

THE ETHIOPIAN ENVIRONMENTAL REGIME VERSUS INTERNATIONAL STANDARDS: POLICY, LEGAL, AND INSTITUTIONAL FRAMEWORKS

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I. Introduction

Today, perhaps more than ever, the international community thinks and speaks the same language when it comes to protecting the planet from environmental degradation. Media outlets carry constant reports about environmental problems confronting the international community, such as climate change, desertification, threats to biodiversity, hazardous waste, and dwindling fish stocks, along with “pledges by the leaders of various states to do something about them.”¹ With the growth of global public concern about environmental issues over the last several decades, environmental legal norms have become increasingly internationalized and sophisticated in both national and international legal systems.² The result is “the emergence of a set of legal principles and norms regarding the environment, such that one can arguably describe it as a body of law.”³ At the national level, most jurisdictions now have environmental protection policies, laws, government departments, and independent agencies and public interest groups dedicated to environmental protection.

This article will try to analyze those national and international environmental legal regimes. Section II briefly looks at the development of international environmental protection regimes and the basic policies, values, and principles of the environmental movement. Section III will examine the important provisions of the Ethiopian Constitution, the

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1. DONALD K. ANTON, UNIVERSITY OF MICHIGAN LAW SCHOOL PUBLIC LAW AND LEGAL THEORY WORKING PAPER SERIES, WORKING PAPER NO. 118, A BEGINNER’S GUIDE TO INTERNATIONAL ENVIRONMENTAL LAW 10 (2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1138463.

2. Tseming Yang & Robert V. Percival, *The Emergence of Global Environmental Law*, 36 *ECOLOGICAL L. Q.* 615, 615 (2009).

3. *Id.*

Environmental Policy of Ethiopia, and other government documents and compare them with widely accepted international standards. Finally, Section IV will provide concluding remarks and recommendations on how to improve Ethiopia's legal and institutional frameworks to best protect, preserve, restore, and sustainably use the natural environment.

II. International Environmental Laws and Institutions

A. History

The development of international environmental law, a relatively new addition to the corpus of international law, can be directly attributed to two factors: "(1) an enhanced awareness that the global environment is fragile, global environmental problems are immense, and human activities are damaging the environment at an accelerated pace; and (2) a growing realization that without concerted national, regional and international action the planet will continue to suffer further environmental degradation."⁴ In addition, advances in science and technology⁵ and recent efforts at linking international environmental law with international trade law have helped us understand and appreciate the nature and scope of the challenge, and further tuned the regime.⁶

Historically speaking, perspectives on the importance of international environmental law have passed through three stages.⁷ At the first stage (late 19th century), laws were based on humankind's immediate self-interest and aimed at maximizing nature's resources in view of their exploitation.⁸ In the second stage of development (1970s), an intergenerational dimension of environmental instruments appeared to

4. Ved P. Nanda, *International Environmental Law and International Business Ventures*, in INTERNATIONAL ENVIRONMENTAL LAW FOR NATURAL RESOURCES PRACTITIONERS 4-1 30 (Rocky Mountain Mineral Law Foundation ed. 1997).

5. "Scientific uncertainties" have been the biggest challenges in almost all international environmental negotiations. But the precautionary principle advocates for prompt and proactive action even before scientific certainty exists. This is helping the ozone layer and climate change regimes, among others, to succeed. *Id.*

6. *Id.* Many recent environmental regimes do not seek to provide for rights and obligations, but rather to secure better compliance procedures and trade measures, or to integrate environmental policies with international trade.

7. Susan Emmenegger & Axel Tschentscher, *Taking Nature's Rights Seriously: The Long Way to Biocentrism in Environmental Law*, 6 GEO. INT'L ENVTL. L. REV. 545, 552-68 (1994).

8. *Id.* This was intended to avoid conflict over resources. Early examples include agreements on rivers, exploitation of fish, and protection of migratory birds.

make the regime more complex.⁹ The contemporary and third phase of development brought a shift to a “non-anthropocentric paradigm and nature’s own right,” where the primary concern is ecological survival rather than human development or aspirations.¹⁰

Throughout these three stages, different international efforts have been made to develop the regime. Philippe Sands has categorized the evolution of international environmental law into four distinct periods.¹¹ The first (from the 19th century to 1945) was characterized by bilateral treaties addressing some components of the environment, and culminated with the establishment of the United Nations in 1945. During this stage, it was understood that exploitation of some natural resources (e.g., birds, fish, seals, rivers, and seas) requires limitation, as well as adoption of sound legal instruments.¹²

The second period was from 1945 to 1972. This period was generally characterized by the establishment of international environment-related institutions and the adoption of regional and global legal instruments addressing specific environmental subjects like wetlands, oil pollution, the marine environment, nuclear tests, and freshwater.¹³ In June 1972, the United Nations held the Stockholm Conference on the Human Environment, representing the first major international effort to comprehensively address worldwide environmental concerns and develop concrete action plans.¹⁴ The Conference adopted the celebrated Stockholm

9. *Id.* Before the 1970s, environmental resource protection was aimed at the needs of the existing generation. The 1970s saw the beginning of consideration of the interests of future generations.

10. *Id.* This is mostly advocated by biologists. Dr. Tewolde Berhan G. Egziabher, Director General of Ethiopia’s Environmental Protection Authority, has said that, as a biologist, he is uncomfortable with the eradication of the smallpox virus from the planet.

11. PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 25-69 (2d ed. 2003).

12. *Id.* Examples include the 1902 Convention to Protect Birds Useful to Agriculture, the 1900 Convention Destinée à Assurer la Conservation des Diverses Espèces Animales Vivant à l’Etat Sauvage en Afrique qui sont Utiles à l’Homme ou Inoffensive (seeking to ensure the conservation of wildlife in the African colonies of European states, including the use of trade restrictions on the export of certain skins and furs), and the 1909 Water Boundaries Treaty between the United States and Canada.

13. *Id.* at 33. Documents adopted during this period include the International Convention for the Prevention of Pollution of the Sea by Oil (May 12, 1954, 327 U.N.T.S. 3) and the Convention on Fishing and Conservation of Living Resources of the High Seas (Apr. 29, 1958, 559 U.N.T.S. 285). In addition, “[t]he United Nations Economic Commission for Europe promulgated harmonizing regulations on emissions from motor vehicles, and the Committee of Ministers of the Council of Europe adopted the first international act dealing with general aspects of air pollution.” *Id.* at 34.

14. See Nanda, *supra* note 4.

Declaration, comprising guiding principles that represent the first global consensus on the magnitude of the environmental problems that confront the world community,¹⁵ and an Action Plan for environmental management. Subsequently, the UN General Assembly established the United Nations Environment Programme (“UNEP”) to serve as a focal point for environmental action and coordination within the UN system, and to act as a catalyst for environmental action.¹⁶

Following the Stockholm Conference, the next twenty years witnessed the third period of evolution, during which the UN tried to coordinate actions on environmental issues. Many more international and regional treaties were adopted, and trading and consumption of some products were globally banned.¹⁷ In addition, large numbers of states enacted domestic environmental laws, and industrialized states began to provide technical and financial assistance to developing countries in their efforts to address environmental problems.¹⁸

The World Charter for Nature was adopted in 1982,¹⁹ followed in 1987 by the Report of the World Commission on Environment and Development (also known as the Brundtland Report, or *Our Common Future*), which reexamined environmental and development issues. The United Nations Conference on Environment and Development (“UNCED”), held in Rio de Janeiro in 1992 to mark the twentieth anniversary of the Stockholm Conference, inspired the negotiation, signing, and ratification of even more new conventions. Thus, UNCED adopted the Rio Declaration on Environment and Development,²⁰ Agenda 21 (a

15. The Stockholm Declaration contains 26 principles, an action plan consisting of 109 separate recommendations, and a resolution dealing with institutional and financial arrangements. Topics covered in the principles include Fundamental Human Rights, Management of Human Resources, The Relationship Between Development and the Environment, Planning and Demographic Policy, Science and Technology, State Responsibility, Respect for National Environmental Standards and the Need for State Cooperation, and The Threat of Nuclear Weapons to the Environment. Mark S. Blodgett et al., *A Primer On International Environmental Law: Sustainability as a Principle of International Law and Custom*, 15 ILSA J. Int'l & Comp. L. 15, 18-23 (2008).

