

ENVIRONMENTAL IMPACT ASSESSMENT AND MONITORING UNDER ETHIOPIAN LAW

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I. Introduction

Production activities in any industry may “harm the environment through their damaging effects on air, water, soil and biodiversity.”¹ To protect the environment, it is imperative to conduct environmental impact assessment (“EIA”) of investment projects in order to identify their potential harms. Appropriate measures should be taken so as to avoid or lessen harms to the environment where the EIA indicates possible harms. In this way, EIA helps to enforce environmental standards and certification processes, which can potentially induce investors “to turn to more environmentally friendly production methods and practices.”² Monitoring the implementation of licensed projects is also essential to ensure that projects are implemented in accordance with the standards and conditions, and to make sure there are no circumstances that may have been unforeseen at the time of impact assessment.

In international and national laws, EIA is used as a tool to prevent environmental damage. At the international level, lending banks and bilateral aid agencies have made environmental impact assessment a requirement for lending money.³ In 1989, the World Bank issued an Operational Directive making EIA a standard requirement for all of its investment projects, so that borrowing countries are required to comply

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1. U.N. Conference on Trade & Dev. [UNCTAD], *World Investment Report 2009: Transnational Corporations, Agricultural Production and Development* 155, U.N. Doc. UNCTAD/WIR/2009 (2009).

2. *Id.* at 156.

3. BARRY SADLER, ENVIRONMENTAL ASSESSMENT IN A CHANGING WORLD: EVALUATING PRACTICE TO IMPROVE PERFORMANCE 25 (1996), available at http://www.iaia.org/publicdocuments/EIA/EAE/EAE_10E.PDF.

with this EIA Directive.⁴ In addition, the 1992 Rio Declaration on Environment and Development, under Principle 17, provides that “environmental impact assessment . . . shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment.”⁵ The European Community Council also enacted Directive 85/337 in June 1985, which requires EIA for proposed projects. European Community member countries adopted the Directive.⁶

At the national level, the United States was the first country to require EIA with the National Environmental Policy Act in 1970.⁷ Following in the footsteps of the U.S. in 1973 and 1974, Canada, Australia, and New Zealand adopted environmental impact assessment as well, and other industrialized and developing countries followed during the 1970s.⁸ Developing countries came to use the environmental impact assessment because of the requirements of the World Bank and other development banks and donors, as well as capacity building activities initiated in the wake of the Rio Declaration.⁹

Ethiopia enacted the Environmental Impact Assessment Proclamation in 2002, providing for EIA and monitoring.¹⁰ This Article mainly focuses on the issue of EIA and monitoring under Ethiopian law. Part II of the Article considers the definition and nature of EIA. Part III deals with the role of EIA in sustainable development. Part IV describes the purpose and scope of EIA. Part V discusses the body that prepares EIA reports. Part VI deals with the criteria that are used to determine whether a project requires an environmental impact assessment. Part VII considers the important elements of an EIA. Part VIII and Part IX address monitoring and enforcement mechanisms, respectively. Conclusions and recommendations

4. *Id.*

5. Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, prin. 17, U.N. Doc. A/CONF.151/26 (vol. I).

6. SUSAN WOLF & ANNA WHITE, ENVIRONMENTAL LAW 344 (1995).

7. *Id.*; see also STEVEN FERREY, ENVIRONMENTAL LAW: EXAMPLES AND EXPLANATIONS 76 (3d ed. 2004).

8. SADLER, *supra* note 3.

9. *Id.*

10. Environmental Impact Assessment Proc. No. 299/2002, FEDERAL NEGARIT GAZETA [hereinafter EIA Proc.]. Ethiopia adopted the 1992 Rio Declaration, and ratified the Convention on Biological Diversity (“CBD”) and United Nations Framework Convention on Climate Change in 1994. These may have contributed to the enactment of EIA law in Ethiopia, along with the 1997 Environmental Policy of Ethiopia and the proclamation establishing the Environmental Protection Authority. See ENVIRONMENTAL POLICY OF ETHIOPIA, art. 4.9 (1997), available at <http://www.epa.gov.et/Download/Proclamations/ENVIRONMENT%20POLICY%20OF%20ETHIOPIA.pdf>; Environmental Protection Authority Establishment Proc. No. 9/1995, FEDERAL NEGARIT GAZETA.

are given in Part X.

II. Definition and Nature of EIA

“Environmental impact assessment,” or sometimes simply “environmental assessment,”¹¹ refers to the determination of the environmental consequences of proposed projects or activities.¹² Collecting and assessing information is necessary to evaluate the effects of a proposed project or program.¹³ Such assessment is an important part of the “process of deciding whether or not a project should get permission or approval.”¹⁴

Under Ethiopian law, an impact is defined as “any change to the environment or to its component that may affect human health or safety, flora, fauna, soil, air, water, climate, natural or cultural heritage, other physical structure, or in general, subsequently alter environmental, social, economic or cultural conditions,”¹⁵ while EIA is defined as “the methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument.”¹⁶ “Project” refers to “any new development activity under any category listed in any directive issued pursuant to [the EIA] proclamation, major expansion or alteration or any existing undertaking, or any resumption of work that had been discontinued.”¹⁷ Public instrument is “a policy, a strategy, a programme, a law or an international agreement.”¹⁸ So, for example, the government must conduct an EIA when crafting an agricultural policy or a development strategy, or ratifying an international agreement. This definition does not include the determination of whether or not a project should get permission, nor does it imply that a proposed project is rejected if it has a negative impact on the environment.

