

Ethiopian Environmental Impact Assessment Proclamation NO. 299/2002Vis a Vis Other Sectoral Laws

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Abstract: For development to be sustainable, environmental protection is very important. And sustainable development could be achieved by effectively balancing social, environmental, and economic goals. In Ethiopia, the environment, society, and economy are so intertwined that they require systematic attention in government policy and law to realize synergies and avoid conflicts between these three fundamental components of sustainable development. Environmental Impact Assessment is a fundamental technique for preventing, reducing, or offsetting the significant negative environmental impacts of development activities while enhancing the good ones. To this end, major economic development activities should pass through the EIA process. This study aims to conduct a legal analysis to determine whether Ethiopian EIA Proclamation No. 299/2002 is integrated into major sectoral laws governing economic activities. To accomplish this, a doctrinal methodology based on primary and secondary data sources was applied. A comparison of repealed and existing laws concerning EIA requirements under sectoral laws was used to provide additional insight into the status of former and present laws on EIA. The study contends that Ethiopia's EIA law is not adequately integrated with various sectoral laws and that their development activities have major consequences for human health and the environment. Consequently, the writer recommends making legal reform to EIA Proclamation and the major Sectoral laws, creating a system of public interest litigation for the functioning of EIA, analyzing different laws that conflict with EIA requirements, and creating follow-up and implementation systems, as well as raising awareness on the importance of EIA.

Keywords: Sustainable Development, Environmental Protection, Sectoral Laws, EIA, Integration

1. Introduction

Environmental Impact Assessment (EIA) originated in the United States in the late 1960s and early 1970s. It has been adopted widely in the rest of the world. The U.S. model and that of other developed countries share basic principles and reflect commonly agreed-upon approaches to similar problems. EIA in developing countries, on the other hand, is based on the same set of principles; their implementation often falls considerably short of international standards. They mostly suffer from insufficient consideration of impacts, alternatives, and public participation. Even in the worst case, they are not conducted at all [1].

Environmental issues have become vital if development is to be sustainable. The growing awareness of challenges to development thinking that targeted only economic and social development has led to the increasingly wide acceptance of

sustainable development meaning economic development that protects the environment and that brings economic development with its social progress [2]. For development to be sustainable, environmental protection is crucial. And sustainability could be achieved through the effective balancing of social, environmental, and economic objectives [3]. The basic goal of EIA is to prevent, reduce or offset the significant adverse environmental effects of development proposals, and to enhance the positive ones [4].

The EIA process has several important purposes. It is first and foremost a decision-making aid to prevent projects with strongly negative environmental impacts from going forward. The emphasis in EIAs, in contrast with other mechanisms for environmental protection such as cost-effectiveness analysis, is on a systematic, holistic, and multidisciplinary assessment of the potential impacts of specific projects on the environment. EIAs also is meant to help inform development

decisions by mandating consideration of alternatives /including alternative project sites, scales, processes, layouts, operating conditions, or in some cases, the option of desisting from implementing a project/ and ways to prevent, mitigate, and control potential negative environmental and social impacts. The process generally involves several steps, including project screening, scoping, an EIA report /consideration of alternatives, identification of major impacts, and mitigation measures/, public participation, review, decision, and monitoring.

In Ethiopia environment, society and economy are so closely interconnected it demands systematic attention in government policy and law to realize the synergies among these components and to avoid conflicts between these three essential components of sustainable development. The majority of poor people in Ethiopia are farmers principally dependent on agriculture, and the society at large, in turn, is dependent on farmers managing land well to sustain water supplies, biodiversity, and other environmental services which are dynamic and increasingly intense: climate change, population explosion, and resource scarcities put them all under pressure [5].

To this end, the FDRE Constitution provides that, development programs and projects shall be designed and implemented in a way that will not damage the environment. And individuals have a right to consultation and to participate in the planning and implementation of projects and environmental policies that affect them [6]. In addition, the duty to protect the environment rests on the government as well as on individuals. FDRE Constitution incorporates some provisions relevant to the protection, sustainable use, and improvement of the country's environment. Article 44 guarantees "the right to a clean and healthy environment," while Article 43 provides "the right... to sustainable development." Beyond this, Articles 89 and 92 require national policy and government activities to be compatible with environmental health.

Article 89 of the Constitution further obliges the government to ensure sustainable development, work for the common benefit of the community, and promote the participation of the people, including women, in the creation of national development policies and programs. Moreover, according to Article 91, the government is duty-bound to protect and support cultures, traditions, natural endowments, and historical sites and objects.

