

WOLKITE UNVIERISTY SCHOOL OF LAW



TITLE: THE ANALYSIS OF ENVIROMENTAL CRIME AND THEIR LEGAL REMEDIES UNDER ETHIOPIAN LAWS.

A THESIS SUBMITTED TO WOLKITE UNIVERSITY SCHOOL OF LAW FOR THE PARTIAL FULLFILMENT OF (LLB) DEGREE IN LAW

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Declaration

I, hereby declare that this is original work and never been submitted before for any degree, diploma, and any other titles in any other institution. I also declare that all the sources I have used have been indicated and duly acknowledged as complete references.

Declared by; Dano Jirata

Signature.....

Date.....

Confirmed by; Mr. Nahom Teketel (L, L.B, L, L, M)

Signature.....

Date.....

Acknowledgment

First of all I would like to thank my” God” who has given me health and mental consciousness that enables me to undertake my task. Next I would like to give my heartily thanks to my advisor Instructor; Mr. Nahom Teketel (LLB, LLM) at wolkite University school of law, who has provided me all necessary information’s for the achievements of my work. And also I would like to thanks my best my brother Kibiru for his assistance during my stay at the campus supporting me morally and financially. Next I would like to thanks my family and my best friends Nagasa fufa, Tewdros Tesfaye. Lastly but not the least I could not pass without giving thanks and application to my friends who helped me.

Acrimony

1. CFC-----Chlorofluorocarbons.
2. CWA-----Clean water Act.
3. EAPCCO-----East African police chief cooperation organ.
4. ECP-----Environmental crime project.
5. EIA-----Environmental impact assessment.
6. EPA-----Environmental protection authority.
7. EU----- European Union.
8. EWCA-----Ethiopian wildlife Conservation Authority.
9. FDRE -----Federal Democratic Republic of Ethiopian.
10. FEPA-----Federal Environmental protection authority
11. ICCPR-----International Covenant on Civil and Political Right.
12. ISS-----Institute for security studies.
- 13 . NGO-----nongovernmental organ
14. REA-----Regional environmental authority.
15. RCRA-----Resource Conservation and Recovery Act.
16. UNCHR-----United Nations Commission on Human Environment.
17. UNFCCC-----United nation framework convention on climate change.
18. US-----United states.
19. WCED-----World Commission on Environment and Development.

Abstract

This study deals with the analysis of environmental crime and their legal remedies under the Ethiopian laws. Environmental crime was very serious challenge for development and sustainability of fauna and flora generally in the world arena and in Ethiopia. Environmental crimes can be broadly defined as illegal acts which directly harm the environment. It contributes to environmental degradation, which in turn affects the quality and quantity of environmental resources. As such, environmental crime impacts on human livelihoods. The major objective of the study to examine whether the legal framework of environmental law and institutions are implemented in Ethiopia, to this end both doctrinal and qualitative research approach was employed. The international conventions important in providing remedies for environmental pollutions are also part of Ethiopian laws through Article 9 (4) of the FDRE Constitution. Remedies for environmental crime like, criminal remedies, civil remedies and administrative remedies are concerned. In line with the FDRE Constitution, environmental protection authority has also issued an important regulation aimed at protecting the environment and providing appropriate remedies for environmental crimes committed in Ethiopia. The ministry Environmental forest and climate change, Police Office and the others are the main authorities entrusted with the responsibility to protect environmental protection and apply appropriate remedies against perpetrators of environmental crimes. One of the preventive mechanisms of environmental crimes is giving advance knowledge of the existence of the laws that prohibit a certain act to the public. The problem is done through the accessibility of the laws is become less when laws are scattered. And those problems primarily affect the environment and endanger the wellbeing of the community. In this regarding environmental crime and the implementation of legal remedy in the Ethiopia revealed that, despite the existence of governmental and non-governmental agencies, little concern has been made to the environment and it lacks creation of public awareness. Despite the ratification of international treaties, enacted of national laws and regulations there is negligence from the concerning environmental protection authority body in Ethiopia.

Finally based on the finding of the research the following recommendations are forwarded. The law which complied the all environmental crime in single document should be enacted to serve the purpose of fair warning as the people easily understand the environmental crime. Independent environmental organ which implement environmental crime should to be established.

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CHAPTER ONE

1. Introduction

1.1. Background of the Study

Across different legal system there had been different environmental problems and have also no clear-cut definition on environment and environmental crimes which have received universal recognition by countries Over the years international community alarmed by environmental damages and disasters. Environmental change is more expanding and needs the effort of all population of the world. Due to this the right to live in safe and healthy environment has incorporated in number of United Nations International Fora and Principal Document such as 1948 Universal Declaration of Human Right and the United Nation Conferences on the Human Environment (Stockholm, 1972).¹ In recent year is growing at local, regional, national and International levels on environmental issues and harms against the environment. A look at the environmental profile of Ethiopia law reveals that its environment is being degraded. It could be said that such degradations are mainly attributable to human behavior. As such, it is possible to control these degradations by taking actions. On its part, the Federal Government of Ethiopia has so far issued a number of environmental laws which focus on different aspects of environmental protection.²

The 1992 Rio Declaration on Environment and Development has referred at many points to environmental needs, environmental protection, and degradation and so on but nowhere identifies what it includes. Interestingly it includes the term entirely in principle one, declaring instead human beings were entitled to a healthy and productive life in harmony with nature. Environment defined as a term everyone understands but no one able to define.³ In Ethiopian legal system; Environment was defined as totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected their quality or quantity and the welfare of human or other living things, including but not restricted to land atmosphere, weather, and climate water sound, odor, taste, social factors and aesthetics.⁴

Having this in mind, Ethiopia had a short history of dealing with environmental crimes. This was mainly because of the connection between the environment and crime was a relatively new one, dating back to only about three decades. But recently, FDRE constitution and subsequent legislation had incorporated different provisions governing remedies and prevention of environmental crime in Ethiopia such as environmental Impact assessment proclamation number

¹ Daniel Bodansky, *The Art and Craft of International Environmental Law*, Harvard University Press, 2010, pp. 18-20 [hereinafter, Daniel Bodansky, *The Art and Craft of International Environmental Law*]

² For instance soil erosion, deforestation, reduction of wetlands, fro-alpine areas, loss of biodiversity, and air water pollution are some of the environmental problems Ethiopia is facing,

³ The environmental protection authority establishment pro.No.295/2002,Neg.Gaz.9 year,No,7,2,3.

⁴ The environmental impact assessment proclamation No.299/2002, article (2)sub-art 2.

299/2002, Criminal code of Federal Democratic Republic of Ethiopia, proclamation number, 414/2004 and other specific environmental legislations are too. FDRE constitution which is the supreme law of the land,⁵ gives a great emphasis to the protection of the environment from harm which might include preventive mechanisms against environment crime in Ethiopia and provides a framework for the remedy of environmental crimes.

Art.92 (1) and sub art (4) the same constitution had imposed duty to protect environment from damage and destruction on both government and citizens in order to have healthy and clean environment. To this end, for better protection of our environment and remedying for environmental crimes the constitution recognize different international environmental instruments as integral part of the law of the land.⁶ In Ethiopia, in addition to the FDRE constitution, various legislations such as the Environmental Impact assessment proclamation number 299/200, the 2004 FDRE criminal code, Environmental Pollution Control proclamation No. 300/2002 others had incorporated different remedies against environmental crime. This research paper is intended to deal with the analysis of the environmental crimes committed in Ethiopia and violating the legislations concerning environmental protection and their remedies which are provided by those crimes in Ethiopia.

1.2. Statement of the Problem

Environmental crime is very serious challenge for development and sustainability of fauna and flora generally in the world arena and in Ethiopia. There was a very multiplying nature and extent of complexity of environmental crime in Ethiopian. There were numbers of problems which hindered the sound and effective implementation of remedies and preventive mechanisms on environmental crimes in Ethiopia. One of the preventive mechanisms of environmental crimes is giving advance knowledge of the existence of the laws that prohibit a certain act to the public. This task is done through the accessibility of laws to the general public. The accessibility of the laws is become less when laws are scattered. This research is mainly concerned with the analysis environmental crimes and their remedies as well as the reason of the commission of the crime. The reason for investigating of this research by the researchers is to show the environmental crime with their remedies under Ethiopian law. If it is not investigated there may be continuous of environmental of crimes.

1.3. Literature review

Those researchers who conducted research on environmental crime and legal remedies in Ethiopia, *Dejene Girma Janka* argued that environmental wrong doing occurs when there is a failure to comply with environmental regulations (rules).⁷ But In particular he not indicates the remedies against those wrong. Since this work did not addressed issues in relation to

⁵ The Federal Democratic Republic of Ethiopian constitution proclamation. No. 1995), Art (9)1.

⁶ Ibid Art, 9/4.

⁷ Dejene Girma Janka, remedies for environmental wrong doing in Ethiopia; Mekele university law journal, vol.2 No.1 (2013) p4

environmental crime in line with their remedies, I initiated to conduct environmental crime and their legal remedies under Ethiopian law to fill the gaps of previous researcher. The other literature, *AbiyDemmissieKetema*; criminal liability of corporate Environmental crime in Ethiopia; The case of Bahir Dar city administration.⁸ His work only on criminal liability of specific one area corporate environmental crime, his not indicate issues relation to remedies against those environmental crimes whereas, his work did not addressed issue in line remedies.

Dr. Ravulapati Madhavi Associate Professor of law Dr.MCR HRDI, his work on Civil legal remedies for Environmental Damage:⁹ his arise only Civil Legal remedies issue and his did not arise others remedies against issue Environmental Damage. I initiated to conduct environmental crime and their legal remedies under Ethiopia law to fill the gaps of previous researcher.

They Rose Mwebaza, Philip NjugunaMwanika and WondowossenSintayehuWonndamagegnehu, they work on Environmental crimes in Ethiopia, but not indicate issue in line on relation to against environmental crime, whereas issue relation to remedies against Environmental crime. The other literatures Mark Wilde's Book, on for subject matter environmental damages. But In particular he not indicates the remedies against that environmental damage. His work did not address issue in line with environmental damage.

As the researcher stated on above, the work of many writers, including the above have gaps filling on the issues environmental crime and theirs legal remedies, I initiated to conduct environmental crime and their legal remedies under Ethiopia law to fill the gaps of previous researcher. Thus, this research work unlike previous research work on this area mainly focused on analysis the environmental crime and legal remedies under in Ethiopian.