In other jurisdictions, laws distinguish between environmental impact assessment and strategic environmental assessment, which the Ethiopian law fails to do. “Strategic environmental assessment (SEA) is a process of

11. WOLF & WHITE, *supra* note 6, at 344.

12. RAVI JAIN, ENVIRONMENTAL ASSESSMENT 5 (2d ed. 2002).

13. *See* WOLF & WHITE, *supra* note 6, at 346.

14. *Id.*

15. EIA Proc., *supra* note 10, art. 2(4).

16. *Id.* art. 2(3).

17. *Id.* art. 2(8).

18. *Id.* art. 2(10).

prior examination and appraisal of policies,¹⁹ plans,²⁰ and [programs]²¹ and other higher level or pre-project initiatives²²—in other words, the application of the EIA process to policymaking. SEA is intended to address the causes of environmental problems at the policy level. SEA is increasingly used by international development cooperation agencies and partner governments to evaluate the potential impact of strategic development proposals and options.²³

The anticipatory nature of EIA distinguishes it from other environmental management tools.²⁴ “An EIA attempts to *predict* the likely environmental effects of a proposal and provide a basis for the developer and other decision makers to respond to this information.”²⁵ Under Ethiopian law, EIA “is used to predict and manage the environmental effects” of implementing proposed development activities.²⁶ This provides an opportunity for developers to use the information to improve their projects’ compliance with environmental standards.²⁷ In so doing, developers will improve the sustainability of their projects as well as their chances of obtaining project approval.

According to John Brady, of the Institute of Environmental Management and Assessment, “The term ‘predict’ suggests that there may be some uncertainty or some ‘guess work’ associated with EIA. This is certainly true, but experience with EIA and knowledge of environmental systems are usually sufficient to make reasoned estimates of the likely significant effects of proposals.”²⁸ This, in turn, may “indicate that some aspect of the proposal needs to change or that the precautionary principle should be applied and the proposal should not be developed any further.”²⁹

19. A policy may be defined as “a general course of action or proposed overall direction that a government is, or will be, pursuing and which guides ongoing decision making.” SADLER, *supra* note 3, at 140.

20. A plan is “a purposeful, forward-looking strategy or design, often with coordinated priorities, options, and measures, that elaborates and implements policy.” *Id.*

21. A program is “a coherent, organized agenda or schedule of commitments, proposals, instruments, and/or activities that elaborates and implements policy.” *Id.*

22. *Id.* at 13.

23. ORG. FOR ECON. CO-OPERATION & DEV. [OECD], STRATEGIC ENVIRONMENTAL ASSESSMENT AND ECOSYSTEM SERVICES 24 (2008).

24. JOHN BRADY, INST. OF ENVTL. MGMT. & ASSESSMENT, ENVIRONMENTAL MANAGEMENT IN ORGANIZATIONS: THE IEMA HANDBOOK 187 (2004).

25. *Id.* (emphasis added).

26. EIA Proc., *supra* note 10, pmbl. para. 1.

27. BRADY, *supra* note 24.

28. *Id.*

29. *Id.*

Another distinguishing feature of EIA is its interdisciplinary nature. “Most EIA reports are prepared by a team of environmental specialists,” consisting of “at least one qualified environmental engineer, social scientist, biologist, and physical scientist.”³⁰ That is, the assessment involves a team of people “from a range of environmental and social science backgrounds relevant to the potential environmental impacts of the proposal.”³¹ In some countries, professionals from up to 15 different disciplines may participate for large and complex projects.³² In such a case, “the team of consultants is led and coordinated by an EIA project manager whose responsibilities include:

- ensuring that the EIA stays on schedule and on budget;
- providing quality control for the work provided by other members of the team;
- coordinating consultation with other stakeholders;
- working with the project design team to resolve environmental problems; and
- making sure that the report resulting from the EIA is coherent and defensible.”³³

III. EIA and Sustainable Development

The World Commission on Environment and Development (“WCED”), also known as the Brundtland Commission,³⁴ described “sustainable development” as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”³⁵ Sustainable development describes a process “in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs.”³⁶ Because EIA identifies and

30. BINDU N. LOHANI ET AL., ASIAN DEV. BANK, EIA FOR DEVELOPING COUNTRIES IN ASIA, ch. 11, 12 (1997).

31. BRADY, *supra* note 24, at 193.

32. *Id.* However, the selection of personnel differs from project to project “based on the components in the study area and the type and magnitude of project.” LOHANI, *supra* note 30, at 13.

33. BRADY, *supra* note 24, at 193.

34. After its chairperson, Gro Harlem Brundtland.

35. World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, Introduction, ¶27, U.N. Doc. A/42/427/Annex (Aug. 4, 1987).