Lastly, the FDRE Constitution under Article 9 (4) provides that all international agreements ratified by Ethiopia are an integral part of the law of the land. This makes different international environmental law conventions and treaties to be part of the laws of the country that enable for implementation of environmental law principles and norms, especially in the case of EIA. What is also more interesting concerning treaty ratification is that the HPR has ratified International Agreements Making and Ratification Procedure Proclamation No. 1024/2017.

The granting of these important environmental protection provisions into the FDRE Constitution has raised

environmental issues to the level of fundamental human rights. However, effective implementation mechanisms (like laws, policies, and institutions) are required for their realization. EIA is one means for this objective. Accordingly, the Country has adopted Environmental Impact Assessment Proclamation No. 299/2002.

The basic aim of this paper is to analyze whether the Ethiopian EIA Proclamation is integrated into the major sectoral laws of economic activities. To do this, a doctrinal methodology that makes use of primary and secondary sources of data has been used. For further insight into the position of past and recent laws on EIA, a comparison of repealed and current laws concerning EIA requirements has been used. The FDRE Constitution, Ethiopian Water Resource Management Proclamation No. 197/2000, Ethiopian Water Resources Management Regulation No. 115/2005, Amhara National Regional State Rural Land Use Proclamation No. 252/2017, Mining Proclamation No. 678/2010 (as amended), Investment Proclamations, Commercial Registration, and Business Licensing Proclamations, and Industrial Parks Proclamation No. 886/2015 have been reviewed as primary sources. Several secondary sources were reviewed and analyzed, including books, journals, articles, and unpublished materials related to the study and focusing on the topic under investigation.

2. Environmental Impact Assessment in Ethiopia

In Ethiopia, EIA is a recent phenomenon. It became a legally required procedure toward the end of the year 2002, though emerged *de facto* before 2002 when a few land developers, including state-owned agencies, approached the Environmental Protection Authority (EPA) to have their environmental impact studies reviewed.

The Ethiopian EIA Proclamation No. 299/2002 defined Environmental Impact Assessment as the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument; and public instrument means a policy, a strategy, a program, a law or an international agreement [7]. Hence EIA in Ethiopia incorporates both the project level EIA and assessment of a policy, a strategy, law, or international agreement/Strategic Environmental Impact Assessment/SEA/.

Art. 3 (2) of the EIA Proc. No. 299/2002 requires an EIA process for any planned development project or public policy which is likely to harm the environment. To this effect, the proclamation obliges licensing institutions, before issuing investment permits or operation licenses to projects, to ensure that the relevant environmental bodies have authorized the implementation of the projects.

In the EIA Proclamation activities that do not require EIA and those which require EIA are recognized. However, the Proclamation does not provide for a list of actions subject to EIA; nor are there any regulations that provide for such

activities. However, although the EIA Proclamation could require the Council of Ministers to issue regulations specifying actions that must pass through EIA, it requires Environmental Protection Authority (EPA) to issue directives specifying actions that should be subject to EIA by taking into account the size, location, nature, cumulative effect with other concurrent impacts or phenomena, trans-regional effect, duration, reversibility or irreversibility or other related effects of the project to assess impacts. [8] Accordingly, EPA issued such directives for the first time in 2008. These directives provide for projects which are subject to full EIA. The lists of projects that need EIA are only 22 projects [9].

3. Ethiopian EIA Proclamation No. 299/2002 Vis a Vis Other Sectoral Laws

3.1. EIA Under The Investment Proclamation No. 1180/2020

The Investment Proclamations Nos. 37/96, 116/98, 168/99, 280/2002, 375/2003, 769/2012, and 849/2014 are the predecessors of the current Investment Proclamation and are significant for this analysis. Articles 2/17/, 5, 19/1/2, 30/4/d, and Article 38 of the present Investment Proclamation No. 769/2012 as amended by the Investment Proclamation No. 849/2014 deal with environmental issues in general and EIA in particular.

Starting with Investment Proclamation No. 37/96, the proclamation establishes an EIA requirement in Article 14/1/ and is headed as follows.

14. Investment Permit Issuance

1) The appropriate investment organ shall issue an investment permit to the applicant upon receipt of an application for an investment permit made in full compliance with the provisions of Article 13 of this Proclamation, and after ascertaining within 10 days that the intended investment activity would not be contrary to the operational laws of the country and, in particular, that it complies with conditions stipulated in environmental protection laws [10].

