

Teferi Bekele



WUJL, Nov-Dec.2024,2(1), 39-56

DOI: <https://doi.org/10.20372/wujl.v2i1.1334>

ISSN: 2226-7522 (Print) and 3005-7612 (Online)

Wallaga University Journal of Law

WUJL, November- December. 2024, 2(1), 39-56

Home Page: <https://journals.wgu.edu.et>

Original Article

Environmental Regulation in Ethiopia: Is It Adequate?

Teferi Bekele Ayana*

*LL. B (AAU), LL.M (ECSU), PhD in Law Candidate (AAU); Lead Assistant Legal Researcher and Research Director at Oromia Legal Training and Research Institute (Currently on study leave). He also teaches law at Oromia State University on a part-time basis. He is very grateful to the WUJL editorial team and the anonymous reviewers for their useful comments.

The initial Draft of this Article was written as a term paper for an Economic Regulation course in my PhD in Law Program at the School of Law of Addis Ababa University

Abstract

Environmental regulation is a key tool for environmental protection. The objective of this paper is to examine the adequacy of environmental regulation for the safety of the environment in Ethiopia. Methodologically, it is doctrinal and the analysis is based on the existing constitutional, policy, and legal frameworks. Secondary sources are also used to a limited extent. It concludes that the environmental regulation in the country is not adequate since some of the anticipated implementing guidelines or directives are not prepared, or even when prepared, not approved yet. This is so mainly in cases of environmental standards and *environmental impact assessment* guidelines which are essential regulatory mechanisms for the protection of the environment. Moreover, where legal frameworks of regulatory mechanisms are clear, they are poorly enforced because of a lack of funds and capacity of human resources. Accordingly, the paper suggests filling these gaps to have adequate environmental regulation in the country.

Article Information

Article History:

Received: 19-7-2024

Revised: 20-09-2024

Accepted: 10-11-2024

Keywords:

Adequacy, environmental laws, environmental policy, environmental regulation

*Corresponding

Author:

Teferi Bekele

E-mail:

bekele.teferi@yahoo.com

Copyright©2024 Wallaga University Journal of Law. All Rights Reserved

Introduction

Countries in the world strive to ensure economic development. In this endeavor, they

are also expected to adhere to environmental standards. However, economic development and environmental protection are often

considered as two competing interests. Environmental regulation is a tool that tries to strike the balance between these competing interests. Ethiopia has been taking so many policy and legal measures to deal with the situation, too. The main purpose of this paper is, therefore, to examine to what extent environmental regulation in Ethiopia is adequate to protect the environment basically by analyzing the existing constitutional, policy, and legal frameworks. To do this, it is organized into four sections.

Section one briefly explains the nexus between economic development and environmental protection with a view to contextualizing the relevance of environmental regulation. It explains the existing intervention strategies and the basic features/ characteristics of these strategies used for balancing both interests of environmental protection and economic development.

Section two shows the constitutional, policy, and legal frameworks within which environmental issues are operating in Ethiopia. The discussion in the section is neither detailed nor exhaustive as the purpose is just to lay the foundation for regulatory tools to be discussed in the subsequent section, section three.

Section three is the heart of the paper where legal and institutional mechanisms used for regulating the environment such as environmental impact assessment, licensing or permit system, environmental standards, citizen's suits, incentives, and environmental liabilities are all discussed and analyzed to

judge their adequacy thereto. Finally, section four concludes the paper.

1) Environmental Regulation: Setting the Context

Environmental regulation is well contextualized by considering the relationship between economic development and environmental protection. The relationship between the two is controversial. For some, it is positive as they reinforce each other; for others, it is negative as one flourishes at the expense of the other.¹ The trend is also not uniform. Although the negative relationship explains the situation in Sub-Saharan Africa, it is possible to make the relationship positive through effective environmental regulation.² South Africa is often cited as an example of a country that has effectively utilized its regulatory and enforcement mechanism to ensure that Foreign Direct Investment operations in its extractive industries do not impact negatively the environment.³ Moreover, if the environment is left unregulated, it brings environmental problems like pollution whose economic explanation is externalities which are generated affecting parties who have not contracted to bear the environmental damages.⁴

The question is what constitutes effective regulation so that economic development exists without harming the environment. No hard and fast rule fits all in this regard. The intervention strategies are of diverse. Some sectors like transportation and energy need substantial deregulation.⁵ Some other sectors like environment and homeland security need

¹Ghana Dennis O. Agelebe, 'Integrating Liberal Economic Regulation with Environmental Protection: Ethiopia, Zambia, Mali and Ghana', *Australasian Review of African Studies*, Vol.40, No 2, (2019), p105

² Id. p.110

³ Ibid

⁴ W. Kip Viscusi, Joseph E. Harrington, Jr., and John M. Vernon, *Economics of Regulation and Antitrust*, 5th ed., Cambridge MA: MIT Press, (2018), chapter 21

⁵ Id, Introduction.

restrictive regulation.⁶ Some are liberal; some others are restrictive.⁷ This section is devoted to the intervention strategies and some of their attributes/characteristics.

1.1. Intervention Strategies

In principle, numerous intervention strategies might be adopted. Neil Gunningham identified ten of such distinctive, but often mutually compatible intervention strategies. These are rules and deterrence where coerciveness from the government side is emphasized⁸, advice, and persuasion where cooperation is the focus⁹, criteria-based regulation where government officers depend on criteria to conclude (decision)¹⁰, responsive regulation where a mixture of cooperation and coercive is applied as the case may be¹¹, smart regulation where responsive regulation is expanded by including markets, civil societies, and other institutions¹², risk-based regulation where intervention is suggested depending upon the degree of risks¹³, meta-regulation where responsibility is placed upon the regulated organization by submitting a plan for approval by the regulator¹⁴, just deserts where intervention is made through proportional and just punishment of non-compliance¹⁵, restorative justice where intervention is made to give environmental offenders a chance to proactively put things right¹⁶ and ‘responsive

regulation’ where going beyond intervention strategy and examining matters like the operating and cognitive environment of organizations, the institutional environment, the different logics of regulatory tools, and changes in these elements are needed.¹⁷

From Neil Gunningham’s list, one can easily grasp the existence of a considerable diversity of intervention approaches. Some of them (as in the case of Criteria Strategies) are incoherent and provide almost unconstrained discretion to field officers.¹⁸ Others (particularly some hybrids) are internally inconsistent and/or underdeveloped in that they do not fully embrace a particular strategy.¹⁹ Some are proactive (anticipatory); some others are retroactive. Hence, Neil Gunningham rightly concludes that the best approach is applying different intervention strategies according to their suitability to particular regulatory contexts rather than seeking to identify a single intervention strategy.²⁰ However, effective intervention strategies are expected to be environmentally effective and economically efficient.²¹

1.2. Characteristics of Effective Intervention Strategies

Effective environmental regulations do reflect some unique characteristics which include

⁶ Ibid

⁷ Ghana Dennis O. Agelebe, *supra* note 1, p109.

