SALIENT FEATURES OF ENVIRONMENTAL LAWS IN THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

1. OVERVIEW OF THE STATE OF THE ENVIRONMENT
The rural environment in Ethiopia is endowed with farmlands, lakes, rivers, livestock, forests, woodlands, grasslands, wildlife and plenty of open spaces. Approximately 60 percent of Ethiopia’s land surface is classified as arid and semi-arid, the remaining 40 percent being sub-humid and humid and thus of high agricultural potential.

In contrast to the rural areas, the urban environment is characterized by such variables as very high population, high density of housing, crowded market centers and contamination from industrial effluent. Of all the environmental problems, the country's most critical concern focuses on the management and utilization of its land resources. The intensive use of the limited arable land by subsistence farmers under past governments of uninformed interference has led to serious instances of land degradation.

Though air pollution has become a fairly serious localized problem in Addis Ababa, water pollution as well as domestic and industrial wastes are some of the problems that have resulted from the process of industrial expansion and social transformation taking place in the country.

2. EVALUATION OF THE LEGAL REGIME UNTIL 1994
Over the last five decades Ethiopia has enacted a wide range of laws aimed at protecting the environment. However, these laws had insignificant contribution in preventing and avoiding environmental problems. The inadequacy or ineffectiveness of all these laws in relation to environmental management and protection can be attributed to several factors.

For instance, the laws impose a general duty of care to prevent harm on human beings and certain components of the environment. The advantage of such kind of laws is that it provides basic standards against which conduct can be
measured. Although, such obligations are useful as a broad statement of policy and in some cases intended to cover those responsibilities not specifically regulated, they are not, however, made readily suitable for enforcement.

The general trend and subsequent approaches towards the development of environmental laws in Ethiopia since 1943 exhibited a rule oriented approach. For instance, the 1948 Penal Code of Ethiopia Prohibits activities that will have adverse impact upon certain components of the environment and public health. On the other hand relevant conditions that would help the persons and enterprises to comply with their respective obligations have not been regulated and that from the practical point of view, the said measure did not help halt or even slow down the problem.

The other feature of the laws is that they are primarily concerned to regulate the allocation and exploitation of resources either for production or consumption. They did not emphasis on sound management and rational uses. Furthermore, the criminal and administrative fines have not been revised and no longer have a deterrent effect.

As a general rule the criminal sanctions and administrative fines may not be effective where the magnitude of penalty is modest compared to the gains that accrue from non-compliance. Obviously, people will not change their usual behavior unless they do not see a benefit associated with obeying the law or a cost associated with disobeying it.

To be effective, therefore, the magnitude of penalty provided under the laws should have been regularly revised to conform to the actual environmental cost incurred on the current and the upcoming generations. Consequently, this failure not only reduces the deterrent value of the penalties but also imposes an unacceptable environmental cost on the society. The other drawback of the laws attributes to their limitation in holding an offender or polluter pay for and correct or restore damages that he/she/it inflicted upon the physical environment.
3. INTERNATIONAL CONVENTIONS

In the course of three decades, i.e., from 1972 to 2002, a number of major multilateral environmental agreements have been adopted as a basis for state obligations with regard to sustainable development. In this context, Ethiopia has ratified the multilateral environmental agreements enlisted herein below:

- The Convention on Biological Diversity;
- The Basal Convention on the Control of Transboundary Movements of Hazardous Wastes;
- The United Nations Framework Convention on Climate Change;
- The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;
- The Vienna Convention and the Montreal Protocol for the Protection the Ozone Layer;
- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and

4. POLICY AND LEGAL REGIME SINCE 1994

Over the past few years, there has been a growing perception and commitment towards an improved natural resources management and environmental protection regime in the country. Consequently, in order to address the environmental problems mentioned at the beginning of this paper and heading towards achieving sustainable development, the mechanism of environmental protection adopted by Ethiopia since 1994 could be characterized by a three-stage approach.