After the investor applies to the terms outlined in Article 13 of this Proclamation, compliance with environmental protection legislation, or EIA, was a necessity before the permission could be granted. This is a crucial inclusion for linking sectoral laws to the EIA law. The subsequent changes to this proclamation, Proclamation Nos. 116/98 and 168/99, which were once more canceled by Proclamation No. 280/2002, did not include any new provisions on environmental issues; rather, they amended non-environmental sections of Proclamation No. 37/96.

Investment Proclamation No. 280/2002 has been amended to completely remove the requirements for EIA and environmental legislation compliance as stated in Article 14.

14. Investment Permit Issuance

1) The appropriate investment organ shall issue an

investment permit to the applicant upon receipt of an application for an investment permit made in full compliance with the provisions of Article 13 of this Proclamation and after ascertaining, within ten days, that the intended investment activity complies with the conditions stipulated in the regulations and directives to be issued to implement this Proclamation [11].

The requirements for the project profile and other formality requirements are contained in Article 13 of the Proclamation. Therefore, the EIA requirement for granting an investment permit that was outlined in Proclamation No. 37/96 was eliminated by Investment Proclamation No. 280/2002. It only issues permits if the formalities stipulated in Article 13 of the Proclamation have been satisfied.

This proclamation's revision, Proclamation No. 375/2003, raised a new issue regarding business licensing and registration. The following new Sub-Articles (5), (6), (7), and (8) are added under Article 24 of Proclamation No. 280/2002, according to its amendment under Article 3/13. I have only provided the relevant provision under Sub-Article 5, which reads as follows:

(5). Notwithstanding the provision of Article 22 Sub-Article (2) (a) of Commercial Registration and Business Licensing Proclamation No. 67/1997, the appropriate investment organ shall issue the business license upon signing, by the investor, of an undertaking to respect the relevant laws and directives of the land [12].

For comparison, the text of Article 22/2/a/ of Proclamation No. 67/97 states that:

22. Application for Business License

2) The applicant shall submit as appropriate, all or part of the information indicated below together with his application referred to under sub-Article 1 of this Article, based on the requirements set by the directives of the relevant government institution for the commercial activity for which the license is applied for:

(a) [C]ertification of professional qualification and statements related to the commercial activity's health and sanitary conditions, environmental protection, and safety measures from the concerned government institutions [13].

This demonstrates how an environmental protection safety measure, or EIA, is required to provide a company license for a particular activity. Even though it was enacted before the EIA Proclamation No. 299/2002, this proclamation's provision conforms to what licensing authorities are expected to do as stated in Article 3 (3) of the EIA Proclamation. This clause states that the project owner must complete the EIA procedure before receiving an investment or trade license. Proclamation No. 375/2003, and Investment (Amendment) Proclamation, changed this requirement, allowing the Investment Agency to grant investment licenses without the need for an EIA.

Investment Proclamation No. 769/2012 as amended granted permits in a manner identical to that of its predecessor. But as stated below, it has some provisions related to environmental issues. To begin with its preamble, the preamble of the current investment proclamation has no

say about environmental protection in general. The Proclamation did not incorporate environmental protection objectives into its general and specific investment objectives. It indicates that the Federal Democratic Republic of Ethiopia's investment goals are intended to raise the standard of living for Ethiopia's citizens through realizing sustainable economic and social growth [14]. This demonstrates that one of the cornerstones of sustainable growth, namely environmental protection, is not included in the national investment targets. From this, it can be inferred that sustainable development without environmental protection, which is one of the three pillars of sustainable development, could not be sustainable.

Unexpectedly, Investment Proclamation No. 769/2012 under Art. 5 states that the specific investment goal is to: accelerate the country's economic development; exploit and develop its enormous natural resources of the country; develop the domestic market through the growth of production, productivity, and services; increase foreign exchange earnings by encouraging an expansion in the volume, variety, and quality of the country's export products and services; encourage balanced development; and; integrated economic activity among the regions and to strengthen the inter-sectoral linkages of the economy; enhance the role of the private sector in the acceleration of the country's economic development; enable foreign investment play its role in the country's economic development; create ample employment opportunities for Ethiopians and to advance the transfer of technology required for the development of the country.