⁸Neil Gunningham, ‘Enforcing Environmental Regulation’, *Journal of Environmental Law*, Vol.23, No2, (2011),p174

⁹ Ibid

¹⁰ Ibid

¹¹Ibid

¹² Ibid

¹³ Ibid

¹⁴ Neil Gunningham, *supra* note 8, p175

¹⁵ Id, p172

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Neil Gunningham, *supra* note 8, p201

¹⁹ Ibid

²⁰ Ibid

²¹ Michalak Krzysztof and Schucht Simone, Economic Aspects of Environmental Compliance Assurance (Proceedings from the OECD Global Forum on Sustainable Development 2-3 December 2004 OECD Headquarters, Paris, France), p13 available at https://www.researchgate.net/publication/275885954_ECONOMIC_ASPECTS_OF_ENVIRONMENTAL_COMPLIANCE_ASSURANCE last visited on 13 October 2024

enforceability²², adaptability to specific contexts, coordination between and among actors, and leaving discretionary powers to enforcers, especially to the local ones.²³ The whole idea is that effective intervention strategies reflecting these characteristics can lead to economic development without compromising the protection of the environment, i.e., environmentally effective; and economically efficient. With this, now let us turn to constitutional, policy, and legal frameworks for the protection of the environment in Ethiopia.

2) Environmental Protection in Ethiopia: Constitutional, Policy and Legal Framework

This section introduces the existing constitutional, policy, and legal framework for the protection of the environment in Ethiopia. There are many environmental laws in Ethiopia. Many of them are nationally enacted; some of them are domesticated treaties which are considered integral parts of the law of the land by Art. 9 (4) of the FDRE Constitution. Some of them are sectoral and some others are cross-sectoral.

Investment Proclamation No.1180/202, National Park Establishment laws, Water Resource Management Proclamation No. 197/2000, Public Health Proclamation No. 200/2000, Federal Rural Land Administration and Land Use Proclamation No. 456/2005, Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006, Development

Conservation and Utilization of Wildlife Proclamation No. 541/2007, Forest Conservation, Development and Utilization Proclamation No. 542/2007, Radiation Protection Proclamation No.571/2008, Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation No. 575/2008, Biosafety Proclamation No. 655/ 2009, The Convention on Biological Diversity, The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, etc. are all laws directly or indirectly related to the environment.

The purpose of this section is not to make detailed and exhaustive discussions of all these laws and policies. Doing this is not realistic in such a brief paper. Rather, it is to show the general framework it constitutional, policy, or legal within which environmental issues are operating in Ethiopia. This is important as the regulatory tools that will be discussed under section three directly or indirectly emanate from these policies and laws.

2.1. The FDRE Constitution

Under the FDRE Constitution, environmental issues are incorporated both as ‘fundamental rights’ and ‘environmental objectives. The fundamental rights component can be explained in terms of the right to a clean and healthy environment, the right to livelihood, and the right to sustainable development.²⁴ Accordingly, ‘‘all persons have the right to a

²² Enforceability is ‘the nitty-gritty of environmental regulation. For this, the regulation should be: i) transparent (clearly communicated); ii) accountable; iii) consistent (within and between sectors and over time); iv) proportionate (risk-based); v) targeted (outcome-focused); and vi) practicable (proper funding for

enforcers and clarity for business about what they have to do) (see Id p.14).

²³ Id pp.14-15.

²⁴ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, FEDERAL NEGARIT GAZETTE, 1st Year No.1, 1995 (‘hereafter FDRE Constitution’) Articles 43 cum.44.

clean and healthy environment’’.²⁵ This right includes the right to livelihood of persons who have been displaced or whose livelihoods are adversely affected as a result of the implementation of state programs.²⁶ Again, the constitution guaranteed the right to improved living standards and sustainable development for the people of Ethiopia as a whole and each Nation, Nationality, and People in particular.²⁷ Such right presupposes wise and prudent use of environmental resources, i.e., it is an aspect of the right to a clean and healthy environment.

The environmental objectives provided in the Constitution reiterate the fundamental right to health and a clean environment. Accordingly, they impose duties on the government not to design and implement projects that damage or destroy the environment, to hear the views of the people in the design and implementation of environmental policies, and generally to protect the environment.²⁸

Therefore, the FDRE Constitution regulated environmental rights and objectives which indicate Ethiopia’s deep concern and commitment to the protection of the environment. It also laid the foundations for the development of environmental policies and laws.

2.2. The 1997 Environmental Policy

The Environmental Policy of Ethiopia was approved by the Council of Ministers in 1997.

The Policy contains elements that emphasize the importance of mainstreaming socio-ecological dimensions in development programs and projects.²⁹ The goal of the Environmental Policy of Ethiopia is to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through sound management of the environment and use of resources so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.³⁰ The Environmental Policy provides several guiding principles that require adherence to the general principles of sustainable development.³¹ In particular, the a need to ensure that the Environmental Impact Assessment (EIA) completes the following:

- *Considers impacts on human and natural environments,*
- *Provides for early consideration of environmental impacts in project and program design,*
- *Recognizes public consultation processes as essential to effective management,*
- *Includes mitigation and contingency plans,*
- *Provides for auditing and monitoring,*
- *A legally binding requirement.*³²

²⁵ FDRE Constitution Article 44 (1).

²⁶ FDRE Constitution Article 44 (2): *All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.*

²⁷ FDRE Constitution Article 43 (1).

²⁸ FDRE Constitution Article 92

²⁹Federal Democratic Republic of Ethiopia Environmental and Social Management Framework,For

Africa CDC Regional Investment Financing Program, Revised ESMF Report (2019) pp.44-45.

³⁰ See the 1997 of the Environmental Policy of Ethiopia.

