The Impact of Transplanting Environmental Impact Assessment Law into the Ethiopian Legal system

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Abstract

Legal transplantation is not a recent phenomenon. Besides, legal transplantation happens everywhere. Once transplanted, laws may be implemented effectively or partly, or disregarded altogether. In Ethiopia, the EIA Law is the result of legal transplantation because evidence shows that the government enacted the law due to some external factors. Yet, at the moment, the law is implemented although its implementation is selective. On the other hand, such selective implementation of a transplanted law can eventually lead to the total disregard of the law.

1. Introduction

The practice of *legal transplantation*[1] is a very old one.[2] Moreover, it is an experience of virtually all legal systems since legal systems around the world have developed through legal transfers.[3] In other words, legal

[1] The expression *legal transplantation* is known by different names such as legal transfer, legal borrowing, legal importation, legal reception, etc. In this article, I will use these expressions interchangeably.

[2] See, for example, Alan Watson who says legal transplantation is as old as law itself; Alan Watson mentioned in Daniel Berkowitz, Katharina Pistor, Jean-Francois Richard, *THE TRANSPLANT EFFECT*, American Journal of Comparative Law, Winter, 2003, p 4-5; and Shah who argues that it started, probably, during pre-historic time right up to interactions of the Greeks with the Egyptians, Anatolian, Mesopotamian, Persian, and Indian civilizations; Prakash Shah, *Globalization and the Challenges of Asian Legal Transplants in Europe*, Singapore Journal of Legal Studies, [2005] p 349.

[3] Prakash Shah, supra note 2, p 349; John Stanley Gillespie, *Transplanting Commercial Law Reform: Developing a 'rule of law' in Vietnam*, Ashgate Publishing Ltd, England and USA, 2006, p 3. See also Kingsley who argues that some laws have elements or everything emanating from a borrowed source and most of the transplants stem from lawyers reviewing law from "prestigious" jurisdictions in order to deal with legal issues.

systems around the world have developed because they borrowed (or were made to borrow) rules and institutions from one another. In this regard, the Ethiopian legal system is no exception as it has been transplanting laws from various legal systems. The Environmental Impact Assessment Proclamation (EIA law *hereinafter*) is one of such laws. As far as implementation is concerned, transplanted laws may be implemented fully or partly, or they may be totally ignored thereby producing the desired result fully or partly or just remaining on paper.

In this article, I will look at the success and failure of the transplanted EIA law in our legal system to know what its impact is like in light of the objectives it was meant for. To achieve this objective, this article is divided into five sections. The first section deals with legal transplantation and EIA in general and the transplantation of the EIA law into our legal system. The second section deals with the effectiveness of transplanted laws in general and of the EIA law in Ethiopia in particular. The third section adumbrates the reasons for lack of full success of the EIA law in Ethiopia. The fourth section discusses issues related to prospects, if any, that will make the EIA law more effective. The final section concludes the article with some recommendations.

Jeremy J. Kingsley, *Legal Transplantation: Is This What The Doctor Ordered And Are The Blood Types Compatible? The Application Of Interdisciplinary Research To Law Reform In The Developing World–A Case Study Of Corporate Governance In Indonesia*, Arizona Journal of International & Comparative Law Vol. 21, No. 2, 2004, p 18.

2. Legal Transplantation and Environmental Impact Assessment

2.1. Legal Transplantation

Nowadays, the practice of *legal transplant/transplantation*, either through imposition or voluntary borrowing, is a widespread phenomenon.[4] But, what is *legal transplant/transplantation?* So far, different writers have tried to define the concept somewhat differently. For instance, Watson defines legal transplant as "…the moving of a rule or a system of law from one country to another or from one people to another".[5] In other words, legal transplantation refers to the transfer of a rule or a system of law from one place/people to another place/people. Others define it as "the transfer of laws and institutional structures across geopolitical or cultural borders".[6] In this case, legal transplantation is not

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[4] See for example Brian Z. Tamanaha, *A General Jurisprudence of Law and Society*, Oxford University Press, New York, 2001, p xii, 107; and Alan Watson, "Legal Transplants and European Private Law", mentioned in Weiguo He, *Legal Transplantation of "Piercing the Corporate Veil" to China*, (Online article), p 15. Moreover, legal transplantation is now increasing due to various factors. Firstly, globalization is causing legal transplantation to happen because "it brings laws and legal cultures into more, direct, frequent, intimate and often complicated and stressed contacts. It influences what legal professionals want and need to know about foreign law, how they transfer, acquire and process information and how decisions are made". Alan Watson, Legal Transplants, 1974, Edinburgh, Mentioned in Irma Johanna Mosquera Valderrama, Legal Transplant and Comparative Law, International Law: Revista colombiana de derecho internacional, Bogota, Colombia, 2003, p 264. Secondly, large trading nations and international donor agencies are held accountable for the occurrence of legal transplantation because they sponsored international legal harmonization projects. John Stanley Gillespie, supra note 3, p 3.

[5] Alan Watson, *Legal Transplants: an Approach to Comparative Law*, mentioned in Irma Johanna Mosquera Valderrama, supra note 4, p 264; and Weiguo He, supra note 4, p 11.

[6] John Stanley Gillespie, supra note 3, p 3. See also Galinou who defines legal transplant or legal borrowing as copying and applying foreign institutions, regulations, etc; Eirini Elefthenia Galinou, *Legal Borrowing: Why Some Legal Transplants Take Root and Others Fail*, available online (posted on 7/1/2005), p 392; Nicholson who defines transplantation of laws as an attempt to shift laws and institutions across borders including where the politics of the donor and recipient vary; Penelope Nicholson, *Borrowing Court Systems: The Experience if Socialist Vietnam*, the London-Leiden Series On Law, Administration And Development, Netherlands, Martinus Nijhoff

limited to the movement of legal rules alone; rather, it includes the movement of institutions as well. So, seen in light of the second definition, Watson's definition appears narrow as the second definition conceives legal transplantation not only as the transfer of legal framework but also of institutional framework. There are some who argue that the definition for legal transplantation should also include "laws transplanted by a people from a foreign culture".[7] This means, people migrating from one country to another migrate with their laws and they plant these laws into the local legal system of where they migrate to. According to them, thus, such laws should also be taken as transplanted laws. This implies that legal transplantation is not limited to what is allowed or taken or imposed by authorities/institutions but also by people.[8] Further, it is argued that legal transplant can happen even within a state that has parties with divergent legal cultures.[9] This means, for example, legal transplant can happen in a federal state where its

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Publishers, 2007, p 22; and Langer who seems to define, impliedly, legal transplant as the circulation of legal ideas and institutions between legal systems but not in the sense of "cut and paste" but through adaptation or "legal translation". Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, Harvard International Law Journal, Vol. 45, Number 1, Winter 2004, p 5.

