

Ethiopia's Environmental Federalism: Problems and Prospects

An Analysis in Comparative Perspective

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Declaration

I, **YOSEF ALEMU GEBREEGZIABHER**, declare that the work presented in this dissertation is original. It has never been presented before to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine.

Signed

Date



Supervisor: Professor Tobias Van Reenen

Signature

Date.....

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I will be eternally grateful to my supervisor Professor Tobias Van Reenen who through his splendid teaching first stimulated my interest in international environmental law, read my earlier draft, and took painstaking care to save my work from total incoherence and stilted language.

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List of Abbreviations

EIA- Environmental Impact Assessment

EU-European Union

EPA-Environmental Protection Authority

EPE-Environmental Policy of Ethiopia

EPRDF-Ethiopians' People's Revolutionary Front

CBNRM-Community Based Natural Resource Management

CSE-Conservation strategy of Ethiopia

CSA-Central Statistical Authority of Ethiopia

FDRE-Federal Democratic Republic of Ethiopia

FDI-Foreign Direct Investment

IMF-International Monetary Fund

HPR-House of Peoples' Representative

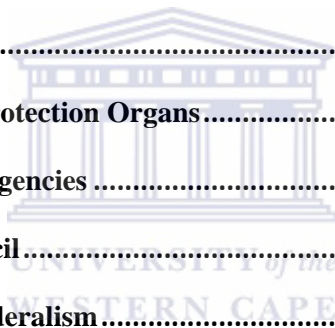
UNEP-United Nations Environment Program



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Chapter One: Introduction

1.1. Aim of the Study

Ethiopia is a federal state located in the horn of Africa. The Constitution has assigned legislative, executive and judicial powers to the federal and regional Governments.¹The main objective of this study is, therefore, to find out whether the decentralization of governmental powers between the national and the state governments of Ethiopia is also reflected in the decentralization of functional competences concerning environment related matters. In other words, this study attempts to determine whether Ethiopia is environmentally federal state, the extent and the possible shortcomings of the environmental federal structure. With this basic aim or objective in mind, in the study attempts will be made to see how the Constitution allocates the powers regarding environment among the federal, state, and local governments. To that effect, the role of the federal, the State and the local governments regarding the setting of environmental standards, pollution control and EIA will critically be analyzed. The match or the mismatch of the role of the federal as well as the state governments with their capacity will be investigated. Comparisons with selected legal systems will also be made for the purpose of identifying the practice of other systems in specific environmental matters selected for comparisons.

1.2. Significance of the Research

In Ethiopia, since the downfall of the socialist '*Derg*'² there has been an increased effort to attract investments. In this respect, various measures have been taken by the

¹ See Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1/1995 arts.51-56.

² '*Derge*' is the name the military Junta that ruled the country from 1974-1991.

government in order to create favourable business climate.³

Even if the growing investment is commendable, the effect of such an increased investment on the environment raises concern. Such an effort to attract FDI, unless complemented with workable environmental policy and administration system, will have deleterious environmental effects. In underdeveloped countries, like Ethiopia, if the environment is damaged, in the Word of Barbara Ward, '[t]he natural resource most threatened with pollution, most exposed to degradation , most liable to irreversible damage is not this or that species or the great oceans . **It is man himself**'.⁴ This is true of Ethiopia as every year millions risk hunger and starvations the resultant obvious effects of which needs no further discussion here. Just looking at the pitiable pictures taken during 2007/08 famine sums up the fact.⁵

In addition, environmental pollution from industries affects plant and animal diversity. Consequently, this will affect the growing tourist flow in the country.⁶ On top of that, products or raw materials manufactured in Ethiopia will lose its international competitiveness, as international standards like ISO require products to be environment friendly.⁷

Hence, in order to avoid these problems the country needs workable and participatory environmental system. In this regard, I find it very significant, especially as an Ethiopian and student of environmental law, to examine whether the country has adopted such a

³ For further discussion on the measures taken by the government since 1991, see 'an Investment guide to Ethiopia opportunities and conditions' < http://www.unctad.org/en/docs/iteiia20042_en.pdf [Accessed on January 12, 2008].

⁴ Barbara Ward and Rene Dubos, *Only One Earth* (1972)295(emphasis supplied).

⁵ 'Desperation as Ethiopia's hunger grows' < <http://news.bbc.co.uk/2/hi/africa/7444753.stm> > [Accessed on 9 June 2008]. According to the official data, over 6 million Ethiopians are in need of food aid currently. The 1984/85 had taken the life of over 1 million Ethiopians in just short period of time. See further, Patrick Webb *et al*, *Famine in Ethiopia: Policy Implications of Coping Failure at National and Household Levels* (1992)28ff.

⁶ UNIDO, *Assessment for the preparation of standards for industrial control in Ethiopia* (2003)2.

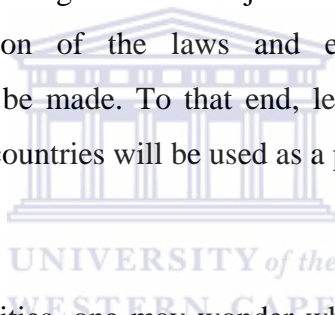
⁷ *Ibid.*

workable system of environmental pollution control, EIA and waste management system.

1.3. Research Methodology

This study will be library-based, descriptive, and analytical. Secondary sources such as Proclamations, Acts, directives, books, the Internet, journals, articles, and case law, will be used. Furthermore, the writer has also travelled to Ethiopia in order to study the organizational structures of environmental agencies at federal and regional levels.

A comparative study on Ethiopian laws governing environmental matters and the laws of India and European Union governing the same subject matter is conducted. In this part of the study, critical examination of the laws and environmental policies of the aforementioned countries will be made. To that end, legislative and policy documents cognate to environment of the countries will be used as a primary source.



Considering the economic realities, one may wonder whether the selected comparisons are just random. The comparisons reflect important issues that I would like to raise in the paper, that is, to what extent would countries be willing enough to surrender their sovereignty for sake of the environment. In addition, the possibilities of having cleaner environment without disturbing interstate commerce shall be investigated.⁸

1.4. Chapter Outline

Chapter 1 has provided significance of the study, aim of the study and the methodologies employed in the research. Chapter 2 exposes the general background of the study and it defines important concepts, compares the advantages and disadvantages of centralized

⁸ European System can be used as the best example for the second comparison(see the discussion on experience of EU 23ff.

and decentralized environmental administration. Chapter 3 discusses the existing legal framework in both the EU and the Indian system giving special emphasis on the power divisions relating to EIA, pollution control and waste management. Chapter 4 critically examines environmental federalism as enshrined in the Ethiopian Constitution and the role of State and Local Governments in EIA, pollution control and waste management. Then chapter 5 critically pinpoints the existing institutional and legal pitfalls associated with Ethiopian environmental federalism. Finally, chapter 6 provides conclusions and recommendations on how to alleviate the existing legal and institutional difficulties.

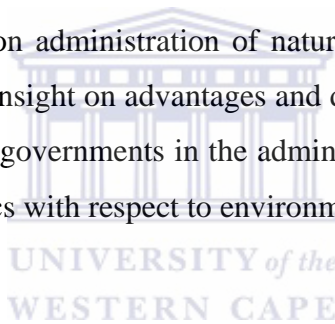


Chapter Two: Administration of the Environment

2.1. Introduction

The choice of the level of government in the provision of public goods specifically environmental matters is still an active policy issue across the globe. What makes the issue quite mesmerizing is that both centralized and decentralized ways of administration have their own advantages and disadvantages, interestingly enough, if one looks at the economic literature an empirical data explaining the advantage of one system over the other is abundant.

The objective of this chapter on administration of natural resources and environmental standards setting is to provide insight on advantages and disadvantages of assigning these functions to different layers of governments in the administrative hierarchy. This chapter discusses the law and economics with respect to environmental federalism.



2.2. Definition and Natures of Decentralization

Recently the world has witnessed a large trend towards transference of fiscal, political, and administrative responsibilities to lower-levels of governments.⁹ Numerous and extensive literature discusses the desirability of decentralization in provision of public goods.¹⁰

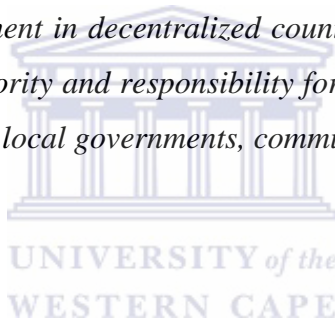
⁹ Campbell, *Devolution in natural resource management: institutional arrangements and power shifts: a synthesis of case studies from southern Africa* (2001). Manor, *Explaining the Popularity of Decentralization* (1997). Lutz et al, *Decentralization and Biodiversity Conservation*. (1994). Joern Altmann et al *The UNDP role in decentralization and local governance: a joint UNDP–government of Germany evaluation* (1993).

¹⁰ Machael Faure and Nicole Niessen (ed.) *Environmental Law in Development: Lesson from Indonesians Experience* (2006) 143ff. Joseph Fotei et al, *Voice and Opening the Door to environmental Democracy* (2008)2, Jennie et al, *Rethinking decentralization in Developing Countries, WB Sector studies series* (1998). Gordon Hughes and Magda Lovei, *Economic Reform and Environmental Performance in Transition Economies*, WB Technical paper (September 1999). James D. Wolrensohn, 'Entering the 21 century : The Challenge for development', *Philosophical Transactions* 354: *Biological Sciences* 1392.

The advent of multiparty political systems in Africa,¹¹ the growth and transformation of Latin American countries into democratic systems,¹² the decline of command market economy and liberalization of the market in Eastern Europe and the former Soviet Union¹³ and in some cases ethnic tensions in countries like Herzegovina and, Ethiopia are some of the reasons for recent widespread decentralization.¹⁴

Various scholars have provided diverse definitions for the term decentralization. In this regard, Jaap De Visser argued that these differences have emanated because of interchangeable use of broad and narrow definition of the term decentralization.¹⁵

Mawhood defined the term as the '*sharing of part of governmental power by a central ruling group with other groups each having authority with in a specific area of the state.*'¹⁶ World Food organization study dealing with *Decentralization and Administration of the environment in decentralized countries* defined decentralization as '*a process through which authority and responsibility for some functions are transferred from the central government to local governments, communities and the private sector.*'¹⁷



Ribot and Larson(ed) *Democratic Decentralization through a Natural Resource Lens* (2005)1. Public goods are characterized by absence of rival in consumption and absence of non-excludability. Parts of an environment like Air satisfy the features of public goods.

¹¹ Brilliantes, A.B. and Cuachon N.G. , *Decentralization and Power Shift. An Imperative for Good Governance, Vol. I. A Sourcebook on Decentralization Experiences in Asia*(2003)1

¹² World Bank '*Entering the 21st Century*' World Development Report 1999/2000 <<http://www.worldbank.org/wdr/2000/fullreport.html,108>> [accessed on August 1 2008].

¹³ Ibid.

¹⁴ Ibid.

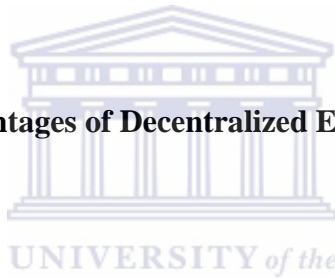
¹⁵ Jaap De Visser, *Developmental Local Government: A Case Study of South Africa*(2005)13ff.

¹⁶ Mawhood (1983) "*Decentralization: The concept and the practice* "in Mawhood P(ed.) *Local Government in the Third World the Experience of Tropical Africa*(1983) 8.

¹⁷ Cistuli, V. '*Environment in Decentralized development Economic and institutional issues, Training for agricultural planning*' (2002) at < <http://www.fao.org/docrep/005/y4256e/y4256e07.htm#bm07> > [accessed on July 12, 2008].

Decentralization can be in the form of administrative decentralization, fiscal decentralization, and market decentralization.¹⁸ Nevertheless, whatever its form or irrespective of the reasons for decentralization, once introduced decentralization will have significant ramification on productive and allocative efficiencies.¹⁹ On top of that, efficient decentralization can greatly affect economic development and poverty reduction.²⁰

In this paper, decentralization is understood as a process whereby regional and local governments are endowed with the responsibilities of setting pollution standards and assessing EIA for projects to be executed in their areas.



2.3. Advantages and Disadvantages of Decentralized Environmental Administration

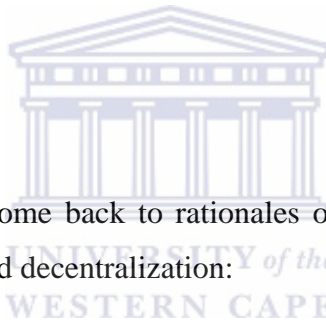
Though by no means exhaustive, the following discussion enunciates the advantages and disadvantages of ceding environmental powers to lower level of governments.

¹⁸ Mawhood (n.11 above) 4. Tim Clairs (2006) *Decentralization and Biodiversity Management: Opportunities to improve UNDP-GEF projects*(2006) 17. Sharma, Chanchal Kumar, 'when Does decentralization deliver? The Dilemma of design' (2005) < <http://mpa.ub.uni-muenchen.de/250/>>[accessed on June 29, 2008].

¹⁹ In economic terms, productive efficiency occurs when production of the good is possible at the lowest cost possible and allocative efficiency occurs when the resources of a country are allocated in accordance with the desires of the citizens. See Campbell R. McConnell, Stanley L. Brue, 6thed, *Economics*(2005)24

²⁰ UNDP- 'Dry lands Development Center, Decentralized Governance of Natural Resources Manual and Guidelines for practitioners ' < www.drylandsnetwork.undp.org/ > [Accessed on March 26, 2008].

In the public finance literature there is a general harmony that the central government irrespective of the form government should perform some of the functions of the state.²¹ Stabilization of the economy and distribution of income are examples of such functions.²² Multifaceted rationales have been forwarded for such an argument, for instance, in cases of stabilization functions, the public finance literature provides that since stabilization is a function to be performed by taking into consideration the wholesomeness of the country local and regional governments, because of their inherent features, lack the necessary instruments condition precedent in order to stabilize the economy.²³ Similarly, when we come to distribution of income, local administrators may use progressive tax²⁴ instruments in order to attain equitable income distribution in the country. However, such type of measures may result in destructive outcomes as it may result in deriving riches out of the locality and inviting more and more poor from other localities in search of subsidies.²⁵



Having that in mind when I come back to rationales of decentralization, Jones briefly summarized the rationale behind decentralization:

I use these words because they seem to me to contain the Kernel of the whole matter : Local because the system of government must be close to the common people and their problems; efficient because it must be

²¹David King, *Fiscal Tiers: The Economics of Multi-level Government* (1984)6ff. Harvey S. Rosen 5th ed , *Public Finance* (1999)471ff . Richard Musgrave, *The Theory of Public Finance* (1959)5. Wallace E. Oates, 'The Theory of Public Finance in a Federal System' 1 *Canadian Journal of Economics* (1968) 37ff.

