

Integration of EIA into Biodiversity Conservation Endeavours in Ethiopia

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Abstract

Biodiversity is indispensable for the proper functioning of the biosphere and, hence, for all systems on the planet. As a result, measures have been adopted at all levels to ensure that biodiversity is well conserved. This is true in Ethiopia, too, because it has so far accepted international obligations, adopted national laws, and established institutional frameworks, among other things, to ensure that its biodiversity is conserved while using it sustainably. In order to achieve this objective, Ethiopia has been employing various strategies one of which is the recognition and implementation of environmental impact assessment (EIA), one of the key tools to ensure biodiversity conservation. Nevertheless, from all indications, the integration of EIA into biodiversity conservation efforts has not been adequate. This article plans to explore, in detail, why this is the case by reviewing and analyzing existing laws and literature and also by conducting interviews with appropriate persons from relevant institutions.

1. General Background

1.1. Introduction

The term *environment* can be defined as everything that surrounds an animal, planet or human being, be it man-made, natural, or chemical,

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biotic or physical.¹ Thus, it comprises the atmosphere, the hydrosphere, the lithosphere, and the biosphere² (which refers to the actual livable space covering the earth).³ To sustain life on the planet, the existence in healthy and functional state of the environment in general and all its basic elements in particular is indispensable. For example, if one of the basic elements of the environment like the hydrosphere is affected by pollution, the whole system will be affected thereby affecting the lives on the planet. *Mishra* and *Das* explain this fact by analogizing the basic components of the environment with the basic components of our body system. They argue that all the elements of the environment should be protected because impact on one affects the other or the whole system as for example effect on our heart affects the whole system of our body.⁴ Hence, the need to protect the environment in general and all its basic elements in particular is no more a point of contention. As a result, we now have different environmental laws which aim, generally speaking, at preventing irreparable environmental harm from occurring, forcing the consideration of environmental values into all realms of activities, and restoring the damaged environment.⁵ For the purpose of achieving

¹ H.V. Jadhav and S.H. Purohit, *Global Warming and Environmental Laws*, 1st Edition, Himalaya Publishing House, Mumbai, 2007, p 8

² The Australian geologist, Eduard Suess is considered to have coined the term *biosphere*, or its close German equivalent, in 1875, but he did not give a strict definition for the term. Even today, it is commonly used in more ways than one. The preferred meaning derives from the work of the Russian chemist Vladimir I. Vernadsky who defined the biosphere as the zone or surface envelope of the earth which is naturally capable of supporting life. See S.V.S. Rana, *Essentials of Ecology and Environmental Science*, 3rd edition, Prince-Hall of India, 2007, Delhi, p 128

³ H.V. Jadhav and S.H. Purohit, *supra* note 1, p 8

⁴ P.C.Mishra and R.C. Das, *Environmental Law and Society: A text in Environmental Studies*, Macmillan, India, 2001, p 1

⁵ See Steven Ferrey, *Environmental Law: Examples and Explanations*, 3rd Edition, ASPEN Publishers, New York, 2004, p 1 and 5

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these objectives, environmental laws recognize the use of different mechanisms such as *environmental impact assessment*.

The theme of this article is the conservation of biodiversity as an element of the environment (via the biosphere). We know that biodiversity (the life on the planet) is spread all over the world. Thus, its complete and effective protection is not something that can be done by any single state or any single system. As it is spread all over the world, its complete and effective protection necessarily requires the participation of every member of the international community. Cognizant of this fact, the international community has come up with a legally binding instrument-the Convention on Biodiversity (CBD)-which has been ratified by many countries including *Ethiopia*. This Convention imposes different obligations on its members to achieve its objectives. For example, it obliges them to introduce the system of environmental impact assessment to conserve biodiversity. The primary goal of this article is, therefore, exploring the extent to which institutions that have the responsibility to ensure biodiversity conservation in Ethiopia have been using environmental impact assessment as one tool for biodiversity conservation to meet, among others, Ethiopia's obligations under the CBD.

1.2. Biodiversity

As stated above, the biosphere is the actual livable space covering our planet and this is basically so because it is the only element of the environment that has a vital life supporting system. This vital life supporting system of the biosphere is its complex collection of innumerable organisms known as the *biological diversity*, or simply called the *biodiversity*. This means, biodiversity, which refers to the total variety of life-plants, animals and microorganisms-on our

planet,⁶ makes the biosphere a hospitable place. Therefore, the existence of the biosphere in a healthy and functional state is essential for the existence of the human race,⁷ whereas the existence of the biosphere in such a state is contingent upon the existence of its biodiversity in a safe state. On the other hand, if biodiversity is affected, the life supporting system of the biosphere will be affected. Let us, for example, consider some instances of the direct and indirect benefits we get from biodiversity.⁸ One of the most important direct benefits of biodiversity to the human race is its importance as a valuable natural resource such as food,⁹ whereas its indirect benefits include carbon fixation through photosynthesis, pollination, soil formation and protection from erosion, maintaining essential nutrient cycles, absorbing and decomposing pollutants, regulating climate at both macro and micro levels, and preserving water cycles and recharging underground water.¹⁰ So, any negative effect on biodiversity will hinder our chance of deriving these innumerable and invaluable benefits from them.

Sadly, however, we are losing our biodiversity at a very fast rate. This has led evolutionary biologists to argue that we are now in the midst of the sixth wave of extinctions in geological history but this time due to human activities.¹¹ The international community has also recognized that our biodiversity is being significantly reduced by

⁶ For a legal definition of *biodiversity*, see article 2 of the 1992 Convention on Biodiversity.