[7] Prakash Shah, supra note 2, p 348-349.

[8] Of course, this makes sense only if the rules the migrating people take with them have force of law; that is, if they are felt binding at least by their members since, from anthropological point of view, the meaning of law is not or should not be confined only to rules created by authorities; rather, as inclusive of rules employed by the people to regulate their relationships. This means, although not all rules are rules of law, some rules people use to live by can be taken as legal rules even if they are not set by a definite maker like a king or a parliament. See, for example, Malinowski who seems to define legal rules as those rules which are felt and regarded as the obligations of one person and the rightful claims of another, irrespective of their sources. Note that people may feel certain rules to be binding or obligatory due to factors like psychological motives, reciprocity, social relationships, and other social machinery. Brownislaw Malinowski, Crime and Custom in Savage Society, Littlefied, Adams & Co, 1926, p 22-55

[9] Penelope Nicholson, supra note 6, p 23.

constituent parts may borrow legal ideas and institutions from one another. For example, in Ethiopia, the Harari Regional Family Code, unlike most other Regional Family Codes, recognizes polygamy.[10] If the other regions take this concept and recognize polygamy as an institution, then, we can say legal transplantation has taken place.

In any case, what we can understand from the above endeavors to define the concept is the fact that legal transplantation can occur when there is a movement of rules or institutions from one place/people to another place/people irrespective of why, how, and by whom it happens. Yet, it must be noted that such movement of rules and institutions should not necessarily take the form of "cut and paste". *Langer* argues that there will be legal transplantation if legal ideas and institutions circulate between legal systems in the form of adaptation or "legal translation".[11] This means, taking legal ideas and institutions from other legal systems and changing/translating them in such a way that they become fit into one's own system amounts to legal transplantation. For example, if legal ideas are taken from somewhere but their *modus operandi* in the receiving country is changed, one can still talk of legal transplantation. The best example here is the 1965 Civil Procedure Code of Ethiopia which was taken largely from India-a country with adversarial system-but which is being used in, by and large, an inquisitorial context.

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[10] Article 11(2), Harari Family Code, Proclmation No 80/2000, *Harari People Regional Government Negarit Gazetta*, 13th Year, 2000. Harari recognizes polygamy because of the religion of the people of the region which can be part of their culture.

[11] Máximo Langer, supra note 6, p 5. Nicholson also, too, transplantation of laws and legal institutions should not necessarily be complete and without transformation. This means, part of laws and legal institutions may be transplanted or the transplantation may happen in the form of transformation, as the case may be. Penelope Nicholson, supra note 6, p. 22.

2.1.1. Causes of Legal Transplantation

As stated before, legal transplantation is old but an increasing phenomenon. Then, one may wonder what causes such phenomenon to occur. The occurrence of legal transplantation may be attributed to different factors. The first factor is the urge to develop one's own legal system.[12] Nations borrow rules and/or institutions from one another if they think that such practice would help them improve their systems. For example, during the era of codification in Ethiopia, legal rules and institutions were borrowed from a number of countries such as France, Germany, UK, US, Japan, Switzerland, Brazil, India, Philippines, Israel, Iran, and Italy.[13] Moreover, legal transplantation can happen when it is imposed by super powers (nations or institutions). For instance, colonial laws were transplanted by colonizers into the legal systems of colonized territories through imposition to serve their interests against the wills of the local peoples.[14] In addition, nowadays, powerful countries like the US or the UK or institutions like the WB and the IMF can force the adoption of certain laws or institutions. Further, as indicated before, migration can also cause legal transplantation to occur. Therefore, one can conclude that legal transplantation happens when there is internal motivation/need

[12] For example, Schauer argues that demand for a law is one of the factors on which the transnational and cross-border spread of law substantially depends. See Frederick Schauer, T*he Politics and Incentives of Legal Transplantation*, CID Working Paper No. 44, Center for International Development, Harvard University, April 2000, p. 2.

[13] The 1950s and 1960s are taken as the era of codification in Ethiopian legal history because virtually all its modern codes emerged during these periods. See Aberra Jemebere, *Legal History of Ethiopia 1434-1974: Some Aspects of Substantive and Procedural Laws*, Rotterdam; Erasmus University, 1998, p 196-208.

[14] See Brain Z. Tamanaha, supra note 4, p 112-115.

to import a given law or institution or an external force triggering the importation of a law/an institution.[15]

2.1.2. Factors Determining Laws To Be Transplanted

We have seen that legal transplantation is now on increase. Moreover, we know that legal transplantation, in the absence of force/pressure, involves selection. For example, if Ethiopia wants to import a law regulating the use of evidence, it has to choose from among the available options. The question then is: what are the factors countries usually take into account to choose the laws they transplant?[16] In this regard, Watson lists prestige, chance and necessity, the likelihood of effectiveness, and incentives as some of the factors nations have to take into account to determine the laws they will transplant.[17]

For example, since the end of the Second World War, and particularly following the end of the Cold War, the US legal system is claimed to have become the most influential legal system in the world as its influences on the legal systems of other nations have ranged from general influences on jurisprudential approaches to law to influences on specific legal areas.[18] In other words, because of its prestige, the US laws/legal ideas were capable of influencing the legal systems of other nations.

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[15] It should be noted here that as long as it is not motivated by the local people or their authorities, laws transplanted by migrating people can also be taken as transplantation caused by external pressure. Of course, the transplantation here is spontaneous because it happens incidentally to migration.

[16] Since this article deals with the impact of transplanting the EIA law into the Ethiopian legal system, I will confine myself to the transplantation of laws alone, not of institutions.

[17] For more on this point, see Alan Watson, *Legal Transplants*, 1974, Edinburgh, mentioned in Irma Johanna Mosquera Valderrama, supra note 4, p. 265-269.

[18] Máximo Langer, supra note 6, p. 1-2.

Moreover, some laws are adopted because the receiving country needs a law and no other better option is available to it. This is transplantation by chance and necessity. For example, the reading of Ethiopian legal history reveals that when Emperor *Zara Yacob* wanted to have a codified law to avoid ruling by amorphous customary laws, the *Fetha Negest* was the only codified law he had been able to know of, which he indeed imported.[19] At that time, the Emperor could not have known and imported any other codified law.

Furthermore, laws that are expected to make legal institutions effective are more likely to be accepted than laws that are not. This means, the suitability of a law with national institutional framework can also determine which law to transplant into a given legal system.[20] For example, it is very unlikely that laws requiring the jury system to operate in our courts will be imported because they are not compatible with the existing arrangement in the country.