²² Richard Musgrave(n.21 above)6.

²³ The apparent fear is that even if local governments succeed in stabilizing their areas destabilization from another local area may again destabilize the already stabilized market. See Wallace E. Oates (n.21.above)38

²⁴ In case of progressive taxes the rate of the tax increases as the income of the person increases. In case of proportional taxes the rate of the tax remains the same while in case of regressive taxes, the rate of the tax decreases as the income of the person increases. From all these types of taxing methods progressive taxes is the instrument available. See Wallace Oates(n.21 above)38

²⁵ Richard Musgrave (n.21 above) 5.

*capable of managing the local services in a way which will help raise the standard of living and democratic because it must not only find a place for the growing class of educated men , but at the same time command the respect and mass of the people.*²⁶

Kasfir considered Jones argument as '*uncommonly concise*'²⁷ way of providing the rationales for decentralization. It is generally agreed that decentralization results in allocative efficiency and hence, avoid economies of scale in the face of different local preferences for local public goods.²⁸This, according to public finance economists, paves the chance in order to tailor the supply of public goods to citizens' heterogeneous preferences across jurisdictions.²⁹ For that reason, the measure will help the country avoid the possible inefficiency that may arise because of imposition of uniform national standard in the face of locally different local preferences.³⁰

It is a grand fact that in decentralized administration the administrators are close to the average person. Hence, this closeness fosters the chance for the citizens to control the

²⁶ Colonial Office Dispatch from the secretary of state for the colonies to the Governors of the African Territories (February 1947) quoted in Samal Humes, *The role of Local Government in Economic Development in Africa* 'Journal of Administration Overseas' (January 1973) 23. Efficiency, attainment of democracy and making administration closer to the people are the rationales for decentralization according to Jones.

²⁷ Nelson Kasfir, '*Designs and Dilemmas: an Overview*' in Mawhood P (ed.) *Local Government in the Third World the Experience of Tropical Africa* (1983)25.

²⁸ Harvey S. Rosen (n.21 above) 482.

²⁹ Wallace Oates, *Fiscal Federalism* (1972) xvff. Suzanne Scotchmer, '*public Goods and Invisible Hand*' (1994)95-99 in John Quigley and Eugene Simolensky, *Modern Public Finance* (1994).

³⁰ Vito Tanzi '*On Fiscal Federalism: Issues to worry About*' *IMF working paper* (2004) .
<www.imf.org/external/pubs/ft/seminar/2000/fiscal/tanzi.pdf > [accessed on June 28 ,2008] , Robin Boadway , et al '*Fiscal federalism dimensions of Tax Reform in Developing Countries*'(1994a) World Bank , <info.worldbank.org/etools/library/latestversion.asp?206950 >[accessed on March 23 ,2008].

daily activity of the administrators and contribute to the development of accountability in the system.³¹

Moreover, decentralized administration has the potential to protect ethnic and traditional minorities.³² This argument makes more sense for multi-ethnic countries like Ethiopia. If minorities inhabit an area with a certain degree of self-government, decentralization essentially grants them the right to be free as a collective and administer their own locality.³³

In the context of environmental matters, decentralized administration of natural resources can pave the way for the attainment of efficient and equitable natural resource management.³⁴ For instance, community-based natural resource management (CBNRM) is one of the tools that help a country achieve efficient environmental management and improve equity for local people.³⁵ In this regard, democratic decentralization is the best alternative for institutionalizing and promoting the public participation that makes CBNRM effective.³⁶

³¹ Ronan Paddison, *The Fragmented State* (1985).143. Michael G. Faure and Jason S. Johnston, 'The Law and Economics of Environmental Federalism: Europe and the United States Compared' <Paper 211, <http://lsr.nellco.org/upenn/wps/papers/211>> [accessed on March 24 2008] .Arun Agrawal and Jesse Ribot, 'Accountability in Decentralization A Frame Work with South Asian and West African' , Digital Library for commons <<http://dlc.dlib.indiana.edu/archive/00000440/>> [accessed on July 1,2008].

³² Charles E. McLure Jr, Christine I. Wallich and Jennie I.Litvack, 'Special issues in Russian Federal Finance : Ethnic Separatism and Natural Resources'. In Richard Miller Bird *et al* (ed) *Decentralization of the Socialist State: Intergovernmental Finance in Transition Economies* (1995)384ff.

³³ Joseph Foti *et al* ,*Voice and Choice : opening the door to environmental Democracy* (2008)3.

³⁴ Jesse Ribot , *Democratic Decentralization of Natural Resources : Insttutionalizing Popular Participation* (2002)8.

³⁵ Ibid.

³⁶ Tim Clairs (n.18 above) 4.

More recently, natural resource decentralization is being promoted as a means for giving substance to political right. Furthermore, as natural resources provide source of revenue this will create a potential legitimacy for local governments and a fulcrum for democratic change in a country.³⁷ Hence, entrusting local institutions with environmental decision making, rule making and adjudication contributes directly to the building of democracy. For it is a truism that without the necessary resources local governments cannot gain the legitimacy they need to effectively represent local populations.³⁸

The location specificity of environmental problems is the strongest argument forwarded as main advantage of decentralized administration.³⁹ Pursuant to this argument, the main environmental problems such as water and noise pollution drastically vary from locality to locality and change over time.⁴⁰ Hence if given the necessary powers local governments will set these standards taking the necessary local interest at hand. Furthermore, because of their proximity local governments are in a better position to appreciate the socio-economic claims attached to the environment and this place them in a best position to enhance and protect the environment if they are given rights with regard to natural resources.⁴¹

On the other hand, it is suggested that empowering the local governments with higher responsibility in decision-making will create a sense of ownership on the part of the local communities towards the natural resources that may ultimately result in effective and efficient use and protection of natural resources.⁴²

³⁷ UNCDF, *Decentralization and Local governance in Africa proceedings from the Cape Town symposium* (26-30 March 2001)104.

³⁸ Ibid. Yet, one should know that there is always a risk associated in decentralizing administration of the environment to the local level that if allocated to non-democratic institutions these powers may result in counterproductive outcomes.

³⁹ Andrew J.Green, 'Public participation, Federalism and Environmental law' 6 *Buff. Env.L.J* 170.

⁴⁰ Ibid.

⁴¹ Tim Clairs (n.18 above) 4.

⁴² Ibid.

From public finance point of view, in face of differences for environmental standards decentralization is a viable option as it gives local administrators the chance to set environmental standards according to the need and preferences of the locality and avoid the optimal in efficiency that may emanate due to the use of uniform standards.⁴³

On the contrary, advocates of centralized administration and standard setting have argued that assigning these powers to local level may result in suboptimal outcomes and resulting in race to the bottom and externalities. I shall discuss each point separately in the next sub sections.

2.3.1. Race to the Bottom

The fear in relation to race bottom comes from the assumption that local governments and states will tend to adopt excessively lax environmental standards and low pollution taxes in order to attract prospective business firms to their own areas.⁴⁴The argument goes on and concludes that similar measures by different states at the same time will result in destruction of the environment.⁴⁵In this regard, Enrich argued that, the central government should ‘*save the states from themselves*’.⁴⁶ According to him only centralized environmental standard setting can save the states from race to the bottom.George Break in 1967, on the other hand, argued that

⁴³ Wallace E. Oates, ‘*Environmental Federalism In the United States : Principles , Problems and Prospects*’ < sunsite.utk.edu/ncedr/pdf/oatespap.pdf >[Accessed on March 12 ,2008]

⁴⁴ The empirical evidence, however, does not suggest that environmental regulations play a major role in plant investment decisions, so "competitiveness" concerns may be misplaced. See, Kirsten H. Engel, ‘State Environmental Standard-Setting: Is There a "Race" and Is It "To the Bottom"’, 48 *Hastings L.J.* 271, 321-37 (1997). Richard L. Revesz and Robert N. Stavins, *Environmental Law and Public Policy* (2004), < www.rff.org > [Accessed on February 4, 2008] 57seq.

⁴⁵ Ibid.

⁴⁶ Enrich, Peter D., "Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business," 110 *Harvard Law Review* (1996) 378seq.

[s]tate and local governments have been engaged for some time in an increasingly active competition among themselves for new business..In such an environment government officials do not lightly propose increase in their own tax rates that go much beyond those prevailing in nearby states ...active tax competition , in short, tends to produce either a generally low level of state –local tax effort or a state –local tax structure with strong regressive features⁴⁷

In such kind of problems, Rivlin recommended that:

States might provide higher quality services if they shared some taxes and did not have to worry so much about losing business to neighboring states with lower tax rates. They would then have more incentives to compete on the basis of the excellence of their services⁴⁸

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Revesz also supporting this opinion argued that, when individual states are given the power to set environmental standards independently the states as a whole face a prisoner's dilemma.⁴⁹ According to him, federal regulation would serve '*not as an intrusion on the autonomy of states, as it is often portrayed, but rather as a mechanism by which states can improve the welfare of their citizens*'.⁵⁰

⁴⁷ George Break, *Intergovernmental Fiscal Relations in the United States*, (1967)23seq.

⁴⁸ Rivlin, Alice *Reviving the American Dream: The Economy, the States, and the Federal Government* (1992)142.

⁴⁹ The Prisoner's Dilemma constitutes a problem in game theory. It was originally framed by Merrill Flood and Melvin Dresher working at RAND in 1950. In this game, regardless of what the opponent chooses, each player always receives a higher payoff (lesser sentence) by betraying the other.

⁵⁰ Richard L. Revesz, 'Rehabilitating Inter- state Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environ- mental Regulation', *67 N.Y.U. L. Rev.* 1210 (1992)1218.

On the contrary, Farber assimilated the above opinion with beggar-thy-neighbor justification.⁵¹ Farber explained that, subject to certain conditions governments that seek to maximize the well-being of their residents would have the right incentive to choose efficient levels of environmental quality.⁵²

Wallace Oates and Robert Schwab have critically examined this matter by using a hypothetical model.⁵³ The key conclusion of the basic Oates and Schwab model-is that there is no general tendency toward a race to the bottom unless either tax or market distortions exist.⁵⁴ Farber argued that the conclusion of Oates and Schwab '*seems to be fairly robust*'⁵⁵ an argument a writer of this paper also accepts.

2.3.2. Decentralization and Externalities⁵⁶

It is a truism that environmental problems respects no political jurisdictions for example Chlorofluorocarbons emitted in South Africa can injure the ozone layer around the Earth; sewerage discharged in Kenya can affect the water quality in Ethiopia; smokestacks in china can cause acid rain in neighboring countries. In this context, presence of spillovers is considered as one disadvantage of decentralization. Proponents of this argument

⁵¹ Policies are those that seek benefits for one country at the expense of others. Such policies attempt to remedy the economic problems in one country by means which tend to worsen the problems of other countries. See Daniel A. Farber , 'Environmental Federalism in Global Economy' , 83 *Va. L. Rev.*(1997)1305

⁵² Ibid.

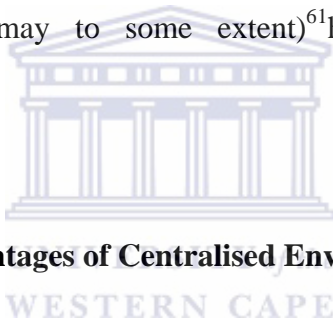
⁵³ Wallace E. Oates & Robert M. Schwab, 'Economic Competition Among Jurisdictions: Efficiency Enhancing or Distortion Inducing?' 35 *J. Pub. Econ.* 333 (1988)350ff.

⁵⁴ Ibid.

⁵⁵ Farber (n.51 above) 1304.

⁵⁶ In economics, an externality is a cost or a benefit to third parties who are not parties to the market transaction. If there is externality in the market, the market tends to produce more or less than the efficient amount. If there is a negative externality, the market produces more outcome than the efficient output.

contend that presence of externalities, especially negative externalities; serves as an incentive to produce more products than the optimal output.⁵⁷ This obviously will result in inefficient market outcomes as the decision in that particular region will be made by taking into consideration the marginal cost of the production of the good and tend to regard the marginal external cost from the production of a particular good; in this case, the marginal external cost will be borne by the neighboring states.⁵⁸ In this regard, Oates (1998) argued that *'for policy makers in one statetypically has little incentive to worry about the costs that their actions convey onto their neighbors'*⁵⁹ According to him ,in this state of affairs the possible response would be the introduction centralized environmental standard setting set by the central government.⁶⁰ Nevertheless, he argued that as the given state's pollution is always at the mercy of polluters in other jurisdictions centralized environmental standard setting would not be an appropriate policy response in the particular(even though it may to some extent)⁶¹he rather opted for regional cooperation.⁶²



2.4. Advantages and Disadvantages of Centralised Environmental Administration

Centralization occurs when organization is decision-making are primarily made by a small group of individuals at the top of its organization while it delegates little or no authority to the lower levels of its organization. In environment law centralization occurs when all environmental standards setting follows a down to the bottom approach. In a sense that the center sets the standards and the role of local administration and states will just be restricted with implementation of these center-targeted goals.

⁵⁷ Jonathan h. Adler, 'Jurisdictional Mismatch in Environmental Federalism '(2005)14 *N.Y.U. Environmental Law Journal*162

⁵⁸ Ibid.

⁵⁹ Wallace E. Oates (n.43 above) 4.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Wallace E. Oates, '*A Reconsideration of Environmental Federalism*' Resources for the Future, <<http://www.rff.org>. >[accessed on July, 21 2008].

In this regard, Per G. Fredriksson *et al* in their studies concluded from developing countries point of view that centralized environmental policy formulation results in better environmental standards than decentralized environmental policy formulation.⁶³ They argued that this happens due to greater aggregate incentive for worker and capital-owner lobbying for less stringent environmental policy under a decentralized system.⁶⁴ They have come up to this conclusion by developing a theory of environmental policy formation where worker, capital- and environmental lobby groups compete for a semi-benevolent government.⁶⁵ They, nevertheless, refrained from making a bold conclusion that centralized environmental policymaking is necessarily optimal for all countries.⁶⁶ Rather they just simply concluded that on the average centralized countries set strict environmental policy as compared to decentralized countries.⁶⁷

Oates provided three-bench mark case in order to decide the question of which level of government should set environmental standards. The first benchmark considers environmental quality as a pure public good⁶⁸ that means environmental quality may vary across jurisdictions but the most important element is that a unit of polluting emissions has the same effect on the national environmental quality irrespective of the place of occurrence.⁶⁹ In this given scenario, Oates argued that centralized determination of environmental standards should be in order.⁷⁰ He further argued that in this type of

⁶³ PerG.Fredriksson, *Environmental Federalism : A panacea or Pandora's Box for Developing countries* World Bank Policy Research Working Paper 3847, February (2006) 2ff

⁶⁴ Ann L. Owen and Julio Videras, 'Trust, Cooperation, and Implementation of Sustainability Programs: The Case of Local Agenda 21' <linkinghub.elsevier.com/retrieve/pii/S092180090800116X> [Accessed on January 28,2008]2.