⁷ D.K. Asthana and Meera Asthana, *Environment: Problems and Solutions*; S. Chanda and Company LTD, 1998, India, p 221

⁸ For more discussions on the value of biodiversity, see David Hunter, James Salzman, and Durwood Zaelke, *International Environmental Law and Policy*, 3rd ed, Federation Press, Thomson West, 2007, p 1008-1009

⁹ S.V.S. Rana, *supra* note 2, p 195 and D.K. Asthana and Meera Asthana, *supra* note 7, p 226

¹⁰ S.V.S. Rana, *supra* note 2, p 196

¹¹ David Hunter and others, *supra* note 8, p 1011

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human activities¹² to the detriment of our own existence. It is, therefore, imperative that we do something to conserve our biodiversity and preserve the foundation of our own existence. Indeed, given the 'biological poverty' we are currently undergoing, any conservation measure in this regard should not be taken as a philanthropic act but as a measure of self-help.

1.3. Environmental Impact Assessment

As state above, the conservation of biodiversity is a measure of self-help. Thus, it is necessary that every possible conservation mechanism is employed to withstand the impact of 'biological poverty' we are now facing. One possible mechanism to employ to conserve biodiversity is the Environmental Impact Assessment (EIA).¹³ EIA refers to the study of impact on the environment of proposed project;¹⁴ it is a process of anticipating or establishing the changes in physical, ecological and socio-economic components of the environment before, during and after an impending development project so that undesirable effects, if any, can be mitigated.¹⁵ EIA is, therefore, a tool for decision-making which enables decision-makers to take environmental issues into account in the early stages of project

¹² See the preamble of the Convention on Biodiversity

¹³ Investigations conducted into the impact of specific projects on the environment are known as EIAs, EI Reports (EIRs), EI Statements (EISs), or planned analysis (the term used in the general environmental policy which is also called Strategic Environmental Assessments (SEAs)). In SEAs a region is assessed to determine its ability to absorb impacts. In integrated environmental management (IEM) the investigation forms part of a management process. See Duard Barnard, *Environmental Law For All: A Practical Guide For The Business Community, The Planning Professions, Environmentalists And Lawyers*, Impact Books Inc, Pretoria, 1999, p 179

¹⁴ D.K. Asthana and Meera Asthana, *supra* note 7, p 186

¹⁵ *Id.*, p 336

conception and development although it does not necessarily eliminate projects that have adverse impacts on the environment.¹⁶

At this juncture, it is necessary to note that the idea of assessment of the possible impact on the environment before starting a development project is an old one; for example, U.S. Army Corps of Engineers had developed techniques and methodology for impact assessment as early as 1870.¹⁷ However, EIA in its present form was introduced by the National Environmental Policy Act (NEPA) of the USA in 1969¹⁸ which made EIA a legal requirement prior to making decisions likely to have significant impacts on the environment.¹⁹ Since 1970, EIA has been adopted as a legal requirement by both developed and developing countries.²⁰ Different international instruments such as the Rio Declaration and the Convention on Biodiversity of 1992 have also been recognizing the need to make environmental impact assessment in relation to actions that are likely to have significant impact on the environment. This, therefore, is why some people argue that the legal requirement of EIA is now certainly one of the principles of environmental law which have received universal acceptance in national legislation and international instruments.²¹

In any case, EIA is nothing more, or less, than simple fact-gathering exercise²² and its primary function is to make available to both

¹⁶ John Ntambirweki, *Environmental Impact Assessment as a Tool for Industrial Planning*, included in *Industries and Enforcement of Environmental Law in Africa*, UNEP, 1997, 1997, p 75. In relation to the relevance of EIA in reducing costs, see H.V. Jadhav and S.H. Purohit, *supra* note 1, p 10

¹⁷ D.K. Asthana and Meera Asthana, *supra* note 7, p 336

¹⁸ *Id.*, p 336

¹⁹ Robert V. Percival, *Environmental Law, Statutory Supplement and Internet Guide 2003-2004*, ASPEN Publishers, USA, 2003, p 873

²⁰ D.K. Asthana and Meera Asthana, *supra* note 7, p 336

²¹ See, for example, John Ntambirweki, *supra* note 16, p 75

²² Duard Barnard, *supra* note 13, p 179

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developers and the national authorities the opportunity to choose development actions with full knowledge of their impacts on the environment.²³ In relation to biodiversity, EIA makes biodiversity evaluations by those making it possible. Here, *biodiversity evaluation* refers to the process of measuring the value (ideally quantitatively) of biodiversity components, such as the population of species, a habitat (usually meaning a vegetation community) or the sum of all such components within a given area or site.²⁴ One of the purposes of such evaluation is to identify, document and quantify as far as possible all potentially valuable ecological components that may be affected by development activity including those that may be affected by off-sites impacts such as those from emissions or effluents, waste material dumping, production of material to be used on site, road construction, water supplies and building materials. If EIA includes biodiversity evaluations, then decision-makers will be able to consider at least the impact of a proposed project on biodiversity in the project site, the extent of such impact, whether or not the benefits to be derived from the project is worth the damage, if any, to the biodiversity, and the possible measure that can be taken to mitigated the adverse impacts of the project on biodiversity.

At this point, it may be worth considering that EIAs are sometimes conducted not to make decisions but for different purpose.²⁵ For example, in some countries, EIAs were prepared and used to justify environmentally degrading activities. Moreover, officials use EIAs in an attempt to postpone the duty of making decisions. Further, sometimes, officials may make decisions and order EIAs to be made

²³ John Ntambirweki, supra note 16, p 75

²⁴ For the discussion in this paragraph, see generally, David Arnold Hill, Matthew Fasham, Graham Tucker, Michael Shewry and Philip Shaw (Eds), *Handbook of biodiversity methods: Survey, Evaluation and monitoring*, <http://books.google.com/books?id=9Jspmhkyex4C&printsec=frontcover#v=onepage&q=&f=false>, accessed on 7 August 2009, p 65

²⁵ For detailed discussion on this point, see Duard Barnard, supra note 13, p 179

to determine the validity of their decisions. Likewise, EIAs have been used to hide the truth behind reams of paper. The bulkiness of some reports has been used to impress the gullible audience. However, all these are contrary to the purpose of EIA. EIA should be used as a tool for decision-making. If that is not so, then the whole purpose of undertaking EIA will be defeated. For example, one of the reasons why the public particularly the community that will be affected by the implementation of a project is given the right to participate in EIA is to enable it to participate in decision-making on matters affecting them. However, ordering EIA to be conducted after decisions have already been made amounts to asking the public to comment on the decisions that are already made instead of giving them the opportunity to participate in their making. This is contrary to the notion of *environmental democracy*.²⁶

