

# Overview of Environmental Impact Assessment in Ethiopia

## *Gaps and Challenges*

Mellese Damtie  
and  
Mesfin Bayou

## Overview of Environmental Impact Assessment in Ethiopia

Written by: Mellese Damtie and Mesfine Bayou

Reviewed by: Solomon Kebede, Head, Impact Assessment Service,  
Environmental Protection Authority.

Edited by: Nicholas Benequista

Cover Design by: Aynalem Melesse

Cover Photos by: EPA and MELCA Mahiber

\*\* This publication is supported by Heinrich Böll Foundation

Published and distributed by:

MELCA Mahiber  
P.O.Box 1519 Code 1250  
Addis Ababa, Ethiopia

Tel.: +251 11 550 7172  
+251 911 402 403

E-mail: [melca@ethionet.et](mailto:melca@ethionet.et)  
[www.melca-ethiopia.org](http://www.melca-ethiopia.org)

There is no copyright on this book. Any information in this book can be freely shared. However, acknowledgement of the source book would be appreciated.

MELCA Mahiber  
January 2008

## Table of Contents

About MELCA .....	i
1 Introduction .....	1
2 Background .....	1
3 International Instruments and the EIA .....	6
4 Country Experiences .....	9
4.1 African Countries .....	9
4.1.1 Trends in EIA use.....	10
4.1.2 The focal organs for the EIA process.....	11
4.1.3 Capacity to conduct EIA .....	12
4.2 Serbia.....	15
5 The EIA System in Ethiopia.....	16
5.1 Policy Framework for EIA.....	17
5.2 Legal Framework for EIA .....	18
5.2.1 The FDRE Constitution.....	18
5.2.2 Environmental impact assessment law .....	19
5.3 Sectoral Laws Relevant to EIA .....	21
5.3.1 Business law .....	21
5.3.2 Investment law .....	22
5.3.3 Land law .....	25
5.3.4 Fishery law .....	26
5.3.5 Wildlife law .....	27
5.3.6 Water law .....	28
5.3.7 Mining law .....	29
5.3.8 Genetic resource law .....	30

5.4	The Institutional Framework of EIA .....	30
5.4.1	Environmental protection organs .....	31
5.4.2	Sectoral institutions relevant to EIA .....	33
6	Gaps and Challenges .....	37
6.1	Lack of Awareness .....	39
6.2	Problems of Capacity .....	40
6.3	Absence of Effective Mechanisms for the EIA Process .....	43
6.4	Lack of Incentives .....	50
6.5	Weak Political Commitment .....	52
6.6	Weak Public Participation .....	56
7	Conclusions and Recommendations.....	58
	References .....	64



## **About MELCA**

MELCA means ford both in Amharic and Oromo Language - two of the widely spoken languages of Ethiopia. It is a crossing point on a river. We use the name symbolically to indicate our work to connect young and elders, culture and environment, traditional and Western, etc. A river also signifies a linkage with a source. We believe our culture is the source of our identity and wisdom. If it is destroyed or degraded, we will lose a vast amount of knowledge and our identity. A river flows forward, and we flow forward into the future taking with us what is positive and works for us and the earth.

The name MELCA also translates in English to Movement for Ecological Learning and Community Action. Ecological learning implies learning experientially, in a participatory way, holistically, empowering the learner, it also espouses democracy as a principle and outcome of learning. Learning in our case should equip us to facilitate action by communities.

MELCA Mahiber was born out of the African Biodiversity Network in 2004. The members are pioneering a way of enhancing traditional ecological knowledge and protecting fragile forest and watershed ecosystems through community participation and empowerment.

### **Vision**

To see empowered communities use and protect their biodiversity and Traditional Ecological Knowledge for sustainable life.

### **Mission**

To work for the conservation of biodiversity and for the revival and enhancement of Traditional Ecological Knowledge and to protect the rights of communities in Ethiopia through research, advocacy, endogenous development and intergenerational learning.

### **Objectives**

To promote research on the relationships between cultural /traditional/ people with their environment; to promote the diverse traditional ways of transferring knowledge and practices from generation to generation; to campaign, advocate and lobby for policy and legislation that effectively protects the rights of local communities as well as the integrity of cultural and local governance systems; and to promote endogenous development.

For detail information about MELCA please visit our website:  
[www.Melca-ethiopia.org](http://www.Melca-ethiopia.org)



## 1. Introduction

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

Since the Environmental Impact Assessment Proclamation № 299 of 2002 was adopted by the House of Peoples' Representatives, some efforts have been made to implement the law by the EPA and the relevant regional environmental organs, which were themselves established by Proclamation № 295 of 2002. In spite of these efforts, EIA in Ethiopia has until now remained weak.

Though five years have elapsed since the adoption of the EIA law in Ethiopia, the practice is still in its infantile stage, owing to a number of interacting factors that have slowed progress. As EIA is a complex process involving a large number of actors, there are many variables that can affect its proper implementation.

This short study tries to identify the problems preventing the full realization of the EIA Proclamation in Ethiopia and to recommend some solutions. The study is based on key informant interviews and an extensive review of academic and grey literature and official documents, especially those available at the Federal EPA's office.

## 2. Background

Economic development can have major impacts on the environment by degrading soils, polluting bodies of water, altering landscapes and threatening biodiversity, in some cases driving species into extinction. In turn, environmental impacts can impose

significant economic and social costs on society, especially with regard to human health. EIA, however, can predict development's negative effects and reveal strategies to avoid and mitigate them, and EIA can also point to possibilities to enhance the positive effects of development activities.

EIA arose in response to the pollution and the unnecessary degradation of natural resources caused by rapid and unsustainable industrialization, agricultural development, and technological progress. EIA recognizes that natural resources are finite and incapable of absorbing the unchecked demands of modern society.

EIA assesses the impacts of proposed initiatives before work on the initiatives begins. EIA is a formal study process and is used to predict the environmental consequences of a proposed major development project. In addition to assisting the formulation of proper development policy, EIA also provides a forum for public involvement in the decision-making process. (UNEP, 1988)

EIA is in essence the methodology for identifying and evaluating in advance any effect – be it positive or negative – that results from the implementation of a proposed project or public instrument. (EIA Proclamation, 2002) The Ethiopian law has defined EIA to include both project-level as well as strategic assessments. Just as EIA investigates the possible environmental impacts of a project, strategic level assessment looks at the possible environmental repercussions of government programs, strategies and laws. Assessments such as these that look at more than one project are often termed strategic environmental assessment (SEA). In this study, however, the writers consistently use the term environmental impact assessment (EIA) to include both project level assessment and strategic assessment, as the EIA Proclamation refers to both kinds of assessments.

SEA has been described as “the formalized, systematic and comprehensive process of evaluating the environmental impacts of a policy, plan or program and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision-making,” (UNEP, 2006)

The main reasons for conducting EIA are:

- To provide effective means of harmonizing and integrating environmental, economic, cultural and social considerations into a decision-making process in a manner that promotes sustainable development — prior to approval of a project or a public instrument; (UNEP, 1988)
- To bring about administrative transparency and accountability, as well as to involve the public and, in particular, communities in the planning of and decision-making on development which may affect them and their environment; (UNEP, 1988)
- To ensure the respect of the constitutionally guaranteed right of the people to live in a clean and healthy environment;
- To ensure that potential problems are foreseen and addressed at an early stage in the project’s planning and design. (UNEP, 1988)

From these points, one can infer that the aim of EIA is to prevent, reduce or offset the significant adverse environmental effects of development proposals, and to enhance the positive ones.

Every organism has the power to modify its environment, but none has so great a power as the human being. This power was heightened by the advent of the Industrial Revolution. Assisted by scientific discoveries and technological advancements, we humans caused great injury to the environment during the second half of

the 19<sup>th</sup> century and first half of the 20<sup>th</sup>. With natural capital still in abundance, scant attention was paid to the environment; instead, attention was almost exclusively focused on economic profitability. During this period, whether or not to proceed with a project was decided solely based on economic and technical feasibility, regardless of the costs to society and the environment – costs otherwise referred to as negative externalities.

As time passed, people began to realize that human activities had caused negative impacts on the environment. Laws and policies aimed at protecting the environment began to emerge in different countries. Initially, these laws sought to curtail the exploitation of natural resources; then they developed into natural resource conservation, protection and management laws. (Sands, 2003)

The natural resource conservation, protection and management laws took different forms. One of these was the EIA law.

The very first EIA law was adopted in the late 1960s by a US State, Michigan. (uneca.org, 2007) From that point on, many national and international legal instruments included EIA as a major environmental management tool, including the 1969 US National Environmental Policy Act (NEPA). NEPA requires, *inter alia*, the publication of an environmental impact statement (EIS) describing in detail the environmental impacts likely to emanate from an action (Wood, 2003).

Though EIA has primarily been concerned with predicting what impacts – both positive and negative – may result from a project, plan, program or strategy, it is also important to note that EIA can also help to ensure the viability of the activity. For instance, if a development project neglects its EIA, it may later face unforeseen costs related to resource depletion, public opposition or other equally expensive eventualities. (uneca.org, 2007)

The undeniable benefits of EIA have prompted every industrialized country in the world to make the practice mandatory in some form. (Sands, 2003) Less developed countries are now playing catch-up.

In Ethiopia, there is now an urgent need for the development of effective EIA. As casual observation suggests and studies confirm, the environment is not featured highly on the development agenda; the major preoccupation in project evaluation has been with short-term technical feasibility and economic benefits. Many development practices have not anticipated, eliminated or mitigated potential environmental problems early in the planning process. This has resulted in a seriously degraded natural environment. For instance, according to a survey of 118 industrial establishments in Addis Ababa, waste containing hazardous pollutants has been discharged into all-purpose streams, water bodies and the air. (Desta, 1989) A survey conducted by the Environmental Protection Authority (EPA) also revealed that most factories located in Addis Ababa do not have any way of treating waste. Evident environmental illnesses in urban centers, especially in Addis Ababa, are the manifestations of the growing challenges. (EPA, 2005) Another study conducted by the EPA revealed that privately-owned Ethio Coffee and Tea Development and Marketing PLC established the Gemadro Coffee Plantation Project\* without going through any EIA process, even using land that was not allocated to it. (EPA, 2002)

Such actions can have devastating impacts unless they are subject to the EIA process. EIA must not be seen as merely an additional bureaucratic burden when a number of studies and policy

---

\* Gemadro is located in Sheka Zone of the Southern Nations, Nationalities and Peoples Regional State. Sheka Zone is one of the areas where remnants of virgin forests exist in the country.

documents attest that the environmental condition of the country is alarming. \*\* EIA, however, is no panacea. It alone will not save the country's environment from the potentially harmful effects of current development. This does not mean that the only option is 'no development option,' but our development activities should at a minimum go through the EIA process to mitigate the adverse impacts and to augment the positive effects.