³¹FDRE Environmental and Social Management Framework, *supra* note 28, p45; Khushal Vibhute, ‘Environmental Policy and Law of Ethiopia: A Policy Perspective’, *Journal of Ethiopian Law*, Vol.22 (2008) p.80.

³²FDRE Environmental and Social Management Framework, Id. p.45

2.3. Some Environmental Proclamations

2.3.1. The Environmental Impact

Assessment Proclamation No.299/2002

Environmental impact assessment (EIA) is “the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument.”³³ Its aim is to integrate environmental considerations in the development planning process so that natural resources are used in a responsible manner and thereby the environment is protected, i.e., to ensure eco-friendly development.³⁴

The EIA proclamation defines the role and the relationship of different actors. Accordingly, the Environmental Protection Authority at the federal and regional levels (the Authority), the proponent, and the licensing agencies are the main actors in the proclamation. The Authority is the decision-maker. The implementation of any project that needs the conduct of an EIA study will not commence without the approval of the Authority.³⁵ Hence, the authority is the appropriate body to decide on the findings of the EIA study and to monitor the implementation of the project.³⁶ The proponent is the owner of the project and any organ of government if in the public sector or any person if in the private sector that initiates a project.³⁷ The licensing agency is any organ of government empowered by law to issue an

investment permit a trade or operating license or a work permit or to register a business organization, as the case may be.³⁸ The agency, prior to giving any permit, has to ensure that the Authority has authorized the implementation of the project.³⁹

Moreover, the EIA proclamation contains provisions dealing with public participation, incentives provided for the rehabilitation of degraded or polluted environments, grievance procedures, and offenses and penalties.

2.3.2. The Pollution Control Proclamation No. 300/2002

As can be understood from the preamble, the proclamation is enacted to control *pollution* that may arise following some social and economic development. It requires ongoing activities to implement measures that reduce the degree of pollution to a set limit or quality standard.⁴⁰ Thus, one of the dictates of the proclamation is to ensure, through inspection, the compliance of ongoing activities with the standards and regulations of the country through an environmental audit.⁴¹

The sectors that require standards shall include at least the following:

- (a) *Standards for the discharge of effluents into water bodies and sewage systems.*
- (b) *Air quality standards that specify the ambient air quality and give the allowable amounts of emission for both stationary and mobile air pollution sources.*

³³Environmental Impact Assessment Proclamation No.299/2002, FEDERAL NEGARIT GAZETA, 9th Year No.11, Addis Ababa, 3rd December 2002 Article 2 (3).

³⁴Khushal Vibhute, *supra* note 31, p.85; this is also understandable from the preamble of the EIA proclamation.

³⁵Environmental Impact Assessment Proclamation No. 299/2002, *supra* note 33, Article3 (1). Here, it is good to note that not all projects need EIA study. The proclamation envisaged the type of projects that need

and do not need EIA study to be fixed by the directive (see Art. 5)

³⁶ Id Articles 4 cum.12

³⁷ Id Articles 2 (9) cum. 7.

³⁸ Id Article 2 (5).

³⁹ Id Article 3 (3)

⁴⁰Environmental Pollution Control Proclamation No. 300/2002,FEDERAL NEGARIT GAZETA, 9th Year No. 12, Addis Ababa, 3rd December, 2002 Article 6 (1)

⁴¹ This is understandable from the whole readings of the proclamation, especially, Articles 3(1), 6 (5)

- (c) *Standards for the types and amounts of substances that can be applied to the soil or disposed of on or in it.*
- (d) *Standards for noise providing for the maximum allowable noise level taking into account the settlement patterns and the availability of scientific and technological capacity in the country.*
- (e) *Waste management standards specifying the levels allowed and the methods to be used in the generation, handling, storage, treatment, transport, and disposal of the various types of waste.*⁴²

As a follow-up to this proclamation (proc.no. 300/2002), Industrial Pollution Regulation No. 159/2008 was enacted to ensure the compatibility of industrial development with environmental conservation. It includes comprehensive industrial pollution standards for a range of industrial and mining activities.

2.3.3 Solid Waste Management

Proclamation No. 513/2007

The proclamation defined ‘solid waste’ as anything that is neither liquid nor gas and is discarded as unwanted.⁴³ Accordingly, solid waste management is the collection, transportation, storage, recycling, or disposal of solid waste or the subsequent use of disposal site that is no longer operational.⁴⁴ The proclamation is enacted to regulate these all. It has also the objective of creating further economic benefit out of the waste by different means like re-cycling.⁴⁵

For this, the proclamation imposed obligations on those who have roles in the management of

solid wastes: government officials, traders, and the community. For example, restaurants and food industries must collect, store, and dispose of solid waste in an environmentally friendly manner.⁴⁶ Similarly, construction companies, together with urban administrators, must arrange appropriate places for waste disposal, a precondition necessary even for the issuance of construction permits.⁴⁷

To conclude, constitutional, policy, and legal frameworks for the protection of the environment in Ethiopia are basically the above ones. As indicated in the introductory remark, they are the main ones; not the only ones. They are also the sources for environmental regulation that we will consider right away in the next section.

3) Environmental Regulation in Ethiopia: Examining Adequacy

This section examines the adequacy of environmental regulation in Ethiopia by examining available legal and institutional mechanisms and identifying the gaps there. Accordingly, the section is organized into two sub-sections. The first sub-section deals with the existing legal mechanisms. The second sub-section is about institutional mechanisms. Let us see one by one.

3.1. Legal Mechanisms

3.1.1. The Environmental Impact Assessment (EIA) System

EIA is considered as a very essential tool for environmental protection with

⁴²Environmental Pollution Control Proclamation No.300/2002, *supra* note 40, Article 6 (1).

⁴³ Solid Waste Management Proclamation No. 513/2007, FEDERAL NEGARIT GAZETA, 13th Year No.13, Addis Ababa, 12th February 2007 Article 2 (6).

⁴⁴Id Article 2(7).

⁴⁵IdArticle3; Habtamu Lanjore, Interplay Between Investment Laws and Environmental Laws in Ethiopia about Environmental Protection, LL.M Thesis, Jimma University (2015) p.43

⁴⁶ Solid Waste Management Proclamation No. 513/2007, *supra* note 43, Article10.