1.4. General Objective of the Study

The general objective of this research is to analyze environmental crimes and their legal remedies under the Ethiopian law.

1.4.1. Specific Objective of the Study

Based on the above general objective this study has the following specific objectives:

- ❖ To investigate environmental crimes.
- ❖ To explore legal remedies against environmental crimes.
- ❖ To examine environmental crime and its legal remedies in Ethiopian environmental law, and
- ❖ To examine legal institutions for protection environmental crime in Ethiopia law.

⁸ *AbiyDemmissieKetema*; criminal liability of corporate Environmental crime in Ethiopia; The case of Bahir Dar city administration. June ,2019 p18

⁹ Mark Wilde, *Civil Liability for EnvironSmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States*, Kluwer Law International

1.5. Research Question

In order to achieve the above mentioned general and specific objectives of this paper, the Research will answers for the following research questions. Accordingly, the research has raised a range of questions that can be answered at the time of conducting the research:-

- What are the environmental crimes in Ethiopian law?
- What are legal remedies against environmental crime?
- What are legal remedies for environmental crime in Ethiopia law?
- What are legal institutions for protection environmental crime in Ethiopia law?

1.6. Significance of the Study

This research paper will demanded urgent solution for challenges against preventing our environment from crime and for remedies against environmental crimes in Ethiopian law context. And the paper also has come up with possible solutions and recommendations with regard to analyze of the environmental crimes in Ethiopia law. Thus, the research will contribute as an input to further researchers, lawyers, law makers and will help policy makers, program managers' and the public at large in line with the environmental crimes and their remedies in Ethiopian law which are incorporated in different laws, enabling environmental legislation and how to combat environmental crime in Ethiopia.

1.7. Scope of the Study

The scope of this research paper will delimited to analysis environmental crimes and the remedies against such crimes under Ethiopia environmental legislations.

1.8. Research Methodology

This research is intended to assess environmental crimes and theirs legal remedies against environmental crimes in Ethiopia law. This research is doctrinal types of research.

1.8.1. Data Source collection method

The kinds of data sources used based on primary data sources and secondary data sources. The primary data sources, relies on analyzing the provision of the proclamation on such issue in light of the FDRE constitutions such as criminal code of Ethiopia and international convention considered. The Secondary sources data, like the books, commentary and journals as well as reports of environmental protection and internet sources and other various kinds of unpublished materials on the topic had been considered.

1.8.2. Data sources analysis method

The study is basically library and internet based. The researchers will use qualitative types of data analysis. To achieve the intended objective and respond to the research question, the data gathered through data gathering instrument are analyzed qualitatively. The basic methodology that used to gather information for this paper is description reviewed of relevant provision,

relevant domestic environmental legislations, and other related relevant, literature, written document on environmental issues. It was a descriptive research design employed for investigating the research problem. Therefore, the research questions are answered and the nature of the research problem shows the implementation of a mixed research approach (doctrinal and qualitative). To this end; mixed approach will be employed because the research problem can be addressed.

1.9. The limitation of the study

In conducting this research paper the major problems faced the researcher are the constraint of budget and the other challenging problem is lack of sufficient published materials and the researcher are attending class, preparing themselves for exit exam are also limitation of the study and also the especially time limitation to deal with all problems.

1.10. Organization of the Research

As per my research paper is concerned, have four chapters; the first chapter concentrated on proposal of the study, chapter two; dealt with the general over view of environmental crime and remedies Chapter dealt with Legal and institutional framework on environmental crimes under Ethiopian law. And the last chapter of my research paper encompassed the conclusion and the recommendation on the research conducted on environmental crimes and the remedies against environmental crimes in Ethiopian laws.

CHAPTER TWO

2. General concepts regarding environmental crime and its legal remedies

Introduction

This chapter is intended to introduce the basic general concepts regarding environmental crimes and their legal remedies that are crucial to understanding the chapter that follows. Here, the chapter will discuss what is the definition of environmental crime, what are the concepts of the environment and the nature of environmental crimes in general, the purpose, and is objective. And what are the remedies to environmental crimes End of Chapter We will discuss the issues about the administration remedies and the conclusion of the chapter.

2.1 Definition of Environment and environmental crime

The word ‘*Environment*’ is derived from an ancient French word ‘*environer*, meaning to encircle. Combination of elements whose complex interrelationship makeup something, the surroundings the condition of life of the individual and of society as they are or as they are felt¹⁰ Thus, environmental problems can be deemed to include such problems as traffic congestion, crime, and noise. Of course, defining an Environment is not an easy task. Most treaties, declarations, codes of conduct, guidelines, etc. don’t attempt to define it directly. No doubt this is because it is difficult both to identify and to restrict the scope of such an ambiguous term, which could be used to encompass anything. Many conventions (like The 1992 Rio Declaration on Environment and Development) avoid the problem, however, no doubt because, as Caldwell remarks it is a term that everyone understands and no one is able to define.¹¹‘Some other treaties and other instruments define the environment in different ways considering the subject matter they want to address. For example, the Declaration of the 1972 Stockholm Conference on the Human Environment (UNCHE) merely referred obliquely to mean ‘environment adding that “both aspects of man’s environment, the natural and man-made, a are essential for his well-being and enjoyment of basic human rights.”

The world commission on environment and development relied on an even more succinct approach; it remarks that the environment is where we live.”The 1992 Rio Declaration on Environment and Development refers at to environmental needs, environmental protection, and environmental degradation and so on, but nowhere identifies what these include. The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines the environment as including Natural resources both abiotic and biotic, such

¹⁰ First Environment Action Plan programme 1973-76-see Gilpin (1996) Dictionary of Environment and Sustainable Development Chichester: Wiley.

¹¹ Caldwell, International environmental Policy and Law (1st end. Durham, NC, 1980), 170

as air, water, soil, fauna and flora the interaction between the same factors; property which forms part of the Cultural heritage; and the characteristic aspects of the landscape.¹²

When we come back to our legal system, under Art 2(3) of Environmental Protection Organs Establishing Proclamation number 295/2002, and As per Art. 2(2) of the Environmental Impact Assessment Proclamation number 299/2002, and Environmental pollution control proclamation number 300/2002, Art 2 (6) the same, defines the environment as; The totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected 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.¹³ When we can see the definition of environmental crime, there are no easy explanations for the phenomena collectively called crime. The concept of crime has always been dependent on public opinion. In fact “law “it self reflects public opinion of the time. Obviously, every society formulates certain rules to regulate the behavior of its members, the violation of which is forbidden. According to Terence Morris, “Crime is what society says is crime by establishing that an act is a violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted.”

An environmental crime can be defined as a grave act against the environment that results in the infringement of the right of citizens to a clean and healthy environment. For such an act to constitute a crime it must contravene laid-down legislation in the various sectors of the environment, such as forestry, water and wildlife. Environmental crime is a serious and growing concern, leading to the near extinction of valuable wildlife species, and significantly impacting on the biological integrity of the planet. It contributes to environmental degradation, which in turn affects the quality and quantity of environmental resources. As such, environmental crime impacts on human livelihoods.

The Revised Criminal Code was adopted in 2004; defines crime as per Art.23, as follows: - ‘Crime’ is defined as an act that is prohibited and made punishable by law. An ‘act’ consists of the commission or omission of what is prescribed by law.¹⁴ Both the individual and/or the corporation will become criminally liable if they are proven to have committed a crime. Criminal law shall apply to any person, whether national or foreign, who has committed a crime in the national territory, specifically the land, air and bodies of water to the extent determined by the Constitution.¹⁵ Notwithstanding this, deliberate evasion of environmental laws and regulations by individuals and companies in the pursuit of personal financial benefit can be termed

¹² UN council of Europe Convention on civil Liability for Damages Resulting from Activities Dangerous to the Environment Protection which was done at Lugano 21 June 1998, Art,2.10

¹³ Environmental pollution control proclamation no. 300/2002, Art 2 (6)

¹⁴ See article 23, of The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, 9th of May 2005, Addis Ababa Criminal Code

¹⁵ Id art.11

environmental crime. Where these activities involve movements across national boundaries, or impacts upon the world as a whole, they can be termed international environmental crime.¹⁶

Environmental crimes can be broadly defined as illegal acts which directly harm the environment. They include: illegal trade, the provision requires the presence of legal, material and moral elements for an act to be considered a crime and a juridical person to be held criminally liable for punishment under the conditions laid in Article 34(1) of the Criminal Code.¹⁷ As a result, corporate bodies either owned by governmental or private will be criminally liable where; one of its officials or employees commit a crime as a principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or violating its legal duty or by unduly using the juridical person as a means. Therefore, from this provision, it can be inferred that if the officials or employees of the corporate bodies committed crimes, including environmental crime, the entity will be criminally held liable.

The 1995 Constitution of the Federal Democratic Republic of Ethiopia being the supreme law of the land,¹⁸ gives great emphasis to the protection of the environment. The Constitution grants all persons the right to a clean and healthy environment.¹⁹ It also grants every Ethiopian the right to sustainable development,²⁰ namely to development that meets the needs of the present generation without compromising the environmental needs of future generations.²¹ Furthermore, it requires the economic and efficient use of natural resources, and an approach to reservation that protects the natural environment from any harm.²² Also outlined is the government's duty to hold, on behalf of the people, land and other natural resources, and to deploy these for the common benefit and development of the people.²³

2.2 Nature of Environmental Crime

The real and well documented environmental problems we face both locally and globally are natural disasters, technological catastrophes, environmental degradation, pollutions, and deforestation, by different human activities.²⁴ Every mining production has different environmental impacts should like, large scale excavation to extract small amount of ores, disrupts top soil, displace local animals, plants, native human populations. Its management plan also different because its effect on the environment will differ according to its geographical,

¹⁶ Definition Used in UNEP. Environment and Compliance of CITES, Montreal and Basel convention (Nairobi UNEP, 1999. Vo.1 p 24

¹⁷ Read together Art,23(2), 23(3) and 34 of FDRE criminal code,2004

¹⁸ The Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 Article 9(1), Id 43(4) of the Constitution

¹⁹ Id art 44

²⁰ Ibid art 43(3)

²¹ World Commission on Environment and Development, Our Common Future, 1987, 43

²² Ibid

²³ The Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 Article 89(5), Constitution

²⁴ Ashton P.J.D love, Mahachi and Dirks (ed.2001); **An overview of the impact of mining and mineral processing operation** on water resource in Zambezi, Limpopo and South Africa (university of Zimbabwe Geology department (Harare), page 149-206.

