

**Making Sense of Investment Work for Sustainable Development: A
Pressing Need to Integrate Sustainable Development into
Ethiopian Investment Law
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Abstract

A prosperous Ethiopia, based on inclusive growth and sustainable development, is aspiration of all nations, nationalities and peoples in Ethiopia, as reflected in the preamble of the FDRE constitution. Foreign direct investment (FDI) in a country can be asserted as one weapon to actualize this aspiration for sustainable development; yet, FDI may also causes tragic social, environmental, and human right impacts unless it is effectively regulated. This paper investigates the nexus between FDI and Sustainable development in Ethiopia, and suggests effective mechanisms to mobilize FDI for sustainable development of Ethiopians without compromising related social, human right and environmental values. To this end, it employed library based and policy-oriented research utilizing both primary and secondary sources. The study established quest for inclusive economic growth, respect for human right, and need to curb social and environmental impacts of FDI as pressing issues that necessitate the integration of the economic, social, and environmental pillars of sustainable development into FDI administration in Ethiopia. It advocates for sound FDI administration and policy that equally integrates the economic, social, and environmental pillars of sustainable development in its regulatory frameworks and process. In particular, the Government shall ensure respect for land rights of local community, pay adequate compensation for land required for FDI, and put in place bilateral investment treaties or clauses in lease agreements addressing foreign investor's obligation regarding performance requirement, benefit sharing, environmental and human rights standards and impact assessment. It shall also ensure public participation and consultation with the concerned local community in all decisions to transfer land to foreign investors and FDI administration. Additionally, the Government shall establish effective monitoring and dispute resolution mechanism, and empower the indigenous community and other stake holders to safeguard rights and interest of local community.

Keywords: Ethiopia, Foreign Direct Investment (FDI), Sustainable development

1. Introduction

A flourishing Ethiopia, based on inclusive growth and ‘*sustainable development*’ grounded upon bottom up approach, respect for human right and democracy, is the aspiration of all nations, nationalities and peoples in Ethiopia as reflected in preamble of the FDRE Constitution.¹ Sustainable development at this juncture implies a process which facilitates for the entire population and all individuals to enjoy economic, social, cultural, and political improvements.² However, the need to ensure other competing values like environmental objective resulted in the inception of the new approach to development called sustainable development. Sustainable development is a process that improves living standard of people inclusively while respecting the environment, based on bottom-up agendas and priorities.³ It embraces, *inter alia*, the three interdependent and mutually reinforcing pillars: economic growth, social development (human rights), and environmental protection.⁴

Meanwhile, with the advent of globalization, the importance of FDI as the primary engine of sustainable development in all economies has been strongly affirmed, especially for developing countries like Ethiopia. However, FDI may also cause a tragic social, environmental, and human right impacts on local community unless it is effectively administered in the ways that avoid or minimize such side effects of FDI, and mobilize it for the ultimate goal of sustainable development. In light of this, sustainable

¹Para 1& 2 of the preamble of The FDRE Constitution reads ‘We, Nations, Nationalities and Peoples of Ethiopia: Strongly committed, to building a political community founded on rule of law and capable of ensuring lasting peace, guaranteeing democratic order, and **advancing our economic and social development**; Firmly convinced that the fulfillment of this objective requires full respect of individual and people’s **fundamental freedoms and rights...**’ As can be inferred from this preamble objective, advancing economic and social development with due respect to fundamental right and is considered key objective of establishing Ethiopian Federation

² United Nations Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 (1986) (hereinafter Declaration on Right to Development), Art.1

³COTULA L., FOREIGN INVESTMENT, LAW AND SUSTAINABLE DEVELOPMENT: HANDBOOK ON AGRICULTURE AND EXTRACTIVE INDUSTRIES, (Natural Resource Issues No.31.IIED, 2nded.) (2016)

⁴ Johannesburg Declaration on Sustainable Development, Johannesburg, South Africa, 2 to 4 September 2002, [hereinafter Johannesburg Declaration]

development has important implications for the regulation of investment. While for the investor the main concern is about generating profit, for host countries and communities, the main aim is (or should be) to mobilize assets and capabilities to promote sustainable development.