⁴⁷ Id Article12.

multidimensional importance.⁴⁸ It can be used to predict the environmental consequences of a proposed major development project.⁴⁹ It can also provide a forum for public involvement in the decision-making process.⁵⁰ However, the proper functioning of the EIA system in Ethiopia has many gaps. The evaluative study conducted in 2010⁵¹ can clearly illustrate the case at hand. This study used eighteen (18) criteria that focus on institutional aspects, the EIA process, and other features of the EIA system. Accordingly, the study found that the EIA system *theoretically* meets 12 of 18 evaluation criteria, partially meets 4 and fails to meet 2. *In practice*, the system meets only 1 criterion, partially meets 5, and fails to meet 12. Hence, the study depicted that a huge gap exists between theory and practical implementation of the EIA system in Ethiopia.

At this juncture, it is good to appreciate that the study was conducted long before a decade and so many improvements have been made since then. However, it objectively indicates the existence of a huge gap in EIA system application in Ethiopia even 8 years after its introduction by Proclamation no. 299/2002. The question is why does the gap exist? Many factors contributed to it, but lack of complementarity between environmental laws and investment laws, inadequate legal coverage, poor reviewing practice of EIA studies, and poor monitoring and evaluation process can be mentioned as the main reasons. Let us see one by one.

a) Lack of Complementarity between Environmental and Investment Laws

As discussed in the first section, development and environmental protection are in tension thereby demanding effective regulation for striking the balance. Investment, being an aspect of development, exhibits this tension. Environmental laws of the country require doing EIA and receiving authorization from the Environmental Protection Authority before the commencement of the investment activity except when the project is free from conducting an EIA study.⁵² However, investment laws do not specifically require conducting EIA as a criterion to get an investment permit. The investment proclamation of the country is very general about environmental protection. The relevant provision of the newly passed investment law reads as follows⁵³:

54. Duty to Observe Other Laws and Social and Environmental Sustainability Values

1/ All investors shall carry out their investment activities in compliance with the Laws of the country.

2/ All investors shall give due regard to social and environmental sustainability values including environmental protection standards and social inclusion objectives in carrying out their investment projects

⁴⁸ Habtamu, *supra* note 45, p.7

⁴⁹ Mesfin Bayou and Mellesse Damite, An Overview of EIA in Ethiopia, Gaps and Challenge (2008).2

⁵⁰ Ibid

⁵¹ Dominik Ruffeis, Willibald Loiskandl, Seleshi Bekele Awulachew & ElineBoelee, Evaluation of the environmental policy and impact assessment process in Ethiopia, Impact Assessment and Project Appraisal

(2010), 28:1, 29-40, DOI: 10.3152/146155110X488844; This study adopted Tedros and Quinn (2007) criteria for evaluating the EIA system in Ethiopia.

⁵² Environmental Impact Assessment Proclamation No.299/2002, *supra* note 33, Articles3 and 5.

⁵³ Investment Proclamation No. 1180/2020, FEDERAL NEGARIT GAZETA, 26th Year No. 28, Addis Ababa, 2nd Day of April 2020, Article54 (1-2).

The above provision of the investment law imposes two obligations on the investors: to comply with the laws of the country and to give due regard to social and environmental sustainability values while doing the investment activities. Both obligations are very general and far from directly guaranteeing an investor to make an EIA study to get an investment permit. The duty to make an EIA study is conceived only if one interprets "...in compliance with the laws of the country" broadly. According to the investment law, an investor can get an investment permit provided that s/he fulfills other requirements. Officials in investment commissions or other licensing agencies are hardly aware of environmental standards and environmental protection authority directives.⁵⁴ In other words, s/he is not prohibited from getting the permit for the simple reason that s/he did not conduct an EIA study.⁵⁵ This creates an opportunity for commencing the implementation of projects without doing an EIA study although they are supposed to do it. Again, no provision in the investment proclamation law requires the Investment Agency of Ethiopia to consult the Environmental Protection Authority as far as the EIA study is concerned before rendering an investment permit. The investment law would have complemented the environmental law had it made conducting an EIA study mandatory or cross-referred to it. Similarly, no legislation compels sectoral and financial institutions to coordinate with the Environmental Protection

Authority and obtain environmental clearance before rendering relevant services.⁵⁶ However, making institutional links and coordination is one of the essential features of environmental regulation that contributes to the protection of the environment by serving as checks and balances as already explained in the first section of the paper.

b) Legal Gap in the Process of Conducting EIA

By and large, the Ethiopian environmental regime is characterized by a "rule-oriented approach".⁵⁷ Despite this, the system has still legal lacunae. One of the areas where such gaps exist is in the process of conducting EIA. Environmental Protection Authority published EIA guidelines in 2003 and the directives in 2008. The guidelines and the directives were prepared based on Art. 5 (1) of EIA Proclamation No.299/2002 which reads as "every project which falls in any category listed in any directive issued under this Proclamation shall be subjected to environmental impact assessment." The guideline provides a list of projects and activities which require full, preliminary, and no EIA studies.⁵⁸ It highlights aspects of potential environmental impacts related to water, air, noise pollution and etc.⁵⁹ However, the guidelines are not binding as they are not yet approved by the Council of Minister.⁶⁰ This means that proponents may not be forced to obey the guidelines and they can avoid dealing with environmental protection organs.⁶¹

⁵⁴James Krueger and *et al*, 'Environmental Permitting in Ethiopia: No Restraint on "Unstoppable Growth?"', *Haramaya Law Review*, Vol.1, No1 (2012), p87.

⁵⁵ Habtamu made similar analysis on the previous investment law, Proc. No.769/2012 (See Habtamu, *supra* note 45, p.66).

⁵⁶Mulugeta Getu, 'The Ethiopian Environmental Regime Versus International Standards: Policy, Legal, And

Institutional Frameworks', *Haramaya Law Review*, Vol.1, No.1 (2012), p70.

⁵⁷ Ibid

⁵⁸ Dominik Ruffeis and *etal*, *supra* note 51, p34

⁵⁹ Ibid

⁶⁰ Habatamu Lanjore, *supra* note 45, p49.

