

# **An Appraisal of the Legal Bottom-Line of Corporate Environmental Responsibility in Ethiopia**

*Ayalew Abate Bishaw\**

## **Abstract**

*While working towards attracting huge investment and promoting business whether or not developing countries have the necessary environmental legal regime to hold corporations legally liable is often an issue. In an effort to partly respond on the issue, this article is meant to assess the minimum environmental law requirements applied for holding business entities (both foreign and domestic) liable to their environmental misdemeanors in Ethiopia-‘the legal bottom lines of corporate environmental responsibility.’ The legal bottom lines of corporate environmental responsibility are requirements that corporations or business organizations are legally mandated to comply with. The purpose of this article is therefore to ascertain whether Ethiopia has the necessary environmental and related legal foundational frameworks to holding corporations accountable- determining the minimum legal framework. For this purpose doctrinal analyses were preferred as a method and assessment was made on relevant laws. Accordingly, the assessment finds that Ethiopia has foundational environmental legal regime and if applied may hold corporations liable. It further unearths that still the laws lack clarity; comprehensiveness and adequacy to flatteringly control businesses conduct to the contemporary requirements. Hence for a proper corporate environmental regulation, further amendment need to be made.*

**Keywords:** Legal bottom line, corporate environmental responsibility, Ethiopia, and environmental liability.

## **Introduction**

Corporate responsibility (CR/ CSR) has been a subject of researchers from various disciplines that include law.<sup>1</sup> It has been a concept debated over a

---

\* Ayalew Abate Bishaw: LLB (Haramaya University), LLM (Alabama University), Doctoral Candidate (Zhejiang University Guanghua Law School), Assistant Professor at Debere Markos University Law School, Advocate and member of Amhara Regional State Bar Association. I thank the anonymous reviewers for their comments and BDU Law School editorial. Email: [tsion.ayelam@yahoo.com](mailto:tsion.ayelam@yahoo.com)

century and continues being debatable.<sup>2</sup> The central issue for the development of various theories and literature as well as arguments reclines in the nature of responsibility and level or extent of corporate responsibility<sup>3</sup> is whether corporations (need to) be responsible beyond the shareholder's interest? Why and how?, to mention some. A much more related issue to the topic at the point is over delineating the legal threshold as CR is understood by many scholars as a *compliance plus*<sup>4</sup> voluntary approach against compulsory authority. Whether the voluntarism is self-initiated or government intervened approach is also a basic issue that quests the extent of legal intervention in regulating the corporate environmental responsibility of corporations. Leaving the rhetoric/theoretic debates<sup>5</sup> aside, this article dwells on setting down corporate environmental accountability in Ethiopia

---

<sup>1</sup> Among the scholastic works reflecting that CSR is hotspot multidisciplinary researchable concept include: Constantina Bichta (2003) Corporate Social Responsibility, a Role in Government Policy and Regulation? From the University of Bath, School of Management; Mia Muhmudur Rahim (2013), Legal Regulation of Corporate Social Responsibility, a Meta Regulation of Law for Raising Corporate Social Responsibility in a Weak Economy from School of Accountancy Queensland University of Technology Brisbane, Queensland Australia; Virginia Harper Ho (2012), Beyond Regulation: A Comparative Look at State-Centric CSR and the Law in China, University of Kansas School of Law, Vanderbilt Journal of Transnational Law vol.46; UNTAD (1999), the Social Responsibility of Transnational Corporations. Halina Ward (2005), Corporate Responsibility and the Business of Law International Institute of Environment and Development. Lyman Johnson, JD (2011), History of Corporate Responsibility, University of St. Thomas School of Law, Washington and Lee University School of Law Project Working Paper No. 6. Avery, C. 2000, Business and Human Rights in a Time of Change Amnesty International-UK: London. Barkin, D. 1999. The Greening of Business in Mexico, Discussion Paper No. 110. UNRISD: Geneva. Cairncross, F. 1995. Green Inc.: A Guide to Business and the Environment. Earth scan: London. Capra, F. and Pauli, G. (eds.). 1995. Steering Business toward Sustainability, United Nations University Press: Tokyo. Clark, A. and Clark, J. 1998. An Integrated Methodology for Assessing the Social and Cultural Impact of Mining UNCTAD: Geneva.

<sup>2</sup> There are literatures dated from 1870 about CSR up until now. This clearly shows that the concept is as old as corporations. As we can see from supra note 1, still we are dealing with it and will continue so far as corporations are important actors in the economy.

<sup>3</sup> The shareholder theory, stakeholder theory, and sustainable development theory are to be mentioned as example here.

<sup>4</sup> UNTAD (1999); the Social Responsibility of Transnational Corporations, New York and Geneva. p.3-4

<sup>5</sup> At the very fore-front there exist two basic theoretical debates: one that alleges corporations responsibility is to make profit and keep the business interest of their stakeholders, and the other that claims the triple bottom line approach: corporations shall be responsible to the society and environment beyond the economic interest they are established to do. Besides taking the political economy and government interest in the business there is further argument relating to whether they shall be responsible compulsory or voluntary. In the neo-liberal classic thought corporations shall be free to do well towards the society and environment and hence CSR is voluntary commitment. Whereas, on the other side of the argument others say that the public has interest in the business and hence they shall be required to be responsible. The debates still persist and countries choose the kind of policy on context, as there is no internationally agreed standard of CSR.

i.e., marking out and analyzing the minimum legal threshold-*legal bottom line of CER in this sense*.

Ethiopia is one of the poorest nations in the world aspiring to join a low middle-income countries class by 2025.<sup>6</sup> Indeed, the government's plan is inspirational and hunts for a grand contribution from the business sector for its fulfillment as the consecutive plans have accentuated.<sup>7</sup> In an effort to meet its goal and/or attain the mission, it concentrates mostly on policies of both attracting foreign investment and enlightening its domestic entrepreneurs (both public and private) to highest level especially since recently. Accordingly, from small scale to large scale, companies are now engaged in the economic sector. And then the corporate responsibility concept is believed to grow up in parallel thereof.

The purpose of this article is to conduct a legal appraisal on the environmental legal frameworks in Ethiopia in order to ascertain the minimum environmental legal requirements of corporations' environmental responsibility (public/private and domestic/foreign, small, medium or larger) - *determine corporate liability/accountability*. The article, however, doesn't surpass to discuss the extent of each liability (administrative, civil and criminal) of corporations. In the meanwhile, legal gaps, inconsistencies and other legal challenges in setting the corporate environmental responsibility are discussed.

To this effect, relevant literature, the laws including the federal constitution, international environmental and bilateral treaties, criminal and civil legislation with the environmental ruling, investment laws, the land laws, the mining proclamation and environmental proclamations are charged. So far studies undertaken in this area (in Ethiopia) have basically focused on evaluating the human rights aspect of the investment;<sup>8</sup> focused on the

---

<sup>6</sup> See FDRE (2015), the Second Growth and Transformation Plan of 2015/16-2019/20 <http://nepadbusinessfoundation.org/index.php/news/latest-news/663-avid-11> <https://en.unesco.org/creativity/policy-monitoring-platform/second-growth-transformation-plan>, it necessary to show this link? The document is already published.) Last accessed on 28 sep. 2018, now the numbers of foreign investment companies are steadily increasing. The private economic sector as well is flourishing compared to the previous era. From China only there are more than thousands of companies registered to invest.

<sup>7</sup> Ibid

<sup>8</sup> Mizanie Abate Tadess (PhD)(2016), Transnational Corporate Liability for Human Rights Abuses: A Cursory Review of the Ethiopian Legal Framework 4 Mekelle U. L.J. 34 (2016)

fairness of the agreements in best protecting Ethiopian interest<sup>9</sup> and others.<sup>10</sup> They don't have a direct compact with the environment. Building on these studies, this article seeks to appraise the Ethiopian legal regime that can hold corporations environmentally accountable. The author has also referred to the relevant foreign literature in order to reinforce the positions and assertions.

The Article is organized into ten small sections. Preceded by this brief introduction section, the section will explore the environmental regulatory legal frameworks in Ethiopia in general. The second section assesses corporate environmental accountability of corporations from treaties as the third section scrutinizes the constitution. The fourth, fifth, sixth, seventh, eighth and ninth sections have examined CEA from the criminal law, the civil code, investment law, land law, the commercial code and the mining proclamations respectively. Finally concluding remarks are also included.

## 1. Environmental laws in Ethiopia

Ethiopia is a civil law (continental law) system. Thus, environmental laws are fundamentally acts from the legislative organ rather than decisions from the courts. To understand environmental law, therefore, we focus on legislation than court decisions. Nevertheless, the legislation doesn't define the term environmental law that may confuse about its scope as well as content. There is no either any court case contested over the definition of environmental law in Ethiopia. This may obviously have some impact to delineate the scope of environmental law for this study as well. Therefore an attempt is made to define by context from the definition basically given for the word environment as environmental law is naturally believed to regulate the environment. The simple survey over the definition sections of laws being applied in Ethiopia revealed that the term *environment* is defined under the pollution control proclamation<sup>11</sup> of 2002.

