

# **The Need for Redesigning and Redefining Institutional Roles for Environmental Governance in Ethiopia**

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**Movement for Ecological Learning Community Action**

**Addis Ababa, August 2012**

Published by:  
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August 2012

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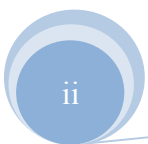
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This Publication is financed by HEINRICH BÖLL FOUNDATION (HBF)



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Acronyms

BPR	Business process reengineering
CA	Competent Authority
CBO	Community based organization
CSE	Conservation Strategy of Ethiopia
DA	Development agent
DEA	Department of Environmental Affairs
DWA	Department of Water Affairs
EC	Environmental Council
EDRI	Ethiopia Development Research Institute
EEPCO	Ethiopian Electric and Power Corporation
EG	Environmental Governance
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
EPC	Environmental Protection Council
EPE	Environmental Policy of Ethiopia
FDRE	Federal Democratic Republic Ethiopia
HPR	House of the People's Representative
MoEF	Ministry of Environment and Forest
NEAMA	National Environment Assessment and Monitoring Agency
NEAPC	National Environment Action Plan Council
NEC	National Environment Council
NEMA	National Environment Management Authority
NET	National Environment Tribunal
NGO	Non-Governmental Organization
NRDEPSC	Natural Resources Development and Environmental Protection Standing Committee
REA	Regional Environmental Agency
SEIAAs	State Environment Impact Assessment Authorities
SERC	Standards and Enforcement Review Committee
SEU	Sectoral Environmental Unit
STC	Sectoral sub-technical Committee

## PREFACE

Dear readers,

I really feel that this is one of the most important publications by MELCA – Ethiopia. A shot history is in order for everything has an origin. A group of NGOs came together to discuss on the multidisciplinary research result on the Sheka forest. After listening to the presentation on the plight of the Sheka forest and the people, the group decided to start an association, which we called the Sheka Forest Alliance or SheFA. We decided to work on empowering the local communities, improving law enforcement and engaging with the policies and the laws of the country. In one of the meetings that we had, we decided to work on the Environmental Impact Assessment (EIA) law of Ethiopia. We did a comprehensive study of the law, published the result in a form of a book and held series of meetings with government and other stakeholders, which culminated in proposing an alternative law to the existing EIA proclamation.

In the process, one of the issues that we felt needed to be addressed was environmental governance. A meeting that we had on environmental governance with Federal Sectoral Offices recommended that we hold similar meetings at the Regional level. Taking this as an opportunity for improving environmental governance in Ethiopia, we held series of workshops with the Regional sectoral offices of the Amhara, Oromia, Southern Nations and Nationalities and Peoples Region (SNNP), Tigray, Benshangul, and Gambella regions. During these meetings, the questions that came out again and again were the need for two documents. One, a research and recommendation on how coordination on environmental issues should happen among sectoral offices and what the responsibilities of each of the organs should be, and the other a draft law on environmental governance.

This book is then a response to the above demand and is produced to support the work of regional environmental bureaus responsible for the coordination of issues related to the environment. We are hoping to follow this up with a draft law on environmental governance. We are conscious that we cannot replace the work of other institutions delegated to do this; but this is just to make our humble response to the demand by the Regional sectoral offices for a product, which will help them better do their work around the issue of environmental protection.

Happy reading!

Million Belay (PhD)

Director of MELCA-Ethiopia

## EXECUTIVE SUMMARY

Environmental protection task has now become increasingly a complex subject that demands a critical shift in governance. This shift is sometimes characterized as a transition from government to governance and reflects the fact that governments no longer are, and in many cases cannot be, the sole source of environmental decision-making authority. Accordingly, effective environmental governance requires different forms of partnership among public and private entities. It also requires the participation of the public, especially at the local level. The existing federal system of Ethiopia constitutionally recognizes the allocation of adequate powers to the lowest units of government for the purpose of enabling the people to participate directly in the administration of such units. This is also relevant for the environmental governance and hence this constitutional rule needs to be sufficiently explored to enhance the effective and collaborative implementation of environmental governance in Ethiopia by ensuring the participation of all stakeholders.

To bring about a paradigm shift in the environmental governance system in the country, the environmental protection agencies are required to undertake institutional reforms that are geared towards successful environmental governance system. There are a number of principles that need to be adhered to so that the desired reforms including autonomy and clear definition of powers, delegation and decentralization with proper coordination to come. The environmental governance system may not necessarily follow identical pattern throughout the world, though the shift in paradigm is moving in a similar direction, that is, from government to governance. Different countries adopted different institutional arrangement models for their environmental governance, based on their objective realities.

Ethiopia has been issuing various policy and legal instruments as well as strategic documents for ensuring a better environmental governance system in its territory. As the review of these instruments shows, some of them (for instance, the Environmental Policy of Ethiopia (EPE) and the Conservation Strategy of Ethiopia (CSE)) have been made in a comprehensive manner and provide for the need of participation of all stakeholders across the board. Moreover, the need for differentiated but common responsibilities is recognized by these policy and strategic instruments. However, the environmental protection laws enacted to implement these instruments have not been made in a way that all the environmental governance rules of the instruments are incorporated in such laws. Moreover, these laws lack mechanisms that could effectively coordinate and functionally link the organs that should engage in the environmental governance system at federal as well as regional levels.

To put in place an effective environmental governance system in Ethiopia, it requires restructuring the current institutional framework of environmental protection. For instance, the Environmental Protection Council (EPC), which has proven ineffective due to its organizational problem, needs to be restructured so that it could have a more dynamic and

well-focused coordinating role in the environmental governance system. It is also necessary to establish similar coordinating organs at the regional level.

The environmental protection laws also failed to provide for clear provisions or elaborations on the roles and responsibilities of non-state actors, financial institutions, environmental sectoral units, functional linkages and accountabilities among key stakeholders. Moreover, they have not clearly separated the institutional framework for the regulatory tasks of environmental protection activities and resources development and conservation activities.

The recent institutional reform, Business Process Reengineering (BPR), had opened windows of opportunities for the better environmental governance in the country but these windows of opportunities had not been sufficiently exploited to address the existing gaps and to establish appropriately empowered environmental protection organs both at Federal and regional levels. The delegation of Environmental Impact Assessment (EIA) report reviewing powers of Environmental Protection Agencies (EPAs) to sectoral agencies has been found to contradict the basic principle of avoiding conflict of interests in assigning the roles and responsibilities of regulation of environmental protection on the one hand and resources development on the other. The political will of the government is expressed by its willingness to issue a number of laws and establishment of institutions both at federal and regional levels. The recent government commitment to adopt green development path way which is charted out in Ethiopia's Climate-Resilient Green Economy vision and strategy is one of the commendable acts of the Ethiopian government. These commitments, however, are not sufficient as compared to the observed multifaceted attention and unreserved support given to economic development activities. Sustainable development can only be attained by striking the balance between economic development and environmental protection. Therefore, same level of attentions needs to be given for environmental protection activities as the attention given to economic development activities. This is so critical with regard to provision of sufficient power and autonomy, standing, recognition of none state entities and the required functional linkage and accountability among them. To this end it is more sensible if EPA and the regional environmental protection agencies are made accountable to their respective houses of elected representatives rather than to the executive organs. Finally the study showed that there is a critical the need for redesigning and redefining institutional roles for environmental governance in Ethiopia.







## INTRODUCTION

This study has been conducted for the purpose of assessing the existing policy and legal instruments in Ethiopia, the institutional framework in environmental protection activities, and international practices in the area environmental governance. The study also has a purpose of forwarding model environmental governance framework that clearly outlines the roles and responsibilities and functional linkages and accountabilities of various stakeholders in the environmental governance system in the country.

Section 1 of the study deals with the brief policy, legal and institutional background of environmental governance in Ethiopia followed by a section that tells the methodology adopted in the study. Section 3 outlines in detail the conceptual framework of the study which specifically deals with the basic concepts of Environmental Governance (EG), the fundamental principles of institutional reforms for EG, the institutional arrangements for EG in some selected countries. Section 4 assesses Ethiopia's (federal and regional) policy, strategic and legal instruments for institutional arrangements for EG.

Section 5 of the study is devoted for the discussion of key issues EG in Ethiopia. This section of the study closely looks on issues like functional linkages and accountability, institutional reforms such as Business Process Reengineering (BPR), delegation of powers, adequacy of political will, limited presence of the environmental protection organs at the local level and lack of supportive mechanisms for enhanced environmental governance. It is this section that analyzes the EG problems which the country is facing. Finally, conclusion and recommendations have been provided in section 6.

## 1. Background

The environmental protection tasks are getting more and more complex in Ethiopia following the economic policy reform and the federal arrangement in the country. Moreover, the extent of environmental problems themselves has made the environmental protection undertakings more difficult. To make things worse, there is a widespread common understanding that it is only the Federal EPA or the environmental protection organs of the regional states which are the sole responsible bodies for environmental protection tasks.

At this time in point, there is a growing tendency of making environmental protection works a common concern of state and non-state actors around the world. Both international and national legal instruments with respect to environmental protection are being developed by engaging all state and non-state actors as the indispensable stakeholders. It is the ever growing complexity of environmental protection that has made the state's command and control mechanism for environmental protection less significant to manage the issue. Now the prevailing situations have dictated the paradigm shift from government to governance by involving all the necessary stakeholders in the environmental protection activities.

The present environmental protection organs' arrangement in Ethiopia follows a decentralized structure in line with the federal arrangement of the country. Federal arrangement gives more opportunity for engaging various actors at different levels by promoting the coordinated but differentiated responsibilities of these organs. The opportunities created by the federal arrangement, however, have not been exploited for the effective and collaborative implementation of environmental governance in the country. For instance, there have not been established meaningful functional linkages between the federal EPA and the regional environmental agencies, the environmental agencies of federal and regional organs and sectoral agencies. Moreover, the environmental protection organs have not been established at the lower levels of administrative structures of the country in most of the Regional States.

As a result of these and other problems, the current environmental governance including institutional arrangement is at a poor level and unable to bring about effective, coordinated and collaborative environmental management system that is required by the prevailing environmental problems such as land degradation, solid waste management and unsustainable development practices.

MELCA-Ethiopia has taken the initiative, by considering these problems to sponsor a research on environmental governance and institutional arrangement with the view to enhancing the coordination and partnership among various stakeholders, both state and non-state actors by proposing an alternative institutional arrangement for improved environmental governance.

## **2. Methodology**

This work relied predominantly on a qualitative analysis of the following sources: academic literature, government policy and strategic documents, NGO documents, focused group discussions and experiences of other countries. Information also gathered from workshop participants, who have been selected from various relevant governmental and nongovernmental organizations in 5 regional states. Moreover, structured and unstructured interviews with key informants have been used to collect verbal as well as written data. The collected data analyzed based on the Ethiopian law, policy, strategic documents and best practices of some other countries.

### 3. Conceptual Framework

#### 3.1. Basic Concepts of Environmental Governance

Environmental governance is “the whole range of rules, practices and institutions related to the management of the environment in its different forms (conservation, protection, exploitation of natural resources, etc.)”<sup>1</sup> A further definition describes it as “all the processes and institutions, both formal and informal, that encompass the standards, values, behavior and organizing mechanisms used by citizens, organizations and social movements as well as the different interest groups as a basis for linking up their interests, defending their differences and exercising their rights and obligations in terms of accessing and using natural resources.”<sup>2</sup>

From these definitions it can be seen that environmental governance is a multi-stakeholder process that involves rights and obligations in the sustainable use and enhancement of natural resources in an equitable manner.

At the international level, global environmental governance is “the sum of organizations, policy instruments, financing mechanisms, rules, procedures and norms that regulate the processes of global environmental protection.”<sup>3</sup> National environmental governance is also linked and may also be dictated in some respects with the international governance interplay for environment is trans-boundary and interlinked phenomenon.

Environmental governance is underpinned by some key principles. The following are some of the key principles of environmental governance:

- Incorporation of environment concerns in all levels of decision-making and actions.
- Conceptualization of cities and communities, economic and political life as a subset of the environment.
- Emphasizing the connection of people to the ecosystems in which they live.
- Promotion of the transition from linear systems (like garbage disposal with no recycling) to circular systems (like zero waste strategies).

A profound global shift in the way environmental governance occurs is taking place around the world. This shift is sometimes characterized as a transition from government to governance<sup>4,5,6,7</sup> and reflects the fact that governments (which collectively are referred to as

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1 Guillaume Fontaine, ‘Green and Black: environmentalism and oil conflicts in Ecuador’, in G. Fontaine, G. van Vliet, R. Pasquis (2007) (eds.), *Environmental policies and governance in Latin America*; FLACSO-IDDRI-CIRAD, pp. 223-254.

2 L. Ojeda, (2005) *Governance of Natural Resources Conservation*, Red ECOUF

3 <http://www.iisd.org/pdf/2006/geg.pdf>, accessed on 23 September 2011.

4 G. Stoker, ‘Governance as theory: five propositions’. *International Social Science Journal* 50 (155), 1998: 17-28.

5 D. A. Sonnenfeld, and A. P. Mol, ‘Globalization and the transformation of environmental governance’. *American Behavioral Scientist* 45(9), 2002: 1318-1339.

“the state”) no longer are, and in many cases cannot be, the sole source of environmental decision making authority.<sup>8,9</sup>

The growing importance of non-state actors in environmental governance reflects a host of considerations including limitations on the capacity of government agencies; pressure from citizens for a greater role in decision making; acknowledgement of the increasing complexity of environmental management, and thus the need for more minds and different kinds of knowledge; and, in the context of developing countries, pressure from international funding agencies.<sup>10,11,12</sup>

The challenge to integrate environment into development has never been more urgent than now. Infrastructure, industry and agriculture must be climate-proofed. Development must be energy and water efficient. Poor people’s environmental deprivations and environmental rights must be tackled in development activity and political decision making. Institutions need to build environmental management capacity as too many of them treat the environment as an externality. Change will continue to be slow without adequate stakeholder pressure and developing strong linkages to learning from experience of ‘what works’ for environmental mainstreaming.<sup>13</sup> These situations clearly indicate the urgency of putting in place strong and viable institutional arrangements and the redefinition of key stakeholders’ relations in environmental governance.

Accordingly, effective environmental governance requires different forms of partnership such as (1) public-private (2) private-civil society (3) civil society-public and (4) public-private-civil society.<sup>14</sup> The nature of the public-private partnership can be characterized by corporate philanthropy, development of market based instruments, policy-advocacy, etc.

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6 M Kaika, ‘The Water Framework Directive: A new directive for a changing social, political and economic European framework’. *European Planning Studies* 11(3): 2003: 299-316.

7 Pahl-Wostl, C., Kabat, P., and Möltgen, J. 2007a. *Adaptive and Integrated Water Management: Coping With Complexity and Uncertainty*. Heidelberg, Germany: Springer Verlag.

8 Bryant, R. L. and Wilson, G. A. 1998. Rethinking environmental management. *Progress in Human Geography* 22(3): 321-343.

9 Armitage, D. R., Plummer, R., Berkes, F., Arthur, R. I., Charles, A. T., Davidson-Hunt, I. J., Diduck, A. P., Doubleday, N. C., Johnson, D. S., Marschke, M., McConney, P., Pinkerton, E. W., and Wollenburg, E. K. 2009. Adaptive co-management for social-ecological complexity. *Frontiers in Ecology and the Environment* 7(2): 95-102.

10 Pahl-Wostl, C., Sendzimir, J., Jeffrey, P., Aerts, J., Berkamp, G., and Cross, K. 2007b. Managing change toward adaptive water management through social learning. *Ecology and Society* 12(2): Online.