⁶¹ Ibid

Similarly, the directives are not effective because they are not approved. Hence, the EIA law is incomplete and inadequate as the implementing laws are not in place.

c) **Poor Reviewing, Monitoring and Auditing**

A body responsible for the task of reviewing, monitoring, and auditing the environment has a different name from time to time. Originally, it was Environmental Protection Organ established by Proclamation No. 9/1995, later re-established as Environmental Protection Authority by Proclamation No. 295/2000. Recently, it was the Ministry of Environment, Forest and Climate Change under Forest Development, Conservation and Utilization established by Proclamation No.1065/2018. More recently, the Federal Executive Organ Establishment Proclamation No.1263/2021 established the Environment Protection Authority as an autonomous federal government body having its legal personality and accountable to the Ministry of Planning and Development.⁶² This body, especially in the beginning, conducts weak or no review, monitoring, and auditing.⁶³ The reasons are many. First, many EIA studies which are conducted largely by international or national consultants were not submitted to it or submitted belatedly at the operational level.⁶⁴ For example, a study shows that only half of the EIA reports produced by donor agencies between 1995 and 2003 were submitted to the Environmental Protection Authority for official

review.⁶⁵ Second, the institutional capacity of the reviewing body is limited in terms of expertise human resources, and budgets.⁶⁶ Third, although the law demands public participation in the review process of EIA, this is lacking in practice; if at all it exists, it is not genuine.⁶⁷

To conclude, although the EIA system is considered an essential tool for economic regulation of the environment, the system has gaps both at entry and in its process thereby questioning the adequacy of the regulation.

3.1.2. **The Permit or Licensing System**

Environmental permitting is one of those very important areas in environmental governance where the process of deciding between environment and development can be made clear.⁶⁸ It is a decision measuring an economic project against an explicit set of environmental criteria.⁶⁹ It involves balancing and choosing between environment and development.⁷⁰ In its broadest sense, it includes any type of license or permit that has at least one environmental criterion.⁷¹ Therefore, the permit system is one of the criteria-based regulatory mechanisms as an intervention approach in regulating the environmental issue we briefly discussed in the first section of this paper.

In Ethiopia, environmental permits are needed for different purposes and are found in different environmental laws. Accordingly, an environmental permit is needed for any discharge of waste into water bodies⁷²,

⁶² Definition of Powers and Duties of Executive Organs Proclamation No.1263/2021, FEDERAL NEGARIT GAZETA, 28th Year No.4, Addis Ababa, 25th January 2022, Articles 59 (1) cum.89 (1).

⁶³ Dominik Ruffeis and *et al*, *supra* note 51, pp.35 & 37

⁶⁴ Id p.35.

⁶⁵ Ibid

⁶⁶ Id p37

⁶⁷ Id p.35

⁶⁸ James Krueger and *etal*, *supra* note 54, p74

⁶⁹ Ibid

⁷⁰ Id., p.82

⁷¹ Ibid

⁷²Ethiopian Water Resources Management Proc.No.197/2000, FEDERAL NEGARIT GAZETA, 6th Year No. 25, Addis Ababa,9th March 2000, Article11(1)

collection and disposal of solid or hazardous waste⁷³, operating businesses that cause air or water pollution⁷⁴, starting a project or business that has environmental impacts and requires an impact statement.⁷⁵ Because of this, the permit system has not only the function of registration as well as control but also enhances government transparency.⁷⁶

As regards permitting institutions, environmental institutions such as the Environmental Protection Authority and regional environmental agencies do very little of the environmental permitting.⁷⁷ These institutions have legal authority only to issue permits for hazardous waste⁷⁸ and, in practice, do not issue any permits or licenses at all.⁷⁹ The Environmental Protection Authority has the power to conduct environmental impact assessments, but this power will be exercised only if a licensing authority (or a bank) refuses to go forward without the Authority's (EPA's) approval.⁸⁰ Ethiopian Investment Commission, and different Ministries like the Ministry of Water and Energy, the Ministry of Trade and Integration, etc. are licensing institutions. In the context of industries, the licensing agencies grant a license to a factory after verifying that the effluent is not a pollutant or will not exceed the limit set under the relevant environmental standard and it will not entail damage if released into the environment.⁸¹ The

problem with this is that licensing agencies do not have the expertise required for making such a judgment as doing this needs to conduct EIA, a task entrusted to the Environmental Protection Authority. Environmental Protection Authority, however, cannot properly discharge this duty since environmental standards are not fully prepared and implemented. Moreover, the scope of the duty to verify the licensing agencies is limited to some specified industrial sectors only.⁸²

A license granted can be renewed, suspended, or revoked. For example, an investment permit shall be renewed annually before the issuance of business license.⁸³ It can also be suspended if the investor fails to submit accurate and timely information, obtains the permit based on false information, uses an investment permit incompatibly with the objective, and fails to review without good cause.⁸⁴ Furthermore, it can be revoked if the investor fails to commence investment project implementation, fails to rectify the issue that caused the suspension of the investment permit, voluntarily forsakes his investment activity, misuses, or illegally transfers to third-party investment incentives.⁸⁵ In factories, the competent environmental organ shall suspend or cancel a license if it has reason to believe that the continuation in operation of the factory

(d) and Ethiopian Water Resources Management Reg. No.115/ 2005, FEDERAL NEGARIT GAZETA, 11th Year No. 27, Addis Ababa ,29th March 2005, Art.11 (1).
⁷³ Solid Waste Management Proc. No. 513/2007, *supra* note 43, Article 4 (2) and Environmental Pollution Control Proc. No. 300/ 2002, *supra* note 40, Article 4 (1).
⁷⁴ Prevention of Industrial Pollution Regulation No.159/2008, FEDERAL NEGARIT GAZETA, 15th Year No.14, Addis Ababa, Article 5.

⁷⁵ James Krueger and *et al*, *supra* note 54, p.82

⁷⁶ *Id.* p.83

⁷⁷ *Ibid*

⁷⁸Environmental Pollution Control Proclamation No.300/2002,*supra* note 40, Article 4

⁷⁹ James Krueger and *et al*, *supra* note 54, p.83

⁸⁰ *Ibid*

⁸¹ Prevention of Industrial Pollution Regulation No.159/2008, *supra* note 74, Article 5.

⁸² *Id.*, Article 3

⁸³ Investment Proclamation No.1180/2020, *supra* note 53, Article 11(1).

⁸⁴ *Id.* Article 13 (1).

