

# LEGAL CASE STUDY - ETHIOPIA

The implementation of the Rotterdam Convention



Food and Agriculture Organization  
of the United Nations

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## A. List of Abbreviations

CPPTRD	Crop Production and Protection Technology and Regulatory Dept.
DNA	Designated National Authority
EDACA	Ethiopian Drug Administration and Control Authority
EPA	Environmental Protection Authority
EPC	Environment Protection Council
FAO	Food and Agriculture Organization of the United Nations
FDRE	Federal Democratic Republic of Ethiopia
GEF	Global Environmental Facility
GoE	Government of Ethiopia
HoPR	House of Peoples Representatives
ISO	International Organization for Standardization
MoARD	Ministry of Agriculture and Rural Development
MoH	Ministry of Health
MoLSA	Ministry of Labour and Social Affairs
MoTI	Ministry of Trade and Industry
NIP	National Implementation Plan
NBS	National Bureau of Standards
PIC	Prior Informed Consent procedure
PRA	Pesticides Registration Agency
Pro	Proclamation
SD	Special Decree
UNIDO	United Nations Industrial Development Organization
WHO	World Health Organization
WTO	World Trade Organization

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## B. Acknowledgements

The author acknowledges the assistance of EPA particularly the Acting Director Ato Desalegn Mesfin and his staff who guided the author through the maze of local legislation and ratified international conventions presently governing the chemical industry in Ethiopia.

## C. Terms of Reference

The terms of reference were to develop a case study of Ethiopia's experience in developing/amending national legislative and regulatory frameworks in order to implement the Rotterdam Convention.

Specifically the consultant was to:

- Conduct research on the implementation of the Rotterdam Convention in Ethiopia.
- Develop a written case study on legal approaches in Ethiopia to implementing the Convention.

The content of the case study was to include:

- The review of pesticides and industrial chemicals management within Ethiopia prior to signing the Convention.
  - Actions taken at the national level to revise and/or strengthen the legal and regulatory framework after signing the Convention.
  - Further actions that may be needed to achieve effective implementation of the Convention in Ethiopia.
  - Conclusions and lessons learned of possible interest to other countries.
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## D. Introduction

The Rio Convention of 1992 led to the imposition of global obligations for the protection of health and the environment, leading to the adoption of agreements and conventions. Among such convention is the Rotterdam Convention now incorporating the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The Rotterdam Convention was adopted in September 1998 and ratified by the Government of Ethiopia on the 2nd of July 2002.

The Environmental Protection Authority (EPA) has been mandated by legislation<sup>1</sup> to be the implementing authority for all the environmental conventions negotiated and ratified by the Government of Ethiopia (GoE). The EPA together with the Ministry of Agriculture and Rural Development (MoARD) has been designated as the Designated National Authority (DNA) under the Rotterdam Convention. This mission therefore was primarily based at the offices of the EPA albeit with frequent excursions to the Pesticide Registration Agency (PRA) offices of the MoARD. The inputs of the two agencies, particularly in relation to the absence of control over the chemical industries, have been incorporated in this report.

During the mission consultative talks were taken with various persons employed within institutions involved in the implementation of the Convention. This report acknowledges comments received from all persons, and where appropriate, their contributions are also reflected in various parts of the report. Persons met are indicated in the itinerary which is attached as Annexure 2.

A workshop was conducted prior to the mission for the purposes of identifying gaps which may impede implementation. The findings are included in the gap analysis at Part 3 of the report.

This report contains data and references extracted from an earlier mission report on Ethiopia by the same consultant<sup>2</sup>. References will be indicated where appropriate.

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<sup>1</sup> Pro. No 278/2002 Art. 3

<sup>2</sup> I. Heward-Mills, *Prevention and Disposal of Obsolete Pesticide Stocks in Ethiopia Phase II, Interim Report, February 2004.*

## **1 - Pre-Rotterdam Convention: Background to Management of Pesticides and Chemicals**

The nation of Ethiopia is made up of a federation of 11 states including Addis Ababa. Each region has a semi-autonomous legal and administrative status.

The history of industrial and agricultural chemical inputs in Ethiopia points to a policy directive and encouragement by the Government of Ethiopia (GoE) for increased agricultural and industrial production. This has directly resulted in a rise in importation of chemicals, particularly fertilisers. Problems with data collection on imports, irregular stock movement and inefficient use of the imports resulted over time in the accumulation of hazardous obsolete pesticides amounting to a figure in excess of 3000 tons. Social groups created an awareness of the dangers of pollution to the environment and the ensuing risks to the population. This resulted in prompt action from the GoE who obtained financial and technical assistance from the international community to set up a project for the disposal of the stocks. The government's determination to prevent future accumulation led to search for long-term solutions. Legislative and administrative measures proposed for implementation included:

- improved pesticide management, relating to importation, transportation, storage, retailing, distribution and monitoring;
- the adoption of international regulations;
- the promotion of the correct use of pesticides;
- search for alternatives to chemical pesticides;
- the promotion of and the adoption of agricultural systems such as integrated pest management; and
- awareness-raising and education of stakeholders in the use of chemicals.

The GoE also deployed a system of registration and licensing to control all imports. Obligations were imposed on manufacturers, through their local agents, to provide data as proof of the non-hazardous nature of the products to be imported. In addition the government granted monitoring powers and controls on establishments such as Customs to ensure that imports entering the country complied with requirements established during registration and licensing.

### **1.1 - Framework of Industrial Chemical Use Pre-Rotterdam Convention**

Numerous enterprises in Ethiopia use industrial chemicals. The areas of use include textiles, tanneries and leather, sugar, cement, beverages, plastic and rubber processing, paints, varnish, pharmaceuticals, metal, garages and dry cleaning. Lately there has been an upsurge in the importation of industrial chemicals due to the expansion of the flower industry. This is an area of activity which has been encouraged by the Government because of its export potential. The industries involved in all the noted categories are, generally, small scale with no organised labour force to assert rights of protection. There is no inventory of the chemicals imported into the country and no identifiable controls, primarily because no major institution has been given overall jurisdiction over industrial chemicals.

In 1999 the Environmental Protection Authority developed a National Chemical Profile which sought to identify the capacity and capability of chemical management in Ethiopia. This was followed by the formation of the National Cleaner Industrial Production Project of Ethiopia, which is a non-governmental initiative between Ethiopian private industries and a German-based private NGO involved in public education and training on environmental issues.

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## 1.2 - Institutions Involved in the Management of Chemicals and Pesticides

The purpose of the analysis below is to reveal overlapping jurisdictions and also to show the variety of stakeholders who will be affected by the Convention and who need to participate or to be consulted in order to achieve successful implementation.

The Establishment Proclamation Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia (FDRE) (Pro. No 380/2004) set up various Government departments with defined administrative structures and jurisdiction in relation to the pesticide industry. As already stated there are no established controls over industrial chemicals. However with respect to pesticides and other chemicals, the institutions listed below are noted for having either a major or perfunctory role in control and/or management.

The chemical industry in Ethiopia consists mainly of importers with no established exporter. There is only one formulation plant, namely Adami-Tulu Pesticide Processing Share Company (the company) which has an agreement with the GoE to produce DDT for the Ministry of Health (MoH) for local control of vector diseases. DDT has not been registered; there are therefore neither established controls nor monitoring by any institution. The raw materials are imported mostly from China and formulated by the Company. The resulting product is sent to the MoH for storage and distribution. The total quantities manufactured are also presently not known but the amount is not sufficient for the needs of Ethiopia so the rest is manufactured outside and imported directly by the MoH.

Protective legislative measures for pesticides introduced by the GoE involve a system of licensing and registration. Ethiopia presently has 170 registered pesticides. There is a high probability that the amount in reality is less, as duplication occurs as a result of registration by different importers of same brands but under different trade names.