---

<sup>9</sup> See Martha Belete Hailu and Tilahun Esmael Kassahun(2014), Rethinking Ethiopia's Bilateral Investment Treaties in light of Recent Developments in International Investment Arbitration, MIZAN LAW REVIEW, Vol. 8, No.1 September 2014, Asamnew D. Gizaw (2017) International Bilateral Investment Treaties and Protection of the Environment, Central European University LLM Thesis.

<sup>10</sup> See supra note 8

<sup>11</sup> Federal Negarit Gazette of the Federal Democratic Republic Of Ethiopia Proclamation N0.300/2002 herein called the Environmental Pollution Control Proclamation, Art2(6)

It seems that the legislature has chosen to give a definition for the term environment than attempting to define the environmental law as confining to the certain element may distort (either by narrowing or broadening to the extent of confusing) understanding of the environmental law in Ethiopia. The definition of environment is still fundamental to capture the message shot to air by the author of this article. Thus the definition section under article 2(6) of the pollution control proclamation states as<sup>12</sup>:

“Environment” means the totality of all materials whether in natural state or modified or changed by humans, their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics;

As designated in the definition ‘*environment*’ is defined very broadly which includes almost all the natural resources and their interaction. Thus if the law is set of rules regulating conduct by inference, environmental law is considered as a broad category of law (sets of rules) to regulating these elements mentioned in the definition section. It is broad enough to encompass the rule regulating the totality of all materials in either natural or modified form plus their interaction, or the external space affecting either quality or quantity including welfare of human and other living things that may include land, water, atmosphere, weather, climate, living things, sound, odor, taste, social factors, and aesthetics.

Therefore the legal framework of the environment in Ethiopia may not be restricted to certainly specified legislation and has to be understood the broad spectrum of rules with effect directly or indirectly to the *environment* as defined/mentioned above.

Thus the legal framework of corporate environmental responsibility in Ethiopia may emanate from rules of the different legal category whose application may affect those elements of the environment in the definition and therefore for the purpose of this study environmental law may refer to all the laws that set forth corporate environmental liability in Ethiopia. Among others, it may include international agreements, the constitution, the tort law,

---

<sup>12</sup> Ibid

the criminal law, the investment law, the environmental impact assessment law, the pollution control law, the mining and energy law. The discussion is thus imperfect to analyzing and determining the coverage of legal foundations of corporate environmental accountability in these legislative frameworks.

## **2. Corporate Environmental Accountability (CEA) from State Agreements (Treaties) in Ethiopia**

### **a) Environmental Treaties**

Ethiopia is a state party to many international and regional environmental agreements. It has also ratified most of the agreements that it has signed. Among others the following could be mentioned in this respect: Nagoya Protocol (Japan) on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization (concluded in 2010 ratified in Ethiopia by 2012)<sup>13</sup>, the Vienna Convention for the Preservation of the Ozone Layer and the Montreal Protocol on Substance that Deplete the Ozone layer (ratified in 2009), United Nations Convention to Combat Desertification in those Countries experiencing Serious drought and-or Desertification particularly in Africa (concluded in Paris in 1994 and ratified by Ethiopia in 1997),<sup>14</sup> Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal (concluded between party members in 1989 and ratified by Ethiopia 2000),<sup>15</sup> the International Treaty on Plant Genetic Resources for food and medicine (signed in 2001 and ratified 2003),<sup>16</sup> the Bamako Convention on the Ban of the import into Africa and the Control of Trans boundary movements and management of Hazardous Wastes Within Africa (signed in 1991 and ratified in 2003),<sup>17</sup> Cartagena Protocol on Bio-safety (signed in 2000 and

---

<sup>13</sup> See Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization Ratification Proclamation, Proclamation No. 753/2012

<sup>14</sup> Federal Democratic Republic of Ethiopian Treaty Ratification Proclamation No. 81/1997; Constitution of the Federal Democratic Republic of Ethiopia, proclamation No. 1/1995, Federal Negarit Gazette 1<sup>st</sup> year, 1995

<sup>15</sup> Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal Ratification, Proclamation 192/2000

<sup>16</sup> The International Treaty on Plant Genetic, Proclamation 330/2003.

<sup>17</sup> Bamako Convention Ratification Proclamation No. 355/2003, This Proclamation provides for the ratification of the Bamako Convention on the Ban of the Import into Africa and the Control of

ratified in 2003)<sup>18</sup> and Kyoto protocol to the implementation of the united nation convention on climate change (signed in 1997 and ratified in 2005).<sup>19</sup> Each of these treaties obliges Ethiopia, as a state party to the treaty, to develop a strategy for its implementation and enforcement of environmental law. In an attempt to enforce these treaties, Ethiopia has ratified most of the agreements it has signed and given them a force of law based on its constitutional stipulation.<sup>20</sup>

The constitution of Ethiopia accords treaties ratified by Ethiopian government status of domestic laws.<sup>21</sup> Once ratified, treaties are for all purpose considered as part of laws of the land and the provisions shall be enforced<sup>22</sup> in the country. The constitution being the supreme law of the land doesn't simply annex and award treaties the status of domestic law in Ethiopia. There is a prime further requirement following ratification set therein for such agreement to attain domestic law status and enforced. Inter alia, the constitution requires them to comply with the fundamental and opportune principle: *the principle of sustainable development*.<sup>23</sup> If not, they shall be deemed void.<sup>24</sup> Therefore, agreements on whatsoever subject matter they are concluded is constitutionally required to comply with the sustainability principle. Sustainability, as mentioned in different literature, contains economic, social and environmental aspects and the balance of them has to be maintained. Therefore, all ventures in Ethiopia shall satisfy this basic requirement.

The act of concluding environmental treaties and ratification proves that the country is committed and duty bound for their implementation so far as it

---

Transboundary Movement and Management of Hazardous Wastes within Africa and authorizes the Environmental Protection Authority to take, in cooperation with the appropriate Federal, Regional and City Administration Government organs, actions necessary to implement the Convention.

<sup>18</sup> Cartagena Protocol on Biosafety Ratification Proclamation No. 362/2003

<sup>19</sup> Kyoto Protocol Ratification Proclamation No. 439/2005

<sup>20</sup> See Article 9 of the Federal Democratic Republic of Ethiopian Constitution; Constitution of the Federal Democratic Republic of Ethiopia, proclamation No. 1/1995, Federal Negarit Gazette 1<sup>st</sup> year, 1995

<sup>21</sup> Id, Article 9 It specifically states under its sub section three that all international agreements ratified by Ethiopia are an integral part of the law of the land.

<sup>22</sup> Ibid

<sup>23</sup> Id, see Article 43(3) of the constitution. It states that all international agreements and relations concluded, established or concluded by the State shall protect and ensure Ethiopia's right to sustainable development.

<sup>24</sup> Id, See Article 9

ensures sustainability. Consequently, this conveys a clear message to corporations in that they are accountable to the environmental treaty commands that Ethiopia has ever ratified.

### **b) Bilateral Investment Treaties (BITs)**

BITs are agreements concluded between sovereign countries with basically prime objective of promoting investment and protection of the investor. They have come to be another most important source of environmental accountability to corporations. BITs basically regulate investment relation between party States. Since recently, however, there have been trends to include environmental protection provisions in the BITs. Especially, BITs between developed countries used to contain an environmental provision in their content or urge environmental related side agreement to be developed between parties.<sup>25</sup> North American Agreement on the environmental cooperation (NAAEC) can be mentioned as an important example of side agreement. The Government of Canada, the Government of the United Mexican States and the Government of the United States of America following their North American Free Trade Agreement (NAFTA) have understood that NAFTA didn't contain any environmental protection rule and later agreed to cooperate for the environmental protection works via this side agreement.<sup>26</sup> Now it has come to be common to include environmental protection rules in the BITs being concluded between States in order for regulating the conduct of investment corporations basically in the host state. As such therefore BITs are cited as important sources to corporate environmental accountability.

