

The Negative Impact of Foreign Direct Investment on People's Right to Food: Ethiopia's Horticulture/Floriculture Industry

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Abstract

Ethiopia, a country with a large amount of untapped land, abundant natural resources and cheap labor coupled with other regulatory incentives, has succeeded in attracting foreign capital investment, particularly, in the agricultural sector. In recent years, Foreign Direct Investment (FDI) in the horticulture/floriculture industry has been reported to have caused problems of soil and water pollution thereby threatening Ethiopian's right to food. This paper explores the legal framework of Ethiopia designed to regulate agricultural investment and its potential adverse impacts on the environment. It identifies legislative and implementation gaps that need reforms to bring better economic and social development to the people. Finally, it gives suggestions on how to address the issue with the coordinated efforts of the government, investors and other stakeholders.

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Acronyms

AfCHPR: the African Charter on Human and People's Rights

ADB: African Development Bank

CESR: Center for Economic and Social Rights

CoM: Council of Ministers of the FDRE

EIA: Environmental Impact Assessment

EHPEA: Ethiopian Horticulture Producers and Exporters Association

EIC: Ethiopian Investment Commission

EPA: Ethiopian Environmental Protection Authority

EPRDF: Ethiopian People's Revolutionary Democratic Front

ESCR: Economic, Social and Cultural Rights

FAO: Food and Agricultural Organization

FDI: Foreign Direct Investment

FDRE: Federal Democratic Republic of Ethiopia

GTP: Growth and Transformation Plan

ICESCR: the International Covenant on Economic, Social and Cultural Rights

IFAD: International Fund for Agricultural Development

IIED: International Institute for Environment and Development

IMF: International Monetary Fund

OHCHR: UN Human Rights Office of the High Commissioner

PRAI: Principles for Responsible Agricultural Investment

SAP: Structural Adjustment Program

SERAC: Social and Economic Rights Action Center

UN: United Nations

UNCTAD: United Nations Conference on Trade and Development

WB: World Bank

Introduction

The impact of globalization on developing countries is a topic of debate among contemporary scholars. While some believe it plays a crucial role in poverty reduction and developmental efforts, others are of the opinion that its negative effect has outweighed the intended benefits, and is largely responsible for the ever increasing inequalities between the underdeveloped and developing countries.¹

The effect of globalization in Ethiopia demonstrates both positive and negative trends. The first of its positive roles comes through the growing cash-inflow in the form Foreign Direct Investment (FDI). Given its natural resource composition, Ethiopia has won the attention of a number of foreign investors who have put large amount of capital in the country's agricultural sector.² Studies prove that this has enormously contributed to growth by availing the necessary capital to carry out large-scale development projects.³ As a result, the country's agricultural products have gained improved competitiveness in the global markets through diversified export bases and enhanced quality. In addition to these, the engagement of foreign investors in both the agricultural and manufacturing sectors have created better employment opportunities for the locals.⁴

¹ C.R. 'When did Globalization Started?' *The Economist* (London, 23 September 2013)

<<http://www.economist.com/blogs/freeexchange/2013/09/economic-history-1>> accessed on 24 March 2016

² Lucie Weissleder, 'Foreign Direct Investment in the Agricultural Sector in Ethiopia' (2009) University of Bonn EcoFair Trade Dialogue Discussion Paper No. 12, 24 <

http://www.globalbioenergy.org/uploads/media/0910_Weissleder_-_

[Foreign direct investment in the agricultural sector in Ethiopia.pdf](#) > accessed on 24 March 2016

³ Getinet Haile and Hirut Assefa, 'Determinants of Foreign Investment in Ethiopia: a time-series analysis' (The 4th International Conference on the Ethiopian Economy, Addis Ababa, June 2006), 10 <

http://westminsterresearch.wmin.ac.uk/2892/1/Haile_Assefa_2006_final.pdf > accessed on 24 March 2016

⁴ Alemayehu Geda and Atnafu G/Meskel, 'Impact of China-Africa Investment Relations: Case Study of Ethiopia' (2009) Addis Ababa University Department of Economics AERC Collaborative Research, 5 <

http://dspace.africaportal.org/jspui/bitstream/123456789/32411/1/Ethiopia-China_Eth_Invest_Fina.pdf?1 > accessed on 24 March 2016

Within the domain of an increasing FDI in Ethiopia, investment in the agricultural sector takes the lion's share, i.e. more than a quarter of it. Consequently, the government has constantly been clearing and handing over quite expensive hectares of land to investors. In research conducted by Oakland Institute, by 2011 only, the government had prepared at least 180,000 hectares of land for transfer.⁵ This land is said to be ideal for the purpose of growing market oriented agricultural products (cash crops) such as cotton, sesame, groundnuts and the like.⁶

A number of issues stem from the government's engagement in the land clearing and transferring business. Although the government claims to have designed the strategies as part of the poverty alleviation plan, arrangements whereby lands of local farmers are forcibly taken by the state and handed-over to investors⁷, and a shift to export-oriented production⁸, pose a threat to the people's right to food, beyond interfering in their property rights.

The way the foreign investors carry out production fuels the problem. Massive use of fertilizers and other chemicals by the companies that are engaged in the production of agricultural products, for example, those in the horticulture/floriculture business, are causing irreparable social and environmental damages, i.e. land and water pollution.⁹

⁵ 'Understanding Land Investment Deals in Africa: Country Report: **Ethiopia**' (2011) The Oakland Institute USA, 6 < http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Ethiopia_Land_Investment_report.pdf > accessed on 24 March 2016

⁶ Ibid, p. 6

⁷ 'The Role of Globalization' (2013) Institute for Agriculture and Trade Policy, 3-4 < http://www.iatp.org/files/2013_02_14_LandGrabsFoodSystem_SM_0.pdf > accessed on 24 March 2016: In contemporary literature, such acts are referred to as "land grabbing". This is a situation, which leads to a disproportionate compromise of the interests of the original landholders when transferring land through sale or lease. This is especially common in poor countries where a strong regulatory framework is missing. See Sophia Murphy, 'Land Grabs and Fragile Food Systems. See also 'Waiting Here for Death: Forced Displacement and Villagization in Ethiopia's Gambella Region' (2012) Human Rights Watch (Human Rights Watch Report), 19 < https://www.hrw.org/sites/default/files/reports/ethiopia0112webwcover_0.pdf > accessed on 24 March 2016

⁸ Weissleder (n 2), 25

⁹ Abayneh Tilahun, 'Environmental Impacts of Floriculture Industry in Debre-Zeit Town: a Need for Strategic Environmental Assessment' (MSc. Thesis, Addis Ababa University 2013), 49

Before licensing the operation of an investment project in the country, the Ethiopian Environmental Protection Authority (EPA) or other designated authorities, as the case may be, have the responsibility of conducting an environmental impact assessment.¹⁰ Furthermore, the same governmental authority has to carry out periodic evaluations of the companies' activities.¹¹

Despite some regulatory attempts, however, the villagers have been experiencing problems of air, soil and water pollutions associated with fertilizers, pesticides and chemicals used in production and poor waste disposal mechanisms.¹² A study conducted on Debre-Zeit¹³, where the horticulture industries are largely concentrated, demonstrate that the waste disposal systems of these farms have degraded the natural quality of the soil thereby leading to its inability to grow the staple food of the people.¹⁴

Since Ethiopia is a dominantly agrarian society and more than 50% of its GDP comes from agriculture, this occurrence has a direct implication on food security.¹⁵ One of the defining elements of the “right to food”, as provided by the Committee for Economic, Social and Cultural

¹⁰ Environmental Impact Assessment Proclamation, Proclamation No. 299/2002, FED. NEGARIT GAZZETA 9th Year No. 11, Addis Ababa, 3rd December 2002 (EIA Proc.), Article 7(1).

¹¹ *ibid* Article 12(1).

¹² Degytnu Gudeta, ‘Socio-economic and Environmental Impact of Floriculture (predominantly, the horticulture/floriculture) Industry in Ethiopia’ (MSc Thesis, Humboldt University of Berlin 2012), 40

¹³ Debre Zeit is a city located in the Oromia Regional State of the Federal Democratic Republic of Ethiopia (FDRE). Most of the Horti/floriculture farms are located in Addis Ababa and surrounding area of the Oromia Region and others are located in the Amhara Regional State., *see ibid*, 11

¹⁴ Mesfin Kebede *et al.*, ‘Modeling the Influence of Floriculture Effluent on Soil Quality and Dry Matter Yield of Wheat on Vertisols at Debre Zeit’ (2012) 2(2) Journal of Environmental and Earth Science, 16 < https://www.researchgate.net/publication/237858658_Modeling_the_Influence_of_Floriculture_Effluent_on_Soil_Quality_and_Dry_Matter_Yield_of_Wheat_on_Vertisols_at_Debre_Zeit_Ethiopia > accessed on 24 March 2016

¹⁵ Andrea Bues, ‘Agricultural Foreign Direct Investment and Water Rights: An Institutional Analysis from Ethiopia’ (International Conference on Global Land Grabbing, April 2011), 3 < <http://www.future-agricultures.org/papers-and-presentations/conference-papers-2/1096-agricultural-foreign-direct-investment-and-water-rights-an-institutional-analysis-from-ethiopia/file> > accessed on 24 March 2016: About 85% of the rural population earns a living from Agriculture.

Rights (ESCR) under its General Comment 12, is having access to means of production.¹⁶ The ongoing acts of “land-grabbing” committed by the government and the environmental (soil and water) pollution caused by private actors frustrate the very nature of this right as it affects the majority’s means of subsistence.

As the execution of a development program normally comes with its own side-effects, the government has the responsibility of taking regulatory actions to mitigate the possible negative consequences. Nonetheless, the facts on the ground suggests that there at least is a gap which may lead to a situation where the cost may dominantly outweigh the intended benefit.¹⁷ This paper proposes the possible mechanisms, public as well as private efforts, of mitigating the environmental pollution caused by foreign investors’ engagement in the horti/floriculture sector.

Chapter one provides a general overview of foreign direct investment in Ethiopia. It begins with a short summary of the changes introduced in the country with the coming into power of Ethiopian People Republican Democratic Party (EPRDF). In its commitment to move the country to a free market economy, EPRDF undertook legal reforms to encourage private investment and FDI. After briefly highlighting the advantages/disadvantages of foreign investment in Ethiopia, a description of the investment incentives available for foreigner follows. It closes with a brief introduction of investment in the agricultural sector focusing on flori/horticulture industry.

¹⁶ UN A Committee on Economic, Social and Cultural Rights, ‘General Comment 12’ on ‘The Right to Adequate Food - Article 11 of ICESCR’ (12 May 1999) UN Doc. E/C.12.1999/5 (General Comment), 3

¹⁷ Mulugeta Getu, ‘Ethiopian Floriculture and its Impact on the Environment: Regulation, Supervision and Compliance (2009) 3 Mizan Law Rev. 240, 269.

The second chapter titled “FDI in the horticulture/floriculture industry in Ethiopia and the right to food” deals with the negative impacts of FDI on Ethiopians’ right to food. Questions related to soil and water pollution will be addressed. It first reflects on the adverse effects FDI, in the horticulture/floriculture industry, has put on the environment. Then, it moves on to discuss the “right to food” under the national legal framework and selected international and regional human rights instruments which Ethiopia is a party. Finally, it will show how the local population’s right to food is being affected by the environmental pollution.

Chapter three covers the domestic governance framework¹⁸ which is designed to regulate investment in Ethiopia including the investment law promulgated by the federal government, environmental protection, and land and water laws. It further discusses the regulatory initiatives taken by associations and private investors in the horticulture sector to bring environmental sustainability.

The last part summarizes the findings of the study and proposes possible legal reforms and enforcement measures to be taken by the Ethiopian government. Moreover, it elaborates on the part to be played by other stakeholders such as the foreign investors, private horti/floriculture associations and initiatives, NGOs, and Ethiopia’s flower trading partners.

¹⁸ This research will deal with major federal legislations which directly and indirectly regulate and affect foreign direct investment in Ethiopia. These are investment, environmental, water and land proclamations and regulations, and the FDRE Constitution.

Chapter I FDI in Ethiopia: the Agricultural Sector

1.1 Introduction

In the realm of global business transactions, there are two major ways through which firms and investors may participate in international business: trade and investment. In the most simplified state, trade involves exchange of goods and services for consideration at a particular time.¹⁹ Whereas investment, more or less, presupposes a fairly longer engagement period.²⁰ Due to this distinction in character, international investment bears more risk when compared against international trade.