⁶⁵ Ibid.

⁶⁶ PerG.Fredriksson (n.63 above)4.

⁶⁷ Ibid.

⁶⁸ Wallace E. Oates, *Environmental Policy and Fiscal Federalism : Selected Essays of Wallace E. Oates*(2004)125ff. Silvana Dalmazzone, *Decentralization and the Environment Working paper* No. 02/2006, < <http://www.de.unito.it> > [Accessed on January 28,2008] 3ff

⁶⁹Wallace E. Oates(n. above 43) 6ff.

⁷⁰ Ibid

situations decentralized or local standard settings would be inefficient, as local jurisdictions do not have control over environmental quality within their own jurisdictions.⁷¹ The second benchmark case considers an environmental quality as a local public good.⁷² In this case, polluting activities or emissions in one particular area are considered to have their effects restricted to the area of origin⁷³ with no externality. Oates used local drinking water and disposal of local refuse as an example. In this particular case, on the other hand, Oates argued that efficient environmental quality standard setting would be the one set by the local governments'.⁷⁴ The third benchmark is a situation whereby an environmental quality is considered as a local spillover.⁷⁵ In this case, wastes emitted from local industries entail local and some pollution in neighboring jurisdictions.⁷⁶ In this situation, the effects of local waste emissions entail both local pollution and some external effects on other jurisdictions. In this third situation, the environmental quality in one jurisdiction depends on the emission patterns of all jurisdictions.⁷⁷ He argued that the natural response for this kind of situation is centralized standard setting.⁷⁸ Nevertheless, he insisted that the answer to this particular problem is more complicated than it sounds. As a conclusion, he recommended that the central government must either specify differentiated taxes for activities directly polluting the environment or offer an appropriate and differentiated subsidy to local governments to induce them to internalize the inter jurisdictional benefits from pollution control.⁷⁹

⁷¹ Silvana Dalmazzone(n.68 above)4ff.

⁷² Wallace E. Oates (n. above 68)126.

⁷³ Wallace E. Oates (n. above43) 10ff.

⁷⁴ Wallace E. Oates (n. above68) 128.

⁷⁵ Ibid.

⁷⁶ He considered this benchmark as the most common benchmark in practice.

⁷⁷ Silvana Dalmazzone(n.68 above)4ff.

⁷⁸ Ibid.

⁷⁹ Wallace E. Oates (n. above43) 10ff.

Administrative and informational costs associated with non-uniform or decentralized administration is one of the strongest arguments invoked in favour for decentralization.⁸⁰

One of the disadvantages associated with the centralized administration is the fact that the central administrators lack the necessary knowledge of local conditions.⁸¹ This lack of information will affect the centralized governments' capacity to perform effectively in jurisdiction with heterogeneous preferences.⁸²

2.5. Conclusion

Both centralized and decentralized environmental administration and standard setting have their own advantages and disadvantages. Proponents of environmental federalism argue that when an environmental administration is decentralized it would give local government the opportunity to adjust environmental standards according to the needs of their locality. Furthermore, decentralized environmental administration reduced the efficiency loss that may arise because of administering different localities with the different preferences by using uniform environmental standards.

On the other hand, it is generally argued that decentralized administration may result in inter-state spillovers, as state adjust their environmental quality by taking into consideration their areas only. In addition, lower industrial pollution standards

⁸⁰ Kolstad, C.D. 'Uniformity versus Differentiation in Regulating Externalities' (1987) 14 *Journal of Environmental Economics and Management* 386ff. This may result in a situation where regulators may sacrifice efficiency and regulate different regions by uniform regulations.

⁸¹ Tim Clairs (n.18 above) 8.

⁸² Francis Kendall, *The Heart of the Nation: Regional and Community Government in the New South Africa*, (1991) 15. The other general disadvantage of centralized administration is that, because of the poor performance at the local level, citizens who can afford private services avoid governmental services being provided by the government. This not only weakens the role of the state and it ultimately leaves the government with the weakest and most needy part of the population, which increases the burdens on governmental services and often affects quality adversely.

tantamount as an indirect investment incentive. Hence, in decentralized administration regional governments may resort to introducing lax environmental standards in order to attracting mobile capital in their area, consequently creating the race to the bottom.

The argument for centralized administration is mainly based on the inability of the decentralized government to regulate the race to the bottom and inter-regional spillovers in the country. Avoidance of duplication of resources offers the strongest argument for centralization.

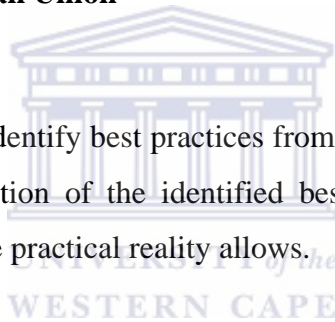


Chapter Three: Administration of the Environment: A Comparative Analysis

This chapter critically examines selected environmental administration and standard setting in the EU and the Indian system. As indicated in the introductory unit,⁸³ this is not a random sample but a systematic method used by the writer in order to identify the best environmental workable systems from countries with the wealth and relative success in this arena.

3.1 Experience of the European Union

The purpose this section is to identify best practices from the EU's environmental system and recommend the incorporation of the identified best green rules to the Ethiopian environmental system as far the practical reality allows.



3.1.1 Origin and Development of Environmental Policies in the EU

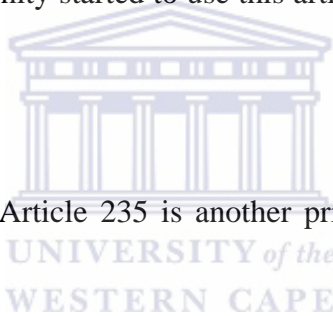
The Treaty of Rome of 1957 did not clearly provide for environmental protection as one of its principles.⁸⁴ This apparent dearth of a provision resulted in a lack of legal bases

⁸³ See page 3 above

⁸⁴ P.Sands, *Principles of International Environmental Law* 2nded.(2003)732. Norman J. et al , *The Global Environment: Institutions, Law and Policy*(1999)73. David Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy*(1997) 57. Pierre-Henri Laurent and Marc Maresceau, *The State of the European Union: Deepening and Widening*(1998)192. Frank McDonald and Stephen Dearden, *European Economic Integration*(2005)254. Sheldon Kamieniecki et al , *Flashpoints in Environmental Policymaking: Controversies in Achieving Sustainability*(1997)237. Lee Miles, *The European Union and the Nordic Countries*(1994)205. Karen Litfin, *The Greening of Sovereignty in World Politics* (1998) 226. Philipp M.Hildebrand, 'The European Community's Environmental Policy, 1957 to '1992': From Incidental Measures to an International Regime?' in David Judge(eds.) , *A Green Dimension for the European Community: Political Issues and Processes*(1993) 14. Matthieu G, 'Introduction: A policy

directly applicable in order to control environmental matters. As it turns out, however, this dearth did not totally close the door for environmental governance, the community started to use other principles in order to pursue environmental matters.⁸⁵ The principle provided in ex-Article 100(now Article 94) of the Treaty was one of such a principle.⁸⁶

This Article provides that '*the council issue Directives for the approximation of such provisions laid down by law , regulation or administrative action in Member States as directly affect the establishment or functioning of the common market*'.⁸⁷ Originally, this provision was intended to govern the smooth flow of the common market in the Community.⁸⁸ As it turns out practically, differences in environmental regulation started to distort competition among Member States in much the same terms as any kind of trade measures.⁸⁹ Hence, the Community started to use this article to avoid the possible market distortions.⁹⁰



The principle provided in ex. Article 235 is another principle put for similar purpose. This Article provides that:

Perspective on the implementation of Community environmental legislation' in Matthieu Glachant (eds.) *Implementing European Environmental Policy : The Impacts of Directives in the Member States*(2001)1.

⁸⁵ Peter G.G. *European Union Environmental law : An Introduction to Key Selected issue*(2004) 2 now article 94.

⁸⁶ Ibid.

⁸⁷ Ex. Article 100 of the EC.

⁸⁸ Peter G.G (n. 84 above) 3.

⁸⁹ For instance, a member state national measure prohibiting the sale of certain goods on environmental grounds or a Member State policy that places a financial burden in industries in the form strict pollution will obviously create a distortion effects.

⁹⁰ Peter G.G (n. 84 above) 3. The Shellfish waters Directive , the Directive on Combating of Air Pollution from Industrial Plants and the Original Waste Frame work Directive are some of examples of Directives relating to environment adopted pursuant to this Article.

*If action by the community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the community and this Treaty has not provided the necessary powers, the council shall acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.*⁹¹

This, on the other hand, was a gap filling provision, it becomes operational in situations where an action is necessary to attain one of the goals of the Community but nothing has been provided to that effect.⁹² As explained above⁹³, since environmental issues were not included in the Treaty this provision had been used as an alternative in route in order to pass laws relating environmental issues.⁹⁴

After the Rome Treaty, the Single European Act (SEA) made various amendments that directly affect environmental governance in the European Union.⁹⁵ The SEA introduced new section that defined the Community's competence to act in the environmental sphere.⁹⁶ In this regard, Article 130 T of this Treaty allowed Member States to introduce

⁹¹ Ex. Article 235 of the EC, now Article 308 of the EC.

⁹² Sands P (n.83 above) 746.

⁹³ See 20 above

⁹⁴ Tim Jeppesen , *Environmental Regulation in a Federal System: Framing Environmental Policy in the European Union* (2002)12 , The wild bird Directive, directive regulating the importation of Certain Seals and products derived from such seals and regulation on the importation of Whales and Cetacean Products⁹⁴ are some of the Directives having Article 235 as a legal base.

⁹⁵ Ibid. See also, Jon Burchell and Simon Lightfoot, *Greening of the European Union: Examining the EU's Environmental Credentials* (2002) 42.

⁹⁶ The Single European Act 1986 Articles 130R-130 T(The Act signed in 1986 came into force in July 1987). These provisions elevated environmental matters from being incidental objectives in the achievement of the common market or attainment of the objectives of the constitution to the primary matter. The heading of these sections clearly says 'Environment'. See Section IV of the SEA

or maintain more strict standards than the one set by the Community so long as they are compatible with the purpose of the Treaty.⁹⁷

The Maastricht Treaty signed in 1992 made environmental matters one of the fundamental objectives of the Community.⁹⁸ The Treaty allowed Member States to take temporary measures subject to Community inspection even for non-economic or solely on environmental reasons.⁹⁹ Furthermore, the Treaty of Amsterdam (1999) and treaty of Nice of (2000) had have strengthened the power of the Community in relation to the environment.¹⁰⁰

3.1.2. Individual vs. Community Environmental Competence

Individual versus Community competence is one of the most relevant issues in multilayered systems. Discussions made in EU context will undoubtedly provide the necessary impetus for critical examination of environmental federalism in the next chapter.



The interactions between the supranational decision making, that is, the Community and national discretion in the context of environmental standard setting can be looked at from two perspectives.

The first perspective is the situation where by no Community regulation exists in the area. In this case, the Member States can implement environmental standards in their areas

⁹⁷ Idem See also Article 130 T.

⁹⁸ Sands P (n.83 above) 746.

⁹⁹ Ibid.

¹⁰⁰ For a brief analysis of the additional powers by these two treaties see Jon Burchell and Simon Lightfoot (n.94 above) 37ff.

freely.¹⁰¹ These measures, nevertheless, must not hamper the free flow of the internal market in the Community.¹⁰²

The second one relates to areas for which a regulation by the Community exists. In this case, the rights of Member States to adopt environmental standards in their areas depend on whether the measure relates to product or process and the scope of the regulation.¹⁰³ In case the of process regulation, the measure by the Member State has to comply with minimum harmonization provided in Article 175 of EC.¹⁰⁴ This provision allows Member States to enact standards that are more stringent than those set by the Community.¹⁰⁵ Yet, these standards by the Member States must not hamper the internal market flow like any measures to be taken by the Member States.¹⁰⁶

In the case of product regulation, the measures have to comply with complete harmonization provided in Article 95 of EC.¹⁰⁷ The possibilities to introduce new measures under this heading are quite limited and are regulated by the *environmental guarantee*.¹⁰⁸

¹⁰¹ Tim Jeppesen (n. 92 above) 19.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Henk folmer & Tim Jeppesen 'Outlook on Europe environmental policy in the European Union: Community competence vs Member State competence' (2003) 94 *Tijdschrift voor Economische en Sociale Geografie*, 510–515, Scott, J., *EC Environmental Law* (1998)39ff

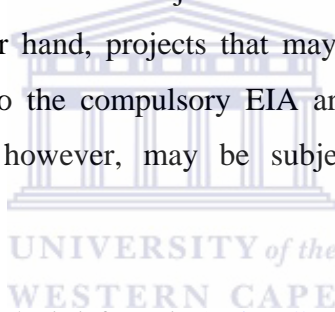
¹⁰⁵ Ibid.

¹⁰⁶ Henk folmer & Tim Jeppesen(n.104 above)38

¹⁰⁷ Ibid

¹⁰⁸ Peter G.G (n.84 above)64, Duncan L. and M.S Andersen , 'Strategies of the ' Green' Member States in EU Environmental Policy Making ' in Andrew Jordan(eds.) *Environmental Policy in the European Union: actors, institutions and processes*(2005) 53. An environmental guarantee is a situation whereby a member state is allowed to maintain its own standards in spite of the fact that a rule governing the area exists. For further analysis on this subject matter see 'What is environmental guarantee (environmental derogation)?' < http://www.eu-oplysningen.dk/euo_en/spsv/all/94/> [Accessed on September 10,2008].