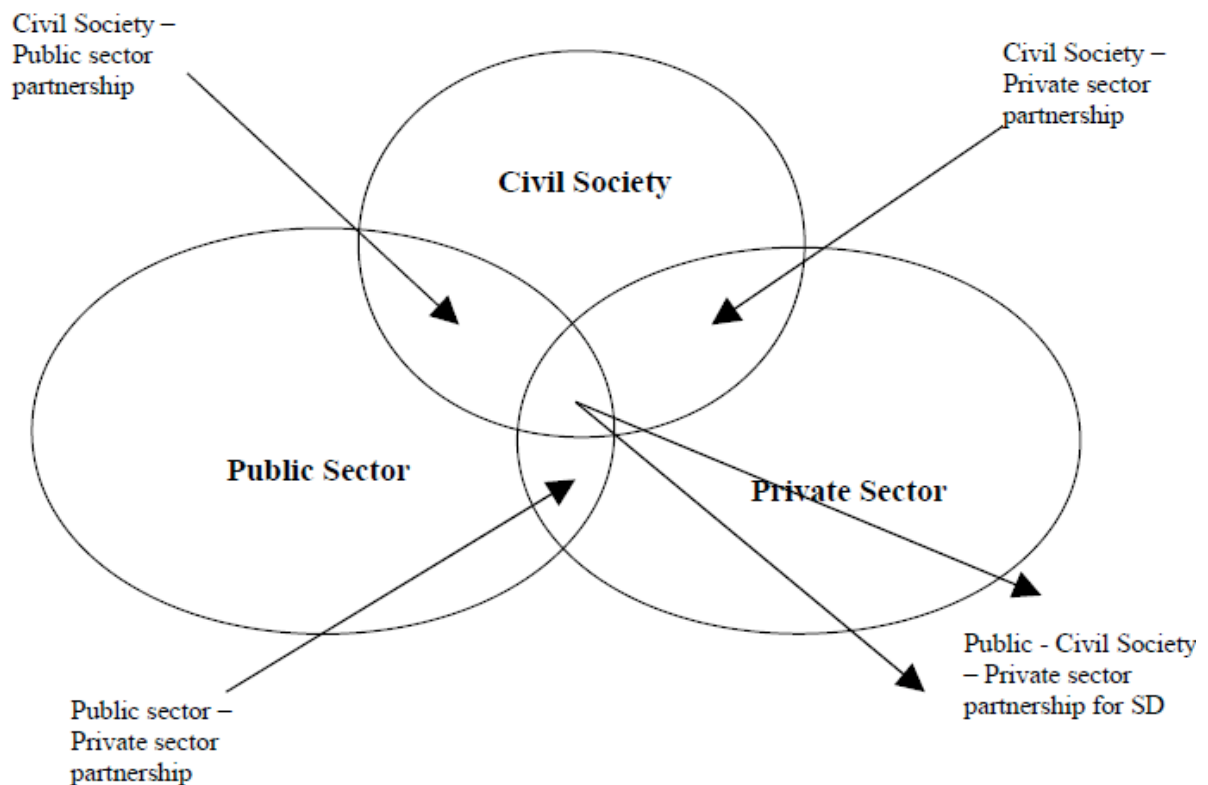
11 Armitage, D. 2008. Governance and the commons in a multi-level world. *International Journal of the Commons* 2(1): 7-32.

12 Armitage, D. R., Plummer, R., Berkes, F., Arthur, R. I., Charles, A. T., Davidson-Hunt, I. J., Diduck, A. P., Doubleday, N. C., Johnson, D. S., Marschke, M., McConney, P., Pinkerton, E. W., and Wollenburg, E. K. 2009. Adaptive co-management for social-ecological complexity. *Frontiers in Ecology and the Environment* 7(2): 95-102.

13 DBSA 2009: *What Works For Us - A South African Country Report for Tactics, Tools and Methods for Integrating Environment and Development*. (A South African case study in partnership with the IIED).

14 Mizan R. Khan. 2010 *Regulatory vs Participatory Governance and Environmental Sustainability in Asia*, North South University, Dhaka

Private-civil society partnership is primarily related to distribution of funds and philanthropic activities to enhance public image of the businesses. On the other hand, civil society-public partnership focuses on policy formulation and giving assistance to government in the implementation of sustainable development projects. Above all, the triangular partnership between public-civil society-private sectors holds the greatest potential in terms of achieving the sustainable development goals. This type of partnership can be equated with the Strategic Stakeholder Engagement Model, illustrated below.



**Fig. 1-Interactive System- stakeholder partnership model**

The review of environmental governance in the transition from government to governance identified the following issues as key concerns,<sup>15</sup> namely:

- **Accountability and legitimacy**-Legitimacy in distributed modes of governance emerges from relationships in addition to law, therefore accountability must be redefined when governance involves a host of state and non-state actors. However, different models of governance involve different kinds of accountability.
- **Actors and roles**- The move from government to governance means new actors with new roles are critical, however, the failure to match the level of participation to

15 de Loë, R.C., Armitage, D., Plummer, R., Davidson, S. and Moraru, L. 2009. From Government to Governance: A State-of-the-Art Review of Environmental Governance. Final Report. Prepared for Alberta Environment, Environmental Stewardship, Environmental Relations. Guelph, ON: Rob de Loë Consulting Services.



appropriate authority and roles may undermine future distributed governance efforts.

- **Fit, interplay and scale**-Governance for social-ecological systems cannot function effectively at only one scale. Scale mismatches, poor understanding of cross-scale and cross-level interactions could lead to ineffective governance. As a result horizontal and vertical linkages among the various actors at different scales and levels are essential.
- **Adaptiveness, flexibility and learning**- Adaptive approaches are needed to address uncertainty and change that characterize social-ecological systems.
- **Knowledge**- Environmental governance of complex social-ecological systems requires knowledge that is widely distributed among state and non-state actors.
- **Evaluation**- When governance involves interactions across multiple scales and levels, evaluation is essential but challenging. Evaluation of governance processes is important, but outcomes (ecological, economic and social) also must be evaluated.

### **3.2. Fundamental Principles of Institutional Reforms for Environmental Governance**

A number of studies have shown that environmental good governance has not received sufficient attention from decision-makers, as a result low environmental performance and violations of environmental laws have been widespread. Among other things, important factors that nourished the slow pace of environmental governance include limited powers, complicated laws, and scarce financial and human resources of environmental institutions.

Organization for Economic Co-operation and Development (OECD)<sup>16</sup> in 2003 has issued guiding principles that need to be adhered to reform of environmental agencies. These principles have universal nature and relevance to the required environmental governance reform in Ethiopia. The key principles pertaining to responsibilities, powers, and environmental protection agencies include:

- a. Environmental protection agencies should be established as autonomous institutions, with clear, legally defined responsibilities and appropriate powers to achieve their objectives.**

This principle requires that environmental protection agencies (EPAs) should have full authority to make independent and objective (free from political and other pressures) decisions. In addition, the said agencies should have clear and legally defined

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16 Organization for Economic Co-operation and Development (OECD). 2003.Guiding Principles for Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus and Central Asia

responsibilities. The principle presupposes that establishing and enforcing environmental regulatory requirements should be institutionally separate. Similarly, regulatory functions should be separate from direct government support to, or participation in, economic activities. Whether or not to delegate environmental permitting mandates is an important decision, but should be made by taking into consideration the issue of avoiding conflict of interest, however, permitting and inspection should not be assigned to the same sub-unit within the environmental agencies' organizational structure. This ensures the checks and balances within the environmental institutional framework.

Adequate power should enable enforcement officials to identify violations and effectively bring violators to compliance, when needed, accompanied by authorized external experts or civil society representatives; having full access to any information from a public or private entity. Environmental agencies should also be empowered, among others, to issuing notices and warnings, suspension or revocation of environmental licenses/permits (in co-operation with licensing authorities), and filing a court suit against violators.

**b. Organizational structure should reflect environmental priorities and legally-defined responsibilities**

The organizational structure and its core mission should focus on major environmental problems and priority concerns and must tally with its major, legally-defined responsibilities of its establishment. In this regard identification of strategic mission and designing the structure around achieving strategic environmental goals and objectives as a regulatory institution in specified geographic and political administrative levels is critical. In addition the core of its organizational structure should be fit enough to deal with emerging functions, *e.g.* compliance assistance or market based approach of environmental governance. The organizational structure should provide for effective coordination and consultation including outside of government, especially with the private sector, civil society and international partners around environmental priorities and the respective strategic goals.

**c. Enforcement of decisions should be delegated to, and taken at, the lowest level and national level environmental protection agencies should provide appropriate support and co-ordination**

This principle demands the clear definition of jurisdictions of power of environmental protection agencies at different levels of administrations. In this regard the role and responsibilities assigned to federal EPA, regional environmental agencies and sub-regional environmental bodies should be clearly defined. It also presupposes that as much as possible and appropriate the mandate to take enforcement-related decisions should be delegated to and taken at, the lowest level where issues can be effectively managed. This principle is consistent with the federal governance system, Conservation Strategy of

Ethiopia (CSE) on institutional framework and operational arrangement.<sup>17</sup> Accordingly, in order to enable effective decentralization, powers should be delegated proportionally to assigned responsibilities based on capability and without causing conflict of interest.

When necessary, EPA should support regional environmental agencies in maintaining institutional integrity when subject to pressure from interest groups and in areas of limited competences. National oversight, reporting and dispute resolution mechanisms should be established as part of effective decentralization. Double subordination, *i.e.* being accountable to both the federal EPA and regional environmental agencies, creates ambiguity about responsibilities and should be avoided.

**d. Identification and establishment of effective working relations with other agencies and departments whose activities influence environmental enforcement**

Since many institutions are involved in the environmental regulatory process, the need for co-ordination of activities and feedback among these institutions requires them to work in close co-operation. This will be crucial where there are, for example, separate institutions for licensing or permitting, environmental authorization, inspection, etc. In such cases, the environmental protection agencies should foster co-operation, functional linkages, accountability and work to clarify roles and responsibilities. In relation to each of its partners, the responsibilities of the environmental agencies should be defined as clearly as possible, with close attention to eliminating gaps and overlaps. To this effects formal relations with other agencies should be established through agreements or memoranda of understanding. They should identify the goals and outputs of co-operation, clearly delineate responsibilities, and describe lines and procedures of communication and conflict resolution.

**e. Ensure effective communication with the general public and provide opportunities for citizens to contribute to more effective environmental enforcement**

The general public, including NGOs and mass media, should have access to information on the environmental agencies' activities and environmental performance of the regulated communities. The core messages should create the public perception of "deterrence with fairness." The environmental agencies may engage civil society and the general public in non-compliance detection and compliance promotion efforts. This might be done in the framework of the system that gives citizens, environmental NGOs and other organizations meaningful opportunity to participate in environmental enforcement.

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17 Environmental Protection Authority and Ministry of Economic Development and Cooperation. 1997. The conservation Strategy of Ethiopia-Volume III-Institutional Framework and Operational Arrangement.

### **3.3. Overview of Institutional Arrangement**

Institutional arrangements are crucial as they provide the government at all levels – federal, regional and local – with the framework of formulation and implementation of policies are affected. Different countries have slightly different institutional arrangements for the purpose of environmental governance. Various studies on institutional arrangements suggest the following types which are applied in different countries.<sup>18</sup>

#### **a. Ministry of Environment in charge of all environmental affairs**

This kind of arrangement reflects that the government assigns importance to environmental matter. Moreover, such arrangement creates opportunity for the development of specialized skills and experiences in dealing with environment-related issues. However, since it is physically separated from other ministries, it may face problems in coordinating, monitoring and enforcing policies. It can also lead to the isolation of the environmental issues rather than regarding them as an integral part of other issues.

#### **b. Environment as a part of a multifunctional ministry**

This kind of arrangement would make it easier for environmental issues to be considered in the policymaking of that particular ministry. When the scope is well defined, its work becomes more focused, which in turn makes it easier to attract personnel with technical capabilities or train them according to specific needs. However, such approach may inherently limit the scope of environmental activities for the reason that it is housed in a multifunctional ministry that does not provide a comprehensive consideration outside the facets or functions of that ministry. Moreover environmental concerns in all other ministries are likely to be neglected. Such arrangement may lead to relegation of environmental concerns to a second place especially when conflicts/competitions with other functions of the host ministry occur. Such arrangement may also show that low priority is placed on environmental issues by a country.

#### **c. Planning authority or committees responsible for integrated policy-making**

The multi-agency representation of committees may offer more opportunities to integrate environment into overall policy making. It also gives the opportunity to consider a variety of issues from different perspectives, before formulating policies. The disadvantage of such arrangement could be operational difficulties, such as lack of regular meetings of these committees that may hamper timely decision-making.

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18 ESCAP, 1999 (a), (b) and (c)). Institutional Arrangements in Countries of the Asian and Pacific Region

**d. Advisory councils formed to make integrated policies**

The advisory nature of the council allows representation from NGOs, the private sector and the general public. This arrangement enables policies to be viewed not only from government but also other perspectives and creates a formal channel to open a dialogue between the government and the public. Yet since the council is only advisory in nature, its recommendations may not be incorporated in policy formulation and its role is minimal to influence public opinion.

**e. Environment units in several ministries whose functions have a bearing on the environment**

Environmental units may help ensure that environment interests are represented in several relevant ministries. There is also a greater possibility that the environment perspective is incorporated in policy-making and implementation within each sectoral ministry. Yet this setting could mean that there is no coherent strategy on the environment. Furthermore, without central authority, the coordination of activities of units becomes difficult, which could lead to overlap, duplication and contradictions in activities.

### 3.4. Institutional Arrangement for Environmental Governance in Selected Countries

All environmental management strategies are expected to establish a precedent for effective cross-sectoral coordination. However, putting an effective cross-sectoral coordination has never been easy. The difficulties have been witnessed in the frequent changes in the 'institutional home' of environmental institutions and the various designations assigned to these agencies. The importance of the choice of institutional arrangements cannot be overemphasized. Each type of arrangement should be considered from at least four points of view: the quality or strength of inter-departmental cooperation, the consensus on institutional objectives, the political commitment of leaders, and their capacity to effectively communicate and link up with grassroots groups.<sup>19</sup> The following is an overview of some selected countries' environmental agencies institutional arrangements. The review focuses on their key mandates, accountability and linkage, as well as institutional structure. In this review the countries are selected on the basis of socio-economic and political governance similarity with Ethiopia.

#### 3.4.1. India

India follows a federal political governance system. Ministry of Environment and Forests (MoEF) constituted by Presidential Notification № 74/2/1/85-Cab. The Ministry consisted of two Departments, namely, Department of Environment and Department of Forests and Wildlife.<sup>20</sup>

The ministry is responsible for planning, promoting, coordinating, and overseeing the implementation of environmental and forestry programs in the country. The main activities undertaken by the ministry include conservation and survey of the flora and fauna of India, forests and other wilderness areas; prevention and control of pollution; afforestation, and land degradation mitigation. It is also responsible for ensuring the welfare of animals the administration of the national parks of India.<sup>21</sup>

The Ministry comprises of two wings, namely the Environment and Forests and Wildlife wings. The environment wing consists of twelve divisions including law and policy, conservation and survey, impact assessment, control of pollution, research, environmental education, and information, policy and law, NGO cell, public grievances redressal cell, and the likes. Similarly, the forest and wildlife wing has twelve divisions such as forest survey of

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19 Clement Dorm-Adzobu. 1995. Institutionalizing Environmental Management In Africa World Resources Institute Pp20-21 New Roots.

20 Government of India, Ministry of Environment and Forest. 2007. Induction Material pp1-2

21 <http://moef.nic.in/modules/about-the-ministry/introduction/> accessed on August 18, 2011

utilization, conservation, policy, research (education and training), wildlife conservation division, animal welfare, etc.<sup>22</sup>

MoEF also have 8 regional, 8 subordinate, 6 autonomous organizations and 4 authorities working on conservation, survey, biodiversity protection, river basin of the country's forest and animal welfare. The MoEF has also three boards on animal welfare, central pollution control and national afforestation and eco-development, as well as public sector undertakings that help implement its roles and responsibilities.<sup>23</sup>

The National Green Tribunal<sup>24</sup> is also established by the National Tribunal Act (2009) Bill No 63 of 2009. Its mandate is to settle dispute related to the environment (Art. 14 of National Tribunal Act) and to provide relief compensation and restitution (Art. 15 National Tribunal Act). The National Environment Appellate Authority Act (Act No 22 of 1997), provides for the establishment of a National Environment Appellate Authority. The aim of the Authority is to hear appeals with respect to restriction of areas and processes, operations related to industries, subject to certain safeguards under the Environment Protection Act, 1986 and for matters connected therewith or incidental thereto.

In spite of all the aforementioned efforts and institutional arrangements and laws enacted the existing regulatory institutions at the central and states levels have been unable to cope up effectively with the rising environmental challenges. It is apparent that the traditional systems of command and control for environmental regulation have stretched to their limits. The mechanism of criminal prosecution of environmental offenders has also failed to yield the desired results. While the number and complexity of the projects processed for environmental clearance has increased manifold, the capacity and resources available with MoEF<sup>25</sup> for major projects clearance and at State Environment Impact Assessment Authorities (SEIAAs) for minor projects have remained limited to manage the task. There is also a need to address a pressing need to improve areas of sanctions and issuance of performance based economic instruments on environmental offenders, mandatory reporting by industries and a verification mechanisms, putting in place appropriate mechanism that help effectively engage civil society in regulatory regimes. To bring about the desired environmental governance reform establishment of an autonomous National Environment Assessment and Monitoring Authority (NEAMA) proposed. NEAMA expected among others, to mainly work in environmental clearance of proposed projects, compliance monitoring, and advice the Government (MoEF) in proactive environmental management policy and guidelines.