Foreign Direct Investment (FDI), which is one form of international investment, has the sole purpose of own property of economic value and exercise managerial and ownership power.²¹ FDI take various forms, i.e. it could be establishing new factory or acquiring an existing one.²² What specifically differentiates FDI from other forms of investment is that it requires presence of the investor in the host country and, additional, the investor will have a degree of control with regard the activity of the enterprise. Although the longer period of engagement increases the commercial risks to be bore by the investor, the greater control latitude by foreign investors poses a danger for the sovereignty of the recipient.

Given this nature of FDI and the risks involved, host countries design ways of attracting foreigner investors while at the same time regulating their activity upon their arrival. The incentive measures take a form of incentives and privileges ranging from tax holidays to availing operational land free

¹⁹ Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd edn, Oxford University Press 2012), 21.

²⁰ *ibid.*

²¹ Ricky W. Griffin and Michael W. Pustay, *International Business* (6th edn, Upper Saddle River 2010), 192.

²² *Ibid.*

of charge. In addition, governments enter into bilateral and multilateral investment treaties to give a guarantee against illegal expropriation, discrimination and other treatments that create unfavorable business environment.²³

Leaving aside the case of multinational companies seeking to expand their branches, foreign investors are attracted by a range of factors like natural resources, stability and the general political atmosphere of the state and, the nature of the targeted investment sector, availability of labor. This chapter explores through the over-all shape of FDI in Ethiopia, its benefits and challenges and the type of incentives provided for horti/floriculture sector under the Ethiopian legal framework.

1.2 An overview of the development FDI in Ethiopia

Among the benefits of a globalized economy, one is the free movement of factors of production such as capital, labor and raw materials used as an input. Countries like Ethiopia have gotten access to investment funds through an expanded availability of Foreign Direct Investment (FDI). Given its largely unexploited fertile land and other natural resources, the country has caught the attention of foreign investors who have put large capital in its agricultural sector.²⁴

With the downfall of the “Derg regime”²⁵ in 1991, the Ethiopian People’s Revolutionary Democratic Front (EPRDF)²⁶ adopted a Structural Adjustment Program (SAP). This program

²³ Dolzer and Schreuer (n 19), 22.

²⁴ Weissleder (n 2), 9

²⁵ <http://www.globalsecurity.org/military/world/ethiopia/history-dergue.htm>: Derg is a common name attached to the military government which ruled Ethiopia between 1974 and 1991. This government was known for its moves to bring socialist reform in the country starting from the declaration of collective ownership of land.

²⁶ ‘Ethiopian People’s Revolutionary Democratic Front (EPRDF)’ Terrorism Research & Analysis Consortium TRAC, Preface

aimed at transforming the country from the previous regime's centralized administration to a market system economy.²⁷ As part of the SAP, the country underwent major economic and social reforms towards liberalization.²⁸ The government further adopted successive policy frameworks and reform measures that have created conducive business environment for the private sector to flourish.²⁹ The latest of these measures is the Growth and Transformation Plan (GTP) - I & II. In this two phased plan, the major the issue that have received due emphasis is improved strengthening the participation of the private sector.³⁰

The GTP aims to boost Ethiopia's engagement in international business by giving specific care on foreign investment attraction in the agricultural and manufacturing sectors.³¹ The policy stand is being given effect through legislative measures.³² Further, the country has taken extra measures and entered into a number of Bilateral Investment Treaties, Double Taxation Avoidance Treaties, for instance, to give assurance to foreigners that come to make an investment.³³

< <http://www.trackingterrorism.org/group/ethiopian-peoples-revolutionary-democratic-front-eprdf> > accessed 24 March 2016: EPRDF is the party in power since 1991 and it is a coalition of four parties representing the major ethnic groups in Ethiopia.

²⁷ See 'Ethiopia: Structural Adjustment Programme Project Performance Evaluation Report (PPER)' (2000) The African Development Bank Group < http://www.afdb.org/fileadmin/uploads/afdb/Documents/Evaluation-Reports-Shared-With-OPEV/_05092255-EN-ETHIOPIA-STRUCTURAL-ADJUSTMENT-PROGRAMME.PDF > accessed 24 March 2016

²⁸ Haile and Assefa (n 3), 10

²⁹ FDRE Ministry of Finance and Economic Development, 'Growth and Transformation Plan - 2010/11-14/15 - Volume I' (2010) (GTP I), 44 < <http://planipolis.iiep.unesco.org/upload/Ethiopia/EthiopiaGTP.pdf> > accessed 24 March 2016. See also FDRE Ministry of Finance and Economic Development, 'Growth and Transformation Plan - 2015/16-19/20 - Volume II (Draft)' (2010) < <https://www.africaintelligence.com/c/dc/LOI/1415/GTP-II.pdf> > accessed 24 March 2016

³⁰ GTP I (n 29), 21-24

³¹ 'The Federal Democratic Republic of Ethiopia: Poverty Reduction Strategy Paper: Growth and Transformation Plan - 2010/11-2014/15 - Volume I' (2011) International Monetary Fund IMF Country Report No. 11/304, 22-24 < <https://www.imf.org/external/pubs/ft/scr/2011/cr11304.pdf> > accessed on 24 March 2016

³² Ethiopia has also adopted different Federal Laws to assist the private sector's engagement in trade and investment. Some include Investment Proclamation (Proc. No. 280/2002 and its amendment) and Investment Incentives and Investment Areas Reserved for Domestic Investors (Regulation No. 270/2012 and its amendment).

³³ 'The Ethiopian Investment Commission, 'Ethiopia: A Preferred Location for Foreign Direct Investment in Africa - An Investment Guide' (Investment Guide) (2015), 35-36 < http://www.ethiopianembassy.org/PDF/Ethiopia_Investment_Guide_2015.pdf > accessed on 24 March 2016

The aggregate of these factors, the government claims, has succeeded in attracting an increasing share of FDI. For example, from 1992-2012 more than 15% of the investment made in the country came through FDI.³⁴ Countries such as China, Korea, Turkey, Saudi Arabia, the United Kingdom and Israel are the major sources of the foreign investment.³⁵

Critics of the current leadership, on the other hand, say that the private sector in Ethiopia is largely facing unfriendly business environment and emphasize that the country falls at the bottom end of World Bank's in ranking of states based on the ease of doing business.³⁶ They claim that those businesses that operate in the country are under direct or indirect control of those in power.³⁷

Leaving its development aside, on the ground, FDI has brought both opportunities and challenges to Ethiopia. Among the different the positive contributions, one is availing capital which is necessary to carryout medium and large-scale agricultural and industrial projects thereby diversifying country's export items.³⁸ Horticulture is one notable example; Ethiopia has become the one of the top six flower exporters of the world³⁹ and this has a great share in the country's GDP.⁴⁰ Another advantage of the creation of job opportunities for the locals. Although the annual earnings of the employees is said to be very low⁴¹, FDI in agricultural as well as manufacturing sectors employed a large number of unskilled workers.⁴²

³⁴ Ibid, 6

³⁵ Ibid

³⁶ J. Bonga, 'Foreign Investment in Ethiopia: A Blessing or a Curse' *Addis Standard* (Addis Ababa, 3rd March 2016) < <http://allafrica.com/stories/201603040859.html> > accessed on 24 March 2016

³⁷ Ibid.

³⁸ Weissleder (n 2), 9 and 14-15

³⁹ Kebede *et al.* (n 14), 41

⁴⁰ The Observance of Economic Complexity (OEC) < <http://atlas.media.mit.edu/en/profile/country/eth/> > accessed on 24 March 2016

⁴¹ Simona Foltyn, 'Ethiopia: Booming Business, Underpaid Workers' *Al Jazeera* (Doha, 29 December 2014) < <http://www.aljazeera.com/indepth/features/2014/12/ethiopia-booming-business-underpaid-workers-20141228732485264.html> > accessed on 24 March 2016

⁴² Geda and G/Meskel (n 4), 5

The disadvantages, on the other hand, range from workers' rights violations, to opening a door to state led "land grabbing"⁴³, to evident air, land and water pollution. Particularly, the growing presence of foreign investors in the horti/floriculture industry has direct and indirect implication on the local population's right to food. Instances of a shift from small-scale farming to the production of export oriented⁴⁴, and forced land eviction and resettlement programs⁴⁵ contribute to food insecurity by negatively influencing the locals' access to food market and means of production, respectively. Similarly, pollution arising from agricultural investment, soil and water contamination, amounts to a denial of means of food production as more than half of Ethiopians' livelihood depends on subsistence farming of staple foods.⁴⁶

The role foreign direct investment has played in Ethiopia's economy should not be underestimated. It is vital to the country's race to attaining sustainable. However, if left unregulated, it may leave the intended beneficiaries in a far much worse position than they are currently. The real challenge, therefore, is to minimize the adverse effects that come with it. Of a particular interest to the writer is regulating the environmental pollution caused by the horti/floriculture farming to protect Ethiopian's right to food. These issues will be dealt with in the following chapters of the paper.

⁴³ Lorenzo Cotula, Sonja, Rebeca Leonard and James Keeley, 'Land Grab or Development Opportunity? - Agricultural Investment and International Land Deals in Africa' (2009) FAO, IIED and IFAD, 100 < <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/IFAD%20IIEE%20Land%20Grab%20in%20Africa.pdf> > accessed on 24 March 2016: For example, up to 2011 only, Indian investors have received more than 1.8 million hectares of land.

⁴⁴ 'Foreign Agricultural Investment Country Profile: Ethiopia' (2011) FAO (Ethiopia, Country Profile: FAO), 8 < http://www.fao.org/fileadmin/user_upload/tcsp/docs/ETHIOPIA_COUNTRY_PROFILE.pdf > accessed on 24 March 2016

⁴⁵ Human Rights Watch Report (n 7), 19. See Human Rights Watch Report (n 7), 25-27: the villagization process is not consent based. Settlers of these places reported the regional government said to them that since the land has been underused by the natives, it would be transferred to investors for an improved use. They were further told that the government would take necessary measure of compliance on those who wouldn't cooperate, 25-26. See also 'Increasing human rights violations and deaths from careless state-owned sugar plantation in the Omo Valley! Ethiopia' (Addis Ababa, 6 March 2016) *FreedomFirst* < <http://zethiopians.blogspot.hu/2016/03/increasing-human-rights-violations-and.html> > accessed 31 March 2016

⁴⁶ Weissleder (n 2), 25

1.3 FDI in the horti/floriculture industry and incentives under the Ethiopian investment regime

Ethiopia, and its people generally, depend on agriculture and it accounts for about half of the country's GDP.⁴⁷ Even though the livelihood of the majority of its population depends on the land, the country remains largely untapped. The suitability of the natural composition of the soil coupled with a favorable climatic condition support different export oriented as well as domestic food crops.⁴⁸ As set out by the Ethiopian government, the major agricultural products have been the top investment focuses of foreign investors are rice, sugar cane plantation, coffee, cotton, and horti/floriculture.

Coffee widely grows in the country's highland areas of the Southwestern parts⁴⁹ and remains to be among the top export commodity of Ethiopia.⁵⁰ Sugar cane plantation also has a long history and it has been practiced for several decades.⁵¹ The final product of this farming, in the amount up to 50,000 tons per year, is being exported to various neighboring countries like Kenya.⁵² Further, cotton production has both local and international market. Large-scale plantations of this kind are mostly found in the southern part of the country.⁵³ The outputs this industry essentially serve as raw materials for the garment and apparel business.⁵⁴

1.3.1 FDI in the horti/floriculture industry

⁴⁷ 'Ethiopia, Country Profile: FAO (n 44), 7

⁴⁸ The Ethiopian Investment Agency, 'A practical Guide to Doing Business in Ethiopia' (A Guide to Doing Business) 35-36 < <file:///D:/Downloads/investor-s-guide-to-ethiopia-120.pdf> > accessed on 24 March 2016.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ A Guide to Doing Business (n 48), 35-36.

⁵⁴ Ibid.

The horti/floriculture sector has emerged as one of the country's important source of foreign exchange earnings in recent years. Ethiopia is among the top three flower exporting countries in Africa and her major trading partners are European countries.⁵⁵ Agro-products like flowers, and mango, banana, and avocado are being grown vastly.⁵⁶ The climatic condition of the country and the availability of irrigation are some of the factors which engage foreigners in this area.⁵⁷

FDI in this sector is generally ever growing⁵⁸ and the number of foreign investors in horti/floriculture by far surpasses that of domestic investors. According to the records of the Ministry of Trade, during the initial years of the 21st century, for instance, out of the 235 investors licensed in the field, 171 of them are foreign investors.⁵⁹

In 2013, Ethiopia's gross domestic product accounted for \$47.5 billion of which floriculture export contributed up to \$346 million.⁶⁰ This level of export is comparable to the performance of the country's competitive top African flower producer, Kenya. In the same year, Kenya earned \$507 million in foreign exchange from horticulture.⁶¹

With respect of the creation of job opportunity for the native people, the expanding horti/floriculture industry accommodates a high number of local workers. Based on a report from the Ethiopian Flower Producers Association, the segment shelters as high as 50,000 youth more than half of which are women.⁶²

⁵⁵ Weissleder (n 2), 15

⁵⁶ A Guide to Doing Business (n 48), 35-36.

