protection, such as the right to live, the right to an adequate standard of living, the right to health, the right to food and so forth. It is now said that human rights and ecologically sound environment, sustainable development and peace are interdependent and indivisible and that all people have the right to a clean, healthy and ecologically sound environment. These rights and other human rights, including civil, cultural, economic, political and social rights are universal, interdependent and indivisible.¹⁸

On the other hand, there is another line of argument. That is, considering all human right as universal may impose one dominant culture on the rest of the people. For instance, many scholars argue against such universal nature of rights, as they fear such tendency could cause the disappearance of traditional cultures, which could better protect the environment.

The question of the relationship between the protection of the environment and the need for economic development is another factor underpinning the evolution of environmental law. States that are currently attempting to industrialize may face the problem of fulfilling their objectives of industrialization in an environmentally safe way. This is because of the fact that the cost of environmental protection is very expensive and the resources that can be devoted to this are extremely limited.¹⁹

One of the biggest challenges of dealing with environmental issues is the question of protecting the environment and economically growing at the same time. It is undeniable that we need to develop. We need a prosperous economy. We need to live in houses which fulfill, at least, the minimum standard. We need to travel by air, by bus or other means of transport; we need to use computers and other technological appliances for more efficient work. We need agricultural products to fulfill our food needs. All these need the utilization of natural resources. The processes require quite a lot of energy, which is mainly obtained by burning fossil fuels. These products and services produce

huge amount of waste materials. One can easily see the relationship between the need for environmental protection and economic growth. It is unfortunate that many of the economic growth activities are not environment friendly. The big challenge that we are faced with is thus, how we can make our economic growth activities environment friendly? Although it is expensive and time consuming, many development projects are required to undergo an environmental impact assessment. The purpose of this scheme is to mitigate the impacts that could be caused due to the implementation of the development projects. Environmental Impact Assessment also plays a big role in making our development sustainable, if it is genuinely made.²⁰

At present, International environmental law imposes more and more obligations on state to protect their environment and also makes them liable to the injury caused by their acts on other states. All activities, which are considered to negatively affect the environment, have been made to include environmental issues as one of their major concerns. The state should also support its subjects with regard to the application of international law principles such as, sustainable development, precautionary principle, and others. Countries are increasingly incorporating such principles in their environmental legislation and are determining how they should be applied.²¹

Environmental law principles are crucial in protecting and preserving the environment. Many of these principles are developed at international level. They are developed by scientific researches and usually tested for their good results. International law demands national states to incorporate these principles into their domestic laws. The inclusion of these principles in the national laws of states would create uniformity of legislation and enhance coordination among states for the protection of the environment. The International community has continuously made various declarations and conventions on environmental issues since 1972. However, these declarations and conventions are not obligatory and they did not attain the level of hard law still now. They are simply soft laws. A soft law is a law that is in the process of making. It is a potential law. It may be in the form of a declaration, a resolution, a statement of principle, which is morally but not legally binding. The impetus for the creation of soft law on the environment began with some vigor in 1972 at the United Nations conference on the Human Environment, with passage of documents such as the Stockholm Declaration of the United Nations on the Human Environment.²²

2.4.2 The Stockholm Declaration

This Declaration was made on 16 June 1972 by the United Nations Conference on the Human Environment, at Stockholm. The conference considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.²³

The Stockholm Conference eventually opted for a non-binding declaration of principles, reflecting commitments of a political and moral, rather than legal, nature; A document ‘embodying the aspirations of the world’s people for a better environment’, rather than imposing specific obligations. Yet, notwithstanding its non-binding character, the Stockholm Declaration is generally regarded as the foundation of modern international environmental law. The Declaration eventually acquired not only moral and political value, but some of the principles laid down in it are now considered as part and parcel of general international law and as binding on governments, independent of their specific consent. In particular, Principle 21 has evolved into hard law. This principle has affirmed the sovereign rights of states to use natural resources within their boundaries.

Moreover, the Stockholm Declaration has served as a basis for the subsequent development of international environmental law in the form of numerous bilateral and multilateral conventions and other legally binding instruments. Numerous principles and concepts which were first articulated in the Stockholm Declaration were subsequently incorporated not only in the preambles of international environmental treaties, but also in certain binding provisions, and even in the constitutions or other provisions of domestic law of various states.²⁴

The Stockholm Declaration recognizes that man is both creature and molder of his environment. With the advancement in science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. The declaration points out that man’s capability either to destroy or to save both natural and human environment is very great. According to the declaration, if used wisely, this human capacity can bring, to all people the benefits of development and the opportunity to enhance the quality of life. If wrongly applied, the same power can do incalculable harm to human beings and the human environment.

The Declaration further describes that in the developing countries most of the environmental problems are caused by under-development and in developed countries environmental problems are related to industrialization and technological development. The declaration imposes the greatest responsibilities in national governments as far as protecting the environment is concerned. It also underlines the roles played by individuals and organizations such as NGOs in shaping the world's environment of the future. Finally the conference called upon governments and prepares to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity. After this the conference adopted 26 principles as statement of common conviction.

For instance, Principle 1 states that *Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generations.*²⁵

From this principle, you can understand that human beings have fundamental right to live in an environment that permits a life of dignity and well being. That is, people have the right to live in a healthy and clean environment, which is safe for their health. Here health does not mean the absence of disease, it rather means that a situation that bring about happiness to the people. The principle also describes the responsibility of the human society. In this regard, the human society is also obliged to protect the environment for present and future generations.

In developing countries the majority of people live in very difficult situations. They directly depend on natural resources and these natural resources are inefficiently used by the poor, since the poor have to survive, even at the expense of the natural environment. The situation in the developing countries is that the poor are the causes and victims of environmental degradation. On the other hand, in developed countries most of the industries are established on the principle of profit maximization and this has made the industries to forego environmental considerations.²⁶

Principle 11 states that, *the environmental policies of all states should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better paving conditions for all.*

The Ethiopian Environmental Policy which is adopted in 1997 has taken some points from this important principle. The policy has an overall goal of enhancing the demands of the present and future generations. It includes many progressive concepts which would contribute to the country's environmental protection.²⁷

Principle 14 describes that *rational planning constitute an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.*

This principle deals with the most important aspect of environmental law, which aims at reconciling the protection of the environment and promotion of economic development. One of the biggest challenges, especially in developing countries is to bring about fast economic growth while protecting the environment. At present the important tool, to simultaneously attain these two important goals is the process of environmental impact assessment. It is believed that this tool helps to mitigate the dangers that may be caused to the environment due to a development project.²⁸

Principle 19 states that *education in environmental matters for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to protect and improve the environment in order to enable man to develop in every respect.*

Environment is growingly becoming the concern of all governments, organizations and individuals. Every one must have a basic introductory education on the importance of protecting the environment. Many countries, including Ethiopia showed efforts to include environmental considerations at various levels of learning. This is a good beginning that must be encouraged.²⁹

Principle 19 underlines the importance of enlightening all members of the society in the protection of the environment. The role played by the mass media in this respect is also considered. In Ethiopia, the mass media did not give sufficient coverage to the issues of

the environment so far except for a 15 minutes program that began to be aired by the national TV recently.

Principle 21 illustrated that *states have, in accordance of the charter to the United Nations in the principles of international law, the sovereign right to exploit their own resources pursuant to their environmental polices, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to environment of other states or of areas beyond the limits of national jurisdictions.*

International law recognizes the sovereign right of states to use or exploit their own resources. States can exercise this rights based on their own environmental policies. This right of states is not an absolute right since they are responsible to the damage caused to other states due to their activities. There fore, states are expected to exploit their own resources in a way that does not cause damage to environment of other countries. This even extends to give due notice to states not to cause damage to their own environment when they are exploiting their own resources. The reason is, environmental damage of one part of the globe affects the other part. For instance deforestation of the Amazon forest may cause a severe drought in North America.³⁰

2.4.3 The 1992 Rio Declaration

This Declaration was made by the United Nations Conference on Environment and Development in Rio de Janeiro, Brasil from 3 to 14 June 1992. It is the continuation of the Stockholm Declaration of 1972. The UN Conference on Environment and Development (UNCED) has evaluated the implementation of of the Stockholm Declaration in the past twenty years. The intention of the UN Conference in 1992 was to build upon the Stockholm Declaration.³¹

The text of the Rio Declaration and the process which produced it provides a unique insight into the debates, compromises and achievements of UNCED. As an international statement of general principles and obligations, which was negotiated in detail by a large and representative number of delegations, it must be taken to reflect- to the extent any international instrument can do so- the current consensus of values and priorities in environment and development. As the manifesto of a conference permeated by the environment motif, the Rio Declaration predictably endorses many of the international environmental principles that have recently been devised for, or accepted in, other

contexts such as: the precautionary principle(principle 15); the polluter pays principle(principle16);environmental impact assessment requirement(principle17); principles on emergency notification (principle 18); and prior consultation(principle19).³²

Principle 1 of this declaration stated that “*Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*”.