In Ethiopia and elsewhere in the world the numbers of these agreements have increased since the last decades.<sup>27</sup> By 2017, Ethiopia has concluded over 34 such agreements.<sup>28</sup> Nevertheless, based on the simple survey of a

---

<sup>25</sup> UNEP 2011; Corporate Social Responsibility (CSR) and Regional trade and investment agreements pp23

<sup>26</sup> See the North American Agreement on the Environmental Cooperation (NAAEC) <http://www.cec.org/about-us/NAAEC>

<sup>27</sup> See from <http://investmentpolicyhub.unctad.org/IIA/mostRecent/treaty/1485> as last accessed on 21 Dec. 2018

<sup>28</sup> See <http://investmentpolicyhub.unctad.org/IIA/mostRecent/treaty/1485> as last accessed on 21 Dec. 2018



treaty content analysis for the inclusion of environment-related provision, only the treaties with Finland (The preamble includes the environmental provision that states “*agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application*”),<sup>29</sup> Denmark (in the preamble there is productive use of resource that could be interpreted to include the environment),<sup>30</sup> and Belgium-Luxembourg (the preamble and article 5)<sup>31</sup> contains environment related provision. These BITs are the only ones that would be cited as a source to environmental responsibility for corporations investing in Ethiopia. The rest of the BITs either purposefully or negligently have omitted the environmental protection provisions and neither of the countries has concluded side environmental agreement with Ethiopia.<sup>32</sup> The BITs model developed and concluded with Ethiopia are obsolete that doesn’t reflect any environmental provision. This signals that it may be hard for Ethiopian government to require them accountability basically for two reasons. First the corporations are not a party to the agreement. Second most of the BITs don’t require them to follow environmental requirements.<sup>33</sup>

### **3. The Constitution of Federal Democratic Republic of Ethiopia, 1995 and CEA/R**

The constitution is a supreme and basic source of law in Ethiopia. It is supreme law of the land and overrides all other subsidiary legislation and practices,<sup>34</sup> as described above. The Ethiopian constitution with its overriding effect on other legislation and practices has many environment-related

---

<sup>29</sup> See the preamble of the BIT between Finland and Ethiopia (2006), <http://investmentpolicyhub.unctad.org/IIA/mostRecent/treaty/1485> as last accessed on 21 Dec. 2018

<sup>30</sup> See the preamble of the BIT between Ethiopia and Denmark, <http://investmentpolicyhub.unctad.org/IIA/mostRecent/treaty/1485> as last accessed on 21 Dec. 2018

<sup>31</sup> See the BIT between Ethiopia and Belgium -Luxembourg which was concluded in 2006.

<sup>32</sup> The exploration from the Ethiopian Ministry of Foreign Affairs (MoFA) and from the official website of UNCTAD doesn’t witness any side environmental agreement. Neither the Ethiopian environment, forest and climate change ministry website testifies the opposite.

<sup>33</sup> Ethiopia has concluded about 34 BITs. The BITs except with Belgium and Finland don’t have any environmental protection provision. This implies that corporations don’t have any obligation (sourced from BIT) to take environmental protection measures. On the other hand the BITs (though the corporations are not directly signatories) have given full protection and security for their property and investment in Ethiopia. See also *supra* note 27

<sup>34</sup> See *supra* note 19 Article 9 (4) of the Constitution. It states that “*all agreements ratified by Ethiopia are an integral part of the law of the land.*”

stipulations that serve as a source of corporate environmental accountability. Among others, Article 9(2), Article 43(3), Article 44<sup>35</sup>, article 51, 52, and Article 92<sup>36</sup> could be mentioned in this regard.<sup>37</sup> From these specific mentions the first, the third and the last articles are only very related to our subject matter. Article 43 (3) is about the right to sustainable development. It is already discussed above. Article 51 and 52 are about environmental lawmaking power of the federal government and administration power of the States.

Article 9(2) of the constitution deals with the implementation of the constitution in general manner. It refers to the implementation of environmental provisions as narrowed to our issue of environmental corporate responsibility. In this aspect, the Constitution imposes the duty of implementation of its provisions in general including the realization of protection of the environment in particular not only on the state but also non-state entities. To this effect, article 9(2) of the constitution provides that “*all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the constitution and to obey it*” It is argued that, the term ‘other associations’ is broad enough that capture investment corporations whether foreign or domestic (small, medium or large). Thus the constitution requires corporations (public or private) to observe its stipulations and ensure observance by others.

The Constitution being supreme law of the land nullifies all acts and practices contravening its declarations.<sup>38</sup> And hence the constitutional prescriptions regarding the environment as well as the investment have overriding effect over other sub-legislation and practices. Therefore, it is the supreme source of law in Ethiopia relating to corporate environmental

---

<sup>35</sup> Ibid Article 44 (1) of the Constitution. It states about environmental rights. It declares that all persons have the right to clean and healthy environment.

<sup>36</sup> Id Article 92 It states the environmental objectives. Specifically it addresses that:

1. Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.
2. The design and implementation of programmes and projects of development shall not damage or destroy the environment.
4. People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly.
5. Government and citizens shall have the duty to protect the environment

<sup>37</sup> The rest of the articles are about right to sustainable development (article 43) and the environmental law making power of the government (the federal and state governments- articles 51 and 52).

<sup>38</sup> See Article 9 of the Constitution, as mentioned supra note 20

accountability too. Therefore, corporations are made duty bound in the environmental protection to take measure to ensure the constitutional environmental stipulations in this regard. The constitution, however, has failed to mention explicitly corporations as the subject of duty in environmental protection. It seems that there is no commerce clause unless through modality of interpretation as highlighted above. It mentions only citizens and government.<sup>39</sup> Still it seems that both of these subjects can't include corporations. But as the corporate citizenship concept is developing, citizen may otherwise be considered to include them. Nevertheless one may still question whether corporations have the duty of environmental protection and accountability and is free to hold his position. Thus, it is possible to argue that, the obligation section of the constitution under article 92 (4) is meant to cover the citizens and government, as subjects and doesn't include corporations explicitly. From this it may seem that, Corporations are entitled only with the duty to observe the duty of *duty bearers*; that is the citizens and the government.<sup>40</sup> He may further argue that corporations are not made party the way citizens and government is mentioned to protect the environment.

Nevertheless, this doesn't exonerate corporations from constitutional environmental liability at times they violated the right of citizens to clean and healthy environment and challenges the government action/omission as it exercises its duty of protecting the environment. What is not imposed on them in this line of argument may be about taking protection measure. Otherwise, they are constitutionally bound to observe measures for the protection of the environment. Besides corporations as mentioned above are citizens because of corporate citizenship. Corporations are creations of a human being and they are formed through association of people. Further unless for academic discourse, such an argument may not have practical significance to exonerate corporations from constitutional liability. They have the constitutional duty of protecting the environment from the negative impact of their activities.

---

<sup>39</sup> Id, Article 92

<sup>40</sup> Id, Article 92(4) contrary reading

In a nutshell, the cumulative reading of article 9 (2) and 92 imply that they are imposed with both duties of observing protection and taking environmental protection measures to ensure environmental objectives. They are accordingly bound by constitutional environmental accountability.

#### **4. The Criminal Corporate Environmental Accountability (*Criminal Environmental Corporate Liability*)**

It is obvious that corporate environmental accountability can be either criminal or civil depending on its nature and consequence. In this section therefore criminal environmental accountability of corporations as incorporated in Ethiopian criminal law are assessed.

##### **a) Purpose and Objectives of the Criminal Law**

The criminal law of Ethiopia has the general purpose of ensuring order, peace and the security of the State, its people, and inhabitants for the public good.<sup>41</sup> When narrowed to the environment, in an effort to meet the very purpose of assessing the environmental criminal accountability of corporations, the criminal code through incorporating environmental criminal provisions has the purpose of maintenance of public environmental interest through ensuring order, peace, and security.

The other most important point in the assessment of criminal accountability of corporations is the objective section of the code. Objective clauses are fundamental inclusions in Ethiopian legal system based on its construction detail rules/provisions are interpreted and given meaning. Accordingly, the objective of the code is discussed as follows to shed light on the subsequent discussions relating to corporate criminal responsibility.

The objective of the Ethiopian criminal code is prescribed to be:

prevention of crime by giving due notice of the crime and penalties through prescribing it in the code and should it came to be ineffective by providing for the punishment of criminals in order to deter them from committing

---

<sup>41</sup> See Article 1 of the Criminal Code of FDRE Proclamation No. 414/2004.

another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.<sup>42</sup>

From this one can understand that, prevention, deterrence, and rehabilitation are the basic objectives of the criminal code; and prevention, as can be inferred, is placed to be the priority objective in the law.

Considering the effect and nature of the act of environmental crime (on the environment), the inclusion of prevention as the primary approach is rewarding. As environmental damages may not be easily restored/rehabilitated, prevention as the prime approach shall be encouraged and the criminal law may be appreciated.<sup>43</sup> The other objective of the code is deterrence. It is applied after the crime is committed as the first approach fails. Deterrence has two sub-objectives: limiting the offender from committing a further environmental crime and pass the message to others not to commit an environmental crime. The last most important objective is rehabilitation based on which environmental offenders could learn to get environmental knowledge and reformed.

### **b) Criminal Environmental Law in Ethiopia**

Criminal law in Ethiopia basically consists of the 2004 criminal code and special proclamations and regulations with criminal provisions in them.<sup>44</sup> For the sake of clarity and simplicity, the 2004 criminal code is referred here just as the *ordinary criminal code* (የወንጀል ህግ) and the rest piecemeal criminal provisions included in the specific legislation of investment, environment, mining, etc. as *sectoral legislations with criminal provisions* (ልዩ የወንጀል ደንቦች ያካተቱ ህጎች).