It is taking into account this pressing need to mobilize FDI for sustainable development that the Ethiopian government works to attract and promote FDI in the country. However, a close inspection of how FDI operates in Ethiopia reveals that the essence of sustainable development is almost missing from the FDI administration in country. This paper investigates the nexus of FDI and Sustainable development in Ethiopia, and suggests effective mechanisms to mobilize FDI for sustainable development without compromising related social, human right and environmental values. To this end, it employed-library based and policy-oriented research by utilizing both primary and secondary sources.

2. Basic Conceptual and Theoretical Frameworks

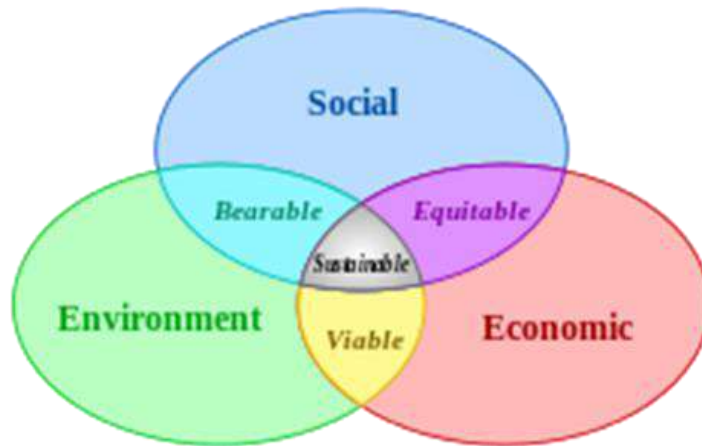
2.1. Concept of Sustainable Development and Its Principles

Sustainable development is an elastic and evolving concept whose meaning, content and legal status evolved over times. The New Delhi Declaration⁵ consolidates the international law principles on sustainable development in seven international law principles. These include the principle of integration; the principle of common but differentiated responsibilities; the principle of precaution; the principle of good governance; the principle of public participation; the principle of equity and poverty eradication; and the principle of duty of states to ensure sustainable use of natural resources. These principles are widely accepted as benchmark and guiding principles that should form the starting point in a principled assessment of any national law and/or policy regarding any activity related to sustainable development.⁶ Of particular importance at this juncture is the principle of integration which conceptualizes sustainable development as being anchored on the integration imperatives that constitute the three pillars: economic growth, social

⁵ New Delhi Declaration on the Principles of International Law Related to Sustainable Development, ILA, September 2002,(hereinafter the New Delhi Declaration).

⁶ M. Barnard, *The role of International Sustainable Development Principles in Enabling Sustainable Energy Policy: A South African Perspective*, 15(2)PER / PELJ, 212,207-243(2012).

development, and environmental protection, and calls for their balanced integration in any activity related to development. See the diagram below:



Source: [Free encyclopedia](#)

As can be learned from this diagram, sustainable development is at the intersection of its economic, social and environmental pillars. The idea embodied in the diagram is that when environment is linked with social interest, it will be bearable; when environment is linked with economic interest, it will be viable; and when social interest is linked to economic interest, it will be equitable. Hence, environmental concern linked with the socioeconomic development amounts to sustainable development and vice-versa. To achieve this desired goal of integration, there shall be a realistic economic (investment) law, a better and achievable social law, and a better and inclusive environmental law that collectively lead to sustainable development.

Overall, it has been firmly asserted under the international conference related to sustainable development that addressing social and environmental issues, ensuring inclusive and equitable economic deal, respecting human right, sustainability impact assessment, and placing people at the center of an investment process are key aspects of investment process and policy.⁷ These

⁷ See *inter alia* Rio Declaration on Environment and Development. Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 New Delhi Declaration on the Principles of International Law Related to Sustainable Development, ILA, September 2002,, & the Johannesburg Declaration.

key issues are directly or indirectly reflected through the aforementioned seven principles of sustainable development consolidated under the New Delhi Declaration. Ethiopia, too, has actively participated in such conferences and shown up a commitment to implement sustainable development objectives.⁸ Accordingly, the FDRE Constitution grants the right to sustainable development, along with the right to environment, and dictates every investment program and policy of the country to ensure such rights to sustainable development.⁹ Hence, it can be acknowledged that the Constitution has subscribed to sustainable development and integration of its three pillars into the Ethiopian FDI administration.