⁸⁵ *Ibid*

may entail serious pollution.⁸⁶ An investor whose permit is suspended will be given one year to take corrective measures. If the corrective measure is not taken within one year, the permit will be revoked. An investor whose investment permit is revoked shall return all investment incentives he received to the Ministry of Revenues, the Ethiopian Customs Commission, the Ministry of Finance, and other pertinent organs within one month of the revocation.⁸⁷

3.1.3. Setting Environmental Standards

Broadly speaking, in practice, environmental standards can be set from either first principles or based on existing national or international guidelines.⁸⁸ Deriving the standards from first principles requires classification, and prioritization of pollutants, derivation of pollutant exposure processes, and determination of their ecological effects.⁸⁹ The information required to develop such principles is drawn predominantly from combinations of extensive epidemiological and toxicological studies which is important to know health and environmental effects.⁹⁰ Since this process is expensive, there are a limited number of international sources who collate and interpret the data in order to prepare guidelines.⁹¹ Most countries depend on the existing national or international guidelines.

Coming to Ethiopia, environmental standards are among several issues covered by Environmental Pollution Control Proclamation No. 300/2002.⁹² The proclamation authorized the Environmental Protection Authority to formulate practicable environmental standards based on scientific and environmental principles.⁹³ The proclamation also makes an illustrative listing of sectors where setting such standards is necessary: air, water, soil, noise, etc.⁹⁴ However, there were no documents that outlined the national or regional strategies that the ministries and agencies could adopt to translate existing policies, legal provisions, or guidelines for air pollution into practical programs except effluent limits on certain water pollutants and on air pollutants for a specified list of industries which are poorly enforced, a feature of non-effective environmental regulation.⁹⁵

Moreover, the Environmental Protection Authority together with the United Nations Industrial Development Organization developed draft guideline ambient environment standards in 2003.⁹⁶ In preparing environmental standards, baseline data is very important. That is why the draft guideline itself recognizes that baseline data is important for the implementation of environmental quality standards particularly about the following:

⁸⁶ Prevention of Industrial Pollution Regulation No.159/2008, *supra* note 74, Article7 (2).

⁸⁷ Investment Proclamation No 1180/2020, *supra* note 53, Article 13 (5).

⁸⁸ Environment Standard Guideline, Introduction.

⁸⁹ *Ibid*

⁹⁰ *Ibid*

⁹¹ *Ibid*

⁹²Environmental Pollution Control Proclamation No.300/2002, *supra* note 40, Article 6 .

⁹³ *Id.*, Article 6 (1)

⁹⁴ *Ibid.*

⁹⁵ Getnet Mitike and *et al*, 'Review of Policy, Regulatory and Organizational Frameworks of Environment and Health in Ethiopia, *Ethiopian Journal of Health Dev.*, 30 (1 Special Issue) (2016), p1 and James Krueger and *et al* , *supra* note 54, p.85.

⁹⁶ The Environmental Protection Authority and United Nations Industrial Development Organization, Guideline Ambient Environment Standards for Ethiopia (Prepared under the Ecologically Sustainable Industrial Development Project US/ETH/99/068/ETHIOPIA,2003; Hereinafter, referred as Environment Standard Guideline).

- forming a basis for zoning; where general or special standards should apply;
- assessing the assimilative capacity of the receiving environment;
- identifying the areas that require stringent or less stringent application of standards; and,
- formulating rehabilitation and/or conservation measures.⁹⁷

In developing the 2003 draft guideline, where sufficient national baseline information is available, it is used as a starting point to assess it against international guidelines to adjust to national standards. Where there is no sufficient national baseline information, additional baseline data collection was undertaken to improve or adapt the initial standards to own country's situation. However, many of the guideline standards have been adopted directly from international guidelines as recommended for developing countries. Accordingly, the draft guideline lists quality standards on four things: air, water, soil and groundwater, and noise standards. Its role in controlling pollution might be immense. However, it is not tested as it is a mere draft and not a binding document. But, the crucial thing in the course of making this kind of environmental standard development is to consider adaptability. A good characteristic of environmental regulation, as indicated in section one of this paper, is the one that is easily adaptable to the context.

3.1.4. Environmental Litigation Procedure (Citizen Suits)

In civil cases, a person who initiates a case is expected to show his/her vested interest in the case.⁹⁸ In environmental litigation, a person can initiate a case without showing this vested interest. Such a process of initiating a case without showing a vested interest in an environmental case is known as public interest litigation. Public interest litigation is a “legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected”.⁹⁹ It has several purposes: provides effective protection of the weaker sections of the community; makes the government in general and the executive, in particular, accountable and act according to its established duty to abide by and enforce legal norms; remedies democratic deficiency; makes the consideration of transparency in decision making real; protects and sustains democratic governance and the rule of law; promotes access to justice before judicial bodies; allows participative justice, etc.¹⁰⁰

Because of its multifaceted purposes, public interest environmental litigation has been introduced into Ethiopia since 2002 by the Environmental Pollution Control Proclamation. The relevant law reads as follows:

⁹⁷ Environment Standard Guideline, Introduction

⁹⁸ Ethiopian Civil Procedure Code, Art. 33 (2).

⁹⁹ Indian Supreme Court Judgment *Janata Dal v. H.S. Chowdhary* with Writ Petition (CrI.) No 114 of 1991 *Dr. P. Nalla Thampy Thera, Petitioner Versus Union of India and Others*, Respondents Criminal Appeal Nos. 304-311 of 1991 and Writ Petition (CrI) No. 114 of 1991 as cited in Yenehun Birlie, Public Interest Environmental Litigation in Ethiopia: Factors for its

Dormant and Stunted Features, *Mizan Law Review*, Vol.11, No.2 (2017), p305.

¹⁰⁰Guardial Singh Nijar, “Public Interest Litigation, A Matter of Justice: An Asian Perspective” (2006), available at <https://www.aseanlawassociation.org/9GAdocs/Malaysi a.pdf>, p3 <accessed on August 26/2017>, as cited in Yenehun, id, p309

11. Right to standing

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

2) When the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has complained is dissatisfied with the decision, he may institute a court case within sixty days from the date the decision was given or the deadline for a decision has elapsed.¹⁰¹

The above provision is explicit in that it allows a person to lodge a complaint before an administrative body established for the protection of the environment (environmental protection authority at the federal or regional), or a court without the need to show any vested interest. However, a study conducted by Yenehun shows that little progress has been recorded in utilizing this innovative litigation tool.¹⁰² Several reasons account for this: established executive dominance political tradition which does not invite for reviewing its action whereas the nature of public interest invites such revision, Ethiopia's predominant

civil law legal system which considers public interest litigation as enforcing the civil interest of the public and expects public institutions like Ministry of Justice for its execution¹⁰³, poor culture of judicial activism to challenge executive action or decision, absence of political will which partly emanates from the parliamentary where the executive is elected by the legislature and where the great majority of laws and policies are initiated by the executive¹⁰⁴, the inadequacy of access and awareness of environmental information, especially among citizens, etc.¹⁰⁵