### **3. International Instruments and the EIA**

Since environmental assessments were first promoted in the US under the 1969 National Environmental Protection Act (NEPA), they have been embraced by a large number of national legal systems. Numerous international conventions, the policies of multilateral development banks, and various non-binding instruments adopted at the regional and global level – all now call for the use of EIAs. (Sands, 2003)

In recent years international cases arose regarding EIA. Notable examples include:

- New Zealand's application to the ICJ concerning France's resumption of underground nuclear testing (1995);
- The conflict over the Gabčíkovo-Nagymaros Project (1997) \*\*1; and
- The dispute between Ireland and the UK over the Mixed Oxide plant (2000).

These cases indicate a heightened recognition that international law requires the preparation of an EIA before a state engages in, or

---

\*\* For instance, see the Environmental Policy of Ethiopia, 1997; Forest Proclamation № 542/2007.

\*\*1 The dispute between Hungary and Slovakia concerning the Construction of two barrages (dams) on the River Danube. (1997) ICJ Reports 7.

permits, any activity which may have serious adverse impacts on the environment.

The principles of the 1972 Stockholm Declaration did not expressly identify EIA as an instrument of national or international policy. However, the rationale underlying EIA can be identified in the Principle 14, which states: *rational planning constitutes an essential tool for reconciling development and environment needs*. In the same spirit, Principle 15 reads: *planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and opting maximum social, economic and environmental benefits for all*.

As indicated in Paragraph 11(b) and (c), the 1982 examination and assessment of activities likely to pose a significant risk to, or which may disturb, nature requires that activities should not cease or find ways to minimize adverse effects on the basis of the results of the assessment or examination.

Agenda 21 calls on all countries to assess the environmental suitability of infrastructure for human settlements, to ensure that relevant decisions are preceded by EIAs and to take into account the costs of any ecological consequences. It also calls on countries to integrate environmental considerations in decision-making at all levels and in all ministries and to ensure that transparency and accountability prevail when economic or other policies have environmental repercussions.

Agenda 21 in Paragraphs 8.5(b) and 10.8(b) also endorses comprehensive analytical procedures for prior and simultaneous assessment of the impacts of decisions, including their environmental impacts and the assessment of costs, benefits and risks, and the systematic application of techniques and procedures for assessing environmental impacts. EIA is also encouraged in

specific Agenda 21 programs, including deforestation, conservation of biodiversity and management of biotechnology. Agenda 21 supports the need for individuals, groups and organizations to participate in the EIA process.

The 1992 Convention on Biological Diversity (CBD) requires parties to identify categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, to monitor their effects through sampling and other techniques and to require EIA of proposed projects that are likely to have significant adverse effects on biological diversity. These requirements are supplemented by decisions of the Conference of Parties. One of the decisions made by the Conference of Parties (Decision IV/10) calls on members to submit to the secretariat impact assessments, reports on the effectiveness of EIA, reports relating to national legislation on EIAs, and incentive schemes to encourage participation in EIA programs.

Article 14 of the CBD also requires parties to promote notification, exchange of information and consultation on activities under their jurisdiction which are likely to significantly and adversely affect the biological diversity of other states or areas beyond the limits of national jurisdiction, and to provide for immediate notification in any case of imminent or grave danger or damage.

The Akwé: Kon Voluntary Guidelines provide guidance to parties and governments on the incorporation of cultural, environmental and social considerations of indigenous and local communities into new or existing impact assessment procedures. They should be applied in conjunction with the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process in strategic environmental assessment

endorsed by the Conference of the Parties in decision VI / 7A and contained in the annex to that decision.

The Akwé: Kon Voluntary Guidelines generally provide for a comprehensive EIA process that duly considers the sacred sites, traditional ecological knowledge, cultural heritage, etc. of indigenous and local communities before the implementation of development project.

The 2000 Protocol on Biosafety to the Convention requires risk assessments to be carried out in respect to important decisions relating to living modified organisms, in order to identify and evaluate the possible adverse effects of such organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

All these instruments attest that EIA has been adopted both at national and international levels as a substantive and procedural legal tool for predicting the possible positive and negative environmental impacts and formulating mitigation strategies.

#### **4. Country Experiences**

Reflecting on experiences from other countries provides insight into how far Ethiopia has progressed with EIA, and how far the country still needs to go. However, it must be noted that this is not a comparative study of EIA systems of different countries. Countries at different stages of economic and social development have been selected for this short review.

##### **4.1. African Countries**

African countries are at various stages, as far as the development in the EIA is concerned. For our analysis we consider three countries; Ghana, Tunisia and South Africa. Well functioning institutions and appropriate regulatory frameworks and procedures

are important prerequisites to the effective application of EIA. All of the three countries have established administrative bodies for EIA. (UNECA, 2005)

Countries can be categorized in terms of their progress on EIA into various levels ranging from the most advanced to the least developed. None of the three countries reviewed here are at the most advanced level, nor is any other country in Africa. (UNECA, 2005) The Advanced category is characterized by robust and functional EIA systems that are generally mainstreamed while those countries with the least developed EIA system have even no EIA laws in place.

The three countries selected here have a system which is functional and relatively developed; institutional arrangements, administrative directives, a framework law and subsidiary regulations are in place, and EIA has been practiced for 10 years or more. (UNECA, 2005)

#### **4.1.1. Trends in EIA use**

South Africa has a history of EIA application dating back to the 1970s, before the EIA law was in place. Several hundred voluntary EIAs were conducted before 1989, when the EIA law was adopted. In the last decade, the number of applicants has shown a magnificent growth in South Africa. (UNECA, 2005)

In Ghana, the number of environmental assessment applications increased from 294 in 1996 to 755 in 2003. This represents an average of over 500 applications per year. Similarly, the number of Environmental Impact Statements (EIS) received has shown a steady increase since 2000, and now over 40 EISs are handled annually on average. A similar trend was observed in Tunisia, where the number of EIA applications received increased from 230 in 1991 and has stabilized between 1000 and 1200 per year since 1996. (UNECA, 2005)

#### **4.1.2. The focal organs for the EIA process**

Inter-agency or cross-sectoral multidisciplinary committees assist most EIA administrative agencies in the execution of their duties. In addition, most government institutions have institutionalized or are in the process of institutionalizing EIA by making its use in their sectoral activities a requirement, either by policy or by law. (UNECA, 2005)

As far back as 1985, the Ghana Investment Code required the Ghana Investment Center (now Ghana Investment Promotion Center) to consider environmental concerns in its activities. Other examples of legislation with EIA requirements include the Energy Commission's Act of 1997 and the Water Resources Commission Act of 1999. The main administrative body to handle EIA issues in Ghana is the Ghana Environmental Protection Agency, which was established in 1994. (UNECA, 2005)

Also in Tunisia, the requirement to conduct EIA and obtain approval from a competent authority is stipulated by sectoral legislation. These apply to the exploitation of quarries; land use and urban planning; waste/management and hydrocarbons. (UNECA, 2005)

Regarding decentralization of EIA administration and regulation in Tunisia, it is mainly concentrated at the central level. The Environmental Assessment and Audit (EAA) Department of Ghana's EPA works through ten EPA regional offices and two district (zonal) offices. However, the capacity of district assemblies to formulate and implement environmental management plans remains limited. (UNECA, 2005)

In Tunisia, it is the National Agency for the Protection of the Environment that is responsible for the review of the EIS. In Ghana, in addition to the national review committee, other

committees are established to review small and medium-scale projects. The reason for setting up these committees is to reduce the load on the national review committee and to facilitate quick decision-making. (UNECA, 2005) The different review systems have their own advantages and disadvantages. For instance, when a single institution is involved in the review system, the review process might be weakened due to lack of input from other stakeholders. Conversely, when extremely large numbers of stakeholders are involved, decision-making can be a lengthy process.

In South Africa, provincial governments have been empowered by EIA policies. By law, provinces have control over the approval of EIAs for development activities, and have in turn partially delegated these responsibilities to local authorities. Still, no additional funding has been provided to help the provinces with this added responsibility. Hence provincial authorities are inadequately staffed to handle the volume of EIAs submitted for review. (UNECA, 2005)

Clearly, the EIA process has been more decentralized in South Africa than in Tunisia and Ghana. This is probably due to the fact that South Africa is federalized, while both Ghana and Tunisia are unitary countries.

#### **4.1.3. Capacity to conduct EIA**

Regarding issues of EIA capacity, countries have varied experiences. In addition to the establishment of viable institutional and regulatory frameworks, it is important that all stakeholders involved in the EIA process have the necessary capacity and expertise to effectively administer and apply the tools.

In Ghana and Tunisia, some tertiary institutions provide training on EIA, which is run as part of various environment-related courses.

In both countries, in addition to the trainings offered by tertiary institutions, professional associations and NGOs provide training on workshop basis. South African tertiary institutions and civil societies in particular have begun to play a leading role in promoting EIA across the continent. (UNECA, 2005)

Unless institutions which are designated to participate in EIAs are staffed by capable personnel, the EIA system will be weak and unable to accomplish the desired goals.

With respect to the professional quality and skills of those consultants involved in the Environmental Impact Study Report (EISR), South Africa has put in place regulations for their certification and registration. (UNECA, 2005) This practice has contributed to a high quality of reports. South Africa also distinguishes itself by recognizing the Development Bank of South Africa as an interested and affected party in the process of conducting impact assessments on the projects it funds. This places pressure on the Bank to ensure that environmental risks and liabilities are addressed in an acceptable manner. Additionally, the Bank always reserves the right to demand an impact assessment on a given project, even if one is not required by law. (UNECA, 2005)

## MELCA Mahiber

	<b>South Africa</b>	<b>Ghana</b>	<b>Tunisia</b>	<b>Ethiopia</b>
Enabling legislation	Yes, 1989	Yes, 1994	Yes, 1988	Yes, 1995
Specific legislation/ regulations	Yes, 1997	Yes, 1999	Yes, 1991	Yes, 2002 (Proclamation)
General and specific guidelines	Yes, 1997	Yes, 1995 and 1999	Yes	Yes, (Draft)
Formal provisions for public participation	Implied under review clause	Yes, 1999	No	Yes, 2002
Main administrative body/bodies	Department of Environmental Affairs and Tourism	Ghana Environmental Protection Agency, 1994	National Environmental Protection Agency, 1988	Environmental Protection Authority and Regional Offices, 2002

Source: UNECA, 2005

## 4.2. Serbia

In Serbia, EIA and its environmental assessment system have developed together through the 1990s. The EIA/SEA Act of Serbia was designed to allow for synchronization between the EIA and SEA procedures. (Sevic, 2005)

In Serbia, EIA is applicable for projects that may result in major environmental pollution or that constitute a risk to human health, etc. Without passing through the EIA process, no project may begin. (Sevic, 2005) An interesting aspect of the Serbian EIA law is that it stipulates that stakeholders shall be informed by public announcement of decision-making procedures, shall take part in the process by submitting opinion, comments and suggestions to the competent authority and shall be timely informed about the decisions. (Sevic, 2005)

Before 2002, the administration of the EIA process occurred only at the republic level. All EIA documentation was being sent to the federal-level Ministry of Environment for review and approval. Since 2002, however, review and approvals are being carried out by the Republican Ministry of Environment, the Provincial Secretariat for Environmental Protection and the City or Municipal administration, depending on the type and location of the project. (Sevic, 2005)

There are a number of professional (consulting) organizations involved in the process of writing EIAs and SEAs. These include university departments and scientific institutions, as well as environmental engineering consultancies. (Sevic, 2005)

As stipulated under Article 5 of the Serbian EIA Act, a developer may not commence a project without having previously completed

the impact assessment procedure and obtained the approval of the EIA study from the competent authority. (Sevic, 2005)

For public participation, the Serbian law requires the notification of republic participation through the appropriate media, at the expense of the project. (Sevic, 2005)

The Serbian EIA Act (Article 19) specifies that EIA can be performed by legal persons and entrepreneurs who are licensed for the execution of planning activities, engineering activities, and studies and analyses. (Sevic, 2005)

The EIA Report is appraised by members of a special review team, the Technical Commission for Review, which must have at least one member from the competent authority and at least one independent expert. (Sevic, 2005) The EIA review process is conducted at various levels, though by requirement is completed within 40 days. (Sevic, 2005)

## **5. The EIA System in Ethiopia**

Prior to becoming a legal requirement in 2002, the application of EIA in Ethiopia was introduced by a few sectors. The practice of contemplating environmental and health impacts was introduced as early as 1980 into water resources development projects assisted by UNDP/WHO, though the main focus was limited to water-related and water-based health problems (Solomon, 2006). This practice then evolved into a formal requirement in international donor assisted and financed projects in various sectors.