2.2. Theories Regarding Nexus of FDI and Sustainable Development

2.2.1. The Classical Economic Theory

This theory holds the position that FDI is wholly beneficial to the host economy establishing a positive link between investment and sustainable development.¹⁰ According to proponents of this theory, FDI benefits the development of the host state through employment creation, technology and skill transfer, capital inflow, building infrastructure etc.¹¹ On the other hand, critiques of this theory say that FDI would unduly exploit host economies without regard to the development concerns of the society; violate human rights, and damage the environment.¹² Hence, this theory disregards these social, environmental, and human right impacts under guise of investment.

2.2.2. The Dependency Theory

⁸ Federal Democratic Republic of Ethiopia (2012). Environmental Protection Authority, (EPA), National Report of Ethiopia, the United Nations Conference on Sustainable Development (Rio+20), Addis Ababa

⁹ FDRE Constitution, Proclamation No 1/1995, Federal Negarit Gazetta, 1st Year No.1, 1995, At Art. 43,44& 89.

¹⁰ M, SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT, (3rd edition, Cambridge University , Press, New York) (2010), at 47

¹¹ Tesfaye Abate, Investment Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute,(2009), at 57-60

¹² Getahun Seifu , *Regulatory Space in the Treatment of Foreign Investment in Ethiopian Laws*, 5TH JOURNAL OF WORLD INVESTMENT AND TRADE ,(2008), at 3

The dependency theory is a criticism to classical theory and establishes a negative link between FDI and sustainable development. This theory takes the view that FDI does not bring about meaningful development by raising two-pronged arguments.¹³ Firstly, it analyzes that investments are normally carried out by privately owned multinational companies that have their headquarters in developed countries, and the branches they establish in developing countries work in the interest of their parent companies and their shareholder. They would also remit their profits to headquarters and, keep on further strengthening the economies of developed countries. This would, in turn, end up in maintaining the economic domination of developed countries.¹⁴ Secondly, as foreign investors are driven by profit motive, they gang up with the ruling class; silence them with unlawful benefits such as corruption, and just keep on enriching individuals in power by bringing about “uneven distribution” of the available scanty resources.¹⁵ On the basis of these two arguments, it can be claimed that FDI would result in economic dependency of host countries on FDI.

2.2.3. The Middle Path/Pragmatic View

According to this theory, FDI has both positive and negative effect on the development of the host state. It accepts that FDI can spur economic growth claimed by classical theorist: however, it also shares the concern that foreign companies may pollute the environment; fail to provide adequate working conditions; violate human rights; instigate conflict with local communities; be involved in government corruption and bribery; or fail to involve indigenous peoples in decision-making.¹⁶ For this reason, it recommends that foreign investment should be harnessed to the objective of sustainable development, and this could be achieved by taking regulatory measures to curb harmful practices by foreign investor.¹⁷

¹³ Id, at 4

¹⁴ Id.

¹⁵ Id.

¹⁶ Tesfaye , supra note 11 at 60-61

¹⁷ M.sornarajah, supra note 10, at 4

3. The Nexus of FDI and Sustainable Development in the Ethiopian Context

3.1. FDI and Economic Growth

The economic pillar of sustainable development requires any development process (including FDI) to improve economic condition of people *inclusively and equitably*. Toward this overarching goal, the economic pillar requires the investment project to equitably and inclusively boost economic growth in host country through job creation, revenue generation, transfer of technology and managerial skill, research and development, export promotion etc.¹⁸ The same justification has been pleaded by Ethiopian government in its policy toward FDI. However, the inspection into how FDI operates in the country suggests that such expected economic benefit of investment remained elusive and unfulfilled promises, especially for the concerned local communities. In this regard, different studies and report of the alerting institutions revealed that FDI in Ethiopia, especially large scale land investments, have little or no economic significance to the local community. For instance, the Oakland Institute argues that the large-scale land transfer in Ethiopia cultivates hunger and poverty because the government takes away key coping strategies from its people and impacts the livelihoods of millions.¹⁹ Das and Grant also found that the large-scale land transfer in Ethiopia displaces poor and vulnerable populations which, in turn, exacerbate poverty and food insecurity.²⁰ Moreover, opposition party leader, Professor Merera Gudina has been quoted complaining that the stated promises of large scale land deal like employment creation, technology transfer and boosting export earnings are empty or utterly inadequate, and are not up to the standard of the propagated promises.²¹

