

## COUNTRY REPORT: ETHIOPIA

### Green Growth, Investment, Environment and Sustainable Development in Ethiopia

FIKREMARKOS MERSO BIRHNU\*

#### Introduction

In the last two decades, Ethiopia has put in place environmental policy, strategies and laws and has established the requisite institution in charge of environmental protection. However, there have been some notable developments in recent years regarding the policy and legal regime in relation to the environment. Ethiopia issued a *Climate Resilient Green Economy Strategy* in 2011, which aims at transforming Ethiopia into carbon-neutral middle-income country by 2025. Even though there has not been a major legislative development with regard to the environment in the last two years, Ethiopia issued a new investment law in 2012 which could have important ramifications in relation to the environment and sustainable development.

In terms of institutional infrastructure, one notable development has been the transformation of the Ethiopian Environmental Protection Authority (EPA) to a new Ministry, the Ministry of the Environment and Forests in 2013. The creation of this new institution, by upgrading the former agency to a Ministry, appears to be an indication of an increased willingness on the part of the government to give more attention to environmental protection. The expectation is that the new Ministry will be able to make a meaningful difference in environmental protection in the country by addressing the institutional and capacity challenges of the former EPA.

---

\* LL.B., LL.M., PhD, Addis Ababa University, School of Law.

## The Constitutional, Policy and Legal Basis for the Protection of the Environment

*The Constitution of the Federal Democratic Ethiopia (the FDRE Constitution)*<sup>1</sup> and the 1997 *Environmental Policy of Ethiopia statement (the EPE)*<sup>2</sup> provide a broad constitutional and policy basis for environmental protection in Ethiopia. *The FDRE Constitution* recognizes the right to live in a clean and healthy environment under Art 44(1), which is part of the chapter dealing with 'Fundamental Rights and Freedoms.' Similarly, Art 43(1) of *the FDRE Constitution* guarantees the peoples of Ethiopia 'the right to sustainable development' and envisages development through rational and prudent use of environmental resources (Article 43.4). *The FDRE Constitution* further requires that international agreements and relations, concluded or established by the country, should uphold the right to sustainable development (Article 43.3).

The environmental objectives of *the FDRE Constitution* under Article 92 prescribe, *inter alia*, that the design and implementation of programs and projects of development should not damage or destroy the environment; that the people have the right to full consultation and to express their views in the planning and implementation of environmental policies and projects that affect them directly; and that government and citizens have a duty to protect the environment.

*The Environmental Policy of Ethiopia Statement (the EPE)* provides more specific guidelines on environmental governance in Ethiopia. While the overall policy goal of EPE is the improvement and enhancement of the health and quality of life of Ethiopians and the promotion of sustainable development, there is also a long list of specific objectives.<sup>3</sup> According to the 'key guiding principles' of the EPE the development, use and management of renewable resources needs to be based on sustainability, and the use of non-renewable resources needs to be minimized and where possible their use should be extended through recycling. More importantly, the key guiding principles state that when a compromise

---

<sup>1</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995.

<sup>2</sup> Environmental Protection Authority and Ministry of Economic Development and Cooperation, *Environmental Policy* (1997).

<sup>3</sup> The specific objectives include: to ensure that essential ecological processes and life support systems are sustained; that biological diversity is preserved; and that renewable natural resources are used in such a way that their regenerative capabilities are maintained and that the needs of future generations are not compromised; to ensure that the benefits of exploitation of non-renewable resources are also extended to the future generation; to prevent the pollution of land, air and water in the most cost-effective way so that the cost of effective preventive intervention does not exceed the benefits; to ensure peoples' participation in the eco-management; to improve the environment of human settlements in such a manner that satisfies the physical, social, economic, and cultural needs of the inhabitants; and to enhance public awareness and understanding about the link that exists between development and environment.

between short-term economic growth and long-term environmental protection is necessary, the compromise should be in favor of protection of the environment, and environmental protection should be made an integral part of development planning.