The former Ethiopian Valleys Development Authority was the first national institution to incorporate EIA into its activities. The authority developed its own specific guideline for the application of EIA in pre-feasibility and feasibility studies of potential medium-scale irrigation projects (Solomon, 2006). Even though

these efforts were limited to the irrigation sector and narrow in scope, and despite that they were donor-driven, they have nonetheless contributed to the emergence of the system of EIA that exists in the country at present.

### **5.1. Policy Framework for EIA**

Until 1997, Ethiopia did not have a comprehensive environment policy as such. The Environmental Policy of Ethiopia was issued in 1997 to provide overall guidance in the conservation and sustainable utilization of the country's environmental resources in general. The overall objective of the environmental policy is to promote the sustainable social and economic development of the country through, *inter alia*, sustainable management and utilization of the natural resources of the country. Among the specific objectives the environmental policy seeks to achieve are ensuring the conservation, development and sustainable use of essential ecological processes and life support systems, biological diversity and renewable natural resources; and the empowerment and participation of the people in environmental management.

The environmental policy lays the foundation for environmental impact assessment in the country. In section 4.9, the environment policy stipulates the country's policies regarding EIA. It provides for the enactment of a law which requires that an appropriate EIA and environmental audits be undertaken on private and state development projects; and the development of detailed technical guidelines that direct the undertaking of EIA and environmental audits in the various sectors. It also provides for the establishment of an institutional arrangement responsible for undertaking, coordinating and approving EIA and the subsequent environmental audits.

Furthermore, the environmental policy determines the scope and key elements of the EIA process. It states that EIA should consider not only physical and biological impacts, but also address social, socio-economic, political and cultural conditions; and that environmental audits should be undertaken at specified intervals during project implementation to ensure compliance with terms of EIA authorization. It also state that environmental impact statements should always include mitigation plans for environmental management problems and contingency plans in case of accidents; and that the EIA procedure should provide for an independent review and public comment on environmental impact statements before they are considered by decision-makers. While the environment policy provided the policy basis of EIA process in the country, it has one major limitation: it does not subject public instruments to the EIA requirement.

## **5.2. Legal Framework for EIA**

### **5.2.1. The FDRE Constitution**

Being a supreme law of a land, a constitution provides the basic framework on which detailed laws shall be developed for various sectors. The 1995 Constitution of the Federal Democratic Republic of Ethiopia contains provisions that support the enactment of EIA legislation. In this regard, it stipulates that the design and implementation of development programs and projects in the country should not damage or destroy the environment; and recognizes the right of the people to be consulted and express their views on the planning and implementation of environmental policies and projects that affect them (Art. 92). In addition, the constitution recognizes the right of citizens to live in a clean environment, and, where they are displaced or their livelihood has been adversely affected by the development projects undertaken by the government, the rights to get commensurate monetary or

alternative compensation, including relocation with adequate state assistance (Art. 44). These provisions provide a perfect constitutional basis for the development and implementation of an effective EIA process.

### **5.2.2. Environmental impact assessment law**

Following the provisions of the environment policy, the Ethiopian government introduced the Environmental Impact Assessment Proclamation (Proclamation № 299 of 2002). The proclamation requires an EIA process for any planned development project or public policy which is likely to have a negative impact on the environment. With regard to development projects, the proclamation stipulates that no person shall commence implementation of a proposed project identified by directive as requiring EIA without first passing through environmental impact assessment process and obtaining authorization from the competent environmental agency (Art. 3(1)). In line with this, project proponents must undertake EIA and submit the report to the concerned environmental body, and, when implementing the project, fulfill the terms and conditions of the EIA authorization given to them (Art. 7). Moreover, the proclamation allows for the imposition of a fine between fifty-thousand and one hundred thousand birr on any project owner who commences implementation of a project without obtaining authorization from environmental agencies or who makes false presentation in the environmental impact assessment study report (Art. 18).

Furthermore, the proclamation obliges licensing institutions, prior to issuing investment permits or operation license to projects, to ensure that the relevant environmental bodies have authorized the implementation of the projects (Art. 3). In addition, it requires such licensing institutions to suspend or cancel the permit or license they have issued for projects where the concerned environmental

body suspends or cancels the authorization given for implementation of the project (Art. 12). These provisions are important to ensure that project owners comply with the EIA requirement.

The proclamation also provides for public participation in the environmental impact assessment process. It requires environmental bodies to ensure that the comments made by the public (in particular the comments by the communities likely to be affected by the implementation of a project) are incorporated into the EIA study report as well as into its evaluation (Art. 15). To this end, it requires environmental bodies to make any EIA study report accessible to the public and to solicit comments thereon.

The proclamation also requires public instruments, which are identified by directive as requiring EIA, to pass through environmental impact assessment process prior to their approval. In line with this, it obliges government organs to ensure that their policies have passed through EIA process prior to their submission for approval (Art. 13).

Having provided the basic framework of EIA, the proclamation envisages the issuance of specific directives and guidelines that further specify implementation of the EIA process. Particularly, it requires the Environmental Protection Authority (EPA) to develop a directive identifying categories of projects likely to have negative impact and thus require EIA (Art. 5). It also requires EPA to issue of guidelines that determine the elements necessary to prepare and evaluate EIA study report (Art. 8). The Environmental Protection Authority has already developed such draft directives and guidelines but they have not yet been formally adopted and put into force.

### **5.3. Sectoral Laws Relevant to EIA**

It has been recognized that activities in the various economic sectors have the greatest impact on natural resources in particular and the environment in general. Accordingly, integrating EIA into the laws, regulations and decision-making process in such sectors is crucial. The following section describes the sector-specific laws and regulations in the country into which EIA should be integrated.

#### **5.3.1. Business law**

Business is one of the economic activities that has an impact on the environment. Thus EIA should be integrated into the laws and regulations that regulate the licensing and operation of businesses. The licensing and operation of business activities in the country at present are regulated by the Trade Registration and Business Licensing Proclamation (Proclamation № 67/1997). The proclamation subjects the undertaking of commercial activities in the country to the requirement of business license. Article 21 of the proclamation stipulates that no person may carry on commercial activity without obtaining a business license.

In addition, the proclamation requires that any commercial activity should be undertaken in compliance with environmental protection regulations. It regards the observance of environmental protection laws both as a pre-condition for issuance, and the ground for suspension and revocation of, a business license. Article 22(2) of the proclamation requires presentation of a certificate from environmental agencies to the effect that the intended business activity does not violate environmental protection laws as pre-condition for the granting of business license. The proclamation also states that, if a licensed business is ascertained to have violated environmental protection laws, its license may be suspended until the violation is rectified. If the issue is not rectified

within the specified time or if the business repeatedly commits the breach, the license may be revoked.

Given that environmental impact assessment is one component of environmental laws, it can be inferred that the Trade Registration and Business Licensing Proclamation (Proclamation № 67/1997) has integrated EIA into the framework regulating the licensing and the operation of businesses. In other words, the proclamation provides a legal basis to require a business license applicant to seek an EIA authorization from environmental agencies before the trade license is issued, and to suspend or revoke the trade license should the business owner fail to comply with the conditionalities specified in the EIA authorization.

### **5.3.2. Investment law**

Investment is an expenditure of capital by private individuals to establish a new business or to expand or upgrade a business that already exists. Legislation often seeks to provide incentives to promote private capital investment, especially by promoting participation of foreigners in the national economy. In Ethiopia, where investment has boomed in recent years, causing deleterious effects on the environment and natural resource base of the country, it is crucial that EIA be integrated with the current legal framework for investment.

The Investment Proclamation № 280 of 2002 (as amended by Proclamation № 375/2003) and Investment Regulation № 84 of 2003 are the laws that regulate investment activities in the country at present. According to the Investment Proclamation, having an investment permit is a requirement for foreign nationals to undertake any commercial activities in Ethiopia; they cannot carry out commercial activity in the country without first having an investment permit. A foreign national can obtain an investment

license provided that the sector is open to foreign investment (not reserved for nationals) and that the minimum investment capital requirement is met. On the other hand, foreign nationals who are Ethiopian by birth and wish to be treated as domestic investors are not required to obtain an investment permit in order to undertake commercial activities in the country, though they must also forego investment incentives granted to foreign investors. In other words, if foreign national who are Ethiopian by have the option to obtain a business license without the need to obtain investment permit.

An investment permit is valid for a period of one year and may be extended upon application by the investor to the proper investment authorities. Investors must acquire operation (trade) license prior to commencing production or provision of service. This means that an investment permit serves only for the period of construction/establishment of the business project. The key purpose of investment permit is thus to facilitate acquisition of land and services such as power, water, telecommunication and other infrastructure services, apart from authorizing foreign nationals to undertake business activities in the country and entitling domestic investors to investment incentives.

The issuance of an investment license provides an opportunity for EIA. According to the Investment Proclamation (Proclamation № 375/2003), investment permits can be obtained upon submission of a completed application form to investment authorities. The application form requires the applicant to provide information relating to the status of the applicant, the kind of the intended investment activity, the investment capital, the investment area (region only), the kind and size of intended production or service, and the number of jobs the investment shall create. Apart from these, the application form does not require presentation of an EIA or any information related to the environmental impact of the

intended investment project. Investment authorities issue an investment permit within a matter of hours upon submission of a properly completed application form, and notify by letter the concerned sectoral institutions, of which the competent environmental agency is one, requesting the necessary support and follow-up of the implementation of the investment project according to the relevant laws of the country.