¹⁸ AD.Basiago, *Economic, social, and Environmental Sustainability in Development Theory and Urban Planning Practice*, 19 THE ENVIRONMENTALIST, 145-161(1999), at 149; see also the new Delhi declaration, principles 1-7

¹⁹ Oakland Institute, *Miracle or Mirage? Manufacturing Hunger and Poverty in Ethiopia* (2016)

²⁰ Evadne Grant & Onita Das, *Land Grabbing, Sustainable Development and Human Rights*, 4(2) TRANSNATIONAL ENVIRONMENTAL LAW, 289-317. ISSN 2047-1025.

²¹ Daniel Behailu, *Large-Scale Land Acquisition in Ethiopia – Towards Attracting Foreign Direct Investment*, 3(1)JLAEA, 279-295(2015), at 292.

Accordingly, different studies found out that most of the lease contracts signed with large scale foreign agricultural investors in the country were clearly not negotiated with job creation in mind, and thus, they did not contain local content provisions requiring the lessee to prioritize local workforce in recruitment.²² It is also revealed that the majority of the jobs are labourer positions, often seasonal and short term in nature. Workers will not be fully paid, or the rate of wages is so low that it is not commensurate with the service rendered by the workers, even the costs of living cannot be guaranteed. In addition, there is also a concern that most of the employees, especially the managerial employees and skill operators, come from other parts of Ethiopia rather than the local or indigenous people.²³

In this way, the operation of FDI in the country undermines economic development of local community, progressively marginalizes smallholders, and eventually turns local farmers into guards or beggars.²⁴ It shall be noted that practice and policy of any investment, including FDI, should primarily target economic empowerment of local and indigenous peoples,²⁵ but such quality is missing from FDI governance and practice in Ethiopia. Hence, the author believes that the aforementioned issues that cast doubt on economic sustainability of FDI in Ethiopia calls for the need to integrate sustainable development into the FDI administration in the country.

3.2. FDI and Social Development (Human Rights)

The social development (human rights) pillar requires, *inter alia*, making people at the center of investment, social inclusion of the poor and historically marginalized people, improving the welfare of all through poverty eradication, improved labor standards, secured land tenure, transparency and anti-corruption, insuring interest of indigenous and local communities, respect for culture, and human rights in general.²⁶ In this

²² Uche E. Ofodile, Foreign Investment in Land and Clash of the Regime In Africa, Paper prepared for the Law and Development Conference 2013 “Legal and Development Implications of International Land Acquisitions” Kyoto, 30-31 May 2013, at 20.

²³ Dessalegn Rahmato, Land to investors: Large-Scale Land Transfers in Ethiopia, Forum for Social Studies , Addis Ababa , 2011, at 22

²⁴ Ibid, at 21.

²⁵ Husen A. Tura, Land Rights and Land Grabbing in Oromia , 70 LAND USE POLICY 7, 247-255 (2018).

²⁶ AD.Basiago, supra note 18; see generally the new Delhi Declaration, principles 1-7

regard, the FDRE Constitution provides a list of human rights provisions including social and cultural rights, and has adopted the human right based approach to development advocating no development at the expense of human rights. However, different studies and reports of vanguard institutions disclosed mass violation of human rights such as land right, labor right, right to food, cultural right, right of indigenous people, and forced villagization and resettlement in the name of investment (FDI) in Ethiopia.²⁷

The prevalence of human rights violation in the name of FDI in Ethiopia is particularly evident if one examines the practice of aggressive large scale land investment running in Oromia and Gambella regions, and the villagization program implemented by the Government to facilitate such investments. According to Human Rights Watch, the government of Ethiopia has relocated tens of thousands of indigenous people and leased out an estimated millions of hectares of land to foreign investors where these lease arrangement are negotiated between investors and the federal or regional governments.²⁸ The study conducted by the Oakland Institute also noted that in its aggressive pursuit of agricultural investment, the Ethiopian government has forcibly displaced hundreds of thousands of indigenous people from their lands, and has arbitrarily arrested and beaten individuals who have refused to comply with its policies.²⁹ Even worse, according to the Oakland institute³⁰, let alone the concerned local communities, the local officials were not consulted in most of the decision to transfer the land to investors, thereby denying indigenous peoples the right not to be removed from their lands without their free, prior and informed consent. In addition, social impacts such as poor labour standards, sexual harassment, health problems and improper compensation for previous land holders,³¹ deterioration of infrastructural facility, food insecurity and famine, disappearance of cultural