2. Legal Regimes on the Conservation of Biodiversity

Until recently, conservation efforts were aimed at something called “wildlife”. Beginning in the late 1970s, however, many biologists became concerned that the focus on wildlife was too narrow because concerns over the fate of cute or ferocious mammals or beautiful birds missed the larger issue of a loss in the overall richness of life on the planet. As a result, they claimed that the better object of conservation should be the *biological diversity* because it covered all forms of life.²⁷

Subsequently, the view that conservation efforts should aim at *biodiversity* had been shared by the rest of the world. Moreover, the

²⁶ *Environmental democracy* is defined as a participatory and ecologically rational form of collective decision-making. In other words, the concept refers to a process whereby people participate in making decisions that have bearing on the environment. See generally, Michael Mason, *Environmental Democracy*, Earthscan Publications Ltd, London, 2006, p 1

²⁷ For more on this point, see David Hunter and others, *supra* note 8, p 1004

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world started appreciating the fact that conserving biodiversity, not just wildlife alone, was a matter of utmost urgency because biodiversity helps the biosphere retain its life supporting systems.²⁸ It was also understood that the conservation of biodiversity is a keystone to sustainable development-development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs.²⁹ Eventually, therefore, the international community came up with some international laws dealing with the conservation of biodiversity. In this regard, the *Convention on Biodiversity* and the *Cartagena Protocol on Biosafety* can be cited.³⁰ At national level, too, countries like Ethiopia have been exerting efforts to conserve biodiversity by adopting different policies.

²⁸ Suresh K. Dhameja, *Environmental Science and Engineering*, 3rd Ed, S.K. Kataria and Sons, 2006-2007, p 156

²⁹ S.V.S. Rana, supra note 2, p 203. For example, in Ethiopia, exploring, collecting, conserving, and utilizing biodiversity is considered as one of the priority areas for sustainable development. See the preamble of the Institute of Biodiversity Conservation and Research Establishment Proclamation, Proclamation No. 120/1998.

³⁰ The Cartagena Protocol on Biosafety will not be discussed in detail here because the discussion of the CBD suffices for the purpose of this paper. But the Protocol is an international agreement on biosafety as a supplement to the CBD. It seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It is clearly stated that the objective of the Protocol is, in accordance with the precautionary principle, to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling, and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on trans-boundary movements (article 1). The Protocol became legally effective on 11 September 2003 in accordance with its article 37 after the required number of 50 instruments of ratification/accession/approval/acceptance by countries was reached in May 2003.

2.1. International law

2.1.1. Convention on Biodiversity

The major international legal regime governing the conservation of biodiversity is the CBD. In 1992, more than 100 heads of states met in Rio De Janeiro, Brazil, for the Earth Summit to address urgent problems of the environmental protection and socio-economic development. Then, conscious of the intrinsic value of biodiversity and of the ecological, genetic, social, economic, scientific, education, cultural, recreational and aesthetic values of biodiversity and its components, conscious also of the importance of biodiversity for evolution and maintaining life supporting system of the biosphere, and further realizing that the conservation of biological diversity is a common concern of humankind, signed the Convention on Biodiversity at the Summit,³¹ which became legally effective on 29 December 1993.³² The objectives of the CBD are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Hitherto, the CBD has been signed and ratified by many countries and Ethiopia became one of these countries by signing and ratifying it in 1993 and 1994, respectively. Thus, by virtue of article 9(4) of Our Constitution, the CBD has been an integral part of the law of the land as of the date of its ratification. So, Ethiopia is obliged to perform the obligations the Convention imposes on its parties.

2.1.1.1. Requirement of EIA

Under article 6, the CBD prescribes the general measures that contracting parties should adopt to achieve its objective of conserving

³¹ See the Preamble of the CBD. See also S. Shanthakumar, *Introduction to Environmental Law*, 2nd edition, Wadhwa and Company Nagpur, 2007, India, p 399

³² S.V.S. Rana, *supra* note 2, p 208. For detailed notes on the history of CBD, see generally David Hunter and others, *supra* note 8, p 1003-1004, 1021-1022

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biodiversity.³³ Under article 14(1)(a), it requires states parties to introduce a specific measure; that is, introducing appropriate procedures requiring EIA of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures. Therefore, all states parties to the CBD including Ethiopia must adopt measures that would lead to the conservation of biodiversity. Specifically, they must use EIA before approving projects that are likely to have significant impact on biodiversity. Naturally, therefore, their EIA guidelines must require making biodiversity evaluations by project owners. The question to what extent Ethiopia has been using EIA in its efforts to conserve its biodiversity will be considered later on.

At this juncture, it is necessary to note that article 14(1)(a) of the CBD seems to require only one type of EIA; that is project level EIA. However, EIA is done not only at project level but also at strategic level which is known as EIA for public instruments. For example, in Ethiopia, our EIA law (to be seen later on) requires EIA to be conducted before certain public instruments (laws, policies, etc) are adopted. Thus, for example, if a government plans to declare previously protected areas to be grazing areas for pastoralists, the impact of such plan on biodiversity ought to be studied in advance. Moreover, if a government has planned fighting a rebel group in a given forest area, such plan has to be subjected to EIA to know the impact of the fighting on the biodiversity at the scene of the fighting.

³³ For instance, article 6(a) requires states parties to develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programs which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned. The measure envisaged under this article may include the adoption of EIA because EIA can be taken as a strategy that enables states to know whether their actions will affect biodiversity adversely or not thereby leading them to make a decision to take conservation measures, if need be

This requirement is missing from article 14(1)(a) of the CBD which talks about *projects*. Nevertheless, one may still argue that since 14(1)(b) of the CBD provides for the duty to introduce appropriate arrangements to ensure that the environmental consequences of programs and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account, strategic EIA is also recognized by the CBD.