The criminal code is the amended form of the penal code of 1957. It regulates criminal conducts in a broad and general manner. In most situations, however, it doesn't cover crimes specific to a particular field (subject area) nor have detail facet. The sectoral criminal legislation, on the

---

<sup>42</sup> Ibid.

<sup>43</sup> Ibid

<sup>44</sup> This can be inferred from article 3 of the criminal code. It reads that nothing in this code shall affect regulation 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 there.

other hand, is exceptionally specific criminal rules said to regulate the uncovered and unjustifiably covered special criminal conducts. The uncovered as mentioned here refers to those conducts that are not mentioned as crime and are unregulated by the criminal code whereas the unjustified imply for those crimes specified by the ordinary code but may not be justified to be regulated that way. With this brief illustration follows the discussion of corporate environmental criminal liability under the two stated categories.

### **c) Corporate Environmental Criminal Accountability under the Criminal Code**

Environmental and related crimes mentioned in the criminal code include the following: spreading of human disease (Article 517), contamination of water (Article 518), environmental pollution (Article 519), mismanagement of hazardous wastes and other materials (Article 520), acts contrary to environmental impact assessment (Article 521), infringement of preventive or protective public health measures (Article 522), creation of distress of famine (Article 523), manufacture, adulteration and sale of injurious or damaged products or foodstuffs (article 527 cum. article 530), crimes committed through production and distribution of substances hazardous to human and animal health (Article 525) (producing, marketing, trafficking in or using poisons or narcotic, and psychotropic substances), Doping (Article 526), Manufacture, Adulteration and Sale of Products or Foodstuffs (Article 527), Manufacture, Adulteration and Sale of Fodder and products injurious to livestock (Article 528), Endangering the Health of Another by Alcoholic Beverages or Spirituous Liquors (Article 531), Endangering by Mental Means or Practices (article 532), Endangering by Philters, Spells or Similar Means (Article 533), Unlawful Delivery of Poisonous or Dangerous Substances (Article 536), and petty offence against public interest and the community 778-837 cum 77. As per this law, one commits an environmental crime and shall be criminally punished in violation of the aforementioned provisions.

Regarding criminal liability of investment companies (juridical persons), there are different views and/or approaches. Some Countries believe that juridical person shall not be liable criminally and don't espouse criminal

liability to corporations in their law. Countries such as Brazil, Bulgaria, Luxembourg, and the Slovak Republic are to be mentioned here. They don't admit any form of corporate criminal liability.<sup>45</sup> Countries such as Germany, Greece, Hungary, Mexico, and Sweden have adopted a legal regime in their law whereby administrative penalties may be imposed on corporations for the criminal act of their employee.<sup>46</sup> Others believe that corporations shall be held criminally liable and adopt criminal accountability of corporations. Ethiopia is under the last category.<sup>47</sup> The criminal code holds corporations and their employee criminally accountable.<sup>48</sup> They will be liable where the law clearly stated that they shall be liable.<sup>49</sup>

Therefore as the corporations participate as the instigator, accomplice, and principal offender they are liable under the criminal code pursuant to article 34 in Ethiopia. The country of origin or nationality can't be an issue so far as the crime is committed in Ethiopia.

#### **d) Corporate Environmental Criminal Accountability under the Sectoral Legislations**

As mentioned above, sectoral environmental laws are too many to have a list of them here. In Ethiopia, almost all sectoral legislations have penalty provisions that imply criminal accountability. The following conducts can be examples as the complete list of all the environmental provisions in the sectoral legislation is not relevant. In the EIA proclamation, we can get a failure to observe the EIA and pollution control proclamation (PCP),<sup>50</sup> false presentation in the EIA study report,<sup>51</sup> failure to record or to fulfill conditions of authorization of EIA as special criminal provisions.<sup>52</sup> In the

---

<sup>45</sup> See supra note 8 pp 63.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid See article 34 (1), 34(2), 34(3) and 90(3), 90(4).

<sup>48</sup> The Criminal Law of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, 9th of May 2005, art. 34(1) read together with art 23(3). Art 34(4) defines the term 'juridical person' to include private organizations established for commercial purpose.

<sup>49</sup> Ibid, Art. 34(1) read together with art 23(3). Art 34(4) defines the term 'juridical person' to include private organizations established for commercial purpose.

<sup>50</sup> See Article 18 of the EIA Proclamation of the FDRE 9thYear Federal Negarette Gazzette No. 11 ADDIS ABABA-3rd December, 2002

<sup>51</sup> Ibid

<sup>52</sup> Ibid

pollution control proclamation, we may see hindering or obstructing, refusing, impersonating or preventing the environmental pollution inspectors, failure to manage hazardous waste or other substances, mislabel or fails to label or withholding information or illegal traffic of any hazardous material, discharging a pollutant, and taking the control of ozone layer depleting substances proclamation importation of substances that deplete the ozone layer are prohibited.<sup>53</sup> The solid waste management proclamation article 17 mentions some of the crimes and penalties relating to license and permit though it is still very vague itself.<sup>54</sup> Crimes committed in violation of the forest development, conservation and utilization proclamation includes cutting and using state forest without the necessary permit, destroy, damage or falsify forest boundary, causes damage to a forest by setting fire or in any other manner, settles or expands farmland in a forest area and providing assistant for illegal forest users.<sup>55</sup>

In similar fashion, other legislations such as water management proclamation, the wildlife conservation and utilization proclamation and other sectoral environmental legislations have included provisions that could hold corporations liable for the damage on the environment. Their cross-reference to the ordinary criminal law and formulation have still problem in addressing all possible special crimes to be committed over the natural resources. The punishment is not also directed to the managers and/or directors of the company and is relatively not heavy for corporations to compel them into compliance.

## **5. Corporate Environmental Civil Accountability/Liability**

### **5.1. Tort Law (Law of Extra-Contractual Liability)**

“A tort is a civil wrong for which the remedy is an action for unliquidated damages and which is not exclusively the breach of a contract, or the breach of a trust, or the breach of other merely equitable obligation”<sup>56</sup>

---

<sup>53</sup> See Article 12-14 of the Pollution Control Proclamation, Proclamation No. 300/2002 of the FDRE Negarit Gazette 9<sup>th</sup> Year No. 12 ADDIS ABABA, December, 2002.

<sup>54</sup> See Article 17 of Solid Waste Management Proclamation No. 513/2007

<sup>55</sup> See Article 26 of the Forest Development, Conservation and Utilization Proclamation, Proclamation No. 1065/2018

<sup>56</sup> Salmond and Hueston (1981): *Laws of Torts* 18<sup>th</sup> ed. P 17



Generally, tort liability in Ethiopia is administered under civil code<sup>57</sup> provisions of articles 2077-2161. There are three sources of tort liability in Ethiopia; namely, fault-based liability, strict liability and vicarious liability.

Fault-based liability arises where a person causes damage by an offense.<sup>58</sup> It requires volition and as corporations may not have the required volition like humans this category of tort liability may not apply on them. In this regard, Dr. Mizanie Abate has also stated that '*of the three sources of tort liability, fault-based liability doesn't directly apply to redress human rights violations by investment corporations*'.<sup>59</sup> It applies *mutantis-mutandis* to the environment.

Strict liability also known as a liability in the absence of an offense arises from the damage a person causes through his activities and by an object he possesses.<sup>60</sup> Here the basic element to derive accountability is the occurrence of environmental damage. Accordingly, corporations can be held accountable once the damage is sustained by their act. Strict liability provisions of tort law provide another avenue for the tort liability of investment corporations for their violation of environment and environmental rights. The specific situations may include damage caused by building (2077); damage caused by machines and vehicles (article 2081) and damage caused by the use of manufactured goods (article 2085). The manufactured goods may not keep environmental quality standard or it may cause injury either to human or other biological entities. The vehicle and the machine may also produce harmful effluents affecting the environment. The effluents may affect nature or the human environment itself. The product or the process of production or the means of production employed by the company may also by itself cause damage to the environment. Accordingly they may be tortuously liable.

Vicarious liability is a liability for a third party for whom a person is responsible.<sup>61</sup> As per this mode of tort liability, the corporation will be held

---

<sup>57</sup>See Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Neg. Gaz. Year 19, No.2.

<sup>58</sup>Id, Art. 2080. The offence in this case may be on the environmental offence.

<sup>59</sup>See supra note 8, (Mizanie Abate) pp. 63

<sup>60</sup> Ibid Article 2066-2089

<sup>61</sup> Ibid see articles 2124-2136.

accountable to the environmental damage its employee has caused.<sup>62</sup> For instance, if the employee brings environmental damage during discharging his duties applying vicarious liability the investment corporation can be held liable.<sup>63</sup>

Another provision that directly applies to tort liability of investment corporations is 2035 of the civil code. This article contains a very important stipulation in the sense that an infringement of every law, be it the constitution or environmental legislation is an offense which attracts tort liability.<sup>64</sup> Consequently, if one of the employees of the foreign investment company violates the constitutionally guaranteed rights of the clean and safe environment, it can be an offense for which the corporation may be vicariously liable. If the company violates the EIA requirement in the EIA proclamation and damage sustains, it will be liable for violating the law and for causing damage. If one company engages of business without environmental permit or business license and/or registration, it will be directly accountable without the need to show damage to the environment.