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[19] Emperor Zara Yacob (who ruled the country from 1434-1468) wanted to have a codified law than using these customary laws. As a result, he ordered the Ethiopia Orthodox Church men to prepare a code and they produced a code called *Fewis Menfesawi*. However, this Code was far from meeting the expectations of the Emperor as it failed to comprehensively regulate the existing legal problems of his time. Then, a religious person from Egypt informed him of the existence of a better law book in Alexandria, Egypt. Soon, the Emperor ordered his informant to bring him the law book which was imported later on. That law book is the *Fetha Negest*, the most comprehensive law book (code) of its time. Since then, the *Fetha Negest* was applied to both civil and criminal matters in our legal system until Ethiopia adopted its modern codes in the 20th century. For more on the discussion in this paragraph, see Aberra Jembere, supra note 13, p 183-190. To add one more example, in early 1970s, countries of the world had no choice, although there was a need, but to use at least the ideas of the National Environmental Policy Act (1969) of the US which introduced, for the first time, the idea of prior environmental impact assessment to protect the environment.

[20] For more on this point, see Alan Watson, Legal Transplants, 1974, Edinburgh, Mentioned in Irma Johanna Mosquera Valderrama, supra note 4, p 265-269.

Finally, it is said that the existence of incentives-political, economic and reputational-from the transferring countries and third parties is likely to cause legal transplantation and determine which law to transplant.[21] For example, if Ethiopia thinks that it will get loans from the IMF/WB if it transplants a given law from somewhere, then, it will do so because of the benefits attached thereto. In this regard, one can mention the current EIA law of Ethiopia, to be discussed later, which was made because of the incentives attached to its enactment.

2.2. Environmental Impact Assessment and the EIA Law in Ethiopia

Environmental Impact Assessment is defined as a process of anticipating or establishing the changes in physical, ecological and socio-economic components of the environment before, during and after a proposed action, as well as evaluating the impacts of all reasonable alternatives, so that undesirable effects, if any, can be eliminated or mitigated.[22] In Ethiopia, it is defined 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*.[23] According to both definitions, EIA is conceived as a tool to consider environmental values in the course of making decisions. Incidentally, it is worth noting

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[21] Ibid.

[22] See D.K. Asthana and Meera Asthana, *Environment: Problems and Solutions*; S. Chanda and Company LTD, India, 1998, p 336; John Ntambirweki, *Environmental Impact Assessment as a Tool for Industrial Planning, included in Industries and Enforcement of Environmental Law in Africa*, UNEP, 1997, p 75; H.V. Jadhav and S.H. Purohit, *Global Warming and Environmental Laws*, 1st Edition, Himalaya Publishing House, Mumbai, 2007, p 10; and Duard Barnard, *Environmental Law for All: A Practical Guide for the Business Community, The Planning Professions, Environmentalists and Lawyers*, Impact Books Inc, Pretoria, 1999, p. 179.

[23] Article 2(3), EIA law of Ethiopia, No. 299/2002 (emphasis added). *Public instrument* refers to a policy, a strategy, a programme, a law or an international agreement.

that the use of such tool to take environmental issues into account while making decisions was first introduced by sec 102 of the National Environmental Policy Act (NFEPA) of the USA in 1969.[24] Since then, the idea of EIA has been transplanted in numerous legal systems around the world. Hence, today most developed and many developing countries have some form of EIA.[25] This is true for Ethiopia, too.[26] Indeed, Ethiopia's earliest commitment to use EIA came into being when it ratified the Convention on Biodiversity in 1994.[27] Then, in 1995, the FDRE Constitution came up with provisions impliedly requiring the use of EIA.[28] In 1997, Ethiopia took another important step by adopting its

[24] NEPA mandates federal agencies to prepare and consider environmental impact statement (EIS) before undertaking any major federal action likely to have significant effect on the environment Robert V. Percival, *Environmental Law, Statutory Supplement and Internet Guide 2003-2004*, ASPEN Publishers, USA, 2003, p 873. For detailed discussion on the conditions attached to the obligation to undertake EIS under sec 102 of NEPA, see Steven Ferry, *Environmental Law: Examples and Explanations*, 4th Edition, Aspen Publishers, Austin, Boston, Chicago, New York, and The Netherlands, 2007, p 88-96. Of course, the use of EIA as a tool for decision is not recent as, for example, the U.S. Army Corps of Engineers had developed techniques and methodology for impact assessment as early as 1870. See D.K. Asthana and Meera Asthana, supra note 22, p. 336.

[25] Mark Lancelot Bynoe 'Citizen Participation in the Environmental Impact Assessment Process in Guyana: Reality or Fallacy?', 2/1 Law, Environment and Development Journal (2006), p. 34, available at http://www.lead-journal.org/content/06034.pdf. This is why it is being argued that the legal requirement of EIA is now one of the principles of environmental law with universal acceptance. See John Ntambirweki, supra note 22, p 75; the Rio Declaration (1992) and the Convention of Biodiversity (1992) both recognizing EIA.

[26] Actually, being one of the poorest countries in the world, Ethiopia is supposed to make, and is making, a number of decisions to bring about economic betterment. This in turn upgrades the importance of EIA as a tool for throwing environmental values into decision-making processes.

[27] Article 14(1)(2) of the convention requires every contracting party to use EIA to protect and conserve biological diversity

[28] For example, article 92(2) of the FDRE Constitution states that "the design and implementation of programmes and projects of development shall not damage or destroy the environment". Article 92(4) of the Constitution stipulates that "the government and citizens shall have the duty to protect the environment"; Article 43(1) recognizes peoples' right to sustainable development; and Article 44(1) recognizes

National Environmental Policy (EPE) which recognizes the need to use EIA for the attainment of its goals.[29] However, it was only in 2002 that Ethiopia adopted an EIA Proclamation, one of the most important environmental laws ever made in Ethiopia. First, it deals solely with EIA. Second, it makes EIA applicable to projects and public instruments. Third, it imposes on all persons the duty to make prior EIA in relation to any actions for which prior EIA is required. Fourth, it strictly prohibits the commencement of any project requiring EIA before *appropriate assessment* is made. Fifth, it entrusts the power to ensure that EIA is done and evaluate same to the Federal Environmental Protection Authority (FEPA), now Ministry of Environment and Forestry, and regional environmental agencies.[30] That is why the EIA Proclamation could be described as one of the most important environmental laws Ethiopia has ever enacted.

2.2.1. Transplantation of the EIA Law into the Ethiopia Legal System

Although our Constitution, with stipulations on the protection of the environment, was promulgated in 1995 and Environmental Protection Authority was established in 1995 with the view to ensuring environmental protection, Ethiopia did not make an EIA law until 2002.

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everyone's right to live in clean and healthy environment. There is no doubt that the use of EIA is of vital importance to fully enforce these constitutional stipulations. Indeed, the discussion on the draft of the EIA law also reveals this fact.