social and ecological situation.²⁵ Mining workings follow different stages like explorations, open pit and underground blasting, crushing, grinding, recycling, processing using chemicals and costal and in land alluvial mining.²⁶

It is important to take notice that by their very nature environmental crimes are dangerous issue and affects whole population of our world it might either domestically or international area for others anyone with an understanding of environmental crime protection can be a solution to other crimes in their own way. Environmental crime is serious and dangerous which has trans - boundary effect. For example, Art 4 of /ICCPR/.Therefore, we are part of the system: if our actions affect the system, we in turn must be the solution, not the system itself. Despite this, we must retain a full understanding of the system and our relationship with it.²⁷ This requires the establishment of early warning systems and risk prioritization systems before the crime occurs as resources are always limited to help address risks; and often irreversible or even reversible environmental damage not only at excessive cost but also to do the necessary things. In other words, many of the damages done to the environment may have long term effects or they may involve important synergism in the environment or may not be effectively reversible such that, the greatest danger is that human kind may set off unchecked degradation that will pass a point of no return, making it impossible to restore a healthy environment.²⁸When discussing the environmental protection, one of the first issues to solve is the definition of environmental crime. Answering this question requires that the object of protection environmental crime is defined first. There is a certain level of agreement at the international level on the importance of defining(a)Environment as the scope of the protection per se, distinguishing it from property and public health or individual right to personal integrity, and (b)The components of the environment meriting protection.²⁹The nature and extent of environmental crime in Kenya was commissioned by the Environmental Crimes Project (ECP) of the Institute for Security Studies (ISS).The ECP is a project in partnership with the East African Police Chiefs Cooperation Organization (EAPCCO). Its core objective is to enhance human security by improving regional law enforcement and policymaking to fight environmental crime in eastern Africa.³⁰

When we can infer the fact that damage to the environment does not only cover damage to the environment per se, but it also covers damage to private property and consequential losses that arise there from or in connection with. In other words, damage to the environment has two facets, that is, private nuisance and public nuisance. Accordingly, for me a proper classification

²⁵ Ibid

²⁶ Ibid

²⁷ J,Weiss Environment Change and International Law: New changes Dimensions, (UN General Assembly, oct,28 1982)

²⁸ Conway W. Honderso International Relations Conflicts and cooperation at the Turn on 21st century (published by the MC Grew-Hill companies,Inc.,1998),p 431

²⁹ Directive, 156/1999 CEE on waste. See Art. 3 also F Gaimpietro, Models and Types of environmental offences ; preliminary consideration in H. J Alberath/s, Lappa (edns), Criminal Law and the Environment HEVNI No 22/ Forssa, 1992.pp.142-151

³⁰ David and Donald the Nature and extent of Environmental Crime in Kenya (2009).

of damage to the environment is imperative because there is a fundamental difference between the environment-related type of damages [private nuisance], on the one hand, and damage to the environment per se [public nuisance] on the other hand in relation to the scope of the traditional tort law. So much so that the scope of the traditional tort law covers only the environment related type of damages which could result in personal injury.

2.2.1 The 1972 Stockholm Declaration

The first declaration of the united nation which was made on June 5-16, 1972 in Stockholm Sweden and marked the beginning of environmental politics and law, with 26 principles that puts obligation on states, NGO'S, important experts, governments and peoples to exert common effort for the presentation and improvement of the human environment.³¹The declaration further mentioned that environmental problems of developing are caused by under development. Whereas developed are related to industrialization and technological development.³² Although, the document is non-binding, its goal is proclaimed to protect and improve the human environment for present and future generations along with fundamental goals of peace and worldwide economic and social development. What it means is that international law recognizes the sovereign right of states to use their own resources based on their environmental policies.

The declaration puts positive obligation on states to take all possible action to prevent pollution of the sea which may create hazard on human health.³³ It also imposes the duty of states not to have the environmental policies that adversely affect the present and the future generation's attainment of the better living conditions.³⁴ The obligation of the states even goes beyond their territories in which they are responsible to ensure that the activities within their jurisdictions do not cause damage to the environment of other states or of areas beyond the limits of their national jurisdiction³⁵.

2.2.2 The 1992 Rio Declaration on environment and development

Rio declaration on environment and development entry in to force in Rio Dejanerio, Brazil from June 3-14, 1992. Ethiopia participated in Rio conference by the then prime minister, Tamratlayne.³⁶Participants on the conference are Head of states, NGO's, Journalists and known experts.³⁷The Rio Declaration on Environment and Development is a set of principles that recognize the importance of preserving the environment and set forth international guidelines for doing so.³⁸It has the objectives of establishing a new and equitable global partnership through the

³¹ John Allphin Moore JR. and Jerry pubantz; (ed.2002). Encyclopedia of the world Nations, from California state polytechnic University and Salem College respectively, on page, 313-320.

³² MelleseDamite **Environmental law teaching material**, page.77- 78.

³³ Principle 7 of the Stockholm Declaration of the United Nation Conference on Human Environment, 1972

³⁴ Ibid. Principle 11

³⁵ Ibid. Principle 21

³⁶ Girma Hailu, (ed.2000), **Environmental Law of Ethiopia**, International liven , Belgium as Cited by YenehunMamo ,in essay on environmental rights Law Series, vol. 4 (July,2012), page, 33

³⁷ Ibid no. 16, page, 313.

³⁸ <http://www.facing-finance.org>. last accessed on January 3, 2018

creation of new levels of cooperation among states, key societies and people, working towards international agreements which respect the interests of all and protect the integrity of the global environment and developmental system.³⁹ The declaration states that:

- Human beings are at the center of concerns for sustainable development and entitled to a healthy and productive life in harmony with nature.⁴⁰
- The right to development must be fulfilled so as to equitably meet developmental needs of present and future generation.⁴¹
- The need to cooperate among states in spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystem.⁴²
- The interdependence and indivisibility of the peace, development and environmental protection is also issues at hand under the declaration.⁴³ Principle 10 specifically endorsed the right to access to environmental information.⁴⁴It states: environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available.⁴⁵In order to protect, promote and preserve the environment the declaration adopted precautionary approach to be widely applied by states according to their capabilities.⁴⁶And the principle of polluter pay, which obligates the polluter to bear the cost of pollution, is also included in the declaration.⁴⁷

2.2.3. The Vienna Convention and Montreal Protocol for the Protection of ozone layer

The convention entry in to force in February 19, 1989 and amend in London (1990) and Copenhagen 1992 And Ethiopia ratified this convention through proclamation No.2/1994, by taking in to consideration the harmful impacts of ozone layer on human health and environment.⁴⁸Ozone is a pollutant at ground level and low altitude, especially in stratosphere, which allow harmful solar ultraviolet radiation to penetrate to the surface of the earth. And it because climate change, adversely affects plants, animals, human health, aquatic systems and bring acid rain. The convention aimed at protecting ozone layer by controlling the emission of

³⁹ Ibid

⁴⁰ Principle 1 of the 1992 Rio Declaration on Environment and Development

⁴¹ Ibid principle 3

⁴² Ibid principle 7

⁴³ Id principle 25

⁴⁴ Fred L. Morrison and Rudiger Wolfrum, supra note Error! **Bookmark not defined.** p. 855.

⁴⁵ Principle 10 of Rio Declaration on Environment and Development

⁴⁶ Ibid principle 15

⁴⁷ Ibid principle 16

⁴⁸ Mellese Damite **Environmental law teaching material**, page, 80

chlorofluoro carbon (CFC's) which contain chlorine, bromine and it threatens ozone layer in polar area. But, scientists kept time table on the issue of CFC'S are being replaced by greener alternatives. And they discovered a number of gases which affect atmospheric ozone such as methane, nitrous oxide, carbon dioxide, lead oxide, sulfur dioxide, cyanide.⁴⁹The convention put different obligation on international communities to ensure the effective implementation of the convention such as wide ratification of the convention, secondly, to build effective institutional structure to monitor and apply as norm and to provide the available remedies. Thirdly, parties to follow appropriate procedures in order to provide reasonable decision for those who breach the agreement. Fourthly, taking sufficient incentives and penalties to encourage observance. Finally, to develop compulsory dispute settlement mechanisms depending on the agreement.

2.2.4 United Nation framework convention on Climate change/UNFCCC

United Nation frame work convention on climate change first adopted on May 9, 1992 in New York.⁵⁰ Ethiopia ratified the convention on May 2, 1994 through proclamation No. 97/1994.⁵¹ The basic objectives of the convention is, limiting the release of greenhouse gases in to the atmosphere, to reduce climate change, global warming, emission of carbon dioxide and its trans boundary impacts respectively.⁵²The convention repeatedly use Rio declaration principles again in several places, such as principle 2 (sovereignty of states to exploit their resources and the responsibility not to cause environmental damage in other states), principle 3, (intergenerational responsibility), principle 7 (common but differentiated responsibility of states), and principle 11 (using national legislation and environmental standards) to address climate Chan impacts.⁵³And also successful international conference prepared in Berlin, Geneva, Bonn, Kyoto, Copenhagen and Buenos-Aires.⁵⁴

2.3 The purpose and objective of the remedies environmental crime

2.3.1 The purpose of the remedies environmental crime

The purpose of the environmental crime remedy is to punish those who commit crimes against the environment to the extent of illegality. In particular, it is to prosecute people who commit environmental crimes and to punish them with the necessary legal punishment. These punishments can be education for others so punish those who commit environmental crimes and protect the environment for punishment so that people do not commit crimes against the environment for fear of punishment. It is also a role that influenced individuals and society as a whole and provided solutions for those people or society.

⁴⁹ Alan Gilpin (ed.2000) **Dictionary of environmental law** Honorary visiting fellow university of new New South Wales, Australia, page 20.

⁵⁰ Ashton P.J.D love, Mahachi and Dirks (ed.2001); **An overview of the impact of mining and mineral processing operation on water resourcein** Zambezi, Limpopo and South Africa (university of Zimbabwe Geology department (Harare),

⁵¹ Id no. 74, page, 72

⁵² Ibid

⁵³ Id no, 78, page, 80

⁵⁴ Id , page, 114.