16. G.A. Res. 2997, 27 U.N. GAOR, Supp. No. 30, at 43, U.N. Doc. A/8730 (1972). See also Nanda, *supra* note 4.

17. See SANDS, *supra* note 11, at 41.

18. See Nanda, *supra* note 4.

19. The 1982 World Charter for Nature is a nonbinding document adopted by the U.N. General Assembly that sets forth principles of conservation by which all human conduct affecting nature is to be guided and judged. It contains 25 principles. Blodgett et al., *supra* note 15, at 18; World Charter for Nature, G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, at 17, U.N. Doc. A/37/51 (Oct. 28, 1982).

20. Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (vol. I) [hereinafter *Rio*

blueprint for managing the environment in the 21st century),²¹ the UN Framework Convention on Climate Change,²² the Convention on Biological Diversity,²³ and a statement of principles on forests.²⁴

The fourth and final stage (from 1992 to the present date) can be thought of as a period of integration of international environmental laws and an increased emphasis on compliance.²⁵ The 2002 Johannesburg Declaration (the result of the World Summit on Sustainable Development (“WSSD”) held in Johannesburg in September 2002) recognized environmental problems as a continued imperative issue and set a commitment for sustainable development. Environmental negotiations continue at different levels today, with a view toward creating better living environments and an emphasis on increased compliance with obligations.

The field of international environmental law, which is one of the most dynamic and growing fields of international law, is not, however, limited by these events.²⁶ By some estimates, there are more than 800 multilateral and bilateral agreements,²⁷ several key decisions by international tribunals and arbitral panels,²⁸ and also nonbinding “soft law” principles and concepts²⁹ comprising the

Declaration].

21. Agenda 21 sets the action plan for a global partnership for sustainable development. Agenda 21: Programme of Action for Sustainable Development, U.N. GAOR, 46th Sess., Agenda Item 21, U.N. Doc A/Conf.151/26 (1992) [hereinafter Agenda 21].

22. United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter Climate Change Convention].

23. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter Biodiversity Convention].

24. Conference on Environment and Development, June 3-14, 1992, *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, U.N. Doc. A/CONF.151/26 (vol. III).

25. SANDS, *supra* note 11, at 26, 50-51.

26. *See generally* BASIC DOCUMENTS ON INTERNATIONAL LAW AND THE ENVIRONMENT (P. Birnie & A. Boyle eds., 1995); Nanda, *supra* note 4; SANDS, *supra* note 11; PATRICIA W. BIRNIE & ALAN E. BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT (1992).

27. *See* BASIC DOCUMENTS ON INTERNATIONAL LAW AND THE ENVIRONMENT, *supra* note 26, at xiii (Table of Major Treaties and Instruments). Between 1648 and 1978, more than 20,000 treaties of all varieties were concluded, filling more than 1,350 books. Their sheer volume demonstrates their importance in international relations.

28. Most famous among these are the Trail Smelter Arbitration (which found Canada responsible for environmental and agricultural damage in the United States caused by a Canadian smelter's sulfur dioxide emissions), the *River Oder* case (underlining the principle of due diligence in protecting the rights of other states in the international environmental arena), and the *Corfu Channel* case (promulgating the principle of equitable or reasonable utilization of shared resources). Blodgett et al., *supra* note 15, at 21-22.

29. *See generally* P. Dupuy, *Soft Law and the International Law of the Environment*, 12

international environmental law regime.³⁰ The following table shows only a few of the key environmental events and agreements that took place over the past century.

Major International Environmental Events and Agreements³¹

YEAR	AGREEMENT
1900	Convention for the Preservation of Animals, Birds and Fish in Africa
1909	International Congress for the Protection of Nature
1911	The North Pacific Fur Seal Treaty
1913	Consultative Commission of the International Protection of Nature
1940	Convention on Nature Protection and Wildlife Conservation in the Western Hemisphere
1946	International Convention for the Regulating of Whaling
1954	International Convention for the Prevention of Pollution of the Sea by Oil
1958	Convention on the High Seas (provisions on maritime pollution)
1959	Antarctic Treaty (banning weapons tests and dumping nuclear waste in the Antarctic)
1963	Partial Test Ban Treaty
1968	Biosphere Conference
1972	London Dumping Convention (ocean pollution)
1972	The UN Conference on the Human Environment (The Stockholm Conference)
1973	International Convention for the Prevention of Pollution from Ships
1975	Convention on International Trade in Endangered Species of Wild Fauna and Flora
1979	Geneva Convention on Long- Range Transboundary Air Pollution
1985	Vienna Convention for the Protection of the Ozone Layer
1987	Montreal Protocol on Substances that Deplete the Ozone Layer
1989	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
1992	UN Conference on Environment and Development (Rio Summit or Earth Summit)
1992	Convention on Biological Diversity

MICH. J. INT'L L. 420-35 (1991).

30. David Hunter, *The Role of Environmental Organizations in International Environmental Law*, in INTERNATIONAL ENVIRONMENTAL LAW FOR NATURAL RESOURCES PRACTITIONERS 5-1 21 (1997).

31. Taken from RICHARD J. PAYNE, GLOBAL ISSUES: POLITICS, ECONOMICS, AND CULTURE 257 (2007); see also Joeti L. Shrestha, International Environmental Law and Issues: A Report (March 7, 2008) (M.A. thesis, Lyceum of the Philippines University), <http://ssrn.com/abstract=1348442/>.

1992	UN Framework Convention on Climate Change
1994	UN Convention to Combat Desertification
1997	Kyoto Protocol to the UN Framework Convention on Climate Change
2001	Stockholm Convention on Persistent Organic Pollutants
2002	World Summit on Sustainable Development (Johannesburg Action Plan)

B. International Environmental Policies and Principles

The sources of international environmental law³² may be found in conventions and treaties, customary international laws,³³ general principles of law, judicial decisions and the writings of eminent scholars,³⁴ soft laws (declarations and resolutions), and *jus cogens*.³⁵ Within these sources, certain principles (emerging mainly from soft law instruments like declarations, international statements, and political resolutions) are starting to assert persuasive force and become standards by which to evaluate the effectiveness of environmental regimes.³⁶ Many of these principles are integrated into international treaties and national systems. As “soft law,” these principles are not binding on states unless they are incorporated into other binding instruments, but they have the following functions:

- a. Provide a framework for negotiating and implementing new or existing agreements;
- b. Provide rules of decision for resolving trans-boundary environmental disputes when there is no authoritative and binding source to resolve the dispute;
- c. Provide a framework for the development and convergence of national and sub-national environmental laws;
- d. Assist in the integration of international environmental law with other fields such as international trade and human rights;

32. See Anton, *supra* note 1; ALEXANDRE KISS & DINAH L. SHELTON, GUIDE TO INTERNATIONAL ENVIRONMENTAL LAW 3-11 (2007), available at <http://ssrn.com/abstract=1013617/>.

33. See Viet Koester, *From Stockholm to Brundtland*, 20 ENV'T'L POL'Y & L. 14, 17-18 (1990).

34. MAURICE SUNKIN ET AL., SOURCEBOOK ON ENVIRONMENTAL LAW 5 (2d ed. 2001).

35. *Jus cogens* is “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.

36. Yang & Percival, *supra* note 2, at 615.

- e. May be codified into a general covenant of international environmental law; and
- f. Are developing into (binding) customary international law.³⁷

Some of these principles governing international environmental relations are briefly discussed below.