Sustainable type of development is the best way for the future survival of human beings and other beings. Principle 1 should not be interpreted in a way that sustainable development must be there only for the well-being of human beings. Rather it has to be construed in a way that human beings live in harmony with nature. Living in harmony with nature means utilizing resources from the environment and effectively protecting it while leading a livelihood which is prosperous. To lead such kind of livelihood needs understanding and acting in accordance with the rhythm of nature. Nature has its own rules which we human beings need to obey. Any activity which severely violates these rules could be taken as tampering with nature and the end result will be disastrous for the human society and all other forms of life on Earth. It is the responsibility of the human society to ensure this kind of living for the quality of life for humans and continued survival of all other life forms. But this does not mean that there should not be any kind of human activity and intervention. Living in harmony with nature means limiting human activities and intervention to the extent that does not seriously affect the environment.³³

The very strong anthropocentric focus of principle 1 is particularly significant given that it begins to contradict the environment motif of the conference and because most developed countries were opposed to it.

Developed countries opposed placing human beings squarely at the centre of environmental and developmental concern because they preferred to stress that human beings should be at the service of the environment rather than to suggest that the environment was at the service of human being. They therefore proposed principles in which human beings were held responsible for the well-being of the environment or provided with an individual right to a healthy environment. To the G-77, however, placing human beings at the centre was of fundamental importance. To allow human

beings to be placed at the service of the environment was to subjugate development needs to environmental needs. To provide for an environmental right or admit to an environmental responsibility was to open the door to international interference with their development plans.³⁴

In principle 4, the International community asserts that: *“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and can not be considered in isolation from it”*.

When any development project is proposed, environment should be a major component of that project. Now it has been understood that many development projects have the capacity to adversely affect the environment. Development projects are important for economic, social and political life of the society. But today's development projects should not challenge our tomorrow's survival. Principle 4 of the Rio Declaration is reminding us not to be blinded only by short-term benefits. Of course, we need short-term benefits. But we have to thoroughly think of also long-term benefits and future achievements. This requires a wise plan to harmonize the short-term benefits. This could be realized by integrating development projects with environmental protection.³⁵

Principle 4 provides that *‘environmental protection shall constitute an integral part of the development process’*. In considering the relationship between development and environment, the Rio Declaration thus appears to give pre-eminence to development. Environment and development are equal partners in ‘sustainable development’ but the right to development comes before sustainable development.³⁶

Principle 17 declared that *Environmental impact assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority*.

This principle emphasized on the necessity of undertaking environmental impact assessment for proposed activities which could have negative impact on the environment. It also addressed that the permission for the proposed activity shall be decided by a competent national authority.

Principle 25 declared that *peace, development and environmental protection are interdependent and indivisible.*

This principle of the Rio Declaration prescribes the relationship that exists between peace, development and environmental protection. Where there is no environmental protection, there can't be peace and development. In many parts of the world, especially in Africa many conflicts have occurred due to disagreements in resource utilization. Environmental degradation will give rise to conflicting situations. Conflicts retard development activities.³⁷

Agenda 21

The Rio Declaration goes part way toward identifying some of the inadequacies in the institutional and legal arrangements for the maintenance of environmental securities. The declaration calls on states to provide 'effective access to judicial and administrative proceedings, including redress and remedy', to 'enact effective environmental legislation' and to 'resolve all their environmental disputes peacefully, by appropriate means and in accordance with the charter of the United Nations. Agenda 21, an action plan ratified in Rio de Janeiro in 1992, goes even further. It recognizes the limitations of existing arrangements, including inadequate implementation by states of their obligations, the need to involve multilateral organizations in the implementation process, and gaps in existing dispute settlement mechanisms. Agenda 21 also recognizes the role of various international institutions as central to the maintenance of environmental security. The UN Environmental Program is called upon to promote the general implementation of international environmental law, while the UN Development Program will play a lead role in supporting the implementation of Agenda 21 and capacity building at country, regional, inter-regional and global level.³⁸

It requires states to develop policies that take into account the land resource base, population changes and the interests of local people; improve and enforce laws and regulations to support the sustainable use of land, and restrict the transfer of productive arable lands to other uses; use techniques such as landscape ecological planning that focuses on an ecosystem or water shade, and encourage sustainable livelihoods; encourage the active participation in decision making of those affected groups such as women, youth, indigenous and other local communities; ensure that institutions that deal

with land and natural resources integrate environmental, social and economic issues into their planning.³⁹

2.4.4 African Convention On Nature And Natural Resources

African Convention on Conservation of Nature and Natural Resources aims to encourage several and joint action for the conservation as well as utilization and development of soil, water, flora and fauna for the welfare of the present and the generations yet to come; requires parties to adopt measures that help ensure conservation, utilization and development of the resource base, and flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the mankind; requires formulation and implementation of policies on conservation, utilization and development of water resources, prevention of pollution and controlling water use, protection of flora and ensuring best utilization and curtailing soil erosion; adopts a holistic approach- all land- based activities that may negatively affect nature and natural resources.⁴⁰

2.5 INTERNATIONAL CODE OF CONDUCT (ICC) FOR THE PRODUCTION OF CUT FLOWERS

The International Code of Conduct was established in 1998 on the basis of International Labour Organization (ILO) conventions. It is made, in its design, to be applicable for the cut flower industry.

The code in its preamble states that it aims to guarantee that flowers are produced under environmentally sustainable condition. It further requires the international cut- flower industry to comply with the threshold of the minimum environmental standards provided under article 8 of the code of conduct; *companies should make every effort to protect the environment and the residential areas, avoid pollution and implement sustainable use of natural resources (water, soil, air,etc.)* . Also under article 6, it talks about the risk assessment and cautions that needed to be taken by the companies in the event of use of pesticides and chemicals and non-employment of banned on highly toxic chemicals by the companies in order to prevent chemical hazards on the environment (Article 6 of the ICC).⁴¹

It also lays down important principles on labour issues such as; fair wages, health and safety of workers, freedom of association and collective bargaining and other basic labour requirements recognized by the ILO.⁴²

2.6 STANDARD CERTIFICATION SYSTEMS

A trend is currently being developed towards self-regulation. This is basically manifested in the form of voluntary codes, labels & regulatory standards. Notably, MPS, FFP, EUREP GAP are some of the existing certification systems that are internationally renowned.

2.6.1 MPS Milieu Project Sierteelt (Floriculture Environment Project)

Milieu Programma Sierteelt (MPS) has been established by the Deutch floricultural sector with support from the flower auctions and several flower trading organizations.

The MPS focuses on promoting sustainable cultivation methods of flowers and plants. This verification standard is applicable to growers, traders and florists all over the world. MPS Socially Qualified (SQ) is a certificate that allows growers to demonstrate that their products are cultivated under good working conditions. MPS-SQ includes requirements on health, safety and terms of employment, and is based on universal human rights, the codes of conduct of local representative organizations, and the various agreements of the International Labour Organization (ILO). The Dutch Flower Consortium has been closely involved in incorporating these International Codes of Conduct (ICC) within MPS.

MPS-GAP is a label with which you can anticipate the market demands of the retail channel. The MPS-GAP certification scheme is based on the criteria formulated by the European retail organization EUREP FOR SAFE, sustainably cultivated, high-quality and traceable products. These criteria are expressed in Good Agricultural Practice (GAP). MPS-GAP is benchmarked with the EUREP GAP flowers and plants scheme.

MPS-A,B and C are environmental registration certificates. The qualifications MPS-A,B and C are awarded to MPS participants. They are awarded qualifications four times a year based on the total number of points achieved. The qualification MPS-A stands for most environmentally- friendly cultivation.⁴³

2.6.2 Fair Flowers Fair Plants (FFP)

This new consumer label is a result of efforts by various stakeholders to bring about conformity in the regulation of working conditions in the cut flower industry. It has its base in Netherlands. It is an international alliance of trade and industry, NGOs and the trade unions.

The FFP has an audit that takes place on the basis of such standards as the International Code of Conduct (ICC), the International Flower Code and the MPS (milieu programma sierteelt) environmental registration programme and qualification system.

The label is inclusive in nature that is, it covers both the social as well as environmental aspects. It presents new possibilities for workers; as it strives to ensure the improvement of both living and working conditions. This is to be achieved through inspections and certification and also through provisions of the Collective Bargaining Agreements for sustainability. Sharing information among trade unions, NGOs will help in the development of a set of best practices.⁴⁴

2.6.3 EUREP GAP

EUREP GAP is a private sector body that sets voluntary standards for the certification of agricultural products around the globe. It started in 1997 as an initiative by retailers belonging to the Euro-Retailer Produce Working Group (EUREP). It was initially established to react upon the growing concerns by the consumers with product safety, environmental and labor standards and decided to take more responsibility for what happened in the supply chain. It is an equal partnership of agricultural producers and retailers which want to establish certification standards. The certificate covers the process of the certified product as from planting of the seed until it leaves the farm and procedures for Good Agricultural Practices (GAP).

The EUREP GAP standard has goals to minimize detrimental environmental impacts of farming operations, efficient use of inputs and to ensure a responsible approach to worker health and safety.⁴⁵

End notes of chapter two

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CHAPTER THREE

EIA AND THE FLOWER PRODUCTION REGULATORY BODY IN ETHIOPIA

3.1 AN OVERVIEW - EIA

Environmental Impact Assessment is, in its simplest form, a planning tool that is now generally regarded as an integral component of sound decision making... . As a planning tool has both an information gathering and decision making component which provides the decision maker with an objective basis for granting or denying approval for a proposed development.