The major remedy in environmental tort law is compensation, although injunctive reliefs, restoration, and others could be included. For the victim (environment) to get her compensation shall prove that actions, omissions/omissions, and activities of the corporation or the property have caused the damage.<sup>65</sup>

## **5.2. Environmental Laws**

Environmental legal frameworks have a relatively short history of development compared to other legal regimes in Ethiopia. They have a relatively short history of development and their implementation lags in the stern. It consists of policies and legislation that are issued for the protection of the environment from dreadful conditions (see the definition of environment and environmental law in the definition sections). It has both general (ordinary) and sectoral parts (special): general in a sense that it

---

<sup>62</sup> Ibid Article 2130

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid, see Article 2027

doesn't specifically talk about one environmental (natural resource) element such as water, air or land. Example the pollution control proclamation is general environmental legislation that applies to any form of pollution and to any of the natural resources that pollute. And sectoral/specific environmental law refers to category of environmental law that relates to one environmental aspect such as water, air, land, and/or biodiversity. Environmental law in Ethiopia includes also treaties and/or agreements that the country has ratified through the course of its history.<sup>66</sup>

The most notable domestic environmental legislation include: the Environmental Impact Assessment (EIA) proclamation, Environmental Pollution Control (EPC) proclamation, Solid Waste Management (SWM) proclamation, and other sectoral laws such as Water Resource Management (WRM) proclamation, fishery development and utilization proclamation, development conservation and utilization of wildlife proclamation, the bio-safety proclamation and others.

Environmental law in Ethiopia, among other things, put set of environmental rules that everybody requires to comply with, stipulate criminal sanction, set civil remedies to victims as well as administrative measures to be taken against persons who fail to observe the standard set therein and establish institutions that oversee its enforcement or implementations. For more clarification, each of the notable legislations (EIA proclamation, pollution control proclamation (PCP)) is analyzed as follow relating to corporate environmental accountability.

### **5.2.1. Environmental Impact Assessment (EIA) Proclamation**

EIA is an environmental planning and management tool. It requires developmental activity to conform to environmental requirements. It clearly demands/adopts the application of the principle of precaution mentioned at Rio earth summit: "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing

---

<sup>66</sup> Ethiopia has been member to many of the environmental agreements. It has also ratified almost all treaties it has signed. These agreements once ratified are part and parcel of the law of the land pursuant to article 9 (4) of the federal constitution.

cost-effective measures to prevent environmental degradation.”<sup>67</sup> It requires EIA to be done before the project is going to be operational. Caution is a requirement. From this we understand that utmost care needs to be taken when investment projects are being promoted and run in Ethiopia. As the purpose of the paper is not to talk about EIA, let’s now closely examine whether the proclamation has incorporated corporate environmental compliance requirements.

The first assessment is on the objective clause of the proclamation. The proclamation sets its objective in the preamble as:<sup>68</sup>

predict and manage the environmental impacts which a proposed development activity entails; to harmonize and integrate environmental, economic, cultural and social considerations into a decision-making process; to bring about administrative transparency and accountability as well as to ensure the participation of the communities in the planning and decision making on developments; and to mitigate the environmental impacts of a proposed development activity (project).

From this objective clause it comes clear that the legislator has interest to ensure, among other things, to harmonize and integrate the environment in the economic and social development. Hence the *triple bottom lines*: economic, social and environment aspects are to be integrated. This in one important manifestation of corporate environmental responsibility and any development work or project by corporations shall observe this prescription. The preamble adds that transparency and accountability shall be ensured. The environmental impacts of projects are reduced. Therefore the objective clause of the EIA proclamation has entrenched the system of environmental accountability and corporations that own development project are expected to meet the purpose clause.

EIA is believed to be a tool that ensures the respect of the constitutionally guaranteed rights of the people to live in a clean and healthy environment. It does this by significantly reducing the negative impacts of development projects on the environment and by maximizing the socio-economic benefits

---

<sup>67</sup> See Principle 15 of the Rio Declaration <https://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

<sup>68</sup> See EIA Proclamation of the FDRE 9<sup>th</sup> Year Federal Negarete Gazette No. 11 ADDIS ABABA-3rd December, Proclamation No. 299/2002

of such development activities. Accordingly the proclamation has given full recognition.

Moreover, EIA proclamation brings about administrative transparency and accountability, as it allows the public to participate in decision making with respect to development projects, which are proposed to take place within their environment.<sup>69</sup> It shall be remarked that the project proponents and owners, as well as runners, are companies/corporations or business entities. Accordingly they are being compelled to discharging their environmental responsibility while required to conducting EIA.

Second relevant provision that sets requirement for corporate environmental liability is article three. Article three has about five basic sub-provisions. Sub-article one is about requirement of authorization or permit from the environmental concerned organ for the projects requiring EIA. According to this sub-article the environmental ministry has to give permit evaluating and accepting the EIA prepared. Sub-article two is about projects of insignificant environmental impact. Sub-article three is about license. Pursuant to this sub-article licensing agencies such as ministry of trade, investment agency or others with the power to give operating/working license has to first ensure that such activity is authorized by the ministry of environment. Sub-article four is about liability of the project proponent for the environmental damage notwithstanding permit or authorization is given from the environmental organ. Sub-article four holds the project proponent, in this case corporations, liable for any damage to the environment emanating from their activity. Whether they have got the approval and permit from the environmental or licensing agency doesn't exonerate them from liability. Whether damage has sustained is the requirement to hold the corporations accountable regardless of the government organs decision. The only way to exonerate from liability is to verify that damage is not occurred by the project proponent or his agency.<sup>70</sup>

Article five of the proclamation requires EIA for projects that negatively affect the environment. As per this provision therefore corporations bringing projects that may negatively affect the environment will be required to

---

<sup>69</sup> Ibid

<sup>70</sup> Ibid See Article 3(5)

prepare EIA and need approval from the environmental organ in order to run it.<sup>71</sup> A directive that includes projects of likely negative impact and requiring EIA is said to be issued in 2008 although its authority is contested.<sup>72</sup> Additional related duties of the project proponent related to EIA are also included in the proclamation.<sup>73</sup>

The last important provision that could hold corporations accountable to the environment is article 18 of the EIA proclamation. In its five sub-articles it has laid down the offenses and punishments when the stipulations in the proclamation are violated. As offences and punishments are discussed earlier in the criminal law discussion section, there is no need to further describe it here. But sub-article 5 shall be underscored. It grants the court with power to order the convicted person to restore or in any other way compensate for the damage inflicted. It stated it as:

The court before which a person is prosecuted for an offence under this Proclamation or regulations or directives emanating from it, may, in addition to any penalty it may impose, order the convicted person to restore or in any other way compensate for the damage inflicted.

Therefore beyond the criminal punishment the court may give order for environmental restoration or *compensation* to be made. Accordingly corporations or business that inflict damage to the environment violating the requirement of EIA proclamation will be, beyond criminal punishment, held liable for restoring the environment back to its earlier state of being or to pay compensation in any other way.

In nutshell, the environmental impact assessment proclamation establishes basic requirements to hold corporations environmentally accountable. It tries to integrate environment into all development aspects. Its attempt to avert bad environmental impact of development projects and to hold liable the perpetrators needs shall be underscored. It requires an environmental permit and calls for the triple bottom line approach-economic, social and environment.

---

<sup>71</sup> Ibid see article 5(2)

<sup>72</sup> A Directive for the Implementation of the Environmental Impact Assessment Proclamation (No 299/2002) of FDRE-Directive No. 1/2008

<sup>73</sup> Supra note 68 Article 7

### **5.2.2. FDRE Environmental Pollution Control Proclamation**

In order to ensure sustainable economic development (green development) by controlling pollution, Ethiopia has also developed pollution control proclamation in 2002<sup>74</sup> and implementation regulation of same in 2008.<sup>75</sup> The proclamation is renowned for bringing radical change in Ethiopia legal system adopting public interest environmental litigation or granting the right of standing to anyone interested of taking action (court and administrative) against environmental damage. In this section, therefore an attempt is made to examine how it has adopted requirements for holding corporations liable for the environment.

The first section that catches scrutiny is the purpose clause enshrined in the preamble part. In the preamble, among other, descriptions such as “entrusting duties and responsibilities of environmental protection for all (stakeholders), and to eliminate or when not possible to mitigate pollution as an undesirable consequence of development activity.”<sup>76</sup> Therefore the proclamation has made clear that environmental protection is not the only responsibility of the government; and stakeholders such as corporations are made accordingly responsible. Thus to protect pollution corporations have responsibility. They are required to eliminate pollution in their business activity. If to eliminate pollution is not possible they are expected to mitigate. Above all they are required to develop environmentally responsible business in the country which is the essence of corporate environmental liability. From here one may argue that CER has got legal recognition in Ethiopia. This may further lead to say that CER is no more voluntary in Ethiopia as per the pollution control law.