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22 Government of India, Ministry of Environment and Forest. 2007. Induction Material. Pp8-19

23 <http://moef.nic.in/modules/about-the-ministry/other-offices/?f=regional-offices&l=1> accessed on August 18, 2011

24 Government of India.2009. The National Tribunal Act 2009, Bill no.63 of 2009.

25 Ministry of Environment & Forests Government of India. 2010. Reforms in Environmental Governance with special reference to establishment of National Environment Assessment and Monitoring Authority (NEAMA), Discussion Paper.





### 3.4.2. Kenya

Ministry of Environmental and Mineral Resources<sup>26</sup> is established with a mission to promote, monitor, conserve, protect, and sustainably manage the environment and mineral resources for national development. The Ministry comprises of various divisions at the head quarter, and parastatals including National Environment Management Authority (NEMA), Mines and Geological Department, and Kenya Meteorological Department.

The Environmental Management and Coordination Act of 1999<sup>27</sup> No 8 of 1999, provides an institutional framework and procedures for management of the environment, including provisions for conflict resolution. Accordingly, this law provide for the establishment of the following institutional arrangements:

#### a. National Environment Council (NEC)

The National Environment Council (NEC) is established by Section 4(1)<sup>28</sup> of the Environmental Management and Coordination Act No 8 of 1999. The Council is chaired by the Minister responsible for Environment matters. Other members of the Council include representatives of the public sectoral agencies, public universities and specialized research institutions; the business community and NGOs. The Director General of NEMA is its Secretary. The key functions of NEC are policy formulation, setting national goals and objectives and priorities for the protection of the environment. In addition it is also responsible for the promotion of cooperation among public departments, local authorities, private sector, and NGOs and performs such other functions as are assigned under the Act.

#### b. The National Environment Management Authority (NEMA)

NEMA is established to exercise general supervision and coordination over all matters relating to the environment and is the principal instrument of the government in the implementation of all policies relating to the environment.<sup>29, 30</sup> NEMA works in collaboration with lead Government agencies, parastatals, state corporations, or local authorities, in which any law vests the functions of control or management of any element of the environment or natural resources. These include integration of environmental consideration in development initiatives, advice government on national and international environmental legislative and other measures, coordinate and undertake research, survey and investigation

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26 Website of Ministry of Environment and Mineral Resources of Kenya. Accessed on 19 August 20, 2011. [http://www.environment.go.ke/?page\\_id=2](http://www.environment.go.ke/?page_id=2)

27 Government of Republic of Kenya. 1999. The Environmental Management and Co-ordination Act, 1999 No 8 of 1999

28 I bid. article 4 (1)

29 I bid article 7(1)

30 I bid article 7 (2)

in environment, awareness creation, resources mobilization and support, and environmental monitoring.

**c. Board**

NEMA is managed by a Board. Some of its members are appointed by the President and others by the Minister of Environmental and Mineral Resources in consultation with the council from inside and outside the public offices, three directors and a secretary from NEMA.

**d. National Environment Tribunal**

National Environment Tribunal is established under the Environmental Management and Coordination Act, 1999 No 8 of 1999 Article 125 to review administrative decisions made by NEMA relating to issuance, revocation or denial of license and conditions of license. It also provides legal opinion to NEMA on complex matters where the Authority seeks such advice. In addition, the Tribunal has power to change or give an order and direction regarding environmental issues in dispute.

**e. National Environment Restoration Fund<sup>31</sup>**

The Restoration Fund consists of fees or deposit bonds as may be determined by the Authority from time to time; such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund. The Restoration Fund is vested in the Authority. The fund established to act as a supplementary insurance for the mitigation of environmental degradation. It will be used where the perpetrator of the damage is not identifiable or where exceptional circumstances force the authority to intervene in the control or mitigation of environmental degradation.

**f. Provincial and District Environment Committees**

As per Article 29 (1) of the Environmental Management and Coordination Act of 1999 No 8 of 1999, the Minister of Environment and Mineral Resources shall by notice in the Gazette, appoint Provincial and District Environment Committees of the Authority in respect of every province and district respectively. They are responsible for the proper management of the environment within the province or district in respect of which they are appointed.

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31 | ibid article 25 -28

**g. The Public Complaints Committee**

It is established under the Environmental Management and Coordination Act of 1999 № 8 of 1999, Article 31 (2). Its function is to investigate any allegations or complaints against any person or against the Authority and suspected case of environmental degradation, and to make a report of its findings together with its recommendation thereon to the Council as well as to undertake assignments given to it by the Council.

**h. National Environment Action Plan Committee (NEAPC)**

As per Article 37 (1) of the National Environmental Management Act of 1999 the National Environment Action Plan Committee (NEAP) is established with the responsibility of preparing every five years a NEAP for the country. The NEAP is required to identify and assess key environmental issues, recommend solutions and outline strategies and programs to redress the problems.

**i. Standards and Enforcement Review Committee (SERC)**

As per Article 71 of the Environmental Management and Coordination Act of 1999, SERC is responsible to advise the NEMA on how to establish criteria and procedures for the measurement of water quality and recommend to the Authority minimum water quality standards and also involve in data collection.

**j. Environmental inspectors**

Apart from the structures mentioned above, the Article 117 (1) of the National Environmental Management Act provides for appointment of environmental inspectors to enforce the provisions of the Act, the regulations and guidelines under the Act.

**k. National Environment Tribunal (NET)**

The National Environment Tribunal is established under Article 125 (1) of NEMA of 1999 with a mandate to hear and determine disputes of technical nature on the administration of the Act as well as appeals against administrative decisions of NEMA and other organs responsible for the enforcement of the Act. NET can also give directions in a complex matter or a matter of unusual importance referred to it by NEMA.

### **I. The National Environment Trust Fund.**

The fund is established to facilitate research intended to further the requirements of environmental management, capacity building, environmental awards, environmental publications and scholarships and grants.

### **m. Other strategies for enforcement**

**The Police Unit**- it is an environment police wing established to assist NEMA in enforcing the environmental law and the regulations. The unit is involved in day-to-day enforcement activities of the Authority.

**The Prosecution Unit** is established to undertake prosecutions against the environmental offenders in ordinary courts. The prosecutors are technical officers with specialized training in prosecution procedures and gazetted to perform such duties.

### **3.4.3. South Africa**

**a. The Ministry of Water and Environmental Affairs** is a lead agency and there are two autonomous departments under it, namely; Department of Water Affairs (DWA) and **Department of Environmental Affairs (DEA)**. The strategic objectives of the ministry include:

- Protecting, conserving and enhancing the country's natural environment and heritage assets and resources;
- Prevention and management of pollution and environmental degradation;
- Providing leadership on climate change adaptation and mitigation, and contributing to sustainable development, livelihood, green and inclusive economic growth through facilitating skills development and employment creation.<sup>32</sup>

**b. Department of Environmental Affairs (DEA)** is responsible for policy formulation, implementation and for environmental assessment at national level.

**c. National Environmental Advisory Forum** is established by Article 3(1) by National Environmental Management Act № 107 of 1998<sup>33</sup> with a responsibility to advise on any

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<sup>32</sup> <http://www.environment.go.za>

matter concerning environmental management and governance. The Forum is specifically responsible for setting and achievement of objectives and priorities for environmental governance, and appropriate methods of monitoring compliance. It is also responsible to inform the Minister of the views of stakeholders regarding the application of the Environmental Management Principles. The Forum consists of at least 12 but not more than 15 members appointed by the Minister in consultation with all concerned organs so that the forum members are drawn from key stakeholder groups, especially disadvantaged groups, namely, women.

**d. Committee for Environmental Coordination**<sup>34</sup>- the object of the Committee is to promote the integration and coordination of environmental functions by the relevant organs of state and in particular, to promote the achievement of the purpose and objectives of environmental implementation plans and environmental management plans. The committee reports annually to the Minister of Water and Environmental Affairs. The key functions include:

- Review the implementations plans and make recommendations;
- investigating the appropriateness of the assignment and delegation of functions between organs of state;
- Recommend on coordination of integrated environmental management, harmonization of function, securing environmental compliance; etc.

**e. Provincial Departments**- there are also a number of provincial authorities and conservation permit offices under Department of Environmental Affairs. The DEA can designate the provinces as competent authorities (CAs), the provinces may, in turn, devolve this competency to their local authorities.

**f. Statutory Bodies**-there are several statutory bodies working on national parks, weather services and wetlands.

**g. Environmental Management Inspectors** -designated as per the regulation № R. 494/2006.

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33 Republic of South Africa, No. 19519 GOVERNMENT GAZETTE, 27 NOVEMBER 1998 Act No. 107, 1998 NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

34 I bid. Article 7-10

#### 3.4.4. Republic of Tanzania

In Tanzania, the environmental governance system is somehow well defined in terms of institutional arrangement by the Environmental Management Act of 2004.<sup>35</sup> Accordingly, like Kenya, the governance structure includes National Environmental Advisory Committee (Art. 11-12), a Minister responsible for environment (Art. 13), National Environment Management Council (Art 16-18), which is equivalent to NEMA of Kenya and similarly managed by a Board. In the same manner at Regional (provincial) (Art. 34), and local levels there are environmental authorities and environmental management officers. Likewise the National Environmental Standards Committee is established (Art. 143) to set criteria and prepare water quality standards, but in Tanzania the committee's mandates are broad enough to include preparation of noise and vibration, noxious smell, subsonic, radiation and soil quality standards.

As part of the enforcement mechanism similar to Kenya, in Tanzania, the Minister for Environment shall appoint environmental inspectors among the employees of the Council as per Article 182 of the Tanzanian Environmental Management Act of 2004.

**Environmental Appeals Tribunal** (Art. 204) and **National Environmental Trust Fund** (Art. 213) are established and working in similar manner like that of the Kenyan counterparts. Exceptional feature of the Tanzanian environmental management structure is, it provides for the establishment of **sectoral environmental section** (Art 30-33) with a responsibility to mainstream and promote the environmental requirements in the sectors' activities, advice and submit report on the implementation of the environmental policy and laws, give support to local agencies on their implementation.

The countries considered have similar socio-economic and political systems with Ethiopia. From the above review it can be seen that different countries have somehow adopted similar basic processes and approaches of environmental governance. These countries, when compared with Ethiopia have better institutional standing coordination and mobilization arrangements. Their governance structure extends down to local levels. They have also put in place important mechanisms to expedite good environmental governance including various high level coordinating bodies, technical support groups, focused environmental action plans, environmental funds, environmental tribunals, environmental inspectors and environmental police. They have also used economic instruments and encourage voluntary initiatives that enhance environmental good governance. Most of these countries provide roles and responsibilities for non state actors. It can therefore be concluded that Ethiopia can emulate, draw lessons from these countries' experiences.

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<sup>35</sup> The United Republic of Tanzania. 2004. The Environmental Management Act, 2004.

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Consequently it can redesign its environmental governance system in a better way by contextualizing the lesson learnt to Ethiopian conditions.

## 4. Overview of Key Policies and Laws Pertaining to Institutional Arrangement in Ethiopia

Strong institutions, those are legally established and with sufficient capacity, are needed for an effective environmental governance system. It is also important that such institutions need to be established at all levels of the organization of the government, especially at the local level their importance is so immense. The following subsections shall address the institutional arrangements in the policies and laws of the country.

### 4.1. Federal Laws

At federal level there are a number of policies and legal documents that deal with the institutional arrangement for environmental governance in Ethiopia. These include: the FDRE Constitution, the Environmental Policy of Ethiopia, the Conservation Strategy of Ethiopia, Proclamation № 295/2002 and the regional laws.

#### 4.1.1. The FDRE Constitution

The present day environmental governance is a question of decentralization. For a decentralized environmental protection activities, a political decentralization makes situations more conducive. As it is known to all, the FDRE Constitution has organized federal political governance in the country for the purpose of strong decentralization. The main goal of decentralization is the bringing about of increased local participation in development planning and management and the allocation of resources so that the development priorities of local people are more closely reflected and efficiency is improved.<sup>36</sup> In view of this principle the FDRE Constitution provides that: “Adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units.”<sup>37</sup>

The Constitution also underlines on the participation of the people on environmental affairs. It provides that: “People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly”<sup>38</sup>. This shows that the people at the local level are the main stakeholders whose decisions are the necessary requirement for any action that may affect them and their environment. This kind of direct participation of the people is considered by the Constitution as the exercise of the sovereign powers of the people.<sup>39</sup> Therefore, any

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36 Conservation Strategy of Ethiopia, Volume III, Paragraph 22.

37 FDRE Constitution Article 50 (4)

38 FDRE Constitution Article 92 (3)

39 FDRE Constitution Article 8 (3)



institutional arrangement for environmental protection activities must give the opportunity for the meaningful local people participation in the environmental governance. Besides these the institutional arrangement should be designed so that it can ensure the environmental rights and obligations enshrined in Articles 44 and 92 of the Constitution. This particularly reflects the links between democracy and environmental good governance.

#### **4.1.2. The Environmental Policy of Ethiopia (EPE)**

Section 5.1 of the EPE is devoted for the issues of institutional arrangement under the title of “*Institutional Framework, Responsibilities and Mandates.*” Under this section there are six policies which incorporate issues like:<sup>40</sup>

The need of institutional arrangement from the federal level to the community level and the existence of legally established coordination among institutions;

- The need to engage all stakeholders—government organs, NGOs, professional associations, community representatives and private sectors from federal up to local levels in the institutional framework for the effective environmental governance;
- The need to avoid conflicts of interest by assigning responsibilities to separate organizations for environmental and natural resource development and management activities on the one hand, and environmental protection, regulation and monitoring on the other.
- These policy statements have clearly provided for the need of institutional arrangements for effective environmental protection purposes at all levels and the existence of viable coordination framework which will ensure the functional linkages among these various stakeholders from federal to the local levels. More importantly the EPE has emphatically recognized the need to organize distinctively those institutes which deal with natural resources development and management activities from those institutes which deal with environmental protection, regulation and monitoring activities. The EPE is very logical in separating these activities as it has clearly indicated these activities are inherently conflicting to one another. To strike the balance between these two potentially conflicting activities<sup>41</sup> and to run both activities side by side, it is necessary to make them to be done by different organs.

In addition to the above policy considerations, the EPE has also underlined the importance of effective institutional framework for the EIA system in Ethiopia.<sup>42</sup> Here the Policy notes

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40 See The Environmental Policy of Ethiopia § 5.1

41 It has been asserted by many writers that development and environmental protection activities can be potentially conflicting to each other, unless environmental concerns are properly addressed in the development planning and implementation.

42 The Environmental Policy of Ethiopia § 4.9 (h)

the linkages which should exist among the various organs that involve in the process of EIA from its making to approving and to the subsequent environmental audit.

The EPE of 1997, which was adopted before most of the major environmental documents in this country is a very progressive document as far as environmental governance and institutional framework are concerned. Laws and strategies which were enacted subsequent to its adoption should have seriously recognized the policy statements which were provided in the Policy in a clear and simple manner.

The EPE has vested the mandate of coordinating policy implementation and monitoring on EPA at federal level and on regional environmental protection agencies at regional level.<sup>43</sup> It has to be noted here that this section of the EPE also anticipates establishment of environmental coordinating committees at all levels, from federal to local. Even if the Policy provides these directions, establishment of environmental coordinating committees are rarely done at local levels.

### **4.1.3. Conservation Strategy of Ethiopia**

The Conservation Strategy of Ethiopia (CSE) Volume III uses exactly same words as the EPE regarding institutional arrangements, except that it further gives details on specific strategies. Accordingly, the CSE suggests the giving of mandate to the Environmental Protection Council as established by Proclamation № 9/1995,<sup>44</sup> for the coordination of the implementation of the various development and management aspects.<sup>45</sup> This Council is maintained in Proclamation № 295 of 2002, though its role in creating and maintaining effective environmental governance is questionable as it is composed of high ranking officials with extremely busy schedules. It has convened a few times since its establishment in 2002. This very low frequency of meeting has crippled the Council's contribution towards ensuring good environmental governance system in the country. This calls for an urgent action.