⁵⁷ Investment Guide (n 33), 19.

⁵⁸ 'Horticulture: Key Reasons for Investing in Ethiopia' the Ethiopian Investment Commission < <http://www.investethiopia.gov.et/investment-opportunities/strategic-sectors/horticulture> > accessed 24 March 2016: according to the EIC, currently, more than 130 farms are operated by foreigners.

⁵⁹ Gudeta (n 12), 9

⁶⁰ See OEC (n 40)

⁶¹ Milena Veselinovic, 'Got roses this Valentine's Day? – They probably came from Kenya' CNN (16th March 2015) < <http://edition.cnn.com/2015/03/16/africa/kenya-flower-industry/> > assessed on 24 March 2016

⁶² Tilahun (n 9), 6

1.3.2 Incentives available for agricultural FDI including the horti/floriculture sector

Countries adopt reforms measure and incentives to create a friendly business environment and attract foreign investment. On this account, beyond the gradual reforms, Ethiopia has adopted both fiscal and non-fiscal investment incentives. Some of the incentives included under the two major federal investment laws⁶³ which apply to investments in the horti/floriculture industry are as follows.

A. Income Tax Exemption: Article 5(1) of the investment incentive regulation states: ‘Any investor who invests to establish a new enterprise shall be entitled to income tax exemption as provided for in the schedules.’⁶⁴

For foreigners who want to start a flower farm in Addis Ababa or surrounding Oromia Region, for example, as provided under the agricultural crop production section of the Appendix, he/she is entitled to a ‘three years’ tax exemption period.⁶⁵ The period extends to four years when the operation is in another part of the country⁶⁶ and a further long-term benefit is attached for investing in the comparatively underdeveloped regions of the country.⁶⁷ The law also gives considerate incentives for those investors that are engaged in the expansion of an already existing enterprise.⁶⁸

B. Exemption of capital goods from customs duty: Article 13(1) of the regulation provides that investors engaged in the areas of investment specified under the law can import capital goods and construction materials duty free if the purpose is to establish a new business or expand an existing

⁶³ Proclamation No. 280/2002 and Council of Ministers Regulation No.270/2012

⁶⁴ Council of Ministers Regulation on Investment Incentives and Investment Areas Reserved for Domestic Investors, Regulation No. 270/2012, FED. NEGARIT GAZZETA 19th Year No. 4, Addis Ababa, 29 November 2012 (Investment Incentive Regulation).

⁶⁵ *ibid*, Appendix, schedule 2

⁶⁶ *Ibid*.

⁶⁷ *Ibid*, Article 5(2)

⁶⁸ *Ibid*, Article 6

one.⁶⁹ Investors in the horti/floriculture sector are beneficiaries of this arrangement when establishing a new farm or expanding an existing one.

C. Net Operating Losses: The loss carry forward scheme helps businesses that have been experiencing losses during the business income tax exemption periods.⁷⁰ This arrangement will relieve business of their tax liability for a specified tax year in consideration to the losses they have sustained during the previous years. Under the current Ethiopian investment laws, an investor can carry a loss up to half of the income tax holiday period.⁷¹ This can be compared with other countries experiences. In Botswana, for example, the net operating loss can be carried forward for up to five years with no time-limitation in the case of farming and mining.⁷²

D. Export Incentives: this benefit is particularly relevant to the horti/floriculture industry as the production is basically targeting the international market. The government specifically adopted incentives to encourage investors engaged in export trade besides the tax exemption benefits available for eligible start-ups. Article 7 of Reg. No. 270/2012 states that those investors who export at least 60% of their products are allowed to two more years of tax holiday period in addition to the above mentioned one.

E. Remittance of Capital: this arrangement is a protection available for foreign investors against the tight financial transfer regulation of Ethiopia. Foreign investors are allowed to make remittances, with regard to payable dividends, external loans, and other payments due out of the country.⁷³ This outlet is very crucial to every foreign investor, including those engaged in the

⁶⁹ Investment Incentive Regulation (n 64), Article 13(1)

⁷⁰ Ibid, Article 12(1)

⁷¹ Ibid

⁷² Miria Pigato, 'The Foreign Direct Investment Environment in Africa' (2001) Africa Region Working Paper Series No. 15/2001, 26 < <http://www.worldbank.org/afr/wps/wp15.pdf> > assessed 24 March 2016.

⁷³ A Proclamation on Investment, Proclamation No. 769/2012, FED. NEGARIT GAZZETA 18th Year No. 63, Addis Ababa, 17 November 2012 (Investment Proclamation), Article 26(1).

horti/floriculture industry, because they need to a guarantee that they would be able to take the profit made with them when leaving the host state.

F. Protection against unlawful expropriation⁷⁴: this also applies to every foreign investor. The law provides that expropriation may only be carried out in accordance with the law when the public interest requires doing so.⁷⁵ In such occasions, the government will pay adequate compensation considering the prevailing market value.⁷⁶

Despite the fact that this industry is growing and comes with multiple benefits, there are some critics attached to the negative consequences it has brought. The first claim is associated with the industry's intensive need for land and water resources which in turn threatens the food security of Ethiopians in general due to the strong bond between agriculture and the nation.⁷⁷ An additional problem with similar tune is soil and water pollution arising from an excessive use of fertilizers and pesticides. According to one researcher, quite a large number of the flower farm projects on the ground start operation without first undertaking the required environmental impact assessment study.⁷⁸ The major type of environmental pollutions caused by FDI in horti/floriculture and their connection to the right to food will be discussed in chapter two.

⁷⁴ See Dolzer and others (n 19), 22: Protection against unlawful expropriation is typically included in Bilateral Investment Treaties (BITs) signed between states,.

⁷⁵ Investment Proclamation, Article 25

⁷⁶ Ibid.

⁷⁷ Weissleder (n 2), 25

⁷⁸ Tilahun (n 9), 49

Chapter II Horticulture/floriculture FDI in Ethiopia and the right to food

2.1 Introduction

As briefly explained in the previous chapter, the expanding scope of FDI within under-developed and developing nations has both negative and positive effects. Broadly speaking, the major problems could be put into one of the following categories: the economy, the environment, or other fundamental human rights.⁷⁹ An illustration in point could be the impact of present day land intensive agricultural investments. These kind of projects are said to fuel tensions between the host government and foreign investors, on the one hand and indigenous farmers, on the other.⁸⁰

Because Ethiopians are predominantly farmers, conflict over land and other natural resources is a prevalent phenomenon. This fact is well acknowledged by the United Nations (UN) and international organizations that work for poverty alleviation and development.⁸¹ Especially in countries where robust legal protection is missing, the interests of native communities will be marginalized⁸² and this will put their food security into question.

In response to this growing concern, Principles for Responsible Agricultural Investment (PRAI) was adopted by the joint effort of the World Bank and other UN specialized agencies, FAO,

⁷⁹ ‘Sustainable Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreement - Phase Three – Horticulture in Eastern and Southern Africa (ESA)’ (2006) GRET and PWC Final Report (SIA of the EU-ACP Agreement), 1 < http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130129.pdf > accessed on 24 March 2016

⁸⁰ Weissleder (n 2), 25

⁸¹ Murphy (n 7), 4

⁸² Ibid.

UNCTAD and IFAD.⁸³ PRAI contains seven broad principles⁸⁴ on how to make a sustainable investment, two of which are respect to existing land rights of the local community and protection against food insecurity.⁸⁵

Apart from being blamed for its indirect connections to the briefly mentioned problems of state led land grab and ongoing human right violations, the engagement of foreign investors in agriculture is indeed causing visible adverse effects to human health and the ecosystem. This chapter highlights the negative impacts of horticulture/floriculture FDI in the context of Ethiopia. It focuses on two particular types of environmental pollutions, i.e. soil and water, which are caused by the industry's application of intensive chemicals as fertilizers and pesticides. Addressing these issues at an early stage is important because, for Ethiopians, land and water are as precious as the oxygen we inhale and, moreover, the aggravation of the problems might reach a point where the only solution would be the abandonment of FDI all in once.

2.2 Ethiopia's horticulture/floriculture industry and its adverse impacts

Every human activity is expected to influence the ecosystem directly or indirectly. The conflicting notions of preserving the natural shape of the earth, on the one hand, and carrying out developmental activities for the benefit of its inhabitants, on the other, have been there since the beginning. However, because intergenerational justice requires the perseveration and assurance of

⁸³ 'Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources: Extended Version' (2010) A discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group, 2 < http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf > accessed on 24 March 2016

⁸⁴ Ibid, 2-10: the other five principles are transparency in the distribution of land and other resources; the participation of the public before commencing developmental projects; responsible practice on the part of investors; social sustainability of investments; and environmental sustainability.

⁸⁵ Ibid.

the sustainable existence of the environment, the merit of every developmental project should be assessed in light of the gravity of adverse impact.⁸⁶

Moving to the specific case of horti/floriculture, the negative impact caused by poor farming administration in this sector ranges from social problems related to workers' rights to environmental pollution of various kind. Among the environmental harms, this section focuses on soil pollution and contamination and high consumption of water resources. These problems are generally linked to the inputs and raw materials (agro-chemicals, i.e. pesticides and fertilizers) used by the industry and the waste disposal mechanisms.⁸⁷

Causes of the problems and consequential harms

1. Soil pollution

Environmental experts suggest that heavy use of pesticides and chemical fertilizers in the horti/floriculture farms are putting pressure on the natural balance of the ecosystem and resulting in the degradation of soil and the environment.⁸⁸

Theoretically speaking, a growing plant obtains the necessary minerals from soil and the air.⁸⁹ As the soil losses its natural composition gradually due to over-usage, farmers add, and/or are recommended to use different fertilizers to supplement the depleted nutrients.⁹⁰ These added chemical fertilizers, nevertheless, have side-effects alongside their short-term service. Among others, fertilizers interrupt the natural cycling and self-sustaining process of the soil through the

⁸⁶ Getu (n 17), 243.

⁸⁷ SIA of the EU-ACP Agreement (n 79), 39.

⁸⁸ Ibid.

⁸⁹ 'Fertilizers and their Use: A Pocket Guide for Extension Officers – Fourth Edition' (2000) FAO and International Fertilizer Industry Association, 2 < [ftp://ftp.fao.org/agl/agll/docs/fertuse.pdf](http://ftp.fao.org/agl/agll/docs/fertuse.pdf) > accessed on 24 March 2016

⁹⁰ Ibid.

destruction of its flora and fauna.⁹¹ In addition, fertilizers normally contain a certain level of acidic elements, such as Phosphoric and Sulfuric Acid, which in turn increases the acidity of the soil and the loss of its natural organisms.⁹² A study conducted in Amhara Region concluded that the horticulture industry is causing a high level of soil pollution.⁹³

A similar problem arises from the use of pesticides. According to estimates of specialized experts in the field, out of the total amount of applied pesticides, about 0.1% of it performs the intended job.⁹⁴ The rest ends up polluting the environment and its dwellers.⁹⁵ It is this portion of the applied chemicals that kill the micro and macro-organisms that are found in soil.⁹⁶ These are essential parts of our ecosystem which carry functions like the decaying plant and animal remains, nitrogen fixation process of the soil, and the like.⁹⁷ The aggregate of these activities, in the long-run, results in the sterilization of the land.⁹⁸

Additionally, the horti/floriculture industry has hazardous wastes associated with its chemical usage and this requires careful waste disposal mechanism.⁹⁹ In the Ethiopia practice, one of the hazardous waste is diseased plants remains and cut-flower stems¹⁰⁰ and approximately, the industry produces an annual residual waste of 500 tons per hectare.¹⁰¹ In spite of this, nevertheless,

⁹¹ Getu (n 17), 244

⁹² Tilahun (n 9), 13-14

⁹³ Mushir Ali, Environmental impact assessment of horticultural project in Amhara region, Ethiopia: a case study, International Journal of Geology, Earth and Environmental Sciences, ISSN: 2277-2081 (Online), 190

⁹⁴ Getu (n 7), 246

⁹⁵ Ibid.