36. *Id.* ¶30.

estimates the environmental impacts of development projects, it is linked to sustainable development. However, EIA alone cannot make development sustainable—it is only one of the important tools required for the job.³⁷

Investors today are wise to consider the principles of socially responsible investment (“SRI”), which attempts to create positive social change, minimize environmental damage, and incorporate religious or ethical beliefs into the investment process.³⁸ According to SRI, investors must look into environmental issues and risks on a short-term and long-term basis. If investors pollute the environment or fail to comply with environmental regulations, they may be held liable under civil or criminal law. In short, a company that does not account for the cost of its environmental impacts is a risk for its investors.³⁹ Companies that manage their environmental risks are at a comparative advantage, and may be differentiated from their competitors. They may be more likely to be chosen to operate in a community, and may find it easier to retain and attract employees.⁴⁰

In seeking to implement SRI, investors may use the precautionary principle and the prevention principle. The precautionary principle is about management of unknown risks to the environment. According to this principle, either anticipatory or preventive action is required where the implementation of a development project would result in environmental harm.⁴¹ The prevention principle allows measures to be taken to protect the environment at an early stage, because it is better to prevent harm than to repair it.⁴² Both the precautionary principle and the prevention principle require EIA. Sustainability recognizes that development inevitably imposes both internalities (unforeseen costs to the parties involved) and externalities (costs borne by a third party or the public, such as pollution), and EIA should help to identify the externalities. It can also explain which externalities can be avoided or mitigated, and how to do this.⁴³

37. INT’L INST. FOR ENV’T & DEV. [IIED], MODIFIED EIA AND INDICATORS OF SUSTAINABILITY: FIRST STEPS TOWARDS SUSTAINABILITY ANALYSIS 3-4 (1993).

38. *Id.* at 1.

39. *Id.* at 74.

40. *Id.* at 75.

41. *See* BRADY, *supra* note 24, at 35.

42. *Id.*

43. MARK STALLWORTHY, SUSTAINABILITY, LAND USE AND ENVIRONMENT: A LEGAL ANALYSIS 48 (2002).

IV. Purpose and Scope of EIA

One key purpose of EIA is to provide information to the decision-makers who determine whether a project should be implemented.⁴⁴ In other words, EIA is a decision-making tool for administrative bodies.⁴⁵ The immediate goal of EIA is to promote sound decision-making “by providing clear, well organised information on the environmental effects, risks, and consequences of development options and proposals.”⁴⁶ Moreover, EIA “is usually (but not universally) directed toward achieving or supporting ultimate goals of environmental protection and sustainable development.”⁴⁷ EIA also ensures that communities are informed of developments that may affect their environment prior to decisions being made,⁴⁸ thus enabling the public to participate in decision-making on environmental issues by communicating their opinions on proposals and their environmental effects. In the realm of business, EIA facilitates the incorporation of environmental considerations in business practice.⁴⁹

Generally, the primary and secondary purposes of EIA include:

- safeguarding valued ecological processes and heritage areas;
- avoiding irreversible and unacceptable loss and deterioration of natural capital;
- ensuring development is adjusted to the potentials and capacities of the resource base;
- optimizing natural resource use, conservation and management opportunities;
- protecting human health and community well being;
- addressing distributional concerns related to the disruption of people and traditional lifestyles;
- improving coordination among participating agencies and actions;
- fostering better designed and planned development projects, i.e., greener and more cost effective;
- empowering community development and building local capacity through public participation;
- instilling environmental values and accountabilities across a range of

44. BRADY, *supra* note 24, at 189.

45. STALLWORTHY, *supra* note 43, at 134.

46. SADLER, *supra* note 3, at 13.

47. *Id.* (emphasis removed).

48. BRADY, *supra* note 24, at 189.

49. JAIN, *supra* note 12, at 6.

institutions; and

- internalizing environmental costs and damages in industry consistent with the polluter pays principle.⁵⁰

In Ethiopia, the stated purpose of EIA is to ensure public participation in planning and decision-making on developments that may affect the public and the environment.⁵¹ In addition, EIA “serves to bring about administrative transparency and accountability.”⁵² The federal environmental policy also clearly indicates that EIA is intended to mitigate environmental risks and damage.⁵³ Finally, the Federal Environmental Protection Authority (“EPA”) states in its draft EIA guidelines that the purpose of EIA “is to generate sufficient information on significant impacts . . . to determine whether or under what conditions a project should proceed.”⁵⁴ These purposes need to be further defined and elaborated in order to bring them in line with the generally recognized purposes of EIA discussed above.

Determining the scope of an EIA is important because it helps to determine the relevant issues and evaluate an impact statement report accordingly.⁵⁵ “The purpose of EIA is to focus on the *significant* environmental effects of a development, not on all of the environmental effects that can be thought of.”⁵⁶ “Scoping” thus allows the time and resources allotted for the EIA to be directed to the most significant environmental effects.⁵⁷

The scoping process involves the project developer consulting the relevant authorities and deciding the key issues that the EIA needs to address.⁵⁸ “[R]easonable and practical alternatives are considered and discussed with the people who are likely to be affected by the proposed project. . . . A scoping report is written based on issues and concerns raised by stakeholders during the scoping exercise. This report forms the basis for

50. SADLER, *supra* note 3, at 14-15.

51. EIA Proc., *supra* note 10, pmb. para. 4.

52. *Id.*

53. ENVIRONMENTAL POLICY OF ETHIOPIA, *supra* note 10, art. 4.9(d).

54. Environmental Protection Authority [EPA], *Environmental Impact Assessment Procedural Guideline Series 1*, 10 (2003). The guidelines are “still under development,” and have not been officially approved.