2.2. National laws

As stated before, the CBD imposes on its parties different obligations to achieve its purposes. One of these obligations is the obligation to introduce appropriate procedures requiring environmental impact assessment of proposed projects that are likely to have significant adverse effects on biodiversity with a view to avoiding or minimizing such effects. The question then remains whether Ethiopia has introduced such a procedure requiring EIA for projects likely to have the impact the CBD envisions.

To begin with, in our Constitution, there is understandably no vivid recognition of the principle of EIA. However, the Constitution requires the environment to be protected and preserved besides recognizing everyone's right to live in a clean and healthy environment. As a result, it may be argued that the Constitution impliedly requires EIA in as long as EIA is one of the ways of protecting and preserving the environment and ensuring the enjoyment of environmental right by individuals.³⁴ More importantly, however,

³⁴ For example, article 92(2) of the FDRE Constitution states that the design and implementation of programmes and projects of development shall not damage or destroy the environment. Article 92(4) of the Constitution stipulates that the government and citizens shall have the duty to protect the environment. Article 44(1) recognizes everyone's right to live in clean and healthy environment. Therefore, one may safely argue that the proper implementation of these

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the 1997 Environmental Policy of Ethiopia and the 2002 Environmental Impact Assessment Proclamation have plainly recognized the principle of EIA as one of the most important principles of environmental law. First of all, the EIA Proclamation recognizes EIA as a broad concept as it defines it as *the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument*.³⁵ Thus, the Proclamation links EIA not only to projects but also to public instruments such as laws and policies. Then, it places on all persons the duty to conduct EIA in advance in relation to any action (projects or public documents) for which prior EIA is required.³⁶ Further, it strictly prohibits the commencement of any project requiring EIA before *appropriate assessment* is made while the power to ensure that EIA is made and evaluate the same is given to the Federal EPA and relevant regional environmental authority.³⁷ This shows that the legal requirement of EIA is granted a superior place in our system of environmental law (although the practice shows, as we will consider later on, that it has a lower position). It is, therefore, evident that Ethiopia has put in place policy frameworks requiring EIA before adopting projects or even public instruments³⁸ that may have significant adverse environmental impacts such as on biodiversity.

constitutional provisions largely depends on the use of EIA as a tool for decision-making whenever appropriate.

³⁵ Article 2(3), Environmental Impact Assessment Proclamation of Ethiopia, Proclamation No. 299/2002

³⁶ See articles 7 and 11 together with article 3 of the Environmental Impact Assessment Proclamation, Proclamation No. 299/2002

³⁷ See articles 3 and 14 of the Environmental Impact Assessment Proclamation, Proclamation No. 299/2002

³⁸ *Public instrument* is defined as a policy, a strategy, a programme, a law or an international agreement. See article 2(10) of the Environmental Impact Assessment Proclamation, Proclamation No. 299/2002

3. Institutional Framework for Biodiversity Conservation and the Use of EIA in Practice

As we have seen from the discussions so far, Ethiopia has different policy frameworks in place to conserve its biodiversity which will enable her to discharge its international obligation under the CBD. However, the existence of policy frameworks by itself is not enough unless they are accompanied by institutional frameworks. Accordingly, the government has come up with different organs which have, in one way or another, the responsibility to contribute to the conservation of biodiversity. These organs will be discussed below together with the extent to which they have been using EIA to contribute to the conservation of biodiversity.

3.1. Environmental Protection Authority (EPA)

As some people write, Ethiopia is deeply concerned for its environment as it has attached great importance to its protection and preservation.³⁹ Of course, this is apparently a fair judgment because a look at our legal system reveals that we are cognizant of the need to protect and preserve the environment. For example, our Constitution and other legislative measures demand the environment to be protected. The establishment of the Federal Environmental Protection Authority (EPA) can also be taken as an indication of this concern.⁴⁰

³⁹ Khushal Vibhute, *Environmental Policy and Law of Ethiopia*, Journal of Ethiopian Law, Volume xxii, No.1, p. 76, 82-83. The assertion that the country has deep concern for the environment seems to hold water because, for example, Ethiopia has recognized the right to clean and healthy environment in its Constitution and this right is meant to protect people against environmental hazards. In this regard, Michael Mason argues that environmental rights are in part designed to make it more difficult for political communication to ignore important ecological problems. See Michael Mason, *supra* note 26, p 65-66.

⁴⁰ See, for example, the 1995 Constitution of the Federal Democratic Republic of Ethiopia, Environmental Protection Organs Establishment Proclamation, Proclamation No. 295/2002, Environmental Pollution Control Proclamation, Proclamation No.300/2002, Environmental Impact Assessment Proclamation,

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In any case, the primary responsibility of ensuring environmental protection in Ethiopia lies on the Federal EPA. It is an organ that is authorized to set environmental standards against which the impact of an action on the environment should be assessed,⁴¹ it decides on projects that require EIA, it ensures that EIA is done and gives, after evaluation, authorization to project owners to implement their projects if they require environmental impact assessment.⁴² Now, with this in mind, what does the practice look like: for example, is EIA done? Is EIA report evaluated? If so, is such evaluation participatory? To what extent is biodiversity considered in the course of EIA report Evaluation?

On one occasion, I had the chance to attend a public lecture given by the Director of the Federal EPA where I was able to raise the following question: *we know that Ethiopia is undertaking different development activities. On the other hand, our EIA Proclamation requires that EIA must be done in respect of activities requiring prior EIA. So, is EIA really done in practice? If so, who ensures that it is done properly?* The Director then responded that EIA is actually being done in relation to activities requiring EIA regardless of who is undertaking them. Moreover, he indicated that the Federal EPA plays primary role in ensuring that EIA is done properly, when it is required,

Proclamation No. 299/2002. The Federal EPA was established in 1995 and re-established in 2002 by virtue of article 3(1) of the Environmental Protection Organs Establishment Proclamation, Proclamation No. 295/2002. The Proclamation that has re-established the EPA also requires the establishment of Regional Environmental Agencies. Some experts at the EPA state that the EPA is not doing what it ought to because environmental issues are still political issues in our case. At times, it lets environmental harms happen in order not to confront with top government officials.