Mr Justice La Forest, Friends of the Oldman River Society v.Canada(1992)

Environmental impact assessment (EIA) is arguably among the most influential and consistent aspects of environmental regulation and policy. Environmental impact assessment is best defined as a process for identifying and considering the impacts of an action. As the quote above suggests, EIA is about making better-informed decisions. Environmental impact assessment is not about rejecting development; rather it is about making sure that development proceeds with full knowledge of the environmental consequences. The Canadian Environmental Assessment Agency defines environmental assessment as a process that

1. identifies possible environmental effects,
2. proposes measures to mitigate adverse effects, and
3. predicts whether there will be significant adverse environmental effects, even after the mitigation is implemented.

As an approach to environmental management, as a system, and as practice, EIA has evolved in significant ways over the last few decades. The Canadian setting is particularly representative of the lasting influence of EIA, the diversity of issues now addressed by EIA process, and the more complex definition of environment that many public agencies must now consider. The federal and provincial governments in Canada each have their own EIA system, despite some common ingredients these systems can vary substantially in what they cover and to whom and what they apply¹.

3.1.1 EIA and planning

Environmental impact assessment is ideally embedded in planning. Planning is concerned with the process of preparing a program or policy for a course of action. The action is a product of planning, and it is the action that has been most commonly subject to EIA. In the lexicon, an action is referred to as an undertaking or a project. Actions can be physical projects, such as constructing a hydroelectric dam or a highway, or non-physical projects and policies, such as creating a social welfare program or raising the price of postage. Planning suggests a proactive process for addressing a goal or need; it suggests actions that involve forward or strategic thinking. But EIA has not always been applied proactively in Canada. In the not-so-distant past, EIA has tended to be applied as an afterthought- when it was applied at all. But this has changed, and we can now say that EIA, in the Canadian context, is often part of proactive policy and planning for many public and private entities.

If planning is an ongoing process, or continuum, that includes not just goal setting, evaluation, and plan formulation, but also fine-tuning the resulting action, then there is an evident role for EIA. Impact assessment is a planning tool, one that fits into a larger process or model of decision making and environmental management².

3.2 FUNDAMENTAL PRINCIPLES OF EIA

One of the key values of EIA is the chance it gives proponents and decision makers to design and implement an action with the best available knowledge of its impacts and likely performance. The capacity for EIA to provide such information depends largely on the principles and values that inform and guide it both as a system and as part of the policy process. Sadler (1996) writes of EIA as having five main guiding principles:

1. *A strong legislative foundation.* EIA should be based on legislation that provides clarity with respect to objectives, purpose, and responsibilities. Application of EIA should be codified, based in law rather than in discretionary guidelines.
2. *Suitable procedures.* The quality, consistency, and outcomes of EIA should reflect the environmental, political, and social context within which EIA operates, and should demonstrate the ability to respond to divergent issues.
3. *Public involvement.* Meaningful and effective public involvement must be present. Not only must those affected and interested be consulted, but their concerns should be able to

affect the decision. As Healey (1997) notes, the power of public involvement is in whether or not it has the capacity to affect the decision.

4. *Orientation towards problem solving and decision making.* The context of EIA is inherently practical and applied. Thus, the EIA system should have relevance to issues of importance, it should generate needed information, and it must influence, and be connected to, the settings where conditions of approval are set and decisions are made.

5. *Monitoring and feedback capability.* The consideration of impacts should not end with approval and implementation; rather the process must have some capacity for insuring compliance, accuracy of impact prediction, and evaluation of project performance. Not only does such a role strengthen EIA, it provides information that can fine-tune the EIA process, provide knowledge of what impacts actually do occur, and measure project performance³.

The National Environment Action Plan for Uganda stated that development activities and land use practices have impacts on the environment and therefore their assessment and evaluation is essential. Although Environmental Impact Assessment is not an entirely new thing in Uganda, its use has not yet been fully understood and appreciated by policy makers and resource users. The low cost of preventing environmental damage compared to the high cost of repairing such damage is a sound economic justification for instituting and carrying out Environmental Impact Assessment. The objective is to provide a system of EIA and environmental monitoring so that adverse environmental impacts can be foreseen, eliminated or mitigated. The Guiding principles are:

- Public and private sector development options should be environmentally sound and sustainable; any environmental consequences should be recognized early and taken into account in project design;
- EIAs should consider not only biophysical/environmental impact but address the impact on existing social, economic, political and cultural conditions;
- EIAs for all public and private sector development activities should be required in order to determine the “environmental threshold” of a particular activity;
- Environmental Impact Statements (EISs) should be required for all activities where the EIA has determined a negative environmental threshold;
- Environmental Audits (EAs), including inspections and record-keeping, should be required for activities as might be determined by the EIS⁴.

Protection of the environment is best achieved by preventing environmental harms rather than attempting to remedy or compensate after the occurrence of such harms. This is because not only harm irreversible in many cases but also action after the occurrence of damage is usually more expensive and less effective than preventive measures. What is important in environmental management is thus managing risks⁵.

The application of EIA helps to fill knowledge gaps and take decisions that are good to society, ecology and economy. When an EIA functions well it helps major stakeholders to work with each other and plan for a sustainable future. For an EIA to function well it requires an enabling condition that provides adequate, clear and enforceable requirements. It also requires consultation and coordination. Quality monitoring, evaluation and taking corrective measures are all the more needed to make certain continual improvement of an EIA system⁶.

3.3 PUBLIC PARTICIPATION IN THE EIA PROCESS

One of the fundamental prerequisites for the achievement of sustainable development is public participation in decision-making. Public participation is the foundation of any EIA system. The extent and nature of public participation at the national level is a derivative of rights on “free speech” and “clean/healthy environment” and ‘secure livelihood”, etc. Environmental issues are best handled with the participation of stakeholders at the relevant level⁷.

3.3.1 Participation Of The Government

At the national level, each individual shall have appropriate access to information concerning the state of the environment and the opportunity to participate in decision-making processes. Government role in this regard is to facilitate and encourage public awareness and participation by availing information.

For instance, the UNFCCC encourages Parties to avail information to citizens. The Rio Declaration and Agenda 21 promote participation and remedies. Similarly, the World Bank requires the borrowing country to consider views of affected and interested group. The EC directive has specified areas where Member States are allowed to refuse

information. In general governments have a major role to play in creating enabling conditions for public participation⁸

3.3.2 Participation Of Civil Society

Civil societies such as NGOs and professional societies are organized means of public participation. The Brundtland Commission also recommended governments to consult with and engage them in environmental matters. Agenda 21 has also described roles of environmental NGOs as “watchdogs”. NGOs can be effective vehicles to catalyze participation by organizing and mobilizing groups, obtaining grassroots perspectives, raising awareness and providing long-term ideas, analysis and advocacy. Involvement of NGOs in the EIA process facilitates decentralization and brings on board views of affected and interested parties⁹.

Non-state actors have also played vital roles in the development and ensuring compliance with environmental and related norms and standards. They have drafted norms and submitted to states for adoption, IUCN was instrumental in elaborating and urging the adoption of the World Charter for Nature, NGOs compile data, intervene in licensing decisions and monitor compliance with environmental laws. However, the extent of their contribution and effective participation in the EIA process depends on their capacity. For citizen groups to effectively participate they need support from professionals. One way of motivating civil societies to get involved in the EIA process is by ensuring them the provision of such supports. Many NGOs would like to strengthen their capacities and if assured, they will be motivated to participate.

Moreover, EIA benefits from training, science and technology. Academia and professional societies are in a better position to fulfill these demands. Developing alternative technologies, defining research priorities and training are better addressed through academia. The academia is believed to have the capacity and expertise such as to prepare background information, provide published or unpublished statistics and conduct studies, etc required under the EIA process.

Academia could also undertake long-term research. Issues concerning research in alternative and appropriate technologies would be best addressed with the participation of academia. This is particularly true in relation to those thematic issues where private

sector, local communities and NGOs cannot handle by their own. It is equally true regarding those thematic issues that fall outside the expertise of particular agencies and requiring independent analysis¹⁰.

3.3.3 Participation Of Private Sector

A lot of business in the private sector is directly dependent upon the natural resource base. Environmental deterioration thus directly affects the private sector. The private sector is the driving force for many economies. Business enterprises, large and small, formal and informal, all provide major trading, employment and livelihood opportunities. It can provide consultancy services on EIA. It can also establish environmental laboratories and provide testing services. The private sector can finance local environmental rehabilitation or enhancement initiatives. The financial institutions can provide loan to finance investments on environmental management. The insurance companies may ensure environmental risk.

The involvement of insurance companies in environmental issues provides encouragement for an increased public involvement in the EIA administration process and enhances public confidence that environmental damage will not remain uncompensated. This is for the reason that financially inadequate remedies may discourage citizens from exercising their rights. An example in this regard is the failure of insurance industries to provide coverage of environmental risks. "Without financial assurance, enterprises can more easily escape liability by declaring bankruptcy, leading to imposition of a fractionally equivalent governmental solution".¹¹

Business undertakings may directly involve in the EIA process order to protect their own interest from adverse impacts likely to emanate from other proposed development initiatives. Conversely, their activities may entail environmental degradation and thus negatively affect the environment and human health. Therefore, developers can be obliged to use resources efficiently and produce lesser waste. They can further be obliged to halt environmental degradation. Moreover, the private sector could also develop and implement environmental norm or codes of conduct. For instance, international standards are developed by agencies where the private actor is dominating. ISO is one such

organization, In the late 1980s ISO developed a standard model for development of environmental management standards¹².