The monitoring of investment projects provides another opportunity for the application of EIA. The Investment Proclamation specifies the grounds for the suspension and revocation of investment licenses. An investment license may be suspended or revoked if the investor obtained the investment permit fraudulently or presented false information; transferred the investment permit to a third person without permit from the investment authority; failed to renew the investment license in due time; misused or illegally transferred incentives to third parties; or engaged in commercial activity without obtaining a business license. Clearly, the Investment Proclamation does not include the commencing of an investment project without first obtaining EIA authorization as grounds for suspension or revocation of a license.

The other aspect of the Investment Proclamation with potential relevance to EIA relates to the issuance of an operator's license to provide a product or service. Proclamation № 375/2003 gives authorities the power to issue trade/operation license to investors, upon commencement of production and service, representing business licensing institutions and in accordance with the relevant laws of the country. Nevertheless, Article 24(5) of the proclamation stipulates that investment authorities may only issue a business license upon the investor's signed pledge to respect the relevant laws and directives of the country, notwithstanding the provision of Article 22(2) of the Commercial Registration and

Business licensing Proclamation № 67/1997. Article 24(5) of the Investment Proclamation № 375/2003 in effect repeals article 22(2) of the Commercial Registration and Business licensing Proclamation № 67/1997, which makes presentation of authorization from environmental agencies a requirement for issuance of business license. The Investment Proclamation № 375/2003 creates a loophole for investment activities to begin before going through an EIA, thereby rendering the EIA meaningless. In other words, the current process for issuing investment licenses does not force investors to comply with the EIA requirement. This allows reckless investors, or investors who are ignorant of the EIA requirement, to inflict damage on the country's environment and natural resources.

### **5.3.3. Land law**

The legal framework governing how land is allocated for investment presents other possibilities for the incorporation of EIA. Regarding the utilization of land for investment, Ethiopia's 1995 Constitution provides for the right of investors to obtain land for investment purpose on lease in accordance with conditions to be specified by subsidiary laws (Art. 40). In line with this, the Rural Land Administration and Use Proclamation (Proclamation № 456/2005) recognizes the right of investors to obtain and use rural land, provided that priority is given to peasants and pastoralists (Art. 5(4)(a)). Once land has been allocated, the proclamation obliges landholders to sustainably use and manage the property. Land users thus face the threat of losing their right to the land in the case that the holding is damaged due to misuse and mismanagement, in accordance with details to be specified by regional land laws.

Having provided the guiding rules, the Rural Land Administration and Use Proclamation (Proclamation № 456/2005) leaves the

particulars to be legislated by regional states, allowing for the spirit of the law to be interpreted in harmony with the situation on the ground in their respective regions. Accordingly, regions have issued their regional rural land laws in recognition of the rights of investors to obtain and use rural land. The Rural Land Administration and Utilization Proclamation of the Southern Regional State (Proclamation № 110/2007), for instance, recognizes the rights of private investors to obtain rural land for investment, with priority given to peasants and pastoralists (Art. 5(15). and Art. 10(5) of the proclamation further stipulate that the development plan submitted by investors seeking land must not lead to the degradation of the land or surrounding environment). In addition, it obliges investors to sustainably manage their holding, including any and all natural resources therein (Article 10(6)). While the rural land law of the Southern Nations Regional State stipulates that the development plan that investors present to obtain rural land must not lead to land or environmental degradation, it fails to subject the allocation of rural land to the requirement of EIA.

#### **5.3.4. Fishery law**

The government has ratified fishery legislation with a view to ensure the conservation, development and utilization of fishery resources in the country (Proclamation № 315 of 2003). Fishery laws seek to ensure the sustainable use of fishery resources in the country. To this end, the proclamation stipulates that federal or regional organs should ensure that development programs and projects will not have a negative impact on the fishery resources of a basin (Art. 8). In addition, it states that any subsidiary fishery laws and regulations to be developed under the proclamation should incorporate EIA. Furthermore, it states that permits for the establishment and operation of an aquaculture for commercial

purposes shall not be issued unless there is sufficient land and water resources and unless it has been ascertained by the competent authorities that the intended aquaculture will not cause negative impact on the surrounding environment and natural resources (Art. 6). While the proclamation contains important provisions that support EIA relevant to the sustainable utilization of fishery resources, it does not specifically require fishery developers to submit an EIA report to environmental agencies.

### **5.3.5. Wildlife law**

The management and utilization of wildlife resources in the country was regulated, until recently, by the wildlife legislation issued in 1980 (Proclamation № 192 of 1980), which remained unchanged in spite of the new trends in wildlife management. A new Wildlife Proclamation was finally enacted with the view to adapt the management of wildlife to existing realities (Proclamation № 541/2007).

Recognizing that the previous strategy to conserve wildlife was not working, the new Wildlife Proclamation seeks to enable the active participation of local communities living around wildlife conservation areas and private investors in the conservation, development and utilization of wildlife resources; and to enhance the contribution of wildlife resources to poverty reduction by maximizing their economic benefit. In relation to maximizing the economic benefit from the wildlife resources of the country, the proclamation encourages investment in wildlife-based tourism, to be conducted in such a way that shall not endanger the ecological integrity of protected areas (Art. 11). In addition, it requires that any economic activity to be undertaken in wildlife conservation areas shall be carried out in accordance with the proclamation, and its corresponding regulations and directives (Art. 10). While the proclamation's assertion that wildlife based tourism should not

endanger the ecological integrity of the protected areas is a positive measure, the proclamation fails to subject the granting of permits for development of wildlife tourism infrastructures such as hotels, camp or other facilities in protected areas to the EIA process. Unless the regulations and directives envisaged to be issued under the Wildlife Proclamation address this issue, there will be a legislative gap in integrating EIA with wildlife-based tourism development.

### **5.3.6. Water law**

The conservation, utilization and development of water resources in the country at present is regulated by the 2000 Water Resources Proclamation (Proclamation № 197/2000) and the 2005 water resources regulation (Regulations № 115 of 2005). The Water Resources Proclamation aims to ensure that the water resources of the country are duly conserved and protected from harmful effects and utilized for the highest social and economic benefits of the country. Accordingly, the proclamation describes the measures that must be taken for the conservation and protection of waterways and the conditions under which water resources may be exploited. The proclamation prohibits the release of any waste that endangers the lives of humans, animals or plants into water bodies. In addition, it prohibits the clearing of trees or vegetation and the construction of residential houses along the banks of water bodies so as to ensure their protection.

Related to the utilization of water resources, the proclamation establishes a system of water resource utilization based on permits. For example, permits are required for the construction of waterworks and for the supply or transfer of water, even if the water is received from another supplier. The water resources regulation lays out the conditions for the issuance, suspension or termination of a water use permit. In this regard, it stipulates that a

water use permit will not be issued if the plans entail the creation of pollution or harmful effects to the water resources and the environment. In addition, it states that a water use permit may be terminated or suspended if the water resource in use is temporarily or permanently depleted, or if the usage of the water resource has caused negative impact on the environment. While the water law seeks to ensure the sustainable use of water resources, it falls short of making EIA a mandatory requirement for the issuance of water use and development permits.

### **5.3.7. Mining law**

The Mining Proclamation (Proclamation № 52/1993) and the Mining Operations Regulation (regulation № 182/1994) regulate the mining of mineral resources in the country. These mining laws contain provisions aimed at ensuring that mining activities are carried out in a way and manner that shall not cause significant damage to the environment. In this respect, the mining laws determine the rules on the utilization of water and timber resources in a mining area. While the mining law allows a miner to use water and timber found in the leased area for the mining operation, it requires at the same time that the use of water should not result in substantial reduction of the quantity or quality of the water needed by other users. It also stipulates that one cannot construct dam or divert watercourses without the prior approval of the appropriate government body. With the exception of the clause on pollution, the mining law does not strictly prohibit uses of water by miners that may cause other environmental problems, such as damage the ecosystem, reduce biodiversity or degrade water resources. Holders of a mining license may log and use timber as dictated by other applicable laws and must submit a restoration plan.

Moreover, the mining law obliges a licensee to conduct the operation in a manner that minimizes damage or pollution to the

environment. It also requires a licensee to immediately notify the licensing authority of anything likely to jeopardize the property or the environment and to immediately take the necessary steps to mitigate the impacts.

#### **5.3.8. Genetic resource law**

Following the Convention on Biological Diversity, the government of Ethiopia enacted legislation which provides for community rights and access to genetic resources and traditional knowledge (Proclamation № 482/2006). The proclamation subjects access to genetic resources and community knowledge in the country to the requirement of permit from the Institute of Biodiversity Conservation, and stipulates the conditions under which access to genetic resources may be denied.

Though the proclamation does not directly stipulate that an access application should first go through an EIA process as such, it does contain provisions meant to ensure that access to genetic resources is carried out without causing harm to the environment. In this regard, it states that access may be denied if the planned use may cause, *inter alia*, an undesirable impact on the environment, an ecosystem, human health or the cultural values of local communities (Art. 13). It also obliges an access permit grantee to respect the laws of the country, particularly those relating to sanitary control, biosafety and environmental protection (Art. 17). Again, however, the law fails to require applicants wishing access to genetic resources to conduct a formal EIA process.

#### **5.4. The Institutional Framework of EIA**

The current system of government in Ethiopia is organized into a federal structure, comprised of a federal government and nine regional states. Government administration of EIA in Ethiopia is thus shared between the federal government and regional states.

This section provides an overview of the institutions responsible for, and relevant to, the administration of EIA in the country.

#### **5.4.1. Environmental protection organs**

The Environmental Protection Organs Establishment Proclamation (Proclamation № 295/2002) established the institutions responsible for regulation of EIA; these include the Environmental Protection Authority, Regional Environmental Agencies and the Sectoral Environmental Units.

##### **a) Environmental protection authority**

The Environmental Protection Authority (EPA) is the lead federal environmental organ with the objective of formulating policies, strategies, laws and standards to ensure social and economic development activities in the country sustainably enhance human welfare and the safety of the environment (Art. 6). The regulation of EIA is one of the key responsibilities entrusted to the EPA. In this respect, EPA is responsible for establishing a system for undertaking EIA on public and private projects as well as on social and economic policies, strategies, laws and programs. Specifically, it is responsible for developing a directive that identifies categories of projects likely to have negative impact and thus require EIA, and for issuing guidelines that direct the preparation and evaluation of EIA study reports (Proclamation № 299/2002, Art. 5 & 8). In addition, EPA is responsible for evaluating the EIA study reports on projects subject to federal licensing, execution or suspension and on projects likely to create inter-regional impacts. The EPA is also responsible for auditing and regulating the implementation of such projects. Moreover, EPA is responsible for giving technical support pertaining to environmental management and protection to regional states and sectoral institutions.