1. State Sovereignty – recognizes states’ permanent sovereignty over the natural resources occurring within their territory. Accordingly, each state has the right to freely choose and develop its social, economic, and cultural systems.³⁸
2. Right to Development – addresses, principally, the claims of developing nations to control and enhance their own development, the right of all peoples to self-determination, and an individual’s right to enjoy a minimum quality of life.³⁹
3. Common Heritage of Humankind – recognizes resources outside of national jurisdiction like the high seas, the sea bed, Antarctica, outer space, and the outer atmosphere (e.g., ozone) as “global commons.” Accordingly, these resources should be exploited and managed in keeping with the principles of nonappropriation, international management, shared benefit, and peaceful purposes.⁴⁰
4. Common Concern of Humankind – holds that, due to the interdependent nature of ecology, humanity may have a collective interest in certain activities located wholly within state boundaries. Subjects like biodiversity and climate are considered to be common concerns of humankind, and states are expected to practice sound conservation and international

37. INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 469-471 (D. Hunter et al., eds., 2d ed. 2001).

38. See U.N. Conference on the Human Environment, Stockholm, Swed., June 5-16, 1972, *Declaration of the United Nations Conference on the Human Environment*, prin. 21, U.N. Doc. A/Conf.48/14/Rev. 1 (1973) [hereinafter *Stockholm Declaration*]; *Rio Declaration*, *supra* note 20, prin. 2; Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), Annex, 25 U.N. GAOR Supp. 18 122 (October 24, 1970).

39. See *Rio Declaration*, *supra* note 20, prin. 3; Declaration on the Right to Development, G.A. Res. 41/128, Annex, 41 U.N. GAOR Supp. No. 53 at 186, U.N. Doc. A/41/53 (Dec. 4, 1986); see also The Right to Development, G.A. Res. 55/108, U.N. Doc. A/RES/55/108 (March 13, 2001).

40. Several treaties have been signed to implement this principle, including the Convention Concerning the Protection of the World Cultural and Natural Heritage (Nov. 23, 1972, 1037 U.N.T.S. 151); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (January 27, 1967, 610 U.N.T.S. 205); Antarctic Treaty (Dec. 1, 1959, 402 U.N.T.S. 71); and Protocol on Environmental Protection to the Antarctic Treaty (Oct. 4, 1991, 30 I.L.M. 1455).

cooperation in these areas.⁴¹

5. Principle of Equity – refers to both *inter-generational equity* (the right of future generations to enjoy a fair share of Earth’s natural resources) and *intra-generational equity* (the right of all peoples within the current generation to enjoy fair access to resources). Hence, the principle requires natural resources to be exploited sustainably, avoiding any irreversible environmental damage.⁴²

6. Common but Differentiated Responsibilities – acknowledges that, while all states share a common responsibility to protect the environment and promote sustainable development, the nature of this responsibility will vary because of states’ different social, economic, and ecological situations. Equitable considerations require that developed countries bear more burdens in the protection of the environment than developing countries.⁴³

7. State Responsibility – holds states responsible for breaches of international duties assumed by consent, as well as all activities occurring within their jurisdiction.⁴⁴

8. Obligation Not to Cause Environmental Harm – obliges states not to cause harm to the interests of any other states. This principle is based on customary international law.⁴⁵

41. See Biodiversity Convention, *supra* note 23; Climate Change Convention, *supra* note 22; INT’L UNION FOR CONSERVATION OF NATURE, DRAFT INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT (1995) [hereinafter IUCN COVENANT].

42. See *Stockholm Declaration*, *supra* note 38, prins. 1, 2; *Rio Declaration*, *supra* note 20, prin. 3; World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, U.N. Doc. A/42/427/Annex (Mar. 20, 1987); see also Historical Responsibility of States for the Preservation of Nature for Present and Future Generations, G.A. Res. 35/8, U.N. Doc. A/RES/35/8 (Oct. 30, 1980). Moreover, in the *Johannesburg Declaration on Sustainable Development*, states committed themselves to “building a humane, equitable and caring global society, cognizant of the need for human dignity for all.” (World Summit on Sustainable Development, Johannesburg, S. Afr., Sept. 2-4, 2002).

43. See *Rio Declaration*, *supra* note 20, prin. 7; Climate Change Convention, *supra* note 22, art. 3; Montreal Protocol on Substances that Deplete the Ozone Layer art. 5, Sept. 16, 1987, 1522 U.N.T.S. 3; Stockholm Convention on Persistent Organic Pollutants, Preamble, May 22, 2001, U.N. Doc. UNEP/POPS/CONF/2. This principle calls for developed states to provide financial and technical assistance and transfer of environmentally sound technologies to developing nations in order to help them protect the environment.

44. Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration can be interpreted to support this principle. See also Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, U.N. GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001); *Factory at Chorzow (Germ. v. Pol.)*, 1927 P.C.I.J. (ser. A) No. 9 (July 26); *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. Rep. 4 (Apr. 9).

45. See *Stockholm Declaration*, *supra* note 38, prin. 21; *Rio Declaration*, *supra* note 20,

9. The Principle of Pollution Prevention – similar to above, but emphasizes the need to anticipate environmental damage and act proactively to avoid or prevent it. This principle is based on the idea that environmental protection is best achieved by preventing environmental harm, rather than relying on remedies or compensation for such harm after it has occurred.⁴⁶

10. The Precautionary Principle – holds that incomplete scientific findings or lack of consensus regarding a particular threat should not prevent decision makers from taking anticipatory actions to prevent environmental harm. States should err on the side of caution, as scientific certainty often comes too late to design effective legal and policy responses to potential environmental threats.⁴⁷

11. The Polluter (or User) Pays Principle – holds that polluters and users of natural resources should bear the full environmental and social costs of their activities and internalize environmental externalities.⁴⁸

12. The Principle of Subsidiarity – proposes that decisions about the environment and resource utilization should be made at the lowest level of government or social organization where the issues can be effectively managed. This is presumed to increase consideration of local environmental conditions and the opinions of local people, who often bear the highest environmental cost of development decisions.⁴⁹

13. Good Neighborliness and the Duty to Cooperate – obliges states to cooperate with their neighbors, in accordance with binding international principles dating back 200 years.⁵⁰

prin. 2; Trail Smelter Arbitration, *supra* note 28; Corfu Channel, *supra* note 44; U.N. Environment Programme [UNEP], *Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States*, prin. 3 (1978); IUCN COVENANT, *supra* note 41, art.11.

46. See *Stockholm Declaration*, *supra* note 38, prin. 6; see also Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa art. 4(3)(f), Jan. 30, 1991, 30 I.L.M. 775 (requiring states to “strive to adopt and implement the preventive, precautionary approach to pollution problems”).

47. See, e.g., *Rio Declaration*, *supra* note 20, prin. 15; World Charter for Nature, *supra* note 19, prin. 11; Adjustments and Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer, London, U.K., U.N. Doc. UNEP/OzL.Pro.2/3 (June 29, 1990).

48. *Rio Declaration*, *supra* note 20, prin. 16. See also Org. for Econ. Co-operation and Dev. [OECD], *Recommendation of the Council on Guiding Principles Concerning International Economic Aspects of Environmental Policies*, OECD Doc. C(72)128 (May 26, 1972); OECD, *Recommendation of the Council on the Implementation of the Polluter-Pays Principle*, OECD Doc. C(74)223 (Nov. 14, 1974).

49. See Agenda 21, *supra* note 21, para. 12.28, 12.37, and ch. 18.

50. See *Stockholm Declaration*, *supra* note 38, prin. 24; *Rio Declaration*, *supra* note 20,

14. Duties to Provide Prior Notification and to Consult in Good Faith – obliges states planning an activity to communicate all necessary information sufficiently in advance to potentially affected states so that the latter can prevent damage to their territories and consult with the acting state.⁵¹

15. Principle of Prior Informed Consent – requires prior consent from a state when another state wants to operate therein, and prior consent from indigenous communities about activities that affect them.⁵²

16. Duty to Assess Environmental Impacts – obliges states to undertake environmental impact assessments (“EIAs”) for proposed activities, and to integrate environmental issues into development planning.⁵³

17. Public Awareness and Participation – proposes that the public, affected communities, and nongovernmental actors should participate in environmental and developmental decisions that affect their interests or the interests they represent. This principle also includes the right of equal access to justice.^{54 55}

These principles may be subject to different interpretations as they are implemented. It is worth noting that the principles are not totally “soft law,” as many have found their way into binding treaties and conventions,

prin. 27. See also U.N. Charter art. 1, para. 3; Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), Annex, 25 U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970).