### 1.2.1 - Ministry of Agriculture and Rural Development

Primary authority of pesticide management in Ethiopia was originally vested in the Ministry of Agriculture (MoA) under Special Decree (SD) No 20/1990. The Ministry has undergone re-organization since the enactment of the Reorganization of the Executive Organs of FDRE (Pro. No 380/2004) and is now known as the Ministry of Agriculture and Development (MoARD). Implementation of the decree is by the Crop Production and Protection Technology and Regulatory Department (CPPTRD).

Under the SD all pesticides are to be registered by a Pesticide Registration Team before importation. The Pesticide Registration Team is made up of 5 officers operating under the CPPTRD. The main duties of the team are to approve applications for registration of pesticides after evaluation by a Pesticide Technical Committee. They are also required to advise on policy matters and assist in the drawing up of regulations. Apart from its registration duties the team also carries out inspections and issues letters of support and of technical competence which enables registered importers and retailers of pesticides to acquire licenses issued by the Ministry of Trade and Industry (MoTI).

Registration is limited to pesticides considered to be "less hazardous, safe, effective and of good quality". The MoARD is also mandated to control all activities concerning pesticides by regulating imports and all related

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business. In addition it is to promote safe handling and appropriate use of pesticides. The MoARD is required to issue subsidiary regulations to cover post-registration inspection and monitoring.

The MoARD has also established regional bureaus through which extension services and agricultural inputs are administered. Monitoring of pesticide use in the regions is supposed to be undertaken by these bureaus. They are required to send data of pesticides used and future requirements to ensure the appropriate pesticides in the right quantities are supplied by the MoARD. Major failures in this system of inventory and data compilation greatly contributed towards the stockpile of obsolete pesticides.

The new ministry is to “set criteria to be fulfilled by traders engaged in the production, supply, and the distribution of agricultural products, and to issue import and export permit for agricultural inputs.” The MoARD has instituted training and awareness programmes and is overseeing the project involved in the disposal of obsolete pesticides. The Ministry is one of the Designated National Authorities (DNAs) under the Rotterdam Convention. The other is the Environmental Protection Authority (EPA).

### **1.2.2 - Environmental Protection Authority**

The EPA originally was part of the Ministry of Natural Resources Development and Environmental Protection. In 1995 all issues concerning the environment were given to the Authority. The Authority was to nominate environmental protection organs and assign to them the responsibility of regulating, monitoring and protecting the environment. The establishing proclamation set up the Environment Protection Council (EPC) headed by the Prime Minister which oversees all activities of the EPA. The EPC has representatives from both the MoH and MoARD. It has been given the statutory mandate to make regulations, seek funds and generally oversee the full implementation of all conventions entered into by the Government including the Rotterdam Convention. The specific areas of operation of this agency and other stakeholders can be found later in this report.

Together with the MoTI, the EPA has also been given jurisdiction and control over the issuing of licences for investment projects. There is no clear definition over its exact area of control with regard to chemical industries. It is also relatively speaking a very recent statutory creation and operates with limited resources and manpower.

### **1.2.3 - Ministry of Health**

The MoH is the main importer and distributor of public health pesticides for vector control particularly of DDT. Formerly, it relied entirely on imports mainly from China. With the establishment of Adami Tulu formulating plant, the foreign exchange allocation of the MoH has been transferred to the Company. Although the entire output of the Company is purchased by MoH it still has to rely mostly on imports as its demands far outstrip the production capacity of the plant.

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#### **1.2.4 - Ethiopian Drug Administration Authority**

The Ethiopian Drug Administration Authority (EDACA) originated as an office under the MoH. On acquisition of the status of an Authority, it has been placed directly under the responsibility of the Prime Minister. Its jurisdiction previously was to control of the distribution of drugs and public health pesticides for the prevention of malaria. An amendment to the regulatory drug proclamation however has extended its jurisdiction to include the registration and control of pesticides which are in the registered list of the MoARD.

The gaps resulting from the apparent overlap of jurisdiction between the Authority, the MoH and the MoARD are a major source of the ineffectiveness of present legislative controls. An expanded critique is contained in the gap analysis below<sup>3</sup>.

#### **1.2.5 - Ministry of Trade and Industry**

Manufacturing industries are controlled through the issuing of licences by the MoTI. A project referred to as “The project on Cleaner Industrial Production” is situated within the ministry and it is also the main agency responsible for the implementation of the Chemical Weapons Convention<sup>4</sup>. The control of the MoTI covers all persons intending to engage in any commercial activity. In the pesticide trade all importers, retailers and manufacturers/formulators must first obtain a certificate of competence or support letter from the MoARD. These letters are issued after the inspection of their business premises by inspectors from the MoTI. The validity of a licence is normally 5 years.

Under Article 41 of Pro. No 67/97<sup>5</sup> special licences are issued by the MoTI under a liberal regime which does not require prior inspection or the usual processes of prior registration. The process is meant to encourage investors in selected areas of rapid growing industries such as flowers, leather and seed protection industries. However laxity has resulted in major gap in controls over chemical imports. The number of active pesticide and chemical importers now standing at about 30 cannot be verified because of the absence of accurate data.

#### **1.2.6 - Ministry of Labour and Social Affairs**

The Ministry of Labour and Social Affairs (MoLSA) was established primarily to ensure the protection of workers. All employers are statutorily obliged not only to create a safe environment for work but are also to keep a record of incidents causing injuries to workers and are to make such records available to inspectors from the MoLSA<sup>6</sup>.

#### **1.2.7 - Federal Government Customs Department**

The Department is the main agency for controlling imports and exports. In addition to its main duty of collecting revenue, a certificate of clearance is required from the MoARD before the release of any imports of pesticides. The Department is required to collaborate closely with inspectors from the MoARD to ensure that no pesticides are released without prior inspection by inspectors at border posts. The process of checking imported products

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<sup>3</sup> Para. 3

<sup>4</sup> See Annex 1c

<sup>5</sup> Para 1.2.4

<sup>6</sup> Annex 1m Art. 92(4)

covers not only documentation but is supposed to filter out both illegal and poor quality goods. The discrepancies between data on pesticides which have been imported and those that are distributed reveal major gaps in the monitoring system. It is the intention of the MoARD to position inspectors permanently at custom posts to ensure effective monitoring.

### **1.3 - Review of Legislative Framework Pre-Rotterdam Convention**

The legislative framework in Ethiopia is mostly institutional and follows basically the same pattern. Once an institution is set up it is then mandated to initiate the relevant legislation for its operation. Although there is inter-departmental consultation before the legislation is promulgated, the result is often an overlap or conflict of jurisdiction.

The legislations of significance to the Convention are listed below and the provisions under annexe 1. Relevant sections are commented on in the accompanying notes.

#### **1.3.1 - Constitution of Ethiopia (Pro. No 1/1995)**

The supremacy of the constitution over all the other legislation is established by Art. 9.1. Art 9.4 is the overarching Legislative provision giving direct effect to the Convention<sup>7</sup>. Ratification of Conventions is the primary responsibility of the federal Government. The regions have the option of adopting federal proposals or promulgating a regional equivalent. There is therefore no automatic application of federal laws and a procedure must be established by EPA to enable the implementation of the Convention in the regions. Proposals below recommend the use of regional counterparts under a general chemical or pesticide regime. The MoARD already has regional bureaus<sup>8</sup> which provide extension services. The EPA is empowered to also see to the establishment of independent regional environmental agencies<sup>9</sup>. There is however no statutory regulation defining their powers and procedures. Legislative proposals below recommend that their jurisdiction is specified and that the appropriate regulations and procedures incorporating the performance of obligations under the convention are drawn up.