2.3.2 The objective of the remedies environmental crime

The objective of the remedies environmental crime is to eliminate crime and ensure that the neighbourhood receives the necessary care for adequate environmental protection. Informing people that they have the same right to live in a clean and safe environment and be responsible for environmental crime. The main purpose of criminal justice is to eradicate environmental crime and protect the environment. It also shows the rights and obligations of the conservation area, public and government bodies responsible for environmental protection and legitimate environmental solutions as appropriate. To enhance the capacity to support host counterparts in preventing and addressing (transnational) environmental crime through guidance development, training and attainment of required skill sets and expertise, while managing and reducing its own environmental footprint.⁵⁵ And pass on a pristine environment to future generations. In general, its main purpose is to protect the environment from crime and to pass on a clean environment to future generations. In general, the main objective and purpose of the remedies environmental crime in the highest and main is to punish and educate the perpetrator of environmental crime to strengthen environmental crime protection to prevent crime against the environment.

2.4 Legal Remedies for Environmental crime

When environmental crimes occur, three possible remedies will come into the picture. These are civil remedies, criminal remedies, and administrative remedies. For the purpose of this research criminal remedies refer to measures that can be taken in accordance with criminal law and criminal procedure law, whereas civil remedies refer to all non-criminal measures that can be taken by judicial organs. On the other hand, administrative remedies refer to all measures that can be taken by non-judicial organs such as environmental protection organs.

2.4.1 Civil Remedies

One of the first remedies that may be used whenever environmental crime occurs is a civil remedy. There are also different types of civil remedies.⁵⁶ One such remedy is compensation which refers to financial remedy that aims at granting a plaintiff monetary relief for the harm he has sustained with a view to restoring him to the position he was in prior to the occurrence of the harm.⁵⁷ Although not all harms to the environment can be assessed in monetary terms such as loss of eco-services, it is said that where harm has already occurred, compensation may be awarded to the injured party to indemnify for the losses suffered to the environment and the services it provides as well as the expenses that have been incurred due to the environmental harm.⁵⁸ Moreover, it is possible to claim compensation for future harm if it is proved, not just

⁵⁵ Preventing and Addressing Environmental Crime, a Key Driver of Conflict, through UN Policing

⁵⁶ By remedies for crime environmental, the author is referring to all measures that are and can be taken by non-judicial bodies

⁵⁷ Jonathan MCKEE (EC Delegation), ETHIOPIA: COUNTRY ENVIRONMENTAL PROFILE, Addis Ababa, August 2007,

⁵⁸ CIVIL REMEDIES TO CONTROL CRIME: LEGAL ISSUES AND CONSTITUTIONAL CHALLENGES by Mary M. Cheh George Washington University

feared, that a party is exposed to risk/hazard such as toxin as a result of environmental offender. The other civil remedy for environmental crime is an injunction. It is said that, in environmental context, the injunction is an extremely effective remedy because it leads to the prevention of imminent environmental crimes from happening. Restitution and remediation are also other civil remedies.⁵⁹ When it is possible for the injury to be wiped out and the situation restored to its pre-injury state, restitution is a preferred remedy.

In environmental cases, courts often order environmental harm to be cleaned up or the damaged ecosystem be returned to a healthy state. So, as indicated above, civil remedies can have various purposes such as compensating victims, preventing harms from occurring, and restoring the damaged environment.⁶⁰ The experiences of some countries also show that the above mentioned civil remedies are recognized. For instance, in Tanzania, civil remedies such as injunctions, compensation, restoration orders, conservation orders, easement orders, and compliance orders can be used to enforce environmental regulations.⁶¹ In the US, in addition to seeking compensation by injured party; one can find different civil remedies recognized for environmental violations under different acts. Under the Clean Air Act, the US EPA can bring a civil action before a court against a non-complying entity to seek monetary fine or an injunctive order.⁶² Finally, the US Resource Conservation and Recovery Act (RCRA) also provide that the US EPA can seek civil remedies if its provisions or regulations issued there under are not observed.⁶³ Many European countries also recognize and use different civil remedies against environmental crimes.⁶⁴

2.4.2 Criminal Remedies

In addition to civil remedies, environmental laws recognize criminal remedies to penalize environmental crimes with a view to expressing the public rejection of the conduct and to discourage future similar conduct. In this regard, the main criminal penalties that can be used are fine and jail even if other criminal sanctions such as community service can be applied.⁶⁵ Criminal remedies it deals with the remedies and concept of various nuisances with regards to environmental pollution and crimes. It deals with pollution offences affecting the public safety, health, convenience, decency and morals⁶⁶. A criminal remedy or sanction is pursued by the state, with or without the involvement of the victim. Criminal remedies or sanctions against an individual person or legal entity (i.e. a business) can take a range of forms depending on the jurisdiction, which can include imprisonment, house arrest, community supervision, fines,

⁵⁹ civil remedies to control crime ;legal issues and constitutional challenges by Mary M.Cheh George Washington University

⁶⁰ Mark Wilde, *Civil Liability for Environmental Damage: A Comparative Analysis of Law and Policy in Europe and the United States*, Kluwer Law International, The Hague, London, New York, 2002, p 273-289; Dinah Shelton and Aleixandre Kiss, *Judicial handbook on Environmental Law*, UNEP, 2005, pp. 54-56.

⁶¹ See Sec.226, *The Environmental Management Act of Tanzania*, 2004, Act No. 20 of 2004 (Tanzania EMA hereinafter).

⁶² Steven Ferry mentioned at note 3, pp. 226-228.

⁶³ Steven Ferry mentioned at note 3, pp. 344-448.

⁶⁴ See Mark Wilde, mentioned at note 12, pp. 273-289.

⁶⁵ Dinah Shelton and Andreen Kiss mentioned at note 12, p. 56.

⁶⁶ civil and criminal remedies for protection of environment.docx (slideshare.net)

restitution, and community service.⁶⁷ For instance, in the US, the Clean Air Act, the CWA and the RCRA recognize the use of criminal remedies to enforce environmental regulations.⁶⁸ In Europe, countries like Austria, Belgium, Denmark, Finland and France also recognize criminal remedies for violations of environmental regulations.⁶⁹ In Africa, countries like Tunisia,⁷⁰ Tanzania⁷¹ and South Africa⁷² use criminal sanctions to enforce environmental regulations.⁷³ Thus, criminal remedies are also seen as important means environmental laws employ to achieve their objectives.

2.4.3 Administrative Remedies

The use of civil and criminal measures alone will not suffice to effectively implement environmental regulations. As a result, different countries recognize the important roles administrative bodies can play in the enforcement of environmental regulations.⁷⁴ One of the roles they can play is imposing various types of administrative remedies⁷⁵ when non-compliance with environmental regulations occurs. For instance, in Tanzania, administrative bodies are empowered to take necessary administrative measures such as specific performance orders, restoration orders, conservation orders, and compliance orders to bring violators of environmental regulations into compliance with them.⁷⁶ Most members of the EU also provide for different administrative measures that can be imposed by administrative bodies when environmental regulations are not observed.⁷⁷ In the US, the Clean Air Act, the CWA and the RCRA mandate the US EPA to take certain types of administrative measures. For instance, in accordance with the CWA, the US EPA may issue administrative compliance orders, impose administrative sanctions, cause the termination or modification of certain permits, or order cleaning-up operation or payment for such operation.⁷⁸ Therefore, like civil and criminal remedies, different jurisdictions recognize the use of various administrative remedies when environmental crimes occur in order to ensure environmental protection.

⁶⁷ Judicial remedy | National Action Plans on Business and Human Rights (globalnaps.org)

⁶⁸ See William L. Andreen, mentioned at note 16, pp. 549-551 and Steven Ferry, mentioned at note 3, pp. 226-228.

⁶⁹ Michael G. Faure, and Günter Heine, *Criminal Enforcement of Environmental Law in European Union*, Kluwer Law International, The Hague, 2005, p. 14

⁷⁰ See sec Batir Wardam, *New Stringent Law against Pollution in Tunisia*, available at <http://www.arabenvironment.net/archive/2007/9/334707.html>, accessed on 16 November 2019.

⁷¹ See Sec. 226, Tanzania EMA

⁷² See Sec. 51 and 52, National Environment Management: Air Quality Act, Act No. 39 of 2004, 2004 (US Air Quality Act hereinafter).

⁷³ The UNCLOS, the Paris Convention for the Prevention of Land-Based Pollution, and the Basel Convention on trans boundary Movement of Hazardous Wastes.

⁷⁴ Michael G. Faure, and Günter Heine, mentioned at note 22, pp. 17 and 49.

⁷⁵ By administrative remedies, the author is referring to all measures that are and can be taken by non-judicial bodies.

⁷⁶ See Sec. 226, Tanzania EMA.

⁷⁷ Michael G. Faure, and Günter Heine, mentioned at note 22, pp. 17 and 49.

⁷⁸ For the information on the administrative remedies the above US environmental laws recognize, see generally, Steven Ferry, mentioned at note 3, p. 226-228, and William L. Andreen, mentioned at note 16, pp. 549-551.

CHAPTER THREE

3. Environmental crimes and its remedies under Ethiopian environmental law

Introduction

Environmental crimes and its remedies are incorporated in different environmental as well as criminal law of Ethiopia's. These crimes and remedy of them are scattered here and there. This chapter is intended to introduce environmental crimes and its remedies under Ethiopian environmental laws. It is devoted to the study of many of the environmental law and its remedies of environmental crime. It deals with discuss like, constitution ,criminal ,status of an offender and sanction of the environmental crimes as well as sectorial legislation environmental remedies and the others issue arise in this topic institutional framework for environmental crime and the remedies criminal remedies, civil remedies and administrative remedies and so on others remedies for environmental crimes.

3.1. The FDRE Constitution of 1995

The FDRE Constitution a number of provisions relevant to the protection, sustainable use, and improvement of the country's environment. Art.44 (1) of the FDRE Constitution states that “all persons have the right to live in a clean and healthy environment.”⁷⁹This provision is put as an environmental right under the Fundamental rights and freedoms of the Constitution as one of the democratic rights enshrined therein. Besides to this, art. 92(1) of the FDRE Constitution, that puts environmental objectives, states that “the government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.”⁸⁰Furthermore, sub art 2 of 92 states that “the design and implementation of programs and projects of development shall not damage or destroy the environment.” The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE), being the supreme law of the land,⁸¹ gives great emphasis to the protection of the environment.