3.3.4 Local community and public participation

Whether subsistence farmer, pastoralist or commercial, urban, or rural, these communities at the lowest administrative level are the first group whose livelihood is dependent on the soil, water, air, biodiversity and other resources found in the locality. The impact of environmental depreciation affects the interests of these local communities. Therefore, local communities should own the EIA process. Empowerment is a key motivation for local communities. As long as they accrue from the benefits, their will to chip in the process should also be assured. Local communities need tangible support, motivation and information about the benefits that will accrue to them as a result of participating in the EIA process . Any information provided to local communities and stakeholders should be practical and relevant to enable local communities to take informed choices and to protect themselves. their families, their communities and their environment. Local communities can be reached effectively through their administration. Local administrations are elected by them and as such the prime purpose of the former is to ensure the interests of the latter. Local administrations can do this in the best way only after their communities have conjointly identified their environmental problems and decided on the need to change for the better¹³.

3.4 . POLICY AND LEGAL FRAMEWORK FOR EIA

3.4.1 Policy Framework For EIA

The Environmental Policy of Ethiopia was issued in 1997 to provide overall guidance in the conservation and sustainable utilization of the country's environmental resources. The overall objective of the environmental policy is policy is to promote the sustainable social and economic development of the country through, *inter alia*, sustainable management and utilization of the natural resources of the country. Among the specific objectives that the environmental policy seeks to achieve include:

- ensuring the conservation, development and sustainable use of essential ecological processes and life support systems, biological diversity and renewable natural resources;
- and the empowerment and participation of the people in environmental management¹⁴.

The environmental policy lays the foundation for environmental impact assessment in the country. Under section 4.9, the environment policy stipulates the country's policies regarding EIA. It provides environmental audits to be undertaken on private and state development projects; and the development of detailed technical guidelines that direct the undertaking of EIA and an institutional arrangement responsible for undertaking , coordinating and approving EIA and the subsequent environmental audits¹⁵.

Furthermore, the environmental policy determines the scope and key elements of the EIA process. It states that EIA should consider not only physical and biological impacts, but should also address social, socio-economic, political and cultural conditions; and that environmental audits should be undertaken at specified intervals during project implementation to ensure compliance with terms of EIA authorization. It also states that environmental impact statements should always include mitigation plans for environmental management problems and contingency plans in cases of accidents; and that the EIA procedure should provide for an independent review and public comment on environmental impact statements before they are considered by decision-makers. While the environment policy provides the policy basis for the EIA process in the country, it has one major limitation: it does not subject public instruments to the EIA requirement¹⁶.

3.4.2 Legal Framework For EIA

A. The FDRE Constitution

Being a supreme law of a land, a constitution provides the basic framework on which detailed laws shall be developed for various sectors. The 1995 Constitution of the Federal Democratic Republic of Ethiopia contains provisions that support the enactment of an EIA legislation. In this regard, it stipulates that the design and implementation of development programs and projects in the country should not damage or destroy the environment; and recognizes the right of the people to be consulted and express their views on the planning and implementation of environmental policies and projects that affect them (Art.92). In addition, the constitution recognizes the right of citizens to live in a clean environment, and, where they are displaced or their livelihood has been adversely affected by the development projects undertaken by the government, the right to get commensurate monetary or alternative compensation, including relocation with adequate

state assistance (Art.44). These provisions provide a perfect constitutional basis for the development and implementation of an effective EIA process¹⁷.

B. Environmental Impact Assessment Law

Following the provisions of the environment policy, the Ethiopian government introduced the Environmental Impact Assessment Proclamation No.299 of 2002. The proclamation requires an EIA process for any planned development project or public policy which is likely to have a negative impact on the environment. With regard to development projects, the proclamation stipulates that no person shall commence implementation of a proposed project identified by directive as requiring EIA without first passing through environmental impact assessment process and obtaining authorization from the competent environmental agency (Art.3 (1)). In line with this, project proponents must undertake EIA and submit the report to the concerned environmental body, and , when implementing the project, fulfill the terms and conditions of the EIA authorization given to them (Art.7). Moreover, the proclamation allows for the imposition of a fine between fifty-thousand and one hundred thousand Birr on any project owner who commences implementation of a project without obtaining authorization from environmental agencies or who makes false presentation in the environmental impact assessment study report (Art.18)¹⁸.

Furthermore, the proclamation obliges licensing institutions, prior to issuing investment permits or operation license to projects, to ensure that the relevant environmental bodies have authorized the implementation of the projects (Art.3) In addition, it requires such licensing institutions to suspend or cancel the permit or license they have issued for projects where the concerned environmental body suspends or cancels the authorization given for implementation of the project (Art.12) These provisions are important to ensure that project owners comply with the EIA requirement. The proclamation also provides for public participation in the environmental impact assessment process. It requires environmental bodies to ensure that the comments made by the public (in particular, the comments forwarded by the communities likely to be affected by the implementation of a project) are incorporated into the EIA study report as well as into its evaluation (Art.15). To this end, it requires environmental bodies to make any EIA study report accessible to the public and to solicit comments thereon¹⁹.

The proclamation also requires public instruments, which are identified by directives as requiring EIA, to pass through environmental impact assessment process prior to their approval. In line with this, it obliges government organs to ensure that their policies have pass through EIA process prior to their submission for approval (Art.13). Having provided the basic framework of EIA, the proclamation envisages the issuance of specific directives and guidelines that further specify implementation of the FIA process. Particularly, it requires the Environmental Protection Authority (EPA) to develop a directive identifying categories of projects likely to have negative impact and thus require EIA (Art.5). It also requires EPA to issue of guidelines that determine the elements necessary to prepare and evaluate EIA study report (Art.8). The Environmental Protection Authority has already developed such draft directives and guidelines but they have not yet been formally adopted and put into force²⁰.

C. Business Law

Business is one of the economic activities that has an impact on the environment. Thus EIA should be integrated into the laws and regulations that regulate the licensing and operation of businesses proclamation No. 67/1997 requires that any commercial activity should be undertaken in compliance with environmental protection regulations. It regards the observance of environmental protection regulations. It regards the observance of environmental protection laws both as a pre-condition for issuance, and the ground for suspension and revocation of, a business license. Article 22(2) of the proclamation requires presentation of a certificate from environmental agencies to the effect that the intended business activity does not violate environmental protection laws as pre-condition fro the granting of business license. The proclamation also states that, if a licensed business is its license may be suspended until the violation is rectified.

Given that environmental impact assessment is one component of environmental laws, it can be inferred that the Trade Registration and Business Licensing Proclamation No. 67/1997 has integrated EIA into the framework regulating the licensing and the operation of businesses. In other words, the proclamation provides a legal basis to require a business license applicant to seek an EIA authorization from environmental agencies before the trade license is issued, and to suspend or revoke the trade license should the business owner fail to comply with the conditionality specified in the EIA authorization²¹.

D. Investment Law

In Ethiopia- where investment has boomed in recent years, causing deleterious effects on the environment and natural resource base of the country, it is crucial that EIA be integrated with the current legal framework for investment.

The Investment Proclamation No. 280 of 2002 (as amended by Proclamation No. 373/2003) and Investment Regulation No. 84 of 2003 are the laws that regulate investment activities in the country at present.

According to the Investment Proclamation (Proclamation No. 373/2003). investment permits can be obtained upon submission of a completed application form to investment authorities. The application form requires the applicant to provide information relating to the status of the applicant, the kind of the intended investment activity, the investment capital, the investment area (region only), the kind and size of intended production or service, and the number of jobs the investment shall create. Apart from these, the application form does not require presentation of an EIA or any information related to the environmental impact of the intended investment project²².

E. Land Law

The legal framework governing how land is allocated for investment presents other possibilities for the incorporation of EIA, the Rural Land Administration and Use Proclamation No. 456/2005 recognizes the right of investors to obtain and use rural land, provided that priority is given to peasants and pastoralists (art 5(4)(a)). Once land has been allocated, the proclamation obliges landholders to sustainably use and manage the property. Land users thus face the threat of losing their right to the land in the case that the holding is damaged due to misuse and mismanagement, in accordance with details to be specified by regional land laws²³.

3.5 ADMINISTRATION OF THE EIA SYSTEM IN ETHIOPIA

The current system of government Ethiopia is organized into a federal structure, comprised of a federal government and nine regional states. Government administration of EIA in Ethiopia is thus shared between the federal government and regional states.

The Environmental Protection Organs Establishment Proclamation No. 295/2002 established the institution responsible for regulation of EIA; these include the Environmental Protection Authority and Regional Environmental Agencies²⁴.