51. See *Rio Declaration*, *supra* note 20, prin. 18, 19. See also OECD, *Recommendation of the Council on Principles Concerning Transfrontier Pollution*, OECD Doc. C(74)224 (Nov. 14, 1974); UNEP, *London Guidelines for the Exchange of Information on Chemicals in International Trade (Amended)*, Governing Council Decision 15/30, U.N. Doc. UNEP/GC. 15/12, Annex II, at 17 (May 25, 1989).

52. See Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal art. 6(4), Mar. 22, 1989, 1673 U.N.T.S. 126; Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade [Rotterdam Convention], Sept. 10, 1998, 38 I.L.M. 1 (1999); Biodiversity Convention, *supra* note 23, art. 15(5); United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

53. See *Rio Declaration*, *supra* note 20, prin. 17. See also Climate Change Convention, *supra* note 22, art. 4(1)(f); United Nations Convention on the Law of the Sea art. 206, Dec. 10, 1982, 1833 U.N.T.S. 397; World Charter for Nature, *supra* note 19, prin. 11(c).

54. *Rio Declaration*, *supra* note 20, prin. 10; Agenda 21, *supra* note 21, paras. 8, 23 (declaring that states must ensure broad public participation in initiatives for sustainable development, through access to information and access to justice); *Johannesburg Declaration*, *supra* note 42, para. 26 (“We recognize that sustainable development requires a long-term perspective and broad-based participation in policy formulation, decision-making and implementation at all levels.”).

55. These principles are discussed in INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, *supra* note 37, at 472-537. Other writers may use different categories or wordings to distinguish these principles.

or at least into customary international law. The following discussion will assess the extent to which these principles have influenced Ethiopian environmental frameworks.

III. Ethiopian Environmental Laws and Institutional Frameworks

A. Introduction

Ethiopia's urban environments are characterized by unplanned and unmanaged industrialization and urbanization, very high population, high density of housing and unplanned settlement, crowded market centers, poor infrastructure, and contamination from industrial effluents.⁵⁶ But rural areas suffer from more severe environmental problems like serious land degradation, loss of soil fertility, water pollution, and indoor air pollution.⁵⁷

1. Land – Soil erosion and degradation continue to be Ethiopia's most critical problems, despite soil and water conservation efforts throughout most mountainous parts of the country. According to European Commission Delegate Jonathan McKee, the core factors in this problem are lack of effective political commitment, lack of skilled government staff, population pressure, poor design and tenure problems, lack of a sense of ownership among farmers, and increased urbanization and industrialization.⁵⁸ Soil erosion has also been exacerbated by “[e]xtensive agricultural production . . . , the use of obsolete technology which is not environmentally friendly and overgrazing by the fast growing livestock population.”⁵⁹

2. Water and Sanitation – Rural access to the water supply was estimated to be 34.5 percent at the end of 2005, according to a government report.⁶⁰

56. Fikremariam Tesfaye, *Ethiopia: Environmental Policy Implementation Still in Difficulty* – EPA, DAILY MONITOR (Ethiopia), March 13, 2009 (quoting Tekle Woldegerima, Deputy General Manager of the Addis Ababa Environmental Protection Authority), available at <http://allafrica.com/stories/200903130194.html>.

57. Most of these problems are common knowledge for ordinary Ethiopian citizens, but are briefly discussed here as background information. Writers who have explored these issues in depth include Jonathan McKee, an EC delegate to Ethiopia (JONATHAN MCKEE, EUROPEAN COMMISSION, ETHIOPIA: COUNTRY ENVIRONMENTAL PROFILE 17-48 (2007)) and Girma Kebede, an Ethiopian from Mount Holyoke College in the U.S., who describes the dreadful urban environmental situations in Ethiopia (GIRMA KEBEDE, LIVING WITH URBAN ENVIRONMENTAL HEALTH RISKS: THE CASE OF ETHIOPIA (2004)).

58. MCKEE, *supra* note 57.

59. MEDHIN ZEWDU, SUSTAINABLE DEVELOPMENT IN ETHIOPIA 6 (2002), available at www.worldsummit2002.org/texts/ethiopiaReport.rtf.

60. MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT (ETHIOPIA), A PLAN FOR

Moreover, the Ministry of Health (2006) has determined that fluoride contamination is a major problem, especially in the Rift Valley.⁶¹ Levels of water quality protection are very low from risks like sewers and latrines, animals, cracks in the pre-filters, and other pollutants. Despite recent efforts to promote hygiene and community mobilization, Ethiopia has the lowest level of sanitation coverage in the world—approximately 30 percent, with rural coverage estimated at only 7 percent.⁶² (A 2006 government report estimated coverage at 17.5 percent in rural and 50 percent in urban areas.)⁶³

3. Toxic Substances – Ethiopia is reported to be a toxic hotspot, with 2000 tons of obsolete pesticide deposits throughout the country.⁶⁴ This supply of inappropriate or surplus chemicals is the result of absent or incomplete labeling, lack of coordination between donors, and discrepancy between real and estimated needs. DDT especially has become a threat to human health due to losses, organized thefts from stock, and misuse by farmers.⁶⁵

4. Air – Emissions from vehicles (particularly older vehicles) and unregulated industry have caused a sharp decline in the air quality of the nation's capital.⁶⁶ Indoor air pollution is also a very serious issue, causing acute respiratory illnesses. The problem is especially severe for women and children due to household use of polluting traditional stoves and woody biomass (such as fuel wood, dung, and crop residues), which accounts for 95 percent of the energy supply.⁶⁷

5. Forests – The nation's forest cover has declined to only 4 percent of the total land area, despite a positive trend in recent years.⁶⁸ Causes include

ACCELERATED AND SUSTAINED DEVELOPMENT TO END POVERTY 127 (2005) [hereinafter PASDEP].

61. MCKEE, *supra* note 57, at 20-23.

62. EMELIE DAHLBERG, ANDERS EKBOM, MENALE KASSIE, & MAHMUD YESUF, ETHIOPIA ENVIRONMENT AND CLIMATE ANALYSIS 6 (2008).

63. PASDEP, *supra* note 60, at 128.

64. According to the information obtained from the Ministry of Agriculture and Environmental Protection Authority, the existing 2,000 tons of wastes are awaiting shipment for its disposal in Europe. This is in addition to the 1,500 tons already disposed abroad.

65. With the cooperation of the U.N. Food and Agriculture Organization and other donors, the country has transported around 1,500 tons of obsolete pesticides for safe disposal or incineration. *See* MCKEE, *supra* note 57, at 24. The Ministry of Health has currently prohibited the use of DDT for any purpose, though with stiff resistance from some parties having a large supply stock. Wudineh Zenebe, *Ethiopia: DDT Ban Forces Pesticide Co to Export Stockpile*, Addis Fortune, March 16, 2010, available at <http://allafrica.com/stories/201003160751.html>.