⁹⁶ Ibid, 247

⁹⁷ Ibid

⁹⁸ Tilahun (n 9), 14

⁹⁹ Getu (n 17), 248-9

¹⁰⁰ Abiy Tamrat, 'Toxication in Bits: Flower Industry Threatens Right to Water in Ethiopia - Cut-Flower Production Practices, the Sector's Socio-Economic Contribution and Environmental Standards' (2011) GIZ and the European Union, 15 < <http://www.fian.at/assets/FIANtoxicationinbitsstudyethiopia2011final.pdf> > accessed on 24 March 2016

¹⁰¹ Ibid.

horti/floriculture investment in Ethiopia are identified for its lack of adequate and cautious waste disposal administrations.¹⁰²

2. Water contamination and high consumption rate

Like the case of soil pollutions, the driving forces behind water pollution are high use of chemicals (fertilizers and pesticides) and poor waste disposal system. Given their textural composition, these chemicals and pesticides seep through the soil¹⁰³ leaving underground water vulnerable to contamination. Besides the underground water, countable number of flori-/horticultural farms release their waste directly to nearby water bodies.¹⁰⁴ For example, about 30% of the floriculture industries around Debre-Zeit area directly dispose their waste to Wedecha River.¹⁰⁵ In this specific area, the dangerous nutrients that cause the contamination include high Nitrate, Phosphate and Ammonia accommodation.¹⁰⁶

The horticulture industry is known for its high water consumption and this is the reason why foreign investors interested in the sector choose host states endowed with natural water resources. Depending on the case, a daily consumption per hectare may go as high as a 160,000 liters.¹⁰⁷ The fact is in direct correlation with the industry's routine production cycles; i.e. water resource is need for irrigation, for the application of pesticide and other chemicals throughout the process.¹⁰⁸ On top of this, wasteful practices like over-watering have contributed to the severity of the problem.¹⁰⁹

¹⁰² Ibid.

¹⁰³ Getu (n 17), 246

¹⁰⁴ Tilahun (9), 29

¹⁰⁵ Ibid.

¹⁰⁶ Ibid, 37-40

¹⁰⁷ Ibid, 7

¹⁰⁸ Ibid.

¹⁰⁹ Tilahun (9), 7.

A case study conducted on the usage of an irrigation water resource in a village located within the Oromia regional state of Ethiopia proved how an expanding number of horticulture investors compete with native farmers over limited water supply.¹¹⁰ The locals stated that besides the increased shortage which has come due to the growing number of agricultural projects in their vicinity, the situation is being worsened by the overly high water intake of horticulture farms.¹¹¹

At the root of the problem is the absence of an integrated water management system to reduce the level of wastage and pollution nor is there a developed custom of water recycling and reuse.¹¹² The seventh principle provided under World Bank's Principles for Responsible Agricultural Investment is sustainable use of natural resources and minimizing the magnitude of negative effects on the environment.¹¹³ Taking this into account, it is crucial that the horticulture business operates in this mind set.

Case Report

For lack of accessible information on the production cycle of horti/floriculture farms owned by foreigners, the researcher presented a case study carried out on a small farm owned by domestic investors. The writer believes that with the cumulative reading of the summarized overall pollution level described above and this specific case study, we can make logical inferences on the situation of large-scale horti/floriculture businesses of foreign investors. This selected case demonstrates the problems of both water and soil pollution.

¹¹⁰ Bues (n 15), 3

¹¹¹ Ibid, 10

¹¹² Tilahun (n 9), 7

¹¹³ Murphy (n 7), 4

Yemam and Worku horticulture farm is located in Amhara Regional and it involves the production of fruits and vegetables 70% of which is targeted for the international market.¹¹⁴ The project plans to depend on irrigation (ground water) during the relatively dry seasons and on rain for the rest.¹¹⁵ Even though its textual composition is of a good quality, use of fertilizers on the soil to complement the necessary nutrients is part of the production strategy and pesticides are also applied to get rid of harmful insects, pests and to prevent potential diseases.¹¹⁶ Based on the impact assessment conducted on the samples taken from the farm in light of the predefined criteria, the case study arrived at the following conclusions: high ground water contamination due to toxic chemicals and waste, high physical and chemical disturbance of the soil in consequence of excessive fertilizer and pesticide usage, soil pollution leading to sterilization and grave injury to its natural nutrient composition.¹¹⁷

The inference from this case study is that if a small horticulture farm can bring a high degree of ground water and land pollution, the extent of the medium and large-scale horti/floriculture business in the country are presumed to do much worse. As mentioned in the previous chapter, foreign investors' operation takes the greatest share when it comes to the Ethiopian horti/floriculture industry and, hence, we can take an estimate of the gravity of the pollution.

2.3 The right to food

The right to food is a fundamental human right and it is crucial for fulfillment of other rights such as the right to life, physical integrity and health.¹¹⁸ In some countries, the right has given clear

¹¹⁴ Ali (n 93), 187-188

¹¹⁵ Ibid, 188

¹¹⁶ Ibid

¹¹⁷ Ibid, 189-190

¹¹⁸ General Comment (n 16), 2

constitutional recognition while in others, its enforcement has been inferred from the right to life.¹¹⁹ This section contains a discussion of the defining elements of right to food as provided under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and People's Rights (AfCHPR) and the FDRE Constitution.

2.3.1 The right to food under the International Covenant on Economic, Social and Cultural Rights (ICESCR)

One of the essential rights recognized by ICESCR is “the right to adequate standard of living”.¹²⁰ This is an umbrella right with two important pillars; the right to food and water, and the right to housing and clothing.¹²¹ This right allows individuals and families to have a dignified life.¹²² The committee on Economic, Social and Cultural Rights (here is after ‘the committee’) acknowledged that the challenges of right food, although widespread in less developed countries, developing nations are not completely immune from them.¹²³

United Nations Special Rapporteur on the right to food defines the right:

The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.¹²⁴

Key elements of the right to food

¹¹⁹ Ben Saul, *et al.*, *International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press 2014), 888

¹²⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR), Article 11(1); the right to food is also recognized by other UN Conventions such as CEDAW and CRC.

¹²¹ Ben Saul, *et al.* (n 119), 861 and the following

¹²² General Comment (n 16), 2.

¹²³ Ibid.

¹²⁴ UN Human Rights Office of the High Commissioner, ‘Special Rapporteur on the Right to Food’ < <http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx> > accessed on 24 March 2016

In its general comment, the committee has identified the following elements as essential components of the right: availability, accessibility and adequacy of food.

1. Availability of food

This refers the existing means of obtaining and securing food. It encompasses securing the means, such as land, to grow or produce crops for consumption or, alternatively, the existence of a market or a distribution system which allows individuals to possess necessary goods.¹²⁵ There is a misconception of equating the right food to the right to be fed.¹²⁶ The committee's intention is not creating increased dependency, but rather, states have a reasonable obligation to develop conducive environment that lets their citizens to produce or acquire food using their skills and expertise.¹²⁷

2. Accessibility of food: i.e. economic and physical accessibility

Economic accessibility refers to affordability of the cost associated with obtaining food for a satisfactory diet.¹²⁸ The committee on ESCR emphasises that the cost of acquiring it should not be unreasonably burdensome to lead to a compromise.¹²⁹ It further stated that countries should devise mechanisms and programs to attend to the needs of special vulnerable groups.¹³⁰

The physical accessibility of food is about the bodily capability of acquiring food items. It refers to having material access to distributors and the market at large.¹³¹ In this case as well, states should pay special attention to groups that require care like the disabled and the elderly, disadvantaged regions, those affected by conflict, etc.

¹²⁵ General Comment (n 16), 3.

¹²⁶ The Right to Food: Factsheet No. 34' (2010) OHCHR and FAO (Factsheet No. 34), 3-4 < <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf> > accessed on 24 March 2016

¹²⁷ Ibid.

¹²⁸ General Comment (n 16), 3

¹²⁹ Ibid

¹³⁰ Ibid.

¹³¹ General Comment (n 16), 3-4

3. Adequacy of food

The third element of the right to food, i.e. adequacy, should be understood taking different variables into account. This include age, living conditions, health, occupation, sex, and culture.¹³²

The dietary needs of an individual varies greatly depending on his/her age and health condition. Moreover, food has a cultural feature.¹³³ For example, what is acceptable in China may not be tolerable in Ethiopia and vis-versa.

The committee on ESCR said the adequacy requirement of the right to food should be interpreted broadly to encompass what is required to satisfy the minimum dietary and nutrition requirement.¹³⁴

Sustainability should further guarantees a continued and an uninterrupted access to food.¹³⁵

A sensitive issue that arises in relation of this is indigenous people's right to food. Often times, the livelihood of these group of people depends on their ancestral land and surrounding natural resources. In disregard to this fact, nonetheless, they would be subjected to displacement and expropriation plans without their consent.¹³⁶ This intrusion in the free enjoyment of their right to food puts the population at a higher risk of hunger and malnutrition.¹³⁷

Obligations of states regarding the right to food

Similar to other fundamental human rights, the state's duty under the right to food is respect, protect and fulfil.¹³⁸ The obligation to respect is a negative obligation; i.e. the government should refrain from taking any act that jeopardizes the exercise of the right.¹³⁹ While the obligation to

¹³² Fact Sheet No. 34 (n 126), 1-2

¹³³ *ibid.*

¹³⁴ General Comment (n 16), 2

¹³⁵ *Ibid.*

¹³⁶ Ben Saul, *et al.* (n 119), 880

¹³⁷ Fact Sheet No. 34 (n 126), 12-13

¹³⁸ General Comment (n 16), 4

¹³⁹ Manfred Nowak *et al.* (eds), *All Human Rights for All: Vienna Manual on Human Rights* (Intersentia 2012), 319

protect entails a positive obligation to defend the right against the acts of other private actors including business entities.¹⁴⁰

The core duty of the right to food is found in the third segment of the commitment. Each state party to the present covenant commit itself for the promotion of the right, i.e. deploy existing resources to improve their citizens' access to a better life.¹⁴¹ In cases where acquiring adequate food for oneself and the family becomes unattainable for an individual or a group, the government should step in with different social protection.¹⁴² Emphasizing on the causes of food insecurity throughout the world, the Special Rapporteur on the right to food stated that in situations where income becomes unstable, the social security scheme provided under ICESCR (Article 9 of the Covenant) should be used to enforce the right to food.¹⁴³ The relevant social security measures applicable in this case may include social assistance in the form of financial allowance or in kind food provision free of charge.¹⁴⁴ On the ground, for example, donations made to countries like Kenya and the Philippines were used for such purposes.¹⁴⁵

The time framework attached to the state's duty regarding the right to food depends on the nature and urgency of the problem. If, for instance, there is a natural disaster, drought, or war, the government is expected to act immediately or at least cooperate with humanitarian organizations

¹⁴⁰ Ibid.

¹⁴¹ General Comment (n 16), 4

¹⁴² Ben Saul, *et al.* (n 119), 890. In the case between People's Union for Civil Liberty and the Union of India, the Supreme Court order the government to adopt measures and give effect to social security programs such as child development and national family development schemes, "People's Union for Civil Liberties and Another v. Union of India." *Commonwealth Law Bulletin* 31.1 (2005): 139-14. See also ICESCR Commentary (n 119), 888-890.

¹⁴³ UNCHR 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' (2009) UN Doc A/HRC/12/31, 16.

¹⁴⁴ Ibid

¹⁴⁵ Ibid

to deliver the aid.¹⁴⁶ Generally speaking, however, the obligation to fulfill is to be carried out progressively; i.e. progressive realization of the right.¹⁴⁷

States may violate their obligation under Article 11 through both action and inaction. With regard to the obligation to ‘respect’, a state may violate its duty both through active engagement and failure to act. For instance, by taking away ancestral land with no prior consultation and denying citizen of their means of earning a livelihood, it is actively stepping on their right. On the other hand, failure to act, constitutes as a violation when the government refrains from mobilizing available resources for the fulfillment of its people’s right to food security.¹⁴⁸

Obligation of private parties

With regard to non-state actors or private persons, it has been acknowledged that their obligation under international human rights law is a duty to respect.¹⁴⁹ Particularly, with respect to business entities, local as well all multinational corporations, the committee of ESCR urges them to observe the particulars of the right to food security (national and international standards and industrial codes of conduct) in their manner of carrying out business everywhere.¹⁵⁰

2.3.2 The right to food under the African Charter on Human and Peoples’ Rights

Alongside the UN system, the right to food got recognition under regional human rights schemes although it may not be clearly stated on the human right instruments. The right is being derived

¹⁴⁶ UNCHR, ‘Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler resolution 2001/25’ (2002) UN Doc E/CN.4/2002/58, 25

¹⁴⁷ General Comment (n 16), 4

¹⁴⁸ Ibid, 6

¹⁴⁹ John Ruggie, *Just Business: Multinational Corporations and Human Rights* (W.W. Norton & Company 2013), 90 and the following

¹⁵⁰ General Comment (n 16), 5

from other fundamental rights like the right to life and health.¹⁵¹ The African Charter on Human and People's Rights (ACHPR) is one notable example.