3.5.1 Environmental Protection Authority

The Environmental Protection Authority (EPA) is the lead federal environmental organ with the objective of formulating policies, strategies, laws and standards to ensure social and economic development activities in the country sustainable enhance human welfare and the safety of the environment (art.6). The regulation of EIA is one of the key responsibilities entrusted to the EPA. In this respect, EPA is responsible for establishing a system for undertaking EIA on public and private projects as well as on social and economic policies. strategies, laws and programs. Specifically it is responsible for developing a directive that identifies categories of projects likely to have negative impact and thus require EIA, and for issuing guidelines that direct the preparation and evaluation of EIA study reports (Proclamation No 299/2002, Art.5 & 8). In addition, EPA is responsible for evaluating the EIA study reports on projects subject to federal licensing, execution or suspension and on projects likely to create inter-regional impacts. The EPA is also responsible for auditing and regulating the implementation of such projects. Moreover, EPA is responsible for giving technical support pertaining to environmental management and protection to regional states and sectoral institutions²⁵.

3.5.2 Regional Environmental Agencies

The Environmental Protection Organs Establishment Proclamations (Proclamation No.295/2002) requires regional states to establish or designate their own regional environmental agencies. The regional environmental agencies are responsible for coordinating the formulation, implementation, review and revision of regional conservation strategies; and for environmental monitoring protection and regulation (Art.15). Relating to EIA specifically, the Environmental Impact Assessment Proclamation No.299 of 2002 gives regional environmental agencies the responsibility to evaluate the EIA study reports on projects that are licensed. executed or supervised by regional states and that are not likely to entail inter-regional impacts. Regional environmental agencies are also responsible for auditing and regulating the implementation of such projects²⁶.

The institutional standing of regional environmental agencies varies from region to region. In some regions, they are established as separate institutions, while in others they are constituted within other institutions. For instance, in the Oromiya Regional state, an Environmental Protection Office is established as separate Regional, while in the Southern Nations Nationalities and Peoples Regional State, the regional environmental organ is situated within the Bureau of Agriculture and Rural development as an Environmental Impact Assessment and Pollution Control Team²⁷.

3.6 THE ETHIOPIAN HORTICULTURE PRODUCER and EXPORTERS ASSOCIATION (EHPEA) CODE OF PRACTICE FOR SUSTAINABLE FLOWER PRODUCTION.

The Ethiopian Horticulture Producer Exporters Association (EHPEA) seeks to monitor the industry by coming up with Code of Practice for Sustainable Flower Production, a new standare setting document for the country. The objective of the EHPEA Code of Practice is to provide a mechanism that enables Ethiopian floriculture sector to achieve the highest performance standards by continuous improvement and sustainable development. This document defines essential elements for the development of best practices and the minimum requirements acceptable to enable the sector to compete at international market level.

The Ethiopian Horticulture Producer Exporters Association (EHPEA) Code of Practice for Sustainable Flower Production consists of three level of standards; the Bronze, Silver and Gold Levels. Each level will be recognized by the Ethiopian Horticulture Producer Exporters Association through a certificate. The Association's role is simply to assist members in reaching compliance, manage the code and organize but not carry out the audit of the code. Members receive their code accreditation through independent verification form an internationally accredited and reputable body contracted by EPHEA. The association helps the sector to comply with the requirements of the code by establishing Training Unit and entering into agreements with stakeholders to provide a network of support and capacity building²⁸.

3.6.1 The Bronze Level

The members are required to meet the minimum standard that is the Bronze Level. Compliance with requirements of the Bronze level requires a basic management system

in place that ensures the planning, monitoring and evaluations of sustainability issues stipulated by the code. It also requires farmers to implement certain working practices and comply with the law of the land. Compliance with the Bronze level is expected to ensure that the farm:

- Measures, documents and evaluates every month its performance on water consumption, pesticide use, fertilized use, waste management and energy consumption.
- Uses the information from the monthly performance evaluation to take the required corrective actions in order to remain between the sector's wide defined ranges.
- Has put a basic farm auditing system in place that allows the periodical evaluation of all issues that are relevant to the Bronze Level.
- Has assessed risks related to environment and occupational health and safety and has put in place suitable mitigating actions in accordance with the Environmental Impact Assessment procedure.
- Does not purchase, store or use banned and unregistered (excluding temporary permission to use products) pesticide products as per WHO List of Internationally Banned pesticide Products and list of permitted products.
- Implements safe pesticides use and storage; a pest control planning and monitoring system is put in place, the pesticide and fertilizers storage complies with locally recognized safety and health conditions.
- Ensures that personnel related to pest control activities are trained about the risks of handling pesticides and the correct use of personnel protective devices and washing facilities. Re-entry times and a general emergency and emergency procedure are put in place at farm level. All personnel are trained in the general accident and emergency procedures.
- Has its personnel enrolled in a general training and awareness building programme on sustainability issues at the workplace.
- Has put personnel management system to ensure safe working conditions.
- Has put in place human resource management systems for staff briefing, issues on work contracts and disciplinary and grievance procedures which are in compliance with the Ethiopian Labour legislation.

In addition, members who are capable of upgrading their level of standard are encouraged to comply with higher standards of the Silver and Gold levels. The preparation of the higher standards is underway²⁹.

3.6.2 The Silver Level

The Silver Level, not yet issued by the Code of Practice, is expected to set internationally recognized standards for Good Agricultural Practices. It strives to enable the Ethiopian flower farms to meet national and international legal compliance, and basic sustainable flower cultivation practices demanded by the European retail sector. Upon reaching the Silver Level, the farm should be able to obtain MPS GAP/EUREP GAP certification.

Compliance with the Silver Level standard requires the farm to meet the following requirements in addition to the minimum requirements of the Bronze Level:

- The farm has to put a professional auditing system in place that allows the periodical valuation of the sustainable management practices.
- It has to ensure farm compliance with Ethiopian laws and regulations regarding:
 - Sustainable site management adjustments have been made to ensure sustainable site management, sustainable soil and substrate management practices have been put in place.
 - Safe pesticides use and storage: a pest control planning and monitoring system is put in place, the pesticides and fertilizers storage complies with internationally recognized safety and health conditions.
 - Sustainable water use: farm water use is measured and practices are put in place to ensure the sustainable consumption of available water sources.
 - Safe waste management: a sustainable waste management system is put place that complies with national legislation and MPS/A/B/C requirements.
 - Occupational health: there is medical service in place either inside of the farm or in cooperation with local service holders.

- Labour conditions: a personnel management is put in place that guarantees its compliance with Ethiopian Laws on: minimum wage and the right to organize and collective bargaining.
- o It has to ensure market compliance with requirements related to:
 - Sustainable post harvest practices
 - Accepted pesticides residue levels
 - Safe pesticides and fertilizer storage
- o The farm has to put a management system in place that allows the data collection, reporting and evaluation of its sustainable management performance, and has put a procedure in place to take its required corrective measures.
- o The farm has to put a complaint procedure for visitors and other stakeholders and has installed a procedure to take the required actions to respond.
- o The farm has to put a procedure in place for involving all levels of farm staff as appropriate in the development and implementation of procedure that lead to code compliance³⁰.

3.6.3 The Gold Level

The gold level, also not yet issued by the Code of Practice, will define the key elements of current agricultural best-practices within a Sustainable Production framework. It strives to enable Ethiopian flower farms to meet good sustainable flower cultivation practices demanded by the European retail sector and niche markets. Upon reaching the Gold Level the farm should be able to obtain MPS SQ/FFP certifications.

Compliance with the Gold Level standard requires the farm to meet the following requirements in addition to the minimum requirements of the Bronze Level and the Silver Levels:

- o The farm has to put system in place that enables the complete concept of Integrated Pest Management.
- o The farm has to introduce biological crop management systems that enable a significant reduction of Agrochemical use.
- o The farm has to install an internationally recognized sustainable waste management system.
- o The farm has to put a personnel management system in place, based on internationally recognized fair labour conditions, as indicated by the ILO conventions.

- The farm should plan, monitor and evaluate activities that improve nature conservation and support community development in the direct surroundings of the farm.

However, the most sustainable practices on essential issues like: monitoring Environmental Impact Assessments, recognizing fair labour conditions, reduction of agrochemical use etc. are left to be the "high standards" that will be met upon reaching the Silver and Gold Levels. These issues are not made a 'minimum requirement' in the current EHPEA code of Practice. In short, some of the issues put to be achieved at a higher standard level, should have been made essential minimum standards and be made part of the Bronze level. The standards set under the Silver Level, list down the requirements that should have been made the minimum compliance requirement of the Ethiopian Horticulture Producer Exporters Association (EHPEA) Code of Practice for Sustainable Flower Production. For instance, internally recognized fair labour conditions indicated under the ILO conventions, to which Ethiopia is a party is made a requirement at the highest level i.e. the Gold Level and not as a bench-mark requirement³¹. The minimum requirements of the Bronze Level are very minimal, that the foundation of having code of practice to ensure and safeguard the basic social and environmental issues, are given a much less consideration than they actually deserved. Even then, the minimum requirements of the Bronze level are set to comply with local laws, which in most of the issues, there exists a legislature gap that makes compliance with the Bronze level be dependent on non-existent or unspecific laws. To illustrate this conclusion, we can take one of the Bronze level requirements which states that the safe pesticides use and storage should be in accordance with locally recognized safety and health conditions. Conversely, there is no policy or guideline to be used to this effect. The Ethiopian Environmental Authority has drafted guidelines on the use and storage of fertilizers and pesticide, however, it still remains to be a draft.³²