66. MCKEE, *supra* note 57, at 24-26.

67. DAHLBERG, *supra* note 62, at 6.

68. This positive trend is partly due to the nationwide tree-planting campaign during the Ethiopian millennium and to natural regeneration practices, particularly in the northern part

population increase, unmanaged human activities, lack of a sense of ownership, government resettlement schemes, fire, and commercial farming.⁶⁹

6. Wetlands – The country’s wetlands (which are estimated to cover only 2 percent of the nation’s area) are threatened due to draining for agriculture, grazing, overexploitation, deforestation, siltation, soil erosion, land degradation, settlements, industrialization, and pollution.⁷⁰

7. Biodiversity – Ethiopia is one of the world’s most degraded biodiversity hotspots due to population increase, invasion of alien species, expansion of arable lands, and insufficient financial and political commitment. Parks, hunting areas, and wildlife reserve areas have been established throughout the country, but they are under severe threat.⁷¹

8. Natural and Cultural Heritage – Ethiopia’s rich natural and cultural heritage is threatened by neglect, decay, removal, and destruction, as well as the less visible and tangible impacts of changing sociocultural values, foreign ideas, and imported technologies.⁷²

Jonathan McKee has characterized the primary features of the Ethiopian environmental regime as the existence of established structures, institutions, and laws at the federal, regional, and sometimes *woreda* (district) and zonal levels; lack of capacity to effectively manage the environment; and donors’ inclination to mainstream environmental issues into the country’s major economic sectors without recognizing the urgency of Ethiopia’s environmental crisis.⁷³ Let us now take a look at Ethiopia’s cherished but toothless environmental legal frameworks.

B. The Constitution

Ethiopia’s Constitution incorporates a number of provisions relevant to the protection, sustainable use, and improvement of the country’s

of the country.

69. MCKEE, *supra* note 57, at 31-33.

70. *Id.* at 35.

71. Ethiopia is a center of origin for agricultural plant diversity (also called a Vavilovian center). However, loss of this genetic diversity is acute due to factors like “deforestation, expansion of investment activities, overgrazing, expansion of agricultural activities, poverty, and lack of appropriate policies that encourage conservation and management of biodiversity.” Medhin Zewdu, *supra* note 59, at 3, 6.

72. ENVIRONMENTAL POLICY OF ETHIOPIA 2 (1997), *available at* <http://www.epa.gov.et/Download/Proclamations/ENVIRONMENT%20POLICY%20OF%20ETHIOPIA.pdf> [hereinafter EPE].

73. MCKEE, *supra* note 57, at 10.

environment. Article 44 guarantees “the right to a clean and healthy environment,” while Article 43 pledges “the right . . . to sustainable development.”⁷⁴ Additionally, Articles 89 and 92 require national policy and government activities to be compatible with environmental health.⁷⁵ Article 89 further obliges the government to ensure sustainable development, work for the common benefit of the community, and promote the participation of the people, including women, in the creation of national development policies and programs. Moreover, according to Article 91, the government is duty-bound to protect and support cultures, traditions, natural endowments, and historical sites and objects.

The incorporation of these important provisions into the supreme law of the land has raised environmental issues to the level of fundamental human rights. However, effective implementation mechanisms (like laws, policies, and institutions) are needed to realize these rights. For example, the Constitution in many places underlines consultation and community participation as indispensable elements of development activities, but these still require subordinate legislation to put effective mechanisms in place. Such legislation should oblige government agencies to effectively reach out to the community, handle and respond to their concerns, communicate findings, and provide access to judicial review.

C. *Environmental Policy*

Like the Constitution, the Environmental Policy of Ethiopia (“EPE”)⁷⁶ prioritizes improving the well-being and quality of life of Ethiopians and the promotion of sustainable development.⁷⁷ One implementation strategy is the effective management of natural and environmental resources from the federal level down to the *woreda* and community levels. Another

74. CONSTITUTION, Arts. 43(1), 44(1) (1995) (Ethiopia).

75. Article 92(3) reads, “People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.”

76. The EPE was born out of the Conservation Strategy of Ethiopia (“CSE”) in 1997. CSE was initiated in 1989 and lasted 13 years, passing through three phases. “Phase I (1989-90) focused on identifying key environmental issues and developing a framework and process for the CSE. Phase II (1990-94) focused on developing an environmental policy, an institutional framework and an investment program. Phase III was devoted to the preparation of Regional Conservation Strategies (RCSs) in all regions.” Significant achievements of CSE include the formulation of EPE, establishment of the Environmental Protection Authority, building regional capacity, and pushing forward critical issues related to environmental protection and sustainable development. MCKEE, *supra* note 57, at 50-51.

77. EPE, *supra* note 72, sec. 2.1, at 3.

strategy envisaged within the Policy is to assign resource management to one organization and protection, regulation, and monitoring to another.⁷⁸

The EPE also discusses specific principles meant to guide development activities. Some of these are briefly discussed below, illuminating the links between international environmental principles and Ethiopian policy statements.⁷⁹

- a. Right to a Healthy Environment – as with the Constitution, the EPE guarantees every person’s right to live in a healthy environment.
- b. Community Participation and Decision-making – acquisition of power by communities to make their own decisions on matters affecting their lives and environment. Similar to the international *Principles of Subsidiarity, Public Awareness, and Participation*.
- c. Renewable and Nonrenewable Resources – use of renewable resources should be sustainable, while use of nonrenewable resources shall be minimized and, where possible, their availability should be extended (e.g., through recycling). This is the *Principle of Inter-Generational Equity*, and is related to the *Principle of Sustainable Use of Natural Resources*.
- d. Technology – adoption and dissemination of technologies that use resources efficiently, and support for communities and individuals to use and manage such technologies. This is also related to the *Principle of Sustainable Use of Natural Resources*.
- e. Precaution – “err on the side of caution when a compromise between short-term economic growth and long-term environmental protection is necessary;” this is the *Precautionary Principle*.
- f. Cost-Benefit Analysis – full environmental and social costs (or benefits forgone or lost) shall be incorporated into public and private sector planning, as well as accounting and pricing of resources. This is similar to the *Polluter (and User) Pays Principle*.
- g. Social Equity and Equality of Women – social equity shall be

78. The overall policy goal is to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made, and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs. *Id.*

79. This list is a summary of EPE, *supra* note 72, sec. 2.3, at 4-6. For easy reference and understanding, different provisions of the policy discussing related subjects have been included.

assured, particularly in resource use, and women shall be empowered and treated equally with men in all activities. This would be included in the *Principle of Intra-Generational Equity*.

- h. Environmental Assessment and Monitoring – regular, accurate assessment and monitoring of environmental conditions, along with publication of all data, in keeping with the *Duty to Assess Environmental Impacts*.
- i. Awareness and Information – increased awareness and understanding of environmental and resource issues, as in the *Principle of Public Awareness and Participation*.
- j. Land Security and Preservation of Species – uninterrupted access for people to their own land and resources, and recognition of other species’ right to exist. These are parts of the *Principle of Sustainable Use of Natural Resources*.

The EPE further stipulates detailed environmental policies for sectoral and cross-sectoral activities, together with implementation policies.⁸⁰ The original draft version, as an annex, also included draft interpretation guidelines, standards for specified industrial sectors, general standards for all other industrial effluents, standards for gaseous emissions, and standards for noise limits.⁸¹

In addition to the EPE, other sectoral policies have an indispensable role in the improvement of Ethiopia’s environmental quality. The Ethiopian Water Sector Policy⁸² and Ethiopian Water Sector Strategy⁸³ are good examples. The Water Policy provides specific policy directions for environmental and water resource protection and conservation; use and management of technology and engineering in the sector; water cost and

80. The sectoral matters for which detailed policies are described include soil husbandry and sustainable agriculture; forest, woodland, and tree resources; genetic, species, and ecosystem biodiversity; water, energy, and mineral resources; human settlement, urban development, and environmental health; control of hazardous materials and pollution from industrial wastes; atmospheric pollution and climate change; and cultural and natural heritage. Cross-sectoral matters include population, community participation, gender, environmental research, environmental education, environmental information systems, environmental economics, land use, and tenure and access rights to land and natural resources. EPE, *supra* note 72, at 6-25.

81. For some of these issues (e.g., industrial emissions), the Environmental Protection Authority issued binding standards late in 2008.

82. Ministry of Water Resources, Ethiopian Water Sector Policy (2001), <http://www.mowr.gov.et/> (click on “Download” to the left, then “1. Ethiopian Water Resources Management Policy”) [hereinafter Water Policy].