The CSE states that Regional Environmental Coordinating Committees have been established by the Regional States and it suggests that these committees to be legally mandated to coordinate the implementation, review and revision of their respective Regional Policies on Natural Resources and the Environment.<sup>46</sup> It also recommends that the committee be appropriately representative of the relevant stakeholders, both state and non-state actors such as NGOs, community representatives and the private sector and such committee should be established up to the lowest government structure.<sup>47</sup> However, such

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43 See, EPE § 5.3 (c), (e) & (f).

44 Note that Proclamation № 9/1995 has been repealed and replaced by Proclamation № 295/2002.

45 CSE, Volume III, Paragraph 13 (d).

46 CSE, Volume III, Paragraph 13 (e).

47 CSE, Volume III, Paragraph 13 (e) & (f).

governance structures, that could have promoted effective stakeholders' participation, have not been established yet.

The importance of coordinated action by involving all the relevant stakeholders from state and non-state actors has been envisaged long ago by the CSE though the reality on the ground is quite different. That is, there are no such committees, except at federal level (EPC).<sup>48</sup>

#### **4.1.4. Environmental Protection Organs Establishment Proclamation № 295 of 2002**

As it can be seen from its preamble, this Proclamation has the following objectives:

- Assigning responsibilities to separate organizations for environmental development and management activities on the one hand, and environmental protection, regulations and monitoring on the other for the purpose of avoiding possible conflicts of interests and duplication of efforts;
- Establishing a system that fosters coordinated but differentiated responsibilities among environmental protection agencies at federal and regional levels.<sup>49</sup>

These objectives well conform to the general policy and strategic guidance of the EPE and the CSE as the Proclamation strives for decentralized institutional arrangement, coordinated but differentiated responsibilities of all the concerned organs at federal and regional levels.

The Proclamation seems to exhaustively list the environmental protection organs of the country only with reference to the public sector. That is the list of the environmental protection organs of the Proclamation does not include non state actors. Accordingly, the environmental protection organs are: the federal EPA, the Environmental Council, sectoral environmental units (SEUs) and the regional environmental agencies.<sup>50</sup> In the following sections, we shall see the key mandates of these organs, their accountability and the linkages which exist among them.

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48 During the study period visits were made to 5 Regional States, namely Amhara, Behishangul Gumuz, Gambela, Oromia and SNNPRS. In none of these Regional States there were such committees at any level of governmental organization.

49 Environmental Protection Organs Establishment Proclamation № 295 of 2002, preamble.

50 Ibid, Article 2 (4).

### **a. Mandates of Federal EPA**

EPA is established with the objective of formulating policies, strategies, laws and standards, which foster social and economic development and the safety of the environment, by spearheading the effectiveness of the process of their implementation.<sup>51</sup> This objective makes EPA the main environmental protection organ in the country since it is empowered by Proclamation № 295 of 2002 to initiate the necessary policy and legal framework for environmental protection. Moreover, it is the one that spearheads the implementation of these policy and legal instruments in the country. To attain these broader objectives, EPA is vested with specific tasks. The main tasks include:<sup>52</sup>

- Coordinating measures that ensure the realization of environmental objectives provided under the constitution and the basic principles set out in the EPE;
- Liaising with competent agencies in the field of environmental protection and rehabilitation and supporting them in developing their capacity;
- Establishing a system for EIA of public and private projects, as well as social and economic development policies, strategies, laws, and programs and auditing and regulating their implementation and “reviewing EIA studies” of projects and public instruments which fall under its jurisdiction;
- Preparing and availing to the government as well as the public a periodic report on the state of the environment of the country;
- Providing advice to competent agencies regarding the discharge of their obligations under Proclamation № 295/2002 or under other laws pertaining to environmental protection and, as appropriate, giving recommendations to the government regarding measures necessary to ensure compliance.

These and other powers vested in the EPA by Proclamation № 295 of 2002 are the ones which enable it to play a leading role in the environmental governance in the country. However, when seen with the development of environmental governance and institutional arrangement laws around the world, including many African countries, there are limitations in the powers and duties of the EPA for developing an effective environmental governance system in the country. To mention some of the gaps of the Proclamation which should be bridged include:

- Lack of recognition of the roles and contributions of non-state actors in the environmental governance system;
- Lack of explicit mention for involving financial and insurance institutions in the environmental governance system for the purpose of enforcing environmental laws;

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51 Ibid, Article 5.

52 Ibid, Article 6.

- Lack of clear indication of functional linkages and accountability among environmental protection and other sectoral organs the implications of which shall further be elaborated in section 5.

Besides these, Proclamation № 295 of 2002 does not establish the environmental coordinating committees at any level of organization, except the Environmental Protection Council at federal level, even if this has been anticipated by EPE and CSE.

#### **b. Mandates of Regional Agencies**

Proclamation № 295 of 2002 states about the establishment of regional environmental agencies that:

*“Each national regional state shall establish an independent regional environmental agency or designate an existing agency that shall, based on the EPE and CSE and ensuring public participation in the decision making process, be responsible for: (a) coordinating the formulation, implementation, review and revision of regional conservation strategies, and, (b) environmental monitoring, protection and regulation.”<sup>53</sup>*

According to this rule, regional states have to establish a new independent agency for the purpose of environmental protection or instead they have to designate an already existing government organ as independent environmental protection agency, based on EPE and CSE. As it has been discussed above, these policy and strategic documents provided for the establishment of environmental protection organs at federal as well as regional levels with the tasks that are not merged with conservation or developmental activities so that the regional environmental protection agencies should act independently.

Have the regional environmental agencies been established as per the rules provided for by the EPE, the CSE and Proclamation № 295 of 2002? This question shall be entertained in section 5.

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53 Proclamation № 295 of 2002, Article 15 (1)

## 4.2. Regional Laws

### 4.2.1. The Amhara Regional State

The Amhara National Regional State Executive Organs Re-establishment, Organization and Determination of their Powers and Duties Proclamation № 120/2006 have made the Environmental Protection and Rural Land Administration and Use Authority autonomous and directly accountable to the Head of the Regional Government.<sup>54</sup> This arrangement is believed to increase the independence of the Authority in comparison with its previous organizational standing where the Authority was one of the sectors under the Bureau of Agriculture and Rural Development.<sup>55</sup> Another Proclamation № 176 of 2010 has been enacted to re-establish and determine the powers of executive organs of the regional state. The new law raised the status of the previous Environmental Protection and Rural Land Administration and Use Authority to a bureau level and now it has a nomenclature of Environmental Protection, Rural Land Administration and Use Bureau.<sup>56</sup>

Though there is improvement in the institutional framework of environmental protection, still challenges have persisted. The environmental protection organ is now blended with land administration and use department to form a bureau. The problem here is the lion's share attention is given to the land administration and use department by neglecting the environmental protection. For instance, when reports are made to the Office of the Regional State's President, only the parts of land administration and use are presented by cutting off the environmental protection part or by reducing it to a few lines.<sup>57</sup>

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54 The Amhara National Regional State Executive Organs Re-establishment, Organization and Determination of their Powers and Duties Proclamation № 120/2006, Article 29 (12) (b).

55 It is very common for environmentalists to claim that the recently introduced organization of the executive organs has taken away the autonomy of environmental protection bodies as they are mainly relegated to departments under agricultural departments. They say that agricultural departments do not give due attention to environmental issues. Even they claim that the agricultural organs consider environmental protection activities as a hindrance to the agricultural development activities.

56 Amhara National Regional State Executive Organs Re-establishment, Organization and Determination of their Powers and Duties Proclamation № 176/2010, Article 10 (5).

57 Comment forwarded by Ato Aseffa Mekonnen, Deputy Head of the Environmental Protection Department at a meeting organized by MELCA-Ethiopia on the theme of "Institutional Framework for Environmental Protection" (July 05-06/2011) Ato Aseffa asked a very important question. "How can we get heard at the top level of executive while we are blended together with Land Administration and Use Department?" Participants on the meeting repeatedly expressed their concerns about the mixing of these organs with completely different missions. The Land Administration and Use Department, according to participants, is busy with administrative tasks while the Environmental Protection Department has to engage in regulatory tasks and there have been instances where these tasks conflict with each other.

#### 4.2.2. Benishangul Gumuz Regional State

The Benishangul Gumuz Regional State Environmental Protection Authority is established by the Benishangul Gumuz Regional State Environmental Protection Authority Establishment and Determination of its Powers and Duties Proclamation № 42/95 E.C. This structural organization had organized the environmental protection organ independently, without blending it with another organization. Experts and officials of the environmental protection organs of regional states usually complain that their conjunction with the land sector has created a number of problems.<sup>58</sup> In the absence of such blending with other sectoral department, experts assert, it is expected that the environmental protection organs can focus on their regulatory tasks with full and undivided energy. The Authority was accountable to the Council of the Regional Administration.<sup>59</sup> Moreover, the Proclamation was silent, unlike the Federal Proclamation № 295/2002, regarding the performance of the tasks of the Authority in consultation with the relevant organs.<sup>60</sup> This kind of structural organization is short lived and the proclamation that established the independent authority has been repealed by another newer Proclamation № 94/2003 E.C., the proclamation that redefined the powers and duties of the executive organs of the regional state. This Proclamation has reestablished the Environmental Protection, Land Administration and Use Bureau by making it member of the regional cabinet.<sup>61</sup> Those executive organs which are members of the regional cabinet are accountable to the regional cabinet as well as the president of the regional state<sup>62</sup> at the same time.

The Proclamation has never attempted to indicate that the Bureau shall perform its tasks in coordination with other relevant organs. The only place where it considers about coordination with the concerned organs is while the Bureau is conducting studies and registering the regional land for the purpose of land administration.<sup>63</sup> The Proclamation should not have restricted the functional link of the Bureau with other organs for land administration only. To make things worse, no sectoral organ in the region has established

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58 For instance, the experts and officials of the Amhara Regional State Environmental Protection and Land Administration and Use Bureau have complained that they were not heard by higher officials as these officials are not prepared to hear their voices as compared to the voices of the land administration and use department.

59 Benishangul Gumuz Regional State Environmental Protection Authority Establishment and Determination of its Powers and Duties Proclamation № 42/95 E.C, Article 3 (2). The 2002 Revised Constitution of the Regional State refers this council as the Executive Council and it is counterpart of the Council of Ministers of the federal government.

60 See table above for the consultation of the Federal EPA with competent agencies or concerned organs.

61 Benishangul Gumuz Regional State Redefinition of Powers and Duties of the Executive Organs Proclamation № 24 of 2003 E.C., Article 9 (13)

62 Benishangul Gumuz Proclamation № 24 of 2003 E.C., Article 11 (1)

63 Benishangul Gumuz Proclamation № 24 of 2003 E.C., Article 27 (18)

SEU and hence the functional link between the environmental protection organ and the sectoral organs is poor and informal.<sup>64</sup>

### 4.2.3. Gambella Regional State

The Gambella Regional State has established Bureau of Land Utilization, Administration and Environmental Protection by Proclamation № 92/2010. When a certain regional government organ is established at the level of a bureau, it will automatically become member of the regional cabinet. The Bureau is divided into two core processes, the land utilization and administration core process and the environment and biodiversity core process.<sup>65</sup> Without changing this internal organization, another newer law, Proclamation № 95 of 2003 E.C. has been issued in 2011<sup>66</sup> by reducing the status to the level of an authority. However, still the newly created Land Administration and Utilization Authority is accountable to the President of the Regional State.

### 4.2.4. Oromia

The Oromia Bureau of Land and Environmental Protection has been established by Proclamation № 147/2009. The powers and duties of the Bureau are listed under Article 5 of the Proclamation. The Proclamation in its Article 5 (18) provides that the Bureau, as per necessity, communicate and establish relations with concerned bodies.<sup>67</sup>

With respect to the Oromia Regional State environmental governance and institutional framework, a focused group discussion was made and the following points have been extracted from the discussion.<sup>68</sup>

- Previously, environmental protection and land administration tasks were run at an office level under the Agricultural Bureau. Now the office has been raised to the level of a bureau, though still environment and land are merged together.

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64 Ato Muradu, paper presented on the title: "Activities of the Environmental Protection and Land Administration and Use Bureau of the Benishangul Gumuz Regional State" on 30 October 2010.

65 Source: organizational chart of the Gambella Regional State Bureau of Land Utilization, Administration and Environmental Protection.

66 Unlike Proclamation № 92/2010 which is bilingual (Amharic and English), Proclamation № 95/93 E.C. is a monolingual (Amharic) proclamation. It is issued in 2011 after about a year later from the promulgation of the former.

67 Unlike the federal Proclamation 295/2002, the regional states' proclamations do not seem to mandatorily require to link with other relevant organs. For instance, see the Afan Oromo and Amharic versions of this Article which are written in a permissive rather than in a mandatory language.

68 In this focused group discussion, Ato Techane Gonfa, Ato Geremew Gomoro, Ato Alemayehu Gelan and Ato Dejene Birru (all are experts at the Oromia Bureau of Land and Environmental Protection) have participated. The discussion was conducted on 12 April 2011 in the premises of the Bureau.



- Now there have been improvements as far as land allocation is concerned. Previously, land was managed in a decentralized manner and even without the knowledge of environmental protection organ, lands were allocated to investors. For instance, the Investment Agency of the region and mayors of towns were allocating land to investors. Now no such thing exists as plots of land for investment are pulled into a land-bank system.
- The EIA process is also taking shape now. The reason for this is, actually the land shall not be legally transferred to the investor unless the latter's EIA study is reviewed by the environmental protection core process. Unless they pass through this process, the landholding certificate shall not be issued to the investors.
- Irrespective of these improvements, the decision to merge the environmental protection regulatory role with the land administration functions poses problems on the tasks of environmental protection for more attention is given to the land administration.
- Presently the structural arrangement of the Oromia land administration and environmental protection has reached to the kebele level. Although there are successes in having such level of organization, no experts have been assigned until now, particularly at the lower levels of organization. To bridge this gap, there have been efforts to use the DAs of the Agricultural Bureau. But that was not a success as there was no mechanism of controlling them by the Bureau of Land and Environmental Protection.
- Regarding the accountability of the Bureau, now it is accountable to the Regional Council. Before it was raised to the level of bureau, it was accountable to the Office of the President. That organization also did not help much, as in the President's agenda environment was not a priority.
- For effective environmental governance in the country, concerted efforts with all stakeholders is essential. Particularly, the EPA has to play its leading role by assisting the regional organs. For instance, the Ministry of Agriculture is closely working with the regional agricultural bureaus. It is necessary that EPA should do same thing. EPA should have given advices, trainings and other assistances to the regional environmental protection agencies. No such thing exists now.
- The functional link of the Bureau with other concerned organs, state and non-state actors, is very poor in the region.
- The justice organs are not very helpful in fighting against environmental crimes. It is better if there is a separate environmental tribunal which specializes on environmental affairs.

As can be observed from these discussions progressive steps are being taken by the Oromia Regional State in organizing the environmental protection organ of the region. However,

these steps must be consolidated further to have effective environmental governance in the region. Especially the functional link with the sectoral organs is in its infantile stage until now.

#### 4.2.5. SNNPRS

The SNNPRS Environmental Protection, Land Administration and Utilization Authority has been established by Proclamation № 52 of 2003. The Authority was accountable to the Head of the Regional Government. As in other regional states in SNNPRS too, the institutional arrangement of environmental protection remained unstable. Since 1991 to 2010 there have been changes on the institutional arrangement of environmental protection organ for 8 times. This makes, on average, a change on two years basis. It would be difficult to have institutional memory and maturity on such kind of continuous make-and-unmake situations.<sup>69</sup>

In October 2011 a new law has been issued, namely the proclamation to redefine the powers and responsibilities of the executive powers of the regional state.<sup>70</sup> The proclamation has made changed the previous Environmental Protection, Land Administration and Utilization Authority into Natural Resources and Environmental Protection Agency by making it accountable to the Bureau of Agriculture.<sup>71</sup>

#### 4.2.6. Tigray

The Tigray Regional State Environmental Protection Authority has been established by Proclamation № 77/1996 E.C. by being accountable to the President of the Regional State.<sup>72</sup> Although recent proclamations are not found, it has been learned that the Authority is currently accountable to the Bureau of Agriculture. But the structural arrangement at woreda level is different. That is, the woreda environmental protection, land administration and use desk is accountable to the woreda administration office.<sup>73</sup> Moreover, many participants suggested that it is unfair to have an independent environmental protection organ at federal level while there is no such organ at the regional level where the environmental protection work is actually done. The interview respondents also affirmed the weak EIA reviewing process in the region which the result of lower institutional standing.