The right to a clean and healthy environment is enshrined in the constitution by Arts. 44 and 92<sup>10</sup>, and by Art. 9.4 All international agreements ratified by Ethiopia are an integral part of the law of the land Under Art. 9(1) all state bodies and ministries are obliged to make all related issues paramount. Under Art. 9(2) any legislation including definitions initiated by a ministry or body, which contradicts those contained in related international convention by implication are automatically nullified. This rationale would therefore form the basis and justification for any changes to institutional legislation that might be proposed as part of the process of implementing the Convention.

#### **1.3.2 - Penal Code (Pro. No 158/1957)**

There is a revised code based on the above currently under consideration by the Houses of People Representatives (HoPR). The main administering body is the Ministry of Justice and the code's dual objectives

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<sup>7</sup> See *Annexe 1a*

<sup>8</sup> *Ibid* 1.2.1 para. 4

<sup>9</sup> *Annexe 1k Art. 6*

<sup>10</sup> See *Annexe 1a*

are to establish generally the criminal jurisdiction of the courts and to lay out various penal sanctions. The penal sanctions, contained in the code, would normally prevail over all penal sanctions contained in any legislation unless the provisions of the latter sanctions are deemed more effective. This decision as to which penal sanction to apply, depends to a large extent on the seriousness of the case and the subjective decision of the prosecutor. The provisions of the code particularly those marked with asterisk<sup>11</sup> can be utilised to prevent breaches of most of the provisions cited. However the proclamations themselves do not always create offences and even when they do, no individual or institution is charged with the responsibility of prosecuting and ensuring compliance. Reliance on the general penal code renders the enforceability of the proclamations ineffective. It is recommended that any legislation ensuing from the Convention embodies sanctions with clear guidelines as to their enforceability.

### **1.3.3 - Commercial Registration and Business Licensing (Pro. No 67/1997)**

The proclamation as stated in the preamble is “to consolidate in one decree provisions of law relating to registration and licensing of business to restrain illegal commercial activities.” The MoTI wields considerable power, in terms of imports and in setting up businesses. Reference has already been made to imports of chemicals under special licences. Under article 37<sup>12</sup>, no action may be taken against the commercial interest of any business concern without prior notice to the MoTI. A final regulatory action to ban or restrict the import or registration of chemicals presently permitted into the country, will certainly affect existing business interests. Legislative amendments in relation to this within the chemicals or pesticides industry will require close collaboration of the MoTI.

### **1.3.4 - Pesticide Registration and Control (SD No 20/1990)**

This Special Decree (SD) is the first and the only existing pesticide decree controlling the import and general management of pesticides. The extensive jurisdiction over pesticides granted by the Decree has been whittled down by subsequent legislation particularly the Proclamation on “Reorganization of the Executive Organs of FDRE (Pro. No 380/2004<sup>13</sup>), and the instruments relating to drug administration and public health<sup>14</sup>. The SD defined a pesticide as “any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs, or substances which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant growth regulator, defoliant, desiccant or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.”<sup>15</sup>

The new proclamation “Reorganization of the Executive Organs of FDRE” substantially changed the definition of pesticide originally contained in the enabling Special Decree.

The consequences are the immense gaps in pesticide monitoring and control discussed in this report. The draft

<sup>11</sup> See Annex 1b

<sup>12</sup> See Annex 1d

<sup>13</sup> See para. 1.3.5 below

<sup>14</sup> See paras. 1.3.8 and 1.3.9 below

<sup>15</sup> See Annex 1e

pesticide decree proposed for adoption by this consultant during the last mission<sup>16</sup> uses the internationally accepted definition. The extent that the existing enabling legislation will be affected by the convention is analysed in the gap analysis at section 3. The requirement under Art. 24 of the SD<sup>17</sup> for the reporting of pesticides and chemicals accident-related incidents, to the Ministry is a very crucial part of the implementation of the Convention because the information provided, forms the basis for classification and for the performance of ensuing obligations of the Convention. Gaps which have contributed to the non-compliance of this aspect of monitoring will be found further in this report<sup>18</sup>. Legislative proposals include centralised drafting of a new pesticide law containing wide and comprehensive definitions which incorporate those contained in the Convention

### **1.3.5 - Re-Organization of the Executive Organs of FDRE (Pro. 380/2004)**

Pesticide under this new proclamation is redefined and limited to “any substance, chemical, compound or mixture thereof or a living organism intended for use as an agricultural input to prevent or control pests”.

By Art.1 additional departments were added to the MOA which was then renamed “Ministry of Agriculture and Rural Development (MoARD).<sup>19</sup>

### **1.3.6 - Investment Proclamation (No 37/1996)**

This established the Ethiopian Investment Authority, to encourage and promote and accelerate economic growth and widen participation by foreign investors. Areas of operation include production of electrical energy, air and rail transport, pharmaceuticals, chemical and fertilizer industries<sup>20</sup>.

This is also one of the instruments whose enactment actively encouraged and led to excessive imports of pesticides and other chemicals.

### **1.3.7 - Re-establishment and Modernization of Customs Authority Proclamation (1997)**

This proclamation empowers the Customs Authority to control and prohibit import and export of all prohibited or restricted goods<sup>21</sup>.

### **1.3.8 - Drug Administration and Control (Pro. No 176/1999)**

According to the Preamble, the objective of this Act is “to ensure efficacy and quality of drugs, to maintain proper production, distribution and use of drugs and to deter illicit production, traffic and use of narcotic drugs and psychotropic substances”<sup>22</sup>. In essence it is to establish an effective system of drug administration and control of drugs. The definition of drug is “Any substance or mixture of substances used in the diagnosis, treatment, mitigation or prevention of a disease in man or animal to include pesticides”.

<sup>16</sup> *Prevention and Disposal of Obsolete Pesticide Stocks in Ethiopia Phase II Interim report February 2004 page 74*

<sup>17</sup> *See Annexe 1e*

<sup>18</sup> *See gap analysis in part 3*

<sup>19</sup> *See Annexe 1f*

<sup>20</sup> *See Annexe 1g*

<sup>21</sup> *See Annexe 1h*

<sup>22</sup> *See Annexe 1i*

Pesticide is subsequently defined as “Any chemical, mixture, compound or living organism used to prevent, control or destroy pests”.

Art.16. provides for the registration of “drugs” which as stated above includes certain categories of pesticides. Although the Authority’s jurisdiction covers pesticides, the bulk of its regulations covering export, import, trading, prescription, storage, disposal, cessation and recording, refer exclusively to and have more relevance to “narcotic and psychotropic drugs” than pesticides. Gaps resulting from the shared jurisdiction with MoARD, over the registration of pesticides, are a major impediment to the proper control and monitoring of the pesticide industry. A major policy shift is required in the area of pesticides to enable the successful implementation of the Convention.

### **1.3.9 - Public Health Proclamation (No 200/2000)**

Although this Proclamation makes no reference to pesticides, the MoH is a major stakeholder in the industry because of its sole monopoly over the distribution and use of DDT which is neither registered nor controlled by any agency<sup>23</sup>. Apart from the issuing of guidelines for the safe use of pesticides the MoH is not involved in any legislative procedures in relation to pesticides or other chemicals. EDACA is an integral part of the Ministry and the overlap of jurisdiction between EDACA and the MoH and the MoARD has only exacerbated the confusion. As stated earlier the implementation of the Convention requires close collaboration between the three agencies.