The Constitution grants all persons the right to a clean and healthy environment.⁸²It also grants every Ethiopian the right to sustainable development,⁸³ namely to development that meets the needs of the present generation without compromising the environmental needs of future generations.⁸⁴ This is kind of development that can only be achieved with a minimal possible impact on the environment. Furthermore, it requires the economic and efficient use of natural resources, and an approach to preservation that protects the natural environment from any

⁷⁹ The Federal Democratic Republic of Ethiopia, Proclamation No.1/1995) Article .44(1) Constitution

⁸⁰ Id, art 92(1)

⁸¹ Id, Article 9(1),

⁸² Id, Article 44,

⁸³ Id ,Article 43(4),

⁸⁴ World Commission on Environment and Development, Our Common Future, 1987,43

harm.⁸⁵ Also outlined is the government's duty to hold, on behalf of the people, land and other natural resources, and to deploy these for the common benefit and development of the people.⁸⁶ The Constitution enumerates a set of environmental objectives under the 'National Policy and Principles and Objectives'. Article 92 of the Constitution imposes a duty on both the federal and regional governments and their citizens to protect the environment. It imposes an obligation on these governments to ensure that developmental projects do not damage the environment. It further assures participatory rights for citizens in the planning and implementation of environmental policies and projects that affect them directly. In addition, Article 85(1) mandates all organs of the federal and regional governments to be guided by constitutional objectives when implementing the country's environmental laws and policies. Generally, the constitution is the base for all stakeholders to combat corporate environmental crime so that constitutionally recognized rights of citizens to live in a clean and healthy environment will not be compromised and legislative objectives can be achieved.

3.2. The criminal code of Ethiopia

Crime is defined as an act that is prohibited and made punishable by law. An 'act' consists of the commission or omission of what is prescribed by law.⁸⁷ Both the individual and/or the corporation will become criminally liable if they are proven to have committed a crime. Criminal law shall apply to any person, whether national or foreign, who has committed a crime in the national territory, specifically the land, air, and bodies of water to the extent determined by the Constitution.⁸⁸ Notwithstanding this, the provision requires the presence of legal, material and moral elements for an act to be considered a crime and for a juridical person to be held criminally liable for punishment under the conditions laid down in Article 34 of the Criminal Code, which refers to a corporation as a 'juridical person'. As far as important elements of the environmental crime are concerned, four elements can be deduced from this definition.

Firstly, corporate environmental crimes are the result of a violation of environmental laws either through commissions or omissions. These provisions are either incorporated under the criminal code of a country and the sector specific laws. Secondly, corporate environmental crime is committed by the agents or employees of a company or firm since they are either the leading minds or the working force of the firm which lacks the capacity to act. Thirdly, in relation to the motive behind the commission of such crimes, the very purpose of the agents or employees in committing environmental crimes issue curing the interest and benefit of the firm. These interests might be financial profit obtained through exploitation of the environment or it can be expenditure saved by non-compliance to the requirements of the law. Lastly, since corporate

⁸⁵ Ibid

⁸⁶ Article 89(5), Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995

⁸⁷ See article 23, The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, 9th of May 2005, Addis Ababa Criminal Code

⁸⁸ Id, Art 11

environmental crimes are criminal acts, they are subject to criminal liability.⁸⁹ Note that, however, the Criminal Code is not immediately applicable when an environmental crime is committed. The Criminal Code will be called to the application when either gap is shown in relation to liability for an environmental crime under environmental legislation or when it provides more serious penalties for environmental crime than other laws.

3.2.1. The Status of an offender

The rank, title or status of an offender within a company is disregarded when it comes to criminal culpability or responsibility. It makes anyone criminally liable if he or she happens to commit an offense, regardless of the authority the individual holds in a certain company. A juridical person shall be deemed to have committed a crime and will be punished accordingly where one of its officials or employees commits a crime in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or violating its legal duty.⁹⁰ Environmental enforcement strategy involves a three element approach, based on regulatory, civil, and criminal enforcement. Severe punishments are stipulated for environmental crimes such as pollution, propagation of an agricultural or forest parasite, contamination of water, contamination of pastureland, mismanagement of hazardous wastes and acts contrary to the environmental impact assessment. A fine of up to 10 000 Birr,⁹¹ or rigorous imprisonment for up to five years, is provided for in instances of discharging pollutants into the environment in contravention of the relevant environmental standards. The corporate body as a legal person acting through its natural persons will be punished independently of the punishment to be imposed on the managers and officers of the company for violating environmental laws.⁹²

3.2.2 The criminal sanction

The criminal sanction to be imposed on corporate body is principally based on the theories of vicarious liability (respond eat superior) and the identification theory (or alter ego theory). Based on the theory of vicarious liability (respond eat superior), an entity will be liable for environmental offenses committed by their employees including the directors, managers and lower level employees, acting within the scope of their duty for the benefit of the corporate body. It is by the principle of imputation that legal entities are punished for environmental crimes committed by their employees.⁹³

Whereas, under the identification theory, directors are believed to be the brain of a corporate body running its complex system and corporate bodies are held criminally responsible.⁹⁴ This is

⁸⁹ AbiyDemmissieKetema; criminal liability of corporate Environmental crime in Ethiopia; The case of Bahir Dar city administration. June ,2019 p18

⁹⁰ See article 34(1), The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, 9th of May 2005, Addis Ababa Criminal Code

⁹¹ One USD is approximately equivalent to 11 birr (January 2009)

⁹² Abiy Demmissie Ketema; criminal liability of corporate Environmental crime in Ethiopia; The case of Bahir Dar city administration. June ,2019 p19

⁹³ Id

⁹⁴ Id

because environmental crimes are committed by a person who is the directing mind and will 'of the corporate body which the law considers him/her as the corporate body itself. As per this theory, corporate body are equated with certain key personnel who acts on its behalf and few high ranking officials will be held liable.⁹⁵ If such pollution results in serious consequences to the health or life of persons, or to the environment, the term of imprisonment may extend to ten years.⁹⁶ Imprisonment for up to 15 years is provided for if a person intentionally poisons a well, cistern, spring, waterhole, river or lake.⁹⁷ If the environmental crimes provided for by a special section of the Criminal Code is imprisonment only, then the punishment shall be a fine not exceeding 10 000 birr. For a crime punishable with imprisonment not exceeding five years, the punishment shall be a fine of up to 20000 birr. For a crime punishable with rigorous imprisonment more than five years, but not exceeding ten years⁹⁸

3.3 The Sectorial legislation

3.3.1. Solid waste Management Proclamation No.513/2007

It is essential to promote community participation in order to prevent adverse effects and enhance the benefits resulting from solid wastes.⁹⁹ It also needs administrative willingness and license to manage, dispose, plastic wastes not more than 0.03 millimeter thickness importation and manufacture is prohibited.¹⁰⁰ Solid waste disposal sites shall be constructed properly and subject to environmental auditing as per the relevant law and the owner of it is obliged to modify its operation not to poses a risk to public health or the environment.¹⁰¹ However, the implementation of solid waste management project require special permit which determined in the directive issued by environmental agency, a person who implemented solid waste management project without authorization is committed an offence and shall be liable according to the relevant provision of criminal code.¹⁰²

3.3.2. Environmental Impact Assessment Proclamation No.299/2002

The proclamation helps to bring the intended development activity by considering, economic, social and cultural issues before decision was given on environmental issues by federal and regional agencies. it also help to raise sustainable development but, it needs administrative transparency and accountability as well as the involvement of peoples in decision making by following constitutional principles like consultation and participation on the issues which directly or indirectly affect their interest.¹⁰³ And provide incentive as technical assistance for

⁹⁵ Ibid

⁹⁶ federal democratic republic of Ethiopian Revised Criminal Code,no.414/ 2004 article 519

⁹⁷ Id. article 517(2)

⁹⁸ Ibid. article 519(2)

⁹⁹ Solid waste proclamation. No. 513/2007 under its preambles.

¹⁰⁰ Ibid, article 8 and 9

¹⁰¹ Id Article 14 and 15.

¹⁰² Id Art 17

¹⁰³ Environmental Impact Assessment Proclamation No.300/2002 Under its preambles

those projects rehabilitate the degraded environment.¹⁰⁴ The EIA Proclamation defines 'environmental impact' as any change to the environment or its components that may affect human health or safety, flora, fauna, soil, air, water or climate.¹⁰⁵ Such impact shall be assessed on the basis of the size, location, nature or cumulative effect in comparison with other concurrent impacts.¹⁰⁶

EIA is a legal requirement devised to implement the rights granted by the Constitution and protects against the violation of these by any person, particularly if such rights are violated under the guise of development. To ensure enforcement of EIA, the EIA Proclamation also defines a set of environmental crimes. It provides for criminal liability for operating a development activity without obtaining the requisite authorization from the Environmental Protection Authority, or the relevant Regional Environmental Authority.¹⁰⁷ Making a false representation in the report, failing to keep the required records and failing to fulfill conditions attached to the authorization are all offenses punishable by a fine of between 10,000 birr and 100,000 birr. It also provides for an additional fine of not less than 5,000 birr and not more than 10,000 birr for failure to exercise due diligence. In this regard, the Revised Criminal Code also labels certain act concerning EIA as offences. It provides for imprisonment for a term of up to one year for a person who implements a development project requiring EIA without obtaining the requisite authorization, or makes a false statement concerning EIA.¹⁰⁸

3.3.3. Environmental Pollution Control proclamation No.300/2002

The proclamation aims to bring social and economic development by using effective protection of environment , high production, safeguarding of human health, protect nature\its aesthetic value, mitigate pollution or if possible eliminate it.¹⁰⁹ Management of hazardous wastes, chemicals and radioactive substances by using sound technology, recycling of wastes, polluter pay costs of damage after demanded, criminalizing the polluter, using permit rules for limited discharges and emissions of chemicals, set standards, train inspectors to control pollution and prepare incentives for those who produce environmentally friendly goods.¹¹⁰

The Proclamation No. 300/2002 imposes a legal duty, as a general principle, no person shall pollute the environment. If any person is engaged in any field of activity that is likely to cause an environmental hazard, such a person is legally required to install sound technology that will avoid or reduce the impact of any such hazard.¹¹¹ This is a precautionary measure by the law to prevent environmental harm before it even happens. To this effect, environmental inspectors are

¹⁰⁴ Id Article 16.

¹⁰⁵ Article 2(4), Environmental Impact Assessment Proclamation No. 299/2002of Ethiopian

¹⁰⁶ Id Article 4,

¹⁰⁷ Id, Article 18,

¹⁰⁸ Article 521, Ethiopian Revised Criminal Code of 2004

¹⁰⁹ Environmental Pollution Control proclamation No.300/2002 ibid, under paragraph I-III.

¹¹⁰ Id, Articles 3, 4, 6, 7, 10, 12 and the following provisions.