The 1985 Intergovernmental Conference adopted the first Directive governing environmental impact assessment for public and private projects.¹⁰⁹ Article 2(1) of this Directive provides that '*projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.*'¹¹⁰ Accordingly, not all projects are Subject to EIA.¹¹¹ Pursuant to this Directive, only projects that are likely to have significant effect on the environment are subject to EIA.¹¹² In this regard, the '*significance*'¹¹³ threshold shall be determined by taking into consideration the '*size, nature or location*'¹¹³ of the project. In this respect, the Annex attached to the Directives gives guidelines regarding the projects to be subject to EIA .Consequently, all projects listed in Annex I to the Directives are subject to mandatory EIA before their implementation.¹¹⁴ On the other hand, projects that may cause significant effect to the environment but not subject to the compulsory EIA are provided in Annex II to the Directive.¹¹⁵ These projects, however, may be subject to EIA upon request and



¹⁰⁹ 'Environmental Impact Assessment basic information' < <http://ec.europa.eu/environment/eia/eia-legalcontext.htm> > [Accessed on January 28, 2008] It was amended in 1997.

¹¹⁰ COUNCIL DIRECTIVE of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) Article 2(1) this Directive do not cover projects relating to national defense, specific projects adopted by specific act of National legislation and a member country is also given an optional right to exclude some projects from the ambit of EIA under exceptional circumstances. See, art.1 (4), 1(5) and 2(3) of the Directive.

¹¹¹ Idem

¹¹² Idem

¹¹³ See article 2(1) of the Directive.

¹¹⁴ The Annex includes projects like crude oil refineries, nuclear power stations, installations for the reprocessing of irradiated fuel, installations for extracting asbestos, Chemical installations motorways, thermal power stations, waste incinerators, landfill sites for hazardous waste, For additional projects see Annex I to the Directive , Available at , <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20030625:EN:PDF> > [Accessed on May 2, 2008].

¹¹⁵ Ibid. Projects listed in Annex II *inter alia* grouped into rubber industry food industry, tourism and leisure, textile, leather, wood and paper industry, production and processing of metals, extractive industry and specific projects are listed in each group.

determination of the Member States concerned.¹¹⁶ The decision in order to conduct EIA for Annex II projects will be made on case-by-case bases after reviewing the project in light of the available guidelines.¹¹⁷ The characteristics of the project, location of the project and the potential impact of the project are some of the guidelines to be used while deciding whether a project listed in Annex II should undergo EIA or not.¹¹⁸ In this respect, the ECJ in *Aannemersbedrijf PK Kraaijeveld BV et al v Gedeputeerde Staten van Zuid-Holland*¹¹⁹ provided that projects listed in Annex I are subject to compulsory EIA.¹²⁰ ECI has also decided that national governments in principle are prohibited from extending blanket exemption to those projects in Annex II.¹²¹

It is a truism that environmental impacts from industries do not respect political jurisdictions. Considering this, the Directive has provided rules that regulate spillover effects.¹²² Accordingly, Member States are required to inform each other before implementing projects with spillover effects.¹²³ Furthermore, the Directive has provided for the right of Member States to demand for reasonable period in order to be able assess the possible outcome of the project in their jurisdictions.¹²⁴ The Directive provides that

¹¹⁶ See art.4 (2).

¹¹⁷ See art. 4(2) (a).

¹¹⁸ See Annex III, See also, Wood and Jones, *Monitoring Environmental Assessment and Planning* (1991)12ff.

¹¹⁹ *Case 72/95[1996]ECR I-5403 para.50.*

¹²⁰ *Ibid.*

¹²¹ *Case C-133/94 Commission v Belgium [1996] ECR I-2323, Paras, 42-43.* In other words, a blanket permission of projects is not allowed, rather it has to be done on case-by-case bases.

¹²² See art. 7 of the Directive.

¹²³ See art. 7 of the Directive as Amended.

¹²⁴ See art. 7 (1) (b).The states are given the right to participate in the system if they wish to do so; so long as they can prove that the project is type of project with externality to their locality.

the information sent to the countries must also be made available to the public so that citizens can air their comment.¹²⁵

As far as waste management¹²⁶ is concerned, prevention,¹²⁷ recovery and safe disposal of waste are the underlying objectives.¹²⁸ The Waste Directive provides self-sufficiency and proximity as main principles to be followed in the waste management system.¹²⁹ According to principle of self-sufficiency, Member States are required to establish an integrated disposal installation taking into consideration the available technology and costs.¹³⁰ Proximity on the other hand requires wastes generated in one area to be disposed at the nearest waste disposal site possible.¹³¹ The combined application of these two

¹²⁵ Idem.

¹²⁶ See art. 2 of the Directive has excluded the following from its ambit :

(a) *Gaseous effluents emitted into the atmosphere;*

(b) *Where they are already covered by other legislation:*

(i) *Radioactive waste;*

(ii) *Waste resulting from prospecting, extraction, and treatment and storage of mineral resources and the working of quarries;*

(iii) *Animal carcasses and the following agricultural waste: faecal matter and other natural, non -dangerous substances used in farming;*

(iv) *Waste waters, with the exception of waste in liquid form;*

(v) *Decommissioned explosives*

¹²⁷ See the preamble of the Directive

¹²⁸ EU Commission Directorate General Environment Nuclear Safety and Civil Protection, 'EU focus on Waste Management' (1999)10, Available at,

http://ec.europa.eu/environment/waste/publications/pdf/eufocus_en.pdf > [Accessed on January 22,2008). REGULATION (EC) No 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.

of 14 June 2006 on Shipments of Waste, Official Journal of the European Union, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1013:EN:NOT> > [Accessed on January 22,2008].

Economic Research Centre ,*Transport of Waste Products : Round Table* 116 (2001)149. The European Commission report on waste noted that waste is an indicator of progress European Commission , EU on Waste management (1999, Cited in Peter G.G. (n.83 above) 217)

¹²⁹ Peter G.G. (n.83 above) 219.

¹³⁰ See art. 5(1).

¹³¹ See art. 5(2).

principles results in either waste being disposed in the country of origin or in the nearest country possible. These two principles help minimize the damage that may occur because of transport of waste from one area into another.¹³²

The Directive requires member states to draw up waste management plans.¹³³ Accordingly, Member States are required to establish or designate competent organ to be responsible for implementing the Directive.¹³⁴ The Directive also gives a guidance regarding the items to be included in the Waste Management Plans.¹³⁵ Furthermore, any waste disposal activities should be performed with permit.¹³⁶

3.2. The Indian Experience



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¹³² Helmut Karl and Omar Ranne, 'Waste Management in the European Union: National Self-sufficiency and Harmonization at the Expense of Economic efficiency?' 23(2) *Environmental Management* 146-148.

¹³³ See the preamble of the Directive.

¹³⁴ See art .6.

¹³⁵ According to art.7(1) the following must be included *the type, quantity and origin of waste to be recovered or disposed of*;

- (b) *general technical requirements*;
- (c) *any special arrangements for particular wastes*;
- (d) Suitable disposal sites or installations.

¹³⁶ See art. 9(1) of the Directive has provided that the permit must cover:

- (a) *the types and quantities of*
- (b) *the technical requirements*;
- (c) *the safety precautions to*
- (d) *the disposal site*;
- (e) the treatment method.

In this section, I will briefly examine EIA power divisions and environmental standard setting in India's federalist system.

3.2.1. Environmental Federalism as Provided in the Constitution

The Indian Constitution divides governmental powers into three main lists.¹³⁷ List I contains those powers over which the Union Government has an exclusive jurisdiction.¹³⁸ The list incorporates environment related matters such as mineral resources,¹³⁹ the regulation and development of interstate rivers,¹⁴⁰ and the regulation of mines and mineral development of oil fields.¹⁴¹ List II, on the other hand, enumerates the powers reserved to the States.¹⁴² The list contains environment related matters including water and land.¹⁴³ List III enumerates concurrent subject matters.¹⁴⁴ In addition, it includes environmental matters like forests and protection of wild animals.¹⁴⁵

Central and Regional Governments are given an exclusive jurisdiction in their respective areas of competence.¹⁴⁶ In areas reserved as concurrent, both the Union and the State

¹³⁷ Sharma Manoj, *Indian Administrative Law* (2004)350. S.R.Sen, "India's Political System: What is to be done?" in Upendra Baxi *et al* (ed.) *Reconstructing the Republic* (1999)78ff. Brij Kishore Sharma, ed, *Introduction to the Constitution of India* (2005)36ff. Shrama M, *Indian Administration* (2003)335ff see further The Constitution of India, as Modified up to the 1st December 2007: Available at eh Ministry of Law and Justice of India website <<http://indiacode.nic.in/coiweb/welcome.html>> articles 245-255[Accessed on July-November 2008].

¹³⁸ Idem. See also the seventh schedule. See also art.246 (1). The list contains 97 subject matters.

¹³⁹ Idem.

¹⁴⁰ Idem.

¹⁴¹ Idem.

¹⁴² See the Seventh Schedule. The schedule contains 66 items.

¹⁴³ See art. 246.

¹⁴⁴ See arts.245-249. See further the Seventh Schedule The list is composed of over 52 subjects.

¹⁴⁵ Idem.

¹⁴⁶ See articles 245-251.

Parliament have the competence to make laws.¹⁴⁷ In case of inconsistency between the laws made by the Union Parliament and the States, the laws made by the Union Parliament shall prevail.¹⁴⁸ Nonetheless, there is one possibility for the laws made by the States to prevail over those made by the Union Parliament. This happens if the laws made by the States have received the assessment of the President before their promulgation.¹⁴⁹

As far as local administrations are concerned, the 73 and the 74 Constitutional Amendments empowered Panchayats¹⁵⁰ and Municipalities¹⁵¹ to exercise administrative competences in selected areas. According to these Constitutional amendments, the Panchayat can handle agriculture, land improvement and soil conservation,¹⁵² minor conservation,¹⁵³ minor irrigation,¹⁵⁴ water management and watershed development,¹⁵⁵ animal husbandry,¹⁵⁶ fisheries¹⁵⁷ and non-conventional energy sources.¹⁵⁸

Moreover, the Constitution requires Indian citizens to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures and imposed an obligation on the Indian State not only to protect but

¹⁴⁷ Idem.

¹⁴⁸ See article 251(1).

¹⁴⁹ Idem.

¹⁵⁰ Panchayats are Rural local government, see further articles 243-243(o) of the Constitution. Village panchayat is an institution of self-governing for rural areas. See Article 40-part IV. These organizations are form of Local Governments.

¹⁵¹ Municipalities are Urban Local Government, see further articles 243 (P) -243(z) of the Constitution.

¹⁵² See ariclet.243 (o) and article.243 (p)-(z).

¹⁵³ Idem.

¹⁵⁴ Idem.

¹⁵⁵ Idem.

¹⁵⁶ Idem.

¹⁵⁷ Idem.

¹⁵⁸ Idem. The municipality on the other hand can undertake town planning; regulation of land and construction of buildings; roads and bridges; water supply for domestic, industrial and commercial purpose; public health, sanitation, solid waste management; urban forestry, protection of environment and promotion of ecological aspects.

more importantly, to improve the environment and to safeguard the forests and wildlife of the country.¹⁵⁹

In *M. C. Mehta V. Union of India AIR* the Supreme Court directed the Central , States and Local authorities to introduce ‘*cleanliness week*’ where all citizens, including members of the Executive, Legislature and Judiciary, should render free personal service to keep their local areas free from pollution.¹⁶⁰

In relation to specific environmental laws, the Central Government used articles 253 and 51(c) of the Constitution in order to promulgate laws governing the environment.¹⁶¹ Both articles deal with international agreements and manner of implementation of international agreements.¹⁶²



3.2.2. Pollution and Environmental Federalism

The Water Prevention and Pollution Control Act of 1974 and the Air Prevention and Control Act of 1987 are the two laws governing water and air pollutions respectively.

¹⁵⁹ See the Constitution of India art. 51A (g) and art. 48A.

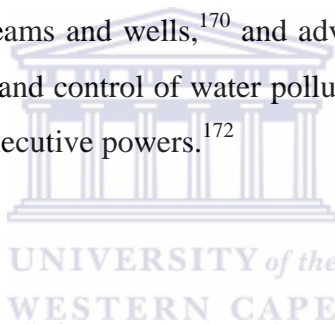
¹⁶⁰ *M. C. Mehta V. Union of India AIR* (198) SC1115.

¹⁶¹ Nilima Chandiraman , ‘Environmental Federalism: An Indian view-point’ an article available at http://www3.esmpu.gov.br/linha-editorial/outras-publicacoes/serie-grandes-eventos-meio-ambiente/Nilima_Chandiramani_Environmental_federalism_in_India.pdf [accessed on January 12 ,2008] 2ff.

¹⁶² The Constitution of India arts. 253 and 51(c). These two articles give powers to the Union Parliament to make laws for implementing a treaty, agreements or convention with another country or for implementing decisions made at international conference.

As far as water pollution is concerned, as provided in the preamble of the Act, prevention and control of water pollution and the maintaining or restoring of wholesomeness of water is one of the objectives of the Act.¹⁶³ As indicated above¹⁶⁴, even though water is a State matter, the Union Parliament was the one that enacted the law pursuant to article 252 of the Constitution.¹⁶⁵

The Act has established Central and State Pollution Control Boards.¹⁶⁶ The Central Water Pollution Prevention Board is given the power to coordinate the activities of the State Boards,¹⁶⁷ resolve disputes among them,¹⁶⁸ provide technical assistance and guidance,¹⁶⁹ lay down the standards for streams and wells,¹⁷⁰ and advise the Central Government on matters concerning prevention and control of water pollution.¹⁷¹ The State Boards, on the other hand, are mainly given executive powers.¹⁷²



¹⁶³ Water (Prevention and Control of Pollution) Act, 1974. see the preamble of the Act.

¹⁶⁴ See 29 above

¹⁶⁵ Idem. See the preamble of the Act. Pursuant to clause 2 of the Constitutional provision the Union parliament may legislate laws on the areas reserved for the states if states by agreement allow the Union Parliament to make laws on those areas. At the time state of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal agreed to this effect and the law was promulgated accordingly. At the time the applicability of this Act was reserved to the states consented to it.

¹⁶⁶ See sec.3-4.

¹⁶⁷ See sec.16 (2) (b).

¹⁶⁸ Idem.

¹⁶⁹ See sec.16 (2) (c).

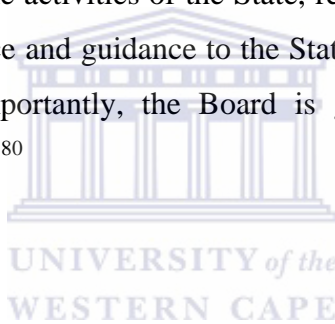
¹⁷⁰ See sec.16 (2) (g).

¹⁷¹ See sec.16 (2) (a).

¹⁷² See sec.17.