### **1.3.10 - Establishment of Environmental Protection Organs (Pro. No. 295/2002), Environmental Impact Assessment (Pro. No. 299/2002), Environmental Pollution Control (Pro. No. 300/2002)**

These are the three complementary pieces of legislation which established the EPA and defined its powers and jurisdiction. Pro. 295/2002 repealed the earlier Pro. 9/1995 and assigned the responsibility of environmental protection to individuals and organizations to ensure that use of hazardous chemicals does not endanger humans and the environment. It was also to ensure there was sustainable use of environmental resource, to avoid possible conflicts of interests and duplication of efforts<sup>24</sup>. Pro. 300/2002 further extended the powers and functions of the Authority, contained in Pro.295/2002<sup>25</sup>.

One of the main purposes of the EPA is to assist in the development of policies and strategies for the implementation of international agreements. Under Arts. 8 and 9 of Pro.300/2002<sup>26</sup> EPA has been given the full statutory mandate. It is to collaborate with other Government institutions to make regulations, seek funds and generally oversee the full implementation of all conventions entered into by the Government, including the Rotterdam Convention. Therefore on the face, there are no legal barriers to achieving the full implementation of the Convention. The problem is overcoming the struggle for jurisdictional control by the various institutions. It is necessary for EPA to assert some uniformity and certainty in the relevant legislation in order to ensure efficient use of the resources available. The following passages recommendations and conclusions will touch on the issues raised and attempt to address them further.

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<sup>23</sup> See Annexe 1j

<sup>24</sup> See Annexe 1k

<sup>25</sup> See Annexes 1l

<sup>26</sup> See Annexe 1l



### **1.3.11 - Labour Proclamation (No. 42/1993 Amended by Pro. No. 377/2003)**

The main aim of this proclamation is to generally protect the health and safety of workers<sup>27</sup>. Those who handle or use hazardous substances are to be properly equipped, trained and provided with regular medical examination.<sup>28</sup>

The compilation of records of incidents involving the use of pesticides or chemicals is an obligatory provision under the Convention. Under articles 5, 6 and 7 of the Convention, the taking of a final regulatory action and or listing of a severely hazardous pesticide formulation or restricted chemical, relies to a large extent on the provision by proposing parties, of documentation, showing description of incidents relating to the use of a particular pesticide or chemical.<sup>29</sup> As stated above<sup>30</sup> all employers are statutorily obliged to keep a record of incidents causing injuries to workers and are to make such records available to inspectors from the MoLSA. Legislating on the procedures for compliance with this requirement and the coordination of activities with MoLSA will therefore be an essential aspect of the implementation of the Convention.

## **2. - Background to the Ratification of the Rotterdam Convention**

The reasons for the ratification of this Convention have already been stated at the beginning of this report.<sup>31</sup> The objective of the Convention generally stated is to institute shared responsibility between the parties in relation to international trade in hazardous pesticides and industrial chemicals. It aims through cooperative efforts and the institution of an early warning system to protect environment and human health and to provide means for information exchange to assist national decision-making processes. The role of the Environmental Protection Authority which has the primary statutory mandate for the implementation of all conventions features prominently in this part of the report.

### **2.1 - Post-Rotterdam: Implementation of Legal Obligations under the Rotterdam Convention**

Ethiopia's mode of adoption is to simply enact a proclamation (No. 278/2002), a single page document, which restated the fact of ratification and entrusted the responsibility for further legislative actions primarily on EPA. The proclamation therefore emphasises the original jurisdiction of the EPA as the main body responsible for implementing international conventions. Article 3 further extended the powers of the Authority by authorising it to carry out its designated tasks in cooperation with the federal and regional agencies.

The Authority is currently working with the United Nations Industrial Development Organization (UNIDO) on the development of a National Implementation Plan (NIP) with financial assistance from GEF.

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<sup>27</sup> See Annex 1m

<sup>30</sup> Para 1.2.6

<sup>28</sup> *Ibid* Art. 92 (3, 4, & 5)

<sup>31</sup> See Part 1

<sup>29</sup> See part 1 annex iii (g) of the Convention



## 2.2 - Legal Obligations under the Convention

The essence of the main obligations under the convention can be categorised as:

- Nominating a Designated National Authority to institute the relevant measures for compliance with the Convention;
- Instituting a system of networking with national and international institutions;
- Monitoring; and
- Exchanging information on export, import and use of chemicals defined as including pesticides.

At the time of this mission a workshop had been organised, facilitated by representatives from UNITAR and the Secretariat of the Rotterdam Convention. Participants were drawn from a variety of places including the federal and regional EPA, MoARD, Ethiopian Customs Authority, MoLSA, MoTI, Ethiopian Electric Power Corporation, research and educational institutes and NGOs such as the Safe Environment Association and the Ethiopian Cleaner Production Center.

A resolution passed at the end of workshop proposed the formation of a Joint Committee of DNA with representatives from stakeholders particularly from EPA and MoARD. The two DNAs from MoARD and EPA were mandated to establish a working plan for the implementation of the Convention.

The following paragraphs list the legal obligations and comment on the issues arising.

## 2.3 - Analysis of Articles Imposing Legal Obligations and State of Implementation

Ethiopia is not yet an exporting country and the obligations dealing with exports will be excluded from this report.

Legally binding obligations on importers under the Convention are mainly found under the Prior Informed Consent (PIC) procedures and contained in the following articles:

### 2.3.1 - Definitions and Scope (Articles 2 and 3)

As is stated in the preamble to this article 2, the definitions listed are limited to the peculiar purposes of the Convention. The essence of the definition is for the limited purpose of controlling the trading of hazardous chemicals between parties to the Convention. Since local legislation applies for wider purposes the discussion below will attempt to illustrate areas where modifications will be necessary to incorporate the stated purposes of the Convention.

- (a) "Chemical" as defined in the Convention excludes living organism but includes all pesticides, severely hazardous formulations and industrial chemicals. In local legislation, "chemical" is excluded from the main pesticide decree (Pesticide Registration and Control SD No 20/1990). However, under the EDACA<sup>32</sup> regime which registers and controls pesticides used for household pests and vector disease control, the enabling

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<sup>32</sup> See *annexe 1e Art. 3*

decree defines drug as including “pesticide” which is subsequently defined as “Any chemical, mixture, compound or living organism used to prevent, control or destroy pests”.

- (b) “Banned chemical” in the Convention denotes final prohibition, whereas the SD does not ban per se any pesticide but merely “prohibits” until and unless a pesticide is registered<sup>33</sup>.
- (c) Words like (c) “Severely restricted chemical” (d), “severely hazardous formulation” and (e) “final regulatory action” have special meanings within the context of the convention and are not found within the local legislation.

In respect of “export” and “import” (f) the preamble to the SD states that the essence of the promulgation is to “regulate the manufacture formulation registration import, export storage, transportation, sale, distribution and use of pesticides”.

Article 21 allows the importation of pesticides with special licenses for research purposes. Article 22 forbids the importation of any pesticide without an import certificate issued by the Ministry.

Apart from the above articles, the decree neither defines nor makes further references to movements of pesticides in, out or across the country.

## Comment

The clash of jurisdiction over the control of pesticides and the absence of control over industrial chemicals has been commented on in this report. The promulgation of an updated proclamation on pesticides and chemicals by the GoE is long overdue. A new draft pesticide law attached to the mission report, already referred to, recommended the incorporation of definitions taken from the “International Code of Conduct on the Distribution and Use of Pesticide<sup>34</sup>. The remaining question as to which body or institutions should continue to retain their original legislating jurisdiction is a matter for a policy decision which requires careful consideration. The procedures for listing of pesticides and chemicals and for the performance of obligatory tasks under the Convention are to a large extent dictated by the classifications and definitions contained in article 2. For example, an application for adding to the annexed list of pesticides under article 6 is specifically limited to “severely hazardous pesticide formulation”. As indicated above there is no agreement as to the definition of pesticides. The problem is compounded further by the grant of jurisdiction and legislative power in the area of pesticides and some chemicals to varied federal and regional institutions. The legislative action commended below is to centralise legislation in order to achieve uniformity.