The ACHPR does not explicitly recognize the right to food. However, in the case between Social and Economic Rights Action Center & Center for Economic and Social Rights (SERAC & CESR), and Nigeria, the African Commission on Human and People's Rights ("the Commission") stated that the essence of the right to food is basic for the implementation of people's right provided under the ACHPR: that is, the right to life, the right health and the right to socio-economic rights.¹⁵²

In 1996, SERAC & CESR submitted a complaint against the Nigeria government before the African Commission for Human and peoples' Rights.¹⁵³ The communication alleged that the government is responsible for the environmental pollution caused by the oil exploitation project in Ogoniland led by a consortium formed between the Nigerian National Petroleum Company (NNPC) and Shell Petroleum Development Corporation (SPDC).¹⁵⁴ Further, the state's culpability came from the measures taken by the military in defense of the operation.¹⁵⁵ The materialized contamination came in the form of water, soil, and air pollution infringing upon fundamental human rights.¹⁵⁶ After investigating the conducts of the Nigerian government, the Commission concluded that there is an implied recognition of the right to food under the African Charter as

¹⁵¹ Ben Saul, *et al.* (n 119), 894

¹⁵² The African Commission on Human and Peoples' Rights, 'Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights' (African Commission Principles and Guidelines), 48 < http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf > accessed on 24 March 2015

¹⁵³ Decision Regarding Communication 155/96 (Social and Economic Rights Action Center/Center for Economic and Social Rights v. Nigeria), Case No. ACHPR/COMM/A044/1 (Afr. Comm'n Hum. & Peoples' Rts. May 27, 2002) (SERC Case) < <http://caselaw.ihrda.org/doc/155.96/> > accessed on 29 March 2016

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

rights such as the right to life, health, and social and cultural development would be rendered meaningless in its absence, and it was found guilty of the violation.¹⁵⁷

On the other hand, in the Principles and Guidelines prepared by the Commission on the Implementation of Economic, Social and Cultural Rights, it has identified three minimum core obligation of states with respect to the right to food.¹⁵⁸ These are (1) to guarantee everyone's freedom from hunger, (2) respect and protect the people's food sources and (3) prohibition of attaching political conditions as a precondition for enjoying the right.¹⁵⁹

Furthermore, parties to the ACHPR are expected to adopt favorable national policies and strategies to achieve food security and improve production, distribution and marketing of food items.¹⁶⁰

2.3.3 The right to food under the Ethiopian Constitution

In its General Comment 12, the Committee on ESC rights emphasized that, alongside the international recognition of the right to food, its implementation is in the hands of national governments. Accordingly, states are expected to adopt favorable domestic strategies, plans and legislations that promotes and gives effect to the essence of the right.¹⁶¹

There are more than 20 countries in the world that accord an explicit constitutional protection to the right to food security. South Africa, Brazil, Ecuador and Nepal are a few of them.¹⁶² While in the case of countries like India¹⁶³ and Ghana, the right is being inferred from other constitutional

¹⁵⁷ African Commission Principles and Guidelines (n 153), 48

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid, 48-50

¹⁶¹ General Comment (n 16), 5-7

¹⁶² Ben Saul, *et al.* (n 119), 887-88

¹⁶³ The Union of India case (n 142): for example in this case, the Indian Supreme Court ruled that right to life is imperative for the protection of the right to life. This decision further gave rise to broader positive state obligations which requires India to design social protection programs including subsidizing basic food items for vulnerable

provision; the right to life and state's obligation to protect welfare and acceptable living standard.¹⁶⁴ A further category of countries is for those where constitutional protection is missing, but the governments adopted national policies to promote food security.¹⁶⁵ The problem with this last approach is, unlike rights, citizens cannot move to enforce policy stands. They will be left at the mercy of the government concerned.

The Ethiopian legal framework as it exists, in the absence of an explicit constitutional provision for the right to food, there are two competing views on the existence of implicit constitutional recognition. The writer believes that there is an implicit recognition¹⁶⁶ under the Ethiopian Constitution which can be inferred from the cumulative as well as separate readings of the following provisions (Articles 9(4), 13(2), 41(4) and 90(1)).

The provision of the Ethiopian Constitution ("the Constitution") which deals with the supremacy of the Constitution, under its fourth sub-paragraph, it provides that 'All international agreements ratified by Ethiopia are an integral part of the law of the land.'¹⁶⁷

The 'law of the land', in this context, is the highest authoritative instrument of the country which is the Constitution and the conventions form part of it.¹⁶⁸ As Ethiopia is a signatory state to

groups; see also Lidija Knuth and Margret Vidar, 'Constitutional and Legal Protection of the Right to Food around the World' (2011) FAO, 14 < <http://www.fao.org/docrep/016/ap554e/ap554e.pdf> > accessed 29 March 2016

¹⁶⁴ ICESCR Commentary (n 119), 888

¹⁶⁵ Ibid.

¹⁶⁶ 'Report of the Constitutional Review Commission: From a Political to a Developmental Constitution' (2011) The Republic of Ghana, 681-682 < <https://s3.amazonaws.com/ndpc-static/CACHES/NEWS/2015/07/22/CRC+Report+2011.pdf> > accessed on 29 March 2016: as mentioned above, there are some countries that give implicit recognition to the right. One of these is Ghana and their Constitutional Review Commission stated that, under the current Constitution, the right to food is implicit in Article 33(5) which protects the dignity of all citizens and stipulates the state's obligation to respect, protect and fulfil the right.,

¹⁶⁷ The Constitution of the Federal Democratic Republic of Ethiopia (1994) Proclamation No.1/1995 (The Ethiopian Constitution), Article 9(4)

¹⁶⁸ Takele Soboka, 'Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory' (2011) 19 African Journal of International and Comparative Law 99, 134

ICESCR and ACHPR, it is bound by the interpretative decisions of both the committee on ESCR and the African Commission on Human and People's Rights.

A second line of argument which supports the first comes from the cumulative reading of Articles 41(4) and 13(2) of the Constitution. Article 41(4) reads 'the State has the obligation to allocate an ever increasing resources to provide to the public health, education and other social services.'¹⁶⁹ On the other hand, article 13(2) of the Constitution states that all the fundamental rights (civil, political, economic and social rights) incorporated in it should be interpreted in light of the principles of UDHR and other International Human Rights Instruments adopted by the country.¹⁷⁰ This means if there is a seeming contradiction between the Constitution and any of the Human Rights Treaties signed by Ethiopia, the Convention prevails.¹⁷¹ With respect to the socio-economic rights, they are to be read together with ICESCR and the ESCR Committee's interpretative documents.¹⁷² For the purpose of Article 41 on the Economic, Social and Cultural Rights of Ethiopians should be interpreted in accordance with General Comment 12 of the Committee. This interpretation of Article 41(4) entails a state obligation to guarantee the right to food as part of its duty to provide basic social services for the continued survival of its citizens.

Lastly, the first paragraph of Article 90 of the Constitution, which contains the state's social policy objectives, reads as "To the extent the country's resources permit, policies shall aim to provide all

¹⁶⁹ The Ethiopian Constitution, Article 41(4)

¹⁷⁰ The Ethiopian Constitution, Article 13(2)

¹⁷¹ Tsega Andualem, 'The Legal and Policy Framework for Implementing the Right to Water in Ethiopia' (LL.M Thesis, Addis Ababa University 2014), 103

¹⁷² Sileshi Zeyohannes, *Constitutional Law II: Reaching Material* (Ethiopian Justice and Research Institute 2009), 239-40 < <https://chilot.files.wordpress.com/2011/06/constitutional-law-ii.pdf> > accessed 24 March 2016

Ethiopians access to public health and education, clean water, housing, food and social security.”¹⁷³

The author is aware of the group of people that argue that principles stated as policy guideline should and could not be taken as ‘rights’.¹⁷⁴ However, if we look at the experiences of other countries such as Sri Lanka, the inclusion of this type of provision in the national constitution amounts to an implied recognition of right.¹⁷⁵ By the same token, Article 90(1) of the FDRE Constitution gives an implicit constitutional protection to the right to food.

Based on the foregoing discussions of the constitutional provisions, it is logical to conclude that Ethiopia accords constitutional protection to the right to food. However, as far as this research is concerned, the writer is not aware of any court case that directly or indirectly gives effect to this right.

2.4 The right to food vis-à-vis horticulture/floriculture investment in Ethiopia

As identified before, more than 80% of the population depends on the land to produce food.¹⁷⁶ Based on a 2009 report, at least 45% of the population was said to be food insecure and this fact alone establishes the inherent problems of our farming and agricultural production, and the increasing number of foreign investors in the agricultural sector is adding a fuel to it.¹⁷⁷ To begin with, the increasing presence of foreign investors in the country looking for fertile agricultural land increases the number of rivalries. Troublesome than this, however, is the pollution and

¹⁷³ The Ethiopian Constitution, Article 90(1)

¹⁷⁴ Andualem (n 171), 96

¹⁷⁵ ICESCR Commentary (n 119), 888

¹⁷⁶ Weissleder (2), iii

¹⁷⁷ Ibid, 25

contamination of land and water caused by their activity. These two basic resources are closely linked with an agrarian populations' survival.

The Voluntary Guidelines on the right to food adopted by the Food and Agricultural Organization contains basic principles regarding access to and use of resources like land and water. Guideline 8B on utilization of land says states have the obligation to devise mechanisms, including the necessary legal framework, to promote sustainable land and soil use.¹⁷⁸ With respect to access to water resources, Guideline 8C provides with a commitment to improve the food security of their people, governments should work towards an improved access to water and promote its sustainable consumption.¹⁷⁹ These same principles are also endorsed by the Ethiopian Constitution.

These two principles have a special meaning for a society like Ethiopia whose life is strongly intertwined with the surrounding natural resources. As set out by the Committee on ESCR, 'availability of food' means either as having a direct access to means of production to grow food, or an effectively functioning distribution system.¹⁸⁰ The back bones of any agricultural activity are land and water.

As revealed by the researches and reports discussed above on the level of soil and water pollution caused by the foreign investors engaged in the flori/horticultural sector, there is a failure on the part of the government to ensure sustainable use of land and water resources. Because for Ethiopians land and water are as precious as the air we breathe, their pollution directly upsets the '*availability*' element of one's right to adequate food as defined under General Comment 12 and,

¹⁷⁸ 'The Right to Food: Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' (2005) FAO (Voluntary Guidelines: FAO), 18

¹⁷⁹ Ibid, 18

¹⁸⁰ General Comment (n 16), 3

in the long run, it is reasonable to predict that the aggravated level of pollution may make the soil completely unfit to grow staple food items.

The Ethiopian government has licensed the flori/horticultural industry to operate and failed to prevent or control the pollution. Therefore, this is a violation of an obligation to protect the people's right to food, a constitutionally protected right, against a harm caused by another private party.

Once it is established that the operation of the flori/horticultural has a negative impact on land and water, and this impact is clearly connected to Ethiopians' right to food, the next chapter will look into factors behind the government's inability to prevent the harm. It explores through the legal framework designed to prevent and mitigate environmental pollution. In addition, it briefly summarizes notable efforts taken private efforts within the industry.

Chapter Three Legislative frameworks and industry-led initiatives that regulate the relationship between FDI in the horti/floricultural sector and environmental harm in Ethiopia

3.1 Introduction

Investment and business transaction will bring both benefits and challenges. While governments usually choose to engage in such transactions if and when the benefits outweigh the possible harm, they, at the same time, take regulatory measures to minimize the negative effects. Besides deliberate state rules, there are other forms of regulations which may put additional control. These include market regulation (demand-supply chain) and industry driven regulation.¹⁸¹ Unlike these two, at least theoretically speaking, the measures taken by governments aim at protecting the welfare of the general public through the sustainability of the market system. It is an attempt to draw the right balance between the competing interests of private parties and the public.

In the case of foreign direct investment, particularly, the relationship between the host state and the investor put the sovereignty of the host into question.¹⁸² In addition, there are other areas of concern like the protection of domestic producers and suppliers, labor related issues and environmental pollution.¹⁸³ In Ethiopia, these regulatory schemes have constitutional basis.

Under Article 55 of the FDRE Constitution, the federal government is entrusted with the function of regulating foreign commercial relationships.¹⁸⁴ The power begins with enacting specific legislations on the matter. It also has the power to regulate the use of land and other natural

¹⁸¹ Tesfaye Abate, Investment Law: Teaching Material (the Ethiopian Justice and Research Institute 2009), 120 < <https://chilot.files.wordpress.com/2011/06/investment-law.pdf> > accessed 24 March 2016

¹⁸² Ibid, 125

¹⁸³ ibid

¹⁸⁴ The Ethiopian Constitution, Article 55(2)(b)

resources¹⁸⁵, in whose scope agricultural investment falls. Moreover, the provision that deal with economic objectives puts a duty on the state to formulate feasible economic policies.¹⁸⁶

As countries compete among themselves to attract as many foreign investors as possible, we observe deregulation of various aspects of doing business. Among the things that make doing business expensive, one is coping up with environmental regulatory and cautionary measures and hence, the tighter the law is, the less attractive it gets to investors. Consequently, governments of developing and underdeveloped countries show reluctance towards strict regulation in fear of scaring away potential capital inflow and focus more on their short term economic benefits.¹⁸⁷ At times, due to unfavorable bargaining position when compared against investors of developed countries, these nations may not have a choice, but to take certain measures to compete in the international market.