55. FERREY, *supra* note 7, at 102.

56. BRADY, *supra* note 24, at 194 (emphasis added).

57. *Id.* Scoping “ensures that EIAs are focused on the significant effects and do not involve unnecessary investigations that waste time and resources.” U.N. ENVIRONMENT PROGRAMME [UNEP], DESALINATION: RESOURCE AND GUIDANCE MANUAL FOR ENVIRONMENTAL IMPACT ASSESSMENTS 9 (2008).

58. WOLF & WHITE, *supra* note 6, at 352.

the Terms of Reference (ToR) . . . [which is] an agreed list that defines all the issues the EIA must address.”⁵⁹ Scoping should “identify [t]he appropriate boundaries for the EIA study, [i]mportant issues and concerns of the communities, [and] [e]ffects and cultural factors to be considered in the EIA.”⁶⁰ Ethiopia’s Environmental Policy requires that “social, socio-economic, political and cultural conditions” be considered in an EIA.⁶¹

V. Who Prepares an EIA?

In the United States, a person who proposes an action is required to prepare environmental documents and is called the “proponent” of the action.⁶² In other words, the person who is seeking permission for a project or development activity is responsible for carrying out the EIA.⁶³ Similarly, under Ethiopian law, the project proponent is responsible for undertaking an EIA.⁶⁴ The proponent is defined as the initiator of a project—an organ of government in the public sector or a person in the private sector.⁶⁵ According to the federal environmental policy, an EIA should be made “by the relevant sectoral ministries or departments, if in the public sector, and by the developer, if in the private sector.”⁶⁶ The underlying presumption is that the developer is the appropriate person to conduct an EIA and submit the information to the decision making agency.⁶⁷

In Ethiopia, every sectoral governmental body has the delegated authority to make decisions on proponents’ environmental impact statements. For example, licensing bodies like the Ministry of Trade and

59. Tari Dadiowei, *Environmental Impact Assessment and Sustainable Development in the Niger Delta: The Gbarain Oil Field Experience* 11 (Inst. of Int’l Studies, U.C. Berkeley, Niger Delta: Economies of Violence Working Paper No. 24, 2009). In Ethiopia, the EPA’s draft guidelines provide that the terms of reference should include “background to the proposal, setting the context of the problem, consideration of alternatives, institutional and public involvement, required information regarding project and location, etc, analysis of impacts, mitigation and monitoring, and conclusions and recommendations.” EPA, *supra* note 54.

60. Dadiowei, *supra* note 59. See also SADLER, *supra* note 3, at 113; EPA, *supra* note 54, at 9.

61. ENVIRONMENTAL POLICY OF ETHIOPIA, *supra* note 10, art. 4.9(j).

62. JAIN, *supra* note 12, at 7.

63. WOLF & WHITE, *supra* note 6, at 347.

64. EIA Proc., *supra* note 10, art. 7(1).

65. *Id.* art. 2(9).

66. ENVIRONMENTAL POLICY OF ETHIOPIA, *supra* note 10, art. 4.9(f).

67. STALLWORTHY, *supra* note 43, at 151.

Industry, Ministry of Transport and Communication, or Ministry of Mines and Energy are empowered to evaluate environmental impact statements.⁶⁸ However, there is a potential conflict of interest in having an agency review and approve the environmental implications of its own licensing decisions.

An EIA requires input from a multidisciplinary team of engineers and scientists representing disciplines related to the major potential environmental impacts. American environmental law requires “a systematic, interdisciplinary approach” to be used in preparing environmental documentation.⁶⁹ The applicant for a project license is required to submit much of the environmental information needed for documentation and analysis. The relevant government agency should help the applicant by outlining the types of information required. The agency granting the permit must make an independent evaluation of the environmental issues involved and must take full responsibility for the scope and content of the environmental documentation actually prepared.⁷⁰

In many jurisdictions, including Ethiopia, environmental consultants will prepare an EIA for the proponent. Because they are hired and paid by the proponent, consultants may be biased in favor of approving the project, believing that approval will lead to future work or other benefits. One way of addressing this problem is to require licensing of consultants. In Addis Ababa, twenty environmental consultants are registered and licensed to conduct EIAs. Most of them are environmentalists by profession.⁷¹ Out of these twenty consultants, eight are private limited companies, one consists of a group of consultants, and eleven are private individuals.⁷² However, there are no defined criteria to license consultants.⁷³ This is an indication of the poor coordination in this area.

It is possible to argue that it is not licensing of consultants but rigorous review that ensures the quality of an EIA. However, environmental agencies should at least maintain a register of environmental consultants so

68. This delegation was made as per the agreement reached by the 73rd Regular Meeting of the Council of Ministers held on Nov. 5, 2001 E.C.

69. National Environmental Policy Act, 42 U.S.C. § 4331 (1969) (U.S.).

70. JAIN, *supra* note 12, at 7.

71. Interview with Getachew Belachew, Environmental Impact Assessment Officer, Addis Ababa City Environmental Protection Authority, in Addis Ababa (Apr. 20, 2010). According to Getachew, these consultants might not be available even though they are licensed; it is difficult to get in touch with them when corrections are needed on the study reports.

72. Names of consultants and their addresses are posted on the door of the Environmental Impact Assessment Office of the Addis Ababa City Environmental Protection Authority.