With regard to air pollution, the Act first came into force in 1981 and was amended in 1987.¹⁷³ The main objective of the Act is to provide for the prevention, control and abatement of air pollution.¹⁷⁴

In a similar manner, the Act has established Central and State Pollution control Boards.¹⁷⁵ Improving the quality of air and abatement of air pollution in the country is the duty of the Central Pollution Control Board.¹⁷⁶ Furthermore, the Central Board is given the power to advise the Central Government on any matter concerning the improvement of the quality of air and abatement of air pollution.¹⁷⁷ The Board can also plan and cause to be executed a nation-wide programme for the prevention control or abatement of air pollution.¹⁷⁸ Coordination of the activities of the State, resolve disputes among them and provision of technical assistance and guidance to the State Boards are the other duties of the Central Board.¹⁷⁹ Most importantly, the Board is given the power to lay down standards for the quality of air.¹⁸⁰



¹⁷³ Ministry of Environment and Forests Website < <http://envfor.nic.in/legis/legis.html#B> > [Accessed on October 1, 2008].

¹⁷⁴ The Air (Prevention and Control Of pollution) ACT, 1981 see the preamble. See see further, Harish C. Sharma Pollution Control Acts and Regulations of India/<<http://www.petroleumbazaar.com/library/Pollution%20control%20acts%20&%20Measures.pdf>> [Accessed on July 26, 2008].

¹⁷⁵ See sec.3 and sec 4.

¹⁷⁶ See sec.16.

¹⁷⁷ See sec.16 (2) b.

¹⁷⁸ See sec. 16(2) d.

¹⁷⁹ See sec.16 (2) e.

¹⁸⁰ See sec. 16(2) h.

Setting environmental standards (air and water Pollution standards) is the power of the Central Government.¹⁸¹ The States are given the power to make more stringent standards for particular activities or industries.¹⁸² Hence, making the process more centralized like the EU.

3.2.3. EIA and Environmental Federalism

The Environmental Protection Act of 1986 has introduced the notion of environmental impact assessment.¹⁸³ The 2006 Amendment Notification, which was highly opposed by States,¹⁸⁴ is the law in practice. This Notification classified projects into Category 'A' and Category 'B'.¹⁸⁵ Proponents of Category 'A' projects are required to submit their application to the Central Government while Category 'B' proponents are expected to submit their application to the States.¹⁸⁶ Hence, this Notification has created for a

¹⁸¹ See The Water (Prevention and Control of Pollution) Act, 1974, amended 1988, sec.16(2)(g), The Air (Prevention and Control of Pollution) Act, 1981, sec.16 (2)9h), see also Ambient Air Quality Standard for Ammonia (NH₃) a law made by the Central government pursuant to this section, See further, The Environment (Protection) Act, 1986, sec.3(2)(iii) gives the central government the general power to set standard.

¹⁸² See The Environment (Protection) rules, 1986 sec.3(2) in this regard provides that 'Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in....'.

¹⁸³ Dwivedi and B. Kishore 'Protecting the Environment from Pollution: A Review of India's Legal and Institutional Mechanisms' (1982) 22 Asian Surveys 897ff. Ritu Paliwal, 'EIA practice in India and its evaluation using SWOT analysis' 26 *Environmental Impact Assessment Review* (2006)492ff 'Environmental Impact Assessment' <http://coe.mse.ac.in/eiamain.asp> [Accessed on July 28,2008]. Until 1994, only big projects were subject to the environmental impact assessment.

¹⁸⁴ 'States unhappy with centralized clearances,' <<http://www.indiatogether.org/2006/jun/env-eiastates.htm>.> [Accessed on July 26, 2008], Sunita Dubey, 'EIA: The foundation of Failures' <<http://www.indiatogether.org/2006/mar/env-eiafail.htm#continue>> [Accessed on July 26,2008], In this regard Kerala's legislative assembly adopted a resolution on July 11 urging the Centre to withdraw the Environmental Impact Assessment Notification of 2006.

¹⁸⁵ Environmental Impact Assessment Notification 2006, Article 4 Bigger projects are mainly classified as Category A and smaller projects are classified as Category B.

¹⁸⁶ See. Sec 4.

possibility whereby the Central or the States, depending on the size of the project, might review the same type of project. The notification has also introduced a creative provision where by a particular project found in category 'B' might be considered as category 'A' for the sake of protecting the environment.¹⁸⁷

The Notification provides for the rule that makes displacing the approved Terms of Reference on the website of the Ministry of Environment and Forests and the concerned State level EIA Authority.¹⁸⁸ This measure will definitely foster accountability, as it would give the public the chance to access terms of Reference for each approved projects.

This Notification unlike its Ethiopian counterpart precisely defined what public consultation is,¹⁸⁹ the components of public consultation and the manner of conducting public consultations.¹⁹⁰ However, in similar stand with the Ethiopian law, no mention has been made about the power of local administrators in the EIA system.¹⁹¹

In summary, one can safely conclude that looking at the provisions of the Notification the power is more concentrated at the Center leaving the Regions with projects of lesser environmental impacts.

¹⁸⁷ See. Sec. 4 (iii). See also Schedule 2-7 Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of protected Areas notified under the Wild Life (Protection) Act, or Critically Polluted areas as notified by the Central Pollution Control Board from time to time, or Notified Eco-sensitive areas, or inter-State boundaries and international boundaries.

¹⁸⁸ See. Sec. 7 (i).

¹⁸⁹ See sec.7.

¹⁹⁰ Idem.

¹⁹¹ Subrato Sinha, 'Environmental impact assessment: an effective management tool' <<http://www.terienvi.nic.in/times3-1.pdf>> [Accessed on July 26, 2008.].

3.3. Conclusion

In the EU, environmental matters have transformed from being an incidental issue to crucial guiding principle in the activity of the Community. From the above discussion, it is possible to identify that Member States have surrendered various powers to the Community with the intention of greening the EU. As identified above, setting the environmental standards is within the purview of the Community and the Member States are allowed to set environmental standards only under exceptional circumstances. Generally, one can safely conclude that environmental standard setting in the EU is centralized.

As far as the Indian system is concerned, environmental matters save water and mineral matters had not been directly provided in the Constitution. However, the Central Government came up with various Acts regulating the environment based on the provisions of the Constitution dealing with international treaties. In India too, setting environmental standards is the power of the Central Government. Regional Governments, however, can set stricter environmental standards than those set by the Central Government. With regard to the EIA, projects with significant environmental damages fall under the ambit of the Central Government. Furthermore, the 2006 Notification envisaged the possibility whereby the Central Government might evaluate projects under the ambit of the Regional Governments. In summary, one can safely conclude that the Indian EIA and pollution control laws follow a centralized approach.



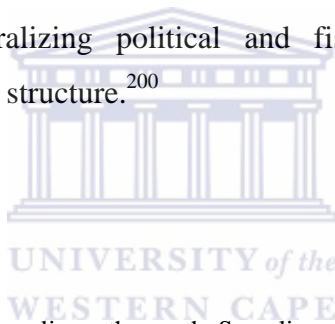
Chapter Four: Administration of the Environment under FDRE structure

4.1. Introduction

This chapter critically examines environmental power sharing under the present FDRE structure. First, I shall provide the environmental framework of the country, the general Constitutional structure of the country, the Environmental Policy, and Conservation Strategy of the country. Due to the limited scope of the research, I shall concentrate on the powers of the Federal Government, Regional Administrations and the right of Local Governments concerning pollution control, EIA and waste disposals.

4.2. State of the Environment and Structure of the Country

Ethiopia is a landlocked country located in the Horn of Africa.¹⁹² The country has an area of 1,104,000 square km and a population of 77.1 million in 2007.¹⁹³ The country has a great geographical diversity ranging from 110 meters below sea level to Ras Dashen that is 4620 meters above sea level.¹⁹⁴ Ethiopia has a history of more than 2000 years that dates back to the Axumite Kingdom around 100 BC.¹⁹⁵ Nevertheless, the modern state was born only in the mid 19th century.¹⁹⁶ This Empire flourished for about 120 years and ended with the 1974 revolution.¹⁹⁷ The period, 1974-1991, was a period of centralization with a civil war lurking behind.¹⁹⁸ In 1991, the civil war ended with the downfall of the military rule; this paved a way for a new Ethiopia based on free market ideology and decentralization.¹⁹⁹ The new government, led by the EPRDF, since then has embarked upon new trends of decentralizing political and fiscal powers to the Regional Administration within a federal structure.²⁰⁰



¹⁹² Its neighbors include Kenya and Somalia on the south, Somalia and Djibouti in the east, Eritrea on the north and Sudan in the west.

¹⁹³ UNFP, the United Nations Population Fund, available at, < <http://ethiopia.unfpa.org/population.html> > [Accessed on July 28 2008].

¹⁹⁴ Dallol depression is one of the lowest places in Africa. See, Environmental Protection Authority, Federal Democratic Republic of Ethiopia State of Environment Report for Ethiopia (2003)1.

¹⁹⁵ Margery Perham, *The Government of Ethiopia* (1968)10. Richard Pankhurst, *The Peoples of Africa the Ethiopians: A history* (1998)1ff. Bahru Zewde and Siegfried Pausewang(ed), *Ethiopia: The Challenge of Democracy from Below* (2002)9. Harold G. Marcus, *A history of Ethiopia* (2002)1ff.

¹⁹⁶ Bertus Praeg, *Ethiopia and Political Renaissance in Africa*(2006)63ff. Jason W. Clay, Bonnie K. Holcomb, *Politics and the Ethiopian Famine, 1984-1985: 1984-1985*(1986)9ff.

¹⁹⁷ Andargachew Tiruneh, *The Ethiopian Revolution, 1974-1987: A Transformation from an Aristocratic to a Totalitarian Autocracy* (1993). Abebe Zegeye, Siegfried Pausewang, *Ethiopia in Change: Peasantry, Nationalism and Democracy* (1994).

¹⁹⁸ Raymond W. Copson, *Africa's Wars and Prospects for Peace* (1994)37.

¹⁹⁹ Ibid.

²⁰⁰ The Constitution of the Federal Democratic Republic of Ethiopia, proclamation 1, 1995, art.50.

4.3. Constitutional Environmental Powers

The Constitution confers executive, judicial and legislative powers to the Federal and the Regional Governments.²⁰¹ Furthermore, the Constitution has also introduced a bicameral system.²⁰²

The House of People's Representatives is the highest law-making organ in the country. The HPR promulgate laws in areas that fall under the exclusive jurisdiction of the Federal Government.²⁰³ The HPR is composed of members elected by the people for a term of five years; the house contains 547 members, 20 members of which are allocated to minorities.²⁰⁴ The members of the house are believed to be representatives of the Ethiopian People as a whole and not a specific ethnic group.²⁰⁵

The other house is the House of Federation.²⁰⁶ One member for each ethnic group and at least an additional one representative for each extra million is the composition of the House.²⁰⁷ Constitutional interpretation and determination of share of revenue sources from concurrent powers of taxation are the main tasks of this house.²⁰⁸ Even though two houses exist in the country, only one house is practically capable of making laws while the other house, that is, the House of Federation is restricted to interpreting the Constitution and assigning shares to regional governments from the revenue collected out

²⁰¹ See art.51-55 of the Constitution.

²⁰² See arts.55 and 62 of the Constitution.

²⁰³ See art. 55 of the Constitution.

²⁰⁴ See art. 54 of the Constitution.

²⁰⁵ *Idem*.

²⁰⁶ See art.61 of the Constitution.

²⁰⁷ See art. 61(2) of the Constitution.

²⁰⁸ See art.62 of the Constitution.

of concurrent powers of taxation. Therefore, one can safely argue that Ethiopia is only structurally bicameral and functionally unicameral.

The Federal executive consists of the ceremonial president and powerful prime minister along with his cabinet, that is, the Council of Ministers.²⁰⁹ The House of Peoples Representative from among its members nominates the federal president who at the same time serves as the head of the state.²¹⁰ The person selected as a president of the country must however, be approved in a joint session of the two houses by a two third majority vote for a term of six years.²¹¹ The powers of the president are nominal and to some extents merely symbolic. The president opens a joint session of both houses every September, signs a draft law before its promulgation and receives credentials of foreign ambassadors.²¹²

The prime minister and along with the Council of Ministers is perhaps the most powerful federal executive organ. The Council of Ministers has law-making power and perhaps most importantly the power to issue emergency declaration that has the power to suspend some constitutional rights.²¹³ The political party and coalition of political parties that has the greatest number of seats in the House of Peoples Representative is entitled to form the executive.²¹⁴

The Constitution has established two sets of judicial system. It has provided for a three tire federal and state judicial system.²¹⁵ The state courts in addition to original jurisdiction also assume delegate jurisdiction over federal matters.²¹⁶

²⁰⁹ See art.art.72 of the Constitution.

²¹⁰ See arts.69 and 70 of the Constitution.

²¹¹ See art.70 (2) of the Constitution.

²¹² See arts 70 and 71 of the Constitution. Even f the president refuses to sign in the bill all the same the bill becomes operational after 15 days it has been submitted for signature.

²¹³ See art.93 of the Constitution.

²¹⁴ See arts. 72,73 and 74 of the Constitution.

²¹⁵ See art.80 of the Constitution.

²¹⁶ See art.80(4) Constitution.

As far as power assignments are concerned, the Constitution has listed down all the powers of the Federal Government while leaving the states with residual powers.²¹⁷ Regarding the relationship between federal and the state laws, the Constitution is silent as to which law shall prevail in case of conflict between the laws made by the Regional and the Federal Government. Finally, when it comes to local governments, however, it simply passed the subject matter by merely stating that adequate powers shall be granted to the lower units of government.²¹⁸

According to the current decentralization formula, the country has been divided into 9 regions (based on ethnic grounds mainly), the regions are further classified into Zones, the Zones into Woredas, and Woredas into Kebeles.²¹⁹

Regarding environmental issues, articles 44 and 92 of the Constitution introduce important environmental principles.²²⁰ Firstly, article 44 has extended the right to a clean and healthy environment to all citizens.²²¹ Accordingly, all citizens shall have the right to live in a healthy and clean environment. In other words, this provision implies that, the state is required to take the necessary measures so that citizens can enjoy this constitutional right. Furthermore the Constitution has also provided for the right of citizens' who have been displaced or whose livelihoods have been adversely affected as

²¹⁷ See art.52(1) as provided in article 99 of the Constitution residual tax powers are not to the states.

²¹⁸ See specially article 50(4).

²¹⁹ Asfaw Kumssa in *New Regional Development Paradigms* (2001)130 , Sigfried Pausewang *et al* , *Ethiopia Since Derg: A decade of Democratic Pretension and Performance*(2002)10ff. As it is now exists there are nine regional states and two special city administrations representing the two largest cities-Addis Ababa and Dire Dawa with a status equivalent to regional states. And as explained above, the regional administrations are subdivided zones and the Zones Woredas and the Woredas into Kebeles. See also articles 45-49 of the Constitution. The Woreda is the local administrative Unit under Ethiopian decentralized system.