**b) Regional environmental agencies**

The Environmental Protection Organs Establishment Proclamation (Proclamation № 295/2002) requires regional states to establish or designate their own regional environmental agencies. The regional environmental agencies are responsible for coordinating the formulation, implementation, review and revision of regional conservation strategies; and for environmental monitoring, protection and regulation (Art. 15). Relating to EIA specifically, the Environmental Impact Assessment Proclamation (Proclamation № 299 of 2002) gives regional environmental agencies the responsibility to evaluate the EIA study reports on projects that are licensed, executed or supervised by regional states and that are not likely to entail inter-regional impacts. Regional environmental agencies are also responsible for auditing and regulating the implementation of such projects.

The institutional standing of regional environmental agencies varies from region to region. In some regions, they are established as separate institutions, while in others they are constituted within other institutions. For instance, in the Oromiya Regional State, an Environmental Protection Office is established as separate institution, while in the Southern Nations Nationalities and Peoples Regional State, the regional environmental organ is situated within the Bureau of Agriculture and Rural development as an Environmental Impact Assessment and Pollution Control Team.

**c) Sectoral environmental units**

The other environmental organs created by the Environmental Protection Organs Establishment Proclamation (Proclamation № 295/2002) are the “Sectoral Environmental Units,” which are mandated to be established at every competent agency with the responsibility of coordinating and following up activities in

harmony with environmental protection laws and requirements (art. 14). Such sectoral environmental units can play important role in ensuring that EIA is carried on development projects and public instruments initiated by government institutions. However, sectoral environmental units have not been established as yet in most of the relevant federal institutions, except at the Ethiopian Roads Authority, Ethiopian Electric Power Corporation and the Ministry of Water Resources. (Kebede, 2006) At the regional level, not a single sectoral environmental unit has been established as yet.

#### **5.4.2. Sectoral institutions relevant to EIA**

##### **a) Licensing institutions**

###### ***Ministry/Bureau of Trade and Industry***

Business activities are regulated at the federal level by the federal Ministry of Trade and Industry, and by the Bureaus of Trade, Industry and Transport the Trade at regional levels (Proclamation № 67/1997). These institutions have the power to issue business licenses for most commercial activities and the obligation to see that they are operated in accordance with the law. There are some commercial activities, however, which because of their technical nature are licensed by other institutions.

###### ***Investment institutions***

The Ethiopian Investment Agency is the federal institution responsible for promoting, coordinating and facilitating foreign investment in the country. In particular, the Investment Agency is vested with the power to approve and issue investment permits, trade registrations and operating licenses to foreign investors; and to facilitate acquisition of land by foreign investors (Proclamation № 280/2002). According to Ato Solomon Kebede, an official at the Environmental Protection Authority, the Investment Agency has

issued investment licenses to about 23,000 investors within the last five years.

Investment licenses for domestic investors are issued by regional investment commissions. Regional investment commissions are responsible for facilitating and promoting investment activities in the regions. The Investment Commission of SNNPRS, for instance, has the power to, *inter alia*, issue and renew investment licenses and, where necessary, suspend and revoke them; initiate policy and implementation proposals necessary to create conducive investment conditions; take over administration of land designated for investment and ensure that the land is indeed used for investment; follow up projects and investment licenses and ensure that project owners fulfill their obligations; and provide advice and support to investors (Proclamation № 106/2007).

### ***Ministry/Agency of Mines and Energy***

The Ministry of Mines and Energy is responsible for the development and proper utilization of mineral resources in the country (Proclamation 4/1995 article 15). In relation to this, the ministry has the responsibility to, among other things, prepare laws on the utilization of natural resources, issue licenses to private investors engaged in large-scale mining activities and supervise their operations.

Regional Agencies of Mines and Energy are responsible for regulating the utilization of mineral resources at regional levels. In this regard, they have the responsibility to, *inter alia*, study the mineral resources in the regions and prepare directives and manuals on the utilization of mineral resources in the region, issue license for producers of construction minerals and for small-scale mineral producers and supervise the operations the producers (Proclamation № 106/2007).

**b) Natural resources management institutions*****Ministry/Bureau of Agriculture and Rural Development***

The Ministry of Agriculture and Rural Development (MoARD) has both development and natural resource management responsibilities (Proclamation 380/2004). Relating to natural resources management, MoARD has the responsibility to prepare policy on land use and draft legislation on forestry and wildlife.

The Agriculture and Rural Development Bureau (ARDB) is the key natural resource management institution at regional level. It is responsible for the management of land, forest, wildlife and biodiversity resources (Proclamation No 110/2007). Relating to the wider land use domain, ARDB is expected to, *inter alia*, allocate/prepare rural land for agricultural investment; provide assistance to investors engaged in the sectors; and issue and implement directives that enable protect natural resources and the environment from pollution. Even though EIA is under ARDB, the new Executive Organs Establishment Proclamation of SNNPRS (Proclamation No 106/2007) does not clearly mandate the ARDB to evaluate and decide on EIA study reports, and to monitor the implementation of its decisions, whereas the former Environmental Protection, Land Administration and Utilization Proclamation (Proclamation No 52/2003) of the SNNPRS was quite clear on these issues. The new Executive Organs Establishment Proclamation of SNNPRS (Proclamation No 106/2007) thus appears intent on modifying or weakening the EIA framework formerly in place.

***Ministry/ Bureau of Water Resources***

The Ministry of Water Resources (MoWR) is the lead federal institution responsible for the conservation, utilization and

development of water resources in the country (Proclamation No 4/95). Specifically, MoWR has the responsibility, *inter alia*, to formulate legislation on the conservation and utilization of water resources; develop plans on the proper utilization of the country's water resources for development, and, upon approval, supervise their implementation; and determine water quality standards for various uses. In addition, MoWR is responsible for determining the conditions and methods for the optimum allocation and utilization of water resources that occupy more than one regional state among various uses and users; and to undertake studies on the utilization of trans-national rivers.

The Water Resources Bureau (WRB) is a regional institution responsible for the management and use of water resources (Proclamation No 110/2007). Particularly, WRB has the responsibility to, among other things, study the quantity and distribution of water resource of the region and prepare water utilization directives and manuals; ensure balanced and fair sharing and utilization of water resource in the basins; and issue license to, and supervise, investors engaged in irrigation development.

### **c) Financial institutions**

Financial institutions should also incorporate EIA into their procedures. By incorporating EIA authorization into their loan policies, financial institutions can help ensure that development projects comply with the EIA requirement. There are a number of private and state-owned banking institutions operating in the country. Nevertheless, only the Development Bank of Ethiopia, the major long-term development loan provider in the country, has incorporated environmental impact into its loan policy. The Development Bank of Ethiopia thus requires loan applicants to present EIA authorization from environmental agencies as a requirement for obtaining loan.

## 6. Gaps and Challenges

Regarding the EIA process in Ethiopia, there are signs of a positive beginning, according to Girma Mikru, Head of the EPA's Economic and Social Affairs Department, (Interview, Girma)

- There are some indications that EIA is being applied on the ground. That is, some project owners, including government agencies, have begun to bring their Environmental Impact Study Reports (EISR) to the EPA and regional organs;
- Experiences are beginning to accumulate from current engagements in EIA activities. Especially at the Federal level, the number of applications made by project owners or EIA proponents is increasing year to year
- The government appears to have some commitment to environmental issues, as suggested by:
  - The enactment of new laws;
  - The establishment of the Environmental Council at Federal level;
  - The establishment of environmental units in some sectoral offices; and
  - Some training opportunities, etc.

Ato Solomon Kebede, an official at the Environmental Protection Authority, identified other promising developments. (Solomon, 2006)

- There is growing concern over EIA among officials from sectoral agencies, which has been witnessed in public discussions with the sectoral agencies and policy makers;

- Sectoral agencies that have established environmental monitoring units have strengthened their EIA capacity. Those that have not yet established monitoring units have shown interest to do so. EPA also plans to assist sectoral and regional agencies with the view to enhance their capacity in all possible aspects.
- The Development Bank of Ethiopia has made EIA a requirement for credit purposes; i.e., it loans money to investors only after they present the approved review of the EISR, making it a pioneer in greening its credit policy. Other banks also have shown interest to follow the footsteps of the Development Bank, but they claimed that they need this to be a legal requirement. They also suggested that their clients should have insurance coverage for potential environmental liabilities.
- The Ethiopian Floriculture Association has developed a Code of Conduct that requires EIA for the purpose of accessing the EU market successfully.

Other encouraging items include:

- A booklet published by the Ministry of Trade and Industry, the Ethiopian Investment Agency and the Ethiopian Horticulture Producer-Exporters Association, which requires EIA before starting a horticultural farm. (Stoop, 2007)
- The requirement of EIA set by the new Criminal Code (Article 521)

Irrespective of the progress in the area of EIA, there are a number of gaps and challenges with respect to EIA process in Ethiopia.

The following are considered to be the main gaps and challenges observed in the Ethiopian EIA process.

### **6.1. Lack of Awareness**

Very little is known about EIA in Ethiopia. One of the reasons for such low level of knowledge about EIA is that the lawmaking process has not been participatory. EIA law was enacted without the sufficient participation of all stakeholders. Local communities who can be directly affected by a development project have never been consulted during the lawmaking process that finally resulted in Proclamation № 299/2002. (Interview, Solomon)

Local administrations and other government officials are one of the key actors in the process of the EIA. However, there is a complete absence of information about EIA and its importance with these persons, making the EIA process very difficult. Moreover, absence of knowledge about EIA led many officials to consider it “a process that is designed to make development activates difficult.” Lack of sufficient understanding of EIA led to a number of misconceptions among those who are key actors in the EIA process. (Interview, Solomon)

There are people now who think, “*We are poor and we need very rapid economic growth, thus we cannot afford environmental luxuries; EIA is anti-investment and anti-development, time-taking, costly and a complicated process that delays the development process, etc.*” (Solomon, 2006) Project owners and investors also have inadequate awareness about the importance of EIA. They generally perceive it as a bureaucratic hurdle with no visible importance. They do not generally appreciate that it is not only important for the continued supply of the main inputs to their activities, but also as a guarantee for their continued activities. They do not usually understand that the absence of EIA could mean an

unexpected depletion of resources, public resistance against their projects or difficulty in accessing market opportunities. Because of these perceptions, EIA is seen by many as “*a threat*” to investment and other development activities, rather than as a tool for sustainable development. (Interview, Solomon)

It is clear that our economic foundation is our natural resources and that we are experiencing severe environmental degradation. At present, the best way to design and implement our development endeavors in the context of ecological and social realities is through EIA. Investment can only be successful and profitable if it is conscious of its environmental and social realities and addresses them fairly and adequately. Finding a shortcut by avoiding EIA may appear to be profitable, but from long-term perspective, it is suicidal. Unless there is sufficient knowledge on the main objective of EIA – which is to attain economic development together with social development and environmental protection – it will be hard to say that our development is a sustainable one. (Interview, Solomon)

## **6.2. Problems of Capacity**

The problem of capacity is best seen from the perspective of consultants and of the EPA itself. Consultants are very important actors in the EIA process as they are the ones who are preparing EISR on behalf of the applicant. As there is no code of conduct or criteria governing how such a multidisciplinary task should be handled, consultants risk being highly influenced by their clients. (Interview, Abiy) Currently, it is believed that there are virtually no consultants who are qualified to conduct EISR in an efficient manner. According to this interviewee, the fact that the EIA process has been started in Ethiopia at all is a big achievement, as EIA cannot attain a high level of effectiveness within a short period. Since EIA is a process, it will grow gradually.