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69 Presentation by Ato Woldeberhan Kuma 24 December 2010, Hawassa.

70 This proclamation is not numbered but sealed with stamp of the Office of the Regional President for its authenticity.

71 See Article 6 (6) of the proclamation.

72 Environmental Protection, Land Administration and Use Authority Establishment Proclamation № 77/1996 E.C. Article 3 (2).

73 'Environmental Protection Activities in Tigray Regional State', paper presentation by Wro. Kibra at Mekele on 13 March 2011.

## **5. Key Issues of Environmental Governance in Ethiopia**

Environmental governance is a complex matter that needs to involve a multi-stakeholder state and non-state actors. The institutional arrangement for environmental governance is equally a challenging issue that demands a workable functional linkage among role takers at various levels. Environmental governance is about establishing a system that coordinates all stakeholders in their common but differentiated responsibilities towards environmentally sustainable development. The key issues, which are identified in relation to environmental governance in Ethiopia, are discussed below.

### **5.1. Functional Linkages and Accountability**

There are a number of structures or bodies involved in environmental protection activities in Ethiopia. In the following sub-sections, we shall examine their functional linkages and accountabilities.

#### **5.1.1. The Prime Minister (PM) and EPA**

According to Article 3 of Proclamation № 295/2002, the Authority, which includes the Environmental Council, is accountable to the Prime Minister. On the other hand the Environmental Council is supposed to be chaired by the PM or his designee which actually makes the PM or his designee part and parcel of the Authority. As a result, it would be difficult to make the Authority accountable to the PM, who is at the same time a chairperson of the Council. Even so, the mentioned accountability or linkage has not been elaborated by the Proclamation or by any other subordinate document.

Making EPA accountable to the highest executive official may be seen as the government's concern for environmental protection issues. However, this arrangement has created its own problems on the environmental governance system in the country. The challenges with respect to this arrangement are at least two. These are: firstly though EPA is accountable to the Prime Minister, it is not a member of the Council of Ministers and has limited or even no access to the Office of the Prime Minister until very recently; secondly and most importantly, the Prime Minister is the chief executive that coordinates the functions of sectoral development agencies, while EPA is a regulatory organ that controls the environmental performance of these organs. Thus, it would create functional difficulties that emanate from conflict of interests. This kind of arrangement is not uncommon. If we see the US Environmental Protection Agency, for instance, it is not organized under the executive branch. It is organized under the branch known as the Independent Agencies of the US Government, though its administrator is appointed by the President and approved by the Congress. Although this administrator is given a cabinet rank, the USEPA is not member

of the cabinet. While these independent agencies are constitutionally part of the executive branch, they are independent of presidential control.<sup>74</sup>

As indicated above, there was no means of direct communication between the Office of the Prime Minister and EPA on a regular basis. However, very recently, the PM office has initiated a follow up scheme and started monitoring the plans and performances of EPA. This is quite encouraging and such functional relationship should continue in clearly defined procedures. It may be appropriate here to suggest that the PM's office's control need to mainly focus on ensuring that the major sectoral agencies have indeed observed the environmental requirements and made the required contributions for their proper enforcement. It can also work towards urging and requiring EPA to put in place the necessary enabling conditions and facilitate the enactment of environmental legal instruments subject to the Council of Ministers' approval.

However, the traditional practice in fact, is that EPA is reporting to the Natural Resources Development and Environmental Protection Standing Committee (NRDEPSC) of the House of People's Representatives (HPR).

As it can be observed from around the world, institutions with cross-sectoral regulatory functions become more autonomous when they are made accountable to the elected representatives than the executive organ.<sup>75</sup>

### **5.1.2. The Environmental Protection Council (EPC) and EPA**

The Environmental Protection Council is considered as part of the Authority by Article 7 (1) of Proclamation № 295 of 2002. Actually the Council and Authority are not the same body and do not have similar standing and functions. The Environmental Protection Council as per Article 9 of Proclamation № 295/2002 is entrusted with responsibilities of reviewing proposed environmental policies, strategies, and laws presented to it by EPA and issue recommendations to the government. In addition, it is expected to evaluate the report of the Authority and provide advice on the implementation of the EPE. Similarly, the Council has to review and approve directives, guidelines and environmental standards prepared by the Authority.

As things stand now, ensuring effective environmental governance under the guidance of t

- Most of the members of the Council are high ranking officials with busy schedules and could not be available for frequent meetings.

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74 Source: Wikipedia, the free encyclopedia.

75 In Ethiopia also there is similar experience. For instance, the Auditor General is accountable to the HPR. (See Article 6 (2) of Office of the Federal Auditor General Establishment /Amendment/ Proclamation № 669/2010."

- The issues supposed to be considered by the Council for approval are too technical to be considered by these high ranking officials. Moreover, it does not have a technical advisory organ to fill this gap.
- The Council is not established as a separate body from EPA to oversee its activities.
- Its composition is not comprehensive enough to include key stakeholders, such as higher learning and research institutions, environmental think tanks and senior citizens.

It is, therefore, necessary to establish an organ or a council that works at broad policy guidance and advisory level. The policy guidance and advisory roles of the Council could focus on overseeing and giving advices on the observation and implementation of the environmental rights and obligations of citizens. The Council should also guide the formulation and implementation of environmental visions, strategic goals, objectives and national environmental protection plans and follow up their implementation. Moreover, it must promote cooperation among key stakeholders. It shall also review the recommendations of the technical task force or committee, and give guidance on the transfer of draft proclamations and regulations to the Council of Ministers draft environmental proclamations and regulations. Most importantly, it should give advice and guidance on the negotiation of multilateral environmental agreements and finally spearhead the peer review and evaluation of the national environmental governance system effectiveness and fairness.

Similar coordinating bodies are also required at the regional states' level to oversee and give overall policy guidance and implementation of same.

### **5.1.3. EPA and Natural Resources Development and Environmental Protection Standing Committee**

The NRDEPSC is monitoring EPA's performances and gives the necessary guidance on regular basis. However, the Environmental Protection Organs' Establishment Proclamation № 295/2002 did not provide for such relationship between NRDEPSC and EPA. The NRDEPSC, which is part of the ultimate political power, the HPR, has a critical role of scrutinizing the performances of key federal executive organs. In fact, the standing committee has developed a checklist so that other major sector's parliamentary standing committees ensure the consideration or the mainstreaming of environmental issues into the respective sectoral activities or development initiatives. This is a good step forward in environmental governance in Ethiopia. This could be further strengthened if the issue of environmental sustainability is included into budget approval criteria of major sectoral agencies' plans, programs and projects.

It can be safely argued that this can be a basis to consider NRDEPSC as a nodal point for future reorientation of EPA's accountability to the Parliament. This will give EPA a proper political standing to deal with cross-sectoral nature of the environmental governance. There is also similar desire at the regional levels, as it has been observed from meetings in 5 regional states. According to this practice, it is more sensible if EPA and the regional environmental protection agencies are made accountable to their respective houses of elected representatives rather than to the executive organs.

### **5.1.4. NRDEPSC and EPC**

The relationship between the NRDEPSC and EPC is not defined by any law. However, the NRDEPSC, as a body of the ultimate power, can request the EPC to report on its functions as deemed necessary through either the Prime Minister or EPA's Director. Up to now no experience is seen of the control of the EPC by the NRDEPSC.

### 5.1.5. Regional Environmental Agencies and EPA

According to Environmental Protection Organs Establishment Proclamation № 295/2002 Article 6 (21), EPA is required to provide advice and support to regional environmental agencies regarding the management and protection of the environment. Similarly as per Article 15 (2), the regional environmental agencies are responsible to ensure the implementation of federal environmental standards or, as may be appropriate, issue and implement their own, no less stringent standards. Sometimes regional environmental agencies think that EPA is slow in putting in place the necessary laws as a result they complain that they are unable to go forward or forced to work in legal and technical vacuum.<sup>76</sup> This shows that EPA needs to take the lead in developing policies, laws, standards and guidelines that the regional environmental agencies can adopt or based on which they develop their own, no less stringent instruments. The issue here is what will happen if EPA fails to develop the necessary instruments or regional environmental agencies do not implement or prepare less stringent standards? This calls for the definition of clear accountabilities and meaningful functional linkages that should exist between them. In addition, as per Article 15 (3) of the Proclamation, regional environmental agencies shall prepare reports on the state of the environment and sustainable development of their respective states and submit them to the Authority. As facts on the ground indicate, no environmental agency has submitted any report of that nature so far. This issue also needs attention for effective environmental governance which requires strong cooperation between federal and regional environmental agencies.

Due to the introduction of BPR and the delegation of its powers with respect to EIA review, EPA has also planned to change some of its relationships with the regional environmental protection agencies.<sup>77</sup>

In a consultative meeting held in 2007 between the federal EPA and the regional environmental agencies, efforts have been made to identify loopholes regarding the functional linkage among the environmental protection organs in the process of EIA and suggested some ideas on establishing the desired functional linkages.<sup>78</sup> However, the proposed ideas have not led to the establishment of meaningful formal functional linkages. It is also learnt that recently EPA has embarked on a closer working relationships with REAs and there are also a joint evaluation of agenda. Cooperation in capacity building and design of national program mainly related to climate change related projects and initiatives but all in informal and non binding and in the absence of long term common specific

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76 This point has been repeatedly raised during the meeting sessions in 5 regional states.

77 አካባቢ ጥበቃ ለምልጣን -2001 ዓ.ም. በመሠረታዊ የሥራ ሂደት ለውጥ ሂደት የአካባቢ እንክብካቤ ሥርዓትን የማስፈን ዋና የሥራ ሂደት ጥናት ሰነድ -አዲስ አበባ p 56. For detailed discussion of these issues, see § 7.2 and 7.5

78 Desalegn Mesfin, op. cit., p. 56.



environmental goal and objective basis. These situations call for legal and formal relationship.

### 5.1.6. EPA and Sectoral Environmental Units (SEUs)

#### a. Functional Linkages between EPA and SEUs

Proclamation № 295/2002 has established sectoral environmental units as one of the organs responsible for environmental protection at federal and regional levels.<sup>79</sup> The Proclamation, except establishing these organs as one of environmental protection organs, it has never indicated how the SEUs shall cooperate and functionally link to the EPA (at the federal level) and the regional environmental protection agencies and among themselves. Moreover, no elaborated mandates have been vested in them by the Proclamation. Absence of such clear and elaborated mandates for the SEUs could be one of the reasons for the absence of the actual establishment of these organs in most of the sectoral organs.<sup>80</sup> Regarding the federal sectoral organs, out of the 33 sectoral organs, which should have established SEUs, only 7 have established or designated their own SEUs.<sup>81</sup> Even the ones which have established their environmental units did not develop a systematic link with the EPA.<sup>82</sup> Regarding the existing coordination among the environmental protection organs in relation to EIA, Desalegn argues that: "Poor coordination and collaboration among public agencies in EIA administration manifests not only in poorly defined lines of responsibility but also the content of the existing EIA system is not yet concretely defined and is still incomplete."<sup>83</sup> From this it can be clearly seen that the environmental governance in the

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79 Article 2 (4) of the Proclamation defines environmental protection organs as "the Authority, the Council, the Sectoral and Regional environmental units and agencies mentioned under Article 14 and 15 of the Proclamation. Although it apparently seems that the SEUs are established only at the federal level by Proclamation № 295/2002, close reading of the Proclamation reveals that SEUs are also established at regional level. Article 14 of the Proclamation reads as "Every competent agency shall establish or designate an environmental unit that shall be responsible for coordination and follow-up so that the activities of the competent agency are in harmony with this Proclamation and with other environmental protection requirements." Article 2 (2) of the Proclamation, on the other hand, defines competent agency as federal or regional government organ entrusted by law with a responsibility related to the subject specified in the provisions where the term is used. From this it is clear that SEUs are established by the Proclamation both at federal and regional levels.

80 According to the discussions made in 5 regional states, very few sectoral organs have established the SEUs. Even the established ones are not linked with the environmental protection organs. If there is some kind of linkage or coordination, that is not a formal and a well-designed one.

81 Desalegn Mesfin (2007), Evaluation of the Environmental Impact Assessment System of Ethiopia, AAU, Institute of Development Research, MA Thesis, p. 52.

82 Desalegn Mesfin, *op. cit.*, pp. 52 ff. This has also been proved in the personal communications with some officers in the Ministry of Water and Energy, Ministry of Mines and EEPCO. According to the Amharic magazine of Ministry of Mines and Energy (now Ministry of Mines), Meskerem 2003 E.C. (September 2010) Volume 10 № 1 the Ministry has established its own SEU under the name of Environment and Community Development Unit. As per the delegation of EPA, it is reviewing the EIA study documents. The magazine did not indicate how it is communicating with the EPA.

83 Desalegn Mesfin, *op. cit.*, pp. 52-53.

country has not yet took shape and needs serious considerations from all the concerned organs, especially the government organs.

If we see experiences from other countries, the roles environmental units are somehow defined. For instance, in Tanzania<sup>84</sup> sectoral environment sections are responsible, among others, liaison with the director of environment and the council on matters involving environment and all matters with respect to which cooperation or shared responsibility is desirable or required. It is also responsible to collaborate with other institutions or agencies, evaluate existing and proposed policies and legislation and recommend measures to ensure that those policies and legislation take adequate account of effects on the environment. Furthermore it is mandated to prepare and coordinate the implementation of environmental action plans at the national and local levels.

Article 6 of Proclamation № 295 of 2002 provides for powers and duties of the EPA. The Proclamation further expresses that EPA, to perform these powers and duties, shall consult competent agencies, other concerned organs and the public at large. The following table shows the type of power or duty of the EPA and the organs to be consulted.

	<b>Power/Duty of EPA</b>	<b>Organs to be consulted</b>
1.	Preparing, reviewing and updating of policies strategies and laws	Competent agencies, other concerned organs and the public at large.
2.	Liaising	Competent agencies in the field of environmental protection and rehabilitation.
3.	Combating desertification	Competent agencies.
4.	Setting environmental standards	Competent agencies.
5.	Take part in the negotiations of international environmental agreements	Competent agencies.
6.	Preparing environmental cost-benefit analysis and an accounting system	In <i>cooperation</i> with the competent agencies.
7.	Proposing incentives or disincentives	Competent agencies.
8.	Establishing environmental information system	Competent agencies.
9.	Integrating environmental concerns in the regular educational curricula	Competent agencies.

<sup>84</sup> The United Republic of Tanzania, The Environmental Management Act, 2004, Articles 30-33.

Three various organs have been indicated in the Proclamation which the EPA needs to consult in the course of discharging its powers and duties, namely; the competent agencies, the concerned organs and the public at large. Competent agency is a federal or regional government organ.<sup>85</sup> The expression *concerned organs* has not been defined. One may estimate that the concerned organs could be NGOs, professional associations, CBOs, private sectors, etc. However, this is not a safe way of engaging all the stakeholders. In order to avoid the risk of inadvertently or otherwise leaving out any of the stakeholders, it is necessary to list, even if not in an exhaustive manner, than stating as *concerned organs* in a general manner. Moreover, it would have been better had the Proclamation stated the roles and responsibilities of the *concerned organs*, at least in a general manner. If such roles and responsibilities defined, one would easily identify those which are stated as *concerned organs* by the Proclamation for engaging them.

The other point that needs consideration is the liaising role of the EPA with the competent agencies in the field of environmental protection and rehabilitation. This is a crucially important coordination role of the EPA in the environmental governance system in the country. Though the Proclamation provides for the liaising role of EPA with the competent agencies that work in the field of environmental protection and rehabilitation, it does not specify the modalities of liaising. Moreover, the Proclamation is silent as far as roles, responsibilities and accountabilities of the competent agencies are concerned. As things stand now on the ground, it can be argued that there is no effective functional linkage for successful environmental governance among the competent agencies or other concerned organs. That is, EPA's liaising role is not formally and strongly seen practically with the federal sectoral organs (or in the language of the EPE or CSE, with line ministries) and with regional environmental agencies.<sup>86</sup>

However, it should be noted that the major sectoral agencies are represented in the Environmental Protection Council. EPA has also a traditional practice of involving sectoral agencies in some of its initiatives in non regular basis. In this connection, EPA involves sectoral agencies as members of ad-hoc working groups or steering committees for its initiatives such as during the preparation of National Environmental Action Plans.