To conclude, the code clearly states that it seeks to compliment the Law of Ethiopia but does not substitute the Law and farmers should be aware that where the Code standard falls below the Law or where the Code is silent, then the standards set by law prevails. However, some of the minimum requirements of the Code fall short of the legal requirements of the Laws of the Land and others are crafted to depend upon non-existent or vague laws, In the first case, the legal standards match the higher standards of the Code and in the later case: both the Code and Law are either silent or vague

which creates a practical gap on the practice for sustainable production of flowers, In addition to this, the Code of Practice merely creates the general framework to be followed. The compliance criteria of the minimum requirement appear to be vague and require further detailed guidelines to help with the full implementation of the requirements. Even when requirements are relatively clear; there is no enforcing mechanism to ensure that requirements are fully complied with. Members take the voluntary initiative to meet the terms with the code. In addition to this, it is evident that there are many producers in the business who are not yet members to the Ethiopian Horticulture Producer Exporters Association .³³

End notes of chapter three

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CHAPTER FOUR

PRACTICAL PROBLEMS WITH REGARD TO EIA ADMINISTRATION

PERTINENT TO THE FLORICULTURE INDUSTRY

4.1 LACK OF AWARENESS AND PUBLIC PARTICIPATION

The knowledge level on EIA is very low in Ethiopia. One of the reasons for lack of awareness is that the law making process of EIA has not been participatory. It was enacted without sufficient participation of all stakeholders. Local communities who can be directly affected by a development project have never been consulted during the law making process that finally resulted in Proclamation No.299/2002.¹

There is a complete absence of information about EIA and its importance with local administrators, parliamentarians, various governmental officials, business persons, people directly affected by development programs and projects, etc. For example, in flower farms there is low level of awareness, let alone EIA, on issues of forming a worker union, labour related conventions, rules and regulations.

It is understood that some local administrators who are direct participants in the EIA process have no knowledge about it.²

This lack of information makes the EIA process very difficult. That is the reason why many officials consider EIA as an obstacle to development. Misconceptions of considering EIA as anti-investment and anti-development, time-taking, costly and a complicated process that delays the development process, etc. are created among those who are key actors in the EIA process. Project owners and investors have also inadequate awareness about the importance of EIA. They generally perceive it as a bureaucratic hurdle with no visible importance. They do not understand that the absence of EIA could mean an unexpected depletion of resources which would have a negative impact on their investment activity.³

This low level of knowledge on EIA in the country makes its implementation difficult. Participation in the development plan of the state is the constitutional right of Nationals. Article 43/2 of the FDRE Constitution States as:

“Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community”.⁴

The Supreme law of the land grants the right of citizens to participate in the national development and be consulted on projects affecting them pursuant to the article cited above. However, when we see the practice, implementation of the law of EIA was not respected adequately. Flower farms which have a great impact on the community are also implemented without sufficient consultation of the society residing there. Other subordinate laws of the country should also be enacted in compatibility with this supreme law.

On the contrary, the investment Proclamation No.280/2002 and investment amendment Proc.No.373/2003 did not set EIA as a requirement to grant investment permits investment. In the absence of EIA, the local people who are living in the place where that investment activity carried out are consulted about the issue. This means that the legitimate interests of the community is not maintained.

Importance of participation is pronounced by the Environmental Policy of Ethiopia (EPE), Conservation Strategy of Ethiopia (CSE) and the EIA proclamation. The competent environmental agencies are also obliged to disseminate state of the environment report. The Environmental Impact Assessment Proclamation in its preamble ensures the involvement of the public and, in particular, communities in the planning of and decision taking on development which may affect them and its environment.⁵

Based on that, Article 9/2 of the above cited proclamation requires the Authority or regional environmental agency to take into account any public comment before the approval of the project. Article 15 of the proclamation provides that any environmental impact study report shall be made accessible to the public and solicit comments on it. Those comments made by the public and in particular by the communities likely to be affected by the implementation of a project shall be considered by the Environmental Protection Authority or the relevant regional environmental agency.⁶

This in effect shows that the law sets the requirement of public involvement in the planning and decision making on development projects which may have an impact on them and their environment. EPA and regional environmental agencies have the duty to declare Environmental Impact Study Reports (EISR) to the public for comment and ensure that the comments made by the public and community are incorporated into the EISR and in its evaluation. Eventhough the law sets all these requirements, employees in

the flower farm and residents in the area are not involved in the planning and decision making process of the floriculture sector.

However, due to structural weaknesses and lack of capacity EPA and Regional Environmental Agencies could not apply what is set in the law.⁷ We can compare this with experience from other countries. For instance, the Serbian EIA law stipulates that stakeholders shall be informed by public announcement of decision-making procedures, shall take part in the process by submitting opinion, comments and suggestions to the competent authority and shall be timely informed about the decision.⁸ For public participation, the Serbian law requires the notification of public participation through the appropriate media, at the expense of the project.⁹

The achievement of the government to guarantee public participation and consultation in the EIA process is only 25% . This is because lack of key infrastructure to ensure effective and meaningful participation. The capacity of proponents to engage the public in the EIA process is only 24% while the public participation in the EIA process is only 6%. Non- state actors that are working in the area of lobby groups are virtually non-existent. Affected groups are not empowered for their participation remains unaided. The academia and professional societies are totally invisible from the EIA process.¹⁰

Hence, efforts must be made to enhance awareness among key actors, such as parliamentarians, various governmental officials, local administrators, business persons, people directly affected by development programs and projects, etc. Awareness creation and effective public participation in EIA process can not be achieved through the effort made by governmental offices only. Proponents, NGOs and academia and professionals have to be involved in a coordinated manner in order to divert misconceptions about EIA.

4.2 INSTITUTIONAL WEAKNESSES

In some regions, the executive unit that deals with environment is not given prominent place. It is represented under different sectors, instead of standing as a separate institute. There is limited coordination between federal and regional environmental institutions. At the Regional level, environmental offices are found in different sectors and bureaus. This creates communication gaps and limitations in forming linkages. Beside this, EPA is not well structured at both regional and sectoral level.¹¹

The above fact shows that environment sectors are not working independently. Especially at the regional level, these offices communicate with the federal office through other section or a bureau, mainly through the Regional Agricultural and Rural Development Bureau. This channel of indirect communication creates gaps between the two very related institutions so that it affects their performance

Representation of EPA under different sections is an obstacle to work with other sectoral offices working on the Environment such as the Ministry of Mines and Energy, Ministry of Water Resources, etc. Direct communication between EPA and the environmental units in the above mentioned government offices is essential for the coordinated development plan and implementation of EIA.

Even though EPA is directly accountable to the Prime Minister (Proc. No. 295/2002), it is not represented at the Minister of Council. It has no channel to address its issues to the executive organ of the state. Establishment of EPA as a ministry will make it influential in the Council of Ministers where big decisions related to environment and developments are made.

4.3 CAPACITY PROBLEMS

EPA and Regional Environmental Agencies lack sufficient human power, budget and institutional arrangement.¹²

The relevant functional units of the EPA are undermanned and in need of skill enhancement. For effective administration of the EIA process the EPA and regional environmental agencies should be supplied with the required man power. Not only EPA but also all stakeholders involved in the EIA process should have the necessary capacity and professionals to make the EIA system strong and achieve the desired goals.

In some countries such as Ghana and Tunisia, some tertiary institutions provide training on EIA, which is run as part of various environment- related courses.¹³

Training can be given by designing different mechanisms such as on workshop basis and continuous training courses. NGOs, Civil societies, professional associations and scholars can be the main actors of such training program.

In Serbia, there are a number of professional (consulting) organizations involved in the process of writing EIAs and Strategic Environmental Assessments (SEAs). These include

University departments and scientific institutions, as well as environmental engineering consultancies. The Serbian EIA act (Article 19) specifies that EIA can be performed by legal persons and entrepreneurs who are licensed for the execution of planning activities, engineering activities, and studies and analyses.¹⁴

South Africa has also put in place regulations for their certification and registration to the professional quality and skills of those consultants involved in the Environmental Impact Study Report (EISR).¹⁵

Consultants are very important actors in the EIA process as they are the ones who are preparing EISR on behalf of the applicant. In Ethiopia, there is no private sector which provides consultancy service on EIA and accreditation or certifying criteria for supervisors in EPA [Interview with Solomon]. The skill required for the application of the EIA system is very less. It is impossible to obtain effective EIA system without qualified EIA practitioners. According to this interviewee, the EISR prepared and presented by many consulting firms does not meet the conditions set in the draft guidelines prepared by EPA. Many of them write assumptions instead of describing the actual situation. This is a bottle-neck to the effective implementation of EIA.

EPA as a regulatory organ, is not organized in such a manner that it could effectively regulate the activities of government-owned projects. This is due to the fact that most government offices are hierarchically placed above EPA's structure which prevents the EPA from regulating their activities. It has no sufficient power to regulate government offices that disobey the EIA law environmental agencies are overburdened and can not review the EISR since there is no sufficient number of experts.

Because of this, the department of EIA service is now under great pressure constraining it from performing efficiently. It is impossible to respond quickly and evaluate efficiently the application submitted to it. This is one problem that makes EPA less effective in the implementation of EIA.