3.1.5. Incentives

The other mechanism for regulating the environment is to give incentives to those who protect the environment. Normally, respecting environmental laws is the duty of everyone. If that is the case, one may ask a question: should someone be given an incentive for discharging his/her obligation or for someone who protects the environment by going beyond their duty? Even though it is an obligation of everyone, including investors to respect countries' environmental laws, it is advantageous if there are incentive mechanisms for those investors who respect the laws and work in an environmentally friendly manner.¹⁰⁶ This will help not only to protect the environment but also to enhance a good environment for the attraction of Foreign Direct Investment.¹⁰⁷ This

¹⁰¹ Environmental Pollution Control Proclamation No. 300/2002, *supra* note 40, Article 11.

¹⁰² Yenehun, *supra* note 99, p304.

¹⁰³ Contrary to this, common law legal tradition considers public interest litigation as an interest separate from that of the state –moreover, an interest which is often in direct conflict with the interest represented by the government'. Hence the expectation for the litigation is not limited to government institutions (state and non-state actors can take part in it).

¹⁰⁴ However, opting for parliamentary system alone is not adequate to discourage application of public interest

litigation. For example, India and England have parliamentary form of government. However, public interest litigation in these countries, especially in England is very much progressive because of strong culture of judicial independence (Yenehun, *supra* note 99, p339).

¹⁰⁵ For detail discussion on barriers to effective implementation of public interest litigation see Yenehun, *Id.*, pp.331-340.

¹⁰⁶ Habtamu Lanjore, *supra* note 45, p55

¹⁰⁷ *Ibid*

is so because investors prefer to invest in countries where there are incentives than where there are no incentives.

It may be cognizant of this fact that some Ethiopian environmental laws recognize incentives as regulatory tools. For example, Pollution Control Proclamation No.300/2002 provides the following:

Art.10. Incentives

- 1) *Incentives for the introduction of methods that enable the prevention or minimization of pollution into an existing undertaking shall be determined by regulations issued hereunder.*
- 2) *Importation of new equipment that is destined to control pollution shall, upon verification by the Authority, be exempted from payment of customs duty.¹⁰⁸*

However, the provision is general and difficult to implement without details. What type of equipment prevents or minimizes pollution? A regulation issued under the proclamation, Reg. No.159/2008 is also silent about incentives to be provided. Nonetheless, it is possible to envisage it includes instances where investors use solar energy sources or use wastes in a recycling manner though they have no legal obligation to do that. Since this is important to foster environmental protection, it is logical to guarantee incentives for such activities.¹⁰⁹

Similarly, Art.16 (2) EIA Proclamation No. 299/2002 provides that environmental agencies may provide financial and technical support for “any environmental rehabilitation or pollution prevention or clean-up project”. Again, this is not clear what such support would cover, but the provision should be interpreted to at least include EIA studies.¹¹⁰ However, the EPA has no funds or budgetary provisions for the incentives.¹¹¹ Moreover, there are no guidelines for implementing the incentive provision.¹¹² In order to encourage the performance of EIA, it would be beneficial to widen the scope of available incentives to include tax exemptions/holidays and market access.¹¹³ Furthermore, the government could make EIA a criterion for renewing permits and allocating credit or land.¹¹⁴

In short, although incentives are recognized as one form of environmental regulatory tool in Ethiopia, it is difficult to apply as it is not supported by detailed guidelines and necessary budgets.

3.1.6. Environmental Liabilities

By and large, environmental liabilities can be administrative, civil, or criminal. Administrative liabilities are liabilities imposed on a person by an administrative body mainly by the Environmental Protection Authority as remedies. The Authority can take administrative or legal remedies proactively or reactively in case when there is actual or potential damage to the environment.¹¹⁵ This

¹⁰⁸ Pollution Control Proclamation No.300/2002, *supra* note 40, Article 10.

¹⁰⁹ *Ibid*

¹¹⁰ Tesfaye Abate, ‘Environmental Impact Assessment and Monitoring’, *Haramaya Law Review*, Vol.1, No.1, (2012), p.121.

¹¹¹ Solomon Kebede, The Law and EIA Governance in Practice: EIA Proclamation No 299/2002, 2006, unpublished manuscript as cited in Tesfaye, *Id.*, p121.

¹¹² Mellese Dantie and *et al.*, Overview of Environmental Impact Assessment in Ethiopia: Gaps and Challenges 51(2008) as cited in Tesfaye, *supra* note 1110, p121.

¹¹³ Tesfaye, *supra* note 110, p121.

¹¹⁴ *Ibid*

¹¹⁵ Tsegai Berhane and Merhatbeb Teklemedhn, Environmental Law, Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute(2009), p166

entails, among other things, installation of sound technology, recycling of waste, cleaning up or payment of the cost of cleaning up the polluted environment, and any measure up to the closure or relocation of any enterprise in order to prevent harm.¹¹⁶

Civil liabilities are liability regimes adopted by countries to make private entities accountable for harm they create on the environment knowingly or negligently.¹¹⁷ They happen when nuisances of public or private nature exist. Public nuisance is an act affecting the public at large or considerable portion of it; and it must interfere with the rights which members of the community might otherwise enjoy.¹¹⁸ In such type of public nuisance, the damage to the environment could be manifested by affecting both private interests which could be entertained on the basis of Arts. 33 (2) of Civ. Pro. C and 2091 of the Civ. C; and diffused public interests which could be handled on the basis of Arts. 37 (2) (b) of the FDRE Constitution and 11 of Pollution Control Proclamation.¹¹⁹

Private nuisance is using or authorizing the use of one's property or of anything under one's control so as to injuriously affect an owner or occupier of property by physically injuring his property or by interfering materially with his health, comfort or convenience.¹²⁰ An action is

brought against the hand committing the injury, or against the owner for whom the act was done.¹²¹ Nuisance remedies can be compensatory damages, abatement, and injunction.¹²²

Criminal liabilities are reflections of growing awareness among the judiciary of seriousness of environmental wrongdoing, laws and courts are increasingly punishing wrongdoers by imprisonment.¹²³ Criminal liabilities are encompassed in the Criminal Code, and other enabling environmental statutes. To avoid any possible contradiction between the Criminal Code and the other enabling environmental statute, the Criminal Code provides that nothing in this Code shall affect regulations and special laws of criminal nature provided that the general principles embodied in this Code are applicable to those regulations and laws except as otherwise expressly provided therein.¹²⁴ Reiterating the above position, the Pollution Control Proclamation provides that unless the provisions of the Criminal Code provide more severe penalties, the penalties laid down under this proclamation shall be applicable.¹²⁵ Accordingly, criminal liabilities are provided under Criminal Code¹²⁶, Pollution Control Proclamation¹²⁷, and Environmental Impact Assessment Proclamation.¹²⁸ They can take different forms- fine and/or imprisonment

¹¹⁶ Pollution Control Proclamation No.300/2002, *supra* note 40, Article 3.