²²⁰ See articles 44 and 92 of the Constitution.

²²¹ See art.44 of the Constitution.

result of state programmes' to get commensurate monetary or alternative means of compensation, which includes relocation with adequate state assistance.²²²

Article 92, on the other hand, provides the environmental objectives of the country.²²³ The first environmental objective obliges Federal and Regional Governments to endeavor to ensure that Ethiopians live in a healthy and clean environment.²²⁴ This provision requires the state to take the necessary measures like promulgating environmental impact assessment laws, pollution standards and waste management rules with the intention of creating healthy and clean environment. The right to full consultation and expression of their views in the planning and implementation of environmental policies and projects is the other objective.²²⁵ This objective requires state to make sure that citizens participate in preparation of environmental policies, conservation strategies and ensure their participation in implementation of these strategies and policies. In addition, implementation of programmes and projects are required to be environment friendly.²²⁶ Hence, according to the Constitution projects requiring too much air or any type of pollution must not be implemented at all, as these types of projects will not be in line with the environment friendly requirement provided in the Constitution. The Constitution, just like the Indian Constitution, has also imposed a duty on citizens and the Government to protect the environment.²²⁷ Nonetheless, nothing had been mentioned in the Constitution about the competence of Local Governments in the administration of the environment.

²²² Idem.

²²³ See art.92 of the Constitution.

²²⁴ See art.92 (1) This one is similar to the provision introduced in the Indian Constitution See the discussion in chapter three.

²²⁵ See art.92 (3) of the Constitution.

²²⁶ See art.92 (2) of the Constitution.

²²⁷ Idem.

For the sake of convenience, I shall look at the environmental power divisions between Federal and Regional Governments from two angles. The first one relates to the constitutional power divisions concerning land and other natural resources and the second one relate to issues of environmental pollution protection matters like EIA and pollution control measures.

As far as land and other natural resources are concerned, Article 51(5) of the Constitution has extended the power to promulgate laws governing conservation and proper utilization of land and other natural resources to the Federal Government. On the other hand, state are given the power to administer natural resources in their areas according to federal laws.²²⁸ Therefore, one can safely argue that regarding natural resources and land, the power to make laws is an exclusive power of the Federal Government while states are left with the power to administer these natural resources and the land based on the laws made by the Federal Government. Hence, the Constitution has followed a more decentralized approach in this regard.

When I come back to the second issue, to start with, there is no direct provision in the Constitution that allows the Federal or the Regional Governments either to set environmental standards for the whole (part of the country) or to provide EIA rules.²²⁹ As pointed out above, in the Indian Constitution two particular provisions have been used to solve this kind of problem.²³⁰ In the Ethiopian context, however, the Indian counterpart provision simply provides that the House of Peoples' Representatives '*shall ratify international agreements concluded by the executive.*'²³¹ Hence, the article unlike its counterpart only extends the power to ratify international agreements. Of course, one may

²²⁸ See art.52(2)(d) of the Constitution.

²²⁹ See the preamble of The EIA Proclamation, The Pollution Control Proclamation.

²³⁰ See article 253 of the Indian Constitution provides. '*Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.*'

²³¹ See art.55 (12).

argue that the power to ratify international environmental treaties also indirectly includes the power to set domestic laws implementing those standards in the country.

Therefore, it is the opinion of the writer of this paper that, the power to make EIA and pollution standards are the powers of the Federal Government so long as these laws are going to be made in order to implement international environmental requirements to which Ethiopia is a party. On the contrary, in all other cases the power to make environmental standards, other than those mentioned in article 51(5) should be left to the Regional Governments. Strict interpretation of article 52(1) of the Constitution also supports this argument.

4.4. Environmental Policy Frameworks

In this part, I shall briefly discuss the Conservation Strategies and the Environmental Policy of the country.



4.4.1. Conservation Strategy of Ethiopia

The Conservation Strategy of Ethiopia (CSE) that treats 11 sectoral and 11 cross-sectoral policies is the basis of the environmental policy of the country.²³² After this initial measure by the Federal Government, Regional Governments are now preparing conservation strategies to be applicable in their own regions.

Assessing the status and trends in the use and management of the resource base of the country,²³³ presenting a policy, strategy²³⁴ and institutional frameworks for sustainable

²³² The environmental policy of the Country is mainly taken from the second volume of the strategy.

²³³ The Conservation Strategy of Ethiopia, Executive Summary (1997)1.

use of natural resources²³⁵ are some of the purposes of the Strategy. Meeting with sample communities, zonal level assessments and series of workshops and conferences were conducted during the preparation phase in order to make the process participatory.²³⁶

The first Volume of the Strategy evaluated the prevailing state of the environment and development of the country.²³⁷ The Volume encourages participatory conservation of natural resources.²³⁸ For this reason, the strategy has provided detail reasons for public participation and suggested the steps required to ensure citizens' participation.²³⁹

Volume II²⁴⁰ presents a policy and strategy framework aimed at ensuring the sustainable use and management of natural resources.²⁴¹ The volume presents the Federal policy on natural resources and the environment.²⁴²

The institutional frame works in the protection of the environment are listed down in Volume III of the Strategy. This Strategy enumerates the role of Federal and Regional Governments in the protection and the administration of natural resources.²⁴³ It lists down

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Gedion Asfaw, *Assessment of the Environmental Policy of Ethiopia* (2001)17 in Environment and development in Ethiopia proceedings of the Symposium of the Forum for Social Studies Addis Abeba 15-16 September 2000 .

²³⁷ The Conservation Strategy of Ethiopia Vol. I (1997)1

²³⁸ Idem at 12.

²³⁹ In addition, this volume of the strategy contains chapters that describe the location, topography and present status of other natural resources of the country. As a background document, it also provides the historical background of the conservation strategy of the country.

²⁴⁰ The Environmental policy of the country is almost directly taken from this volume. The title of this part of CSE is '*Environmental policy of Ethiopia*'.

²⁴¹ The Conservation Strategy of Ethiopia, Vol. II (1997)1.

²⁴² Idem at 25.

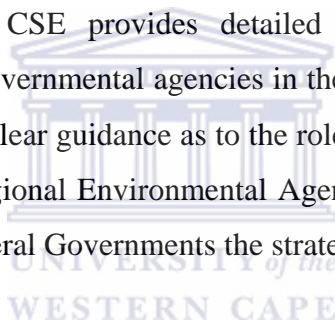
²⁴³ The Conservation Strategy of Ethiopia Vol.III(1997)3ff.

the overall institutional framework,²⁴⁴ the administrative structures²⁴⁵ and the responsibilities of government Ministers in the protection of the environment.²⁴⁶

Volume IV identifies short term and medium actions that should be taken to implement the Strategies.²⁴⁷

Volume V of the Strategy lists down specific projects to be implemented and projects currently in the implementation stage.²⁴⁸

Generally, even though the CSE provides detailed rules relating to institutional frameworks and the roles of governmental agencies in the protection of the environment. It, nevertheless, failed to give clear guidance as to the roles of other levels of government other than the Federal and Regional Environmental Agencies. Even while providing the duties of the Regional and Federal Governments the strategy lacked the required clarity.



4.4.2. Environmental Policy of Ethiopia

The great famine of 1984/85 is continuously cited by writers as one of the main reasons for the development of environmental policy in Ethiopia.²⁴⁹ At the time, mismanagement

²⁴⁴ Idem at 2

²⁴⁵ Idem at 3

²⁴⁶ Idem See especially 2-6 and 11-15.

²⁴⁷ The Conservation Strategy of Ethiopia IV(1997)2ff.

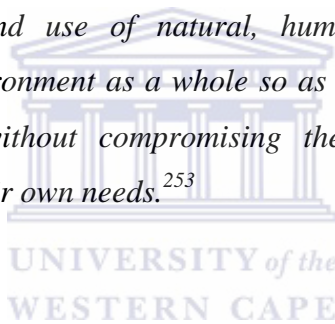
²⁴⁸ The Conservation Strategy of Ethiopia, Executive summary (n. above 217) 1.

²⁴⁹ Gedion Asfaw(n above 221) 19. Allan Boben , Paradigms and politics : The cultural construction of Environmental Policy in Ethiopia , 23*World Development*1007. Jason W. Clayand Bonnie K. Holcomb, *Politics and the Ethiopian Famine, 1984-1985*(1986)10. Margareta Sjöström, and Rolf Sjöström, *How Do*

of the environment was cited as the major cause for the famine.²⁵⁰ In addition to this disastrous event, there was also external pressure by international organizations forcing not only Ethiopia but also all developing countries to endorse internationally driven strategic environmental frameworks.²⁵¹ Regrettably enough, the Policy came into picture only in 1997.²⁵²

Section II of the Policy provides the overall objectives as follows:

*[t]o improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human made and cultural resources and the environment as a whole so as to meet the needs of the present generations without compromising the ability of the future generations to meet their own needs.*²⁵³



In my opinion, the Policy failed to provide in clear terms the roles of the Regional and Local environmental bodies.

You Spell Development?: A Study of a Literacy Campaign in Ethiopia(1983)¹ This book gives snippet view of the reasons for the draught in 1970s. Donald Curtis, Michael Hubbard, and Andrew Shepherd, *Preventing Famine: Policies and Prospects for Africa* (1988). Steven Varnis on his book argued that the military should take the majority of the blame for the disaster, see further Steven Varnis, *Reluctant Aid or Aiding the Reluctant?: U.S. Food Aid Policy and Ethiopian Famine Relief* (1990) especially at 47ff.

²⁵⁰ Idem at 19.

²⁵¹ Idem. The preparation of this document was made based on volume II of the CSE and its preparation and discussion took seven years. Finally, the Council of Ministers approved the document on April 2, 1997.

²⁵² The Environmental Policy of Ethiopia (1997).1ff. Eastern Nile Technical Regional Office (ENTRO), Environmental and Social Impact Assessment Final Report (2006)7. According to the policy, stagnation of GDP, predominance decline of agricultural output, deterioration of renewable natural resources of the country, burning of dung as fuel instead of using it as a fertilizer, mismanagement of natural and cultural heritage ,low utilization of natural resources and erosion of biodiversity are some of the major environmental problems of the country and main drawbacks for the future development of the country.

²⁵³ Environmental Policy of Ethiopia (1997) 3.

4.5. Institutional Frameworks

In this section, I shall discuss the institutional frameworks introduced by the environmental laws.

4.5.1. Federal Environmental Protection Organs

The Environmental Protection Council was one of the few Executive Organs established after the promulgation of the new Federal Constitution in 1995.²⁵⁴ After almost seven years, the new Proclamation 295 /2002 replaced the 1995 Proclamation.

The new Proclamation for the first time introduced a coordinated but differentiated responsibility between the Federal and Regional Environmental Protection Agencies.²⁵⁵ The mandate to look after this matter is left to the Federal Environmental Protection Authority.²⁵⁶

The EPA is an independent agency having its main office in the capital city of the country and is directly responsible for the Prime Minister.²⁵⁷ The Proclamation provides for the possibility of establishing a branch in one of the Regions.²⁵⁸

Article 6 of the Proclamation provides the powers and duties of EPA. Accordingly, the Authority is given the power to coordinate measures to ensure that the environmental

²⁵⁴ Environmental Protection Authority Establishment Proclamation, Proclamation No. 9/1995.

²⁵⁵ Environmental Protection Organs Establishment Proclamation 295/2002 see the preamble.

²⁵⁶ *Idem*.

²⁵⁷ See art.4. The authority has its own director General and Deputy Director, staff and an Environmental Council.

²⁵⁸ See art.4 So far, no branch had been established in any of the regional administrations.

objectives provided in the Constitution and Environmental Policies are realized.²⁵⁹ EPA has the power to prepare, review and update environmental policies strategies and laws in consultation with the competent agencies.²⁶⁰ In this regard, the Authority in consultation with the Ministry of Finance and Economic Development has prepared the Environmental Policy of the Country and the Conservation Strategies. In addition to the preparation of policies and strategies, the Authority shall have the power to monitor and enforce the implementation of these policies.²⁶¹ Furthermore, the Authority has the power to review environmental impact reports submitted by the proponent of projects with trans-boundary environmental pollution.²⁶² The power to set environmental standards and ensures compliance with those standards is another power of EPA.²⁶³ So far, there are only draft environmental standards prepared in collaboration with NGOs.

Participation in the consultation and negotiations with relevant international organs during the ratification of international agreements is another mandate of the Authority.²⁶⁴ This participation power is accompanied with corresponding powers to initiate the ratification of relevant international environmental agreements.²⁶⁵

The Authority is also required to carry out studies to combat desertification,²⁶⁶ mitigate the effects of drought,²⁶⁷ prepare corrective measures and create favorable conditions for

²⁵⁹ See art.6 (1).

²⁶⁰ See art.6 (2).

²⁶¹ See art.6 (19).

²⁶² See art.6 (5).

²⁶³ See art.6 (7).

²⁶⁴ See art.6 (8).

²⁶⁵ See art.6 (8).

²⁶⁶ See art.6(6).

²⁶⁷ Idem.

their implementations.²⁶⁸ Preparation of periodic report regarding the state of environment of the country and carrying out research on environmental protection are the other duties of the Authority.²⁶⁹

The Proclamation also envisages the possibility of delegating one or many of the powers of the Authority to the regional administrations.²⁷⁰

4.5.2 Regional Environmental Agencies

The Proclamation imposes a duty on all Regional Administrations to establish an independent environmental agency or designate an existing agency to carry out the functions to be assigned by the Proclamation.²⁷¹ The established agency is expected to assume responsibility for coordinating the formulation, implementation, review and revision of Regional Conservation Strategy.²⁷² The organ shall also be responsible for monitoring, protection and regulation of the environment.²⁷³

The Regional Environmental Agencies are obliged by the Proclamation to ensure the implementation of Federal environmental standards.²⁷⁴ Hence, the principle followed by

²⁶⁸ Idem.

²⁶⁹ See art.6 (16) since establishment the Authority had only established one Environmental report in 2003.

²⁷⁰ See art.6 (24).

²⁷¹ See art art.15 (1). The 2006 Waste Directive in EU introduces similar measure. In India on the other hand, the Central Pollution Control Boards establish the Regional Pollution Control Boards. See 32ff above.

²⁷² See art 15(1)(b).

²⁷³ Idem.