As a result, under Investment Proclamation No. 769/2012, environmental preservation was not mentioned as a general and specific investment objective as one of the aspects of sustainable development. It was more concerned with economic development, which is only one component of sustainable development. Thus, it appears that the precise objectives prioritize economic growth while mentioning the social component, but the sustainability component of the development is not explicitly stated.

The relevant and significant clause of Proclamation No. 769/2012 on environmental concerns is Article 38, which states that each investor must follow local regulations when conducting his investment activity. He must pay close attention to environmental protection in particular. The phrase "due attention" in this context seems to be a weak formulation for environmental protection, and the first sentence of the clause instead mandates the duty to adhere to the permit and other conditions that are specifically stated in the proclamation. This leaves room for interpretation, which is undesirable in the context of environmental protection because it could lead to interpretations that compromise such protection.

Concerning Article 38 of Proclamation No. 769/2012, there are two conceivable interpretations. According to the first interpretation, the word used to describe the environment is written in poor language. The requirement to "give due regard" to environmental protection seems lax. The

requirement that an investor abides by the nation's environmental rules is not stated explicitly in the statement. As a result, Article 38 serves only as a gentle reminder to investors to conserve the environment [15] This reading leads to the conclusion that this specific provision, Article 19, does not translate the expressed general and specific objective under Article 5 of the proclamation relating to sustainable development (environmental protection requirement).

The second interpretation holds that this provision gives environmental conservation more weight. While all national regulations must be followed by investors, they must pay special attention to environmental protection. Alternatively, only if they follow the relevant regulations can investors give environmental protection the respect it deserves. Ethiopia now has several environmental protection rules; therefore, investors must abide by any of these laws that they deem to be appropriate when conducting business. As a result, under this interpretation, it can be asserted that environmental protections are given appropriate respect and that this specific provision incorporates the stated general objective under Article 5 relating to sustainable development/environmental protection.

One could interpret the idea under Article 38 as a provision to obligate investors to observe those various environmental laws passed before the enactment of this proclamation. This could be justified by considering the value that the government accords to the environment through the enactment of various environmental laws before the enactment of this proclamation. Before this proclamation, the majority of the environmental policies, proclamations, rules, and directives were put into place.

If you take a look at the different environmental legislation that was enacted before this proclamation, they demonstrate how the government is incorporating the environment. This is further supported by the message included in Article 30 (4) (d), which mandates that the investment agency carry out investors' requests for approval of impact assessment studies completed in connection with their investment projects as part of its obligation to provide one-stop service. Investors are not expected to submit their environmental impact studies for examination and approval to the appropriate environmental protection bodies.

Even though the Article does not require investors to do EIAs, it suggests that they should do so if the activities they plan to undertake are required to do so under the applicable legislation, which supports the Article 38 requirement that investors abide by national environmental laws. These arguments suggest that the principle under Article 38 is equal to requiring investors to abide by the nation's environmental laws by utilizing the phrase "investor must respect the nation's environmental laws."

Further substantiating the aforementioned point, the proclamation stipulates that failure to comply with environmental obligations, such as environmental standards and EIA, may be grounds for license suspension or revocation under Article 19/1/ and /2/(a), although the legal ramifications of not fully complying with environmental laws

have not been specified. It demonstrates that Article 38 is a clause in the investment law that requires investors to uphold environmental laws, which means it is a clause that requires investors to acknowledge environmental protection under environmental laws. Concerning this Article, Article 19 (1) provides that: "Where an Investor violates the provisions of this Proclamation or regulations or directives issued to implement this Proclamation, the Appropriate Investment Organ may suspend the Investment Permit until the Investor takes the Required Corrective Measures."

The message that environmental law violations are considered to be violations of Article 38 under this proclamation (because they require environmental law protection) is strengthened by the cumulative reading of the two provisions, which results in the suspension of the investment license under Article 19 of the Proclamation.

Proclamation No. 1180/2020 is the current investment law. According to the proclamation, Ethiopia's overall investment goal is to increase the standard of living for Ethiopians by attaining rapid, inclusive, and sustainable economic and social growth. This broad goal is supported by a variety of more specific objectives. One of these objectives is to encourage socially and environmentally responsible investments [16]. The other is the responsibility of investors to respect environmental sustainability values such as environmental protection standards when conducting investment activities as provided under Art. 54 (1) of the Proclamation.