When it is observed in a general manner, the EISR prepared and presented by many consulting firms does not meet the draft guidelines prepared by EPA. (Interview, Solomon) Many consulting firms write their assumptions instead of describing the actual situation. This is particularly true with the baseline information. Moreover, facts often appear in the EISR that are not contextualized to the project at hand.

The other aspect of capacity relates to the duties of the EPA. The EPA is a regulatory organ, which is accountable to the Prime Minister (see Art. 3(2) of Proclamation № 295 of 2002). EPA is expected to regulate the activities carried out not only by private project owners, but also by the government. However, it is not organized in such a manner that it could effectively regulate the activities of government-owned projects. Most government offices are hierarchically at a higher level than the EPA, which prevents the EPA from regulating the activities of those government offices. Regulatory organs need to have sufficient powers or they will remain crippled. EPA can do nothing, at least at the moment, if some government offices want to disobey the EIA law.

The EISR review process carried out by the applicant is usually not that effective. The EISR documents are usually bulky documents. As there is not a sufficient number of experts in the government, agencies are overburdened and cannot review the EISR in a manner that is expected of them. It is very difficult to get a quality EIA process in such a stressful environment. For instance, the EISR is dispatched to different sections for review, depending on their specialization. The reviews obtained from most of these sections do not meet the standards of the draft guidelines. Because of this, the Department of EIA Service is now under great pressure and unfinished work has been piling up in the department.

EPA is not a financially strong government organ. That is, the budget allocated to it is not commensurate with its vast regulatory tasks. For instance, in the 2000 Ethiopian budget year the total money allocated to EPA was Birr 3,907,642. From this amount, 2,348,300 was intended to cover the salaries of the employees, and the remaining balance, about one and a half million birr, was intended to cover all of the EPA's other expenses (EPA, 2007). According to many experts at the EPA, this amount is far too small to run the EIA process and fulfill all the agency's other duties.

The other problem associated with the EPA is the lack of infrastructure, meaning Internet service, environmental laboratories, a good library service, etc. The Department of EIA Service in the EPA is expected to communicate with many organizations, project owners, consulting firms, government offices, international organization, etc. These communications involve exchanging bulky document, which often contain lots of pictures. Unless the Department is equipped with powerful computers and quality Internet service, it will remain a difficulty to download and send materials and documents to the concerned organs.

Needless to say that well equipped environmental laboratories are required to conduct quality reviews on EISR and for the follow-up purposes after approval of the EISR. EPA's environmental laboratories are not well equipped to facilitate a quality EIA process; although there are now efforts being made to improve the quality of service from the laboratories.

EIA is an extremely dynamic process, and those experts who are responsible to conduct reviews should be at the cutting edge of the discipline. This requires continuous training, and access to information through a highly organized library and the like. When the EPA is assessed from this point of view, especially from the

viewpoint of organization of the library, it is wholly unprepared to engage in a robust EIA process.

Although it is not only EPA which has to take part in regulating the EIA process, it is at the forefront of the regulatory process as compared to the Regional environmental organs. With regard to capacity, the regional institutions are unfortunately in even worse condition. They are poorly organized and have negligible capacity to play a role in the EIA process.

### **6.3. Absence of Effective Mechanisms for the EIA Process**

As it has been repeatedly stipulated, EIA is a management tool for the protection of the environment and for ensuring sustainable development. In the absence of an effective EIA process, it would be not possible to guide the development initiatives in the direction that they shall operate without causing serious damage to the environment. This in turn will have a direct bearing on the sustainability of a specific development project and on the general sustainability of the country's development. It is not just for the sake of the environment alone that EIA must be effective, but also for the viability of the country's development activities in general.

As the facts clearly show, most of the development initiatives which must pass through the EIA process will never appear with their EISR. For instance in 1998 E.C., out of more than 300 project owners who were given land for their investment projects, the Addis Ababa Environmental Protection Authority chose 80 major projects to go through the EIA process. It communicated to all 80 projects and notified them to prepare an EISR. Only two of these approached the Addis Ababa EPA, and they were advised how to prepare and submit the EISR. These two project owners, however, never showed up again and have yet to submit the EISR document. (Interview, Seid)

The addresses of the 80 projects are well known because they received land for their projects from the Investment Agency in an area designated as an Industrial Zone. One can easily imagine how difficult it would be to trace project owners who have been issued investment or trade licenses, and are implementing their projects at unknown sites. Since 1996 E.C., says Ato Seid Abdella, the Investment Agency has been sending letter after letter notifying the EPA that it has issued investment licenses. It also advises the EPA to follow up on whether the project owners are observing the legal EIA requirements.

According to Ato Seid there are no mechanisms for tracing the project owners who have been issued investment license. However, very recently the Addis Ababa EPA is trying to work in collaboration with the Addis Ababa Land Administration Department to trace those project owners before they implement their activities.

There is a relevant directive which was issued by the Addis Ababa City Administration in June 2007. The directive is in Amharic; two of its provisions are translated as follows:

**Art. 11**

*When land is allocated to a project owner, the Land Administration Desk at the Investment Agency shall notify the Addis Ababa EAP.*

**Art. 13(2)**

*The project owner must get permission from Addis Ababa EPA before his/her project commences implementation. If the project is implemented without getting the said permission, it shall take all the responsibilities for any damage caused to the environment and for the legal actions taken against the damage and the loss the*

*project will suffer as a result of the legal actions. This shall be part of the lease agreement.*

Though early for a conclusive verdict, the directive issued by the Addis Ababa City Administration has apparently not been implemented properly, as there is a low level of willingness on the side of the Land Administration Department to work in cooperation with the Addis Ababa EPA.

The Development Bank of Ethiopia is highly concerned about the EIA process and it has made one of the requirements to get money in loan is going through the EIA process. Unless the project owner fulfills this requirement, he/she cannot get the money he/she wants to get in loan from the bank, whether the project is a new one or an expansion of an existing project.

Under the current conditions, it is clear that there is no strong mechanism that would make project owners submit the EISR to the Federal EPA or the relevant regional organ. The conditions in the regions are even worse. For instance, in the Southern Nations, Nationalities and Peoples Regional State, very few project owners submit their EISR to the EIA and Pollution Control Team of the Land Administration and Natural Resource Conservation Department. (Interview, W. Berhan) In fact, according to Ato W. Berhan Kuma, EIA and Pollution Control Team Leader, the agency has no means of compelling project owners, including government projects, to go through the EIA process. Owing to this, the team he leads does not seriously consider the EISRs presented. Unless there are extremely outrageous situations, the EIA and Pollution Control Team has been encouraging those developers who have presented the EISR with the belief that it is improper to impose greater obligations and responsibilities on these developers, while the greater proportion of developers do not appear at all.

Having no means to compel developers towards the EIA process is also one of the major problems of the Federal EPA, according to the EPA's Ato Solomon. (Interview, Solomon) According to this interviewee, less than 3% of developers appear before the Federal EPA with their EISR out of the total number of projects which have to pass through the EIA process. As it has been observed in EPA documents, out of 11,091 licensed investment projects from 1996 to 1998 E.C., only 24 prepared EISRs on their respective projects and submitted them to the EPA for review (EPA, 2006). This makes only 0.2%. However, it must be noted that not all of these projects must go through the EIA process.

One of the reasons for such low level of EIA process is lack of specific laws. It is only Proclamation № 299/2002, the EIA Proclamation, which is officially declared. Since 2002, no specific regulations, directives, guidelines or other subordinate rules have been issued for the purpose of implementing the EIA Proclamation; although there are a number of draft guidelines prepared by the Federal EPA\*. Of all the guidelines prepared by the Federal EPA, the Procedural and Review guidelines are being utilized at present, even if they are not approved yet, according to Articles 6(19) and 9(3) of the Environmental Protection Organs Establishment Proclamation № 295/2002.

### **Art. 6(19) Powers and Duties of the EPA**

*The Authority shall have the powers and duties to:  
"prepare directives to implement environmental protection laws  
and **upon approval**, ensure their implementation"*

---

\* There are two guidelines, Procedural Guidelines and Review Guidelines, which have been finalized in 2003, though they still have the status of draft legislation since they have not been approved by the concerned organ, the Environmental Council. There are also other several guidelines which are sectoral in nature.

**Art. 9(3) Responsibilities of the Council**

*The Council shall:*

*“Review and approve directives, guidelines and environmental standards prepared by the Authority.”*

The Environmental Council, which is the highest organ of the EPA, composed of the Prime Minister or his designate, a representative designated by each National Regional State, and other members, was legally established by Proclamation № 295 of 2002. It took nearly five years to establish the environmental council in actual terms. (Interview, Desalegn)

As the Environmental Council was in reality only established recently, it has not yet approved any directive or guideline prepared by the EPA. Legally speaking, it is almost impossible in Ethiopia to conduct EIA as the project owners can successfully argue that they cannot prepare EISR as there are no legally binding and specific rules. The EIA Proclamation is an umbrella Proclamation, which has the nature of a framework legislation intended to outline principles in a very general manner.

The very nature of EIA requires many specific rules for its implementation. Lack of these specific rules obstructs the implementation of EIA. Article 7(2) of the EIA Proclamation illustrates the need for more specific regulations.

**Art. 7 Duties of a Proponent**

*A Proponent shall ensure that the environmental impact of his project is conducted and the EISR prepared by experts that meet the requirements specified under any directive issued by the EPA.*

As it has already been indicated, many of the EISRs prepared by the consulting firms at present do not meet the draft guidelines

prepared by the EPA. The Proclamation requires that EISR must be prepared by experts that fulfill the requirements of the directives (guidelines) prepared by EPA. There have never been such directives or guidelines in the legal sense. As the result of this, it is not possible to identify those consulting firms which are qualified for this task. Unlike many African countries, we do not have rules as to how such consulting firms should be registered and licensed.

Another problem under this heading is an absence of a legal provision for the right to standing. In the care of the Pollution Control Proclamation, there is the right to starting. According to this rule, any person shall have, without the need to show any vested interest, the right to lodge a complaint at the EPA or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment. (Pollution Control Proclamation, 2002)

The Pollution Control Proclamation has recognized the right of any person (individual, NGO, association, government organ, etc.) to lodge a complaint at the EPA or the relevant regional environmental agency. Moreover, it bestows the right on such person or organization to take the case to a court of law if not satisfied by the decision of EPA or the relevant regional environmental agency. This rule obviously provides a mechanism to control those persons who pollute the environment. There is, however, no such mechanism to hold accountable those who had an obligation to carry out an EIA process, but escaped it deliberately or unknowingly.