²⁷ See inter alia, Human Rights Watch , *Waiting here for Death: Forced Displacement and Villagization in Ethiopia's Gambella* (2012), Oakland Institute , *Development Aid to Ethiopia, Overlooking Violence, Marginalization, and Political Repression* (2012)

²⁸ *Id.*

²⁹ Oakland Institute, *FAQs on Indian Agriculture Investment in Ethiopia* (2013)

³⁰ Azeb W. Degife, *The intricacies of Large Scale Agricultural Investment in Gambella Region, Ethiopia*, Paper prepared for presentation at the "2017 WORLD BANK CONFERENCE ON LAND AND POVERTY" The World Bank - Washington DC, March 20-24, 2017.

³¹ Gudeta Degytnu, *Socio-economic and Environmental Impact of Floriculture Industry in Ethiopia*, (unpublished, LL.M Thesis, University of Gent, 2011-2012), at 47

heritages, social marginalization and identity crisis, and excessive labour exploitation that is equated to slavery and feudal system have been identified as impacts of investment in the country.

To curb such social impacts and human rights violation in the name of investment, Ethiopia needs to have an effective investment law/policy that adequately integrates the social (human rights) pillar into investment administration and decision. Overall, as can be understood from the above discussion about the incidence of human rights violation in the name of investment in Ethiopia, the investment practice in the country reverses human right based approach to development and rushes for economic growth at the expense of human right and freedom, and social values of the local communities.

3.3. FDI and Environmental Protection

The environmental protection as a pillar of sustainable development requires integration of the environmental concern in any development process, and this assertion has been reflected under Articles 44 & 92 of the FDRE Constitution. However, different studies and reports disclosed tragic environmental impacts of FDI in Ethiopia, especially in foreign large scale commercial agricultural investment and floriculture investment. For instance, the environmental impacts like water and air pollution, soil pollution and degradation, human and cattle health hazards, defective pregnancy, risk on aquatic life, water logging and salinization have been identified in different floriculture industries.³² And it seems both investor and government turned a blind eye to such negative impacts of investment. The author believes that legal tool is an important strategy to prevent and remedy environmental impacts of investment. Hence, these and other environmental impacts under guise of investment demands the integration of social and environmental pillar of sustainable development into Ethiopia's FDI administration.

³² Mulugeta Getu, *Ethiopian floriculture and Its Impacts on the Environment*,: *Regulation, Supervision and Compliance*, 3(2) MIZAN LAW REVIEW , 240-270 (2009), at 126; see also Ofodile, *supra* note 44.

4. Integrating Sustainable Development into the FDI Administration in Ethiopia: Closing the Gaps

As can be understood from the preceding section, there exist pressing economic, social (human rights) and environment impacts proliferated under guise of FDI in Ethiopia. These economic, social (human rights) and environmental tragedy of FDI in the country could be addressed via effective FDI administration and policy framework that effectively integrates the three pillars of sustainable development. Hence, Ethiopia should have sound FDI administration and policy that equally integrate the economic, social, and environmental pillars of sustainable development in its regulatory frameworks and process. In particular, the government shall ensure respect for land rights of local community, pay adequate compensation for land required for FDI, and put in place bilateral investment treaties or clauses in lease agreements addressing foreign investor's obligation regarding performance requirement, benefit sharing, environmental and human rights standards and impact assessment. It shall also ensure public participation and consultation with the concerned local community in all decisions to transfer land to foreign investor and FDI administration. Additionally, the government shall put in place effective monitoring and dispute resolution mechanisms, and empower the indigenous community and other stakeholders to safeguard their rights and interests.