²⁷⁴ See art.15 (1)(a).

the Proclamation is that the Federal Environmental Authority will centrally set all standards without any distinctions and Regional Governments are required to comply with these standards. This will practically make the whole standard setting power centralized even in cases of environmental standards that are local in their nature such as noise.

Finally, the Proclamation imposes a duty to report on the regional environmental protection agencies.²⁷⁵ Accordingly, the regional agencies are required to prepare an annual report on the state of environment in their regions and submit their report to EPA. Currently, no Regional Environmental Agency prepares and submits an annual report to the Federal Environmental Agencies.

In practice, the institutional standing of Regional Environmental Agencies varies from region to region. In some Regions, they are established and work as independent institutions, while in others they function as part of another institution. For instance in Addis Ababa and, Oromiya the Environmental Protection Office is established as separate institution , while in the Southern Nations Nationalities and peoples Regional State , the Regional Environmental Organ is situated in the Bureau of Agriculture and Rural Development as EIA and Pollution Control Team.²⁷⁶

4.5.3. The Environmental Council

²⁷⁵ See art 15(2).

²⁷⁶ Melleseer Damtie and Mesfin Bayou, Ov

The Environment Council is the other institutional structure in the administration of the environment. The Prime Minister or person designated by the Prime Minister,²⁷⁷ representative designated by each Regional State,²⁷⁸ representative of the Federal Government,²⁷⁹ representative of the Chamber of Commerce,²⁸⁰ representative of local environmental and non-governmental organizations and a representative of the Confederation of Ethiopian Trade Unions and Director General of the Authority are the members of this Council.²⁸¹

Revision of proposed environmental policies, strategies and laws is one of the responsibilities of the Council.²⁸² After revising the policies or strategies the Council is required to present its recommendations to the Government.²⁸³ The word '*government*' in this sub article is vague as it is not clear which organ of government it refers too. The Council is also empowered to evaluate and provide appropriate advice on the implementation of Environmental Policy of the country.²⁸⁴ The Council also revises and approves Directives, Guidelines and environmental standards prepared by the Authority.²⁸⁵ As provided in article 10 of the Proclamation the Council is expected to hold its meeting once every six months.²⁸⁶ So far, the Council held a single meeting over the period of almost six years after its establishment.

²⁷⁷ See art.8 (a). At the same time works as chairman of the Council.

²⁷⁸ See art8(c).

²⁷⁹ See art8 (b).

²⁸⁰ See art 8 (d).

²⁸¹ See art 8 (g).

²⁸² See art 9(1).

²⁸³ Idem.

²⁸⁴ See art 9(2).

²⁸⁵ See art 9(3).

²⁸⁶ See art 10(1).

4.6. EIA and Environmental Federalism

Economic development is a priority for countries like Ethiopia. On the other hand, it is a truism that any type of economic development may result in destruction of the natural environment. As a result, no country in the world can have its cake and eat it too at the same time. In this regard, what a country can do is minimize the extent of damage to the lesser extent possible. One tool in order to achieve this noble objective is EIA.²⁸⁷ EIA, if used appropriately, can predict negative effect of development activities on the environment.²⁸⁸ EIA can also point to possibilities to enhance the positive effects of development activities.²⁸⁹ In addition to assisting the formulation of proper development policy, EIA also provides a forum for public involvement in the decision-making process.²⁹⁰

In the Ethiopian context, EIA became legally required procedure towards the end of the year 2002 with the promulgation of the EIA Proclamation. The Proclamation stipulates that no person shall commence implementation of a proposed project identified by directive requiring EIA without first passing conducting EIA and obtaining authorization from the competent environmental agency.²⁹¹ Projects that require EIA are provided in Appendix 1 of the 2003 EIA Guideline.²⁹² Pursuant to this Guideline, projects are classified into three Schedules.²⁹³ Schedule 1 contains list of projects that may have

²⁸⁷ A.G Colombo (ed.), *Environmental Impact Assessment: Proceedings of the Euro course Held at the Joint Research Centre, Ispra, Italy, September 30-October 4(1991)*1. Uro Marchetti, and Victoria Rivas(ed.) , *Geomorphology and Environmental Impact Assessment*(2001)1. Great Britain Dept. of the Environment, Transport, *Environmental Impact Assessment: A Guide to Procedures* (2000)7ff.

²⁸⁸ Peter Wathern(ed), *Environmental Impact Assessment: Theory and Practice* (1990)3.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

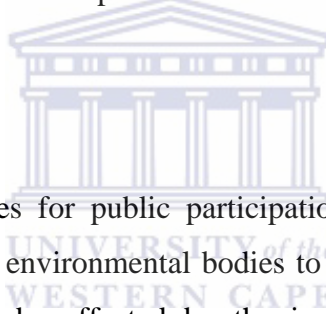
²⁹¹ Environmental Impact Assessment Proclamation 299/2002 art.3.

²⁹² Federal Democratic Republic Of Ethiopia Environmental Assessment and Management Guidelines (2003) appendix 1.

²⁹³ Idem.

adverse and significant environmental impacts and therefore, require full EIA.²⁹⁴ Schedule 2 on the other hand enumerates projects that may have the potential to cause environmental impacts but not likely to warrant an EIA study.²⁹⁵ The last Schedule lists down projects that will have no impact and does not require environmental impact assessment.²⁹⁶

The Proclamation obliges licensing institutions to ensure that the relevant environmental bodies have authorized the implementation of the project prior to issuing an investment permit.²⁹⁷ In addition, the EIA Proclamation requires such licensing institutions to suspend or cancel the permit or license they have issued for projects where the concerned environmental body suspends or cancels the authorization given for implementation of the project.²⁹⁸ These provisions are important as it ensures that project owners comply with the EIA requirement.



The Proclamation also provides for public participation in the environmental impact assessment process. It requires environmental bodies to ensure that the comments made by the communities likely to be affected by the implementation of the project be incorporated into the EIA study as well as in its evaluation process.²⁹⁹ The Proclamation also requires public projects identified by the directive as requiring EIA, to pass through environmental impact assessment process prior to their approval. It obliges government organs to ensure that their policies have passed through EIA process prior to their submission for approval.³⁰⁰

²⁹⁴ Idem.

²⁹⁵ See art.4 of the EIA Proclamation.

²⁹⁶ See art 6.

²⁹⁷ See.art.3.

²⁹⁸ See art.12.

²⁹⁹ See .art.15.

³⁰⁰ See art.13.

As far as the issue of environmental federalism is concerned, the Proclamation has not expressly provided the list of projects for which Federal or Regional approval is required. The only projects that clearly mentioned in the Proclamation are projects with trans-regional impacts.³⁰¹ In case of these types of projects, proponents are required to submit their reports to EPA.³⁰² The proponents are also required to consult societies in the regions to be affected by the project.³⁰³ As far as other projects are concerned, the Proclamation gives a direction. Accordingly, the power to evaluate EIA is the power left to the level of government with the permit to issue the investment license.³⁰⁴ In a sense that if the licensing, execution or supervision of a particular project is to be performed by the Federal Agency then the Federal environmental Authority will evaluate EIA of the project and vice versa.

On the Other hand, the Investment Proclamation provides that investments by foreign investor,³⁰⁵ investments by foreign nationals taken as a foreign investor,³⁰⁶ investment in areas eligible for incentives by domestic investor who is required to obtain business license from concerned Federal Organs³⁰⁷ and joint investment by domestic and foreign investor³⁰⁸ must get their license from the Federal Organs. Investments other than those referred above shall fall under the jurisdiction of regional investment organ.³⁰⁹ Therefore, the practical effect of this type of division is that since both them are given the chance to

³⁰¹ See art.6.

³⁰² Idem.

³⁰³ See art.6 (1).

³⁰⁴ See art.14.

³⁰⁵ Investment Proclamation 280/2002 art.23.

³⁰⁶ Idem.

³⁰⁷ Idem.

³⁰⁸ Idem.

³⁰⁹ Idem.

issue a license for similar projects even bigger and most complex projects may fall under the jurisdiction of the Regional Governments.

4.7. Pollution Control and Environmental Federalism

The country promulgated its first pollution control law in 2002. The Proclamation defined pollution as '*any condition which is hazardous or potentially hazardous to human health, safety or welfare or to living things*'.³¹⁰ The Federal and Regional environmental agencies have the power to take administrative or other legal measures against any person who pollutes the environment.³¹¹ The environmental agencies have the power to order the closure or relocation of companies persistently polluting the environment.³¹²

The Proclamation has prohibited the generation,³¹³ keeping,³¹⁴ storage,³¹⁵ transportation, treatment or disposal of any hazardous waste without a permit from either the Federal or the Regional authorities.³¹⁶ Hence, in principle, both the Federal and Regional governments have the power to control pollution in their own jurisdiction as defined by the Constitution.

³¹⁰ Environmental Pollution Control Proclamation 300/2002 art 2(12).

³¹¹ See art.3 (2).

³¹² Idem.

³¹³ See art. 4 of the Proclamation.

³¹⁴ Idem.

³¹⁵ Idem.

³¹⁶ See art.3 (1) art. 4 and art 5 extends power to the regional administration to Control Pollution and generation of municipal wastes in their own localities.

As pointed out above, standard setting is one of the important tools in the regulation of pollution. In this regard, it is provided in the Pollution Control Proclamation that such power is an exclusive power of the EPA.³¹⁷ Accordingly, EPA is the one with the power to determine air quality standards in the country,³¹⁸ standards for the discharge of effluents into water bodies and sewerage,³¹⁹ standard for substances that can be applied to soils,³²⁰ and standards relating to noise and waste management standards.³²¹ Practically no room is left for the Regional Governments to set their own environmental standards of whatsoever kind. Purely local environmental matters like noise are to be set by the Federal Government and the Regional Environmental Agencies power is restricted to implementing these standards. The only power left to the Regional Environmental Agencies is the power to set strict environmental standards than those set by the Federal Government.³²²

In order to control the implementation of the environmental standards set by the Federal Environmental Authority, the Proclamation has provided for the establishment of an environmental inspector.³²³ The powers of inspectors include the power to enter into the premises of any person at any time and the power to seize properties.³²⁴ Nonetheless, the jurisdiction and relationship of the Federal and Regional environmental inspectors has not been made clear by the proclamation. For instance, can the Federal inspectors inspect pollution occurring in the regional governments? Alternatively, what would happen if conflicts of interests arise between federal and regional environmental inspectors? I have

³¹⁷ *Idem.*

³¹⁸ See art.6 (1) (b).

³¹⁹ See art.6 (1) (a).

³²⁰ See art.6 (1) (c).

³²¹ See art.6 (1) (e).

³²² See art.6 (4).

³²³ See art.7.

³²⁴ See arts .7-10.

discussed in the previous chapter that the Indian counterpart gives an answer to these types of questions.

4.8. Solid Waste Management and Environmental Federalism

The solid waste management is a new law that came into force only recently. The objective of the waste management proclamation, as provided in the preamble, is to prevent the adverse effects of wastes and enhance the benefits that arise from waste.³²⁵ Hence, this proclamation has indirectly acknowledged the fact that wastes if used properly can be an asset to the country.

The proclamation has made it clear that urban administrations must ensure the participation of local communities in the design and implementation of waste management plans.³²⁶

The Proclamation requires each Regional Government to dispose their waste on their own areas and keep export of waste to the minimum possible.³²⁷ During the transport of waste from one Region to the other, the Proclamation provides that the Regional Administrations in whose Region the package passes through can require the package be transported in accordance with the standards issued by the concerned Environmental Agency.³²⁸ This law generally extends the power to management disposal of wastes in their areas to urban administrations. In this waste management system, the Federal Government has very little power.

³²⁵ Solid Waste Management Proclamation, proc.513/2007, See the preamble.

³²⁶ See art.5 (1).

³²⁷ See art. 6(1) of the Solid Waste Management Proclamation.

³²⁸ See art. 6(2) provides—‘Regional states may require any transit of solid waste through their region to be packaged and transported in conformity with the directives and standards issued by the **concerned environmental agency**’----concerned environmental agency is vague as at least three environmental agencies are involved and it can refer to any one of them at the same time.

4.9. Fisheries, Wildlife, Forests and Water

Fisheries development proclamation has prohibited commercial fishing activities without permit. The proclamation has given the Regional and the Federal Government the power to issue licenses to prospective fishing activities.³²⁹ Regional administrations are generally required to cooperate in the administration of the resources.³³⁰ Article 20(2) of the proclamation has extended for the Regional governments the power to make laws governing the resources in their areas. From this provision, one can indirectly gather that Regional Governments shall have the power to administer the resources located in their own jurisdictions.

The wild life proclamation, on the other hand, has clearly, provided for wild life areas and sanctuaries reserved for the Federal, Regional and Local governments.³³¹ According to this law, the Federal Government shall have the power to administer wildlife conservation areas located even inside the jurisdiction of the Regional governments.³³² In addition, the Federal Government administers those national parks situated across the border.³³³ Those areas not designated to the Federal Government pursuant to article 4 of the proclamation are the powers left to the Regional governments.³³⁴ On the other hand, areas not clearly designated to the Federal or the Regional Governments are reserved to the Local authorities.³³⁵

The forest development proclamation has classified forests into state and private forests.³³⁶ According to this proclamation, Regional Governments have to the clear

³²⁹ Fisheries Development and Utilization Proclamation 315/2003, art.art.6(1)

³³⁰ See art.9 (2) of the Fisheries proclamation.

³³¹ Development, Conservation and Utilization of Wildlife proclamation 541/2007, arts 4, 5, and 6.

³³² See art.4 of the Proclamation.

³³³ See art.4(1)of the Proclamation.

³³⁴ See art.5 of the Proclamation.

³³⁵ Forest Development, Conservation and Utilization Proclamation, 542/2007 art.3. There is also a possibility of designating areas to be administered by the individuals.

³³⁶ Idem.

mandate to administer forest resources located in their own jurisdictions.³³⁷ Nonetheless, the Regional Governments are required to administer the forests pursuant to laws made by the Federal Government.³³⁸

Ethiopia is a country endowed with abundant water resources. All water resources in the country are common property of the Ethiopian people and the state.³³⁹ Administration of water resources of the country is the power exclusively given to the supervising body.³⁴⁰ As provided in article 8(2) of the proclamation the supervising may delegate some of its power to the Regional Governments. Therefore, as far as administration of water resources are concerned the regional governments can only have delegate powers. Hence, the law regarding water resources is more centralized.

4.10. Critical Appraisal of Ethiopia's Environmental Federalism

4. 10.1. Race to the Bottom in Ethiopia?