With a view to translating the objectives and guiding principles of the EPE into practice, the country has issued specific laws relating to different aspects of environmental protection. The main environmental laws of the country were issued in the same year and include: the *Environmental Organs Establishment Proclamation* No. 295/2002, the *Environmental Impact Assessment Proclamation* No. 299/2002 and the *Environmental Pollution Control Proclamation* No. 300/2002.

*The FDRE Constitution, the EPE* and the environmental protection laws when taken together appear to suggest that Ethiopia follows a cross-sectorial rather than a sectorial approach where protection of the environment should be mainstreamed in all policies, laws, programs, projects and activities based on the idea of sustainable development. Sustainability is a key element in development where environmental protection should be given precedence over mere economic growth.

### **Ethiopia's Climate Resilient Green Economy Strategy**

Ethiopia is a country that has suffered and continues to suffer from the negative effects of climate change. For a long time the country has been struggling with drought and the unpredictable patterns of rain including rain failures which have resulted in food shortages and famine in the country. Climate change is often taken to be the culprit behind this and other similar problems in the country.

With a view to overcoming the effects of climate change and promote green growth, Ethiopia adopted *the Climate Resilient Green Economy Strategy (CRGE)* in 2011.<sup>4</sup> The CRGE is built on the five-year national Growth and Transformation Plan (GTP) which was adopted in 2010 and carries the ambition of transforming Ethiopia into a middle income country by 2025. The CRGE makes a brief assessment of the challenges of conventional economic growth in the context of Ethiopia. It forecasts that greenhouse gas emissions would more than double to 400 million tonnes of CO<sub>2</sub> equivalents (Mt CO<sub>2</sub>e) in 2030 if Ethiopia were to pursue a conventional economic development path. It also states that conventional economic growth

---

<sup>4</sup> Federal Democratic Republic of Ethiopia (2011), "Ethiopia's Climate Resilience Green Economy Strategy: the Path to Sustainable Development." Addis Ababa, Ethiopia.

could lead to other challenges, such as depleting the natural resources that Ethiopia's economic development is based on, locking it into outdated technologies.

The CRGE states that Ethiopia is committed to building a climate-resilient green economy rather than pursuing a conventional economic growth model which does not take into account sustainability. This is to be achieved through two complementary and mutually-reinforcing measures: actions to reduce greenhouse gas emissions while safeguarding economic growth ("green economy") as well as initiatives to reduce vulnerability to the effects of climate change ("climate resilience"), thus addressing both climate change adaptation and mitigation objectives. Reading the CRGE and the GTP together suggests that by transforming the country's development model from the conventional development course to a modern energy-efficient development route Ethiopia aims to achieve carbon-neutral middle-income status by 2025.

Ethiopia is planning to develop the green economy strategy based on four pillars:

- Improving crop and livestock production practices to increase food yields, leading to food security and stable farmer income, while reducing emissions;
- Protecting and re-establishing forests for their economic and ecosystem services, including their operation as carbon stocks;
- Expanding electric power generation from renewable sources of energy fivefold over the next five years for markets at home and in neighbouring countries; and
- Leapfrogging to modern and energy-efficient technologies in transport, industry, and buildings.

With regard to agriculture the measures to be taken include improved crop and livestock practices, reduction of deforestation by agricultural intensification and irrigation of degraded land, and the use of lower-emitting techniques. In the area of forestry, actions to be taken include protecting and growing forests as carbon stocks, reducing demand for fuel wood via efficient stoves, increased sequestration by afforestation/reforestation, and forest management and area closure. Deploying renewable and clean power generation, building renewable power generation capacity and switching-off fossil fuel power generation, and exporting renewable power to substitute for fossil fuel power generation abroad are some of the measures foreseen in the area of power. When it comes to industry, transport and buildings, the actions to be taken include the use of advanced technologies, improved industry energy efficiency, improved production processes, tightened fuel efficiency of cars,

the construction of an electric rail network, the substitution of fossil fuel by biofuels, and improved waste management.