These goals include components of environmental conservation. As a result, the new Investment Proclamation No. 1180/2020 aims to recognize the good relationship between investment and environmental protection, as well as vice versa. However, investment laws are up to date, whereas the EIA legal framework, enacted in 2002, is out of date and cannot keep up with current policy changes [17]. Furthermore, the foregoing rules containing environmental protection features are broad in scope. There are no particular references to environmental safeguards in the proclamation, which would ensure that industrial businesses, for example, do not significantly contaminate the environment. Environmental permitting, according to the author, can and should be one of these environmental protection factors in such investment operations.

Investment Proclamation No. 1180/2020 has a significant flaw in that it makes no mention of EIA or other environmental and associated approvals. As can be seen from Art. 10 of the Proclamation, the investment permit criteria remove EIA and other environmental protection conditions in granting investment permission. This is because the latter, the Investment Proclamation, supersedes the obligation in the EIA Proclamation. As a result, EIC issues an investment permit in the absence of EIA authorization from EPA or REAs [18]. This may let potentially polluting enterprises obtain investment permits from EIC before EIA authorization. This is detrimental to overall pollution control prospects in Ethiopia.

Finally, it may be deducted from the legal analysis above that environmental concerns are covered by the current

Investment Proclamation. This is clearer when compared to its predecessor Investment Proclamation No. 280/2002 and Investment (Amendment) Proclamation No. 375/2003, which did not include a similar clause on environmental issues and concerns.

Therefore, unlike its predecessor Investment Proclamation No. 37/97, the new Investment Proclamation does not expressly integrate EIA as a requirement for the issue of a permit. The current Investment Proclamation's Article 38 contains a lax requirement for environmental protection before the issuing of an investment permit and the start of the investment activity, which is when environmental damage begins to occur.

3.2. EIA Under Commercial Registration and Licensing Proclamation No. 980/2016

The Commercial Registration and Business Licensing Proclamation No. 980/2016 is the most recent business licensing and registration proclamation concerning EIA. Commercial Registration and Business Licensing Proclamation Nos. 67/97, 376/2003, 163/2008, 686/2010, 731/2012, and 801/2013 are its predecessors.

In this regard, under Commercial Registration and Business Licensing Proclamation No. 67/97 EIA is necessary to grant a Business License for business activity (Art. 22/2/a, see above). As was described above, EIA is an environmental protection safety measure. Additionally, the proclamation has established the following mechanisms for noncompliance with such criteria under Article 26/1/.

26. Suspension of Business License

1) The Appropriate Authority may suspend a business license until the deficiencies specified below are remedied, where the license holder: (a) has failed to maintain the standards of health and sanitary conditions, environmental protection, safety precautions, and the quality of his product or service, as confirmed by the relevant government; institution.

Therefore, the Commercial Registration and Business Licensing Proclamation No. 67/97 merged EIA as a requirement and measured its non-compliance. However, it was short-lived because the Investment Amendment Proclamation No. 375/2003 modified it. Such restrictions were not changed by the Commercial Registration and Business Licensing Proclamation No. 376/2003 revision; it dealt with other issues.

EIA was not required for the granting of licenses under the Commercial Registration and Business Licensing Proclamation No. 686/2010, which repealed proclamation No. 67/97 with its amendment. EIA is not integrated at all. The two subsequent amendments, Commercial Registration and Business Licensing Proclamations No. 731/2012 and No. 801/2013 are modest changes that don't address environmental concerns. When it comes to the repeal of proclamation No. 686/2010, the Current Commercial Registration and Licensing Proclamation No. 980/2016, does not additionally call for EIA in the issuing of a business license. The following is supplied in Article 24 of the

proclamation, which is pertinent to the situation at hand:

24. Issuance of Business License

1) *Where a business license application is submitted to the appropriate authority under this Proclamation, regulations, and directives issued thereunder, it shall issue a business license to the applicant upon payment of an appropriate service fee by ensuring that the requirements set forth are satisfied and that the business activity intended to be carried out is not unlawful.*

2) *If the competent authority determines that a business license application was not submitted under the provisions of this Proclamation, rules, and directives issued hereunder, it shall reject the application and notify the applicant in writing of its rejection [19].*

There is no mention of any environmental impact criteria in the proclamation's terms. According to Article 24 (2) of the Proclamation, the regulation would be issued to set forth the license requirements. Commercial Registration and Licensing Regulation No. 392/2016 is the law that was passed per this proclamation. In its own right, the Regulation stipulated conditions for licensing several business types under part 3 (Articles 23 to 29). However, it was missing the EIA standards and mostly focused on passports, investment licenses, and other numerous formality requirements.