73. Getachew, *supra* note 71.

that proponents can identify consultants who prepare honest and unbiased reports, are technically competent to carry out multidisciplinary work, and have the ability to work closely with a design team. Registering consultants would also help them to resist pressure from proponents.⁷⁴

After an environmental impact statement (“EIS”) is prepared, it should be reviewed before being submitted to the responsible agency. The review process can also “begin earlier and be used as a monitoring tool to ensure that progress is satisfactory and that the terms of reference are being followed.”⁷⁵ In countries such as Canada and Australia, an environmental agency is responsible for review, whereas in other countries, such as Italy and the Netherlands, permanent commissions have been established “for independent public review of EISs.”⁷⁶ In Addis Ababa, which seems to follow the Canadian system, review of an environmental impact statement requires seven professionals. Currently, however, there are only five: a soil chemist, an environmentalist, a sociologist and social anthropologist, a natural resource professional, and a chemical engineer.⁷⁷ These professionals could not possibly cover all interdisciplinary environmental issues. It is imperative, therefore, to add more professionals—for instance, a civil engineer and a sanitary engineer.⁷⁸

VI. Criteria to Determine When a Project Requires an EIA

It may not be cost-effective to require all types of projects to undergo environmental impact assessment. When must a proponent conduct an EIA? This is known as the “threshold” question. In answering such a question, government authorities make schedules of projects that require an EIA and those that do not. Projects “likely to have significant impact” should generally be subject to an EIA.⁷⁹

Ethiopian environmental law requires “[p]rojects likely to have negative impacts” to undergo environmental assessment,⁸⁰ in order to determine the nature and degree of such impacts. On the other hand,

74. Malcolm Hollick, *Who Should Prepare Environmental Impact Assessments?*, 8(3) ENVTL. MGMT. 191, 194 (1984).

75. SADLER, *supra* note 3, at 122.

76. *Id.*

77. Interview with Solomon Haile, Executor and Acting Coordinator of Environmental Impact, Addis Ababa City Environmental Protection Authority (March 31, 2010).

78. *Id.* Solomon comments that even though the team has been upgraded from two persons to five, it is still not sufficient to undertake environmental review.

79. FERREY, *supra* note 7, at 82.

80. EIA Proc., *supra* note 10, art. 5(2)(b).

projects that are not likely to have negative impacts do not require EIA.⁸¹ The EIA Proclamation, issued in 2002, authorized the Environmental Protection Authority to issue a directive stating which projects might have negative impacts and thus require EIA. Accordingly, the Authority issued Directive No. 1/2008. The directive does not include any criteria for determining which projects require EIA, but instead simply lists twenty-two types of projects that should be subject to EIA.⁸²

Some countries provide two schedules for environmental impact assessment. For example, British law has one schedule of projects that must undergo an EIA, and another schedule requiring EIA where there are likely to be significant environmental effects by virtue of factors such as the nature, size, or location of the project.⁸³

The Addis Ababa City Environmental Protection Authority has designated three types of projects: Those that require EIA are listed under Group A, those that require preliminary EIA under Group B, and those that do not require EIA under Group C. Group A lists 105 projects, divided into sixteen subgroups, that may have adverse and significant environmental impacts and need to pass through EIA.⁸⁴ However, among the 105 projects in Group A, only mining (basalt rock, red ash, clay, sand, loam, etc.) is subject to EIA in practice. Mining projects go through EIA because the license for such projects is given at the Authority in Addis Ababa.⁸⁵

Ethiopia's Investment Proclamation does not make EIA a requirement for obtaining an investment permit,⁸⁶ and in practice the Ethiopian Investment Authority grants investment permits without EIA as a requirement. However, the EIA Proclamation imposes a duty on any licensing agency to ensure that the relevant environmental agency has authorized implementation of a project *before* issuing an investment permit.⁸⁷ Authorization to implement a project should be granted by the environmental agency only after reviewing the EIS (where required) to

81. *Id.* art. 5(2)(a).

82. Environmental Protection Authority, *Directive Issued to Determine Projects Subject to Environmental Impact Assessment*, Dir. No. 1/2008.

83. WOLF & WHITE, *supra* note 6, at 347-48.

84. Addis Ababa City Environmental Protection Authority, *List of Projects Requiring Environmental Impact Assessment* (EIA). This list is for administrative use only. It has not been officially approved, and was not made according to the Federal EIA Proclamation. Getachew, *supra* note 71.

85. Solomon, *supra* note 77.

86. *See* Investment Proc. No. 280/2002, FEDERAL NEGARIT GAZETA, arts. 13-14; Investment (Amendment) Proc. No. 375/2003, FEDERAL NEGARIT GAZETA, art. 3(6-7).

87. EIA Proc., *supra* note 10, art. 3(3).

make sure the project will not cause harm to the environment.⁸⁸

VII. Important Elements in EIA

One essential element in the preparation of an EIA should be public participation and consultation. In the United Kingdom, for example, the relevant authority must notify the public of any proposed project requiring an EIA. The public will then have the opportunity to comment when the EIS is made available.⁸⁹ A reasonable number of copies of the EIS must be provided for sale to the public. (Unfortunately, some impact statements have been prohibitively priced, despite the fact that developers are only supposed to impose a reasonable charge.)⁹⁰ The proponent is required to publish a notice in a local newspaper and also to post notices at the project site with information about where and when the EIS can be inspected or purchased. The public has the right to communicate views and comments to the planning authority within twenty-one days of the publication of the EIS. Then, the planning authority must make a decision on the application within six weeks after receiving views and comments from the public.⁹¹

In India, when a proponent submits an application to the State Pollution Control Board, the Board will publish a notice for a public hearing in at least two newspapers widely circulated in the region around the project.⁹² One of the newspapers should be in the vernacular language of the region, so that local people can read and comment on it. The notice should invite the public's suggestions, views, comments, and objections within thirty days from the date of notice publication.⁹³ All persons can participate in the public hearing, including those likely to be affected by the implementation of the project, residents, environmental groups, and others. Everyone must be provided access to a copy of the Executive Summary of the project, for which they may have to pay a nominal charge.⁹⁴

In Ethiopia, there is no functional mechanism for ensuring public participation. Environmental impact studies are not made available to the public. The Addis Ababa City Environmental Protection Authority, for

88. *Id.* art. 9(2).