¹¹⁷ Kibru Debebe, *Civil Liability for Environmental Damage in Ethiopia: Legal and Institutional Analysis*, Master's Thesis (2020) p1.

¹¹⁸ Tsegai Berhane and Merhatbeb Teklemedhn, *supra* note 115, p167.

¹¹⁹ *Id.* P.168.

¹²⁰ *Ibid*

¹²¹ *Id.* p.169.

¹²² *Ibid*

¹²³ Dinah Shelton and Alexander Kiss, *Judicial Hand Book Environmental Law*, Printed at the Publishing

section of the United Nations Office at Nairobi (2005), 59.

¹²⁴ The Criminal Code of the FDRE Proclamation No.414/ 2004, FEDERAL NEGARIT GAZETA, 9th of May 2005, Addis Ababa, Article 3.

¹²⁵ Pollution Control Proclamation No.300/2002, *supra* note 40, Article 12 (3).

¹²⁶ The Criminal Code of the FDRE Proclamation No.414/ 2004, Articles 235 and 519.

¹²⁷ See Pollution Control Proclamation No 300/2002, *supra* note 40, Articles 8, 12-17.

¹²⁸ Environmental Impact Assessment Proclamation No 299/2002, *supra* note 33, Article 18

depending upon the nature of the case. They can also be imposed both on natural and legal persons.

3.2. Institutional Mechanisms

At present, the powers and duties of federal executive organ is defined by Proclamation No.1263/2021. The proclamation established the Environment Protection Authority as an autonomous federal government body having its own legal personality.¹²⁹ It is accountable to Ministry of Planning and Development.¹³⁰ The Ministry is entrusted with many tasks one among which is to initiate policies, strategies and laws with respect to climate change and environment.¹³¹ With regard to the powers and functions of the Environment Protection Authority, the proclamation provides that the powers, duties and organization of the Authority shall be determined by Council of Ministers.¹³² The anticipated regulation is not issued yet. However, it is expected that the Authority will have a minimum powers and duties which it had under Proclamation no.295/2002 thereby leading and managing the country's overall environmental affairs.

Although the Environment Protection Authority is the main institution established for this purpose, other Ministries like Ministry of Water and Energy, Ministry of Agriculture, Ministry of Mines, Ministry of Irrigation and Lowland, Ministry of Industry, Ethiopian Forest Development, Petroleum and Energy Authority, Ethiopian Investment Holdings, the Ethiopian Biodiversity Institute, and other similar regional offices are all institutional frameworks for protection and regulation of the environment.

Despite these efforts, Mulugeta argues, environmental protection in Ethiopia remains in its infancy due to a focus on short-term economic gain, lack of commitment, understaffing and lack of capacity in many offices, lack of effective enforcement mechanisms, and loose coordination among responsible agencies.¹³³ He is of opinion that while there has been progress, it has been incommensurate with the nature and degree of threat that Ethiopia is experiencing.¹³⁴

4) Conclusions and Recommendations

It is possible to ensure economic development without harming the environment with effective environmental regulations which reflect characteristics of enforceability, adaptability, interagency cooperation and coordination, and the discretion of enforcers. This paper examines the adequacy of economic regulation for protection of the environment in Ethiopia. Accordingly, the protection of the environment in Ethiopia has constitutional, policy and legal frameworks. There are many environmental laws. Many of them are nationally enacted; some of them are domesticated treaties. Still, some of them are sectoral and some others are cross-sectoral. They provide legal and institutional mechanisms for regulating the environment. Environmental impact assessment, the permit or licensing system, setting standards, allowing citizen's suits (public interest litigation procedure), incentives, setting ranges of environmental liabilities are the major legal mechanisms for regulating the environment. Environmental Protection Authority is also

¹²⁹ Definition of Powers and Duties of Executive Organs Proclamation No.1263/2021, *supra* note 62, Article59 (1).

¹³⁰ *Id.* Article 89 (1)

¹³¹ *Id.* Article 28.

¹³² *Id.*, Article 89 (2).

¹³³ Mulugeta Getu, *supra* note 56, p64

¹³⁴ *Ibid.*

established as an autonomous institution to play regulatory role.

However, it is difficult to say the economic regulation of the environment in Ethiopia is adequate as some of anticipated implementing guidelines or directives are not prepared or even when prepared, not approved yet. This is so mainly in case of environmental standards and EIA guidelines which are essential regulatory mechanisms in protection of the environment. Moreover, where legal frameworks of regulatory mechanisms are clear, they are poorly enforced because of lack of fund and capacity of human resources. Enforcement of regulatory mechanisms, as already explained under section one, is a knitty-gritty in the protection of environmental protection. This is manifestation of inadequacy of economic regulation of the environment since, borrowing Neil Gunningham's expression, for environmental legislation to 'work' it must not only be well designed but also efficiently and effectively enforced. Hence, there is a need to fill these gaps so as to have adequate economic regulation of the environment in the country. Accordingly, the paper suggests the following specific recommendations:

- The 2003 draft EIA guidelines, the 2008 draft EIA directives, and the 2003 draft environmental standards should be approved and implemented. Other economic laws such as investment laws should complement environmental laws for example by clearly obliging the investors to conduct EIA.
- The institutional capacity of the Environmental Protection Authority should be strengthened in terms of finance and technical expertise so that it

effectively review, monitor and audit EIA studies; and properly implement environmental standards and other incentive mechanisms.

- Enhancement of judicial activism and public awareness creations are important to make public interest litigation more practical.