[29] See the National Policy of FDRE, 1997. According to paragraph 2.1 of the EPE, the overall policy goal of the EPE is realizing the right of Ethiopians to live in clean and healthy environment and to bring about sustainable development.

[30] See articles 3, 7, 11 and 14 of the EIA Proclamation. After this article is written, the FEPA was re-established as a *Ministry of Environmental Protection and Forestry*. However, the Proclamation that establishes this Ministry has not yet been published and put on sale. Hence, I have decided to keep the expression FEPA in this article.

In 2002, however, it enacted the EIA law. One may wonder why the country made this law in 2002 while it did not introduce it soon after the promulgation of the Constitution or at least after the establishment of the Environmental Protection Authority in 1995.

According to two officials at the FEPA, the making of the EIA law was not motivated by internal needs; rather, it was caused and facilitated by external pressure. The officials specifically mentioned financial institutions like the WB as the ones responsible for the enactment of the EIA law. They indicated that these institutions started demanding EIA as a condition for the funds they were to release for government projects which, in turn, made the government to submit to their demand. [31]

On the other hand, doing EIA to submit reports to these institutions requires putting a legal framework in place because without legal framework doing an EIA is very difficult, if not entirely impossible. For example, one must know which actions are subject to EIA and which are not; who a responsible person is for doing EIA; what the role of the public is in the EIA process; who bears the cost of doing EIA; who ensures that EIA is done properly; etc. Surely, entertaining these and other issues requires putting a legal framework in place. Therefore, Ethiopia had no choice but to introduce an EIA law to deal, at least, with some of these issues and ultimately to show to institutions like the WB that it was ready to do EIA to get their supports. This is how the current EIA law came into being.

[31] I made conversations with two officials of the FEPA who demanded anonymity. Although the conversation took place in 2009, I deliberately omitted the exact date of the conversation in accordance with their demands.

With regard to its source, the drafting history of the EIA law does not expressly mention from where it was taken. However, it is clearly mentioned that the practices of different countries and international institutions were used to prepare a draft EIA law and introduce the procedure of EIA into Ethiopia.[32] Thus, there is no doubt that the rules in the EIA law are transplanted rules. For example, although it is not said explicitly, the rules of WB on EIA might have been used because the WB was one of the external forces that caused the government to introduce the system of EIA. This is so because it is mentioned, in the legislative history of the law, that the practices of international institutions were used, whereas the WB is one of such institutions with experience in relation to EIA. For example, the WB has guidelines on EIA. In any case, what we can understand from this is the fact that the EIA law was not prepared based on the existing realities in Ethiopia.

The message from the preceding paragraphs is clear. However relevant it might be, the motive behind the introduction of the EIA law was not to protect the environment as such. Rather, it was made to respond to the demands of external factors/actors. Thus, one may conclude that the transplantation of the EIA law into the Ethiopia legal system is attributable to some influence from the above institutions. The influence may be seen as undue on the government because without EIA they started refusing to fund government projects, whereas the government could not afford to lose their aids because of the size of such aids and its

[32] See the discussion on the draft EIA law on 31 October 2002 by the concerned parliamentary committee and stakeholders. The document containing this discussion is available at the archive/library of the House of Peoples Representatives.

incapacity to fund some of its mega projects from its own treasury. On the other hand, legal transplantations that are motivated by external forces such as international institutions are often understood as impositions than voluntary act.[33]

3. Effectiveness of Transplanted Laws

Generally speaking, a transplanted law either through internal motivation or external pressure may be implemented effectively, or ignored altogether, or formally observed but practically disregarded, or selectively applied.[34] Firstly, the transplanted law may be used and applied indiscriminately in the intended fashion. In this case, the law will be fully effective and it will have the desired impact. This is likely to occur when transplantation is triggered by internal needs. Under such circumstance, transplanted laws will not remain on paper; rather, they will actually be used in practice.[35] For example, in Ethiopia, different legal ideas are being taken from abroad in the field politics (election) from time to time and these ideas are rigorously used because their introduction is motivated by internal needs.

Secondly, transplanted laws may be ignored altogether. According to *Kingsley*, this happens when external forces trigger legal transplantation to occur because they assume, among others, the existence of certain institutional, cultural, or political realities in the receiving country which

[33] Jeremy J. Kingsley, supra note 3, p 516.
[34] For discussion on the impacts of transplanted laws and some of the points raised in this section, see generally KATHARINA PISTOR, *THE STANDARDIZATION OF LAW AND ITS EFFECT ON DEVELOPING ECONOMIES*, American Journal of Comparative Law, Winter 2002, p. 10.
[35] For more on this point, see Daniel Berkowitz and others, supra note 2, p 2-3.

in fact do not exist or are not properly developed.[36] Interestingly, transplanted laws may still be rejected, if they are caused by external factors, even when it happens between nations that are very close politically, culturally, developmentally, and economically, which, in turn, implies that the rejection will be more serious if legal transplantation happens between nations which are not politically, culturally, developmentally, and economically close.[37] This is so because it will be difficult to consume the transplanted laws as they are based, when they were formulated, on different political, cultural, developmental, and economic realities than those existing in a country receiving the transplant.[38] In any case, under such circumstance, the transplanted law brings about no change to the existing realities in the receiving state. This means, the law will be totally ineffective; it will remain on paper and will have no impact at all.

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[36] Jeremy J. Kingsley, Supra note 3, p 510-512. According to PISTOR, rules that are imposed may cause domestic resistance thereby leading to ineffectiveness. KATHARINA PISTOR, supra note 34, p 2. According to Watson, a law may be transplanted from a country which has very different political, social, economic, and religious conditions and yet be effective. However, this point presupposes that the transplantation is voluntary. Alan Watson, Legal Transplant: *an Approach to Comparative Law*, mentioned in Weiguo He, supra note 4, p. 11.

[37] Jeremy J. Kingsley, supra note 3, p. 514.

[38] In fact, there are some writers who argue that legal transplant is not possible at all. For example, Legrand says, 'since rules cannot travel, 'legal transplants' are impossible.' Pierre Legrand, "What 'Legal Transplants'?"mentioned in Weiguo He, supra note 4, p 14. Of course, this is an extreme position. Moreover, in this context, the argument is not that legal transplants cannot be successful at all because it is possible. What it means is that if it is to be successful, then it requires more than taking laws. For example, it requires training domestic experts in the field establish the necessary institutional framework for its enforcement, make subsidiary laws to enforce it, have political commitment to use the law, etc. However, if these things are not done, the effective implementation of a transplanted law is unlikely. See generally Jeremy J. Kingsley, supra note 3, p. 516.