The recently prepared Ethiopia's Climate-Resilient Green Economy<sup>87</sup> was led by the Prime Minister's Office, the Environmental Protection Authority (EPA), the Ethiopian Development Research Institute (EDRI), and six ministries. Seven sectoral sub-technical committees (STCs)

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85 Environmental Protection Organs Establishment Proclamation № 295 of 2002, Article 2 (2).

86 Discussions were made with 5 Regional States environmental protection organs and with some federal sectoral organs, such as the Ministry of Water and Energy, Ministry of Mines and Ethiopian Electric Power Corporation. According to the informants in these organs, though there are certain weak efforts for coordinated actions with the EPA, there has never been an effective functional link with it. The informants also emphasized that due to lack of effective coordination, the environmental protection work has also remained ineffective.

87 FDRE, Ethiopia's Climate-Resilient Green Economy: Green economy strategy p. 56.

have been established to work on these plans and see them through to successful implementation. In addition sectoral agencies have also submitted their respective climate adaptation plan.

In this regard, for EPA to properly coordinate activities of environmental protection it is essential to put in place legally defined mechanisms to effectively engage SEUs for the better environmental governance system in the country. In this connection it is learned that as a result of the BPR, EPA has planned to develop a framework that defines the role of SEUs that hopefully established clear functional linkages.<sup>88</sup>

#### ***b. Functional Linkages between Regional Environmental Protection agencies and Regional Sectoral Units***

As it has been discussed above, Proclamation № 295/2002 has established the regional SEUs. However, the regional proclamations that established the respective regional environmental protection agencies have not provided for the establishment of the regional SEUs. Even if the regional proclamations have not established the regional SEUs, it cannot be a hindrance for their establishment as their establishment is provided for by the federal proclamation. As it has been learned from the discussions made in 5 regional states, there have been some efforts to establish the SEUs. In this connection, in Amhara Regional State in two government organs, namely the Rural Road Authority and Investment Agency, there have been efforts to establish environmental units.<sup>89</sup> This practice, however, has not been repeated in other sectoral agencies that require the establishment of SEUs. In addition to this, Sileshi argues that even BPR studies have never attempted to establish environmental units in the sectoral bureaus for effective coordination in the field of environmental protection.<sup>90</sup>

Regarding the functional linkage in the region, it is at its infantile stage. There has not been a significant functional linkage with the concerned organs for the purpose of environmental protection.<sup>91</sup>

A similar workshop has been conducted in the Benishangul Gumuz Regional State and it has been observed that the experts of the Authority firmly believe that functional linkage with other organs is necessary. But there are problems of capacity with respect to human as well as material resources on the side of the Authority for creating effective functional links with

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88 አካባቢ ጥበቃ ለሥልጣን (2001 ዓ.ም) በመሠረታዊ የሥራ ሂደት ለውጥ ሂደት የአካባቢ እንክብካቤ ሥርዓትን የማስፈን ዋና የሥራ ሂደት ጥናት ሰነድ፤ አዲስ አበባ p. 56.

89 Sileshi Temesgen, Amhara Regional State, Environmental Protection, Land Administration and Use Bureau: Objectives and Responsibilities, (Paper presented on 27 August 2010, Bahirdar.

90 Ibid.

91 During the meeting, the Amhara Regional State Justice Organs Training and Legal Research Center has committed itself to include environmental concerns in its curricula and urged other concerned organs to mainstream environmental concerns in their plans.

other stakeholders.<sup>92</sup> On the other hand, no sectoral government organ has established environmental unit in the regional state,<sup>93</sup> and this has posed problems in the environmental protection tasks of the Bureau. However, BPR studies have suggested the need for institutional linkages of sectoral organs with the Bureau and this can be considered as a window of opportunity for the future functional linkages.<sup>94</sup>

As observed from the focused group discussion in the Oromia Regional State, the informants indicated that:<sup>95</sup>

- Before the advent of BPR, there was a plan (financed by the UNEP) to establish an environmental information network. According to that plan, in each sectoral organ, there could be a focal person at an expert level and at the sectoral organ level there could be steering committee. After that structure has been finalized, BPR came on board with a principle of one-stop-shop. That is, every organ has to do its business effectively for the purpose of delivering speedy service for its clients. Basically this principle is good. The problem, however, is the wrong assumption that a one-stop-shop service excludes integration of environmental concerns in decision making. In fact environmental authorization can also adopt one-stop-shop. As the result of this misconception the sectoral organs have cancelled out environmental concerns from their agenda. However, now there are efforts to bring back the coordinated act through Balanced Score Card design.
- There are environmental units in some sectoral organs, such as in the Oromia Roads Authority. But the units are not effective. As there exists the sectoral feeling, the environmental protection core process is not able to establish the desired functional linkage with the units.
- These units are not established with sufficient empowerment or autonomy to withstand undue internal pressures from sectoral interest.

In Tigray Regional State, some efforts have been made by the Regional Environmental Protection, Land Administration and Use Authority to link up and work together with Bureau of Urban Development and with the Mekelle city municipality. However, these links were not systematic and institutionalized nor were they well-designed.<sup>96</sup> With respect to the establishment of environmental units, Wro. Kibra stated that there were environmental

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92 Paper presented by Ato Gebremedhin \_\_\_\_\_, the Environmental Protection Authority, Core Process Owner at the workshop organized by MELCA-Ethiopia on the theme, "Institutional Framework for Environmental Protection" (July 22-23/2011).

93 Muradu on 30 October 2010

94 Ibid.

95 See § 4.2.4 above.

96 Wro. Kibra.

units in the Bureau of Water Resources and Roads Authority. However, she was not sure their existence as the time of her speech.<sup>97</sup>

### 5.1.7. EPA, REA and Non State Actors

Proclamation № 295/2002 has included non-state actors as part of the environmental protection organs. Article 8 (d), (e) and (f) incorporated representatives of the Ethiopian Chamber of Commerce, local environmental NGOs and Confederation of Ethiopian Trade Unions as members of the Environmental Council. Even if this is a positive step, the participation of non-state actors in the environmental governance in Ethiopia is at its rudimentary stage for three main reasons. Firstly, the participation of the non-state actors is limited only to the Environmental Council (EC) which is a very inactive organ as far as day-to-day environmental governance is concerned. Secondly, the number of non-state actors represented in the EC is too small to ensure a mass-base participation in the environmental governance. Lastly, the roles and responsibilities of the non-state actors are not legally defined and it has become difficult to engage them in the course of actions of environmental governance in the country.<sup>98</sup>

The functional linkages between non-state actors, especially NGOs are better in the areas of joint implementation of some projects like sustainable agriculture, land rehabilitation, solid waste management and local level technology introduction and piloting, etc.<sup>99</sup>. It appears

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97 Wro. Kibra. Moreover, 5 experts from the Tigray Regional State Environmental Protection, Land Administration and Use Authority filled questionnaires and all of them responded that there have not been effective functional linkages between the Authority and sectoral agencies for the purpose of environmental protection. These respondents also forwarded their concerns on the confusion of functions that exist in the Regional State. That is, they stated that the Regional State's Water Resources Bureau, the Health Bureau and the Agricultural Bureau have assumed the regulatory as well as implementation tasks, which would overlap with the tasks of the Environmental Protection Authority.

98 In the discussions made in the 5 regional states (especially in Amhara and Tigray regions) participants have asserted that there were certain efforts to engage non-state actors at the regional level environmental protection programs. However, the participants also claimed that there have never been formal and well-structured procedures for engaging non-state actors in the environmental protection activities. If there were any linkages, those were restricted to workshop participation on environmental issues.

99 See Hailu Araya and Sue Edwards (2006), *The Tigray Experience: A Success Story in Sustainable Agriculture*, Third World Network, available at <http://www.twinside.org.sg/title/end/pdf/end04.pdf>. In this work it can be seen that the Institute of Sustainable Development (ISD) has been working with the federal EPA at community level. Moreover, the Ethiopian Wildlife and Natural History Society (EWNHS) once established a temporary functional linkage with the federal EPA on issues like climate change. That is, EWNHS as implementer and EPA as a monitor. Forum for Environment, another NGO working on environment has some linkages with the federal EPA and Ministry of Agriculture in an option of compost for smallholder farmers. It also has a networking with the AAU for the purpose of sharing of information and knowledge, capacity building as well as strengthening leverage for lobbying advocacy. (Source: <http://www.ffe-ethiopia.org>). Forum for Environment has also participated in the formulation of climate change adaptation program for Afar Regional State following the request made by the federal EPA. It also works closely with regional environmental agencies through its regional offices established in 6 regional states. (Source: Interview with informants from FfE).

that these situations have to be further strengthened and widened in scope and carried out in legally defined and predictable action plans.

Some countries have national statements that acknowledge that NGOs and the private sector have an important role to play in environmental protection. However, the participatory role of these groups in environmental decision-making has been restricted. Some of the constraints include limited recognition by government agencies, lack of statutory mandate, which means that they can only make recommendations, lack of a legitimate forum for NGO participation, lack of financial resources and training.

In the Philippines, they have national environmental action plans that call for greater involvement of the private sector and NGOs.<sup>100</sup> In India in the Ministry of Environment and Forests there is a division called NGO Cell. The NGO Cell is established with a view to catalyzing the environmental movement in the country, especially at the grassroots level. It is also responsible for coordinating the various NGO oriented programs under the auspices of the Ministry of Environment and Forest.<sup>101</sup>

The Environmental Policy of Ethiopia and the CSE recognized the beneficial and supplementary roles of NGOs in the environmental governance.<sup>102</sup> Accordingly, these roles and responsibilities of NGOs and other non-state actors further elaborated to establish effective functional linkages with EPA and the regional environmental protection agencies, towards ensuring effective environmental governance.

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100 United Nations. 2009. Institutional Arrangements in Countries of The Asian And Pacific Region

101 Government of India, Ministry of Environment and Forest. 2007. Induction Material P17

102 CSE, Volume III, §5.1 (b) and Environmental Policy of Ethiopia § 3.7 (f)

## 5.2. Institutional Reforms - Business Process Reengineering (BPR)

At Federal, Regional and Sectoral levels environmental protection organs have undergone a BPR that has impacts on environmental governance system of the country. The following sections highlight key changes and their implications.

### 5.2.1. BPR at the Federal EPA

The federal EPA has undertaken a BPR study, based on which, has changed its focuses and institutional structure. The main changes are the following:

- Delegation of sectoral agencies to review the EIA reports of projects, which was made prior to the BPR, has been maintained. Similarly, the BPR study has transferred the mandate of dealing with the trans-regional EIA administration and industrial pollution control to the regional environmental agencies. Accordingly amendments of the applicable provisions of the concerned laws are planned.<sup>103</sup>
- EPA decides to have one core process, namely 'Environmental Protection System Ensuring Core Process'<sup>104</sup>, and based on which has established eight Program Directorates<sup>105</sup> that will implement the task of the identified Core Process.

The transfer of EPA's mandates pertaining to EIA to sectoral agencies will make the credibility of the review process questionable since sectoral agencies have unavoidable interest that emanates from its core mission or being a proponent. On the other hand, transfer of power to regional environmental agencies is a positive action that could enhance the efficiency of environmental governance through decentralization. However, a clear mechanism should have been put in place that enables EPA to effectively discharge its spearheading and coordination role in environmental governance in the country.

The BPR has also helped for planned preparation of the ToR of SEUs, and framework to engage charities and societies. The most interesting introduction of the BPR is the establishment of Environmental Protection System Effectiveness Directorate, which will look

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103 አካባቢ ጥበቃ ለሥልጣን -2001 ዓ.ም በመሠረታዊ የሥራ ሂደት ለውጥ ሂደት የአካባቢ እንክብካቤ ሥርዓትን የማስፈን ዋና የሥራ ሂደት ጥናት ሰነድ -አዲስ አበባ P56. The provisions planned to be amended regarding EIA are articles 5 and 6 of Environmental Protection Organs Proclamation's No 299/2002 and articles 3 (3), 6(1), 6(2), 6(3), 9(2), 12(3) and 14; Environmental Impact Assessment Proclamation No. 299/2002, of where as article 13 of Prevention of Industrial Pollution Council of Ministers' Regulation No 159/2008 which refer to EPA's mandate of issuing environmental license to Industries under Federal government jurisdiction.

104 This is a translation of Amharic version that states: "የአካባቢ እንክብካቤ ሥርዓት የማስፈን ዋና የሥራ ሂደት"

105 The Eight program Directorates are State of the Environment and Change, Environmental System Preparation, Environmental Standards Preparation, Technology Transfer, Financial support, Environmental Awareness and Education, Environmental Unit, Monitoring and Evaluation, and Environmental Effectiveness Evaluation



into the effectiveness of the environmental protection system. However, EPA could capture the opportunities created by BPR to:

- Improve its institutional standing, such as proposing a ministerial structure accountable to the HPR;
- Restructure the composition and reorient the mandates of the EPC to make it a focused and more active one; and
- Restructure EPA around the key strategic environmental goals such as reversing land degradation, controlling pollution, integrating environmental concerns into development initiatives. Structuring around such strategic goals would be advantageous because: (1) it will be easier to spearhead the environmental governance on major, clear, relevant, widely and commonly accepted issues and problems of the country and to be consistent with the CSE and EPE; (2) since all regional environmental agencies have restructured themselves around these strategic goals, it will be easier for EPA to align itself and establish effective functional linkage with them; (3) it will give to EPA an advantageous position to ensure the mainstreaming of environmental concerns into sectoral development initiatives.

Therefore, EPA's structuring around the abovementioned strategic goals is important for ensuring effective environmental governance in the country.

### 5.2.2. BPR at the Regional Agencies

The BPR process at the regional environmental agencies has brought about mixed feelings. For instance in Tigray<sup>106</sup> Regional State, after the BPR study has been completed, there is no significant change in the Environmental Protection and Land Administration and Use Authority except that the Authority's name has been changed to Agency. At woreda level, environmental desk's accountability is shifted from Woreda Agriculture and Natural Resources Office to Woreda Administration Office. However, request for additional manpower, improved structure and autonomous institutional establishment is presented to the regional government and is awaiting response. In Gambella,<sup>107</sup> the BPR process led to the establishment of Land Utilization and Administration and Environmental Protection Bureau. Formerly the land administration and utilization and environmental protection task was merged with agricultural bureau and organized under one team. Now the Environmental and Biodiversity Core Process is one of the two core processes of the Bureau,

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106 Berhane Berhe. 2011a, 2011b. Regional Analysis of BPR and its Implications in the Institutional Standing of Tigray Regional Environmental Organ and the Linkage with other Key Sectoral Agencies. Mekele

107 Hailemariam. 2011. Regional Analysis of BPR and its Implications in the Institutional Standing of Gambella Regional Environmental Organ and the Linkage with other Key Sectoral Agencies. Gambella

which is responsible to protect the environment and biodiversity. In Southern Nations, Nationalities and Peoples Regional State<sup>108</sup> the Natural Resource and Environmental Protection Authority is established in 2003 and made accountable to the president of the Regional State.<sup>109</sup> The structure includes two process and three case teams and extended down to local levels. The Authority is mandated unequally to include coordination of governmental and NGOs engaged in environmental conservation and development activities.<sup>110</sup> Environmental management structures are also established at all levels.

In Oromia<sup>111</sup> after BPR study was completed, the mandate of allocation of land for investment purposes is shifted from Investment Commission to Land and Environmental Protection Bureau. In addition, organizational structure stretched to zonal and woreda levels. In Afar Regional State, as per our informant (September 23, 2011) recently Environmental Protection, Rural Land administration and use Agency is established as autonomous institution accountable to the regional President. The Agency has three case teams, namely 'Environmental pollution control and EIA', 'Environmental Education and Awareness' as well as 'Environmental Study and Research'. Formerly, the environmental protection office was under Pastoralist, Agricultural and Rural Development Bureau. Similarly in Benishangul Gumuz<sup>112</sup> initially the Bureau was structured to have 4 teams. After BPR study was completed, the same Bureau has restructured itself into two core processes; environmental protection core process and rural land administration control and use core process. The environmental protection core process has also three case teams somehow similar to the former teams, however, the new structure provides for the establishment of environmental departments at zonal level and environmental offices at woreda level. Moreover, the new structure provides for the designation of an environmental expert at kebele level.

In Addis Ababa City Administration, the BPR process led to the establishment of the Environmental Protection Authority<sup>113</sup> which is accountable to the Mayor. The Authority has two core processes, namely, Environmental Pollution and Impact Monitoring and Control, and Natural Resources Development, Utilization and Control (including mining licenses and energy technology promotion). It has also sub-city and woreda levels environmental offices. These offices are mainly working in creating awareness and monitoring of the environment.