An institutional mechanism has also been put in place to enable the successful implementation of the CRGE. A Ministerial Steering Committee led by the Office of the Prime Minister and comprising the Ministers and senior officials from a range of ministries is in charge of the overall direction and sector-specific initiatives has been established. The successful implementation of the CRGE requires a financing of about 150 Billion US Dollars which is expected to be raised from government resources, development partners and the International Carbon Finance Mechanism.

It remains to be seen how quickly or effectively Ethiopia will be able to implement the CRGE. Nearly three year after its adoption, the CRGE has not yet been implemented, partly because of a lack of funding, but recently the government has reportedly ramped up its efforts towards implementation following the commitment made by some donors to make available a limited portion of the required funding.<sup>5</sup>

### **Investment Laws**

Following the change of government in 1991, Ethiopia has taken several measures to attract investment and promote economic development. As such it has issued different laws with a view to provide incentives for investors and regulate investment. The latest investment law was issued in 2012 as *the Proclamation on Investment (the Proclamation)*<sup>6</sup> followed in the same year by the implementing regulations.<sup>7</sup> The ultimate goal of investment, as can be gathered from the preamble of the Proclamation, is accelerating the economic development of the country and improving the living standards of its people. Within the ambit of this overarching goal, the preamble also makes reference to specific goals, such as encouraging and expanding investment, strengthening domestic production capacity, increasing inflow of capital, and speeding up of transfer of technology.

---

<sup>5</sup> The Ethiopian Reporter (Amharic Version), "The Country's Green Growth Strategy Implementation in Sight?" October 2013.

<sup>6</sup> Investment Proclamation No.769/2012.

<sup>7</sup> Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012. The prior legal regimes on investment were Proclamation No. 280/2002 as amended by Proclamation No. 375/2003 and the Investment Regulation No.84/2003 as amended by Proclamation No. 146/2008.

The Proclamation outlines the general as well as the specific objectives of investment in the context of Ethiopia. The general objective, as stated under Article 5 of the Proclamation is 'to improve the living standard of the peoples of Ethiopia through the realization of sustainable economic and social development,' while the specific objectives include accelerating economic development, exploiting and developing the natural resources of the country, developing the domestic market, increasing foreign exchange earnings, encouraging balanced development, enhancing the role of the private sector in economic development, and creating ample employment opportunities.

The general objective of investment in Ethiopia is thus the realization of a desire for sustainable economic and social development which would result in the improvement of the standards of living of the people in Ethiopia. This appears to suggest the recognition of a distinction between economic development and sustainable development. Sustainable development represents a paradigm shift in the development discourse which was premised on economic growth indicators as a mark of progress toward development, with little attention to the environment and other social issues. Central to the concept is 'changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development.'<sup>8</sup> The concept of sustainable development has three elements: 'economic development, social development and environmental protection.'<sup>9</sup> The inseparability of environment, social and economic objectives is the central tenet of the concept of sustainable development.

While economic and social sustainability has been taken as the ultimate goal of investment in Ethiopia, sustainability does not feature prominently in the specific objectives outlined under Article 5 which emanate from the general objective. The specific objectives appear to capitalize on economic growth with the 'sustainability' aspect not clearly articulated. At any rate, whether or not the declared objective relating to sustainability has been translated into the specific provisions of the Proclamation is an issue that requires further scrutiny of the provisions of the law.

Part Four of the Proclamation deals with investment permits. The provisions in Part Four cover issues such as application, issuance, renewal, and suspension of permits. Among other things, they prescribe the conditions and requirements for issuance, renewal, suspension and revocation of investment permits. Environmental impact assessment or

---

<sup>8</sup> World Summit on Sustainable Development (2002), Plan of Implementation, para.2.

<sup>9</sup> Ibid.

compliance with environmental standards is required neither as a condition for issuance of permits nor for renewal, suspension, or revocation of permits. It appears the Proclamation has left environmental issues to the environmental laws mentioned above.