89. WOLF & WHITE, *supra* note 6, at 353-54.

90. *Id.*

91. *Id.* at 354.

92. S. SHANTHAKUMAR, S. SHANTHAKUMAR'S INTRODUCTION TO ENVIRONMENTAL LAW 181-182 (2005).

93. *Id.* at 182.

94. *Id.* at 184.

example, does not consult with the public because they believe that, since the implementation of a project will benefit the people, people will not object to it.⁹⁵ Ethiopian law requires the Federal Environmental Protection Authority (“EPA”) or relevant regional agency to “make any environmental impact study report accessible to the public and solicit comments on it,” and also to ensure that public comments are incorporated into the final report.⁹⁶ However, the law does not clearly indicate the procedures for doing this. The law also requires that “a brief statement summarizing the study in non-technical terms”⁹⁷ should be included with the study. This could give the public an opportunity to understand and comment on the EIS, if only they were allowed access to it. After evaluating an EIS, including “any public comments and expert opinions,” the appropriate environmental agency must decide on the project within fifteen working days.⁹⁸

Another essential element in EIA is the consideration of expert scientific opinion. EIA has elements of rigorous scientific experiments. It is necessary to analyze the project by taking water or soil samples, for instance. The study should also consider the impact of the project on air quality. In general, an EIA requires applying relevant scientific multi-disciplinary principles and use of experts from different fields such as civil engineering and biology.⁹⁹

Studying the impact of a project on air, water, soil, aesthetics, and other areas requires skills as well as science.¹⁰⁰ Under Ethiopian law, a proponent is obliged to ensure that the EIS is “prepared by experts” that meet any government-specified requirements.¹⁰¹ Also, an EIS must “contain sufficient information to enable the [Federal] Authority or the relevant regional environmental agency to determine whether and under what conditions the project shall proceed.”¹⁰²

The Federal Environmental Protection Authority is required to issue guidelines on “the elements necessary to prepare as well as evaluate an environmental impact study report.”¹⁰³ However there are still no guidelines in force. The EPA currently uses guidelines that have not been

95. Solomon, *supra* note 77.

96. EIA Proc., *supra* note 10, art. 15.

97. *Id.* art. 9(1).

98. *Id.* art. 9(2).

99. JAIN, *supra* note 12, at 8.

100. *Id.*

101. EIA Proc., *supra* note 10, art. 7(2).

102. *Id.* art. 8(1).

103. *Id.* art. 8(3).

officially approved.

Yet another important element of EIA is the consideration of alternatives to the proposed project or action. American law, for example, requires the direct, indirect, and cumulative environmental impacts of both the proposed project and alternatives to the project (action) to be identified and discussed.¹⁰⁴ “Alternatives” are different methods to accomplish the proposed action in less environmentally damaging ways.¹⁰⁵ One of the alternatives may be “no action,” or not pursuing the project or action at all. It is recognized that the “no action” alternative is always appropriate.¹⁰⁶

The Ethiopian EIA Proclamation recognizes the “no action” alternative by allowing the relevant environmental agency to “refuse implementation of the project if it is convinced that the negative impact cannot be [satisfactorily] avoided.”¹⁰⁷ This alternative is essential to protect the environment where the implementation of the project would result in inevitable environmental harm. If the agency believes that implementation of the project would affect the environment but “that the negative impacts can be effectively countered,” it may stipulate conditions to be fulfilled so as to eliminate or reduce the impacts.¹⁰⁸ In Addis Ababa, the EIA experts make sure that project proponents include mechanisms to mitigate pollution in their projects.¹⁰⁹

In general, successful EIA requires four basic procedural steps.¹¹⁰ The first step is to understand the proposed action: What is to be done? Where? What kinds of materials, labor, and/or resources are involved? Are there different ways to accomplish the original purpose? The second step is to gain a complete understanding of the affected environment at the site where the project will be implemented. Third is to envisage the implementation of the project and determine its possible impacts on the environment, quantifying these impacts whenever possible. Fourth, it is important to report the results of the study so that they may be used in the decision-making process.¹¹¹

The environmental impact report should include the following components:

104. FERREY, *supra* note 7, at 115.

105. *Id.* at 106.

106. *Id.* at 119.

107. EIA Proc., *supra* note 10, art. 9(2)(c).

108. *Id.* art. 9(2)(b).

109. Solomon, *supra* note 77.

110. See JAIN, *supra* note 12, at 5-6.

111. *Id.* at 6.