In this chapter, a discussion of the major regulatory federal laws and policy documents which regulates the impact of agricultural FDI on the environment, land and water resources, will be follow. The chapter will conclude with the industry driven regulatory attempts within the Ethiopian horticulture sector.

3.2 Investment Laws and Institutions

The Investment Proclamation (Proc. No. 769/2012) and its amending proclamation (Proc. 849/2014) are the main legal documents that regulate both domestic and foreign investment in

¹⁸⁵ Ibid, Article 55(2)(a)

¹⁸⁶ Ibid, Article 89(1)

¹⁸⁷ James Krueger, *et al.*, ‘Environmental Permitting in Ethiopia: No Restraint on “Unstoppable Growth?”’ (2012) 1 Haramaya Law Review 73, 81

Ethiopia. These laws are generally applicable on all areas of investment except for mining and petroleum exploitation.¹⁸⁸ Investors are allowed to start a business in one or any of the following forms: sole partnership, business organizations, public enterprises and cooperative societies.¹⁸⁹

Generally speaking, foreign investors can choose from among a pool of investment areas with exception of those exclusively reserved for the government, for joint venture with the government¹⁹⁰ or for Ethiopian nationals¹⁹¹.

The minimum capital requirement to start a business, for foreigners, ranges from USD 100,000 to USD 200,000 depending on whether the investor is operating individually or in collaboration with domestic investors.¹⁹² Further, foreigners should obtain an investment permit in order to carry out a lawful business activity in the country.¹⁹³

An application for an investment permit is to be made to the Ethiopian Investments Commission (EIC), formerly the Ethiopian Investment Agency (EIA)¹⁹⁴, attaching the necessary documents required by law.¹⁹⁵ EIC provides various additional facilities beyond issuing permits.¹⁹⁶ These services include the promotion of FDI and furnishing essential information upon request, issuing work permits for non-Ethiopian nationals, administering investors' requests of land, water and

¹⁸⁸ Investment Proclamation, Article 3

¹⁸⁹ Ibid, Article 10

¹⁹⁰ Ibid, Article 6 and 9

¹⁹¹ Ibid, Article 7

¹⁹² Ibid, Article 11

¹⁹³ Ibid, Article 12

¹⁹⁴ The Ethiopian Investment Agency was renamed as the Ethiopian Investment Commission by Proc. No. 849/2014

¹⁹⁵ Investment Proclamation, Article 14

¹⁹⁶ Ibid, Article 30

other amenity services, loans, etc.¹⁹⁷ One of the significant function of EIC is taking care of matters related to environmental impact assessment of the developmental projects to be implemented.¹⁹⁸

While operating in the country, investors are duty bound by the applicable laws of Ethiopia. Often times, this is also put as a precondition to get the protection included in bilateral treaties countries enter into. The Investment Proclamation, with emphasis, states that investors should give due regard to environmental protection laws when carrying out business activities.¹⁹⁹ This obligation will be monitored through the periodic report the investors are expected submit to the authorities.²⁰⁰

3.3 Environmental Protection Laws and Policy

With regard to environmental sustainability and pollution control measures, the major federal legal instruments are the FDRE Constitution, the 1997 Environmental Policy, the Environmental Impact Assessment Proclamation, and the Environmental Pollution Control Proclamation.²⁰¹

3.3.1 The FDRE Constitution

The Constitution imposes a duty, on both the government and every citizen, to protect the integrity and sustainability of the environment.²⁰² Upholding the sustainability of the environment should be kept in mind when carrying out any developmental project²⁰³ and the concerned community should be consulted starting from the designing stage throughout the process of implementation.²⁰⁴

¹⁹⁷ See, The Ethiopian Investment Agency < <http://www.comesaria.org/site/en/ethiopian-investment-agency.184.html> > accessed 24 March 2016

¹⁹⁸ Investment Proclamation, Article 30(4)(d)

¹⁹⁹ Ibid, Article 38

²⁰⁰ Ibid, Article 20(1) and (2)

²⁰¹ Krueger *et al.*, (n 187), 76

²⁰² The Ethiopian Constitution, Article 92(4)

²⁰³ Ibid, Article 92(2)

²⁰⁴ Ibid, Article 92(3)

This sensible administration of the environment goes hand in hand with the people's constitutional right to live in a healthy and safe environment.²⁰⁵ Any individual who have been prevented from the enjoyment of this right is entitled to compensation or other redress measures as the situation requires.

3.3.2 The Ethiopian Environmental Policy

The Ethiopian Environmental Policy²⁰⁶, adopted in 1997, stated that the worsening condition of natural resources, including land and water, that we use to meet our day-to-day needs necessitated the formulation of it.²⁰⁷ It moves to give practical effect to the constitutionally endorsed principle of environmental sustainability.²⁰⁸

Sustainability, as the guiding principle of the country's environmental and economic policy, plans to ensure effective and feasible utilization of both renewable and non-renewable natural resources for the improvement of its citizens living conditions while at the same time guaranteeing a healthy living abode for everybody.²⁰⁹ It further promotes inter-generational justice constantly reminding the current generation to be responsive of the future's need.²¹⁰

The specific principles and objectives of the policy which concern the issues that arise in relation to FDI in the agricultural sector include:

²⁰⁵ Ibid, Article 44(1)

²⁰⁶ Federal Democratic Republic of Ethiopia: Environmental Policy, Ministry of Economic Development and Environmental Protection Agency (1997) (Environmental Policy of Ethiopia), 16-17. See also, 'Environmental and Social Impact Assessment Report: Tigray Region Raya Azebo District' (2011) Unifruit Ethiopia (Unifruit Ethiopia Report), 18 < https://www.miga.org/Documents/Unifruit_Ethiopia_EISA.pdf > accessed 24 March 2016

²⁰⁷ Ibid, 1

²⁰⁸ Ibid, 2-3

²⁰⁹ Ibid, 3

²¹⁰ Ibid, 3

- Focus on the prevention stage of land and water pollution²¹¹;
- Weighing the cost of degrading the environment and the achievable short-term economic benefit before executing a project and always, leaving a greater latitude on the side of environmental protection²¹²;
- Once giving a permit for the operation of a potentially harmful project, regular and consistent manners of monitoring and watchfulness on the possible adverse effects and educating the society about the same²¹³;

The policy have a specific section designated to Environmental Impact Assessment (EIA). Contrary to this stand, however, researchers have observed the government makes big concessions on sustainability and give larger latitude in favor of economic growth²¹⁴. James Krueger and others, on an article titled ‘Environmental Permitting in Ethiopia: No Restraint on ‘Unstoppable growth’’, they outlined that, more often than not, the EIA process is initialed by actors other than the government.²¹⁵

EIA under the policy is expected to address, not only the ecological pressure, but also the possible social, economic, political and cultural effects that may arise in connection to a designated economic activity.²¹⁶ Public participation is part and parcel of EIA and the potentially affected segments of the society should be consulted throughout the process.²¹⁷ Moreover, EIA requires

²¹¹ Environment Policy of Ethiopia, 4

²¹² Ibid, 5

²¹³ Ibid

²¹⁴ Krueger *et al.*, and others (187), 79

²¹⁵ Ibid

²¹⁶ Environment Policy of Ethiopia, 24

²¹⁷ Ibid, 24

consistent supervision, scrutiny and auditing on the part of the governmental authority entrusted with that function and an emergency or a back-up plan, on the part of the developer.²¹⁸

3.3.3 The Environmental Impact Assessment Proclamation (Proc. No. 299/2002) and EIA

The law begins with the definition of Environmental Impact Assessment as ‘the methodology of identifying and evaluating, in advance, any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument.’²¹⁹ It is a precautionary mechanism that determines the effect a certain project may bring on the environment and its constituent elements.²²⁰ EIA is about making a reasonable estimation of possible harm on collected information based on which a decision to excuse the project or not will be made.²²¹

The intended harm to be prevented is that which causes a change in environmental, social or economic condition leading to disturbing the customary dwelling of the habitants.²²² Under the EIA law, the developer of the project, “proponent”, is expected to formulate an EIA report complying with the form provided by the authorities.²²³ In the report, the proponent has to include the potential negative effects of the activity, proposed method of prevention and, in case of the materialization of the impact, a contingency plan in dealing with the problem.²²⁴

²¹⁸ Ibid, 24-5

²¹⁹ EIA Proclamation, Article 2(3)

²²⁰ Tesfaye Abate Abebe, ‘Environmental Impact Assessment and Monitoring under Ethiopian Law’ (2012) 1 Haramaya Law Review 103, 105

²²¹ Ibid, 106 and 109

²²² EIA Proclamation, Article 2(4)

²²³ Ibid, Article 7(1)

²²⁴ Ibid, Article 7(1)

The Environmental Protection Agency, which was established by Proc. No. 295/2002²²⁵, or other respective Regional Environmental Agencies were put in charge of making a decision on EIA permit applications.²²⁶ However, since 2010, this power has been delegated to sectoral governmental bodies, such as the Ministry of Agriculture and Development, Ministry of Trade and Industry, through an arrangement made within the Council of Ministries (CoM) of the federal government.²²⁷ This kind of delegation, as one writer puts it, gives rise to conflict of interests as in effect the same authority will be revising the impact of a project it has given permit to.²²⁸

If a certain activity falls within the category of projects that require the undertaking of an impact assessment²²⁹, it is mandatory for the developer to carry out the assessment before starting an operation.²³⁰ About twenty projects are included in the Directive which defined the categories of activities that need EIA.²³¹ For the effectiveness of this implementation, the law imposes respective duties on both licensing authorities as well as project designers. Licensing authorities, before issuing an operational permit, they should make sure that applicants received an EIA approval.²³² On the other hand, proponents, if they fail to abide by the EIA Proclamation, they will face a fine up to an amount of ETB 100,000.²³³

²²⁵ A Proclamation provided for the Establishment of Environmental Protection Organs, Proclamation No. 295/2002, FED. NEGARIT GAZZETA 9th Year No. 7, Addis Ababa, 31 October 2002 (Environmental Protection Organs Establishment Proclamation): this proclamation also established the Environmental Protection Council which exercises a monitoring role over EPA.

²²⁶ EIA Proclamation, Article 7(1)

²²⁷ Abebe (n 220), 112

²²⁸ Ibid

²²⁹ Krueger *et al.*, (n 187), 91: a Directive containing the list of developmental activities which require EIA was adopted by the Ethiopian Environmental Protection Authority in 2008 (Directive No. 1/2008),

²³⁰ EIA Proclamation, Article 3(1)

²³¹ Abebe (n 220), 114

²³² EIA Proclamation, Article 3(3)

²³³ Ibid, Article 18

A further implementation scheme is the supervision and monitoring function to be carried out by the Ethiopian Environmental Protection Authority and other respective Regional Agencies. They are required to make periodic evaluation of the execution throughout the project.²³⁴ If there is non-compliance, the Environmental Protection Authority may order for redress measures and, depending on the severity, the EIA permit might be suspended or revoked which in turn should lead to the cancelation of operational license.²³⁵

3.3.4 Environmental Impact Assessment and the Ethiopian Investment Commission

As stated in the previous discussions, the Ethiopian Investment Commission (EIC) is responsible for the promotion of foreign investment opportunities the country offers and encourage foreign investors to come in. One of these attempts is promoting the ease of obtaining a business license and absence of lengthy bureaucratic technicalities. Under Article 30(1) of the country's investment law, it is stated that the authority in charge of investment permits provides a "one-stop shop service"²³⁶. This in effect means that the authority, acting on behalf of the foreign investors, will facilitate the execution of the development project through a coordinated effort with other relevant sectoral authorities on issues of land, water, EIA, etc.²³⁷ While facilitating the process, EIC is expected to ensure the observance of the minimum requirements of the various applicable sections of the law.

²³⁴ Ibid, Article 12(1)

²³⁵ Ibid, Article 12(2) and (3)

²³⁶ Investment Proclamation, Article 30

²³⁷ Krueger *et al.*, (n 187), 89-90

EIC, for example, should, first, check if the project on hand needs an Environmental Impact Assessment or not.²³⁸ If the answer is in the affirmative, it should consult the relevant Environmental Agency to get the report before issuing an operational permit²³⁹ during the times where EPA was in charge of the impact assessment process. However, the cooperation between EIC and EPA had never been smooth.²⁴⁰ As the EIA process takes a relatively longer time, it was an obstacle for EIC's commitment of a fast-track licensing service and EIC indeed issued a permit without obtaining a decision from EPA.²⁴¹

With the transfer of the responsibility to executive organs in charge of giving operational licenses, EIC become the decision maker of those EIA reports which are to be submitted by foreign investors. Nonetheless, EIC, in order to effectively implement the widely advertised "one stop shop" services of the authority, it will show reluctance to carry out the time-consuming evaluation process.