Thirdly, and closer to total rejection, transplanted laws may be observed formally but be circumvented in practice. This type of observance of the law is called "creative compliance." For example, transplanted laws may be made in general terms leaving too much latitude for interpretation. This makes the application of the law difficult because its scope will be broad and law enforcer may not know what is include and what is not. Moreover, for "creative compliance", it is possible to exclude important actors/areas from the coverage of the transplanted law to make it ineffective. In both cases, the desired result of the law will not be obtained. This again is likely to happen when transplantation is not based on internal needs/initiatives.

Fourthly, and somewhere in between full implementation and total rejection, transplanted laws may be applied only selectively. This means, while some actors/actions are regulated by the law, others are not. For example, in Ethiopia, while EIA is done for projects, public instruments (laws, policies, programmes, etc.) are not subject to EIA. Similarly, while some project proponents do EIA, there are many project proponents who do not do EIA. These are good examples of selective application of a law. As far as the impact of such law is concerned, there is no doubt that it will affect the behaviour of those who are subject to it. Nevertheless, such application of the law will eventually lead to 'creative compliance' than to true compliance thereby, eventually, denying the law the opportunity to produce full impact.

Now, when we consider the reality of transplanted laws in light of the above discussions, it is argued that, generally, they are quite ineffective

and thus have very limited impact.[39] This means, usually, transplanted laws do not have the impact they are meant for. This is bound to happen because making these laws effective requires a number of things. For example, they must be meaningful in the context in which they are applied so that citizens will have an incentive to use them and also demand institutions to enforce and develop them.[40] If the laws do not make sense to citizens of a given place, then, they will not be effective or may be less effective. For example, in Ethiopia, laws requiring the use of *family name* were imported in 1960 with the introduction of the Civil Code. Yet, more than half a century later, these laws are not in use because they are totally at odds with the prevailing realities in the country. Moreover, there should be preparedness by the receiving country to use and develop transplanted laws. For example, one of the problems in Ethiopia in relation to the EIA law is the fact that few people understand environmental law in general and EIA law in particular. If this is the case, then, it is easily discernible how difficult developing and effectively implementing the law would be. Therefore, importation of a law, however good it might be, does not necessarily guarantee effective implementation. If there is no conducive environment for its implementation (such as citizens' demand and legal intermediaries that can understand, apply and develop the law), its ineffectiveness will be inevitable.

With the preceding discussions in mind, it would be appropriate to consider the fate/impact of the EIA law of Ethiopia. In which of the

[39] Daniel Berkowitz and others, supra note 2, p. 1.
[40] Id., p. 2-3.

above categories does it fall? Is it totally ignored and, hence, producing no impact at all? Is it observed constructively? Is it applied selectively? Or, has it been used fully and thus been producing the desired results? The following section will answer this question.

3.1. Implementation of EIA law in Ethiopia

A cursory look at our system of EIA or the impact of the EIA law, in light of the previous points, forces one to make a quick conclusion that the law is neither totally ignored nor fully implemented. As a result, its impact is somewhere between the impact of total rejection (that is, no impact at all) and full implementation (that is, having the desired impact/effect). In the following paragraphs, I will make clear what the impact of this law is like in a situation where it is neither totally rejected nor fully enforced.

To begin with, the system of EIA is working in Ethiopia at least for some projects.[41] Of course, some officials at the FEPA may be tempted to argue that all projects that are subject to EIA are passing through EIA.[42] While this may be an exaggeration, one cannot deny that there are

[41] Interviews with Ato Solomon Kebede, Head of the EIA Department, FEPA, on 7 and 8 September 2009, Ato Abraham Hailemelekot, EIA Expert, FEPA, on 24 August 2009; and Ato Wondosen Sintayehu, Acting Head, Environmental Policies and Legislation Department, FEPA, on 24 August 2009. I have checked the currency of this information from the legal department of the Ministry of Environment and Forestry on 04 February 2014 and I have been informed that there has not been any appreciable change in this regard.

[42] Tewolde Berhan Gebre Egziabher, Director General, Ethiopian Environmental Protection Authority, Public Lecture on 7 May 2009. However, some people at the FEPA agree with what the director said only in part. For a more detailed discussion on the practice of EIA in Ethiopia, see generally, Dejene Girma Janka, Environmental Impact Assessment in Ethiopia: Laws and Practices, University of Alabama, (PhD Dissertation), p. 153-190.

proponents who are willing to do EIA for their projects in accordance with the EIA law.[43] Moreover, there are times when non-observance of the EIA law leads to stoppage of a project. In this regard, mentioning one example seems relevant. Some time ago, a certain investor wanted to establish oil planet to produce bio-fuel in *Babille*, a protected area for its biodiversity richness.[44] In accordance with the EIA law, therefore, he wanted to do an EIA before he commenced implementing his project. Then, he approached the Ethiopian Institute of Biodiversity Conservation (IBC) to help him in this regard. However, the IBC informed him that the area was already studied and no development activity could be undertaken in *Babille* unless it would be for the good of the area itself. But disregarding the advice of the IBC, the investor conducted an EIA and submitted his report to the FEPA for evaluation. The FEPA also looked at the report in accordance with the existing legal framework and ordered the investor to make some modifications before he was issued environmental clearance. However, the investor never reappeared before the FEPA again with the required modifications. Instead, he went ahead with his project and started removing the forests in the area.[45] This led to a dispute between environmental groups-the IBC, FEPA, Ethiopian Wildlife Development and Conservation Authority (EWDCA), and some

[43] Moreover, Ato Solomon Kebede, Head of the EIA Department, FEPA, indicated that some investors are willing to do (and they actually do) EIA before beginning to implement their projects because they want to discharge their obligations under the EIA law. Indeed, he indicated that these investors could refuse to do EIA with almost no consequence; yet, they do it because they want to respect the law. Incidentally, according to article 3(1) of the EIA law, no person can commence the implementation of any project that requires EIA, in accordance with the directives to be issued by the FEPA, before obtaining authorization from the FEPA or the relevant regional environmental agency.

[44] Babille is a sanctuary of many endemic animals particularly elephants.

[45] It was said that thousands of hectares of forests were cleared before the matter was stopped.

NGOs like Forum for Environment, on the one hand, and the investor on the other. The dispute was very serious and it went all the way long to the Office of the Prime Minister. After a year and half, it was resolved in favour of the environmental groups although the investor fled the country before such resolution was made.[46]

What we can understand from the above story is the fact that there are times when the EIA law is in fact made to work. It is the non-observance of the EIA law that made some of the environmental groups like the FEPA to join the dispute and challenge the measures taken by the investor. Knowing that he would lose the case, seen in light of the EIA law, the investor also eventually abandoned his project and fled the country. This means, the desired result; that is, stopping the project under such circumstance, was obtained.

In the case of willing actors, that is, those persons who do EIA willingly, it is the mere existence of the EIA law that makes them do EIA before they start implementing their projects. Obviously, if the law did not exist, they would not do EIA because they would not have any obligation to discharge.