On top of these, it is useful and workable to adopt right-based approach to FDI administration in the country. Right-based approach is 'conceptual framework for process of human development that is affirmatively based on international human rights standards and operationally directed to promoting and protecting human rights.'³³ It sets the achievement of human rights as an objective of development process and integrates norms, standards and principles of the international human rights system into the plans, policies and processes of development.³⁴ In context of FDI governance, right-based approach entails integration of human rights issues in the investment regulation and administration. Hence, applying right-based approach in FDI

³³ HRBA Portal <<https://hrbaportal.org/faq/what-is-a-human-rights-based-approach>> accessed 20 Jan 2020

³⁴ Ibid.

administration in Ethiopia helps to ensure the rights of the local peoples, including their environmental rights, and mobilize to realize the right to sustainable development recognized under the FDRE Constitution. In the furtherance of this, the Government and all other respective bodies engaged in FDI administration shall work towards effective implementation and integration of the economic, social, and environmental rights of local peoples.

In particular, the Government organ in charge of FDI administration shall effectively implement local peoples' procedural rights to public participation, prior informed consent, access to information and access to justice and effective remedy for violations of rights in the course of large scale land acquisition for FDI. Effective implementation of these procedural rights is important not only as an end in itself but also as a means to safeguard other rights of affected community, and ensure their economic interests. For instance, implementation of the right to access to information could provide opportunity for the communities to take important decisions on matters that affect them in case of the need to protect and enhance their rights and interest. Effective enforcement of right to public participation could also enable local communities to effectively engage with the relevant authorities during the process of large-scale land acquisition for FDI in order to prevent the harmful impacts of such FDI or seek redress after the event. Moreover, respect for and the promotion of the economic, social, and environmental rights in the course of FDI, can be effectively guaranteed by means of access to justice. Hence, the government shall disclose all information about large scale land investment deals for FDI to local community and all affected stakeholders as early as possible, ensure their effective participation, and stick to their prior informed consent in all courses of large-scale land deals for FDI and its implementation.

Moreover, the government should take necessary steps to ensure that its large scale land transfer for FDI respect other economic, social, and environmental rights of the community, including land right, right to food, right to development, right to culture, labor rights, environmental right, and right to self-determination.³⁵ Most importantly, the government should recognize the

³⁵ These are the main substantives right of local community seriously undermined by the practice of large scale land investment as depicted under section 3 above.

existing use or ownership rights to land - whether statutory or customary, formal or informal, communal or individual. This entails the identification of all rights holders; legal recognition of all rights and uses; negotiation with land holders/users; fair and prompts payment for all acquired rights; and independent avenues for resolving disputes or grievances. In line with this requirement, the government should stop its worst practice of expropriating the land before it can be transferred to investor, thereby blocking direct negotiation between the right holder and investor. The government should also be honest in providing compensation as well as relocation assistance for those who have been displaced due to large scale land acquisition for FDI. In this regard, the FDRE Constitution, and most importantly, the new land expropriation proclamation of Ethiopia has taken positive steps towards ensuring land rights of local community in case their land is needed for investment, including the FDI.

The FDRE Constitution has plenty of provisions that recognize the land use rights of the indigenous farmers/pastoralists, to protect them against arbitrary eviction or displacement, and entitled them to get equitable compensation in case their land is expropriated for the public purpose.³⁶ All persons who have been displaced or whose livelihoods have been adversely affected as a result of State program have the right to equitable monetary or alternative means of compensation, including relocation with adequate State assistance pursuant to Article 44(2) of the Constitution. However, Article 40(3) of the Constitution, which considers land as common property of the Nations, Nationalities and Peoples of Ethiopia, and prohibits sale or other means of exchange in land, could potentially limit the land rights of the indigenous peoples and make it subject for abuse in the expropriation. Be that as it may, these constitutional rights to land shall be effectively implemented in FDI administration in the country.

To implement the land use rights of the land holder against arbitrary expropriation and displacement provided under the constitution, the new Expropriation of Landholdings for Public Purpose and Payment of Compensation proclamation³⁷ has recently been adopted addressing matters