83. Ministry of Water Resources, Ethiopian Water Sector Strategy (2001), <http://www.mowr.gov.et/> (click on “Download” to the left, then “2. National Water Sector Strategy”) [hereinafter Water Strategy].

pricing; groundwater utilization; disaster, emergency, and public safety management; “equitable and reasonable” use of trans-boundary water; and participation of stakeholders in the sector.⁸⁴ The Water Strategy contains detailed guidelines for implementing the above policies, along with guidelines on the development of hydropower, guaranteeing water supply, sanitation, and exploitation of agricultural irrigation potentials.⁸⁵ These documents, on paper at least, try to strike a balance between resource development and conservation, but can have little effect without strong legislative and institutional regimes.

D. Environmental Laws

Many laws have been enacted and treaties adopted for the protection of different segments of the Ethiopian environment. Due to the large volume of these federal laws and treaties, this part will only list some of them instead of thoroughly discussing each one.⁸⁶

- a. Awash National Park Establishment Order No. 54/1969, Simien National Park Establishment Order No. 59/1970, and similar other establishment documents;
- b. Institute of Biodiversity Conservation and Research Establishment Proclamation No. 120/1998 (later renamed the Institute of Biodiversity Conservation by Proclamation No 381/2004);
- c. Water Resource Management Proclamation No. 197/2000;
- d. Public Health Proclamation No. 200/2000;
- e. Proclamation on the Establishment of Environmental Protection Organs No. 295/2002;
- f. Environmental Impact Assessment Proclamation No. 299/2002, Directive Issued to Determine Projects Subject to Environmental Impact Assessment (“EIA”) No. 2/ 2008, EIA Guideline Document (May 2000), EIA Procedural Guideline Series 1 (2003), Guideline Series Documents for Reviewing EIA Reports (2003), EIA Guidelines on Irrigation (2004) and on Pesticides (2004);
- g. Environmental Pollution Control Proclamation No. 300/2002, Regulation and Directives for Emission Standards of Selected

84. Water Policy, *supra* note 82, at 8-18.

85. Water Strategy, *supra* note 83, at 2-23.

86. Electronic copies of most of these laws are available on the websites of the House of Peoples’ Representatives (<http://www.ethiobar.net>) and Federal Supreme Court (<http://www.fsc.gov.et>), with printed copies available from Birhanena Selam Press. The laws are in order of issuance, from the earliest to the most recent.

- Industries (2008);
- h. Criminal Code of Ethiopia No. 414/2004 [penalizes pollution and related offenses];
 - i. Federal Rural Land Administration and Land Use Proclamation No. 456/2005;
 - j. Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006;
 - k. Solid Waste Management Proclamation No. 513/2007;
 - l. Development Conservation and Utilization of Wildlife Proclamation No. 541/2007;
 - m. Forest Conservation, Development and Utilization Proclamation No. 542/2007;
 - n. Radiation Protection Proclamation No. 571/2008;
 - o. Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation No. 575/2008; and
 - p. Biosafety Proclamation No. 655/2009.

In addition to national laws, increasingly globalized environmental issues often require treaties to coordinate national efforts. These treaties are part of the Ethiopian environmental legal framework.⁸⁷ Between 1972 and the present, Ethiopia ratified many multilateral environmental agreements, including:

- The Convention on Biological Diversity;
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and Basel Ban Amendment;
- The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa;
- The International Treaty on Plant Genetic Resources for Food and Agriculture;
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- The United Nations Framework Convention on Climate Change and its Kyoto Protocol;
- The United Nations Convention to Combat Desertification in those

87. According to the Constitution, “All international agreements ratified by Ethiopia are an integral part of the law of the land.” Thus, there is no doubt that these environmental treaties are part of the national regime and can be effected by domestic laws, and the nation is duty-bound to observe the obligations assumed by such treaties. CONSTITUTION, Art. 9(4) (1995).

Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;

- The Cartagena Protocol on Biosafety to the Convention on Biological Diversity;
- The Convention on Migratory Species and the African-Eurasian Waterbird Agreement;
- The Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer;
- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and
- The Stockholm Convention on Persistent Organic Pollutants .

Administration of these treaties is, however, fragmented by various loosely coordinated federal sectoral offices. At the federal level, implementation of environmental treaties is the responsibility of the Environmental Protection Authority (“EPA”), the Ministry of Agriculture (“MoA”), the Ministry of Water and Energy, and the Ministry of Culture and Tourism.⁸⁸

E. Institutional Frameworks

Under the EPE, different agencies are assigned to “environmental and natural resource development and management activities on the one hand, and environmental protection, regulation and monitoring on the other.”⁸⁹ The EPA⁹⁰ is the leading federal environmental agency, with the objective of formulating policies, strategies, laws, and standards to ensure that social

88. Tewelde Berhan G/Egziabher, Director General of EPA, Lecture for Graduate Students of Alabama University: Global Trade and Environment and Issues of Particular Importance to Africa (May 7, 2009). EPA takes care of the UN Framework Convention on Climate Change and Kyoto Protocol, the Cartagena Protocol on Biosafety, the Bamako Convention, the Rotterdam Convention, the Stockholm Convention, and the Convention to Combat Desertification and Drought. The MoA is responsible for the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture. The Ministry of Water and Energy is delegated by EPA to follow the implementation of the Vienna Convention on the Protection of Ozone Layer and its Montreal Protocol. Lastly, the Ministry of Culture and Tourism is responsible for the Convention on Migratory Species, the Convention on the International Trade in Endangered Species of Wild Fauna and Flora and for the Agreement on African and Eurasian Water Birds. *Id.*

89. EPE, *supra* note 72, Section 5.1(e), at 27.

90. The EPA has two arms: the executive, headed by the Director General, and the policy-maker (known as the Environmental Council), which is composed of representatives and stakeholders from all regions.

and economic development activities sustainably enhance human welfare and the safety of the environment.⁹¹ In addition, EPA is responsible for evaluating the environmental impact assessment reports of federal and inter-regional projects, as well as auditing and regulating their implementation.⁹² EPA is also in charge of providing technical support for environmental management and protection to regional offices and sectoral institutions.⁹³

The proclamation that established the EPA also requires regional states to establish or designate their own regional environmental agencies (“REAs”). These REAs are responsible for coordinating the formulation, implementation, review, and revision of regional conservation strategies and for environmental monitoring, protection, and regulation.⁹⁴ In some regions, REAs have been established as parts of other agencies, while other regions’ REAs are separate institutions.⁹⁵ All regions and city administrations have established REAs except the Somali region, whose REA is continuously being restructured.⁹⁶ The REAs suffer from practical constraints. Some lack an approved conservation strategy to guide their environmental management, and where such strategies exist, they are limited in practical utility. In addition, structural instability (structural change, transfer of authority, conflict of interests between sectoral offices), under-staffing, and lack of experts are common across REAs.⁹⁷

In addition to the EPA and REAs, the Environmental Organ Establishment Proclamation mandated that “Sectoral Environmental Units” (“SEUs”) be established at every competent agency, with the responsibility of coordinating and following up activities in harmony with environmental laws and requirements.⁹⁸ The purpose of the SEUs is to ensure “that

91. Environmental Protection Organs Establishment Proc. No. 295/2002, FEDERAL NEGARIT GAZETA, art. 6.

92. *Id.* Projects that are neither subject to federal licensing, execution, or supervision nor likely to entail inter-regional impacts are within the jurisdiction of regional environmental agencies.

93. MELLESE DAMTIE & MESFIN BAYOU, MELCA MAHIBER, OVERVIEW OF ENVIRONMENTAL IMPACT ASSESSMENT IN ETHIOPIA: GAPS AND CHALLENGES 31(2008).

94. Environmental Protection Organs Establishment Proc. No. 295/2002, FEDERAL NEGARITGAZETA, art. 15.

95. MELLESE & MESFIN, *supra* note 93, at 32.

96. Independent environmental agencies have been established in the Dire Dawa and Addis Ababa administrations, while the REAs in Amhara, Tigray, SNNP, and Oromia are situated in the offices of Environmental Protection and Land Administration. Interview with Mohammed Ali, EPA (Apr. 16, 2010).