3.3. EIA Requirements under Selected Sectoral Environmental Legislations

3.3.1. Land Laws

The current law on rural land law at the federal level is Proclamation No. 456/2005. The proclamation recognizes the right of investors to obtain and use rural land [20]. It has a framework nature and fails to subject the allocation of rural land to the requirement of EIA leaving the particulars to be legislated by regions.

Regarding this, the EIA requirement for investments in agriculture is not included in the Revised Amhara National Regional State Rural Land Administration and Use Proclamation No. 252/2017, which is much worse for investments in industries other than agriculture. It just said that private investors may obtain rural land through a public lease tender competition after having their project needs personally assessed and the specifics of the public lease being established by regulation if they wish to invest in rural land other than agricultural [21].

3.3.2. Water Laws

Currently, the Water Resources Management Proclamation No. 197/2000 and the Water Resources Regulation No. 115/2005 govern how water resources are conserved, used, and developed in the nation. The goal of water resource management is to make sure that the nation's water resources are used to the greatest extent possible for the country's social and economic benefits while being properly conserved, safeguarded from adverse consequences, and exploited [22].

Accordingly, the proclamation outlines the steps that must be taken for the preservation and protection of waterways as well as the restrictions that apply to the use of water resources.

The Proclamation prohibits the discharge of any waste into water bodies that pose a threat to people, animals, or vegetation. To safeguard water bodies, it also forbids the removal of trees or other vegetation as well as the building of homes next to them. The proclamation established a system of water utilization based on permits (Articles 11 and 13 of the Proclamation) to ensure the proper use of the water resources.

Articles 6, 7, and 13 of the Water Resources Management Regulation outline the requirements for issuing, suspending, or terminating a water usage permit. In this regard, it states that a water usage permit won't be given out if the plans call for the production of pollution or adverse effects on the environment and water resources. A water-use permit may also be revoked or suspended under certain circumstances, including when a water resource is temporarily or permanently exhausted (Article 6/3/d) or when the use of a water resource harms the environment (Article 6/3/e). The text of this particular provision is as follows:

"3) The Supervising Body may terminate a permit for the grounds listed below:

(e) a determination that the use of water resources has a detrimental effect on the environment under the provisions of Environmental Impact Assessment Proclamation No. 299/2002" [23]. The supervisory body may revoke a permit on this justification. However, it is a lax requirement.

The water law generally does not make EIA a prerequisite for the issuing of water use permits and development permits, even though it strives to ensure the sustainable use of water resources. According to Article 8 (c) of Proclamation No. 197/2000, the Supervisory Body, the Ministry of Water Resources, or any organ designated by the Ministry is not required to terminate the permission. EIA should therefore be made a required requirement within the permit system for sustainable usage as specified by the water law.

3.3.3. Mining Laws

The relevant legislation for the regulation of mining is the Mining Operations Proclamation No. 678/2010 and its revisions. Environmental issues are fully covered in this proclamation as amended by Proclamations 816/2013 and Mining Operations Amendment Proclamation No. 1213/2020. Beginning with its preamble, it states that "the Government has to protect the environment for the benefit of present and future generations and to ensure environmentally sustainable development of minerals." [24]. The proclamation addresses environmental protection problems. Once more, sub-Article 5 of Article 4 lists that ensuring the country's mineral resources are developed in an orderly and sustainable manner is one of its goals. By this, it means in a way that satisfies the needs of both the present and future generations. The fact that this Proclamation contains environmental protection for special treatment in section 7 is the more significant aspect of it. Art. 70 is produced as follows:

Part Seven

Environment

60. Environmental Impact Assessment, Rehabilitation Fund, and Community Development.

1) Any license applicant must complete an environmental impact assessment and get all necessary approvals from the competent authority needed by the applicable environmental laws of the nation, except for licenses for reconnaissance, retention, or artisanal mining.

2) Every licensee, save those who have reconnaissance, retention, or artisanal mining licenses, must set aside funds to pay for the costs of environmental impact rehabilitation.