The time allocated for reviewing the EISR, which is 15 working days, is too short to review the document in a satisfactory manner. Especially when public participation must be included in the process, the time would not be sufficient to produce meaningful comments. (Interview, Solomon) The experience now shows that

the review is being made within 3 to 4 days and the maximum period given to the very complex document is 7 days. (Interview, Solomon, W. Berhan) The EPA and the regional environmental agencies are under great pressure to give their comments within this short period, creating haste that compromises the EIA process. A grievance procedure, which one would reasonably expect to take less time than the technical and complex EISR, is given 30 days for a decision from the head of EPA or the relevant regional organ.

Lack of NGOs and professional associations that can strongly advocate for EIA is also another prominent obstacle to a robust EIA process. These organizations have been influencing governments in many countries and have proved to influence a government in the areas of gender, environmental protection, HIV/AIDS, good governance etc. In Ethiopia even there are a number of success stories of advocacy work with respect to gender and HIV/AIDS.

The other issue which must be considered is the general misconception that EIA is only the concern of the Federal EPA or the regional environmental agency. Generally, there is little willingness on the part of other entities to contribute positively to the EIA process. EIA is a process which can only be realized with the commitment of all the concerned organs, including the public at large. EPA is an organization that is expected to lead the EIA process; it is not the only body to shoulder all the responsibility for EIA. This must be true for the review process and other tasks of the EIA process; many aspects demand coordination among different stakeholders.

The lack of concern is highlighted by an example from the SNNPRS. The Investment Agency of the region does not notify the region's Land Administration and Natural Resources Conservation Department about the investment licenses it issues, unless the

licenses are related to agricultural activities, while many people in Awassa town and its environs are complaining instead about the discharges of the Awassa Textile Factory and the Awassa Hospital for polluting the nearby water bodies. (Interview, Temesgen) The Investment Agency of the region needs to be advised to send other projects to the appropriate environmental agency, as they also need to go through the EIA process.

It is mainly the failure of the law to stipulate an effective way of cooperation among different actors of the EIA system. Neither the Establishment Proclamation nor the EIA Proclamation has provided for sufficient obligations and functional linkage among all actors of the EIA system. Partnership and coordination is limited due to absence of clear definition of roles and responsibilities of the major actors of the EIA system.

In some Regional States (e.g., SNNPRS) the environmental agency is organized as a department under the Agricultural and Rural Development Bureau. Such an organizational framework also affects, to some extent, the EIA process. (Interview, W. Berhan) The fact that the environmental agency is subordinate to another office, sometimes with competing interests, prevents EIA and other environmental issues from assuming its due importance on the agenda.

#### **6.4. Lack of Incentives**

This issue is best from the perspective of the project owner and those experts who are involved in the review process.

The EIA Proclamation provides for incentives to be available for project owners in Article 16

**Article 16 Incentives**

1. *The Authority (EPA) or the relevant regional environmental agency shall, within the capacity available to it, support implementation of a project declined to rehabilitate a degraded environment.*
2. *Without prejudice to Sub-article (1) of this Article, the Authority may, to the extent that its capacity allows, provide any environmental rehabilitation or pollution prevention or clean up project with financial and technical support to cover additional costs.*

There are two obvious problems associated with this provision. Firstly, it does not directly address those initiatives with best EIA performance. It may even create doubt as to whether the incentive refers to performance in EIA or not. Secondly, it is not known how to implement the incentive, as there are no directives or guidelines in this respect.

EISRs contain copious technical information, which should be reviewed with due attention. Owing to the very short time that is allotted to complete the review process, experts are unable to finish the review on deadline if they perform the task only within the office hours. Experts are not encouraged to work beyond and over their office hours unless there is some financial compensation. Experiences in other countries show that countries with a strong EIA process allocate a sitting allowance for those experts engaged in the review process. (Interview, Solomon) At present, there is no arrangement for incentives in relation to experts involved in the review process.

### **6.5. Weak Political Commitment**

It has been repeatedly mentioned that EIA is a tool to achieve sustainable development. The Ethiopian government now is highly involved in activities with the intent to alleviate poverty as soon as possible. While this goal is noble, as it often occurs, when we strive to achieve one goal, we seriously affect another important interest, unless we take care to address all of the problems we have in a systematic way. To ensure sustainable development, its three pillars – namely, economic growth, social development and environmental protection – must be proportionately considered. If one of these pillars is missing, we cannot achieve the development we desire. An activity that focuses on any one of the three pillars at the cost of ignoring one or two of the other pillars will significantly affect the sustainability of our development. Most countries, including Ethiopia, give much more emphasis to economic growth than to dealing with environmental issues. Yet the history of efforts to alleviate poverty clearly shows that such a narrow focus will not carry us far.

In spite of the measures taken by the government, such as establishing environmental institutions and enacting laws, which show a commitment to environmental concerns, the established institutions nonetheless suffer from heavy political pressures to remain focused on growth. All the relevant institutions are understaffed and lack the necessary power to fulfill their duties. The existing laws do not have enforcement mechanisms, are not dynamic, are feeble and are easily circumvented by economically oriented legislations. (Solomon, 2006)

Of course, it is possible to attain economic development at high social as well as environmental costs. Nevertheless, this variety of economic growth is not equitable and is most likely short-lived. Government officials are expected to treat economic growth

alongside with social development and environmental protection. Environmental protection should not be seen as a rival for economic growth, but must be seen as integral to it.

When due attention is given to social development and environmental protection, then we may boast to be on the right track for sustainable development.

When we compare the government's commitment to promoting investment and other development projects with its commitment to protecting the environment, the imbalance is evident. There is indisputable evidence for the weak political will on the side of the government with regard to issues in relation to the protection of the environment, including the EIA process.

One problem that many experts are complaining about is the reversal of a provision requiring a proponent to get permission from the EPA or relevant regional environmental agency before securing an investment or trade license, according to Article 3(3) of Proclamation № 299/2002.

### **Article 3 General provisions**

*Any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that EPA or the relevant regional environmental agency has authorized its implementation.*

According to this rule, the project owner, before being issued an investment or trade license, must go through the EIA process. This procedure has been reversed by Proclamation № 375/2003, an Investment (Amendment) Proclamation. According to the latter proclamation, the Investment Agency can issue the investment license without any EIA.

Three reasons were given for the reversal of the requirement. (Comments on a workshop, 2006)

1. There is a great need from the side of the government to promote investment. It has been observed that investors were suffering from EIA requirements, which delay projects. It was necessary to relieve investors from such bureaucratic hurdles.
2. Investment licenses do not allow the investor to commence implementation, as the investor does not yet know the site for implementing the project. The investor can get land only after getting the investment license. (This is especially true for foreign investors).
3. Until now no investor has been halted by the EPA for not fulfilling the EIA requirements. No single case has been registered in this respect and it is not useful to have a rule that requires EIA prior to getting investment license.

Even if many EPA experts consider the reversal of the procedure as a threat, the Deputy Director General of the EPA does not take it as a serious threat. (Interview, Desalegn) According to Deputy Director General, obtaining an investment license has nothing to do with EIA. The reason is simple. The investor needs the investment license to get some benefits such as duty free importation of some equipment. The investor cannot commence operations unless he/she gets land. The Deputy Director General hopes that all or most of the problems associated with EIA will be solved when the Business Process Reengineering (BPR) study, which is underway at present, is concluded. One of the most significant focus areas of the BPR is the improvement in the EIA process, according to the Deputy Director General.

It has to be noted here, however, that some projects may not need a specific site for their operation. For instance, transport service delivery may not necessarily require land at all. Likewise, public instruments such as government policies, strategies and programs, which need to go through the EIA process, may not necessarily affect a specific geographic area. It would be advisable that the BPR study consider such special kinds of projects.

Another illustration of the lack of political will for the protection of the environment in general, and for an effective EIA process in particular, is the legislative stepping back of the greening of investment laws. The first investment laws, which were successively repealed, mainly to attract more investors, had more green provisions than the most recent ones. The Investment Proclamation № 15 of 1992, in its Article 20 (2) (e), provided that polluting the environment is a grounds for the cancellation of an investment license. Investment Proclamation № 37 of 1996, even more green than its predecessor, stipulates in Article 14(1) that “...*the intended investment activity would not be convening without complying the operational laws of the country and that; in particular, it complies with conditions stipulated in environmental protection laws...*” This situation did not last for long as the subsequent Investment Proclamation № 280 of 2002 eliminated references to the environment all together.

Shortly after the enactment of Proclamation № 280 of 2002, the EIA Proclamation № 299 of 2002 was promulgated with vital EIA rules. Even if this proclamation has brought hope to the supports of environmental protection, one of its most important rules has been reversed by Investment Proclamation № 375 of 2003, as discussed above. Moreover, the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations

№ 84 of 2003 says nothing about the incentive mechanisms for environmentally friendly investment.

All these conditions relegated the EIA Proclamation into its present obscure position, while investment laws have gained increased prominence with time.

### **6.6. Weak Public Participation**

According to EIA Proclamation, the public must participate at two stages: during the making of the EISR and during the review process of EISR. When we see the public participation at the making of the EISR, however, it is very weak. Some project owners list the names of a few individuals – together with their signatures or thumb marks – as those who have participated in the EISR. As examination of some documents reveal that the participants' names are predominantly of male, and the documents leave doubt that those who signed with their thumb marks, who are presumably illiterate, actually participated.

For its part, the EPA cannot be sure whether the lists attached to the EISRs by project owners are genuine or not. Hence, the EIA Service Department of EPA added another criterion, requiring public participation to be endorsed by Woreda Administration officials. (Interview, Solomon) Even this, however, has failed to guarantee genuine public participation, as the officials of the Woreda Administration have little understanding of the importance of the EIA. At present, the EIA Service Department is requiring video clips to ensure the public participated.

As there are no specific guidelines for public participation, it has not been possible to determine what actually constitutes public participation. Is it when all adults participate? Or is it when most of the people participate? How can public decisions be made? Should decisions be made unanimously, by majority vote, or what? What

should be the consequence of public participation when people demonstrate that they are severely affected by the project? Nothing is known.

It is also doubtful then that public citizens are making informed decisions. As anyone can observe, the media in Ethiopia usually limit coverage to the positive aspects of development projects and the rarely mention about the negative impacts. This situation itself creates unbalanced notion of development within the public.

It is clear also that the public is informed by the project owners about the positive aspects, such as the “job opportunities” they create for some members of the community. Usually they do not inform people of the whole story, such as how many of the jobs are likely to be in construction, and that few positions will remain after the construction phase of the project is over.

Another factor that weakens public participation is the general perception that the government has already decided to support a given project and will, in spite of everything, remain in favor of its implementation. With such an opinion, the majority of the people who should participate in the EIA process unsurprisingly opt out under the believe that their efforts would be a waste. They even believe that their comments may simply spread animosity between the people on the one hand, and government officials and project owners on the other. (Interview, Abiy)

The public must also participate in the review process, but this aspect is totally neglected and the review process is now only for experts, not for citizens. (Interview, Desalegn) It is very difficult for the EIA Service Department to involve people for at least two main reasons. (Interview, Solomon) First, the time given for review is too short to engage the public, and some of the projects

are located in distant places. Second, there is no budget to solicit public participation, which is a costly process.