EPA has also financial constraints to undertake its vast regulatory activities. For instance, in the 2000 Ethiopian budget year the total money allocated to EPA was Birr 3,907,642. From this amount, Birr 2,348,300 was intended to cover the salaries of the employees, and the remaining balance, one and a half million birr, was intended to cover all other expenses [EPA, 2007]. This amount is far too small to run the EIA process and fulfill all

the agency's other duties. The current capacity to predict and identify impacts is only 24%. The content of the final decision made by the competent environmental agencies on the EISRs does not demonstrate a good judgment for it is not based on a holistic analysis.¹⁶

Lack of infrastructure is another problem related to EPA. The Department of EIA Service at the EPA is not equipped with quality Internet service and powerful computers to download or exchange materials and documents with the concerned organs. The environmental laboratory at the EPA is not well equipped to ensure the quality of the EIA process. There is lack of highly organized and well furnished library to accommodate those who seek informations. Hence, experts who are assigned to conduct reviews have no access to information. These capacity problems are even worse in Regional institutions. Therefore, EPA should be equipped with all the above mentioned facilities both at Federal and Regional level.

The Authority or Regional agencies are provided with only 15 days to evaluate the document (Proclamation 299/2002). However, EPA is forced to do it in 3 or 4 days.¹⁷

This makes the task of evaluation of EISRs to be undertaken solely by in-house experts despite the requirement for public consultation under the law. Without qualified evaluators, in the absence of well-equipped institutions and lack of coordination among the Federal and Regional agencies it is difficult to carryout EIA of proposed floriculture projects within this limited time.

4.4 LEGAL PROBLEMS

As Ato Solomon Kebede, Head, Environmental Impact Assessment Service of EPA says the law has no market-based structure. The Investor is not prohibited from getting land, loan, market, etc. if he disobeys the law.

Financial institutions should also incorporate EIA into their procedures. By incorporating EIA authorization into their loan policies, financial institutions can help ensure that development projects comply with the EIA requirement. There are a number of private and state-owned banking institutions operating in the country. Nevertheless, only the Development Bank of Ethiopia has made EIA a requirement for credit purposes, i.e, it loans money to investors only after they present the approved review of the EISR.¹⁸

There is limited link between financing institutions and investments. Financial institutions except the Development Bank provide loan to finance investment activities without considering the requirement of EIA. There is no environmental insurance. Without the involvement of insurance companies in environmental issues, investors in the floriculture sector can easily escape liability by declaring bankruptcy. Banking institutions and insurance companies may directly involve in the EIA process in order to protect their own interest. Another legal problem with regard to the implementation of EIA process in the flower farm industry is that the law has no dynamism throughout the last six years. This is because of the adoption of Investment law which apparently ignores the environmental law. The EIA proclamation No. 299/2002 on its article 3(1) states that:

“ Without authorization from the authority or from the relevant regional environmental agency, no person shall commence implementation of any project that requires environmental impact assessment.”

It prohibits the implementation of any project that requires Environmental Impact Assessment without the authorization from the Authority or regional environmental Agency. The Environmental Protection Authority has its own guidelines showing the list of projects that require a preliminary environmental impact study. The floriculture sector is the one that is listed for preliminary impact study.¹⁹

Also under article 3(3) of the EIA proclamation obliges any licensing agency to ensure that the relevant environmental authority has authorized its implementation prior to the issuance of any permit. This in effect shows that any investment permit should give an investment license after ensuring whether or not an environmental impact assessment is carried out and authorized by the relevant ministry for its implementation. On the contrary, the investment proclamation No.280/2002 and investment amendment proclamation No.373/2003 didn't set EIA as a requirement to grant permit for investment. Under article 13,14 and 15 of the investment amendment proclamation No.373/2003, the application for investment permit by a foreign or domestic investor doesn't include the requirement of EIA. Also Article 16 of the same proclamation states that the appropriate investment organ, after examining the intended investment activity in light of the proclamation or regulations and directives issued for the execution of the proclamation, shall issue investment permit within five working days after receiving the

application form or it may notify the investor where the application is found unacceptable.²⁰

But the proclamation doesn't put a condition on the conduction of the EIA as a ground for accepting or denying investment. Therefore, the investment permit authority is not obliged by this law to give investment permit after checking on whether or not an EIA is conducted on that project. On the other hand Art.12(3) of the environmental impact assessment proclamation No.299/2002 stipulates that:

“ Any investment permit authority shall in tandem with the relevant environmental agency's decision to suspend or cancel any authorization to implement a project, suspend or cancel the license it may have issued in favor of the project.”²¹

This in effect shows that if the relevant environmental agency cancels the authorization to implement a project due to the failure to conduct EIA, the investment permit authority should also do the same. Art.16 of the Investment Proclamation No.280/2002 provides the reasons for suspension or revocation of investment permit. But failure to conduct EIA is not included in the list of reasons. As a result, there is a discrepancy between the environmental impact assessment and investment proclamations. This inconsistency between the two laws creates a loop-hole for the flower investors to disobey the rule. Once the investment authority issued investment permit there is no way to revoke the license due to failure to implement EIA since the investment proclamation doesn't put an obligation to that effect. Therefore, this has created a problem in implementing EIA to a proposed project. In this way many investment permits are given without conducting EIA. From 1996 to 1998 E.C. Ethiopian Investment Authority and its regional equivalents alone issued about 12000 investment permits. Out of which only 24 had prepared EISR on their respective projects and submitted it to the EPA for review.²²

The floriculture sector in Ethiopia is one of the investments implemented without environmental impact assessment. But currently the flower farms are approaching the EPA for conducting EIA after commencing implementation.²³

This system is not however, in line with the basic concept of EIA. It should be carried out at the planning phase and not after a project is implemented. In addition to this, Article 521 of the Criminal Code of Ethiopia stipulates that:

“Whoever, without obtaining authorization from the competent authority, implements

a projects on which an environmental impact assessment is required by law is punishable with simple imprisonment not exceeding one year.”²⁴

According to this provision implementing a project which needs EIA, without obtaining authorization from the relevant authority is taken as a criminal act. Granting an investment permit without checking for EISR approval is hence a clear violation of national laws. An investor that implements a project without conducting EIA will be criminally liable. Therefore, the investment proclamation should be in line with the EIA proclamation and the new criminal code. Besides this authorities empowered to permit investments should take into consideration EIA before they allow investments.

Another legal problem is within the EPA itself. EPA doesn't make efforts to up scale the EIA law and doesn't adjust its structure. It has even taken five years to initiate the formal establishment of the environmental council. Article 6(19) of the Environmental Protection Organs Establishment Proclamation No.295/2002 empowered EPA to prepare directives to implement environmental protection laws and upon approval, ensure their implementation.²⁵ However, since 2002, there is no specific regulations, directives or other subordinate rules issued for the purpose of implementing the EIA Proclamation, except for the approval of a list of projects requiring EIA by the environmental Council in March 2008. So far the law in force is only Proclamation No.299/2002 and some draft guidelines prepared by the Federal EPA. So the absence of specific laws is another reason for weakness of EIA process. The Environmental Council, though it is the highest organ of EPA, has not yet approved any directive or guideline prepared by EPA except for the one mentioned above.

Issuance of investment license without EIA does not comply with the provisions of the International Code of Conduct (ICC) for the cut flower industry. The purpose of ICC is to mitigate the negative impact of flower industries on the environment and communities. Article 6 of its provision describes that risk assessment and measures that needs to be taken by the companies in the event of pesticides and chemicals usage and non-employment of banned on highly toxic chemicals by the companies in order to prevent chemical hazards on the environment.²⁶

The practice also violates the constitutional right of citizens. The FDRE Constitution under Article 46/2 recognizes the workers' right to have a healthy and safe work environment.²⁷

However, the flower sector in Ethiopia employs intensive agrochemicals for production. The pesticides used in the sector are also known to cause skin ,throat, and respiratory health problems.²⁸

The use of these chemicals may be the cause to work related illness and sometimes, death. Employers shall also not require the workers to execute any work which is hazardous to his life.²⁹

The sector has a large number of workforce about 60 percent of which are women. Some of the agrochemicals used in the flower production process are known to have chemicals that can result in reproductive problems.³⁰

This is against the Labour Proclamation No.377/2003 which prohibits employing women on a type of work to be particularly arduous or harmful to their health , under Article 87(2).³¹ Different negative health effects are being observed among flower workers. Due to the publicity problems, official data regarding occupational health problems in floriculture sectors are not found. However, different organizations that work closely with floriculture farms like Forum For Environment have found negative health effects among workers of flower farms [Workshop held at Hilton]. So violation of the rights of the workers in the flower farm and negative impacts that occur on them could be effectively prevented if EIA had been carried out before implementing the project.

The right to form associations to improve their conditions of employment and economic well being by forming trade unions to bargain collectively with employers (1995 FDRE Const.) It also ensured through approved Environmental Impact Study Reports and the monitoring after the implementation of the project.

4.5 ABSENCE OF APPROPRIATE ENFORCEMENT MECHANISMS

Absence of appropriate enforcement mechanism to put EIA to use is another problem. There is no sufficient structure to implement EIA effectively. Even though there are laws, the means of implementation are not clear. In the absence of effective EIA process, it is not possible to protect the environment and ensure sustainable development. This

will have a direct influence on the sustainability of the country's development. In one instance, the Addis Ababa EPA is trying to work in collaboration with the Addis Ababa Land Administration Department to trace those project owners before they implement their activities. Even if there is a directive issued by Addis Ababa City Administration in June 2007, stating under Article 13(2) that:

“The project owner must get permission from Addis Ababa EPA before his/her project commences implementation. If the project is implemented without getting the said permission, it shall take all the responsibilities for any damage caused to the environment and for the legal actions taken against the damage and the loss the project will suffer as a result of the legal actions. This shall be part of the lease agreement.”

it is not implemented properly, due to unwillingness on the side of the Land Administration Department to work in cooperation with the Addis Ababa EPA.³²

Therefore, effectiveness of EIA process is paralyzed due to lack of strong mechanism that would enforce project owners submit the EISR to the Federal EPA or the relevant regional organ.