Therefore, although no one can say that the EIA law is having all the desired impacts it was meant to have when its transplantation was triggered; that is, avoiding or minimizing actions that have adverse

[46]The information in this paragraph was obtained through interview from Ato Solomon Kebede, supra note 41, Ato Fanuel Kebede, Senor Wildlife Expert, Ethiopian Wildlife Development and Protection Authority, 31 August 2009, and some people at the IBC who demanded anonymity, 1 September 2009.

impacts on the environment, equally no one denies that it is having certain positive impacts. It is producing some changes in behaviour of persons although that is, as we will see below, only under limited circumstances. This goes in line with what was mentioned before; that is, the effectiveness of transplanted laws is very limited.

On the other side of the fence, however, there are times when the EIA law is not used in practice.[47] In fact, the ineffectiveness of the EIA law is more glaring than its effectiveness (implementation) because most of the purposes it was enacted for have not been served.[48] This means, actions (projects and public instruments) that may have adverse impacts on the environment are not being avoided or minimized as they should be. The major factors contributing to the failure of the EIA law include the absence of subsidiary laws to implement the EIA law, lack of EIA for government funded projects unless some kind of external aid is required, the performance of EIA for some projects after the commencement of their implementation, the absence of EIA for public instruments, and the government's lack of adequate political commitment to fully implement the EIA law.[49] Some of these factors will be discussed below.

First, the EIA law is a very general law. For example, it provides for *public participation* in the EIA process. However, from the general stipulations of the law, it is difficult to know what the term *public* refers to, whether or not the *public* can participate in the EIA process at every stage, the mode of involving the *public* in the EIA process, etc.

[47] Interviews with Ato Solomon Kebede et. al., supra note 41.
[48] Ibid.
[49] Ibid.

Therefore, even a modest (putting aside effective) implementation of the EIA law imperatively requires the issuance of implementing laws casting light on such issues. Cognizant of this fact, the legislature authorized the Council of Ministers to issue regulations and the FEPA to issue directives to implement the law. Nonetheless, more than a decade later, we still do not have Council of Ministers' Regulations to implement the EIA law. Likewise, the FEPA did not issue the necessary directives to implement the EIA law for six years after the enactment of the EIA law. However, in 2008, it came up with directives providing for the list of projects (not public instruments, though) which are subject to EIA. Despite this, the directives still have legal and substantive problems. To begin with the legal problem, in our system law-making passes through five stages: initiation, discussion, approval, signature, and publication. When we come to the directives, first, they have not been signed by the Chairperson of the Council whose signature is necessary for the directives the FEPA issues. Second, and consequently, the directives have not been published in the official newspaper for the publication of federal laws; that is, the Federal *Negarit Gazeta*.[50] This means, the making process of the directives is two steps short of consummation. As a result, legally speaking, the directives are not yet a law. Of course, in practice, directives are not published in this newspaper although they are applied as laws. But, signature is indispensable. Thus, the FEPA directives could be treated as a law if they were signed by the chairperson

[50] Article 2(2) of the Federal Negarit Establishment Proclamation of 1995 states that *[a]ll Laws of the Federal Government shall be published in the Federal Negarit Gazeta.* Then, under article 2(3), it adds; *All Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of Laws published in the Federal Negarit Gazeta.* If federal laws are not published in this newspaper, then no one is supposed to take judicial notice of their existence. See Federal Negarit Gazeta Establishment, Proclamation No. 3/1995.

of the Council.[51] In default of signature, project owners can legitimately claim that there is no law that, as envisaged by the EIA law, provides for list of projects that are subject to prior EIA but a draft law and, hence, refuse to do EIA.

The substantive problem of the FEPA directives pertains to its scope. They are not comprehensive for two reasons. First, the directives do not provide for list of public instruments that should pass through EIA. However, the EIA law requires the FEPA to issue directives specifying public instruments that should pass through EIA. It is, therefore, unfortunate that, more than a decade later, there are no such directives put in place. Moreover, this is a big below to the effectiveness of the EIA law because EIA for public instrument is, as some convincingly argue, very important to ensure environmental protection.[52] What this means is that the making of public instruments is not required to be preceded by EIA. Second, the 2008 directives deal with projects that are subject to EIA only selectively. There are projects that can be properly subjected to EIA but which are left out. For example, while housing development

[51] In fact, the FEPA claims that it can use these directives as law despite the fact that the requirement of signature is not yet met. Of course, this makes sense because the Prime Minister was part of the approving body (the Council) when they were approved. So, to fail to use them as if they were not laws because they are not signed by the person who participated in their approval may not make sense.

[52] There is an argument that since project-based EIA tends to occur after broader social and economic policy decisions have been made and these prior policy decisions may constrain the ability of project-based EIA to ensure environmental protection, there should be a Strategic Environmental Assessment (SEA) for greater integration of EIA processes with top level decision-making. SEA makes decision-makers consider environmental values not only at project level but also at programmatic/strategic levels. Indeed, SEA has now emerged as an important element in domestic environmental decision-making processes. See Neil Craik, *The International Law of Environmental Impact Assessment: Process, Substance and Integration,* Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, 2008, p. 155-156.

projects by private investors, which are now expanding, are not subject to EIA, similar projects are subject to EIA when government organs undertake them.

Therefore, in the absence of specific laws to implement the general stipulations in the EIA law, to think of the law to produce the desired result to the full extent is not possible. The government could make such laws to implement the EIA law if it wanted to. However, it does not seem that there is adequate commitment to do so. In this regard, perhaps making a comparison between two peer laws, yet in different fields, seems appropriate. In 2002, Investment Proclamation No. 280/2002 was enacted. Later on, Proclamation No.373/2003 amended it. To facilitate the implementation of the Investment Proclamation, as amended, the Council of Ministers issued Regulations No. 84/2003. To further facilitate the effectiveness of the Investment Proclamation, the Council amended these regulations by another regulation, Regulation No. 146/2008.[53] Finally, to enhance investment activities further, the 2002 Investment Proclamation and its amending Proclamation were repealed and replaced by a new Investment Proclamation, Proclamation 769/2012, which is supported by a new Council of Ministers' regulations. Now, the amendment of the Investment Proclamation No. 280/2002 by another proclamation and the issuance of two regulations to enforce its provisions, as amended, and the eventual replacement of this Proclamation by a new proclamation and supporting it by regulations

[53] Investment Proclamation, Proclamation No. 280/2002, Investment Proclamation 280/280 Amendment Proclamation, Proclamation No.373/2003, Council of Ministers Regulations, Regulations No. 84/2003, Council of Ministers Regulations, Regulations No. 146/2008.

show how committed the government is to boost investment activities in the country. On the contrary, when we see the EIA law which was made in the same year (2002) with the Investment Proclamation 280/2002, it has never been amended or replaced; nor it has ever been supported by implementing regulations. This is not because the EIA law does not need amendment. Indeed, there are problems which could only be rectified by amending the law. For instance, the extension of the time within which EIAs should be reviewed, imposing the duty to require an environmental clearance certificate on the authorities that approve public instruments, granting express power to environmental protection organs to monitor the implementation of projects and take appropriate measures, if need be, recognizing the right to standing of everyone to take action against any person including environmental protection agencies for failing to discharge their EIA related duties require, removing regressive measures that have been introduced by subsequent proclamations, etc. require the amendment of the EIA Proclamation.[54] Such changes cannot be introduced by implementing regulations for doing so in regulations would amount to going beyond the powers of the Council of Ministers. This is why one can safely say the non-amendment of the EIA law can imply lack of the necessary commitment to fully implement it or use it in practice to ensure environmental protection.