⁴¹ See article 6(7) of the Environmental Protection Organs Establishment Proclamation, Proclamation No.295/2002.

⁴² See article 3(1) of the Environmental Impact Assessment Proclamation, **Proclamation No. 299/2002**

before issuing a go ahead permit with a project.⁴³ Similarly, I interviewed different persons from the EPA (such as Ato Solomon Kebede, Head of the EIA Department at the Federal EPA,⁴⁴ Ato Abraham Hailemeleket, EIA Expert at the Federal EPA⁴⁵ and Ato Wondosen Sintayehu, Acting Head, Environmental Policies and Legislation Department at the Federal EPA⁴⁶) and outside the Federal EPA but those who are interested in having EIA done such as the people from the Institute of Biodiversity Conservation (IBC) and Ethiopian Wildlife Development and Conservation Authority (EWDCA). These people also confirmed that in fact EIA is done in practice at least in relation to certain projects. More importantly, Ato Solomon Kebede, who is the head of the EIA Department of the Federal EPA, indicated that EIA is done in practice although there are projects for which EIAs have not been done even if they are subject to it. Furthermore, I have been able to see some documents at the Federal EPA containing EIAs of different projects.⁴⁷ Therefore, although there are projects which require prior EIA but which have not passed through EIA, the fact that EIA is made for certain projects is a point beyond dispute.

As far as the person that is responsible for making EIA is concerned, our EIA Proclamation imposes the duty on a proponent (project owner). In practice, too, the personnel I interviewed at the Federal EPA indicated that EIAs are being made by project owners. Then, the

⁴³ Tewolde Berhan Gebre Egziabher, Director General, Ethiopian Environmental Protection Authority, Public Lecture on 7 May 2009 at Addis Ababa University, Akaki Campus.

⁴⁴ Interview with Ato Solomon Kebede, Head of the EIA Department of the Federal EPA on 7 and 8 September 2009

⁴⁵ Interview with Ato Abraham Hailemeleket, EIA Expert, Federal EPA, 24 August 2009

⁴⁶ Interview with Ato Wondosen Sintayehu, Acting Head, Environmental Policies and Legislation Department, Federal EPA, 24 August 2009

⁴⁷ Of course, I did not go through these documents.

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Federal EPA evaluates the EIAs presented to it by using people from different fields such as law, biology, and agriculture as evaluation requires multidisciplinary knowledge. In the course of its evaluation, the Federal EPA acts strictly when sensitive areas such as cemeteries, valleys, and lakes are involved. Nevertheless, Ato Abraham Hailemeleket indicated that the evaluation of EIA does not specifically consider whether or not project owners have made biodiversity evaluations. Moreover, he added, the Federal EPA does not make its own side EIA for the verification of project owners' EIAs than simply trusting them even if they do not make genuine reports.

One of the causes for the Federal EPA not specifically considering effects of projects on biodiversity can be, according to Ato Wondosen Sintayehu, the lack of comprehensive guidelines or checklists that require project owners to produce comprehensive EIAs by considering the impacts of their projects on the complete ecosystems of their project sites. In this regard, the Federal EPA's guidelines or checklists are fragmented and sector-specific. This makes our system of EIA poor and disorganized because, among others, EIAs will be evaluated only in light of sector specific checklists, not in light of the overall environmental impacts a project may have on the project site. For instance, if a project is to be implemented around water areas, impacts on fish will be considered, not on the ecosystem of the area as a whole thereby causing failure to take the other elements of the environment into account.

Ato Wondosen Sintayehu further stated that the absence of comprehensive guidelines causes problems to project owners as well because they are sometimes required to do EIA again to consider the impact of their projects on certain elements of the environment they had not been required to consider initially. More importantly, however, the Federal EPA does not know whether the project owners make genuine reports or not on the other elements of the environment

unless they are required to do EIA again to verify what they have reported, which is less likely to happen. If the guidelines were comprehensive, not sector specific, it would be very easy to consider the impact of a project on other elements of the environment. For example, it would be possible to ask: *what would be the impact of cutting a particular tree on human beings, flora, and fauna or simply on the surrounding ecosystem?*

As far as the involvement in EIA report evaluation of persons who may be more interested in using EIA to conserve biodiversity, such as people from the IBC and EWDC, is concerned, the people in the Federal EPA have stated that networking is very poor. For that matter, some of them have indicated that officials from these organs (Federal EPA, IBC, and EWDC) meet only on workshops. The basic reason according to Ato Abraham Hailemeleket and Ato Wondosen Sintayehu is the reluctance (unwillingness) of the Federal EPA to engage these organs in EIA evaluation. They said that the Federal EPA is reluctant or unwilling to engage them in EIA evaluation in most cases because; firstly, it thinks that it is capable of taking care of all EIA related matters; and, secondly, it wants to avoid inconveniences to project owners by cutting out ‘unnecessary’ bureaucracies because it fears that these other organs may not comment on EIAs timely or they may comment on them negatively.

Therefore, in conclusion, one can say that the Federal EPA is not very much interested in considering biodiversity as one of the criteria to approve or reject EIAs. It considers adverse impacts on biodiversity only when sensitive areas such as valley or lake areas are involved although biodiversity is found everywhere. Moreover, it is very much reluctant to engage other organs who can use EIA for biodiversity conservation to discharge their responsibilities. Therefore, the use of EIA by the Federal EPA to conserve biodiversity as one of the

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elements of the environment is pretty much limited seen in light of what it could have done. Of course, it may be thought that the Federal EPA has been facing challenges not to be strict in its approach to protect the environment. However, neglecting biodiversity in most cases does not seem tenable as well. Sadly, there are projects that are subject to EIA but which have been implemented before EIA is conducted. Here, the use of EIA to conserve biodiversity by the Federal EPA is unthinkable. In this regard, Ato Solomon Kebede indicated that although many such projects exist, the Federal EPA could not do anything because it does not have the power to take actions like prohibiting them from proceeding.