## Legislative action required

- The drafting by EPA in collaboration with relevant agencies of updated **PRIMARY** legislation to cover the registration, importation, exportation, marketing, transportation, use, monitoring and general control of pesticides and chemicals.
- A clear definition of what constitutes “pesticides” and “chemicals” using internationally accepted definitions contained in this Convention as well as other related international instruments<sup>35</sup>.

<sup>33</sup> See above 1.3.4

<sup>34</sup> FAO, *International Code of Conduct on the Distribution and Sale of Pesticides*, 2002, fn 5 page 75

<sup>35</sup> *Ibid.* fn 21

- Legislation should include a centralised system of registration for all pesticides and all chemicals.
- Registration should effectively control and exclude from exportation, importation and use pesticides and chemicals considered hazardous to health and the environment.
- The subject area covered by the legislation require extension to incorporate words such as banned, restricted, import, export, transportation and others used in this and other related international conventions dealing with chemicals and or pesticides.

### 2.3.2 - Scope (Article 3)

This article limits the area of operation of the Convention to (a) banned or severely restricted chemicals; and (b) severely hazardous pesticide formulations. Article 3(2) exempts certain categories of chemicals and pesticides such as narcotic drugs, wastes, chemical weapons, chemical food additives and chemicals used for research purposes or for personal use.

#### Comment

The comments above<sup>36</sup> and accompanying legislative actions recommended equally apply here. The most relevant institution is EDACA. Article 3(2) of the Convention ousts its main area of jurisdiction that is, control over “narcotic and psychotropic drugs”. EDACA’s power of registration over household pesticides and chemicals under its enabling legislation (Proclamation for Drug Administration and Control, No 176/19990) however, requires not only legislative modifications but substantial policy changes.

#### Legislative action required

- The present proclamation requires amendments to redefine words like “drugs” “chemicals” using relevant international definitions contained in Conventions applicable and most of which have been ratified by Ethiopia.
- Its areas of jurisdiction need amendment to clarify and distinguish it from those performed by other institutions. Proposals below suggest centralised registration for all pesticides and chemicals.

### 2.3.3 - Designation and Resourcing of National Authorities (Article 4)

This article imposes a mandatory obligation on parties to the Convention to appoint and to resource DNAs.

#### Comment

These obligations have been partly implemented by the designation of the EPA, and the MoARD, the two major stakeholders, as the designated authorities. The personnel involved are already employees of the two ministries and there is no evidence of specific budgetary allocation to meet the additional workload. Article 4 allows the designation of more than one national authority to perform the functions under the Convention. The gap analysis below<sup>37</sup> exposes some of the difficulties faced by GoE. These are the absence of manpower, expertise and resources, and the waste that results from the duplication of jurisdiction to differing authorities. As with most

<sup>36</sup> Para 2.3.1

<sup>37</sup> Part 3

developing countries, competing priorities often means project such as this whose role in national affairs is not apparent on its face as a matter of life and death, gets sidelined. The successful implementation of the convention by the two DNA'S, rests on strong legislative directives allocating specific responsibilities under the Convention.

Recommendations made in paragraphs 3.1 and 3.3 below include designating one primary legislating body to initiate laws for the control of pesticides and chemicals. The primary legislation would designate subsidiary agencies, and define their powers and responsibilities under that legislation and other related instruments including the Convention. With regards to the resourcing, EPA has had a successful trial run in obtaining external financial assistance in relation to the implementation of the Stockholm Convention. In that respect it is hoped that the process can be duplicated in relation to this Convention.

#### **2.3.4 - Procedures for Banned or Severely Restricted Chemicals: Notification of Final Regulatory Action (Article 5 - Annex I)**

The Convention requires Parties to notify the Secretariat when final regulatory action on such category of chemicals has been taken and to attach certain information. Accordingly, the following administrative actions are necessary:

- i. Obtaining Decision Guidance Document on all annex I chemicals.
- ii. Collating import responses including properties, identification and use.
- iii. Sending responses of Final Regulatory Action (to ban, severely restrict or consent to the import) within 9 months of taking action.
- iv. Communicating action to all stakeholders i.e. importers, industries, customs.

#### **Comment**

As already stated above there is presently no institution nor established procedure to enable compliance with this provision. EPA is empowered by Art. 9 of Pro. No 295/2002, in consultation with the competent agencies, to "formulate, or initiate and coordinate the formulation of" policies, strategies, laws and programmes to implement international environmental agreements to which Ethiopia is a party; and upon approval, ensure their implementation. The MoTI presently hosts the Chemical Weapon Agency. It is the responsibility of that Agency to implement the Convention. Under Pro. No 30/1996<sup>38</sup>, the Ministry is empowered like EPA "to undertake, in cooperation with the appropriate government organs, all acts necessary for the implementation of the Weapons Convention." The Agency has already acquired the skill and manpower, albeit limited, to monitor and report the movement of chemicals listed under the convention to the secretariat of the Convention.

#### **Legislative action recommended:**

- The EPA to nominate and seek the cooperation of the most appropriate institution to manage and control chemicals.
- To prepare and initiate primary legislation for registration and to control import, export, manufacture and use of chemicals including those listed by the convention.

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<sup>38</sup> *Annexe 1c Art.3*

- Appoint and designate responsibilities to persons and or bodies to include the performance of obligations under this and other related conventions.
- Empower the issuing of subsidiary regulations to cover procedures for undertaking legislative tasks, including monitoring, collation of data and training,

Or alternatively

- To seek amendments to the enabling legislation of the chemical weapons agency<sup>39</sup> placing the control and management of all chemicals under its jurisdiction and to include the legislative proposals made above.

### 2.3.5 - Procedures for Severely Hazardous Pesticide Formulations (Article 6 - Annex 11)

This article establishes a procedure whereby a developing country or country with an economy in transition can initiate the listing of a pesticide formulation considered as severely hazardous.

#### Comment

The listing of pesticides in use in Ethiopia is by trade name, common name and approved use. The country lacks the resources to accumulate the necessary data required to achieve the de-listing of annex iii pesticides. There are no regulations directing a specific person or personnel to undertake the responsibility.

There is no established procedure for the removal from the list of a pesticide found to be hazardous. De-registration is really by default. There might be a lapse of registration or a deliberate decision not to renew registration.

Under Art. 24 of the SD<sup>40</sup> accidents in connection with the transportation, storage, marketing, use or treatment otherwise of a pesticide are to be reported to the MoARD. Under the Convention, this would form an essential basis for the compilation of data leading to the listing of a hazardous chemical under this article. The lack of expertise in recognizing pesticide poisoning and in identifying specific product involved, the absence of procedures for compliance with notification and the non designation of this task to a responsible person or body had greatly contributed to the absence of data in this area.

The problem of fragmentation of legislation on pesticides and the overlapping jurisdiction of competing agencies will render the necessary amendment of domestic legislation an arduous task. Legislative proposals made by this consultant and referred to earlier are included in the legislative action recommended below.

#### Legislative action recommended:

- The re-registration of all pesticides currently in use in Ethiopia under a new pesticide regime.
- The EPA to initiate a policy decision with all stakeholders to adopt international classification and definition of pesticides presently in use in Ethiopia.
- Place the management of all pesticides generally, using the internationally adopted definition, under the management and control of an institution.