1. Nontechnical Executive Summary – “must describe each significant environmental issue and its resolution in sufficient detail so that the reader can understand its importance and scope, as well as the appropriateness of the approach taken to resolve it. . . . It must be able to stand alone as a document.”¹¹²
2. Introduction – identifies the project and the proponent, describes the project and its importance, and gives any other relevant background information.¹¹³
3. Legal and Institutional Frameworks – describes the relevant law(s) requiring EIA and the responsible authority.¹¹⁴
4. Description of the Project – should include the type of project, need for the project, its location, and a concise description of those aspects of the project likely to cause environmental effects.¹¹⁵
5. Description of the Environment – provides baseline data on the existing environment in which the project is intended to be implemented.¹¹⁶
6. Environmental Impacts and Mitigating Measures – explains the potential impacts of the project and appropriate remedies or measures for reducing or mitigating these impacts.¹¹⁷
7. Environmental Monitoring Program – spells out the budgets, procurement schedules, and administrative manpower needed to undertake environmental monitoring.¹¹⁸
8. Public Consultations – the results of stakeholder consultations carried out during the study, detailing the issues raised and proposals made.¹¹⁹
9. Decommissioning – describes the post-consultation decommissioning of various construction facilities that are not required during operation, like workers’ camps, workshops, lay-down areas, and access roads.
10. Summary and Conclusion – includes “a) the overall net gains which justify implementation of the project; b) explanation of how adverse

112. LOHANI, *supra* note 30, at 3.

113. *Id.*

114. *See, e.g.,* M.E.E.A. LTD., CONSULTING ENVIRONMENTAL ENGINEERS, ENVIRONMENTAL IMPACT ASSESSMENT REPORT: SOLID WASTE TREATMENT FACILITY IN AIN BAAL, CAZA OF TYRE, SOUTH LEBANON x-xi (2005), *available at* http://pdf.usaid.gov/pdf_docs/PNADG553.pdf.

115. *See id.* at xi-xii.

116. *See id.* at xiii-xiv.

117. *See id.* at xiv-xv.

118. LOHANI, *supra* note 30, at 9.

119. *See* M.E.E.A. LTD., *supra* note 114, at xi.

effects have been mitigated; c) explanation of use or destruction of irreplaceable components; and d) provisions for follow-up surveillance and monitoring.”¹²⁰

11. Annexes – “may include terms of reference for the EIA; abstracts or summaries of relevant background documents; tabular and graphical summaries of data; a list of contacts and meetings; and a list of data sources.”¹²¹

In Ethiopia, at minimum, an environmental impact study report should describe:

- a) the nature of the project, including the technology and processes to be used;
- b) the content and amount of pollutant that will be released during [implementation] as well as during operation;
- c) source and amount of energy required for operation;
- d) information on likely trans-regional impacts;
- e) characteristics and duration of all the estimated direct or indirect, positive or negative impacts;
- f) measures proposed to eliminate, minimize, or mitigate negative impacts;
- h) contingency plan in case of accident; and
- i) procedures of self auditing and monitoring during implementation and operation.¹²²

VIII. Follow-Up (Monitoring)

Alternatives or conditions for implementation may be imposed on a project as a result of EIA, but these will be meaningless unless there is compliance. Thus, follow-up (also called “monitoring”) is essential to ensure that the project is being implemented pursuant to the conditions. This may involve measures that ensure mitigation is implemented, or that impacts do not exceed a certain level. Follow-up helps to identify unanticipated changes in implementing the project, so follow-up activities are often implemented during the construction phase of a project.¹²³

120. LOHANI, *supra* note 30, at 11.

121. *Id.*

122. EIA Proc., *supra* note 10, art 8(2). Note that there are discrepancies between the Amharic and English versions of the article. Note also that there is no section (g) listed.

123. BRADY, *supra* note 24, at 196.

Ethiopian environmental policy requires follow-up activities “at specified intervals during project implementation” where these are called for in the EIS.¹²⁴ The appropriate environmental agency is generally required to “monitor the implementation of an authorized project in order to evaluate compliance with all commitments made by, and obligations imposed on[,] the proponent during authorization.”¹²⁵ If the proponent does not fulfill these obligations, the agency can order rectifying measures,¹²⁶ or can “suspend or cancel any authorization to implement a project.”¹²⁷ Where an unforeseen circumstance is realized only after submission of the EIS, the relevant environmental agency may order the EIA to be revised or redone so as to address the circumstance.¹²⁸

In practice, the Addis Ababa City Environmental Protection Authority monitors the projects for which it conducts EIA. The Authority conducts monitoring two to four times per year. Where there is a special suspicion, at least two follow-ups are made per year.¹²⁹ Where the proponent violates some conditions, the Authority orders the fulfillment of the conditions within a specified period of time. Then, the Authority goes to the project site to check compliance with conditions of implementation. So far, no one has been found in violation of the conditions. In one case, the Authority refused to renew a permit because the project was not environmentally friendly, particularly with regards to the graveyard of a church.

In Addis Ababa, environmental offices are established at the *kifle ketema* (sub-city) level. At least two experts work at each *kebele* in the city and monitor the implementation of EIA.¹³⁰ However, practice indicates that not every *kebele* is staffed with the required environmental experts, and no systematic scheme exists for monitoring projects.

IX. Enforcement Mechanisms and Incentives

The 2004 Criminal Code of Ethiopia makes it a crime to “implement a project on which an environmental impact assessment is required by law” without authorization from the relevant environmental authority, or to

124. ENVIRONMENTAL POLICY OF ETHIOPIA, *supra* note 10, art. 4.9(e).

125. EIA Proc., *supra* note 10, art. 12(1).

126. *Id.* art. 12(2).