On the ground, horticultural farms operate without having done the impact assessment.²⁴² In his graduate study dissertation, a Technology school former student concluded that almost all of the floriculture projects concentrated in Debre-Zeit area don't have EIA reports.²⁴³ Before EIC was entrusted with this function as a licensing authority, the justification it provided for giving out an operational license without the impact assessment report was that since the law hasn't explicitly put the EIA report as a prerequisite to give out an investment permit, it was EPA's responsibility to check their compliance once they start an operation.²⁴⁴ This approach defeats the

²³⁸ EIA Proclamation, Article 3(3)

²³⁹ Ibid.

²⁴⁰ Krueger *et al.* (n 187), 90

²⁴¹ Ibid

²⁴² Tilahun (n 9), 49

²⁴³ Ibid.

²⁴⁴ Krueger *et al.* (n 187), 90

very essence of carrying out an Environmental Impact Assessment as EPA can only take action once the harm is materialized. After EIC became in charge of both business licensing and EIA permits, the above argument has grown far more groundless.

3.3.5 The Environmental Pollution Control Proclamation (Proc. No. 300/2002)

The overall objective of this proclamation is to guarantee a healthy environment for every Ethiopian through prevention, control and remedial of pollutants. The law under sub-paragraph twelve of its second provision defines pollution as:

any condition which is hazardous or potentially hazardous to human health, safety, or welfare or to living things created by altering any physical, radioactive, thermal, chemical, biological or other property of any part of the environment in contravention of any condition, limitation or restriction made under this Proclamation or under any other relevant law.²⁴⁵

The building block of this regulation is setting up environmental standards in consultation with relevant authorities.²⁴⁶ In the case of FDI in the horti-/floriculture and, generally, engagements in the agricultural sector, there is a problem with respect to chemicals use on the soil and the application of other pesticides.²⁴⁷ To address this and related issues, the pollution control law requires the adoption of standards on chemicals to be used in agriculture²⁴⁸ and waste products that drains to water bodies.²⁴⁹ The compliance of these standards is to be monitored by Environmental Inspectors from the authorities.²⁵⁰ As per the “polluters pay” principle endorsed by

²⁴⁵ Environnemental Pollution Control Proclamation, Proclamation No. 300/2012, FED. NEGARIT GAZZETA 9th Year No. 12, Addis Ababa, 3 December 2002 (Pollution Control Proclamation), Article 2(12)

²⁴⁶ Ibid, Article 6(1)

²⁴⁷ Unifruit Ethiopia Report (n 206), 25

²⁴⁸ Pollution Control Proclamation, Article 6(1)(c)

²⁴⁹ Ibid, Article 6(1)(a)

²⁵⁰ Unifruit Ethiopia Report (n 206), 25

the law, polluters are responsible for any harm caused by their activity, whether anticipated in the beginning or not.²⁵¹

The enforcement of the standards is further supervised by citizens through the right of standing given to them without the need to show “vested interest”.²⁵² Any Ethiopian may file a complaint with the relevant environmental authority against a person that causes environmental damage. If the authority fails to give answer within the period specified, s/he may institute a court action.²⁵³ The question of suing EPA or other responsible environmental protection authorities for their failure to exercise effective monitoring and control is not provided under the law.²⁵⁴

3.4 Land and Water Laws

Under the section on environmental regulations, most issues that affect land and water in connection with agricultural activities is covered as these two natural resources form part of the ecosystem. However, there are additional legal instruments that address water and land in particular which follow the spirit of country’s environmental and economic policies. The major ones that make a mention of responsible use of these resources are the Rural Land Administration and Use Proclamation (Proc. No. 456/2005) and Water Resource Management Proclamation (Proc. No. 197/2000).

It is emphasized that the environmental policy of Ethiopia calls for a sustainable use of all natural resources including land and water. With respect to the use of soil, it appeals for the application of

²⁵¹ Pollution Control Proclamation, Article 3(4)

²⁵² Ibid, Article 11(1)

²⁵³ Ibid, Article 11(2)

²⁵⁴ Krueger *et al* (n 187), 93

organic nutrients for an improved production and conservation, and pay particular attention to balance chemical and fertilizer use.²⁵⁵ To put this into effect, the policy requires for the adoption of adequate regulations on chemical use and negative impact assessment beforehand, in crop production as well as other agricultural engagements.²⁵⁶ The Rural Land Administration law further states that the holder of the land is liable for any adverse effect caused on the land and this may lead to the loss of the right all together.²⁵⁷

In the case of water resources, the Environmental Policy focuses on the prevention of contamination through the release of hazardous materials and wastes which will lead to the disturbance of natural ecological balance including threatening human health and endangering the different aquatic species.²⁵⁸ It highly promotes recycling water use if and when doing so would not be a danger to the environment and its inhabitants.²⁵⁹ In the execution of this policy, the Water Resource Management law prohibits draining wastes directly to water resources.²⁶⁰ In addition, this law gives due attention to the quality of water available for use which is to be determined by the level of chemical and other materials included in it.²⁶¹

Looking at the country's overall legal framework, it is clear that the preservation of natural resources is put as the guiding principle of every governmental and private actions. Land and water, having an indispensable attachment to the survival of its people, have received further emphasis both in the Constitution as well as major national policy instruments. Nevertheless, when

²⁵⁵ Environment Policy of Ethiopia, 7

²⁵⁶ Ibid, 8

²⁵⁷ Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation, Proclamation No. 456/2005, FED. NEGARIT GAZZETA 11th Year No. 44, Addis Ababa, 15 July 2005 (Rural Land Administration Proclamation), Article 10(1)

²⁵⁸ Environment Policy of Ethiopia, 11-12

²⁵⁹ Ibid, 12

²⁶⁰ Mellese Damtie and Mesfin Bayou, 'Overview of EIA in Ethiopia: Gaps and Challenges' (2008) MELCA Mahiber, 28 < <https://chilot.files.wordpress.com/2011/01/overview-of-eia-book-html.pdf> > accessed 24 March 2016

²⁶¹ Andualem (n 171), 106

it comes to giving effect to what has been stated in the Constitutions and other international human rights instruments signed Ethiopia, there seems to be a visible gap.

The Constitution provides that everyone have the right live and work in a healthy environment and the implementation of this right to be carried out through the subsequent federal and regional laws adopted at different levels of government. The Environmental Policy and the Environmental Impact Assessment Proclamation focus on preventing pollution that would distract the enjoyment of the said right. An investor is required to undertake impact assessment before executing a project and EPA was overseeing the process.

Lack of centrally administered system of the impact assessment process contributes to the lack of a particular body to be held responsible in case of default. With the CoM delegation²⁶², as sectoral bodies became empowered to give environmental permits, its administration has become scattered and hard to attached responsibility. Information about EIA reports and outcomes is not readily accessible to the public and the interest groups such as donors and other civil society groups.

In addition, the focus of the Ethiopian Investment Commission to provide a speedy services, without giving due regard to environmental consequences of the projects, shows that the country may be promoting short-term economic gain over environmental harm. This needs be assessed seriously as the pollution is a direct threat to Ethiopians' means of producing food. The aggregate of the above mentioned points shows that apart from a policy stand, there is no actual commitment on the side of the Ethiopian government to mitigate the negative impact of FDI, in the horti/floriculture sector, on the natives' right to food security.

²⁶² The first question is on the legality of the arrangement made within the Council of Ministers (CoM). With regard to the hieratical relationship between the organ which promulgated the EIA proclamation (the House of People's Representatives, HPR) and the Council of Ministers, the former is higher and the act of the later cannot make amends to the laws legislated by the HPR.

3.5 Industry led self-regulation of the Ethiopian horti/floriculture sector

The country being the second largest flower exporter in Africa²⁶³, the great percentage of the Ethiopian horti/floriculture industry product aims to penetrate the international market. This established relationship is at the root of the self-regulation development. The European Union countries, the leading trading partners of Ethiopia²⁶⁴, have started requiring compliance of minimum international standards from exporting companies.²⁶⁵ This phenomenal in turn gave rise to the adoption of a code of practice by the Ethiopian Horticulture Producers and Exporters Association (EHPEA), 2007.²⁶⁶ The code, according to EHPEA, aspires to promote the sustainable competitiveness of the Ethiopian horticulture industry by encouraging compliance and adhesion to internationally set standards.²⁶⁷

Its current shape, the code of practice accommodates internationally accepted practices in the industry and sets three hierarchical classes upon the attainment of whose requirements, members will receive Gold, Silver or Bronze accreditation certificates.²⁶⁸ At the Bronze level, fulfilling almost all of the operation standards is a mandatory for all members and it highlights practices of sustainable resources use, environmental protection measures, and maintaining reports and vigilant

²⁶³ The Ethiopian Investment Commission (n 58)

²⁶⁴ Mulu Gebreeyesus and Tetsushi Sonobe, 'Global Value Chain and Market Formation Process in Emerging Export Activity: Evidence from Ethiopian Flower Industry' (2011) National Graduate Institute for Policy Studies, 20 < <http://www.grips.ac.jp/r-center/wp-content/uploads/11-13.pdf> > accessed 30 March 2016: the European Union constitutes for about 90% of the total export.

²⁶⁵ Mulu Gebreeyesus, 'Firm's Adoption of International Standards: Evidence from the Ethiopian Floriculture Sector' (2014) United Nations University, 8 < <file:///D:/Downloads/wp2014-007.pdf> > accessed 30 March 2016

²⁶⁶ Gebreeyesus and Sonobe (n 264), 20: After first initiative in 2007, the code has gone through various reviews, The latest version was adopted in 2015. See EHPEA 'Code of Practices for Sustainable Flower Production' (2015) The Ethiopian Horticulture Producers and Exporters Association (EHPEA) (Code of Practice), 5 < <http://www.ehpea.org/files/downloads/EHPEA%20Code%20Version%204.0.pdf> > accessed 30 March 2016

²⁶⁷ Code of Practice, 2

²⁶⁸ Gebreeyesus and Sonobe (n 264), 20-21

supervision throughout the production process.²⁶⁹ Firms are highly encouraged to go beyond the bare minimum and employ good farming practices. At the Silver class, a higher level of environmental sustainability, such as in the case of application and management of fertilizers and pesticides, is expected.²⁷⁰ Further, at the Gold stage, the additional engagement involves developing corporate social responsibility incentives and much more.²⁷¹

Hand-in-hand with this categorization system, EHPEA also provides various training opportunities to its members with the view of building their capacity for a responsible investment and farming practices.²⁷² Among other things, the trainings focus on conducting environmental impact assessment, fertilizer and pesticide application and storage, safe waste disposal system.²⁷³

In the period between 2007 and 2010, 80% of its members received domestic accreditation certificate after the necessary training from EHPEA²⁷⁴ and only 36% managed to get certified for compliance with international standards.²⁷⁵

When compared to government led regulations, this kind of industry driven actions has proved to bear fruit because (1) it is purely a voluntary measure and firms engage themselves for the sake of marketing their products²⁷⁶ and (2) as the association, which is aware of carrying out business in the industry, is in direct touch with its members and it can put a positive influence on them.²⁷⁷

²⁶⁹ Gebreeyesus, 'Firm's Adoption of International Standards: Evidence from the Ethiopian Floriculture Sector' (n 265), 9. See also, The Code of Practice (n 266), 45-74

²⁷⁰ Ibid, 9; See also, The Code of Practice (n 266), 75-154

²⁷¹ Ibid, 9; See also, The Code of Practice (n 266), 155-165

²⁷² Gebreeyesus and Sonobe (n 264), 20

²⁷³ Ibid, 20-21

²⁷⁴ Ibid, 21

²⁷⁵ Gebreeyesus, 'Firm's Adoption of International Standards: Evidence from the Ethiopian Floriculture Sector' (n 265), Abstract

²⁷⁶ Code of Practice (n 266), 5

²⁷⁷ Nina Hatch & Lindley Wells, 'Environmental Policy Update 2012: Multilevel Environmental Governance – The Case of Ethiopian Floriculture' (2012), 28 <
http://web.colby.edu/eastafricaupdate2012/files/2011/12/CH2_Multilevel-Environmental-Governance_The-Case-of-Ethiopian-Floriculture1.pdf> accessed 30 March 2016

However, assessed based on its current development, its effectiveness in terms of containing the above identified problems is very minimal as only a small percentage of horti/floriculture companies joined the association. According to information provided on the official website of EHPEA, the total number of its members is a little more 60²⁷⁸ and based on the Ethiopian Investment Commission's report, there are at least 130 horticulture farms owned by foreign investors. Members of EHPEA are both domestic and foreign investors in the horticulture sector and, the fact that the association has only about 60 members show that not even half of the foreign investors got membership in EHPEA. This makes the effectiveness of the industry led initiative defective.