¹¹¹ Articles 3(1) and 3(3), Environmental Pollution Control Proclamation No. 300/2002 of Ethiopian

authorized to seek entry to any premises, to inspect and to seize any instrument.¹¹² When a person contravenes any provision of this proclamation or any other relevant law, the inspector on duty shall specify the matter constituting the contravention and may also specify the measures that shall be taken to remedy the contravention.

Article 13 of the same proclamation makes the acts punishable. If a ‘natural person’ is found guilty of any one of these crimes, then such a person will be punished by a fine of not less than 3000 birr and not more than 10,000 birr. If the offender is a ‘juridical person’, liability extends to a fine of not less than 10,000 birr and not more than 20,000 birr and the imprisonment of the officer in charge for a term of between one and two years, or a fine amounting to between 5,000 birr and 10,000 birr, or both. A person, who by virtue of the proclamation or any regulation is required to keep records fails to do so or alters them, is punishable by a fine of not less than 10,000 birr and not more than 20,000 birr.¹¹³ A person who fails to manage any hazardous waste or another substance according to the relevant laws, mislabels or fails to label, or in any way withholds information about any hazardous waste or other material, or attempts to take part in or aids the illegal trafficking of any hazardous waste or other material, is punishable by a fine of not less than 20,000 birr and not more than 50,000 birr. If the offender is a juridical person, punishment shall be a fine of not less than 50,000 birr and not more than 100,000 birr, while the officer-in charge shall face imprisonment for a term of between five and ten years, or a fine of not less than 5,000 birr and not more than 10,000 birr, or both.¹¹⁴ Article 17 of the Environmental Pollution Control Proclamation also empowers the trial court, in its discretion, to order the confiscation of anything used in the commission of the offence in favor of the state, or to dispose of it in any other way, and to order the offender to bear the cost of cleaning up and disposing of the substance, chemical or equipment.

3.3.4. The Development Conservation and Utilization of Wildlife Proclamation No. 541/2007

The proclamation seeks to conserve, manage, develop and properly utilize wildlife resources, and to create the conditions necessary for discharging government obligations assumed under treaties regarding the conservation, development and utilization of wildlife.¹¹⁵ The proclamation makes hunting of any game animal off limits to anyone except to those with hunting permits and to officials of the Ministry of Agricultural and Rural Development. A hunting permit may be issued for the collection of wildlife or wildlife products for scientific purposes.¹¹⁶ In addition, a permit may be obtained for any activity of trade in wildlife and their products, including the ownership, sale, transfer, export and import of any processed or unprocessed wildlife product.¹¹⁷ The proclamation makes it an offence for any person to commit an act of illegal wildlife hunting

¹¹² Id, Article 8,

¹¹³ Id, Article 14,

¹¹⁴ Ibid, Article 15,

¹¹⁵ Article 3, Development Conservation and Utilization of Wildlife Proclamation No. 541/2007

¹¹⁶ Ibid Article 6,

¹¹⁷ Article 12, , Development Conservation and Utilization of Wildlife Proclamation No. 541/2007

or trade, carry out unauthorized activities within wildlife conservation areas, or possess any wildlife or wildlife product without a permit. A person guilty of any of these offences shall be punished with a fine of not less than 50,00 birr and not more than 30,000 birr, or with imprisonment of not less than one year and not exceeding five years, or both.¹¹⁸ Under article 15(4) of the proclamation, wildlife anti-poaching officers are empowered to detain any offender who violates article 16 of the proclamation without a court warrant, and to hand over the offender to the appropriate law enforcing body. Furthermore, with the objectives of ensuring the development, conservation and the sustainable utilization of the country's wildlife resource, Proclamation No. 575/2008 establishes the Ethiopian wildlife Development and Conservation Authority. The Forest Development, Conservation and Utilization Proclamation No. 542/2007 prohibits the cutting down or use of indigenous natural trees from a state forest, settling temporarily or permanently in, grazing domestic animals in, carrying out hunting activity in, keeping bee-hives in a state forest, or removing natural resources from state forest, all of which are punishable offenses.¹¹⁹ Furthermore, it is made a prerequisite to obtain a license from the Ministry of Agriculture and Rural Development prior to undertaking large-scale farming, mining, road construction, water drilling, irrigation, dam construction and other similar investment activities. The proclamation makes the cutting down of trees from a state forest punishable by imprisonment for a term of not less than one year and not more than five years plus a fine 10 000 birr. The setting of fire in a forest shall be punishable by imprisonment of not less than ten years and not more than 15 years, of rigorous imprisonment.¹²⁰ An analysis of the legal regime pertinent to environmental crimes in Ethiopia shows that it suffers from inconsistent and contradictory structural arrangements. It also lacks structural hierarchy. This is best illustrated perhaps by the rules governing EIAs. On the one hand, the EIA proclamation makes the conduct of an EIA a mandatory prerequisite before any project is commenced.

3.4. Institutional framework for environmental crimes

3.4.1 The ministry environmental forest and climate change

The Environmental Organs Establishment Proclamation No.916/2015 established the federal Environmental forest and climate change as an autonomous organization vested with expanded mandates. FDRE Constitution provides basic principle for Environmental protection and management which states that “Everyone has the right to live in clean and healthy environment,¹²¹ the Government will makes every effort to provide such an Environment. The Government and the people of Ethiopia have also taken responsibility for conserving natural resources and maintaining ecological balance.¹²² This indicates the ambition and desire of our country for Environmental concern. Since the climate change issue has entered in to the scientific a political arena in recent year Ethiopia has given the issue focused attention nationally. As a

¹¹⁸ Id, Article 16

¹¹⁹ Article 14, Forest Development, Conservation and Utilization Proclamation No. 542/2007,

¹²⁰ Id Article 20,

¹²¹ Federal Democratic Republic of Ethiopian constitution proclamation no.1995of the constitution Art 44

¹²² Id, Art 41(9)

result, Environmental protection is incorporated in to FDRE constitution. Number of that contains provision for the protection and management of Environment that reflect the principle of constitution.¹²³ Since 1994 Ethiopia has taken important step for the incorporation of Environmental right under the constitution, adopting Environmental policy and strategy. The country has ratified multilateral Environmental convention and establishment of Environment Authority is made. Nowadays Ethiopia is party to twelve Environmental agreements.¹²⁴ The most important step in setting up the legal frame work for the Environment in Ethiopia has been the establishment of Environmental forest and climate change. Who have the power and duty to paper Environmental policy and Environmental law for Environmental protection up on the approval of council of minister EPA follow up the implementation of policy and law, proper directive and system necessarily for the Evaluating the impact of social and economic development and supervise its implementation and work closely with neighboring country.¹²⁵ For this regard the first comprehensive statement of environmental policy for Ethiopia was approved by council of minister in 1997.¹²⁶ the overall policy goal was "to improve and enhance the and the quality of life all Ethiopians and to promote sustainable social and economic development through sound management and use of natural human mode and creatural resource so that the need of present generation can be meet without compromising the ability".¹²⁷

3.4.2. Regional environmental entities

Each of the regional state and two city administration is expected under Article 15 of the Environmental Organs Establishment Proclamation No. 295/2002 to establish an independent regional environmental agency, or designate an existing agency for environmental management. In accordance with this, each of the regional states has either formed an independent bureau responsible for environmental matters, or created a department for the environment in one of their bureaus. These regional environmental agencies have important functions with regard to the monitoring of and acting on environmental crimes. Pertinent legal provisions in this respect are charted out under Article 15 of Proclamation No. 295/ 2002 and include the following:

- ✓ Coordinating the formulation, Implementation, review and revision of regional conservation strategies.
- ✓ Environmental monitoring, protection and regulation.
- ✓ Ensuring the implementation of federal environmental standards, as well as issuing and implementing no less stringent standards.
- ✓ Preparing reports on the respective state of the environment of their respective regions and submitting them to the federal government.

¹²³ Asagehndesta (PhD) environmental policy for Ethiopian sustainable social and economic development working paper university of California February 1992 page7

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Asagehndesta (PhD) environmental policy for Ethiopian sustainable social and economic development working paper university of California February 1992 page7.

¹²⁷ Ibid

3.4.3 The Environmental council

The Environmental Protection Authority (EPA), the main agency responsible for environmental management, was established in 1995 under Proclamation 9/1995, as an independent agency reporting to the Council of Ministers.¹²⁸ An Environmental Council, whose composition is greatly extended and is high in profile,¹²⁹ forms part of the organizational setup of the EPA. The EPA is required to provide regional authorities with guidance, technical support, and capacity building; support the development of various guidelines, including procedures appropriate to local projects; undertake awareness creation in other federal agencies; and provide technical support to those agencies.

3.4.4 Environmental inspectors

A set of environmental standards is in force in Ethiopia.¹³⁰ Enforcement of these standards is the responsibility of a specialized body of the Environmental Inspectors constituted under Article 7 of the Environmental Pollution Control Proclamation no.300/2002.¹³¹ The mandate of the inspectorate, which is to perform its task by continuous monitoring and surveillance is vast, and is sometimes referred to by commentators as derogatory of the right to privacy as guaranteed by the constitution.¹³² Environmental inspectors are empowered to –

- ✓ ensure compliance with environmental standards and related requirements;
- ✓ enter any land or premises at any time that seem appropriate to them without prior notice or court order;
- ✓ question any person alone or in the presence of witnesses;
- ✓ check, copy or extract any paper, file or any other document related to pollution;
- ✓ take, free of charge, samples of any material as required and carry out or cause to be carried out tests to determine whether or not such a material causes harm to the environment or to life;
- ✓ Take photographs, measure, draw or examine any commodity, process or facility in order to ensure compliance with environmental standards; and
- ✓ Seize any equipment or any other object that is believed to have been used in the commission of an offence related to the environment.

A person who failed to comply with lawful requirement, refuse an inspector to entry into premises, hinders an inspector from getting access to records or prevents an inspector from checking, copying or extracting any paper, file or any other document, and withholds, misleads or gives wrong information to an inspector is guilty of a criminal offence, Which is punishable

¹²⁸ Bren Area Infrastructure Development Project, Final EIA study Report Dire Dawa City Administration, p 26 August 2013

¹²⁹ The Environmental Council, created under Article 8 of Proclamation No. 295/2002

¹³⁰ Rose Mwebaza, Philip NjugunaMwanika and WondowossenSintayehuWonndemagegnehu; Environmental crimes in Ethiopia, P 14 July 2009

¹³¹ Article 7 of the Environmental Pollution Control Proclamation No. 300/2002 of the federal

¹³² id, Article 8

by a fine and imprisonment under Article 13 of the proc. In addition, when a person is found guilty of contravening any provision of the country's environmental laws, the inspector on duty may order the immediate cessation of the contravening activity. He must specify the matter constituting the contravention and may also determine the measures that shall be taken to remedy the violation within a given period of time.