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<sup>39</sup> See Annex 1c

<sup>40</sup> See Annex 1e

- Amend the present data requirement from the importer to include essential data requirements under international standards such as: distinguishing name, active ingredients, toxicological data, efficacy trials, residue trials, proposed use, disposal methods and hazard ratings, environmental factors, including affected non-targeted species; human and animal health hazards.
- Labelling requirements should generally be strengthened for easy identification and should be suitable for local conditions. It should take into account the diversity of language and level of literacy and also comply with international standards.
- Legislation should indicate clearly what is absolutely prohibited, restricted and exempted.
- Draw up mandatory procedures for making returns in respect of incidents, and for transmitting import responses under Arts. 10.2 and 10.4.
- Identify persons or entities who bear responsibility for making returns and impose penal or administrative sanctions for defaults in making such returns.
- The requirement of further regulations must be specified legislatively.

### **2.3.5 - Legislative and Administrative Measures to Ensure Timely Decisions Regarding Imports of Listed Chemicals under Annex III (Article 10)**

A party to the Convention, in respect of a chemical listed under Annex III must convey a written response to the Secretariat. The response must indicate its intention in respect of future imports of that chemical as specified Article 10(4), that is whether to refuse import or to consent with or without conditions. The absence of regulatory body over chemicals generally has rendered the performance of this article impossible.

Comments stated in section 2.3.4 above and the recommended legislative procedures above are equally applicable here: the EPA has to first initiate the appointment of a regulating body and then mandate by way of regulations to monitor and control the chemical industry including the performance of obligations under international conventions.

For pesticides, the mission was informed that responses had been prepared in respect of 11 pesticides by MoARD. No record of remittance to the Secretariat was made available. This is partly due to reasons already stated above, i.e. fragmented control and management, absence of procedure for classification of the relevant pesticides, confusion in respect of registration, absence of procedures for deregistration and absence of procedures for the transmission of the responses.

#### **Legislative action recommended:**

- Same as above but specifically any legislation should indicate clearly what is absolutely prohibited and exempted to comply with art. 10 (6).
  - Amend the present categorisation of pesticides to enable compliance with art. 10 (5)
  - Set out procedures for the transmission of the responses.
  - Procedure should designate office or officials to undertake compilation and transmission of responses to the Secretariat and to stakeholders.
  - Issue regulations on procedures for the performance of obligations under this article.
  - Impose time limits for performance.
  - Impose administrative or penal sanctions for non performance.
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## 2.4 - Review of Activities Relating to Other Relevant International Conventions

TITLE	DATE	PURPOSE	RESPONSIBLE AUTHORITY	IMPLEMENTATION
Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Ozone Depleting Substances	Ratified January 1996	Reduce and ultimately ban the use of substances depleting the ozone layer	National Meteorological Services Agency	National Ozone Team has been established and draft legislation has been prepared for adoption and promulgation
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Ratified on 12 Apr 2002 (Pro. No 356/2002 - Amendment ratified through Pro. No 357/2002)	Seeks to ban the transboundary movement and to control the management of hazardous waste	Environmental Protection Authority	No evidence of implementation until its utilization by the obsolete pesticide project during transportation of pesticides to Finland for disposal
Bamako Convention of 2002	Acceded in 2002 (Pro. No 355/2002)	Applies the Basel Convention specifically to the needs of Africa	As above	As above
Stockholm Convention on Persistent Organic Pollutants (POPs) 2001	Ratified in 2002 (Pro. No 279/2002)	Bans the use of POPs	Environmental Protection Authority	Draft regulation has been prepared and is awaiting submission to Council of Ministers for final promulgation

### Comment

The table above shows heightened awareness of environmental issues and the desire on the part of the GoE to take protective measures to protect the health and environment of the people of Ethiopia. The theme running through the above conventions is the imposition of restrictions on the use and movement of chemicals and pesticides common to all the conventions. Stockholm Convention lists and restricts “persistent organic pollutants” ten of which are also listed under the Convention.

The Convention excludes “Chemical waste” and “chemical weapons” although some of the listed chemicals under the two categories fall under the jurisdiction of the Convention. The difficulty in translating the desire to protect health and environment, through the use of international instruments, into actual implementation is the subject matter of the gap analyses below. The recommendations take into account the need to adopt a common address to all the issues raised in all the ratified conventions in order to minimise the waste of resources.

### **3 - Gap Analysis and Recommendations**

Of all the conventions signed by the GoE the Stockholm Convention seems to have received the most comprehensive attempts at implementation and the reasons for this are quite obvious. The convention sets out the processes for implementation with clear time limits. The Convention was signed on 17th May 2002 and received ratified on 2nd July 2002 by the GoE. The EPA secured funding from GEF and established a steering committee to prepare a National Implementation Plan (NIP). It also organised workshops with stakeholders, recruited an international consultant to give a two-day training to teams to undertake inventory and provide assessment of chemical management.

After review of the inventory and assessment by a Steering Committee a draft bill was prepared and submitted for further comments. The draft bill has now been submitted for promulgation and the NIP is also ready for submission to the Government and to the Stockholm Secretariat. This was prompted by article 7 under the Convention which required member countries to develop a NIP and communicate same to the Conference of Parties within two years.

Apart from the setting up of the two DNAs and the organization of a workshop most of the obligations under Rotterdam Convention remain unfulfilled. Types of problems commonly experienced by implementing agencies in developing countries such as Ethiopia have been included in the commentary above. It is very clear that lack of manpower, expertise and resources play a prominent role. However such resources as are available are often wasted by duplication of efforts. The common objectives among Stockholm, Basel and Bamako have been highlighted in numerous publications yet the approach to harnessing the benefits under the conventions seem to be piecemeal. This has resulted in unenforceable and or inappropriate legislative measures.

Ethiopia's problem is also compounded by a federal system which cannot guarantee that the benefits of whatever legislation passed by federal agencies impacts regionally.

#### **Recommendations:**

These are threefold; the first tackles the legal framework which involves the policy and institutions directing the implementation of the convention; the second looks at the actual legislative contents and finally the resources available to ensure effective implementation are considered.

#### **3.1 - Legal Framework**

The Proclamation to ratify the Rotterdam Convention as already stated above has entrusted the primary responsibility for further legislative actions on EPA. The EPA is mandated however to do so in collaboration with other federal and regional stakeholders. It is vital to reduce the waste of resources resulting from the duplication of current legislation on pesticides and chemicals to ensure uniformity of application and compliance with international standards. This report has also stated the need for policy decisions which may result in the loss of power and jurisdiction to certain institutions. This bold step must be taken however to ensure that the aims of controlling and excluding hazardous chemicals are achieved not only as between parties to the Convention but generally.

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**Proposals:**

- To establish one designated agency to draft primary legislation for the control of all chemicals and or pesticides.
- The legislation must set out procedures, designate federal and regional institutions, and assign specific obligations to be carried out under the legislation.
- The legislation must define the nature of relationship and the extent of responsibility between them.

**3.2 - Legislative Contents**

There is always the presence of the competing issues between local and international suitability. It is also necessary to avoiding piecemeal legislation to ensure full coverage over related issues, thus avoiding frequent need to amend or re-legislate.