The second important provision of the pollution control proclamation relating to corporate environmental liability is article 7 that sets general obligation. The proclamation among other things imposes the following

---

<sup>74</sup> Environmental Control Proclamation Number 300/2002; Federal Negarit Gazeta 9<sup>th</sup> year number 12 Addiss Ababa 3<sup>rd</sup> December 2002.

<sup>75</sup> Council of ministers regulation to provide for the prevention of industrial pollution regulation number 159/2008, Federal Negarit Gazeta 15<sup>th</sup> year number 14 Addiss Ababa 7<sup>th</sup> January 2009.

<sup>76</sup> See the preamble section of Environmental Control Proclamation Number 300/2002; Federal Negarit Gazeta 9<sup>th</sup> year number 12 Addis Ababa 3<sup>rd</sup> December 2002.

obligation on any person including investment companies that engages in activities that may cause pollution:<sup>77</sup>

shall not pollute or cause other persons to pollute the environment violating environmental standards; install a sound technology that avoids or reduces, to the required minimum the generation of waste and when feasible for the recycling of waste; once a person or an investment company cause any pollution shall be required to clean up or pay the cost of clean up the polluted environment as per the order from the environment organ; to relocate or shut down the company in a situation where the activity causes risk to health or to the environment; take precaution to prevent damage to the environment; obtain the permit before engaging on the activity; observe environmental standards set by the concerned environmental protection organs; and provide information to government stakeholders including the environmental ministry.

Accordingly, the proclamation obliges those interested to engage in business or any development activity to properly obtain the necessary permit and regulate their pollution accordingly. They are required to install sound technology, they are also required to recycle and if they affect the environment violating the required prescription they will be forced to pay compensation, pay the cost of cleanup and may be also closed as they don't comply with the requirements. Much to worry is whether we have the necessary standards to enforce this provision properly as it requires resource, technologically advancement others that our country don't have itself. Here one may argue that corporations shall still be required to take the responsibility for granted as the proclamation has clearly stated that the responsibility to protect pollution and save the environment is not only for the government. This may not be tenable argument as regulation is basically and inherently government power. In fact pluralistic regulatory approach is being considered in most environmental issues and corporations may not totally free in this regard.

The other important thing the proclamation has included is about the duty to provide information. This is important but their duty is limited only to the government organ with authority. They are not obliged to give information for ordinary citizens other than government organ. This may create problem

---

<sup>77</sup> Ibid



to the public interest environmental litigation<sup>78</sup> as incorporated under article 11 and 12 of the proclamation.

Last that author aspires to envisage is about the measures against the corporation that damages the environment because of pollution. As per article 6 necessary corrective measures that could remedy pollution including order of immediate cessation of activities may be taken by the environmental inspectors. Besides as per article 17 the criminal court may

...in addition to any penalty it impose upon the convicted person, order: confiscation of anything used in the commission of the offence in favor of the state or to dispose of it in any other way; that the cost of cleaning up and the disposing of the substance, chemical or equipment seized be borne by the convicted person; and the convicted person to restore to the state in which the environment was prior to the infliction of the damage, and when such restoration is not possible to pay appropriate compensation.

Hence, order of forfeiture and restoration are considered.

In nutshell, the pollution control proclamation has imposed environmental accountability on corporations. It is innovative environmental legislation in that beyond incorporating liability entailing responsibility on corporations it includes public interest environmental litigation. Beyond many of its stipulation relating to corporate environmental accountability, it grants a right of standing to individuals and civil society organizations. Accordingly, individuals and CSOs are empowered with the right of bringing environmental administrative and civil litigation without the need to show vested interest.<sup>79</sup>

## **6. The Investment Law**

Greening investment laws through incorporating environmental provisions have been practiced towards ensuring responsible and/or sustainable economic development. So the investment companies are being required

---

<sup>78</sup> For more description on public interest environmental litigation see Ayalew Abate Bishaw, (2015) Public Interest Environmental Litigation (PIEL) Under Ethiopian Law; [www.theinternationaljournal.org](http://www.theinternationaljournal.org) RJSSM: Volume: 05, Number: 7, November 2015 and Yenehun Berlie, Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features, MIZAN LAW REVIEW, Vol. 11, No.2 December 2017.

<sup>79</sup> See Article 11 and 12 of the pollution control proclamation

through environmental regulatory frameworks to comply with certain environmental requirements as a common practice.

This section is thus devoted to examining the Ethiopian investment law to prove whether it supports environmental accountability of investment corporations.

In Ethiopia, the historical development of investment law could be traced back to the era of Emperor Menelik-II in the late 19 century. By the late 19<sup>th</sup> century attempts had been made to regulate investment and there was a major shift towards attracting foreign investment and establishing a market economy. At this epoch, the attempt was made to regulate investment through concession and the practice had continued until 1974 on which the Derge regime has abolished privatization and established command political economy. This state ownership has continued until 1991/2 in which landmark history is recorded-reorienting the economy from command and control to developmental and free market.<sup>80</sup>

In 1991, when FDRE come to power different economic reform programs have been launched and there have been efforts towards investment regulation. As a result series of investment proclamations have been developed including Proclamation No. 116/1998, Proclamation No. 280/2002, Proclamation No.769/ 2012, and Proclamation No 814/2014. The whole purpose of the repeated amendment was because the government has the interest to give due protection to investors and wanted to attract them into establishing their business in Ethiopia.

The current investment proclamation came into force in 2012 replacing the 2002 investment proclamations but still, there is some amendment made to the 2012 proclamation.<sup>81</sup>

The objective clauses both from article 5 and the preamble show that through the proclamation<sup>82</sup>, the government pledges to work on promoting

---

<sup>80</sup> In 1992/93 began the first series of economic reform programs aimed at: reorienting the economy from command to market economy, rationalizing the role of the state; creating legal, institutional, policy environment and enhance private sector investment.

<sup>81</sup> See Investment Amendment Proclamation No. 849/2014 Federal Negarrit Gazette 20th Year No. 52 ADDIS ABABA 22nd July, 2014.

private investment, both foreign and domestic. It doesn't show any environmental element except devoting itself on economic agenda. There is no sustainability element from the objectives-*triple bottom line approach*.

Although the objective of the proclamation doesn't incorporate environmental element, article 38 of the proclamation expressly mentions special environmental protection law to be respected. Undoubtedly, this provision has imposed an environmental obligation to corporations to comply with all legislation, treaties and other legal documents relating to environmental protection. Particularly the clause "in particular, he shall give due regard to environmental protection" has clear message in that beyond observing the existing laws relating to the environment or in the absence of any clear legal obligation towards the environment, investment corporations are expected to take the measure of environmental protection by their own effort. What are these measures the investment corporation will be considered has taken due regard towards environmental protection will be, however, are unclear to them. Besides as Dejenie Girma Jnaka (Ph.D.) has expressed this article is meant to convey the message that investors shall observe myriad of environmental protection laws so as to be considered as discharging their environmental protection duties.<sup>83</sup> One instance of observing the environmental law among others could be to observe the EIA proclamation that requires investment companies to conduct EIA before the launching of the project.<sup>84</sup> This is so because as, Dejenie has mentioned 'an investor who fails to do EIA cannot be taken as observing the EIA Proclamation and, hence, the law pertaining to the protection of the environment within the meaning of article 38 of the new Investment

---

<sup>82</sup> The purposes of the investment proclamation states: to accelerate the country's economic development; to exploit and develop the immense natural resources of the country; to develop the domestic market through the growth of production, productivity, and services; to increase foreign exchange earnings by encouraging expansion in volume, variety, and quality of the country's export products and services as well as to save foreign exchange through the production of import-substituting products locally; to encourage balanced development and integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy; to enhance the role of the private sector in the acceleration of the country's economic development; to enable foreign investment to play its role in the country's economic development; and to create ample employment opportunities for Ethiopians and to advance the transfer of technology required for the development of the country. See Article 5 of Investment Proclamation No. 769/2012 (2012) Official Gazette No. 63, 17 September 2012

<sup>83</sup> Dejene Girma Janka (PhD), the chance to improve the system of EIA in Ethiopia: a look at the new investment proclamation, Oromia law journal volume 3 issue number 1,

<sup>84</sup> See EIA Proclamation article 3, 5 and 9

Proclamation'. And in this regard, it will be wise to take principles of sustainable investment adopted by different non-government organizations that work on responsible investment.