It is important to mention here that the Federal EPA has the power, according to article 12 of the EIA Proclamation, to monitor the implementation of an authorized project in order to evaluate compliance with all commitments made by and obligations imposed on a proponent during authorization and take appropriate actions, if need be. These measures are ordering the proponent to take specific rectification measure, suspending or canceling authorization to implement a project. Corollary to the Federal EPA's measure of suspension or cancellation, investment authorities that have issued investment permits are also required to suspend or cancel, as the case may be, their investment permits. Nevertheless, the EIA Proclamation has sadly failed to recognize the Federal EPA's power to take action against projects that have not passed through EIA even if they are required to.

3.2. Institute of Biodiversity Conservation (IBC)

The Ethiopian government felt that the establishment of a body that is particularly responsible for undertaking, directing and coordinating biodiversity conservation, research and proper utilization endeavours at national level was necessary. As a result, in 1998, it enacted Proclamation 120/1998 which established the *Institute of Biodiversity*

Conservation and Research (IBCR) as an autonomous body of the Federal Government with the objective of causing and ensuring the appropriate conservation, research, development and sustainable utilization of the country's biodiversity.⁴⁸ However, in 2004, the IBCR Proclamation (Proclamation No. 120/1998) was amended by Proclamation 381/2004 which renamed the IBCR as *Institute of Biodiversity Conservation (IBC)* and also redefined its objective as *ensuring the appropriate conservation and utilization of the country's biodiversity*.⁴⁹

With regard to its powers and duties, the IBC Proclamation (Proclamation 381/2004) contains a long list. All the same, generally speaking, the IBC is empowered to perform anything that is appropriate for the achievement of its objectives. For example, it is empowered to initiate policy and legislative proposals on conservation of the country's biodiversity and, upon approval, enforce and follow up their implementation; implement, in cooperation with the concerned bodies, treaties on biodiversity to which Ethiopia is a party; work in cooperation with the concerned federal and regional bodies with respect to conservation of biodiversity; identify processes that promote or threaten the existence of the country's biodiversity resources; formulate and propose policy ideas to concerned authorities which enable them to promote the healthy processes and control the threatening ones.⁵⁰ However, the power to ensure that EIA is conducted in relation to projects possibly affecting biodiversity or the right to participate in the evaluation of EIAs is not specifically given to the IBC. However, one may argue that the IBC is empowered take

⁴⁸ See the Preamble, articles 3 and 5 of the Institute of Biodiversity Conservation and Research Establishment Proclamation, No. 120/1998

⁴⁹ See articles 2(1) and (5) of the Institute of Biodiversity Conservation and Research Establishment /Amendment/ Proclamation, Proclamation No. 381/2004

⁵⁰ *Id.*, article 2(6)

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part at least in the evaluation of EIAs because that enables it, for example, to identify processes that threaten the existence of the country's biodiversity. Accordingly, one may wonder the extent to which the IBC has been participating in the evaluation of EIAs made by proponents so far.

In this regard, the people in the IBC have the following to say.⁵¹ The IBC does not ensure that EIA is done because that power is not specifically given to it. However, it believes that it must take part in the evaluation of EIAs for projects likely to affect biodiversity (flora and fauna). Fortunately, the EPA sometimes sends to the IBC some EIAs for comments before it acts upon them. However, more often, the EPA marginalizes the IBC thinking that it would comment on EIAs negatively. Consequently, the participation of the IBC on EIA evaluation is very limited. This has been causing, under certain circumstances, controversies between the IBC and project owners because project owners have been trying to implement projects that would have significant adverse impact on biodiversity. Here, mentioning one incident suffices to elaborate the point at hand.

Babille is one of the protected areas in Ethiopia for its biodiversity richness. It is a sanctuary of many endemic animals particularly elephants. A certain investor wanted to establish oil plant in the area to produce biofuel. As a result, the investor approached the IBC to study the impact of his project on the area's biodiversity. The IBC outrightly informed him that the area was already studied and no development activity could be undertaken in the area unless it would be for

⁵¹ I tried to interview the director and the vice director of the IBC. However, I did not succeed in this regard. As a result, I had to resort to interviewing other people who were heads of certain offices within the Institute. The names of these persons are not mentioned here because they gave me the information I wanted on condition that I keep their anonymity. The interview with them was conducted on 1 September 2009.

the good of the area itself. Then, the investor went to the place and started removing the forest. The IBC did not know where the authorization to do so came from. Finally, fight broke out between the investor's employees and the areas guards which led the investor to flee the country. The case lasted for a year and half. But, finally, the IBC, joined by other concerned organs, was able to win the case.

According to the Federal EPA's Head of EIA Department, Ato Solomon Kebede, the investor actually conducted EIA and submitted its report to the Federal EPA. The Federal EPA also looked at the report and ordered the investor to make modifications to his EIA (perhaps doing EIA again on certain element of the area). However, the investor never reappeared before the Federal EPA again. Instead, he proceeded with his project as a result of which thousands of hectors of Babilie forest was cleared before it was noticed. Finally, an NGO called *Forum for Environment* noticed the action and brought it to the fore which caused many organs to join efforts to have the project quitted.

In any case, according to the IBC, in most cases, the Federal EPA decides on EIAs on its own and without involving the IBC as one of the stakeholders. As a result, many forests, for example in South West Ethiopia, have been removed and changed to tea and coffee plantation areas. Other biodiversities have also been affected adversely without the IBC's knowledge although the IBC should have known these facts and participated on the evaluation of their EIAs.

Therefore, it can be said that, because of the Federal EPA's reluctance or unwillingness to engage it, the IBC has been incapable, in most cases, of integrating EIA into its endeavors to conserve the country's biodiversity. Indeed, such integration has been happening only under

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limited circumstances as the IBC has been using EIA, through participation on its evaluation, only when the Federal EPA volunteered to send EIAs to it for comments. Unfortunately, although they have the same ultimate goal, the coordination between Federal EPA and the IBC and integration of their efforts is very poor.