The absence of public participation is a clear violation of the constitutionally guaranteed rights of the people. The sovereignty of the people is expressed through their direct democratic participation. (Constitution, Article 8 (3)) Moreover, the FDRE Constitution in its Article 43(2) provides that: “*Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.*” It is based on this constitutional rule that the EIA Proclamation has underlined the need of public participation in the EIA process.

## **7. Conclusions and Recommendations**

The 1995 Constitution of the Federal Democratic Republic of Ethiopia provides a strong constitutional foundation for the introduction and effective implementation of the EIA system. It stipulates that development programs and projects in the country should not be conducted in a way that cause damage to the environment. In addition, it provides the right of citizens to live in a healthy and clean environment and the right to be consulted and to express their views on the planning and implementation of plans, programs, strategies, policies and projects that affect them. The Environmental Policy of 1997 set out the guiding policy directions to be pursued pertaining to EIA. More importantly, the Environmental Impact Assessment Proclamation № 299 of 2002 has subjected development projects and public instruments in the country to pass through an EIA process prior to commencement of operation.

Even though EIA has been introduced as a legal requirement, it is seldom enforced. That many development initiatives and

investment projects are causing huge damage to the forest and wildlife resources of the country indicates the absence of effective EIA process. There are various gaps and challenges that hinder the effective enforcement of EIA. Some of the gaps and challenges are as follows.

- There is a gross lack of awareness and widespread misconceptions about EIA in Ethiopia. This is not only related to the general public but also to some of the main actors in the EIA process. Some even consider it as obstacle to development activities.
- EIA needs an extensive human and resource capacity, which is lacking in the major implementing organs of the EIA system.
- The EIA Proclamation is a framework law that needs specific regulations, directives or guidelines. Legally speaking, there are no regulations or other specific rules to support the implementation of the EIA Proclamation. The procedural and review guidelines prepared by the EPA are still at their draft stage, leaving the EIA Proclamation ineffective. Moreover, there are a number of gaps which need to be filled by the guidelines prepared by the EPA. For instance, there are no guidelines for the registration, accreditation and certification of for those who give consultancy service on the preparation of EISR.
- A lack of legal and institutional arrangements for effective coordination and communication among the regional and sectoral offices has created a great deal of confusion in the EIA process. Furthermore, the EIA lacks power commensurate to its extensive regulatory functions. It is crippled without a mechanism to compel private or public

development proponents, who by and large refuse to submit their projects for the EIA;

- A shortage of the time allocated for the review process makes the review of the EISR very superficial;
- The government has shown a lack of political will to implement EIA law relative to its commitment to pursue policies for investment and economic growth; a belief which is born out by the fact that investment laws have gained strength, while the EIA process has been legally weakened.

The above points lead us to the conclusion that there is no effective EIA system in Ethiopia. As it is already pointed out in the main body of this work, the absence of EIA is not only prejudicial to the environmental and society, but also it will have detrimental effects on the development programs and projects. Moreover, it must not be forgotten that most of the development activities are run with the public money, directly or indirectly. If projects or programs fail due to environmental reasons, ultimately it will be the public that will suffer from a triple loss; financial, social as well as environmental. For the full realization of the motto — *“Development without destruction,”* — all of our talk on EIA must be put into action.

While dealing with issues of the environment, one must have detailed knowledge. Without familiarity with the nature of the environment, it would be difficult to properly address environmental issues. Human interaction with the environment must no longer continue a *“take from”* relationship, in which we take resources from the environment in a unidirectional way. The relation also must be a *“give to”* one, in which we invest in nature. It is the *“give to and take from”* kind of relationship between humans and the natural environment which is considered to be healthy. Existence of this kind of relationship is a guarantee for

sustainable development, and EIA is a tool to ensure that the balance is right.

The following recommendations are forwarded to improve the low-level implementation of the EIA process in Ethiopia:

1. As the knowledge level on EIA is very low in the country, efforts must be made to enhance awareness. Emphasis must especially be made on key actors, such as parliamentarians, various government officials, Woreda administrators, business persons, people directly affected by development programs and projects, etc. All stakeholders, mainly NGOs, must start an extensive awareness creation campaign.
2. Work must be done to eliminate the notion that EPA is the sole entity responsible for the EIA processes. Regional environmental organs and sectoral units must be strengthened to decentralize the EIA process. Much has to be done to make EIA a public concern rather than the concern of few agencies like the EPA.
3. EIA needs huge capacity, both on the side of the consultants who prepare the EISR, and on the side of the reviewers of the ESIRs. Steps which have been taken in this direction must be encouraged, and additional efforts must be made by all stakeholders to enhance the capacity of those who steer the wheel of the EIA process. The government, as the main stakeholder of the EIA process, must take the guiding role in augmenting the human, financial, infrastructure and other capacities of EPA and the Regional environmental agencies and sectoral offices. In this regard, guidelines which provide for the registration, accreditation and licensing of consultants who prepare the EISR must be prepared and approved by the Environmental Council.

4. Quite a large number of project owners, including the government, do not appear before the EPA and the Regional environmental agencies with their EISR. As of yet, there are no effective ways of bringing them to the EIA process. Those development initiatives and projects designated to pass through the EIA process must be obliged to do so through various mechanisms, such as:

- Opening discussion forums with proponents (both private and government) to raise awareness on the importance of EIA;
- Finding ways to impose EIA as a condition for access to credit, business licenses, access to market and getting land for the operation of the project or the initiative, etc. The Development Bank of Ethiopia on its own initiative formulated a policy of greening its credit system. Such initiatives must be backed by legal instruments and must spread to other lending banks;
- Establishing the public interest litigation in relation to the EIA system;
- Insurance schemes must exist to cover the environmental liability held by development programs and projects;
- Strictly applying both the EIA law and the Criminal Code (Article 521) to punish those who do not submit their EISR to EPA or the relevant Regional organ, through effective cooperation with the prosecution office. The office of prosecution and courts must seriously entertain EIA as a justiciable matter.

5. There is no functional linkage between EPA and the Regional relevant organs and sectoral organs. Efforts must be made for the realization of this linkage, including revising the law to clearly set up a viable institutional link between EPA and other organs.
6. The procedure required EIA for an investment license, which was reversed by the investment law, must be reinstated, especially in relation to projects and programs which do not require specific sites for their operation.
7. The constitutionally guaranteed rights of the people to participate and be consulted in any development activity that could affect them must be realized in its full sense, both during the preparation of the EISR and the review process.
8. There have to be incentive mechanisms provided by the government and other stakeholders for the development projects and programs which have excellent EIA performance.
9. Include EIA as part of the country's millennium goals.

## References

1. Appropriation of Land for Government Works and Payment of Compensation for Property Proclamation № 401/2004
2. Biosafety Protocol (2000)
3. Camille de Stoop (ed.) (2007), *Investing in the horticultural sector of Ethiopia: A guide for new investors*, Ministry of Trade and Industry, Ethiopian Investment Agency and the Ethiopian Horticulture Producer-Exporters Association.
4. Christopher Wood (2003) *Environmental Impact Assessment: A Comparative Review*, 2<sup>nd</sup> ed.
5. Comments given at a workshop organized by Organization for Social Justice in Ethiopia, (02 November, 2005, at Global Hotel) from delegates of the Investment Agency and Ministry of Trade and Industry.
6. Constitution of the Federal Democratic Republic of Ethiopia, 1995.
7. Criminal Code, Proclamation № 414 of 2004
8. Desta Mebratu, *Industrial Waste Management System for Akaki River: A Study Report*, Addis Ababa (1989)
9. Dusan Sevic (2005), Overview of the EIA and SEA System in Serbia, Tamra Maricic, Institute of Architecture and urban & Spatial Planning of Serbia.
10. Environment Policy of Ethiopia, 1997.
11. Environmental Impact Assessment Proclamation № 299/2002.
12. Environmental Protection Organs Establishment Proclamation № 295/2002.
13. Federal Democratic Republic of Ethiopia Rural Land Administration and Utilization Proclamation № 456/2005.

14. Fisheries Development and Utilization Proclamation № 315/2003.
15. Forest and Wildlife Conservation and Development Proclamation № 192/1980.
16. Forestry Development, Conservation and Utilization Proclamation № 542/2007.
17. Forests of Sheka: Multidisciplinary case studies on impacts of land use/land cover changes, Southwest Ethiopia, MELCA Mahiber, 2007.
18. <http://www.uneca.org> (Visited on 01 November 2007)
19. Interview with Ato Abiy Tamrat, Environment Dest Manager, Beruh Consulting Engineers & Hydro Geologist PLC, 08 November 2007.
20. Interview with Ato Desalegn Mesfin, Deputy Director General, EPA, 28 November 2007.
21. Interview with Ato Girma Mikru, Head, Economic and Social Affairs Department, EPA, 28 November 2007
22. Interview with Ato Seid Abdella, EIA Group Leader at Addis Ababa EPA, 11 November 2007.
23. Interview with Ato Temesgen Wodajo, Elementary school teacher and resident of Awassa town, 19 November 2007
24. Interview with Ato W/Berhan Kuma, EIA and Pollution Control Team Leader, SNNPRS, 19 November 2007.
25. Interview with Ato Yisahak Azaz, Head Department of Licensing and planning Affairs Department, SSSPRS investment Agency, 19 Nov. 2007
26. Principal Challenges to Ethiopia's Protected Areas, Biological Society of Ethiopia, 2004 (unpublished).

27. Proclamation on Access to Genetic Resources and Community Rights № 482/2006.
28. Reorganization of the Executive organs of the Federal Democratic Republic of Ethiopia (Amendment) Proclamation № 380/2004.
29. Sadler (1996), as cited in Solomon Kebede, EIA Law in Practice: An Analytical Overview, (Unpublished)
30. Sands, Philippe Principles of International Law (2003), (2<sup>nd</sup> ed.) Cambridge University Press.
31. Taye Bekele, 2003, Management and Utilization of Forests in Ethiopia: Yesterday, Today and Tomorrow, Paper presented at a Workshop on Forest Management and Utilization for Parliamentarians.
32. The Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation № 4/1995.
33. The Investment Proclamation № 350/2003.
34. UNECA (2005), Review of the Application of Environmental Impact Assessment in Selected African Countries.
35. UNEP (1988) Environmental Impact Assessment: Basic Procedures for Developing Countries, Regional Office for Asia and the Pacific.
36. UNEP (2006), Training Manual on International Environmental Law
37. Water Resources Management Proclamation № 197/2000.
38. Water Resources Management Regulation № 115/2005.
39. Wildlife Development, Conservation and utilization Proclamation № 541/2007.

40. Yirmed Demeke, (2003) The Management of Wildlife in Ethiopia: Problems and Suggested Solutions, Paper presented at a Workshop on Forest Management and Utilization for Parliamentarians, Addis Ababa.