I have discussed above, that one of the contentious issues raised concerning environmental federalism is the possibility of the race to the bottom by the regional governments.³⁴¹ In Ethiopia, however, as identified above, that setting environmental standards is the sole competence of the Federal Government.³⁴² Regional Environmental Agencies have very limited power in this area.³⁴³ Hence, this avoids the possibility of race to the bottom in the country, as the regional governments are not in a position to use

³³⁷ See art. 18 of the Proclamation.

³³⁸ See Art.18(1) of the Proclamation.

³³⁹ Ethiopian Water Resources' Management Proclamation,191/2000, art.5

³⁴⁰ See art.2(7) of the Proclamation.

³⁴¹ See above at 12.

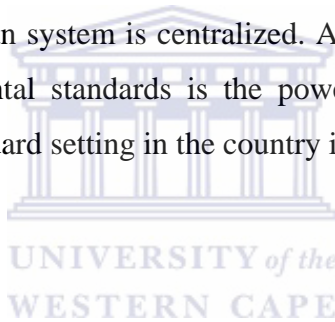
³⁴² See above at 52ff.

³⁴³ The power to set stricter environmental standards.

lax environmental standards as an investment incentive. However, as pointed out above, the power to evaluate EIA of even bigger projects is the power assigned to Regional environmental Agencies. For this reason, they may try to attract investors into their localities by providing lax EIA evaluating procedures.

4.10.2. Centralized or Decentralized?

I have identified in the second chapter that when an environmental standard setting and administration is centralized the focus is on the uniform standard that should be applicable across the country and when it is decentralized, the focus is on different standards adopted by regional and local government by taking into consideration the local interests. In this regard, I have discussed in the third chapter that environmental standard setting in the EU and the Indian system is centralized. As far as the Ethiopian system is concerned, setting environmental standards is the power of the Federal Government. Hence, the environmental standard setting in the country is centralized.



The EIA system is however, relatively decentralized at it empowers both the Federal and Regional Governments the competence to evaluate EIA submitted by proponents in their area jurisdictions.

4.10.3 Interstate Spillovers?

The Federal Government has the power to approve investments with spillover effects. This measure will totally avoid the possible conflicts that might arise because of

investments in one area releasing pollution into other regions. Nevertheless, in this regard the extent of the participation right of the regional governments needs further clarification.

4.11. Conclusion

Even though the Constitution is silent regarding the issue the Federal Parliament, however, came up with the laws governing Pollution, Waste Management and EIA by relying on article 55(1) of the Constitution. In addition to these laws, The EPE and CSE provide an additional policy framework in the protection of the environment.

EPA is the lead Agency in the protection of the environment. The Authority shoulders the massive task of coordinating coordinated but differentiated responsibility in the country. EPA is also empowered to set environmental standards. On the other hand, implementation of these standards is the task left to the Regional Governments.

In the EIA Proclamation, however, both the Federal and Regional Governments are competent to evaluate and approve EIA reports in their jurisdictions. The competence of local governments remains untouched.

Chapter Five: Institutional and Legal Pitfalls

Based on my discussions on the fourth chapter and the experience of other countries in the third chapter, I shall succinctly surmise the main institutional and legal pitfall in the

Ethiopian environmental federalism. The discussion on this part will again focus on EIA, Pollution Control and Solid Waste Management laws and associated institutional flaws.

5.1. Legal Pitfalls

5.1.1. Definitional Problems

The EIA, the Pollution Control and the Waste Control Proclamations divide executive and limited legislative powers between the Federal and Regional Environmental Agencies. While doing so, all of them use similar terms whenever they want to refer to other levels of government other than the Federal Government. The legislator used terms like ‘*the relevant agency*,³⁴⁴ ‘*the competent organ*,³⁴⁵ and ‘*competent agency*’.³⁴⁶ These terms are so broad that it can refer to any level of government and any part of the governmental agency at the same time. For instance, article 6 of the Pollution Control Proclamation provides that the Authority shall formulate practicable environmental standards based on scientific and environmental principles in consultation with *competent agencies*.³⁴⁷ The definitional part defined a competent agency broadly³⁴⁸ from this definition it will be quite difficult to pinpoint the responsible organ to which the particular provision wants to refer too. These types of uncertainties have the tendency to create confusion in the environmental administration system as these words imply so many things at the same time.

³⁴⁴ Environmental Impact Assessment Proclamation, Proc.299/2002 art.3 (1). Environmental Pollution control Proclamation, Proc.300/2002, art.3 (2), 5(2). Environmental Protection Organs establishment proclamation, proc.295/2002, art.6 (8).

³⁴⁵ Idem.

³⁴⁶ Idem.

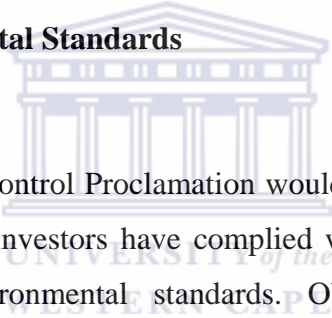
³⁴⁷ See art. 6 of the EIA Proclamation.

³⁴⁸ See art. 2(3) of pollution control proclamation define a competent agency as: ‘*Any Federal or Regional Government organ entrusted by law with a responsibility related to the subject specified in the provision where the term used*’.

5.1.2. Role of Local Governments

Even though the CSE and the EPE acknowledge the benefit of participating local administrations in the administrations of the environment none of the laws, however, extends clear rights to the local administrations. As the Local Governments are closer to the natural resources and to the sources of pollution it is therefore, my opinion that extending clear rights and obligations to local administrations will result in better protection of the natural resources.

5.1.3. Absence of Environmental Standards



The purpose of the Pollution Control Proclamation would just be rhetoric (or at least be reserved to checking whether investors have complied with the provision of their EIA permit) without proper environmental standards. Obviously, in the absence of environmental standards, it will not possible to determine the existence of pollution. Hence, absence of these laws is undermining the whole rationale of having an Environmental Pollution Control and EIA laws.

5.1.4. Lack of Proper Environmental Directives

Environmental policy frameworks and environmental Proclamations would better achieve the expected goals if supported by detail Regulations and Directives. In Ethiopia, however, currently only the frameworks proclamations are in place and these proclamations are not detail to govern all the matters.

5.1.5. Problem with EIA evaluation

I have discussed in the previous chapter that Ethiopian EIA system unlike its Indian counterpart follows the investment permit system. I have also identified in the same chapter that such an approach leads to a situation whereby Regional Governments end up evaluating EIA reports for complicated projects. Given the lack of financial and personnel capacity in the Regional Governments compounded by the eagerness of the Regional Governments to attract more investments to their areas, such an approach may create problems in the future.

5.2. Institutional Pitfalls

In this Section, I shall explain some of the institutional problems that I have come across in relation to Federal and Regional Environmental Agencies.



5.2.1. Total Absence of Local Environmental Agencies

Currently, no local environmental agency exists in the country. Regrettably enough in some Regional Governments, environmental Agencies are being forced to work as Departments under the control of different governmental agencies.³⁴⁹

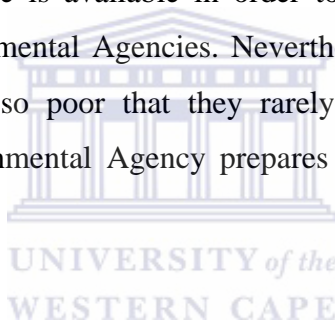
³⁴⁹ Environmental Agency under the Southern Nations Peoples and Nationalities is the best example in this regard.

5.2.2. Poor Environmental Information Systems

Even if the authority runs a website and designates a separate office for environmental information purpose getting an access even to list of environmental Proclamations, Regulations and Directives is hardly possible. In addition, very rarely, that Environmental Agencies teach the public about environmental pollution.

5.2.3. Lack of Coordination

A Regional coordination office is available in order to coordinate the activity of the Regional and Federal Environmental Agencies. Nevertheless, the coordination between the Federal and Regional is so poor that they rarely work together.³⁵⁰ Furthermore, currently no Regional Environmental Agency prepares and submits report to EPA as required by the Proclamation.



5.2.4. Lack of Public Participation

The EIA, Pollution Control and Waste management Proclamations extol the benefit of public participation in the environmental system. However, none of these laws provides clear guidance regarding public participation. For instance, what constitutes public participation by itself is not clear and there is no guideline to that effect too. Furthermore, fewer NGOs actively work in environmental areas and those active NGOs focus on very specific areas like desertification. As a result, one can get repetitious and similar researches in one area but none in other areas.

³⁵⁰ The Only available joint work is the one prepared by Addis Ababa Environmental Authority and Oromiya Environmental Authority on Akaki River (Integrated Program for cleaning up and Management of Akaki Rivers' Water.

5.2.5. Budget Constraint

Budget constraint is serious problem for a country like Ethiopia where a good proportion of the budget comes in the form of external aid. However, when it comes to Environmental Agencies the problem becomes more chronic and the gravity of the problem increases. For instance in 2000(2007/2008) budget year 3,907,642(Ethiopian Birr) was the money allocated to the EPA³⁵¹. From this total amount 2,348,300(Ethiopian Birr) was reserved as a salary for employees. Therefore, it will not be difficult to imagine the practical constraints that might arise in trying to carry out all the remaining activities and assist regional environmental with the remaining balance.



Chapter Six: Conclusion and Recommendation

6.1. Conclusion

This study analyzed environmental federalism in Ethiopia through critical examination of the laws governing pollution control, EIA, and waste management in the country. The study also made a brief exposition of the EU and the Indian system governing similar matters.

³⁵¹ Mellese Dantie and Mesfin Bayou, *Overview of Environmental Impact Assessment in Ethiopia : Gaps and Challenges*(2008)42

In the European context, the EIA Directive has determined those projects for which compulsory EIA is required. Consequently, the rule prohibits all Member States from implementing these projects in their localities without conducting EIA. In this regard, in the Indian EIA system projects are classified into Category 'A' and Category 'B' projects. This classification has classified bigger projects with significant environmental effects as Category 'A', hence, giving the Central Government the chance to evaluate the EIA on those projects. The Ethiopian system, on the other hand, follows a different approach whereby EIA follows on an investment permits system. This procedure gives Federal and Regional Environmental Agencies the chance to evaluate similar projects so long as the right to issue an investment permit is their power according to the the Investment Proclamation.

In the Indian EIA system, if the States fail to establish an EIA Unit then projects assigned to the States would fall under the ambit of the Central Government. This system is not available in Ethiopia; consequently, there is still a possibility of implementing projects without conducting proper EIA if the Regional Governments have not established or not designated a body for such purpose.

As far as setting environmental standards is concerned, in India and in EU, the standards are mainly set from the center. Member State in the EU and the States in the Indian system are given limited roles in this regard. The same rule applies in Ethiopian case too.

In summary based on the critical examination of the selected laws it is possible to argue that environmental federalism in Ethiopia follows a blended approach in a sense that it follows a hybrid of centralized standard setting and decentralized implementation and enforcement.

6.2. Recommendations

Even though the country has promulgated an EIA law, the apparent dearth of proper Regulations and Directives is making the purpose of the law rhetoric. As far as the pollution control is concerned, currently there are no Directives setting standard for air, noise, water, soil and pollution from industries. In the absence of these environmental standards, the presence of the framework law is just rhetoric. Hence, for Pollution Control Proclamation to work effectively the country needs to have its own environmental standards. These standards must at least include air, water, soil and noise pollution standards. Guidelines prepared by the EU, the Indians system and environmental standards prepared by South Africans can be used as starting point in this regard .

It is a truism that for underdeveloped countries like Ethiopia economic development is the only way out of chronic and recurrent famine cycle. However, for this economic development to be sustainable it must result in quantity and quality of growth at the same time. For this purpose, the country must embrace and elevate economic development and environmental protection at the same time. As the economic development in EU demonstrates in starkest terms, integration of development with the environment is an achievable objective. In this regard, EIA, pollution control and proper waste management systems are some of the important instruments in order to realize this objective. These systems, however, require not only top-bottom but also bottom-up strategies whereby the Federal Government, Regional and Local Governments must play a lead role depending on the circumstances.

The administrative and legislative competence of Regional and Local Governments is strictly constrained by the Proclamations and hence making environmental standard setting and EIA top-bottom. Given the size of the country, it would practically be impossible for the Federal Environmental Agency to control air, water and soil pollutions all over the country. It is; therefore, recommend that the Environmental Protection Agency establish branches in all Regional Administrations. Furthermore, all Regional Administrations should at least establish an independent environmental Agency primarily concerned with the control of pollution, EIA and waste management. Furthermore, the

plan for Accelerated and Sustained Development to End Poverty (PASDEP) provides various environment related targets to be implemented in the future. I recommend that the following should be put in practice immediately.³⁵²

It is a truism that no legal solution is cost free. In this respect, establishment of new environmental agencies and environmental standards will create its own additional costs. In order to alleviate this problem and generate additional revenues environmental Agencies should develop the habit of working with international organization specializing in environmental areas.

Management of the environment requires periodic review of the environment. For this purpose, the state of the natural resources of the country should be reviewed periodically.

I also recommend that, there should at least be an annual meeting of Regional and Federal Environmental Protection Organs. This meeting can serve as a forum in order to exchange good practices from different Regional Governments. In this regard, the country can learn a lot from the experience of EU Environmental Ministerial Conferences.

³⁵² Ministry of Finance and Economic Development (MoFED), *Ethiopia: Building on Progress A Plan for Accelerated and Sustained Development to End Poverty (PASDEP)(2006)187ff. 125 woredas will have their capacities improved and will develop and implement their environmental management and sustainable livelihoods plans that mainstream gender equity and increase, among other things, biomass resources, food, feed and household energy.65 urban municipalities will have developed sound Municipal Solid Waste Management Plans that mainstream gender equity and started implementation. A national environmental management information and networking system will be established; Terms of reference (ToR) for ten different sectoral Environment Units will be developed and linkages will be established with the three existing (water resources, roads and electric power) as well as with any new sectoral units created and the ten Regional Agencies through the environmental information system and networking.*



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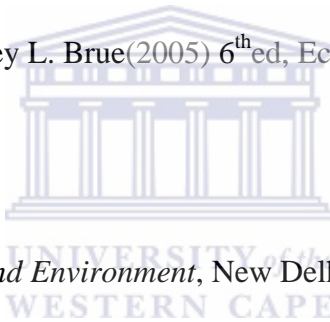
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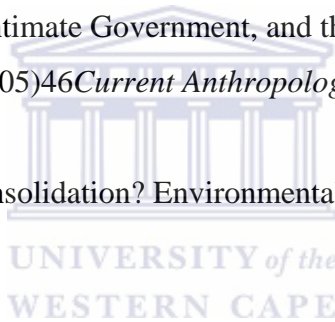
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