The second reason contributing to the failure (ineffectiveness) of the EIA law is lack of EIA for government projects unless some kind of external aid is required to finance them. This means, it is not only when a government formulates strategies (which require Strategic Environment

[54] For more on this point, see Dejene Girma, Supra note 42, p. 241-242.

Assessment (SEA) and which have not been subject to EIA hitherto) but also when it executes its strategies that the EIA law is put aside. Therefore, one can speak of the rejection of the EIA law at two levels; at strategic level and project level, both of which are contrary to the spirit and express stipulations of the EIA law.

However, when government projects require external funding to which EIA is attached as a condition, then, EIA will be done by the concerned government agency. Even so, the performance of EIA is not really to observe the EIA law but to observe the conditions attached to funding a project. Here, we can consider the case of *Gilgel Gibe* III. At the moment, *Gilgel Gibe* III is the second biggest (second only to the Grand Ethiopian Renaissance Dam) hydroelectric power generation project in the county. It is expected to produce more than 1800 MW upon its completion. When the project was designed, no SEA was made. Similarly, the commencement of its implementation was not preceded by EIA. All these happened because initially the designers and implementers of the project thought that it would be fully funded from government treasury. Unfortunately, however, in the course of implementing the project, the government faced financial constraints which forced it to look for external funding from the WB. The WB agreed to fund the project but required the production of prior EIA as a condition. Thinking that it would not be realized, the government then rushed to doing a post implementation EIA, which is contrary to the EIA law that requires prior EIA. Then, the EIA was done and its report submitted to the FEPA for evaluation and approval. Yet, a little bird told the WB that the EIA was

not done prior to the commencement of the implementation of the project. As a result, it withdrew its promise to fund the project.[55]

By the way, more examples could be mentioned with regard to the absence of prior and full scale EIA for government projects. This includes the Grand Ethiopian Renaissance Dam which was not preceded by full scale EIA.[56] Anyway, what one can understand from this is the fact that projects funded by the government do not have to pass through EIA rendering the EIA law expendable. This is another major blow to the effectiveness of the EIA law because, in Ethiopia, most major developmental projects such as irrigations, dam and road constructions are carried out by the government. An excellent case in point is the construction of the Grand Ethiopian Renaissance Dam.

To sum up, there are indeed times, though limited, when the EIA law is observed. Thus, regardless of the motive behind such observance, the impact of the law under such (limited) circumstance is positive. Hence, our transplanted EIA law is not totally devoid of impacts. Nevertheless, often, the law is not being used in practice. While there are times when it is totally disregarded in practice, there also times when it is used only selectively (which will, of course, finally lead to constructive observance of the law where the law will have no impact at all). The underlying reason for the absence of effective implementation of the law is the

[55] For the story in this paragraph, I made discussions with two officials at the FEPA who preferred to remain anonymous. Also see Dr. Tewolde Berihan, supra note 42.
[56] See Dejene Girma, supra note 42, p. 86-87.

absence of adequate political willingness backing its effective implementation.[57]

4. Major Causes for Lack of Adequate Commitment to Fully Implement the EIA Law

Since it is not fully implemented, the impact of the EIA law on proponents hitherto is insignificant. The major reasons for its failure have already been discussed. But all the reasons mentioned before seem to have a common cause; that is, lack of adequate willingness on the side of the government to effectively implement the law with the view to achieving its objectives. It is known that politics is a very important factor for the success of a legal transplant.[58] In our case, adequate political commitment does not seem to exist due to following major reasons.

4.1. Lack of Sincere Internal Needs to Have the EIA Law

It is repeatedly said that the absence of adequate political will is a major cause for the lack of full implementation of the EIA law. For example, the least that the government can do, if there were sufficient will, to effectively implement the EIA law so that it can have the intended impact, is issuing regulations and directives which specify actions (projects and public instruments) that should be subject to EIA. Without such laws, it is crystal clear that the EIA law will not be implemented fully/effectively.[59] However, the government has not issued regulations

[57] Id., p. 153-187.
[58] Otto Kahn-Freund mentioned in Penelope Nicholson, supra note 6, p. 25-27.
[59] Of course, to overcome the effect of not having these laws, the FEPA issued procedural guidelines which list projects which are and are not subject to EIA.

that are necessary to enforce the law. Besides, as discussed before, the 2008 directives do have their own problems. And this is happening because the importation of the EIA law was not triggered by internal governmental needs. As the previous discussions have shown, the law was imported because there was some sort of undue influence from external bodies like the WB. The law is, therefore, as good as an imposed law. Under such circumstance, to think of the existence of adequate political commitment to enforce the law is very difficult except where similar circumstance under which the law was imported exists such as condition to obey the law to get fund for a project. In fact, the easiest measure the government has taken not to fully implement the EIA law is denying it secondary laws destined to implement its general stipulations, which is the usual fate of laws whose transplantations are motivated by external forces.[60]

4.2. Internal priority

The other cause for the absence of adequate political commitment to fully implement the EIA law may be attributed to the place given to environmental protection vis-à-vis the other national interests. Admitting that Ethiopia is one of the poorest countries, the effort of the current

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Nevertheless, these guidelines are not laws/binding; rather, they are like codes of conducts those concerned persons should follow. Hence, other authorities, as it is the case, can refuse to take them into account. For example, our investment commission issues investment permit even when the project to be implemented is subject to prior EIA in accordance with these guidelines and the proponent has not secured authorization from the FEPA.