³⁶ See Art 40 (4)-(8) of the FDRE constitution

³⁷ Expropriation of Landholdings for Public Purpose and Payment of Compensation, Proclamation No. 1161/2019[Expropriation of Landholdings proclamation]

related to land expropriation, payment of compensation, and resettlement of displaced people. The new expropriation proclamation affirmed the constitutional land holding rights; limited expropriation to the situation where the land is needed for better development and is beneficial to the public; stressed the need for transparent, judicious, and accountable procedure in all courses of expropriation (Article 5); requirement of notification and consultation with holder before effecting expropriation (Article 8 (1)); a requirement to give priority rights to develop land to the landholders according to the plan if he/she can do so (Article 7); the requirements of compensation which can be the property compensation, displacement compensation or compensation for loss of income with relatively effective manner of valuation, or giving replacement land whether it is individual or communal (Articles 11-15, 17); requirement to provide displacement/resettlement assistance that sustainably restore and improve livelihood of displaced people or if the expropriation is made for investment giving the displaced people option to own shares from the investment as well as the procedure and institution for dispute settlement and complaint submission mechanism (Articles 18-21)

Through all these efforts, the new expropriation proclamation aspires to ensure land holding rights (rights of indigenous peoples) in a relatively better way than the previous land expropriation proclamation, and it shall be effectively implemented in practice of FDI and acquisition for FDI in Ethiopia. However, this does not mean that the new land holding expropriation proclamation is perfect as there are many outstanding issues. For instance, the practice of expropriating the land before it can be transferred to an investor in itself is not proper because it hinders direct negotiation between the right holder and foreign investor. This, in fact, resulted from the constitutional drawback that prohibits any transaction on land. Moreover, the proclamation nowhere recognizes the traditional/informal tenure system of the indigenous peoples unless it is registered. But in reality most indigenous peasants and pastoralists have not been yet registered and given land holding certificate, and hence are not eligible for compensation as per Article 8(2) of the proclamation

The other important measure that needs to be undertaken with respect to FDI administration in Ethiopia is to put in place a domestic law, regulations,

directives, bilateral investment treaties or clauses in lease agreement addressing foreign investor's obligation regarding performance requirement, benefit sharing, minimum standards for labor, environmental and human rights. It is generally asserted that FDI shall contribute to economic, social and environmental progress of host countries and local community through different means like infrastructural development, technology and skill transfer, creating job opportunity, and paying fair wages and benefits. And one way to achieve this objective is the introduction of performance requirement, either as the conditions for investment permit and operation, or linking it to investment incentive.³⁸

Thus, performance requirements such as local content requirement that requires the large scale agricultural investor to prioritize local community in employment; requirement to achieve a specific level of local jobs, local selling of a certain quantity of its crops to support food security; requirement to engage in training workforce and technology/skill transfer to local farmers; requirement to conduct research and development; achieving better environmental or social outcomes; infrastructural development. Requirement to form a joint venture with local partner/farmer shall be integrated in the FDI administration in Ethiopia to make the FDI contribute to the economic, social and environmental progress of our country. And these could be achieved by putting foreign investor's obligation rewarding performance requirements in domestic laws, bilateral investment treaties or clauses in lease agreements.

Incorporating this minimum standard on Human Rights, labor and environment in investment legislation is extremely important to minimize the labor, human right and environmental impacts of investment. That way, investors should be required to establish and promote investments that are sufficiently labor intensive to contribute to employment creation, prioritize local peoples in employment, provide adequate wages and ensure protection of labor rights of the workers. In addition, there shall be a mechanism that encourages the evicted right holder as a result of the FDI to be a shareholder in the investment in question, or make the affected community a direct beneficiary of the FDI agreement revenues/lease price, or provide other

³⁸ Suzy H.Nikièma(2014) , "Performance Requirements in Investment Treaties Best Practices Series"

means to ensure benefit-sharing between the foreign investor and the local peoples to assist their right to development, and then right to food. Currently, there are no laws in place to ensure that the public shares the benefit from agricultural investment; thus, legal reform measures should be taken to address this legal vacuum. In short, the body in charge of FDI administration shall address these issues either in domestic law, bilateral investment treaties or in lease agreement with foreign investors, and strictly follow up its implementation.

Besides, the body in charge of FDI administration shall put in place the investor's obligation to conduct sustainability impact assessment before granting concessions to foreign investors. Sustainability assessment is an integrated form of impact assessment of the proposed project that covers environmental impact assessment, social impact assessment, cultural impact assessment and human right impact assessment. Sustainability assessment directs investment decision toward sustainable development.³⁹ It can be integrated into investment administration by making it a condition of approval of investment followed by ongoing monitoring with full consultations, involvement and participation, or consent of stakeholders. The assessment shall be made in consultation with affected local peoples and secure their free and prior informed consent; be open to the public, media, and civil society, and ensure their access to its recommendations in the assessment and the review and results of the monitoring processes; provide effective grievance procedure and effective remedies for those whose rights are violated or who may suffer as a result of the investment.