As we have seen before experts have difficulties to complete the review due to very short time provided by the law. To perform their task beyond and over their office hours they have to be encouraged through a well thought out incentive mechanism. But there is no means of incentive. This affects the quality of evaluating the EIA report.

4.6 WEAK POLITICAL COMMITMENT

The government shows some commitment to environmental protection by taking measures like enacting laws, establishing environmental units in some sectoral offices and establishing the environmental Council at Federal level. But there is no doubt that it is highly focusing on economic development than environmental protection. One evidence for this is the reluctant to enforce, Art. 3(3) of Proc. No. 299/2002. According to this Article, “Any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that EPA other relevant regional environmental agency has authorized its implementation.”³³ However, this procedure is reversed by the Investment(Amendment) Proclamation. (Proc. No.375/2003) According to this Proclamation investment licenses can be issued without any EIA. From this fact we

can see that there is a tendency of the government giving priority to the economic aspect of investment activities. But economic growth can not result in sustainable development without environmental protection and social development. Otherwise, development will not be long-lasting.

Environmental institutions suffer from heavy political pressures to remain focused on growth, understaffed and lacking the necessary power to fulfill their duties. The existing laws do not have enforcement mechanisms and are not dynamic, easily circumvented by economically oriented legislations.

End notes of chapter four

1. Melese and Mesfin, Overview of Environmental Impact Assessment in Ethiopia, 2008, p.39.
2. SKc ÇUÖ?=:34)ÿvu= }î * ÓUÑT(:)Ó)Y~f u:=fÄâÁ>ß' p~f:2007 ÁM }S: p/T/é'>y'c=+ tK?ï: Ñî
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3. Melese and Mesfin cited above at note 1, p.39.
4. The Constitution of the Federal Democratic Republic of Ethiopia, 1995, proc.No.1, Fed.Neg.Gaz., year 1, No.1.
5. Environmental Impact Assessment Proclamation, 2002, proc. No. 299, Fed.Neg.Gaz., Year 9, No.11.
6. Ibid
7. Interview with Ato Solomon Kebede, Head, Impact Assessment Service EPA, March 2008.
8. Melese and Mesfin cited above at note 1, p.15
9. Id., p.16
10. Desalegn Mesfin, Evaluation of the Environmental Impact Assessment System of Ethiopia, 2007, unpublished, Institute of Development and Research, Addis Ababa University, p.78.
11. Million Belay and Befekadu Refera(ed.) Environmental Impact Assessment Implementation and Challenges, 2008, p.24.
12. Id., p.28.
13. Melese and Mesfin cited above at note 1, p.12.
14. Id., p.16.
15. Id., p.13.
16. Desalegn Mesfin cited above at note 10, p.79.
17. Cited above at note 11, p.20.
18. Melese and Mesfin cited above at note 1, p.36.

19. Interview cited above at note 7.
20. Investment (Amendment) Proclamation, 2003, proc.No.373, Fed.Neg.Gaz., year 10, No. 8.
21. Cited above at note 5.
22. Desalegn Mesfin cited above at note 10, p. 57
23. Interview cited above at note 7.

24. Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, proc. No. 414, Fed.Neg.Gaz.
25. Environmental Organs Establishment Proclamation, 2002, proc.No.295, Fed.Neg.Gaz.
26. Micael and Timker, Flower Farm Industry, 2008, unpublished, Law school, Addis Ababa University, p.7.
27. Cited above at note 4.
28. Micael and Timker cited above at note 26, p.37.
29. Ethiopian Labour Proclamation, 2003, proc. No.377, Neg.Gaz., year 10, No.12, Art.14/1/e.
30. Micael and Timker, cited above at note 26, p. 38.
31. Cited above at note 4.
32. Melese and Mesfin cited above at note 1, p.44.
33. Cited above at note 5.

CONCLUSION AND RECOMMENDATION

Environmental degradation becomes a serious problem in Ethiopia. The government has taken significant measures to reverse the trend in environmental degradation and made a clear commitment to maximize the carrying capacity of its resource base. The 1995 Constitution of the Federal Democratic Republic of Ethiopia provides a strong constitutional foundation for the introduction and effective implementation of the EIA system. The Environmental Policy of 1997 sets out the guiding policy directions to be pursued pertaining EIA. The Environmental Impact Assessment Proclamation No.299/2002 has subjected development projects and public instruments in the country to pass through an EIA process prior to commencement of operation. The national EIA system helps to translate the government's commitment into action. However, the trend of compliance with and enforcement of the national EIA system is generally ineffective. Implementation of many provisions of this proclamation, particularly regarding regulation of the floriculture sector has many problems.

The newly emerging flower farming sector consumes large quantity of water, energy and agrochemicals throughout its production. Different chemicals used in the process of flower production pollute the air and soil, and cause some diseases on the employees due to the fact that adequate and satisfactory preventive measures are not taken. Many of the problems occur due to the absence of effective prior assessment and follow up procedure before and after the implementation of the project respectively. The main reason is that due focus is not given to issues in relation to the protection of the environment, including the EIA process by the government. The government is more concerned in giving investment incentives and the development of the floriculture business than the possible environmental damages that such projects may entail. The Investment Proclamation No.375/2003 reversed the requirement of EIA before the commencement of a project. This exhibits lack of political will on the part of the government to implement EIA law relative to its commitment to pursue policies for investment and economic growth. Apart from this, the major organs looking after the implementation of the EIA system became unable to adequately implement the law due to poor allocation of resources and budget limitation, lack of trained manpower, shortage of time, and so on. Moreover, sufficient

awareness. The balance between economic development and environmental protection is not sufficiently mainstreamed across government agencies and the general public. As a result, it is assumed that imposing flower investors to properly comply with EIA will discourage them from further investment. However, such reluctance will have an adverse effect on the sustainability of the industry in particular and economic growth of the country in general.

Furthermore, regional and sectoral environmental offices have communication gaps and ineffective coordination that creates confusion in the EIA process. They have no direct channel of communication with other sectors. Even the Environmental Protection Authority has no sufficient power to compel private or public development proponents that refuse to submit their projects for the EIA.

Another reason for the ineffectiveness of EIA proclamation is the absence of regulations or other specific rules to support its implementation. The procedural and review guidelines prepared by EPA are not yet approved by the Environmental Council. Still they are at a draft stage.

Thus, we can conclude that the EIA system in Ethiopia is not effective. Disregarding EIA will have an adverse effect not only to the environment and society, but also on the development programs and projects. The growing floriculture industry therefore needs serious attention and shall change the trend of undertaking investment activities without conducting EIA. Otherwise, if projects fail due to environmental reasons, both the investor and the government will not achieve the desired goal. This will lead the public to suffer from financial, social and environmental loss. Hence, the writer recommends that the following measures be taken.

- Ethiopia has national law dealing with the Environmental Impact Assessment. There is also strong constitutional foundation for its implementation. To have such laws by themselves without the requisite enforcement mechanisms would not bring any end results. Therefore, a strong enforcement mechanism has to be formed.
- The relevant organs have to be equipped with adequate manpower, budget and the necessary facilities to perform their jobs.
- The Investment Proclamation No.280/2002 and its amendment Proclamation No.373/2003 are inconsistent with the Environmental Impact Assessment Proclamation No.299/2002 and with the new criminal code. Therefore, the

- investment proclamation should be amended in order to include EIA as a requirement to grant investment permit before the implementation of a project.
- Having knowledge on environmental protection also helps to implement EIA. Hence, awareness should be created among various government officials, parliamentarians, business persons and the public through mass media that sustainable development is achieved through environmental protection. Furthermore, it is the writer's opinion that environmental protection courses, including environmental impacts, should be prepared and incorporated into the curricula at different levels. This will avoid misconceptions about EIA.
 - Environmental Protection Authority shall have the power to regulate both private and public sectors to submit their EISRs. It has to be restructured at a Ministry level in order to address environmental issues with in the Council of Ministers.
 - Since EIA Proclamation is a framework law it can not be implemented without regulations, directives or guidelines. Thus, specific subsidiary instruments must be prepared without delay. Guidelines for the registration, accreditation and licensing of EISR consultants must be prepared and approved by the Environmental Council.
 - There is no coordination between EPA and the Regional relevant organs as well as environmental units within the sectoral agencies. Strong institutional link between EPA and other organs must be established.
 - EIA must be set as a condition to get credits, land and business licenses. Environmental liability held by development programs and projects must be related with insurance schemes to be covered.
 - The new EHPEA Code of practice for sustainable flower production lacks clarity and endures many gaps on important social and environmental issues. Moreover, the code is not legally binding. Thus, the government has to incorporate existing legal provisions into this code to enable clear and effective application of the rules. The code should be up scaled into a binding legal instrument to be enforced on every flower producer.

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