4.1 CONSTITUTIONAL MEASURE

The first stage marked incorporation of environmental issues into the supreme law of the land. In this regard, the current Constitution of Ethiopia with a large
environmental scope has defined the environmental values to be preserved and protected.

The 1994 Constitution of Ethiopia under Articles 44 and 92 proclaims that all citizens shall have a right to live in a clean and healthy environment. Government and citizens shall have a duty to protect the environment. The design and implementation of programs and projects shall not damage or destroy the environment.

The Constitution of Ethiopia incorporates a number of other provisions relevant for the protection, sustainable use and improvement of the environmental resources of the country. The incorporation of these important provisions into the supreme law of the land uplifted environmental concerns to the level of fundamental human rights.

4.2 POLICY MESURES

The second stage was formulation of national policy and strategy on environmental management and protection. The primary need in preparing national policy and strategy document on environmental matters was aiming at determining the objectives and strategies which should be used in order to ensure the respect for environmental imperatives, by taking into account the prevailing economic, social and cultural situations of the country.

In this context, with a view to further amplifying the Constitutional provisions on environmental protection, the Environmental Policy and the Conservation Strategy of Ethiopia have been prepared. These policy and strategy documents recognized and addressed environmental issues in a holistic manner, and were adopted as well as approved on 2 April 1997.
4.3 LEGISLATIVE MEASURES

Incorporation of environmental rights under the Constitution, adoption of Environmental Policy and the Conservation Strategy of Ethiopia, ratification of multilateral environmental Conventions, establishment of the Environmental Protection Authority are some of the basic moves towards heading for environmental protection and sustainable development in Ethiopia.

The environmental crises, however, may continue despite the taking of all the above-mentioned measures. This is because all the said measures are of a framework nature and thus they cannot implement themselves. They need the formulation and implementation of laws, standards and guidelines.

Therefore, the third stage marks the formulation of environmental protection laws so as to reach the objectives fixed by the Constitution and the Environmental Policy as well as the Conservation Strategy of Ethiopia and the environmental Conventions to which Ethiopia is a party. In this regard the Council of Ministers has recently deliberated upon and adopted the following draft environmental laws submitted to it by the Environmental Protection Authority.

4.3.1 PROCLAMATION ON THE ESTABLISHMENT OF ENVIRONMENTAL PROTECTION ORGANS

The main aim of the draft law is to establish a system that fosters coordinated but differentiated responsibilities among environmental protection agencies at federal and regional levels so as to foster sustainable use of environmental resources, thereby avoiding possible conflicts of interests and duplication of efforts. To this end it assigns responsibilities to separate organizations for environmental development and management activities on the one hand, and environmental protection, regulation and monitoring on the other. It gives the Environmental Protection Authority the legal powers required for enforcing as well to spearhead the enforcement of and ensure compliance with environmental laws and standards.
4.3.2 ENVIRONMENTAL IMPACT ASSESSMENT PROCLAMATION

Environmental impact assessment is used to predict and manage the environmental effects that a proposed development activity might entail and thus helps to bring about intended development. Furthermore, assessment of possible impacts on the environment prior to the approval of a public instrument is recognized as providing an effective means of harmonizing and integrating environmental, economic, cultural and social considerations into a decision making process in a manner that promotes sustainable development.

To this end the draft law is prepared to facilitate the implementation of the environmental rights and objectives enshrined in the Constitution and the maximization of their socio-economic benefits by predicting and managing the environmental effects which a proposed development activity or public instruments might entail prior to their implementation.

4.3.3 ENVIRONMENTAL POLLUTION CONTROL PROCLAMATION

The draft law recognizes the fact that some social and economic development endeavours may inflict environmental harm that could make the endeavours counter-productive. It also underlines the fact that the protection of the environment, in general, and the safeguarding of human health and wellbeing, as well as the maintaining of the biota and the aesthetic value of nature, in particular, are the duty and responsibility of all. To this end the draft law aims to eliminate or, when not possible, to mitigate pollution as an undesirable consequence of social and economic development activities.