3.4.5. Ethiopian wildlife conservation authority (EWCA)

The Ethiopian Wildlife Conservation Authority has responsibility for the management of wildlife in Ethiopia and is the country's focal point for CITES. It was recently placed under the Ministry of Culture and Tourism.¹³³ Its legislative mandate includes the preparation of draft policies and legislation relating to the development, conservation and utilization of wildlife resources. Ethiopian Wildlife Conservation Authority also issue regulations and directives to implement the Wildlife Conservation Proclamation No. 541/2007.¹³⁴ It has the following mandate: To ensure that wildlife conservation areas are established in accordance with international standards with a view to facilitating their registration by the World Conservation Union. To ensure that the international treaties to which Ethiopia is a party, are implemented. To develop and administer wildlife conservation areas established by it and to control illegal activities committed in these areas.

Remarkably, EWCA's mandates are comparable to those of the Environmental Inspectorate. If implemented appropriately, the mandates enable the authority to combat many forms of wildlife violations. EWCA has the following powers, amongst others:¹³⁵ However, like many government institutions, EWCA lacks total autonomy and has been affected by government reorganization. In not even a decade it has formed part of two ministries: first the Ministry of Agriculture and Rural Development and then the Ministry of Culture and Tourism.¹³⁶

3.5 Remedies for Environmental crime in Ethiopia

A look at the environmental profile of Ethiopia reveals that its environment is being degraded.¹³⁷ It could be said that such degradations are mainly attributable to human behavior. As such, it is possible to control these degradations by taking appropriate actions. On its part, the Federal Government of Ethiopia has so far issued a number of environmental laws which focus on different aspects of environmental protection. As such, it refers to criminal, civil, and administrative measures. Usually, most people obey the law, although there is no single answer to the question why; thus, it is only few people who need to be coerced to obey the law.¹³⁸ This

¹³³ Rose Mwebaza, Philip NjugunaMwanika and WondowossenSintayehuWonndemagegnehu; Environmental crimes in Ethiopia, P 14 July 2009

¹³⁴ Ibid

¹³⁵ Id

¹³⁶ Id, page15

¹³⁷ For instance soil erosion, deforestation, reduction of wetlands, fro-alpine areas, loss of biodiversity, and air water pollution are some of the environmental problems Ethiopia is facing,

¹³⁸ (Benn and R.S. Peters,)Social Principles and the Democratic State, Surjeet Publications, 2006, pp. 57-71.

shows that remedies are necessary for the effectiveness of laws despite the fact that only few people may be subjected to them for non-compliance. So, environmental laws must provide for remedies that will be applied when their provisions are not complied with so as to achieve their objectives. Besides, such laws must also provide for suitable conditions to employ the remedies they recognize. In Ethiopia, too, if the environmental laws the Federal Government has issued hitherto are really meant to facilitate environmental protection, they must provide for different remedies for environmental wrongdoings and also create suitable conditions for their effective use. One of the immediate goals of environmental laws is regulating human behaviors vis-à-vis the environment.¹³⁹ Thus, environmental crime occurs when there is a failure to comply with environmental regulations/rules.¹⁴⁰ Similarly, it has to be noted that in order to say there is environmental crime and also be able to take actions against environmental crime, the existence of standards may be necessary.¹⁴¹ Here, standards refer to objects or qualities or measures which serve as bases or examples or principles to which others conform or should conform or by which the accuracy or quality of others is judged.¹⁴² Thus, in the absence of standards, it may not be possible to take measures against some environmental crimes because there will not be anything against which the correctness or otherwise of certain behavior can be checked.

For instance, in default of water quality standards, the issue of water pollution can hardly arise notwithstanding that there are visible changes in the quality of a given river.¹⁴³ Of course, there are times when the existence of standards may not be indispensable for the implementation of environmental laws or to have environmental crime. For instance, if a given law requires prior permit to hunt wild animals, a person who hunts wild animals without securing prior permit commits environmental crime. Thus, there is no need for standards. Similarly, if a given environmental law requires doing EIAs for projects to be implemented in all sensitive areas, failure to do EIAs for such projects amounts to environmental crime and we do not need standards to say there is environmental crime.

3.5.1 Civil remedies in Ethiopia

At the moment, Ethiopia has various general and specific laws in the field of environment some of which contain express stipulations on civil remedies for environmental crimes. For instance, the Environmental Pollution Control Proclamation prohibits any person from polluting the

¹³⁹ The definitions of environmental law as provided in Steven Ferrey, mentioned at note 3, p. 1; Thomas F.P. Sullivan (Editor), *Environmental Law Handbook*, 4th ed. Government Institutes Inc. 1997.

¹⁴⁰ The author uses the expression environmental regulations to mean environmental rules/laws. all rules that are put in place to ensure environmental protection

¹⁴¹ Duard Barnard, *Environmental Law for All: A Practical Guide for the Business Community, The Planning Professions, Environmentalists and Lawyers*, Impact Books Inc., Pretoria, 1999, pp. 135-1

¹⁴² Id

¹⁴³ In Ethiopia, the Federal EPA adopted industrial emission standards (they have not yet been approved by the Environmental Council, the highest organ within the Federal EPA.

environment.¹⁴⁴ Then, it empowers the Federal EPA to take administrative or legal action in case its stipulations are violated.¹⁴⁵ As we can understand from the Proclamation, the term legal action refers to all non-administrative actions. As such, it may include suits for injunctive relief, suit for obtaining an order requiring the restoration of polluted environment, or even causing prosecution to take place if the environmental crime that has occurred constitutes a crime. Thus, the Federal EPA (FEPA) can choose and seek any civil remedy it deems necessary in relation to a given environmental crime. Another piece of legislation with express provision on civil remedies is the Solid Waste Management Proclamation. It was issued with the objective of preventing the adverse impacts of solid waste.¹⁴⁶ In relation to civil remedy, it stipulates that any owner of solid waste disposal site should be civilly liable, regardless of fault, for any damage caused to the environment, human health or property in the course of its operation or after its closure.¹⁴⁷ Thus, for example, a court may order such person to clean up the pollution he has caused or to restore the environment to its previous position or to pay compensation to those who are victimized by his operation. However, unlike the Solid Waste Management Proclamation, many of the other specific environmental laws do not contain express stipulations on what possible civil remedies may be adopted when environmental crimes occur contrary to their provisions. Of course, this does not mean violating the provisions of these laws will not entail civil liability.¹⁴⁸ First, if the violation of these laws causes pollution, the FEPA can take legal action against such violation in accordance with the Environmental Pollution Control Proclamation. Second, those individuals who have sustained harm by the acts of others in violation of any environmental law can bring civil actions against the violators to obtain appropriate reliefs, such as injunction or compensation, under tort law.¹⁴⁹

3.5.2 Criminal remedies in Ethiopia

One of the most important features of environmental laws in Ethiopia (both general and specific) is the recognition of criminal remedies for acts contrary to their provisions. For instance, the Environmental Pollution Control Proclamation,¹⁵⁰ the EIA Proclamation,¹⁵¹ the Water Resources

¹⁴⁴ Article 3(1), Environmental Pollution Control Proclamation, Proclamation No. 300/2002, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 9th Year No.12, Addis Ababa, 3rd December 2002 (Environmental Pollution Control Proclamation hereinafter)

¹⁴⁵ Ibid Article 3(2)

¹⁴⁶ see article 3, Solid Waste Management Proclamation, Proclamation No. 513/2007, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 13th Year No.13, Addis Ababa, 12th February 2007 (Solid Waste Management Proclamation hereinafter).

¹⁴⁷ Id Article 16

¹⁴⁸ See Article 3(4)&(5), Environmental Impact Assessment Proclamation, Proclamation No. 299/2002, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 9th Year No.11, Addis Ababa, 3rd December 2002 (EIA Proclamation).

¹⁴⁹ See article 2035 cum. with article 2028, Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960, NegaritGazeta, Gazeta Extraordinary, 19th Year No. 2, Addis Ababa, 5th May 1960 Civil Code .

¹⁵⁰ See articles 12ff, Environmental Pollution Control Proclamation.

¹⁵¹ See article 18, EIA Proclamation.

Management Proclamation,¹⁵² Food and medicine proclamation ,¹⁵³ the Animal Disease Control Proclamation,¹⁵⁴ the Development, Conservation and Utilization of Wildlife Proclamation,¹⁵⁵ and the Solid Waste Management Proclamation,¹⁵⁶ to mention only a few, recognize the use of criminal sanctions for conducts violating their provisions. Thus, any person who violates the provisions of these laws may be subjected to either fine or imprisonment or both, as the case may be. If the perpetrator is a juridical person and the proper punishment for its environmental crime is imprisonment, such penalty will be converted to fine in accordance with the conversion methods of the Criminal Code as they cannot be jailed.¹⁵⁷ There is one point worth mentioning. Although virtually all environmental laws of Ethiopia contain criminal remedies for environmental crimes, the Criminal Code contains provisions dealing with crimes against the environment¹⁵⁸. Hence, one may resort to the provisions of the Criminal Code in case gaps exist in any environmental legislation in respect of criminal remedies for environmental crimes. Alternatively, when the Criminal Code recognizes more serious penalties for environmental crimes, it will be applied as most of the environmental laws recognize the precedence of the provisions of the Criminal Code over their provisions in case the Code's penalties are more serious.

3.5.3 Administrative remedies in Ethiopia

The application of administrative remedies when environmental laws are violated is one of the ways of ensuring environmental protection. Cognizant of this fact, virtually all environmental laws of Ethiopia recognize the use of various administrative remedies for environmental crimes. These remedies include suspension or revocation of permits, confiscation of tools employed to violate environmental laws/ causing environmental crime, requiring cleaning-up or paying for cleaning-up operation, and requiring the restoration of the injured environment. In accordance with the Environmental Pollution Control Proclamation, the Water Resource Management Proclamation, and Environmental Impact Assessment Proclamation, environmental protection organs can require the rectification of environmental problems that are created, or seek the suspension or cancellation of authorizations or permits to engage in activities causing environmental

¹⁵² See article 29, Water Resources Management Proclamation, Proclamation No. 197/2000, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 6th Year No.25, Addis Ababa, 9th March 2000 (Water Resources Management Proclamation).