It is recommended that legislative content:

- Be harmonized by reference to all existing relevant local and international legislation with respect to definitions and translations.
  - Ensure legal compliance with international standards.
  - Establish a clear demarcation of jurisdiction between stakeholders and relevant institutions.
  - Spell out powers of appointed bodies.
  - Set procedures for the implementation of specified provisions.
  - Provide for the enactment of subsidiary regulations within strict time limits.
  - Clearly define the personnel, institutions their functions and powers.
  - Reduce ineffective legislation by allocating responsibility.
  - Indicate time limits for performance.
  - Impose preventative rather than punitive measures.
  - Include the right to pursue actions and enforce obligations and punish for breaches.
  - Allocate responsibility for mandatory data collection.
  - Impose stringent registration procedures.
  - Adopt international evaluation criteria and standards.
  - Clearly define areas of liability.
  - Impose time limits for the completion of administrative functions.
  - Include judicial procedures to establish liability and to compensate victims.
  - Institute procedures to ensure regular updating without the need for further legislative amendments.
  - Include penal provisions and sanctions against illegal importation and trading wanton disposal; misleading or false adverts; hazardous repackaging; dealing in adulterated products; and making false returns.
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### **3.3 - Infrastructure and Capacity Building**

Budgetary allocations in a developing country such as Ethiopia are often meagre and involve the balancing of priorities. Legislative provisions must be made to ensure proper allocation and use of resources. The Convention, under Article 16, makes provisions for developing countries and countries with economies in transition to receive technical assistance from developed countries. It is recommended that:

- Primary legislation empower primary institution to independently obtain international resources and apply same equitably to all the regions.
- Subsidiary legislation spell out training procedures and allocate responsibility for training stakeholders.
- Due to the federal status of Ethiopia, the allocation of an equitable portion of resources so obtained impose reciprocal mandatory legislative duties on regions counterparts to perform obligations imposed by the Convention especially the monitoring, compilation and forwarding of data under articles that will assist in the re-listing or delisting of a chemical, within a time frame.

### **4 - Conclusions and Lessons Learned of Possible Interest to Other Countries**

The priorities established by the GoE in response to its specific needs are the enhancement of agricultural and industrial production and the reduction of poverty by the creation of jobs. None of these goals are attainable without a healthy environment.

It is also necessary for the country to see itself as playing a more prevalent role in the future in world trade, not only as an importer but a potential exporter. The legislative changes adopted today should hold true for all time and purposes without the need to make frequent changes.

Ensuring consistency with international codes and regional legislation is an essential aspect of any modern-day legislation. Further the success of any legislation is more easily realised where compliance is achieved by obedience rather than through excessive penal measures. The experience in Ethiopia shows that legislative breaches occur more out of lack of knowledge than from wilful disobedience. International trade is often seen as being conducted solely for the benefit of developed countries. It is of vital importance that public education emphasises the benefits accruing to the country from the Convention to ensure its successful implementation.

### **5 - References**

- EPA: National Profile to Assess the National Infrastructure for the Management of Chemicals in Ethiopia, 1999.  
EPA: State Of Environment Report for Ethiopia, 2003.  
FAO: Guidelines for Legislation on the Control of Pesticides, 1989.  
UNEP: Legislating Chemicals, 1995.
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## 6 - Annexes

### Annexe 1

#### a. Constitution of Ethiopia (Pro. No 1/1995)

- Art. 9.1 The Constitution is the supreme law of the land. And it applies to all state bodies and ministries. Any law or decision which contravenes the constitution is rendered a nullity.
- Art. 9.4 All international agreements ratified by Ethiopia are an integral part of the law of the land.
- Art 37.1 Everyone including associations or groups of persons have the right to bring a (justifiable) matter to, and to obtain a decision or judgement by, a court of law or any other competent body with judicial power.
- Arts. 44 and 92 Guarantee individual rights to a clean and healthy environment.
- Art. 51.8 The Federal Government formulates and implements foreign policy negotiates and ratifies international agreements.
- Art. 55 Vests ultimate legislative and ratification power in the HoPR.
- Art. 77 Vests the Council of Ministers the implementation of laws adopted by the House of Representatives.
- Art. 52.1 All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States, are reserved to the States.
- Art. 55.2 It is the responsibility of the HoPR to enact laws covering specific areas such as the labour code, transportation, uniform standards of measurement and the penal code. The States may however, enact penal laws on matters that are not specifically covered by federal legislation.

#### b. Penal Code (Pro. No 158/1957)

- Art 65 Gives indemnity for professional acts in the course of duty if done in accordance with "accepted practice of the profession". Civil liability is not affected by this indemnity clause.
- Art. 86 Gives the judiciary the discretion in determining sentences, taking into account antecedents such as motive, standard of education, etc.
- Art. 88 Fines are pegged to the dollar and vary from 1 dollar to \$5,000.
- Art. 89 A judge can impose a fine together with a term of imprisonment.
- Art. 90 A fine not exceeding \$10,000 is imposed for persistent offenders or for offences motivated by economic gains.
- \*Art.100 Enables victims of offences to be compensated during criminal proceedings. Compensation includes the restitution of goods damaged and the cost of medical treatment.
- Art. 101.3 The compensation may be assigned to the state for the purposes of enforcement.
- Art. 121 For minor offences, judicial discretion may allow flogging, a mere apology or other forms of appropriate punishment.
- \*Art. 146 A trading licence may be suspended or withdrawn for one year or may be completely revoked in the case of a persistent offender.
- \*Art. 147 In addition to any other penalty a court may order the closure or winding up of any establishment or undertaking used in the commission of an offence.
- \*Art. 363 Importing or exporting goods without payment of duty or taxes due attracts a fine not exceeding \$10,000 or imprisonment, together with the possible forfeiture of the property involved in the commission of the offence.
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- \*Art. 506 Contamination of water attracts an imprisonment of 5 years to 15 years or less depending on the degree of guilt.
- \*Art. 507 Contamination of land attracts a fine or imprisonment not exceeding 5 years.
- \*Art. 510 The import, export, transportation, storage, offering for sale or distributing poisons, drugs or narcotic substances without lawful authority is punishable with imprisonment for not less than 3 months and a fine not exceeding \$20,000.
- \*Art. 511 Punishment for the manufacture, adulteration and sale of products which endanger human health is imprisonment up to 5 years plus a fine. Where the offence is aggravated by the large quantities of goods involved the fine is increased to \$20,000.
- Art. 576 Offences committed by body corporate are punishable by legal suspension, prohibition or dissolution or punishment of directors or other individuals involved.
- Art. 730 An absolute time limit of one year is imposed for the prosecution of petty offences.

**c. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Pro. No. 30/1996)**

- Art. 2 Declares the ratification of the Convention.
- Art. 3 Empowers the MoTI to undertake, in cooperation with the appropriate government organs, all acts necessary for the implementation of the Convention.

**d. Commercial Registration and Business Licensing (Pro. No 67/1997)**

- Art. 3.1 Provides that the provisions of the proclamation apply to all commercial enterprises except small-scale activities.
- Arts. 17 and 21 Authorise the issuing of business licences for various imports and exports and for carrying on business.
- Art. 37 Provides that any government institution making policy decisions which may affect commercial activities shall consult and agree with the MoTI.
- Art. 41 The Ministry may “in the national interest” allow imports under special licence.

**e. Pesticide Registration and Control (SD No 20/1990)**

- Art. 3 Prohibits the manufacture, importation, sale, storage, and transportation of all pesticides unless registered by the MoARD.
- Art. 4 Sets out the procedures for registration.
- Art. 15 Establishes the Pesticide Advisory Committee.
- Art. 19 Regulates the appointment of inspectors.
- Art. 24 Provides that accidents in connection with the transportation, storage, marketing, use or treatment otherwise of a pesticide are to be reported to the MoARD.

**f. Reorganization of the Executive Organs of FDRE (Pro. 380/2004)**

- Art.1 The MOA is now “Ministry of Agriculture and Rural Development” (MoARD).
- Art. 4.3 Additional agencies were made accountable to the MoARD including Disaster Prevention, Agricultural Research, Institute of Biodiversity Conservation and Research, Rural Energy Development, National Veterinary Institute and Seeds and the Grain Enterprise.

**g. Investment Proclamation (No 37/1996)**

It established the Ethiopian Investment Authority, to encourage and promote and accelerate economic growth and widen participation by foreign investors. Areas of operation include production of electrical energy, air and rail transport, pharmaceuticals, chemical and fertilizer industries.