The other most pertinent article from the investment provisions is article 30 (4(d)). It basically covers one-stop-shop service provided to investors. It prescribes that investors shall get all the service they need from the government at one office. The office needs to be staffed with all the concerned experts and officials to provide the required service to investors. The proclamation intends to reduce investors' effort of going to different government departments that saves them time, labor and money. Then, the proclamation goes on and, under article 30(4) (d), requires the Agency to execute investors' requests for approval of impact assessment studies conducted for their investment projects. This means investors are required to bring up with them the EIA document once their investment project needs EIA. Then on their behalf, the EIC will be asking the MEFCC to review and approve the EIA document. The proclamation in this regard has prescribed in its sub-article five of same article (30(5)) for the executive organ of the government to establish investment desk that could discharge the task from the EIC. As per article 30(6), the appropriate federal or regional executive organs shall take measures necessary to help the commission properly discharge its duties specified under sub-article (4) of this article. However, whether there is a relevant department that facilitates and renders service to the discharge of the commission's responsibility particularly in relation to EIA is the issue to be seen from the structure of the executive organ. Notwithstanding this, there is no any investment desk said to be established in the EFCCC.<sup>85</sup> There is no also any EIA expert that could review and approve at EIC level. There is the institutional incongruity observed. The investment permit is also granted without the need to go for the approval of EIA.<sup>86</sup>

The last provision very related to the environment is article 19 of the proclamation No.769/2012. It provides grounds of suspension and revocation of investment permit. Among the grounds of both suspension and

---

<sup>85</sup> A response from Ato Wondoson Tadesse, legal directorate at MEFCC June, 2018

<sup>86</sup> James Krueger, Aman K. Gebru, and Inku Asnake (2012) Environmental Permitting in Ethiopia: No Restraint on "Unstoppable Growth?" *Haramaya Law Review Journal* Vol.1:1 pp 89-92

revocation, environmental grounds may be claimed. The grounds for the suspension and revocation mentioned to include environmental grounds include violation of the proclamation 19(1 and 2(a)). Thus it seems clear that the failure by Investment Corporation to observe its environmental obligation entails for the suspension and revocation of the permit/license.

In nutshell, Ethiopian investment law has more economic objective and motive than maintaining corporate environmental accountability. This doesn't mean, however, that it is exonerated from liability as environmental laws are cross-referred by the proclamation and applies.

## **7. Land Law in Ethiopia**

The regulation of corporate conduct relating to land is cardinal for countries like Ethiopia where agriculture is the blood line for the people's subsistence. Any sort of impact to the land also directly affects our life as our attachment and dependence to land and its resources is very natural and direct- is not supported by any other technology. Thus the way the law commands corporations use of the land could affects directly the community as well beyond its direct impact on the ecology in general. Hence we expect strict accountability of corporate practice to the land as basic resource. Land is also among the three bases of economic development that include labor, and capital. Labor and capital are meaningless for corporations without land. It is from land that labor and capital are sourced. It is over the land that many activities of development works are being done and related. The land law of a country is almost the basic reason of economic development as well. The political economy of the country is the country is determined based on its law over the land as major part. Much of the natural resources that we have seen in the definition section of environmental law are found on the land. Hence protection to the land implicates to protection to the environment. Recognizing these states of beings, let's see the land law whether it has foundational legal framework to corporate accountability. The land law in Ethiopia basically covers among other the EFDR constitution, the FDRE rural land use and administration proclamation, the urban land proclamation and expropriation and payment of compensation proclamation. The regional states have detail legislations for the proper enforcement of the land law

principles enshrined in the federal land laws. The regional land laws and other lease contracts are not covered in this article.

The constitution, as the prime law, declares land to be under the ownership of government and nations, nationalities and people of Ethiopia.<sup>87</sup> Private business persons and investors are thus out-rightly excluded to have shared in the ownership of land in Ethiopia as they invest. Therefore obligations attached to the owner of land could not be applicably over corporations. Corporate environmental accountability relating to land is therefore subordinated and supposed to be emanating from sub-ordinary government legislations such as the proclamations, regulations and directives relating to land. In fact the constitution environmental stipulations relating to the environment as discussed above are still preserved.

The FDRE Constitution further has stipulated discretely that investors that obviously could include corporations can get land holding through the modality of lease holding.<sup>88</sup> Thus the type of tenure adopted of investors is leasehold which is administered through government contract- *lease holding contract*. From this constitutional ruling, one may deduce that government being a trustee to land<sup>89</sup> has inherent right to guide as to the environmental/sustainable use of land by the public, private sectors including investors. The government lease holding contract is also major source of obligation for corporations in their economic engagement and in relation to land. Save its significance to regulating corporate conduct including their environmental conduct this paper doesn't, however, dwell on discussing lease contracts. Thus the subsequent discussion will be over other federal sub- ordinary legislations.

Beyond the constitution other land related legislations at the federal level in Ethiopia include subsidiary laws such as the federal rural land administration and use proclamation,<sup>90</sup> the urban land administration and use proclamation<sup>91</sup> and property evaluation and expropriation proclamation as

---

<sup>87</sup> See Article 40 of the Constitution.

<sup>88</sup> Ibid

<sup>89</sup> Article 89 of the Constitution

<sup>90</sup> Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005, Negarrit Gazette 11<sup>th</sup> Year No. 44 ADDIS ABABA-15<sup>th</sup> July, 2005

<sup>91</sup> Federal Democratic Republic of Ethiopia Urban Land Use and Lease Proclamation No. 721/2012

mentioned herein above. What these legislations say about the environmental liability of corporations will be then be discussed hereafter.

The rural land law administration and use proclamation categorized landholding into private, state/public and communal.<sup>92</sup> Each of the landholders is duty bound to manage their land holding.<sup>93</sup> They are obliged to manage their land and lose their right in cases of damage.<sup>94</sup> Damage is not defined and from our ordinary understanding it may imply affecting the natural quality and distorting its feature to the extent of reducing its production. Damage presupposes compensation to the owner/holder whose right is affected. The owner is the government and the people. Hence the holder in this article the corporation holding the land by means of leasehold may lose his right if improperly uses the land and damage sustains. The damage as described may include environmental damage and hence the corporation shall manage the land and protect from environmental problems such as soil pollution and degradation. In fact the extent of damage and the measures taken against a corporation that damages its land holding are not mentioned and one may question whether lose of use right is the only measure to be taken for environmentally damaged land. It may pollute to the irreversible level and lose of right may not be appropriate measure at all. Obviously if damage sustains compensation and other related measures are expected. Whether the holder will be forced to pay compensation in cases of mismanagement and damage to the land and the amount of damage and the payment modalities are expected from the regional land legislations in which the proclamation has given agency power for its detail administration. As per the author's view if the land is damaged because of improper use and management of the land, he shall not only be forced to lose his right but must be forced further to compensate, restore the land and if not restored has to be penalized. Hence corporations once they are entitled a lease-holding right of rural land may lose their use right at times of mismanagement and penalized criminally as stipulated under article 9.

---

<sup>92</sup> See Article 2 of the rural land use and administration proclamation, Proclamation No. 456/2005

<sup>93</sup> See the preamble and Article 10 of the rural land use and administration proclamation, Proclamation number 456/2005

<sup>94</sup> Ibid

Another important thing that the proclamation has included is sustainable conservation, intergenerational equity and land use plan incorporated in the objective clause. The objective clause says that the proclamation has objective to:

to sustainably conserve and develop natural resources and pass over to the coming generation through the development and implementation of a sustainable rural land use planning based on the different agro-ecological zones of the country, to establish an information data base that enables to identify the size, direction and use rights of the different types of landholdings in the country such as individual and federal and regional states holdings; to resolve problems that arise in connection with encouraging individual farmers, pastoralists and agricultural investors and establish a conducive system of rural land administration; to put in place legal conditions which are conducive to enhance and strengthen the land use right of farmers to encourage to take the necessary conservation measures in areas where mixed farming of crop and animal production is prevalent and where there is a threat of soil erosion and forest degradation; to establish a conducive system of rural land administration that promotes the conservation and management of natural resources, and encourages private investors in pastoralist areas where the tribe based communal landholding system dominates.<sup>95</sup>

From this objective clause, it is to be inferred that the government intends to modernize the land administration system and plans to use land sustainably by employing different modalities including conservation works. It clearly has recognized one of the pillar environmental principles called sustainable development. It also has recognized intergenerational equity and rights of the coming generation. These principles presuppose environmental responsibility of land holders among which corporations are obviously one. Any violation of such pillar environmental principles affects the land. Hence civil as well as criminal measures may then be taken on the culprit accordingly.

The proclamation has enshrined environment related user's obligations and restrictions too that applies over corporations.

---

<sup>95</sup> Ibid ( the preamble part of the proclamation)



Holdings restrictions<sup>96</sup> are basically land conservation and environmental management tools as included in article 13. It includes restriction relating to free grazing, use of water between upper and lower catchments, use restriction of the sloppy land, wetland conservation and farming restrictions depending on the nature of the land.<sup>97</sup> These are important restrictions the use of which protects the environment.