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108 Woldebrahan Kuma. 2010. Institutional Linkages and Mainstreaming of Environment in Sectoral Institutions. Unpublished paper presented at the awareness raising workshop. SNNPRS, Hawassa.

109 This has been changed by a new proclamation, a proclamation to redefine the powers and responsibilities of the regional executive organs of October 2011. Article 6 (6) of this proclamation made the Natural Resources and Environmental Protection Agency accountable to the Bureau of Agriculture.

110 See the Southern Nations, Nationalities and Peoples' Regional State Environmental Protection, Land Administration and Utilization Proclamation No 52/2003, Article 9.

111 Ahmed, 2009. BPR and Environmental Protection Organ in Oromia National Regional State

112 Gebremedhen Wolde Gebrele. 2011. Institutional Linkages and Mainstreaming of Environment in Sectoral Institutions. Unpublished paper presented at the awareness raising workshop. Benishangul Gumuz Regional State, Asosa.

113 City of Government of Addis Ababa. 2009. Negari, Proclamation no. 15/2009, Addis Ababa City Government Executive and Municipality Services organs reestablishment proclamation

As can be seen from the above discussion, some of the regional environmental protection agencies are still organized under sectoral agencies. Some others are organized as bureaus and made accountable to the respective regional presidents. Still some others, even if organized as authorities, they are made accountable to the regional presidents. In all cases, the arrangements made the environmental protection agencies accountable to the executive organs. As discussed above, such arrangements:

- may limit the autonomy of the environmental protection agencies to oversee the activities of sectoral agencies.
- appear to be confusing by mixing up mandates of conservation and regulatory natures.
- did not provide for the establishment of higher level coordinating organ, such as the regional environmental protection council.

The regional BPR studies did not provide for clear functional linkages with sectoral agencies, federal EPA, inter-regional environmental protection agencies and non-state actors.

From these points, one can safely conclude that the opportunities created by BPR have not been sufficiently used to transform the regional environmental agencies to effectively and efficiently provide their environmental protection tasks.

### 5.2.3. BPR at Sectoral Environmental Units

Sectoral agencies have also gone through the BPR process. The following are selected examples. In the Ministry of Mines the BPR process has resulted in the strengthening of the formerly established Environment and Community Development Unit. It is accountable to State Minister of the Ministry of Mines.<sup>114</sup>

The Ministry of Water and Energy is a very significant government organ with the mandate of coordinating two important sectors. The Ministry runs and coordinates very big water and energy programs and projects. At the ministry level, Environmental Impact and Community Development Office have been established recently. Before the advent of BPR, Ethiopian Electric and Power Corporation (EEPCO) had established Environmental Management Unit for the purpose of integrating environmental concerns into energy sector programs and projects. However, this unit has been merged with the planning unit of EEPCO and lost its independence as a result of the BPR process. There is no clear idea as to how the Environmental Impact and Community Development Office at the Ministry level work with environmental units that exist at sub-sector or project levels.

In the Ministry of Agriculture environmental unit has not yet been established. A person who coordinates the EIA report review informed us that a proposal for the establishment of environmental unit is submitted to the Ministry and is under consideration. On the other side, the EPA has delegated to the Ministry to review EIA reports of agricultural projects. To fill this gap, the Ministry is running the activities of EIA review by its Agricultural Investment Directorate, which meant to promote agricultural investment.

Generally speaking the BPR has helped the strengthening of the existing SEUs and the establishment of new ones. However, some of the formerly established SEUs have been merged and lost their previous status and functions. Moreover, the BPR process did not sufficiently elaborate the roles and responsibilities of SEUs and their functional linkages with other stakeholders. Finally, the BPR did not provide for the establishment of project level SEUs and their relation with SEU at the ministry level. Therefore, it is necessary to find mechanisms to address such gaps.

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114 Ministry of Mines, Environment and Community Development Unit. 2010. Leaflet on Responsibility of Environment and Community Development Unit.

### 5.3. Shared National Vision, Guiding Principle, Strategic Goals and Objectives

Successful environmental governance begins by understanding our state of the environment, based on which we set our vision and our strategic environmental goals and objectives. The vision should however, be a shared vision by all stakeholders. According to the BPR document the EPA's vision is "to put in place at sectoral and various administrative levels a participatory environmental management system that ensures sustainable development for present and future generations."<sup>115</sup> It is difficult to tell whether this vision is understood and shared by all stakeholders. It is therefore necessary to establish a shared environmental vision based on inclusive and consensus approach. Based on which countrywide or regional environmental strategic goals and objectives are derived and appropriate action-plans are prepared and implemented. The guiding principles which can be a basis for environmental protection activities should be defined and adopted. The EPE has provided a broader environmental goal and a number of guiding principles, which have not been made known widely or adhered strictly. These days' countries such as Tanzania<sup>116</sup>, South Africa<sup>117</sup> and Kenya<sup>118</sup>, started stipulating these principles as a guidelines in their respective environmental agencies establishment laws. Ethiopia needs to set basic principles which lead the environmental governance activities.

### 5.4. Coordination

Coordination between federal and regional levels is important in order to resolve any potential conflict between the economic and environmental goals and to formulate holistic policies. Coordination is also important for sharing information and resources and for joint actions. As UNEP considers:

*"Lack of horizontal and vertical coordination is resulting in dispersed sector-specific policy orientations and concomitant difficulties in trying to harmonize diverse national, local and sectoral interests. In addition, the integration of environmental considerations into the work and mandates of various macroeconomic and sectoral ministries is being hampered by the fragmentation of concerns and responsibilities, restricted decision-making processes that often exclude local level authorities, and inadequate interagency cooperation."*<sup>119</sup>

From this statement it can be seen that in environmental governance system, coordination among various stakeholders is important to harmonize diverse interests ranging from

115 አካባቢ ጥበቃ ለሥልጣን -2001 ዓ.ም በመሠረታዊ የሥራ ሂደት ለውጥ ሂደት የአካባቢ እንክብካቤ ሥርዓትን የማስፈን ዋና የሥራ ሂደት ጥናት ሰነድ -አዲስ አበባ p. 4.

116 The Environmental Management Act of the United Republic of Tanzania of 2004, Articles 4 – 10.

117 Parliament of Republic of South Africa, No. 19519 GOVERNMENT GAZETTE. 1998. Act No. 107, 1998 National Environmental Management Act, 1998. Principles, Article 2.

118 Government of Republic of Kenya. 1999. The Environmental Management and Co-ordination Act, 1999 No 8 of 1999. Article 3.

119 UNEP. 1999. Integrating Environmental Considerations into Economic Policy Making Processes: Background readings, Vol. II pp. 294-295

national to local levels. Moreover, it avoids the risks of inter-agency conflicts that could hamper collaborative achievements of environmental strategic goals and objectives. It is, therefore, necessary to consider the needs for effective coordination in designing good environmental governance.

From the objective and mandates of the EPA prescribed under Articles 5 and 6 (2) of Proclamation No 295/2002, it is clear that the Authority is empowered to spearhead and coordinate activities and measures required for the realization of environmental objectives provided under the Constitution and the basic principles set out in the EPE. The EPC,<sup>120</sup> which is established by the Proclamation, is mandated to oversee and review the day-to-day activities of the Authority. Its role in coordinating various stakeholders, however, has not been stipulated by the Proclamation.

On the other hand, although EPA is mandated to coordinate environmental governance, such a coordination mandate has not been supported by legally established planning tools and coordinating structures. The coordination tools and structures such as a national environmental advisory committee, national environment management council, national environmental standards committee, national environment action plan committee, a public complaints committee and regional, zonal and woreda environment committees are necessary as the case in Tanzania, Kenya and South Africa.<sup>121</sup>

Accordingly, for effective coordination task in Ethiopia, two important measures should be taken as prerequisites. Firstly, it is necessary to restructure the current EC so that it can have a coordinating role and to establish similar coordinating body at the regional level. Secondly, environmental agencies should be sufficiently empowered for effective cross-sectoral coordination.

In this connection, there is a great deal of desire among key stakeholders that EPA and Regional Environmental Agencies are made accountable to the Federal and Regional States parliaments' respectively. It is therefore important to reconsider their structure and mandates.

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120 I bid. Article 8-9

121 The United Republic of Tanzania, The Environmental Management Act, 2004. General Principles, Articles 42-46; Government of the Republic of Kenya, The Environmental Management and Coordination Act, 1999 No 8 of 1999. Article 37-41; Republic of South Africa, No 19519 Government Gazette, 27 November 1998 Act No 107, 1998 National Environmental Management Act, 1998, Articles 11-16.

### 5.5. Delegation of Powers

EPA is an autonomous public institution of the Federal Government which is accountable to the Prime Minister.<sup>122</sup> Constitutionally speaking, it belongs to the executive branch of the government. Based on its regulatory functions, practically it is difficult to think that EPA is simply an executive organ. As it is stipulated under the CSE, EPA has to be seen as a sector neutral organ with a role of facilitation.<sup>123</sup> This can be even clearer from its activities which are more of cross sectoral. That is, its activities are not limited to one sector or department. They have the feature of touching nearly all sectors. That is why the CSE rules that EPA should be considered as a sector neutral government organ.

From the preamble of Proclamation № 295/2002 one can learn that one of the main reasons for the establishing of EPA is to assign various responsibilities to various organs of government. This is to mean that environmental protection activities and development activities shall not be assigned to the same organ for the purpose of avoiding conflict of interests. The same logic also applies to the avoidance of assigning development activities and regulatory tasks on the same organ. The main reason for the doctrine of separation of powers is avoiding concentration of different powers, especially the ones that can affect rights of individuals, on the same organ.

The doctrine of separation of powers can be safely extended to the arena of environmental protection also. If regulatory and development powers are merged in the hands of a certain organ, conflicts of interests during the course of performing these two powers would be inevitable. It is naturally difficult to give equal and fair attention for these two potentially competing and conflicting interests when done by the same organ. That is, it is natural if the organ gives more attention to its mainline objectives and duties by relegating the other functions.

In spite of the above facts, EPA has delegated its powers of reviewing EIA reports to sectoral institutions starting from 14 November 2009<sup>124</sup> on the basis of the decision of the Council of Ministers. It is important to examine this delegation closely. As it is mentioned above, EPA is a sector neutral regulatory organ. One of its tasks is reviewing environmental impact statements,<sup>125</sup> which needs EPA's neutrality. As can be seen from Proclamation № 295/2002 the major objective of establishing EPA is to formulate policies, strategies, laws and standards, which foster social and economic development with a view to enhancing the welfare of humans and the safety of the environment in a sustainable manner, and to spearhead the effectiveness of the process of their implementation.<sup>126</sup> The same

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122 Proclamation № 295/2002, Article 3.

123 CSE, Volume III, § 4.2.1, Paragraph 70.

124 EPA's letter of delegation № 3/3.12/33, to the Ministry of Water and Energy, Ministry of Agriculture, Ministry of Trade, Ministry of Industry, Ministry of Mines, Ministry of Transport and Ministry of Health, dated 14 November 2009.

125 See Article 6 (4) & (5) of Proclamation № 295/2002 and Article 3 of Proclamation № 299/2002.

126 Article 5

Proclamation has also empowered EPA to establish a system for EIA and review environmental impact statements of federal projects as its major tasks.

EIA is needed because most of development activities are assumed to cause damage to the environment unless their potential impacts are predicted and managed properly. For example, if a certain project is allowed to freely engage in its development activities without taking into account its impacts on the environment, it may overexploit or pollute the environment beyond its natural potential to replenish itself. This will have social, ecological and economic negative consequences and eventually could affect the sustainability of the project itself. To avoid these risks, it is necessary to put in place a credible EIA system managed by a neutral organ. If this power of reviewing EIA report is given to the developer, it will obviously defeat the whole purpose of the EIA system.

That, however, does not mean that the project owner shall intentionally cause damage to the environment. As the developer's main focus is its own project, it is generally assumed that it gives the lion's share attention to fulfill its projects. Let's compare this with the attention of a public prosecutor. A public prosecutor's main attention is to get the alleged offender convicted. If the public prosecutor is bestowed with the power of passing judgment on the alleged criminal whom he/she is charging with a criminal act, what kind of judgment is expected? It is clear that the public prosecutor cannot be objective in passing a decision on the offender he/she is charging. This does not, however, mean that the public prosecutor is a hater of people nor does it mean that he/she wants people to be prosecuted on an irrational ground. The point is that, the public prosecutor's attention is focused more on getting the alleged criminals convicted than worrying about the innocence of the latter. This is the basis for vesting of separated tasks in separated organs. As the French Enlightenment political philosopher Baron de Montesquieu, usually referred to as father of separation of powers asserts, concentration of powers in the hands of the same organ is the end of liberty of humans, the same logic also works for the environment. Montesquieu distinguished between legislative, executive and judicial functions arguing that if any two of these fall into the same hands there is a risk of tyranny.<sup>127</sup>

It is based on this notion that both the EPE and the CSE have firmly noted that different tasks have to be allocated to different organs so as to avoid conflicts of interests. As it has been said above, development activities and environment protection have the tendency of conflicting to each other and this is the essence of the principles of environmental protection, such as the precautionary principle, the polluter pays principle and many others. The assumption behind environmental protection in general and EIA in particular is sustainable development. That is, EIA is a system that is designed to harmonize a development initiative with social, ecological and economic sustainability.

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127 John Alder (2010), *General Principles of Constitutional and Administrative Law* (4th ed.), Palgrave MACMILLAN, p. 108.



Even after the power of environmental protection is allocated to a certain regulatory organ, such organ may have the right of delegating some of its powers to other organs. Accordingly, EPA is empowered to do so by Proclamation № 295/2002, Article 6 (24). But here the question is to which organ can such delegation be made? Can courts delegate their powers to the office of the public prosecutor to pass decisions on the alleged criminals? Adjudication power can be exercised by many departments of the executive branch in the form of quasi-judicial power. This is considered to serve justice as the quasi-judicial powers exercised by executive organs are mainly focusing on very detailed and technical matters than on decisive legal issues. A good example of a power vested in the EPA itself through delegation is a rule making power. Generally speaking, lawmaking is constitutionally vested with the HPR. However, the HPR cannot make all the laws which are needed in the country. Therefore, the HPR, by retaining the most significant lawmaking powers for itself, delegated the power of making detailed and technical laws, such as regulations, guidelines and directives to other organs.<sup>128</sup>

Having considered that (1) the objective of the establishment of EPA is to ensure socioeconomic developments are implemented in an environmentally sustainable manner; (2) the basic notion of EIA governance is that reviewing of EIA reports must be done by a neutral organ; and (3) reviewing of EIA reports is a core mandate of EPA; it can be concluded that, the legality and appropriateness of delegation of EIA reports to sectoral agencies is questionable.

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128 For instance, the FDRE Constitution in its Article 77 (13) provides that the Council of Ministers shall enact regulations pursuant to powers vested in it by the House of People's Representatives. The HPR takes the responsibility of making proclamations, which are the primary legislation in Ethiopia by delegating the regulation making power to the Council of Ministers. Regulations are subordinate laws. The Council of Ministers on its turn does not make all the technical and detailed rules. The power of guideline or directive making is vested in the departments, such as ministries, commissions, agencies or authorities.

## 5.6. Adequacy of Political Will

Environmental good governance requires adequate, sustained and multifaceted support from the political leadership. These commitments can be expressed through:

- Enacting the necessary policy and legal framework which clearly stipulate the environmental rights and obligations of the government and citizens;
- Establishing strong and competent institutions from federal to local levels;
- Creation of enabling environment for the establishment and active participation of state, non-state actors and the public at large in environmental protection;
- Introducing mechanisms that guarantee timely access to environmental information and justice; etc.

One can safely argue that the level of commitment which was seen in the enactment of environmental laws has not been repeated on the implementation of these laws. Vivid examples can be cited from various sources in support of this argument.<sup>129</sup> Even after the enactment of the EIA law, there appeared to be a procedural reversal by a later investment law, showing unequal significance for environment and investment.<sup>130</sup> The investment law has reversed the procedure that is required for the fulfillment of the EIA process. Accordingly, the later law has prevented EPA or the relevant regional environmental agency from a prior authorization (i.e., before securing the investment license). The procedural reversal could not create a problem on its own if there have been an effective functional link and institutional strength to redress the procedural reversal. As it has been revealed from the discussions made in 5 regional states and some federal sectoral organs, there have never been effective links between the concerned organs, such as the licensing organs and the environmental protection organs. Moreover, EPA and the regional environmental protection organs were not organized and strengthened so that they could follow up the investment projects which secured license but have not yet undergone the EIA process before they secure land or start operation. The government commitment which was seen in the lawmaking process should have been repeated in strengthening the environmental protection organs. Absence of such institutional strength may be one of the reasons for the

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129 See for general understanding of the level of EIA in the country Desalegn Mesfin (2007). Desalegn clearly showed the complicated problems in which the application of EIA is immersed. Discussions with the 5 regional states environmental protection organs and other stakeholders also revealed that the actual environmental protection is still in its infantile stage.