Each license applicant is required by the proclamation to submit an EIA and any other approvals required by the nation's applicable environmental laws from a competent authority (except in the case of reconnaissance license, retention license, or artisanal mining license). Similar to this, Article 18 (1) (c) specifies that an applicant's submitted environmental impact plan must be approved for a license for mineral exploration to be granted. An environmental impact plan is required for both a small-scale mining license under Article 28 (1) (c) and a large-scale mining license under Article 26 (1) (c).

If the licensee violates the authorized EIA, that is one of the reasons for the suspension and revocation of a mineral license under Article 44 (2) (e) of the proclamation. We may conclude that the Mining Operations Proclamation No. 678/2010 explicitly addressed environmental protection concerns in general and that of EIA in particular due to the adoption of these and other related environmental protection-focused clauses under this proclamation.

3.3.4. Industrial Parks Law

Ethiopia has now built Industrial Parks (IPs) in Addis Ababa, Adama, Debre Birhan, and many other prospective places to grow its industrial sector. The Hawassa, Kombolcha, and Mekelle IPs are the three most well-liked IPs, and there are upcoming IPs as well, like those in Bahir Dar and Burie Towns.

Due to the prevalence of Industrial Parks around the nation, which have had a substantial influence on the environment, this sector was chosen for legal analysis. Industrial parks are created under Article 33/1/ of the Investment Proclamation No. 769/2012, which assigns responsibility for their creation to the federal government and states that it must do so for the industrial sector to play a significant role in the nation's economy.

IPs are currently governed by Industrial Park Proclamation No. 886/2015 and Industrial Parks Regulation No. 417/2017. The goal of establishing IPs, according to paragraph 3 of the IPs Proclamation No. 886/2015, is the "need to boost export promotion; preservation of the environment and human welfare; economical land usage, and establishing and extending planned urban centers" (Emphasis mine). The definition of Industrial Parks as stated in Article 2/17 of the Investment Proclamation No. 769/2012 as revised was modified by the proclamation's Article 2/1. It has organized the "Objective of..." under the Investment Proclamation by "with broad objective," which demonstrates a substantially greater emphasis on environmental issues than the Investment Proclamation.

From these, it can be inferred that the definition provided for IP contains a better scope of environmental protection by taking into account the protection of the human and physical environment, i.e. protection of the environment, human well-being, economical land use/physical environment, and planned urban centers which have an impact on the efficient use and protection of land in some way. Articles 6/7, 8/6, 10/4/, and 18/1/a/, which deal with environmental issues, as well as Article 24, which particularly addresses EIA, are additional provisions of the Proclamation that are pertinent to environmental protection in general and EIA in particular.

The obligations of an IP developer are clearly outlined in Article 6/7), among them the need to adhere to any additional requirements outlined in the Proclamation, the Regulation/Regulation No 417/2017, and environmental protection legislation (such as EIA Proclamation No. 299/2002), other applicable laws, and the permit issued for this undertaking. Similarly, Article 8/6) of the proclamation said that an Industrial Park Operator's duty included adhering to any additional obligations outlined in this proclamation, the regulation, applicable laws, its permit, or agreement, in addition to the social and environmental obligations. Article 10/4/, which outlines the obligations of the Industrial Park Enterprise, stipulates that one of those obligations is for the Enterprise to abide by the environmental, social, and employer obligations that are contained in this Proclamation and the Regulation in general as well as other applicable laws [25]. Article 24 of the Proclamation, which covers three topics—the applicability of environmental laws in an express provision, the responsible organ, and its specifics to be defined by a regulation thereto—is a key clause that cross-references environmental laws. This is what it says:

24. Environmental laws and regulations

1) Industrial parks must adhere to all applicable federal, state, and local environmental laws for the application, supervision, protection and enforcement of environmental norms, standards, safeguards, management, and mitigation plans within Industrial Parks, the Ministry of Environment and Forest (now EPA) shall establish an office there. The specifics regarding Environmental Obligations of an Industrial Park shall be specified in the Regulation.

For example, an IP in the Oromiya Regional State is required to abide by the regional Environmental Pollution Control Proclamation No. 177/2002. This provision of the proclamation could be considered transformative for the observance of environmental laws, norms, standards, and safeguards because it made the federal and regional environmental legislation applicable in IPs. Additionally, the opening of an EPA office to apply, supervise, safeguard, protect, and enforce environmental norms, standards, safeguards, management, and mitigation plans within Industrial Parks aids in tighter control and compliance. In a clear cross-reference to the nation's environmental regulations, the proclamation included significant EIA and environmental protection features.