²⁷⁸ The Ethiopian Horticulture Producers and Exporters Association (EHPEA) < <http://www.ehpea.org/ResourceCenter/AssociationMembersList.aspx#medialink> > accessed 30 March 2016

Conclusion and Recommendation

Conclusion

With the country opening up for the outside world, foreign investors have come in great number. Particularly, foreign investors from countries like India, Saudi Arabia, Japan and Yemen, heavy importers of agro-products, are interested in the production and export of agricultural goods.²⁷⁹ As stated in the previous chapter, there are various reasons that motivate investors to put capital within the jurisdiction of another foreign state. The commonly known traditional incentives include reduced cost of production and, depending on the nature of the business, abundant raw materials. The global crisis of the 21st century, however, has given rise to the development of other ‘new’ investment motives.²⁸⁰ One of these is the so called “food security” of the investing nations.²⁸¹ It is this new trend that motivates the above mentioned countries and similar others to engage in land intensive agricultural investment. Through securing a foreign land for the production of food crops, they attempt to grantee a long-term food security against fluctuating global commodity price change.²⁸²

These foreign investments, alongside taking over a large hectares of fertile land, they have caused recorded environmental pollution on land and water resources. In some areas of Ethiopia, for example, the damage done to the environment and its constituent parts has made it difficult for the soil to support the production of local staple food.²⁸³ For a predominantly agrarian society, factors

²⁷⁹ Weissleder (n 2), 1

²⁸⁰ Ibid.

²⁸¹ Uwe Hoering, ‘FDCL Policy Paper: Alternatives to Food Import Dependency’ (2013) FDCL-Verlag, 7 < http://www.globe-spotting.de/fileadmin/user_upload/globe-spotting/agriculture/Alternatives_to_Food_Import_Dependency_web-3.pdf, > accessed 24 March 2016

²⁸² Weissleder (n 2), 1

²⁸³ Kebede *et al.* (n 14), 16

that affect soil and water are high-rate threats of food security. As the Committee on ESCR defined it, land is an integral element of a nation's right to food.

Contrary to what is happening on the ground, the FDRE Constitution and other national policies promote protection of environmental damage. To give effect to this principle of “environmental sustainability”, a proclamation was adopted that requires the undertaking of environmental impact assessment on projects that which are likely to cause damage to the environment.²⁸⁴ These category of developmental activities were to be defined by the adoption of a Directive.²⁸⁵ Six years after the promulgation of the EIA law, the Ethiopian Environmental Protection Authority issued a Directive in 2008.²⁸⁶ This Directive briefly contains only twenty-two categories of activities and misses out on criteria to further determine similar unlisted projects.²⁸⁷ Considering the time gap between the adoption of the EIA law and the Directive, scholars who conducted researches on environmental impact assessment suggest that countries like Ethiopia have never been truly committed to bring sustainability, rather, they are trying to impress donors and respond to the pressure exerted from organization like International Monetary Fund and the World Bank.²⁸⁸

As the legal framework exists at present, it contains several gaps that explain why projects that require EIA are being licensed for operation without the assessment and why we see pollution spreading throughout the horti/floriculture industry. The following are the major shortcomings of the system.

1. One stop shopping

²⁸⁴ EIA Proclamation

²⁸⁵ Ibid, Article 3(1) and 5(1)

²⁸⁶ Abebe (n 220), 114: Directive No. 1/2008.

²⁸⁷ Ibid

²⁸⁸ Ibid, 104

The Ethiopian Investment Commission commits itself to help foreign investors in facilitating the process of carrying out business in Ethiopia. One manifestation of this is give an operation license to start operation. However, as conducting an Environmental Impact Assessment will take some time, it get in the way of the prompt service and EIC might be reluctant to require the EIA report.²⁸⁹ With EIC becoming the supervisor of EIA reports, the situation worsened as there is no check and balance, and the public don't get access to the information.

2. Absence of centrally administered EIA system and, thereby difficulty of attaching responsibility to a specific institution:

Lack of centrally administered system of the impact assessment process is behind the reason why there is absence of a particular body to be held responsible in case of default. With the CoM delegation, as sectoral bodies became empowered to give environmental permits, its administration has become scattered. Information about EIA reports and outcomes is not readily accessible to the public and the interest groups such as donors and other civil society groups.

3. Obtaining a license and EIA

The investment and other relevant laws don't clearly require the approval of the EIA report before a permit is issued to a foreign investor. It impose a responsibility on the concerned investor to prepare a report on the potential adverse impact of his/her project. Failure to do so would bring legal consequences against the proponent. This shows that the law doesn't follow a protectionist approach. Rather it left the success of the program at the mercy of investors which in turn opens

²⁸⁹ Abate (n 181), 248

the door for them to calculate the profit to be made out of starting an operation without the EIA and the fine to follow afterwards.

4. Lack of strong sanctions on perpetrators

It is the investor responsibility to initiate the impact assessment process. Once the EIA report is prepared following the form provided, the authority in charge will rule on the issue of issuing an environmental permit or not. From this, it is clear that the law depends on the investor for its effectiveness. However, as all of them would not comply with the law, it provides for a fine. Proponents that fail to abide by the EIA Proclamation will face a fine in the range between ETB 50,000 to 100,000.²⁹⁰

For foreign investors, this is a very minimal amount and almost represents a symbolic fine. As conducting an EIA might deny a certain investor from executing the intended project all in all and, at times, as complying with environmental standard regulations might be expensive, this opens a door for them to be calculative. They would simply calculate the revenue they would generate from the operation and deduct the penalty. If there would be a profit, they would rule in favor of carrying out the business without the EIA and pay the fine if caught later.

Despite this major loopholes in the law, there are also notable efforts that try to mitigate the harshness of the problem. An example, a Code of Practice for Sustainable Flower Production which is developed by the Ethiopian Horticulture Producers and Exporters Association (EHPEA).

²⁹⁰ EIA Proclamation, Article 18. The researcher is aware of the existing debate on the deterring power penalties in general. However, in the current situation at hand, it sounds to presume that investors will take advantage of the minimal amount of the fine and given the fact that environmental pollution is oftentimes irreparable, imposing a non-monetary penalty or an amount that is outside their calculation range may deter at least a certain portion of culprits.

²⁹¹ This code sets minimum operational standards upon the fulfillment of which, members will get an accreditation certificate.²⁹²

However, with regard to solving the problem, these measures lag far behind. As the harm caused on land and water resources is in direct correspondence with Ethiopian's food security, the government as well as private actors should act immediately. While FDI still has the potential to contribute to the poverty alleviation struggle the country commits itself to, the associated negative externalities, if not regulated accordingly, may become a weapon of destruction.

Recommendations

Based on the identified legal and implementation gaps on the ground, the following measures are recommended.

1. Legal reforms

- The first step should be establishing a federal environmental protection organisation which will administer the environmental impact assessment process centrally as opposed to spreading the responsibility to different sectoral governmental authority. This organization should be the only one that issues environmental permits. For example, in Kenya, our leading competitor in the horticulture sector, the National Environmental Management Authority (NEMA) is in charge of administering the EIA process.²⁹³ Even after issuing the permit, this organ follows up on the reporting.²⁹⁴ The

²⁹¹ Getu (n 17), 259. See also, Code of Practice (n 266)

²⁹² Getu (n 17), 269

²⁹³ The National Environmental Management Authority (NEMA) - Kenya < <http://www.nema.go.ke/index.php/our-services/environmental-impact-assessment-eia> > accessed 30 March 2016

²⁹⁴ Ibid

authority to be established in Ethiopia should do the same and make the acquired information available for the public.

- The environmental protection organization should be fully independent of the executive branch's control or at least, it should retain a semi-autonomous status. Its accountability should be to the legislative branch of the federal government.
- Further, for those projects which are susceptible of causing environmental harm, the law should clearly and explicitly put EIA as a requirement to get an operational license.²⁹⁵ To achieve this, the definition of those projects must be provided by the law and the state should execute a preventive approach.
- If and when a harm is materialized, as a mechanism of ensuring state accountability, citizens should be given the standing to sue the environmental protection authority as well as the private investor for any harm.²⁹⁶
- Due to the sensitivity of the issue and the growing importance of the horticulture industry, Ethiopia should adopt a specific legislation that governs the effects of investment in this sector and that should contain an effective and deterring penalty.
- To ensure that the public have access to necessary information, the government should require investors to publish EIA related reports on their website.

²⁹⁵ (NEMA) – Kenya (n 293): in the case of Kenya, for those projects that require impact assessment, authorities are strictly prohibited from issuing a business license without first reviewing the EIA report of the intended project.

²⁹⁶ Rose Mwebaza *et al.*, 'Situation Report Environmental crimes in Ethiopia' (2009) Institute for Security Studies, 10-11 < <https://www.issafrica.org/uploads/EnvironCrimesEthioJul08.pdf> > accessed 32 March 2016: in Ethiopia, the single most case brought about challenging a failure of an Environmental Authority was instituted by an NGO called Action for Professionals' Association for the People (APAP). This case, which focused on the contamination of Akaki River (a River located near Addis Ababa) caused by the surrounding manufacturing industries' wastes, came under the right of standing provided in the Pollution Control Proclamation, but APAP was denied standing and it was finally dismissed (Action for Professionals' Association for the People (APAP) v Environmental Protection Authority, Civil File No. 64902/21.02.1999 (EC)). See also, Khushal Vibhute, 'Environmental Policy and Law of Ethiopia: A Policy Perspective', 75 < <https://www.issafrica.org/uploads/EnvironCrimesEthioJul08.pdf> > accessed 30 March 2016

Given the speculations made by some researchers, it may be the case that the Ethiopian government is currently focusing on economic growth making a compromise on environmental sustainability and failing to recognize its effect on its people's food security. International donor and lender organizations, such as the ADB, IMF, and WB, can directly and indirectly push the government to live up to its policy commitments with respect to food security. Donors and lenders should require effective implementation of the EIA process beyond a mere adoption of policy and legal framework. Moreover, the foreign investors themselves and civil society groups can hugely contribute to the promotion and protection of Ethiopians' right to food by controlling land and water pollution.

2. The role of foreign investors and sectoral associations such as EHPEA

As briefly discussed under the last section of the third chapter, horticulture investors formed an association in 2007, the EHPEA and this association designed a code of practice to promote responsible investment and business practices. Even though its impact so far has been minimal due to insufficient number of members, it is an effort that would yield rewarding benefits.

Therefore, foreign as well as domestic investors in the horti/floriculture industry should be encouraged to form sectoral associations or join existing ones. These associations should formulate operational guidelines and codes of conduct that set acceptable standards. The already existing association, EHPEA, should continue giving capacity building training to help them move above the bare minimum requirements.

As a way of enforcing its mandatory guidelines, it should work in cooperation with foreign importing associations of Ethiopia's flower trading partners, such as the ones located in EU, to prevent the

sale of goods produced by non-members and those members that do not observe the code of practice.

3. Ethiopia's trading partners

It was mentioned that the first initiative taken by EHPEA came in response to the pressure exerted from Ethiopia's EU trading partners. And as that has paved a feasible path to a solution, the foreign governments should persist on doing so and they should prohibit the importation of flowers and other product of the horti/floriculture farms which don't comply with the EIA and other environmental sustainability requirements.

Likewise, as part of their global commitment to ensure food security for everyone, home states of investors that come to Ethiopia should regulate their citizens' manner of conducting business in foreign countries to make them responsible investors.

4. Civil society and other interest groups

Civil society organization, on the other hand, should put a positive pressure on the government to adopt relevant laws, including on issues of pollution control, that reinforce citizens' right to food.

The most important role of civil society organization is in the "Shaming and blaming"²⁹⁷ enforcement mechanisms of the contemporary world. This applies to both the government and the private investors. With respect to the government, they should call for the publication of every report related to EIA and international donors will obtain the necessary information from that.

²⁹⁷ "Shaming and blaming" has been an effective compliance tool in the apparel industry as a bad image will hurt their sales volume, business improve their performance. Major multinational corporations such as the Walmart were motivated to adopt a voluntary code of conduct, see, for example, Walmart Inc. <http://corporate.walmart.com/global-responsibility>

While for horti/floriculture farms, interest groups should put initial as well as periodic EIA reports on their official website so that the concerned parties, particular trading partners, should make sure that environmental standards are met.

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