3.3. Ethiopian Wildlife Development and Conservation Authority (EWDCA)

Ethiopia possesses diverse, rare and endemic species of wildlife which are of great value to tourism, education and science.⁵² However, these species have been subjected to unplanned and inappropriate utilization which has resulted in their depletion and endangered existence while conservation measures taken so far have not been productive.⁵³ So, to regulate the use of wildlife and make conservation measures more productive, the government of Ethiopia enacted the Development, Conservation and Utilization of Wildlife Proclamation.⁵⁴ Further, realizing that wildlife threatening conditions are ever growing, and noting also that the effective conservation of wildlife requires, among others things, undertaking appropriate conservation and development of wildlife for sustainable use, and halting the ever growing threats to wildlife by establishing an organ specifically dealing with wildlife development and conservation, the government established the *Ethiopian Wildlife Development and Conservation Authority* (EWDCA) as an autonomous public agency of the federal government in 2008. The objective of the EWDCA is ensuring the development,

⁵² See the Preamble of the Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation, Proclamation No. 575/2008

⁵³ See the Preamble of the Development, Conservation and Utilization of Wildlife Proclamation, Proclamation No. 541/2007

⁵⁴ The objectives of this Proclamation are to conserve, manage, develop and properly utilize the wildlife resources of Ethiopia; to create conditions necessary for discharging government obligations assumed under treaties regarding the conservation, development, and utilization of wildlife; and, to promote wildlife-based tourism and to encourage private investment. Id., Preamble and article 3

conservation, and sustainable utilization of the country's wildlife resource.⁵⁵ At this juncture, it is important to note that both the IBC and EWDC share the objective of conserving biodiversity. However, as compared to the IBC, EWDC is specific in its objective in that it deals only with *wildlife*.⁵⁶

As far as its responsibilities are concerned, EWDC has been given a number of powers and duties by its establishment Proclamation. However, the power to ensure that EIA is conducted or evaluate EIAs or participate in their evaluation is not specifically entrusted to it. Instead, its establishment Proclamation empowers it to *carry out such other activities as are necessary for the fulfilment of its objectives*.⁵⁷ Thus, one may argue that this open-ended mandate to carry out other activities that are necessary for the fulfilment of its objectives includes the power to ensure that EIA is done and also evaluate its reports at least on joint basis with the Federal EPA. However, officials from the EWDC do have different opinions on the role of the EWDC in relation to EIA.

For instance, Ato Yeneheh Teka,⁵⁸ Director of EWDC, stated that the Federal EPA enjoys a *monopoly* to ensure that EIA is done and evaluate its reports whereas EWDC has no share in such power. According to him, in practice, too, Federal EPA has been exercising such monopoly power to ensure that EIA is made and also evaluate its

⁵⁵ See the Preamble, articles 3 and 5 of the Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation, Proclamation No. 575/2008

⁵⁶ *Wildlife* is defined as *any live or dead vertebrate or invertebrate animal other than domestic animal*. See Article 2(1) of the Development, Conservation and Utilization of Wildlife Proclamation No. 541/2007

⁵⁷ Article 6(17) of the Ethiopian Wildlife Development and Conservation Authority Establishment Proclamation No. 575/2008

⁵⁸ Interview with Ato Yeneheh Teka, Director, Wildlife Development and Protection Authority, 31 August 2009

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reports. However, Ato Yeneheh indicated that sometimes the Federal EPA sends EIAs to EWDCA for comments and this usually happens when the areas where proposed projects are to be implemented concerns EWDCA. For example, he stated that if a road is to cross a park, the Federal EPA sends to EWDCA the EIA of the Ethiopian Road Authority for its comments before taking action.⁵⁹ At this juncture, Ato Yeneheh has indicated that in Ethiopia, sometimes, investors get investment permits from investment authority⁶⁰ and start implementing projects before doing EIA and getting approval from the Federal EPA. Then, they do EIA later on only if they are required to do it. Obviously, this affects not only the interest of the Federal EPA but also of the EWDCA because it denies the Federal EPA the chance to send to EWDCA EIAs for comments in case projects are to be implemented in areas that ‘concern’ the EWDCA.

Ato Fanuel Kebede,⁶¹ Senior Wildlife Expert at EWDCA, also has the following to say:

EWDCA does not have the mandate to ensure that EIA is made by concerned persons or evaluate their reports. Its mandate is developing and conserving wildlife. Thus, EWDCA does not ensure that EIA is done; nor does it evaluate its report. Nonetheless, EWDCA sometimes gets that chance to participate in the evaluation of EIAs and this happens usually when the Federal EPA seeks its comments on EIAs thinking

⁵⁹ Incidentally, it is worth raising that, according to Ato Yeneheh Teka, EWDCA makes EIA on its own only when it undertakes certain activities itself such as roads and houses in parks.

⁶⁰ Nevertheless, the investment authority is obliged, in accordance with article 3(3) of the EIA Proclamation, to ensure that EIA is made and it is approved by the EPA before issuing investment permit. This means, any time the authority fails to check that EIA is made and it is approved by the EPA before issuing investment permit, it breaches its duty.

⁶¹ Interview with Ato Fanuel Kebede, Senior Wildlife Expert, Ethiopian Wildlife Development and Protection Authority, 31 August 2009

that the interest of EWDCa is at stake. In this regard, the Federal EPA thinks that EIA evaluation should involve EWDCa when a project is to be implemented in protected areas such as wildlife sanctuaries, parks, and reserves. However, in most cases, the Federal EPA does not send EIAs to EWDCa for its comments. In fact, even when such claims are likely to arise, the Federal EPA claims that it enjoys a monopoly over matters of EIA evaluations. Thus, by raising the issue of mandate, the EPA refuses to engage EWDCa in EIA evaluation. This enables the Federal EPA to sometimes negotiate, as it has been doing, with project owners. At any rate, EWDCa's role on the evaluation of EIAs is very rare. After all, formal communication and cooperation between the two organs are very poor and this is primarily so because the Federal EPA does not seem open to make things participatory. This ultimately denies EWDCa the chance to employ EIA as one of the mechanisms for conserving biodiversity in general and wildlife in particular.