Article 23 states that areas eligible for investment incentives will be specified by regulations to be issued by the Council of Ministers. This was issued in 2012. But the Regulation provides incentives on the basis of factors such as export performance, sector (manufacturing, industry, information and communication technology *et cetera.*) and the region where the investment takes place. Environmental sustainability does not appear to be a justification for an incentive.

An important addition to the new Proclamation with regard to the environment is Article 38 on the duty to observe other laws and to have regard to protection of the environment. It states as follows:

*Any investor shall have the obligation to observe the laws of the country in carrying out his investment activities. In particular, he shall give due regard to environmental protection.*

This is an important development, as the previous investment laws did not include such provisions. However, important as these provisions appear given their direct reference to the environment, are nonetheless formulated in a weak language, and it is not clear if they in fact add any meaningful obligation related to the environment in the context of investment. The first sentence does not add anything since it is the obligation of an investor to respect the laws of the country where he/she operates regardless. Although the second sentence makes a direct reference to the environment, the way the sentence is constructed raises issues. First, the way the obligation is formulated ('give due regard to environmental protection') appears to be weak. The sentence does not unequivocally state that an investor must respect the environmental laws of the country. Second and more importantly, the provisions do not specify the legal consequences of a failure to give due regard to environmental protection. What if an investor fails to discharge his/her obligation with regard to the environment? There is no any consequence provided for by the Proclamation. The consequences of failure are regulated by environmental laws. Article 38 is thus at best a reminder for the investor to protect the environment. In so doing, the Proclamation has failed to make the connection between environmental protection obligations and the content of investment permits by making environmental impact assessment a condition for a grant of a permit, or failure to observe environmental laws of the country as a possible ground for revocation or suspension of a permit. From the perspective of protecting the environment

and sustainability, as envisaged by the Proclamation, it would have been helpful to create a link between environmental protection and the provisions on permits as stated above. This approach would also make sense of the entire efforts to mainstream protection of the environment into the different policies, strategies and laws of the country, particularly the ambitious CRGE.

The creation of environmental protection and permits is not without precedence in Ethiopian investment related legislation. Indeed a parallel can be made between the *Investment Proclamation* and the *Proclamation on Mining Operations, Proclamation No.678/2010* (the Mining Proclamation) which regulates investment in mining. The Mining Proclamation has tried to mainstream protection of the environment into the areas of regulation of mining operation rather than leaving the issue entirely to the environmental laws. This is in spite of the fact that the environmental laws had existed before this law came in to being, and hence a simple reference to those laws would have been acceptable. Under Article 60 of the Mining Proclamation any applicant for a license shall submit an environmental impact assessment and obtain all the necessary approvals from the competent authority required by the relevant environmental laws of the country (except in case of for reconnaissance license, retention license or artisanal mining license). Similarly, according to Article 18, a mineral exploration license can only be granted, *inter alia*, if the environment impact plan submitted by the applicant has been approved. The same is true for the grant of a license for a large scale mining license under Article 26, as well as small scale mining licenses under Article 28. One of the grounds for the suspension and revocation of a mineral license under Article 44 of the proclamation is when the licensee is in breach of the approved environmental impact assessment.

## **Conclusion**

Ethiopia has made a stride in terms of putting in place the necessary policies, strategies, laws and institutions for environmental protection. The recent decision of the government to upgrade the EPA to a full-fledged Ministry is a move in the right direction, as this new institution will play a more active role in environmental protection by addressing the capacity and institutional challenges facing environmental protection efforts in the country. Similarly, the adoption of the CRGE is an important development from the perspective of the environment and sustainable development, but it is yet to be implemented in earnest, and implementation will continue to be a challenge if finance is not forthcoming from donors in the way anticipated. As far as the Investment Proclamation is concerned, it has clearly recognized sustainable economic and social development as an ultimate objective of any

investment in the country and also included a provision requiring investors to protect the environment. However, it does not prescribe consequences for a failure to protect the environment, nor does it attach incentives based on environmental sustainability. It has thus failed to fully mainstream protection of the environment into investment governance as envisaged by the different policies and strategies of the country including the CRGE.