The regulation issued after this proclamation adds more information on the environmental requirements that will be

outlined in regulations under Article 24/3 of the proclamation. Regarding this, Industrial Parks Regulation No. 417/2017's Article 9/2 (d) states that an industrial park firm must adhere to several standards, including the need for *an environmental impact assessment study report to receive an investment permit* (Emphasis Mine). In conclusion, the IPs law, like the mining law described above, integrated the Environmental Impact Assessment into their license criteria, which are crucial to safeguarding the environment from the start of investment operations.

4. Conclusion and Recommendations

4.1. Conclusion

Without combining its three pillars—economic development, social development, and environmental protection—sustainable development cannot be realized. By including environmental protection, the FDRE Constitution and EIA Proclamation No. 299/2002 are based on the integrated elements of sustainable development. The nation's investment rules place a strong emphasis on social and, to a lesser extent, economic growth.

The incorporation of EIA as a prerequisite for an investment or business license has demonstrated a significant discrepancy in Ethiopian investment and business regulations, commercial registration laws, and business licensing laws. The most significant piece of legislation that combined the EIA requirement with other criteria for granting investment permits was Investment Proclamation No. 37/96. Similarly, Commercial Registration and Business Licensing Proclamation No. 67/97 was a significant piece of business law that integrated EIA by making it a necessity to give business licenses for business activity and by taking enforcement action against those who did not comply.

Because of Investment Proclamation No. 375/2003, which amends Investment Proclamation No. 37/96, the Investment Agency was authorized to issue the investment license without the need for an EIA. This effectively rendered Proclamation No. 67/97's mandate that the requirement of EIA to issue business licenses null and void. The Investment and Commercial Registration and Business Licensing Proclamations were repealed; however, EIA was not included as a requirement for the issuance of the appropriate investment permit or business

Instead of integrating EIA by making it a requirement for investment permits, Investment Proclamation No. 769/2012 as amended by Proclamation No. 849/2014 has included some environmental protection issues that are open to interpretation as well as environmental issues compared to its predecessors Investment Proclamation No. 280/2002 as amended by Investment (Amendment) Proclamation No. 375/2003, which had no similar stipulation to the environmental issues. As a result, the EIA procedure is not being used for the majority of development activities.

The integration of EIA is best seen under the Mining Operation Proclamation No. 678/2010 and the Industrial

Parks Proclamation No. 886/2015 and Industrial Parks Regulation No. 417/2017 enacted as per this proclamation. Among other things, they stipulate an obligation to produce the EIA as a precondition for getting a license. As a result, in Ethiopia EIA is not well integrated into sectoral laws of major economic activities.

4.2. Recommendations

From the conclusions reached above the following recommendations could be made.

(A) Legal Reform on EIA and the Major Sectoral Laws

Reforming EIA Proclamation No. 299/2002

- a) The requirements of the EIA Proclamation impose a duty on any licensing agency the obligation to ensure that an environmental permit is obtained for a project subject to EIA before issuing an investment permit or trade or operating license should be mandatorily applied by all permitting agencies including EIC. This could be done by reforming the EIA Proclamation-like investment laws to address new developments.
- b) As the EIA Proclamation is by itself a framework law that requires several subsidiary legislations, it has to be amended with more details on environmental impact assessment. Thus, the reform will fill gaps created by the lack of subsidiary laws.

Reforming Investment, Land, Water, and Commercial Registration and Licensing Laws

The requirement of EIA for projects that significantly impact the environment must not be limited to the EIA Proclamation. It must be included in the investment laws as it will compel EIC to require EIA to be conducted and adequately reviewed by the concerned authority, before handing investment permits to investors. In so doing, coordination must be strengthened and hierarchical power relations must change, to ensure that any development activities are environmentally friendly.

- (B) Create a system of public interest litigation for EIA to function.
- (C) To integrate EIA into the major sectoral laws, the government, particularly the EPA, should engage in the analysis of different laws that are in conflict with the EIA requirements and establish a system of follow-up and implementation, such as by recruiting specialized experts and conducting an independent review.
- (D) Raising awareness to make an attitudinal change towards the importance of EIA.

Acronyms

EIC	Ethiopian Investment Commission
EIA	Environmental Impact Assessment
EPA	Environmental Protection Authority
HPR	House of Peoples Representatives
Art.	Article
SEA	Strategic Environmental Impact Assessment
IPs	Industrial Parks
Para	Paragraph

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