Nevertheless, if a project is going to affect (be implemented in) a protected area, no one can do any job in this area without the permission of EWDCa. Hence, in this case, the Federal EPA will, as a matter of necessity, be forced to engage EWDCa in the evaluation of EIAs. In this regard, the *Babille case* is a turning point. As soon as EWDCa came to know that the investor started implementing its project in the area, it prohibited him from proceeding which finally led to conflict between EWDCa's scouts in the area and the employees of the investor. Since then, the Federal EPA is conscious of the need to get the comments of EWDCa on EIAs for projects affecting protected areas.

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In conclusion, as both officials from EWDCA have indicated, the Federal EPA has been allowing the participation of EWDCA on the evaluation of EIA reports if protected areas are involved. Thus, we can conclude that EWDCA has been integrating EIA into its wildlife conservation (or biodiversity at large) endeavor in relation to protected areas. Nonetheless, still one major problem remains. It is known that, particularly in countries like Ethiopia, the presence of wildlife is not limited only to protected areas. In fact, while wildlife is found everywhere, certain unprotected areas do have strong potential for wildlife conservation. So, based on the interviews with the above two EWDCA personnel, the Federal EPA does not send EIAs to EWDCA for comments if unprotected areas are involved. Moreover, Ato Fanuel Kebede indicated that EWDCA's own role to get EIAs for comments in relation to projects that are to be implemented in unprotected areas but with some wildlife potential is not meaningful. As a result, EWDCA has not been using EIA to conserve wildlife that is found outside the protected areas. More importantly, while Ethiopia is rich in wildlife resources, protected areas for their conservation are few in number. This makes the participation of EWDCA in the evaluation EIAs of projects to be implemented outside protected areas necessary.

4. Involvement of Stakeholders in EIA

The fact that stakeholders' involvement in making EIA and the evaluation of its report makes EIA more effective is not disputable. Here, the term *stakeholder* may include not only the community that may be directly affected by the implementation of a project but also other interested persons such as NGOs and government agencies. In our case, therefore, the IBC and the EWDCA will be appropriate stakeholders to participate in the evaluation of EIAs at least by way of commenting on them. Hence, they can use this leeway to integrate EIA into their efforts to conserve biodiversity. In this regard, the EIA Proclamation obliges the Federal EPA to ensure that the *public* has participated in environmental impact study and to make EIA

accessible to the *public* and solicit comments on it.⁶² So, although the Proclamation uses the term *public*, not stakeholders, one can argue that *public* here refers, in its broadest sense, to all interested persons.

5. Conclusion and recommendations

As we have seen from the discussions hitherto, the conservation of biodiversity is a matter of top urgency. As a result, the Ethiopian government has put in place policy frameworks, including the ratification of the CBD, to conserve and sustainably use its biodiversity. These policies are also supported by necessary institutional frameworks to put them into force by employing different strategies. One such strategy is the use of EIA which enables decision makers to know projects that are likely to have significant adverse impact on the country's biodiversity and to act accordingly. Here, the power to ensure that EIA is done and to evaluate same is given to the Federal EPA with regard to matters falling under federal jurisdiction. Thus, the EPA can consider the impact of a project on biodiversity before it approves EIAs thereby using EIA as one means to conserve biodiversity-one element of the environment. Nonetheless, there are certain projects which are subject to EIA but which are implemented without EIA thereby denying the Federal EPA the chance to consider the impact of these projects on biodiversity. However, what is more bewildering is the fact that even in relation to projects that are preceded by EIA, the Federal EPA does not specifically consider biodiversity conservation in the course of evaluating EIAs. For that matter, it does not have a comprehensive guideline project owners have to use in the course of conducting EIA so as to take biodiversity into account at all times. Further, the Federal EPA does not usually engage other organs that are closely concerned with the conservation of biodiversity. Thus, the IBC and EWDC get the chance to

⁶² See articles 9(2) and 15 of the Environmental Impact Assessment Proclamation, Proclamation No. 299/2002

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participate in the evaluation of EIA reports under limited circumstances. As a result, these two organs have not been able to use EIA adequately as one of their strategies to conserve biodiversity.

Now, bearing in mind the problems we have identified in relation to the use of EIA as a method of conserving biodiversity, the following recommendations ought to be adopted. First, the EPA must engage the IBC and EWDCa in the process of EIA evaluation. One, of all, the ultimate goal of these organs is the same; that is, the protection and preservation of the environment which necessitates integration of their efforts. Two, the EPA will be better off in relation to the evaluation it makes on EIAs as the other two organs have more experts at their disposal for biodiversity conservation. Three, such engagement of other organs in EIA report evaluation will facilitate the conservation of biodiversity that are found in unprotected areas as well. Second, the IBC and EWDCa must demand the permission to participate in EIA evaluations instead of waiting for the Federal EPA to invite them to do so. Such measure will enable them to use EIA as a means to an end-conservation of biodiversity-not only in protected areas but also in all other areas with biodiversity potentials. Here, it should be noted that there is a loophole for them to demand permission from the Federal EPA for such participation because they are, after all, allowed to do anything that would enable them to achieve their objectives. Thus, if they interpret their establishment Proclamations generously, not restrictively, they will arrive at the conclusion that they in fact have the right to demand such participation. Third, both the IBC and EWDCa should make studies in relation to unprotected areas but with biodiversity potentials and submit the results of such studies, in advance, to the Federal EPA to enable it to accommodate the interests of biodiversity in the course of evaluating EIAs. Finally, the Federal EPA should adopt comprehensive EIA checklists requiring project owners to study the complete ecosystem of their project sites. If this is done, project owners will be able to make and come up with

comprehensive EIA reports whereas the team that undertakes EIA evaluation will be in a position to consider the extent to which a project may have adverse impact on biodiversity.