97. MCKEE, *supra* note 57, at 57.

98. Environmental Protection Organs Establishment Proc. No. 295/2002, FEDERAL NEGARIT GAZETA, art. 4.

environmental issues are addressed in development projects and public instruments initiated by government institutions.”⁹⁹ However, SEUs have only been established so far at the Ministry of Mines, Ministry of Agriculture, Ministry of Water and Energy, Ethiopian Roads Authority, and Ethiopian Electric Power Corporation, leaving most relevant federal agencies (as well as all regional ones) without environmental coordination.¹⁰⁰

In managing Ethiopia’s environment, government agencies share importance with private individuals, communities, and (to a lesser degree) companies. Before the enactment of the new law on civil organizations (which may shrink their quality of service, number, and capacity),¹⁰¹ such organizations in Ethiopia were maturing in their quality of service, geographical coverage, and creation of policy dialogue.¹⁰² Mohammed Ali of the EPA agrees that the role of nongovernmental organizations is increasing in both national and international environmental negotiation and implementation.¹⁰³ He notes that Forum for Environment, a local nongovernmental organization (“NGO”) active in environmental concerns, is a member of the EPA’s Environmental Council. In addition, EPA is working closely with other NGOs on various issues.¹⁰⁴

Some sectoral/ministry offices are also responsible for specific aspects of the administration of natural resources.¹⁰⁵ For example, the MoA is responsible for forest, soil, land, and wildlife resources; the Ministry of Mines is responsible for mineral resources; and the Ministry of Water and Energy is responsible for water and energy resources. The National Meteorological Agency, under the Ministry of Water and Energy, used to handle issues revolving around ozone layer protection until recent transfer of this task to the EPA, while the National Radiation Protection Authority, under the Ministry of Science and Technology, renders radiation protection services. The Institute of Biodiversity Conservation (“IBC”) is responsible for exploring, surveying, and ensuring conservation of the country’s

99. MELLESE & MESFIN, *supra* note 93, at 33.

100. Mohammed, *supra* note 96; *see also* MELLESE & MESFIN, *supra* note 93, at 33.

101. The law restricts indigenous non-governmental organizations to raising no more than 10 percent of their funds from abroad, and also limits the kinds of services provided by non-Ethiopian charities or associations. *See* Charities and Societies Proc. No. 621/2009, FEDERAL NEGARIT GAZETA.

102. MCKEE, *supra* note 57, at 58.

103. Mohammed, *supra* note 96.

104. *Id.*

105. *See generally* Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proc. No. 471/2005, FEDERAL NEGARIT GAZETA (specifically defining the responsibilities of ministry offices and agencies).

biodiversity.¹⁰⁶

Despite these efforts, environmental protection in Ethiopia remains in its infancy due to a focus on short-term economic gain, lack of commitment, under-staffing and lack of capacity in many offices, lack of effective enforcement mechanisms, and loose coordination among responsible agencies. While there has been progress, it has been incommensurate with the nature and degree of threat that Ethiopia is experiencing.

F. Plan for Accelerated and Sustainable Development to End Poverty

As a cross-sectoral issue, environmental protection may be strongly influenced by government planning documents. An important example of this is the Plan for Accelerated and Sustainable Development to End Poverty (“PASDEP”), an economic planning document that guided the country’s activities during the period 2005-2010. Ethiopia launched PASDEP in 2005, building on its predecessor, the Sustainable Development and Poverty Reduction Program (SDPRP).¹⁰⁷ The objectives of PASDEP were to define the nation’s overall development strategy for five years (2005/06-2009/10), chart a course for eradicating poverty, and outline major programs and policies in each of the major sectors.¹⁰⁸ Specific emphasis was placed on increasing production, exploiting existing natural resources, research, market utilization, pest management, animal feed, health services, sustainable land and water use, and conservation.¹⁰⁹

On environmental issues, PASDEP enumerated six strategic goals toward the realization of environmentally sound development:

GOAL A: Ensure community-led environmental protection and the sustainable use of environmental resources for gender equity

106. Institute of Biodiversity Conservation and Research Establishment/ Amendment Proc. No. 381/2004, FEDERAL NEGARIT GAZETA.

107. PASDEP, *supra* note 60, at 1. The Sustainable Development and Poverty Reduction Program lasted for three years (2002/03-2004/05), providing overall guidance for the country’s development and a framework within which donor support could be coordinated. In environmental matters, there were some successes, especially in establishing environmental agencies and units at the federal and regional levels, and including environmental concerns in planning documents like the Safety Nets and the Resettlement Program. However, there has been a huge gap between policies and their implementation on the ground. See Mulugeta Getu, *Ethiopian Floriculture and its Impact on the Environment: Regulation, Supervision and Compliance*, 3.2 MIZAN L. REV. 240, 253 (2009).

108. PASDEP, *supra* note 60, at 1.

109. *Id.*

and improved livelihood[s];

GOAL B: Rehabilitate affected ecosystems;

GOAL C: Enhance capacity of ecosystems to deliver goods and services, particularly biomass for food, feed and household energy;

GOAL D: Remove adverse impacts of municipal waste;

GOAL E: Prevent environmental pollution; and

GOAL F: Ensure proactively the integration of environmental and ethical dictates especially mainstreaming gender equity in development.¹¹⁰

The plan's main implementation strategy was to empower the 125 *woredas* by increasing their capacity and developing and implementing their environmental management and sustainable livelihood plans.¹¹¹ PASDEP also called for Environmental Management Plans for the most polluting industries (textile, beverage, chemical, sugar, and cement factories, tanners), sound municipal waste management systems for sixty-two municipalities, review of EIAs for projects, establishment of a "national environmental management information and networking system," and encouragement of environmental awareness through student environmental clubs.¹¹²

Jonathan McKee has praised PASDEP's focus on pollution and solid waste management in urban areas, noting the rising importance in Ethiopia of urban growth and pollution issues.¹¹³ Nonetheless, he proposed "further fine-tuning" in the integration of agricultural growth and environmental issues: "For instance, it is unclear how the implementation of government enforced enclosure activities outlined in the agricultural strategy can be reconciled with the strategic goal . . . of ensuring community led environmental protection."¹¹⁴ Also, integrated pest management, a pillar of the earlier SDPRP, was omitted from PASDEP, which instead emphasized

110. *Id.* at 189-190.

111. The newly formulated Growth and Transformation Plan ("GTP") that replaced PASDEP to function for the years 2010/11 to 2014/15 reported that "[a] woreda environment management planning manual was prepared," with which about 1,450 environmental experts were trained. In addition, the GTP noted that 116 *woredas* out of the targeted 125 had prepared and implemented environmental management plans. MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT (ETHIOPIA), GROWTH AND TRANSFORMATION PLAN 18 (2010), <http://www.mofed.gov.et/English/Resources/Documents/GTP%20English2.pdf> [hereinafter GTP].

112. PASDEP, *supra* note 60, at 190-91. According to the GTP, twelve EIA manuals have been prepared, a dry waste management strategy and law have been issued, and sixty-five experts have been trained accordingly. GTP, *supra* note 111.