[60] Of course, this does not mean that legal transplantation cannot be effective because it can be. For example, according to Watson successful legal borrowing could be made from a very different legal system, even from one at a much higher level of development and of a different political complexion. Alan Watson mentioned in Penelope Nicholson, supra note 6, p. 22. However, Watson's argument presupposes that the borrowing is motivated by internal initiative.

government is to change this reality and make the country among middle-income countries by 2020-2023.[61] Therefore, no one should wonder if the government makes economic development, not environmental protection, its priority area. Of course, it is obvious that the use of EIA would contribute to the sustainability of development. In this regard, the legislative history of the EIA law shows that the drafters did not want to make the EIA law an obstacle to development but to make development sustainable.[62] Yet, there is equally no question that EIA may sometimes suggest the abandonment of certain projects because the harm their implementation would cause to the environment may be greater than the benefits they would produce. This may be seen as detrimental to the countries development plans. For example, in the case of *Gilgel Gibe* III, some environmental groups were arguing that the harm to the environment will be enormous. However, the project will produce more than 1800 MW of hydroelectric power which may enable the country to export power to obtain foreign currency. As a result, the government proceeded with the project despite the criticisms from different 'stakeholders'. Indeed, as discussed before, the government did not mind to do prior EIA for the implementation for the project. The same applies to the Grand Ethiopian Renaissance Dam which was not preceded by full scale EIA. This implies that the priority of the government right now does not seem environmental protection (hence, the full implementation of the EIA law) but bringing about fast-tracked economic development.[63]

[61] See the FDRE Ministry of Finance and Economic Development, FDRE Growth and Transformation Plan 2010/11-2014/15.
[62] See the discussion on the draft EIA Proclamation as mentioned before, supra note 32.
[63] Of course, this is not unique to Ethiopia. For example, the US NEPA requires EIA as long as it is consistent with other national interests. This means, if doing EIA is

If this is so, then, the government will do everything to bring about economic development. For example, one of the top policies of the government is encouraging investment activities (foreign and domestic), whereas the achievement of this objective, in turn, requires easing the requirements investors are expected to meet. Demanding strict compliance with the EIA law is obviously a pushing factor for investors because it is both time taking and costly. That is why both the past and the present investment laws do not expressly require EIA as one of the conditions to get investment permit although the current investment law, Investment Proclamation No. 769/2009, requires environmental protection in a vague way.

Generally, the present political backing for the full implementation of the EIA law is not adequate. On the other hand, the fact that the introduction of the law was triggered by external pressure, and not internal initiatives of the government as such, and the tendency to give priority to economic development than environmental protection have contributed to the absence of the necessary support for the law's full implementation.

5. Prospects of the EIA Law in Ethiopia

Although the effectiveness of the EIA law is low, there are now glimmers of hope that it may be more effective. First, sectoral agencies' attitudes towards EIA are changing as they have started appreciating the purpose of EIA. This means, they may take and do EIA seriously. Second, civic societies such as NGOs are taking EIA seriously. As a result, they are

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detrimental to other national interests, then NEPA can be put aside. See sec 102, NEPA (1969).

participating in the EIA process and demanding that it should be done when so required. Others have even gone too far to propose changes to the existing EIA law. Third, the public is gaining awareness about the environment in general and EIA in particular. Fourth, some local financial institutions like the Ethiopian Development Bank have shown interest to use EIA as a requirement for the relation they establish with investors. Therefore, if these and other prospects come true, the transplanted EIA law will have more positive impacts.[64]

Another enormous leap forward relates to the measures the government itself has been taking. It is clear that one of the ways of making the system of EIA effective is mainstreaming the requirement of EIA into sectoral laws. In this regard, although they are limited, there are some sectoral laws which require the use of EIA or taking the needs of the environment into account before projects are implemented. In this regard, mentioning two examples would suffice. First, the Mining Operations Proclamation No. 678/2010 provides, under article 60(1), for the following stipulations.

> Except for reconnaissance license, retention license or artisanal mining license, *any applicant for a license shall submit an environmental impact assessment and obtain all the necessary approvals from the competent authority required by the relevant environmental laws of the country.*[65]

This implies that anyone, save for artisan miners, who intends to carry out *exploration* or *mining* activity must conduct an EIA and obtain an

[64] The information in this paragraph was obtained through interview with Ato Solomon Kebede et al, supra note 41.
[65] Emphasis added.

environmental permit from the relevant federal or regional body before he/it is issued a license. In fact, this Proclamation contains other provisions which attempt to ensure the protection of the environment in the course of undertaking mining activities.[66]

Another example is the current investment proclamation, Investment Proclamation No. 769/2012. This Proclamation contains some provisions which are pertinent to environmental protection. For example, under article 38, it requires investors to observe the laws of the country in general and environmental protection laws in particular while carrying out investment activities. This shows that investors or project owners should comply with the requirements of the EIA law. Indeed, the Proclamation contains other provisions which have bearing on environmental protection as well.[67] But the bottom-line is, although it is not as explicit as the Mining Proclamation is with regard to the requirement of EIA, the inclusion of provisions that could be used to ensure environmental protection in the new Investment Proclamation shows that there is a beacon of hope for the effective implementation for the EIA law.

Generally, as there are challenges to the full implementation of the transplanted EIA law, there are also prospects that the record of its implementation could be improved in the future.

[66] See, for example, articles 34(1)(b), 44(1), (2)(3), and 61(4).
[67] See, for example, article 19(1), (2)(a) and (6) and article 30(4)(d).

6. Conclusion and recommendations

Legal transplantation happens everywhere. Sometimes it is effective, sometime it is not. But, generally, it is agreed that transplanted laws have limited impacts. In Ethiopia, the EIA law was transplanted and its transplantation was motivated by external pressure. As such, its effectiveness is very limited because mostly, not solely, it is respected only when there is a willing proponent or when funders require EIA. Thus, the law has not been able to have the impacts it could have. On the other hand, the government has contributed to the limited success of the EIA law in two ways; first, by denying it implementing laws; and, second, by not subjecting at least some of its projects to EIA. This has been happening because the importation of the law was not motivated by the government's needs and the government has a priority area to pay serious attention to as compared to environmental protection. Thus, although there are glimmers of hope, one cannot deny that the fate of the EIA law may be the same as transplanted laws in general; that is, little effectiveness with limited impact on the behaviours of proponents.

From the discussions made before, the most important factor that has contributed to the non-effectiveness of the EIA law is the lack of adequate political commitment backing the law. However, it was noted that even if the importation of the law was caused by external pressure, the law is still beneficial because it make development, one of the top priorities of the government, sustainable. Thus, the government has to have the necessary political commitment and this should be reflected, among others things, by making the necessary laws facilitating the implementation of the EIA law and subjecting its actions (strategies and

projects) to EIA when so required. Moreover, investment authorities should use the new Investment Proclamation to require environmental permits as one of the conditions to issue investment permits when a proposed project is subject to EIA. Finally, the substitute for the FEPA, that is, the Ministry of Environmental Protection and Forestry, should work closely with investment authorities to ensure the use of environmental permit to license projects and also lobby the government to issue subordinate laws to effectively implement the EIA law. Besides, the Ministry should issue the necessary EIA directives as this is within its exclusive jurisdiction.