130 Article 3 (3) of Proclamation № 299/2002 provides that: "Any licensing agency shall, prior to issuing an investment permit or a trade or an operating license for any project, ensure that the Authority or the relevant regional environmental agency has authorized its implementation." An investment (amendment) Proclamation № 375/2003 in its Article 7 (2) provides that: "The appropriate investment organ shall, after issuing the investment permit, notify the concerned government institutions so that the latter could conduct the necessary follow up."

decision of the Council of Ministers for the delegation of powers on environmental impact statement reports by the EPA to sectoral organs.

Another illustration of the lack of sufficient political commitment is the legislative stepping back of the greening of investment laws. The first pack of investment laws, which were successively repealed, had more green provisions than the most recent ones. For instance, the Investment Proclamation № 15 of 1992, in its Article 20 (2) (e), provided that polluting the environment is a ground for the cancellation of an investment license. Investment Proclamation № 37 of 1996, even greener than its predecessor, stipulates in Article 14 (1) that "...the intended investment activity would not be convening without complying the operational laws of the country and that; in particular, it complies with conditions stipulated in environmental protection laws..." This situation did not last for long as the subsequent Investment Proclamation № 280 of 2002 eliminated references to the environment all together. Moreover, the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations № 84 of 2003 provide nothing about the incentive mechanisms for environmentally friendly investments.

However, since the transitional period in 1991, considerable efforts have been made in the field of environmental policy and legal documents formulation and institutionalization of environmental protection. Recently the Ethiopian government has shown its willingness to adopt green economic development model. These are symptoms of political will from the side of the government. Irrespective of these political commitments of the government, there are a number of problems in the environmental governance system of the country that still need more commitments from the government. The following points show the areas that need improved political commitment:

- The fact that the environmental protection organs are made accountable to and established under the executive organs is believed to limit their regulatory functions over sectoral agencies. Moreover, the environmental protection organs have not been provided with sufficient capacity (human, financial, technical, etc.) that enables them to regulate other organs. It is therefore necessary to establish them with the appropriate autonomy and capacity.
- It is being observed that some laws are being enacted with the effect of undermining the environmental protection objectives. It is necessary to reconsider these laws so that they could be harmonized with the environmental protection objectives.
- Inclusion of environmental good governance as a component of good governance.
- The EPC should be made active and reoriented to give policy level guidance and overall supervision of the environmental governance in the country.

## 5.7. Limited presence of the environmental protection organs at the local level

The FDRE Constitution in its Article 50 (4) provides that: “Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units.” This statement is applicable not only for political administration purposes but also for environmental governance. Accordingly, having environmental protection structures with adequate power at the local level ensures the participation of the people in the environmental governance.

As it has been indicated above, in the Oromia Regional State the structure for environmental protection has been designed up to kebele level. However, the structure is unmanned and remains not functional. In Tigray Regional State, the environmental protection institutional structure is gone only up to woreda level and there is no structure below the woreda level. Even if in the BPR study it has been recognized that structures should go to the lowest level, no structures until now organized.<sup>131</sup> In the Amhara Regional State the structure went up to kebele level, like the case in Oromia. The Amhara Regional State, however, assigned an expert<sup>132</sup> at this lower level of organization unlike the Oromia one.

From the above few cases it can be observed that the institutional setup of environmental protection at the local level is at its rudimentary stage. This will directly affect the constitutionally guaranteed rights of participation of the local people. This in turn affects the efforts of environmental protection. As the FDRE Constitution prescribed it is time to work to allocate powers to the local level where environmental protection activities are better managed.

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131 Kibra, op. cit.

132 Sintayehu Deresse, Presentation at a workshop organized by MELCA-Ethiopia on the theme “Institutional Framework for Environmental Protection” 5 July 2011, Bahir Dar.

## **5.8. Lack of Supportive Mechanisms for Enhanced Environmental Governance**

Environmental Agencies in Ethiopia are working under limited scope and supportive arrangements compared with many other countries. The following highlights the key issues in this regard.

### **5.8.1. Environment Fund**

In Kenya the Trust Fund<sup>133</sup> is established to facilitate research intended to further the requirements of the environmental management, capacity building, environmental awards, environmental publications, scholarships and grants. In addition the Restoration Fund<sup>134</sup> is established as a supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation. In Tanzania,<sup>135</sup> Zimbabwe<sup>136</sup>, similar funds are established to support the environmental management. This kind of financial leverage should be made available to enhance the activities of environmental agencies.

The sources of the fund in case of Tanzania are given under article 213(2) of the Environmental Management Act of 2004 while in case of Zimbabwe are given under article 49 and 50 of Environmental Management Act [chapter 20:27] of 2006. The sources of funds in both cases are somehow similar, and include environment levies, fund may obtain, with the approval of the Minister responsible for finance, by way of donations loans, or other financial assistance; and any moneys that may vest in accrue to the Fund, whether in terms of this Act or otherwise.

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133 Government of Republic of Kenya. 1999. The Environmental Management and Co-ordination Act, 1999 No 8 of 1999, Article 24

134 Ibid. Article 25-28

135 The United Republic of Tanzania. 2004. The Environmental Management Act, 2004. Articles 213-214

136 The President and Parliament of Zimbabwe. 2006. Environmental Management Act [Chapter 20:27]

## 5.8.2. Environmental Tribunal

It has been discussed during the discussion sessions with the 5 regional states about the extent of environmental crimes, particularly forest clearing crimes. Forest clearing for various purposes is on the increase according to the participants of the workshops in all the regional states. Participants mentioned the following points in relation to forest crimes:

- Forests are cleared for various purposes: for agricultural expansion, logging for timber, for biomass fuel, etc. The demand for agricultural land, furniture or charcoal is increasing with population growth and change in the lifestyle.
- The prices of the forest products are skyrocketing by attracting many jobless youths to the illegal logging activities.
- Prosecuting forest offenders is not an easy task. The reasons for this have been identified as the nature of the crime (which is done in the forests without being noticed) and due to reluctance of the justice organs (police, prosecution offices and courts). Even where prosecutions are brought, courts tend to be lenient in their sentencing policy.

Ethiopia is a country where environmental consciousness is still low. As the result of this, harsh penalties would be perceived by the public as illegitimate and not commensurate with what are generally viewed as minor offenses. The same level of feeling exists in the justice administration organs.<sup>137</sup>

Similarly, during the focused group discussion the Oromia Bureau of Land Administration and Environmental Protection experts suggested the establishment of regional environmental tribunal, as the existing justice organs are not paying due attention to environmental crimes. This situation calls for the establishment of a separate environmental tribunal that facilitates the effective environmental protection in the country.

Environmental tribunals are not uncommon around the world. They are meant to facilitate effective environmental governance. For instance, in India the National Green Tribunal<sup>138</sup> is established to provide for the effective and expeditious disposal of cases relating to environmental protection, and conservation of forests and other natural resources including enforcement of any legal right relating to the environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. In the same manner, in Kenya<sup>139</sup> the National Environment Tribunal, in

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137 For instance, on a workshop conducted at Sebetta town of the Oromia Regional State on a theme: “Environmental Law Awareness Creation Workshop for the Justice Organs” on 19 December 2010, many judges and prosecutors argued that the penalty clause by the Oromia Forest Proclamation was so harsh and they rarely implemented it since it appeared to them as against the Constitution and the Criminal Code.

138 Government of India. The National Green Tribunal Act 2009.

139 Government of Republic of Kenya. 1999. The Environmental Management and Co-ordination Act, 1999 No 8 of 1999. Articles 125-136

Tanzania<sup>140</sup> the Environmental Appeals Tribunal are established for the same purpose. It would be better if similar tribunal is established for effectively controlling environmental wrongs.

### **5.8.3. The Environmental Action Plans**

Different countries (Tanzania,<sup>141</sup> Kenya,<sup>142</sup> Zimbabwe,<sup>143</sup> and South Africa<sup>144</sup>) have a legal requirement for the preparation of environmental action plan at national, regional, sectoral and local levels in the participatory manner that outlines major environmental protection activities of priority concerns. This approach will help to lead and coordinate the environmental protection actions with defined goals and objectives with local and national context in complementary manner. The importance of preparing such action plans is indisputable and its preparation appears to be a legal requirement in Ethiopia to make environmental actions obligatory and ensure cooperative governance towards the priority environmental objectives.

### **5.8.4. Broadening the scope of Environmental Service of the Agencies**

The environmental agencies should also involve in environmental permits that enable them secure some finance and create conducive environment for private sectors involvement in environmental service provisions. The possible areas include registration of EIA experts and firms, environmental licensing or authorization and environmental auditors. In addition to these, environmental agencies should involve in setting environmental tax and royalty fees, licensing and designation of environmental laboratories, licensing of public or private environmental service providers. Finally, the environmental agencies should register and coordinate environmental NGOs.

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140 The United Republic of Tanzania. 2004. The Environmental Management Act, 2004. Articles 204-212

141 I bid. Articles 42-46

142 Government of Republic of Kenya. 1999. The Environmental Management and Co-ordination Act, 1999 No 8 of 1999. Articles 38-41

143 Government of Zimbabwe. 2006. the Environmental Management Act [Chapter 20:27]. Articles 87-96

144 Parliament of Republic of South Africa, No. 19519 GOVERNMENT GAZETTE. 1998. Act No. 107, 1998 National Environmental Management Act, 1998. Principles, Article 11-16.

### **5.8.5. Compliance Promotion and Environmental Research**

Environmental agencies need to encourage voluntary environmental management initiatives and best practices done in the environmental protection fronts. The agencies in this regard need to develop a well thought incentive and eco-investment packages. On the other the environmental agencies should also work very closely with research institutions and select topical research areas as well as pilot and disseminate the best practices for wider use and applications.

## **6. Conclusion and Recommendations**

### **6.1. Conclusion**

There are various environmental governance systems and principles. Different countries have adopted different governance systems based on their own social, economic, ecological and political realities. The general trend of the environmental governance system in the world is a shift from state led or controlled to multi-stakeholders partnership governance. Ethiopia is also expected to design appropriate environmental governance system that reflects its objective realities and the prevailing environmental governance system in the world.

A good environmental governance system is a function of policy and legal instruments which are prepared in a participatory manner and the effective application of these instruments by using strong and well coordinated institutions. Regarding making of policy and legal instruments, there are good beginnings in Ethiopia at federal as well as regional levels. The recent development of Ethiopia's Climate-Resilience Green Economy vision and strategy, the preparation of regional and key sectors climate adaptation plans and the ongoing work of consolidations of these efforts are encouraging. With respect to the institutional setup, the environmental protection organs have been established at both tiers of governments in the country and are trying to implant better environmental governance system in the country. Similarly, some federal sectoral agencies have established their respective environmental units. At regional levels, in some regions, regional environmental structures are extended down to Kebele levels.

Irrespective of these efforts of the federal as well as regional governments, there are a number of problems which need special attention by all stakeholders in the area of environmental governance. The EPE and the CSE have provided good guidance on environmental governance, though not sufficiently elaborated and updated. The legal instruments that are enacted to implement these policy and strategic documents have major limitations which require serious attention. The limitations include: the major roles and responsibilities of the environmental governance system has been primarily given to state organs alone by disregarding the non-governmental actors, including the communities at the grassroots level; the functional linkages among the various stakeholders have not



been sufficiently defined; the mixing up of regulatory and resource administration tasks in a single institution. Most of the environmental protection laws of the country are framework laws and subsidiary laws for their enforcement are hardly issued and as a result these laws are rarely applied on the ground.

The other problem area in the environmental governance system in the country is lack of sufficient and sustained political will. This can be observed by the continuous reform in the environmental protection organs that led to their instability and weakness; legislative stepping back of the greening of investment laws; lack of support for the proper institutionalization of environmental protection horizontally and vertically. Even the EPC, which is considered to be the expression of the government's political will, is unable to become effective due to its organizational problems. The government's political commitment in this regard has never been seen at the regional levels, where there are no EPCs at all.

Generally speaking, there are a number of problems in the environmental governance system of the country. Most of the problems can be easily avoided or at least reduced. This situation calls for the redesigning of the environmental governance system of the country.

## **6.2. Recommendations**

- 1) The federal and regional governments have made several efforts in issuing enabling policies, strategies and laws, establishing institutions and informal working arrangements. Moreover, the federal EPA has started providing technical and financial supports to the regional counterparts. These efforts need to be further enhanced and formalized to create a good environmental governance system in Ethiopia.
- 2) Currently, the EPC is unable to effectively discharge its duties due to the busy schedule of most of its members who are high ranking officials. Moreover, the EPC has no taskforce that provides advisory support to it. It is essential to restructure the EPC so that it could be composed of members who can spare sufficient time for the activities of the Council. Similar structures are also necessary at regional levels.
- 3) Environmental agencies at federal, regional as well as sectoral levels have not been established with sufficient autonomies and clarities of mandates. In addition to this, there are no clear arrangements required for effective functional linkages and accountabilities among various actors. Moreover, the institutional arrangement does not extend to the grassroots level where the environmental protection activities can be effectively done. To address these issues, environmental protection organs need to be established as autonomous bodies with appropriate powers to achieve their objectives, with clear, legally defined responsibilities for coordination, functional

linkages, with top down, bottom up and lateral accountabilities among formal and informal key actors at all levels.

- 4) For ensuring effective environmental governance, environmental protection tasks require to have a public foundation. However, in Ethiopia, the major role of environmental protection is given to the state organs. Such arrangement has weakened the environmental governance system in the country due to putting major burden on state bodies. Therefore, the contribution of non state actors such as environmental NGOs, professional associations, CBOs, private environmental service providers and other relevant stakeholders should be given recognition and their roles and responsibilities should be clearly defined.
- 5) Environmental protection functions should be clearly demarcated between federal-regional, federal-sectoral, regional-sectoral and regional-local levels and accordingly this functional demarcation should adhere to the principle of common but differentiated responsibilities. The Ethiopian environmental governance system is not well organized and coordinated in a way that it satisfies the application of this principle. It is therefore, essential to redefine the functions of different environmental protection institutions at various levels by avoiding duplication of efforts and conflicts and confusion of mandates.
- 6) Recently, EPA has delegated one of its core powers, reviewing and approval of environmental impact study reports of sectoral development initiatives. Although EPA is legally empowered to delegate some of its powers, the recent delegation is made in a way that affects the environmental governance system of the country for two obvious reasons. Firstly, the powers delegated are related to the core functions of EPA which should have been done by the EPA itself. Secondly, the institutions delegated are mandated to review their own projects in which it is difficult for them to be objective neutral. This delegation is made to enhance the EIA review efficiency. However, such efficiency could have been achieved without compromising the neutrality of the review process through:
  - a. Building and improving EPA's capacity to review EIA study reports;
  - b. Outsourcing the review functions to competent private organs which have no vested interest, while at the same time keeping the authorization the review process with EPA;
  - c. Establishing multi-stakeholder taskforce that shall be coordinated by the EPA;
  - d. Legally establishing a separate agency for EIA administration;
  - e. Delegating the review mandate to the regional environmental protection agency where project lies and where the regional agency has the capacity to review EIA studies.

- 7) Currently, Ethiopia is launching ambitious development initiatives through green development model. This model requires strong environmental governance system that ensures the achievement of sustainable green economic goals. Accordingly the environmental protection organs of the country, at various levels should be strengthened to have capacity to mobilize and channel resources; provide incentives and impose sanctions; seek reports from the concerned organs; design the levying of environmental tax and royalties.
- 8) Even if environmental offences lead to various penalties by many of the country's environmental laws, the penalty clauses of these laws are reluctantly applied by the justice administration organs. This reluctance has led to the violation of the constitutionally recognized environmental rights. It is therefore, essential to establish environmental tribunals, as part of the judiciary, at federal and regional levels.
- 9) In order to concretize the above recommendations, it is critical to have a framework law on environmental governance. For this to happen, the concerned stakeholders should take the initiative and responsibility for the preparation of such legal framework as soon as possible.

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