113. MCKEE, *supra* note 57, at 68.

114. *Id.*

pest control through chemicals.¹¹⁵ McKee further questioned the proposed expansion of the floriculture and horticulture industries, given their heavy reliance on chemical fertilizers and pesticides.¹¹⁶

Overall, according to McKee, PASDEP prioritized economic growth and development while environmental and sustainability issues were “relegated into the background.”¹¹⁷ As a result, aggressive programs have been implemented in recent years without much consideration of their environmental impacts. Examples include clearing prime virgin forest for commercial farming, expanding the flower sector with uncontrolled chemical fertilizers and pesticide use,¹¹⁸ converting large wetland areas to commercial farms, and expanding sugarcane and other agro-fuel commercial farming in lowland areas without effective regulatory and policy frameworks.¹¹⁹

Like McKee, the Development Assistance Group Ethiopia (“DAG,” a consortium of donors including the World Bank and U.N. Development Programme) praised PASDEP’s urban agenda and mainstreaming of environmental sustainability.¹²⁰ The group’s assessment, however, found that PASDEP only weakly addressed issues such as institutional strengthening for long-term environmental management beyond EPA’s mandate, or the involvement of other sectors to ensure environmental sustainability.¹²¹ DAG also criticized PASDEP for its urban bias,¹²² for not addressing sustainable land management strategies consistently in various parts of the document, and for “[l]ack of strategic linkage to core poverty

115. *Id.*

116. *Id.*

117. *Id.*

118. See Mulugeta, *supra* note 107 (discussing the impact of the floriculture sector and low levels of regulation).

119. McKee, *supra* note 57, at 68-69.

120. DEVELOPMENT ASSISTANCE GROUP, ETHIOPIA: A PLAN FOR ACCELERATED AND SUSTAINED DEVELOPMENT TO END POVERTY (PASDEP): COMMENTS FROM THE DEVELOPMENT ASSISTANCE GROUP 9(2006) [hereinafter DAG].

121. *Id.* at 9-10. DAG highly recommends “[c]ommitment of the sector ministries and agencies to integrate environment into their planning and implementation processes For this to happen, PASDEP should include actions such as enhancement of capacities of line ministries and their respective environmental units, regional environment bodies to ensure environment sustainability of development initiatives, and to identify and implement environment related investments that make an effective contribution towards delivering sector policies.” *Id.* at 50.

122. “Overall, the identified strategies in the environment component are focused on urban challenges, which only partially address key problems facing the rural population. For instance, consumption of fuel wood and charcoal, land degradation under the increasing population pressure, watershed management, climate change and biodiversity should be strategically addressed in the PASDEP.” *Id.* at 50.

generating factors, like poor land management.”¹²³ The assessment recommended that environmental strategies be more integrated with other core areas of PASDEP to ensure sustainability, and emphasized that in order to achieve the planned impact in the long run, there must be a proper implementation plan with clearly defined responsibilities and institutional capacity development.¹²⁴

PASDEP’s two-year progress was evaluated in 2008 by concerned groups, who found that good progress had been made in many respects, but that more needed to be done.¹²⁵ Paul Ackroyd, co-chair of DAG, suggested that addressing existing challenges will require stronger planning and management capacity, as well as enhanced implementation and coordination, at both the federal and regional levels.¹²⁶ This assessment suggests that development of the economic sector has been moving faster than the means to control and supervise it.

The Ethiopian government recently prepared a new version of PASDEP, the Growth and Transformation Plan (“GTP”).¹²⁷ Though it is too early to evaluate the GTP, mainstreaming of environmental standards into every development endeavor is still an issue. Furthermore, the document puts forward building a “green economy” as its only key environmental direction, and then only in relation to implementing adaptation or mitigation strategies to climate change,¹²⁸ making the new plan less environment-friendly than its predecessor.

IV. Conclusions and Recommendations

Environmental laws have been promulgated at the national and international levels to further two goals: preventing irreversible environmental damage and mandating the consideration of environmental values in all realms of private and commercial activity. International environmental laws have developed, with some agreements constituting

123. *Id.* at 49. “Land degradation is a major factor in Ethiopia contributing extensively to overall poverty, but is not currently addressed in the PASDEP.” *Id.* at 50.

124. *Id.* at 10, 49.

125. DEVELOPMENT ASSISTANCE GROUP, PASDEP ANNUAL PROGRESS REVIEW MEETING BRIEF SUMMARY (2008). Sufian Ahmed, the Ethiopian Minister of Finance and Economic Development, found that remaining challenges include structural problems, low levels of productivity, weak implementation capacity, low levels of external finance, unpredictability and transaction costs of aid, and the rising price of oil.

126. *Id.*

127. GTP, *supra* note 111.

128. *Id.* at 119-121.

enforceable laws on signatory parties, while others comprise nonbinding basic principles. Many environmental issues are now regulated internationally, including climate change, ozone depletion, biodiversity, movement of hazardous wastes, and toxic chemicals.

As part of the global community, Ethiopia has been an integral part of this movement. The country has become a party to most of the international treaties, adopted national policies and laws, and established institutions to enhance the quality of the environment. Nonetheless, “even though Ethiopia has approved good policies and [legislation] on paper, the implementation of measures for the protection of the environment is in great difficulty.”¹²⁹ This difficulty is likely the result of “a significant gap between the official commitments and objectives, and practices on the ground.”¹³⁰ Accordingly, the Ethiopian environmental regime may be characterized as a “rule-based approach,” with many constraints to implementation. Though the country’s environment has been deteriorating for many decades, some improvements have been made in soil protection and sanitation. In order to generate further improvements, the following areas deserve special attention.

A. *Research and Awareness*

There is a tremendous need for more environmental education and awareness, as many local environmental issues can only be effectively addressed by the people themselves.¹³¹ Research is also helpful in assessing and publicizing the gravity of environmental problems, developing adaptation methods for different problems, and updating scientific discoveries about technology or new threats.¹³²

B. *Political Commitment*

It is essential to mainstream and integrate environmental considerations into all national development plans, sectoral policies, and programs, as well as at the project level.¹³³ The past years have shown that

129. Fikremariam, *supra* note 56.

130. DAHLBERG ET AL., *supra* note 62, at 2.

131. *Id.* at 8.

132. POVERTY ACTION NETWORK OF CIVIL SOCIETY ORGANIZATIONS IN ETHIOPIA [PANE], WORKSHOP TO REVIEW THE IMPACT OF CLIMATE CHANGE ON PASDEP AND MDGS ASSESSMENT REPORT PROCEEDINGS 17-21(2009) [hereinafter PANE].

133. *Id.*; *see also* DAHLBERG ET AL., *supra* note 62, at 8. Though the Constitution and

environmental degradation is the result of development activities that look only at short-term technical feasibilities and economic benefits; this problem remains in some sectors.¹³⁴

C. Institutional Strength/Capacity

Stronger institutions are needed, with extended mandates, experts, and resources in order to coordinate and supervise activities down to the community level.¹³⁵ This will involve building the capacity of environmental protection agencies and other stakeholders at both the federal and regional levels, actively involving all stakeholders at the grassroots level, and creating strategic alliances and partnerships among stakeholders.¹³⁶ Moreover, local NGOs and women must be supported and allowed full participation in all aspects of the development process, especially policy formulation, analysis, and monitoring and evaluation of impacts.¹³⁷

D. Legal Frameworks

The Ethiopian environmental regime is characterized by a rule-oriented approach with low enforcement capacity, but there are also legal lacunae in the implementation of policy documents. Legislative action must establish standards for different environmental concerns. For instance, legislation is needed to compel sectoral and financial institutions to coordinate with EPA and obtain environmental clearance before rendering relevant services, as well as to create standards for waste emissions by older factories and cars.

E. Coordination and Enhanced Participation

Governmental and nongovernmental actors and the donor community

national policies have highlighted the integration of environmental concerns into development activities, these have been generally disregarded due to a lack of awareness and commitment on the part of government officers.

134. MELCA MAHIBER & SHEKA FOREST ALLIANCE, ENVIRONMENTAL IMPACT ASSESSMENT: IMPLEMENTATION AND CHALLENGES 6-7 (2008), available at <http://www.melca-ethiopia.org/images/stories/Publication/Proceeding%20of%20EIA%20WS.pdf>.

135. PANE, *supra* note 132.

136. MELCA, *supra* note 134, at 17.

137. MEDHIN, *supra* note 59, at 26-27.

must collaborate and coordinate their activities to avoid duplication of efforts, achieve better results, and encourage the participation of different stakeholders in decision-making at all levels.¹³⁸

138. PANE, *supra* note 132. This also avoids power struggles in which different agencies and stakeholders all claim a mandate to control some environmental issue.

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