¹⁵³ See article 20, Food and medicine administration Proclamation No. 1112/2019, , Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 25th Year No.39, Addis Ababa, 28th February 2019 (Food and medicine administration).

¹⁵⁴ See article 21, Animal Disease Control Proclamation, Proclamation No. 267/2002, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 8th Year No.14, Addis Ababa, 31st January 2002 (Animal Disease Control Proclamation).

¹⁵⁵ See article 16 (1) and (2), Development, Conservation and Utilization of Wildlife Proclamation No. 541/2007, Federal NegaritGazeta of the Federal Democratic Republic of Ethiopia, 13h Year No.41, Addis Ababa, 21st August 2007 (Development, Conservation and Utilization of Wildlife Proclamation,

¹⁵⁶ Solid Waste Management Proclamation no,541/2007 Article (17)

¹⁵⁷ See article 90, The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, 9th of May 2005, Addis Ababa (Criminal Code).

¹⁵⁸ Id., articles 514 and the following.

problems.¹⁵⁹ The other laws also provide for different administrative measures that are pertinent to their objectives. In this regard, we may mention the Food and Medicine administration Proclamation,¹⁶⁰ the Animal Disease Control Proclamation,¹⁶¹ the Development, Conservation and Utilization of Wildlife Proclamation,¹⁶² and the Solid Waste Management Proclamation¹⁶³ which provide for various administrative remedies that can facilitate the achievement of their respective objectives.

3.5,4 The Public interest litigation

It is important to note that in addition to the inherent powers vested in the state to prosecute environmental crimes, members of the public are by law also empowered to prosecute environmental crime through public-interest litigation. Such litigation is a legal action initiated in a court of law for the enforcement of the public or general interest in which the public as a class has a pecuniary or other interest by which the legal rights or liabilities are affected.¹⁶⁴ Effective public interest litigation involves a unique bundle of procedures and substantive guarantees of rights. These include procedural flexibility, relaxed rules of standing, a broader interpretation of fundamental freedoms enshrined in the Constitution, remedial flexibility and ongoing judicial participation and supervision.¹⁶⁵ Under the Environmental Pollution Control Proclamation locus stands granted to a private individual for initiating action ‘against any person’ who is allegedly causing or is likely to cause damage to the environment. Article 11 of the proclamation provides as follows:¹⁶⁶ The right to standing, any person shall have, without the need to show any vested interest, the right to lodge a complaint at the authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment. When the authority or regional environmental agency fails to give a decision within 30 days, or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a court case within 60 days from the date the decision was given, or the deadline for decision has elapsed. Moreover, article 37 of the Constitution gives ‘everyone’ the right to bring any justifiable matter to a court of law, or to any other competent body with judicial power, for the purpose of seeking to obtain judgment. In public interest litigation the flexibility and a liberal approach of courts are of great importance in bringing to life the substantive laws enshrined in the Constitution and the Environmental Pollution Control Proclamation. It should be noted that the issue of locus stands and public interest litigation pertaining to any environmental crime is yet to be resolved since the APAP case was brought under the Environmental Pollution Control

¹⁵⁹ Article 3(2), Environmental Pollution Control Proclamation & Article 17, Water Resources Management Proclamation

¹⁶⁰ See article 12, EIA Proclamation

¹⁶¹ See article 8, Animal Disease Control Proclamation

¹⁶² See article 16 (3) and (2), Development, Conservation and Utilization of Wildlife Proclamation,

¹⁶³ See article 14(4), Solid Waste Management Proclamation

¹⁶⁴ Black’s Law Dictionary, 1990 (7th edit.), 1 229

¹⁶⁵ J Cassels, Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?, American Journal of Comparative Law, 1989, 498

¹⁶⁶ Environmental Pollution Control proclamation No.300/2002 Article 11,

Proclamation and not Article 37 of the Constitution, which recognizes public standing. There is thus still another opportunity within Ethiopian jurisprudence to test the practical applicability of the constitutional recognition of public standing in the enforcement of the law pertaining to environmental crime.

3.5.5. Federal police commission

The Federal Police Commission was re-established in 2000, when its mandate over the control of crime in Ethiopia was expanded. According to its establishment proclamation, the commission is empowered to – prevent any crime; investigate crimes that fall under the jurisdiction of federal courts, execute orders and decisions issued by courts having judicial powers; safeguard the security of Ethiopia’s borders, airports, railway lines and terminals, mining areas and vital institutions of the federal government; provide assistance in time of emergency and cooperate with concerned organs; render professional and technical advice and support to regional police commissions and, at the requests of regions, give assistance with regard to the prevention and investigation of criminal cases; and Collect evidence, conduct research and distribute information and statistical data on crime, as well as create a nationwide system for criminal data collection and processing. Despite this mandate, there appears to be a significant misunderstanding in the police force about its role with regard to environmental crime. This is evident from the low profile environmental crime holds within the Federal Police Commission. In part, this is because crimes of an environmental nature are a relatively new phenomenon in Ethiopia. Training for police officers in environmental law is quite minimal, and the frequency and intensity of courses needs to be enhanced. The role of the courts in protecting environmental rights is limited. Once a law is made in parliament the courts role is to apply and interpret the law. The courts can only apply the law to the facts put before them and they can only reach their decisions based on facts that have already been established. The courts cannot overrule parliament unless parliament has acted beyond their powers.¹⁶⁷The courts have a broad range of powers to deal with environmental matters including injunctions, declarations, fines or imprisonment or remediation orders. The courts can restrain projects that have not adequately been planned and assessed by insisting they not go forward until they can demonstrate they have considered and adequately resolved all matters affecting the environment. Judges play a pivotal role in improving environmental protection; decisions made by judges create legal precedents thereby building a form of common law for the environmental.

¹⁶⁷ court role and environmental rights | [The Lawyers & Jurists](http://TheLawyers&Jurists.com) (lawyersjurists.com)

The roles of prosecutors play an essential role in criminal investigations. Depending on the national legislation, prosecutors might be entrusted with the oversight over the investigation carried out by other law enforcement agencies, conducting an investigation by themselves, as well as participating in trials.¹⁶⁸ The prosecutors should ensure, when it is within their authority, that an investigation into environmental crimes is conducted thoroughly, that all the targets in the chain of responsibility (natural and legal persons, perpetrators, co-perpetrators and accomplices) are identified and that they establish all incidences of unlawful acts and any possible links with organized and violent crime and associated offences. Prosecutors should strive to ensure that not only the direct perpetrators of environmental crimes, but also the offenders acting in other capacities, such as masterminds, instigators, abettors and those who benefit from these crimes, are brought to justice. As noted earlier, prosecutors should be aware of the link between environmental crime and organized and violent crime, corruption, financing of terrorism, or with crimes committed in the context of armed conflict through warfare methods and means.¹⁶⁹ The role of police for environmental protection police have vital role in the administration of criminal justice matters through detecting crime, Inspecting, investigating violations, supporting compliance enforcement, protecting businesses, and tourist and community policing.

¹⁶⁸ CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

¹⁶⁹ *Ibid*

CHAPTER FOUR 4

4. Conclusion and recommendation

4.1 Conclusion

The Environment is the totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected 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. Environmental crimes can be broadly defined as illegal acts which directly harm the environment. An environmental crime is a serious and growing concern, leading to the near extinction of valuable wildlife species, and significantly impacting on the biological integrity of the planet. It contributes to environmental degradation, which in turn affects the quality and quantity of environmental resources. There are remedies for regarding with the environmental crime can be considers like, criminal remedies the main criminal penalties that can be used are fine and jail even if other criminal sanctions such as community service can be applied. Civil remedies can have various purposes such as compensation, restoration orders, conservation orders, easement orders, injunctions, and compliance orders can be used to enforce environmental regulations. The other one administrative remedy are empowered to take necessary administrative measures such as specific performance orders, restoration orders, conservation orders, and compliance orders to bring violators of environmental regulations into compliance with them. Various national environmental instruments articulate the right of individuals to live in clean and healthy environment. In this regards there are differences legal system regarding with environmental crimes like, constitution, criminal, and proclamation like, the Environmental Pollution Control Proclamation, the Environmental Impact Assessment Proclamation are the main significant instruments for the protection of the environment and providing appropriate remedies for environmental damage and pollutions. The international conventions important in providing remedies for environmental pollutions are also part of Ethiopian laws through Article 9 (4) of the FDRE Constitution. The ministry of Environmental forest and climate change, Police Office and the others are the main authorities entrusted with the responsibility environmental protection and apply appropriate remedies against perpetrators of environmental crimes.

Since deterrent measures are not taken in such a way to notice subsequent perpetrators of environmental crimes about the consequence of their acts. One of the preventive mechanisms of environmental crimes is giving advance knowledge of the existence of the laws that prohibit a certain act to the public. The problem is done through the accessibility of the laws is become less when laws are scattered. Even though the EFCC has a responsibility supervising and regulating environmental crimes within the authority, due to various reasons, it does not carry out such obligation properly in that there are plenty of environmental crimes that have been committed and still being committed with in the ministry. With regard to the Sanitation and Beautification

Authority, this ministry has also limitations in performing its responsibilities which is attributed to lack of Independent environmental organ, lack of complied and single document which incorporate environmental crime. There is also lack of the single independent institutions organ in working together so as to protect the environment and to provide appropriate civil and criminal remedies against perpetrators of environmental crimes. On the part of the community itself, there is lack of awareness as to the consequences of environmental damage and pollution in that the community does not cooperate in protection of the environment and in providing remedies for environmental crimes.

4.2 Recommendations

Ethiopia has enacted various environmental laws and ratified a number of international environmental conventions for the purpose of environmental protection and for providing appropriate remedies for those crimes. And also enacted different regulations and environmental standards in accordance with the constitution and other federal environmental laws. However, the accessibility of the laws is become less when laws are scattered.

- The law which the complied all environmental crime in single document should be enacted to serve the purpose of fair warning as the people easily understand the environmental crime.
- Independent environmental organ which implement environmental crime should to be established.
- Administrative, civil and criminal remedies should be imposed for environmental crimes therefore subsequent perpetrators of environmental crimes may remain abstain from their acts fearing and knowing the consequences of their acts. Perpetrators of environmental crimes should not escape from liabilities.
- The community should be taught and given awareness regarding the causes and consequences of environmental crime and pollution through various types of media.

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