What is more, sustainable development requires FDI administration to be grounded on principles of good governance and public participation. In this regard, the principle of good governance requires investment administration that is built up on democracy and rule of law; respects human rights including right to self-determination; upholds legitimate interest of indigenous and local communities; dedicates to combat corruption and ensure transparency.⁴⁰ The principle of public participation and access to justice and information calls for investment administration that ensures full

³⁹ Alan Bond, Angus Morrison-Saunders & Jenny Pope (2012), Sustainability Assessment: Sstate of the Art, Impact Assessment and Project Appraisal, 30:1, 53-62

⁴⁰ Inferred from the reading of the New Delhi Declaration, principle,6

participation of the concerned stakeholders and local communities in all levels of decision-making; ensures right to hold and express opinions and impart idea in relation to investment project; provides grievance mechanism for those affected by the investment decision etc.⁴¹ Hence, to democratize FDI administration and ensure bottom up approach to investment, the practice of FDI administration in the country must ensure grass root public participation in investment administration and provide grievance submission mechanisms for those affected by the investment decision. Public participation in this context envisages not only direct participation of affected community, but also is concerned with civil society and indirect participation through their nearest local authorities, in line with jurisdictional separation set under the Constitution.

Finally, to ensure enforcement of the foreign investor's obligation, the Government shall put in place legal or administrative frameworks on investor's liability including criminal liability, civil liability, and a grievance procedure or align compliance with investor's obligation to investment permit and incentive. There shall be a procedure or law that entitles the victim of harm caused by the FDI to institute civil suit against investors and allow public interest litigation in case the harm is to environment or public at large. The government shall invest in empowering the local community to know their rights, and be able to organize themselves to safeguard their human rights and interests, and encourage civil society, non-governmental organizations, media, and activists to promote the rights and interests of local peoples and environment in all courses of large-scale land deals and operation of FDI in the country.

5. Concluding Remarks

Sustainable development is the aspiration of all nations, nationalities and peoples in Ethiopia as reflected in the preamble of the FDRE Constitution. Apparently, FDI in the country can be asserted as one weapon to actualize this aspiration for sustainable development; yet, FDI may also causes tragic social, environmental, and human right impacts unless effectively regulated. This paper investigated the nexus of FDI and sustainable development in Ethiopia, and pinpointed the need to integrate economic, social (human

⁴¹ he New Delhi Declamation, Principle 5

rights) and environmental pillars of sustainable development into the FDI administration as a way out to reach a win-win solution. To this end, the study employed library-based and policy-oriented research utilizing both primary and secondary sources.

The research found out that there is a visible nexus between FDI and the economic, social, and environmental pillars of sustainable development in Ethiopia. It confirmed that the FDI in the country produced little or no economic significance for the concerned local community. And even worse, it was found that the practice of FDI, especially foreign large scale agricultural investment in the country, economically marginalized the local farmers, undermined their human rights including land right, labor right, right to food, cultural right, right of indigenous people, and the environment. The study established quest for inclusive economic growth, respect for human right, and a need to curb social and environmental impacts of FDI as pressing issues that necessitate the integration of the economic, social, and environmental pillars of sustainable development into FDI administration. It advocates for sound FDI administration and policy that equally integrates the economic, social, and environmental pillars of sustainable development in its regulatory frameworks and process.

In particular, the Government organ in charge of FDI administration in the country shall ensure respect for land rights of local community, pay adequate compensation for land required for FDI, and put in place domestic laws, regulation, directives, bilateral investment treaties or clauses in lease agreement addressing foreign investor's obligations regarding performance requirement, benefit sharing, minimum standards for labor, environment and human rights standards and sustainability impact assessment. It shall also ensure public participation and consultation with the concerned local community in all decisions to transfer land to foreign investor and FDI administration. Additionally, the government shall put in place effective monitoring and dispute resolution mechanisms, and empower the indigenous community and other stakeholders to safeguard their rights and interests.