In nutshell the rural land administration and use proclamation has important provisions that could hold corporations liable while affecting the land through applying environmentally unfriendly techniques or ways of production. Although the very detail administrations are expected more from the regional land laws, the proclamation has still incorporated fundamental environmental protection clauses if applied could held corporations accountable.

The third part of the land law discussion is about the urban land use proclamation (721/2002). The content analysis on the urban land proclamation testify that the proclamation doesn't have clear and direct environment related provision to apply over corporations to hold accountable for the sake of environment. This, however, doesn't mean that in urban centers the environment is not regulated. The environmental laws as discussed above apply all over the country. The last is about the expropriation for public purpose and payment of compensation proclamation.<sup>98</sup> The proclamation has its main objective of regulating how expropriation is made and relating to payment of compensation of property including land. It is the proclamation based on which the government takes land using its eminent domain and distribute to the investors. This proclamation doesn't have close objective relating to environmental regulation unless there are instances the government may take land for environment related projects. Hence there is no special need to articulate the provisions.

---

<sup>96</sup> Ibid, see Article 13

<sup>97</sup> Ibid, See article 13

<sup>98</sup> Expropriation of landholding for public purpose and Payment of Compensation Proclamation, Proclamation No. 455/2005

The overall assessment shows that the rural land administration proclamation and the constitution relating to land have incorporated important environmental protection provisions that may hold corporations accountable. However, the urban land proclamation and the expropriation for public purpose and payment of compensation proclamation don't have enough coverage that helps to hold corporations accountable for the environment. This doesn't, however, mean that they are exonerated from liability as the environmental laws are applied and the common law remedies in the civil and criminal code still may apply.

### **8. The Commercial Code of Ethiopia, 1960-Company Law**

Company and other business issues are basically regulated by the commercial code in Ethiopia. The commercial code of Ethiopia was issued in 1960.<sup>99</sup> It was enacted with an attempt to comprehensively regulate business and business-related affairs.<sup>100</sup> It treats business, the formation of business organizations, administers the mode of business practices, company formations, operations, and winding ups and related issues.<sup>101</sup>

Foreign investment companies, in whatsoever form they might be constituted, are subject to Ethiopian law requirements while operating in Ethiopia. They are required to be incorporated as per Ethiopian law.<sup>102</sup> As per the company law, there are about six basic business organizations.<sup>103</sup> Nevertheless, the commercial code of Ethiopia is an old business regulatory framework that doesn't incorporate provisions requiring stakeholder's interest such as the environment. It doesn't have any provision requiring or promoting companies for CSR. The content analysis over its provisions indicates that the legal orientation is based on the classic shareholders model that runs for promoting economic interest of shareholders as its prime objective.

---

<sup>99</sup> Michael P. Porter (1995), Unlimited and limited liability in the commercial code of Ethiopia, *ILSA Journal of Int'l & Comparative Law*, Vol. 4: 1083. It can be accessed from [www.abyssinialaw.com](http://www.abyssinialaw.com).

<sup>100</sup> See the commercial code of the empire of Ethiopia, 1960

<sup>101</sup> *Ibid*

<sup>102</sup> See Article 10 of the Investment Proclamation, Proclamation No. 769/2012 (as amended in 2014)

<sup>103</sup> See Article 100 of the Commercial Code and Article 10 of the Investment Proclamation

From all the provisions there is only a single article that may apply to the environment as a case in the public interest (Article 542). Article 542 describes the causes of the dissolution of private limited companies. It stated that a court may dissolve a private limited company through order provided there is a good cause. The phrase for *good cause* includes cases of public interest.<sup>104</sup> And the environment is one of the most important public interest issues that shall be included in such a scenario. The violation of environmental law requirements, therefore, amounts to good cause for the order of dissolution are rendered. Besides the commercial code applies over investment companies incorporated in Ethiopia in the form of business organization.<sup>105</sup>

In nutshell, although the applicability of the commercial code over investment companies in Ethiopia is unquestionable, still, however, the commercial code lags behind time to set environmental requirements and hence its review proves the non-existence of direct environment related requirement to make companies liable. It doesn't require environmental responsibility from companies. Corporate governance shall, however, promote stakeholder participation and environmental interest needs to be reflected in the future amendment.

## **9. The Mining Operations Proclamation no. 678/2010**

Mining may affect badly the environment unless properly managed. This section assesses the mining proclamation relating to whether it has some regulatory framework that compel corporations or business entities involved on the sector to be environmentally accountable.

In Ethiopia the first proclamation to regulate the mining sector and subjects was enacted in 1993<sup>106</sup> and has been amended in 2010. The objective of the 2010 proclamation incorporates ensuring environmentally sustainable

---

<sup>104</sup> Mizanie Abate Tadesse (PhD), Transnational Corporate Liability for Human Rights Abuses: a Cursory Review of the Ethiopian Legal Framework, *Mekelle University Law Journal* Vol.4 June 2016 pp 63. See also article 10 of the investment proclamation number 769/2012.

<sup>105</sup> *Ibid* and See also article 10 of the investment proclamation number 769/2012.

<sup>106</sup> See Proclamation No. 52/1993: A Proclamation to Promote the Development of Mineral Resources

development of mineral resources in the country.<sup>107</sup> The proclamation in the preamble section clearly states that “it is the obligation of the Government to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable development of minerals.” From this sustainable development and future generation equity which are among the fundamental environmental principles are recognized. The proclamation thus has clearly mainstreamed in its objective the issue of the environment in the mining process. Whether it has further prescribed liability for corporations operating against the environmental principles is also scrutinized. Thus as per the review article 60 of the proclamation is found relevant to the point at hand. As per this article two environmental rulings of great significance are prescribed. First rules about environmental impact assessment<sup>108</sup> while the second importantly deals with allocation of funds to cover the costs of rehabilitation of environmental impact.<sup>109</sup> According to the first for obtaining license preparing EIA is mandatory and he shall also get approval from the ministry of forest, environment and climate change. It stated as;

except for reconnaissance license, retention license or artisanal mining license, any applicant for a license shall submit an environmental impact assessment and obtain all the necessary approvals from the competent authority required by the relevant environmental laws of the country.<sup>110</sup>

As per the second environmental sub article the owner of the license has to show deposit about funding the costs of rehabilitation of the environmental impact it will obviously be emanating from the actual mining practice. It stated very clearly as “... any licensee shall allocate funds to cover the costs of rehabilitation of environmental impact.” This provision has great contribution to the environmental protection endeavor. It may have significant prevention role to the environment. Via these two provisions the mining proclamation able to regulate environmental responsibility of corporations involving on the sector. The last important provision is article 78 that describes about penalty. This provision in general has set a

---

<sup>107</sup> See the preamble and objective clause of the mining operation proclamation, Proclamation No. 678/2010, Fed.Neg.Gaz. 4<sup>th</sup> august 2010

<sup>108</sup> Ibid, see Article 60

<sup>109</sup> Ibid

<sup>110</sup> Ibid

punishment of fine up to Birr 200,000 or an imprisonment up to five years or both. Accordingly if corporations contravenes or fails to comply with provisions we have discussed above they may face with such punishment. But whether this punishment is additional to the punishment relating to EIA in the criminal code and EIA proclamation is not clear. The mode of calculation of costs for rehabilitating environmental impact is not as well clear. Still, however, the mining proclamation has attempted to set the bottom-line environmental legal requirements for corporations or business that wants to involve on the sector. The cross reference to the EIA law and the incorporation of environmentally sustainable clause as well as the requirement of allocation of fund for the environmental rehabilitation makes this proclamation very crucial for ensuring responsible corporate practice.

### **Concluding Remarks**

Corporate environmental responsibility is often recognized as *compliance plus approach* and to ascertain whether a country has corporate environmental liability regime requires assessment of investment and environmental regulatory frameworks that have a nexus to do with business and environment. By this article whether or not Ethiopia has the necessary legal regime to hold corporations accountable for their impact on the environment has been assessed- *it is called an appraisal of the legal bottom line*. It scrutinizes the minimum legal threshold of corporation's environmental legal liability.

The assessment signifies that there are various provisions/rules to regulate the environmental conduct of corporate/business sector that ranges from international hard and soft laws (to which Ethiopia is a party) to national environmental laws of civil and criminal nature. These environmental regulatory frameworks are found scattered in different forms and sizes that include international environmental treaties, bilateral investment treaties, the constitution, the criminal law, the civil code, specific environmental laws (pollution control proclamation and the environmental impact assessment proclamation), and sectoral legislations such as the company law, the investment law, land law and the mining law.

Hence the study confirms that Ethiopia has the necessary legal bottom-line to hold corporations environmentally accountable although its special

environmental legislations lack comprehensiveness, clarity and adequacy. Hence it is suggested that reforms shall be made to better respond for the current environmental problems and holding the business sector environmentally accountable. Especially the commercial code needs to take environmental issues into its governance framework so as to promote responsible investment.