127. *Id.* art. 12(3).

128. *Id.* art. 11.

129. Solomon, *supra* note 77.

130. *Id.*

make “false statements concerning such assessment.”¹³¹ Either act is punishable with up to a year in prison.¹³² In addition, the EIA Proclamation makes any violation of the Proclamation, or “any other relevant law or directive” an actionable offence.¹³³ The law goes on to specify liability for specific offenses: anyone who makes false statements in an EIS will be liable for 50,000-100,000 Ethiopian birr (“ETB”), while anyone who “fails to keep records or to fulfil conditions of authorization” will be liable for 10,000-20,000 ETB.¹³⁴ If the offender is a “juridical person” (company), “the manager who failed to exercise all due diligence” will be liable for 5,000-10,000 ETB on top of the other fines.¹³⁵ In addition to the given penalties, courts have the power to order the offender to restore (or otherwise compensate for) any environmental damage that has been caused.¹³⁶

Incentives are another way to encourage compliance with EIA requirements. The EIA Proclamation provides that environmental agencies may provide financial and technical support for “any environmental rehabilitation or pollution prevention or cleanup project.”¹³⁷ It is not clear what such support would cover, but the provision should be interpreted to at least cover EIA. However, the Environmental Protection Authority has no funds or budgetary provisions for the incentives.¹³⁸ What is more, there are no guidelines for implementing the incentive provision.¹³⁹ In order to encourage performance of EIA, it would be beneficial to widen the scope of available incentives to include tax exemptions/holidays and market access. Furthermore, the government could make EIA a criterion for renewing permits and allocating credit or land.

A broad right to standing is also helpful to the enforcement of EIA laws. The issue of standing can decide whether public interest environmental organizations have the right to “bring suits purely in the interests of protecting the environment.”¹⁴⁰ Standing can allow citizens to

131. CRIMINAL CODE art. 521 (Eth.).

132. *Id.*

133. EIA Proc., *supra* note 10, art. 18(1).

134. *Id.* art. 18(2-3).

135. *Id.* art. 18(4).

136. *Id.* art. 18(5).

137. *Id.* art. 16(2).

138. Solomon Kebede, *The Law and EIA Governance in Practice: EIA Proclamation 299/2002 (2006)* (unpublished manuscript).

139. MELLESE DAMTIE & MESFIN BAYOU, MELCA MAHIBER, *OVERVIEW OF ENVIRONMENTAL IMPACT ASSESSMENT IN ETHIOPIA: GAPS AND CHALLENGES* 51 (2008).

140. See Tumai Murombo, *Strengthening Locus Standi in Public Interest Environmental Litigation: Has Leadership Moved from the United States to South Africa?*, 6(2) *LAW*,

bring a complaint against an administrator for, e.g., failure to enforce an EIA law, or against an individual who violates EIA laws.¹⁴¹ Statutes may allow such suits in regular courts, or may establish a special environmental tribunal.

X. Conclusion and Recommendations

Ethiopian law requires an EIA for those projects that would adversely affect the environment. However, the directive issued by the Environmental Protection Authority does not provide clear criteria to determine exactly which projects should require EIA. Additionally, while a project proponent will likely need to hire environmental experts (consultancies) to undertake EIA, there is a shortage of experts in the field. Finally, because EIA requires additional costs to be expended by the investor, it may discourage investment unless incentives are provided to cover the costs. The law provides both penalties and incentives to encourage compliance, but these are not used.

After the EIA is completed, an environmental impact study report should be released, containing information about the nature of the project, content and amount of pollutant that will be released, and measures proposed to eliminate, minimize, or mitigate negative impacts. It should also contain procedures for auditing and monitoring during implementation and operation. The EIS should be made available to the public, and public comments should be received before a final decision is made. However, environmental impact reports are not available to the public in current Ethiopian practice.

Based on the findings of this article, the following are recommended:

- 1) The federal and regional environmental authorities should build up their professional capacities, so that they will have a sufficient number of professionals to review environmental impact studies;
- 2) The government should prepare trainings and other education so that there will be sufficient professionals to conduct EIA;
- 3) The EPA should issue a directive providing clear criteria to determine which projects require EIA;
- 4) The EPA should implement incentive mechanisms so as to encourage EIA;

ENV'T, & DEV. J. 163, 165 (2010).

141. See DINAH SHELTON & ALEXANDRE KISS, U.N. ENV'T PROGRAMME [UNEP], JUDICIAL HANDBOOK ON ENVIRONMENTAL LAW 44 (2005).

- 5) The EIA Proclamation and the Investment Proclamation should be revised so as to ensure the performance of EIA;
- 6) The environmental agencies should ensure that environmental impact study reports are made available to the public for comment;
- 7) Persons should be answerable for violations of EIA law in criminal as well as civil courts;
- 8) Proper EIA guidelines should be approved and implemented;
- 9) The government should develop additional enforcement mechanisms;
- 10) Legislators should develop a list of strategic initiatives that are subject to SEA;
- 11) The contents of EIA reports should be improved;
- 12) The government should establish an environmental fund and tribunal;
and
- 13) The EPA should provide clear guidance on follow-ups for EIA and SEA.

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