**h. Re-establishment and Modernization of Customs Authority Proclamation (1997)**

Empowers the Customs Authority to control and prohibit import and export of all prohibited or restricted goods.

**i. Drug Administration and Control (Pro. No 176/1999)**

Preamble defines drug as “Any substance or mixture of substances used in the diagnosis, treatment, mitigation or prevention of a disease in man or animal to include pesticides”.

Pesticide is subsequently defined as “Any chemical, mixture, compound or living organism used to prevent, control or destroy pests;”

Art. 16 No drug whether imported or produced locally shall be put into use unless registered by the Authority. Registration is valid for 5 years.

Art. 33 Acts such as, impeding the work of an inspector, transfer of license, sales of drug without license, trading in drug without certificate of competence, dispensing drugs in excess or less quantity than that justified, purchasing drug from a person not licensed, unfair trade practice by counterfeiting, adulteration mislabelling buying or selling substandard or expired drugs constitute offences and attract penal sanctions of imprisonment as well as fines.

Art. 34 Deals with offences “facilitating the abuse of Narcotic Drugs and psychotropic substances”.

Art. 35 Authorises the confiscation of properties used in the commission of offences under articles 33 and 34.

Art. 39 The running of a drug trade in the absence of professional pharmacy personnel is prohibited

**j. Public Health Proclamation (No 200/2000)**

Art. 6 appoints inspectors whose powers and duties include “entering and inspecting premises, “appropriating any article or material which is the result of any act committed contrary to law or used for the commission of illegal act or has connection with the commission of the illegal act”. In addition they can also detain articles appropriated, order closure of buildings, take samples, cause the destruction of articles or goods if dangerous to health, cause the institution of prosecution.

Art. 20 (2) The penalty for disposal of waste, outside garbage container, in a manner that can cause the contamination of the environment or create a health hazard is at least 3 months up to 3 years imprisonment and a fine.

**k. Establishment of Environmental Protection Organs (Pro. No 295/2002) and Environmental Impact Assessment (Pro. No. 299/2002)**

Establishment of Environmental Protection Organs (Pro. No 295/2002):

Art. 2.5 Defines “Hazardous substance” as any substance in the solid, liquid or gaseous state or any plant animal or micro organism that is injurious to human health or the environment;

Art. 2.8 Defines "Region" to include any of those parts of Ethiopia specified in the Constitution as a Regions under.

- Art. 2.9 "Regional Environmental Agency" means any regional government organ entrusted, by that Region, with a responsibility for the protection or regulation of the environment and natural resources.
- Art. 3.1 The Authority is re-established as an autonomous public institution of the Federal Government.
- Art. 3.2 The Authority is made accountable to the Prime Minister.
- Art. 6 Coordinates measures to: 1) ensure that the environmental objectives provided under the Constitution and the basic principles set out in the environmental Policy of Ethiopia are realized; 2) prepare, review and update, monitor and enforce environmental policies, strategies and laws in consultation with other agencies; 3) liaise with other agencies and support their capacity development; 4) establish a system for environmental impact assessment of public and private projects; 5) review environmental impact study reports; 6) in consultation with the competent agencies, set environmental standards and ensure compliance with those standards; 7) in consultation with competent agencies, take part in the negotiations of international environmental agreements and, as appropriate, initiate or cause the initiation of a process of their ratification; 8) in consultation with the competent agencies, formulate, or initiate and coordinate the formulation of policies, strategies, laws and programs to implement international environmental agreements to which Ethiopia is a party and upon approval, ensures their implementation; 9) in consultation with other agencies, formulate environmental safety policies and laws on the production importation management and utilization of hazardous substances or waste; 10) in cooperation with the competent agencies, prepare or cause the preparation of environmental cost benefit analysis formulate and an accounting system to be used in development plans and investment programs and, as the case may be, monitor their application; 11) in consultation with the competent agencies, propose incentives or disincentives to discourage practices that may hamper the sustainable use of natural resources or the prevention of environmental degradation or pollution; 12) in consultation with the competent agencies, establish an environmental information system that promotes efficiency in environmental data collection, management and use; 13) coordinate, promote and, as may be appropriate, carry out research on environmental protection; 14) in accordance with the provisions of the relevant laws, enter any land, premise or any other place that falls under the federal jurisdiction, inspect anything and take samples as deemed necessary with a view to discharging duty and ascertaining compliance with environmental protection requirements; 15) prepare and avail to the government as well as the public a periodic report on the state of the environment of the country; 16) promote and provide non-formal environmental education programs, and cooperate with the competent agencies with a view to integrating environmental concerns in the regular educational curricula; 17) promote or assist in the formulation of environmental protection action plans and projects and solicit support for such action plans and projects; 18) prepare directives to implement environmental protection laws and, upon approval, ensure their implementation; 19) advise and, as feasible and subject to the consent of the Environmental Council, provide financial as well as technical support to any organization or individual having as its objective the management and protection of the environment; 20) provide advice and support to regions regarding the management and protection of the environment; 21) provide advice to other agencies regarding the discharge of their obligations in relation to environmental laws to ensure compliance; 22) advise the Government on measures necessary to cope with environmental emergency situations.
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- Art.14 Every institution is to set up an environmental unit to coordinate activities with other environmental protection agencies.
- Art. 15.1 Each national regional state is to establish an independent regional environmental agency or designate an existing agency to be responsible for coordinating the formulation, implementation, review and revision of regional conservation strategies, and monitoring.
- Art.15.3 The Regional agencies are to prepare reports on the state of the environment and submit them to the federal Authority.
- Art .16.1 Repealed the Environmental Protection Authority Establishment Proclamation No. 9/1995.

**Environmental Impact Assessment (Pro. No. 299/2002):**

- Art. 3.1 requires Environmental Impact Assessment in advance, of all projects especially where it is likely to have trans-regional impact unless the project is declared insignificant by the Authority.
- Art. 3.3 No licence for “any project” must be issued unless authorized by the Authority.
- Art.14.1 The authority is responsible for monitoring projects requiring licensing, supervision by federal agencies or having trans-regional impact.
- Art.14.2 The monitoring of projects other than those in 14.1 is delegated to regional environmental agencies.
- Art. 18 Offences include not obtaining authorization, failure to keep records and false representation in an assessment report.

**I. Environmental Pollution Control (Pro. No. 300/2002)**

- Art. 2.2 Defines "Chemical" as an “element or a compound whether by itself, or in a mixture or a preparation, whether manufactured or obtained from nature”.
- Art. 2.8 "Hazardous material" means any substance in solid, liquid or gaseous state, or any plant, animal or micro organism that is injurious to human health or the environment.
- Art. 3.4 Any person who causes any pollution is required to clean up or pay for the cost of cleaning up.
- Art. 3.5 The Authority may close or relocate any offending enterprise.
- Art 4.4 The importation, preparation, keeping, distribution, storage, transportation or use of a chemical categorized as hazardous or of restricted use, shall be subject to a permit from the Authority or the relevant regional environmental agency or from any other competent agency.
- Art. 4.5 Any person engaged in the preparation, production, manufacturing or transportation or in trading in any hazardous or restricted chemical may ensure that the chemical is registered, packed and labeled as per the applicable standards.
- Art 6 The Authority sets standards for types and amounts of substances that can be applied to the soil or is disposed of or in it
- Art. 7 The Authority or regional agencies may assign environmental inspectors
- Art. 8 The inspectors may enter any land or premises at any time which seems appropriate to them without prior notice or court order, to question any person, check papers files or other document related to pollution, take samples free of charge, photograph measure draw or examine any commodity or process, seize equipment, specify or order remedial measures.
- Art. 13 Offences include not keeping records and the withholding of information
- Art. 17 The court may in addition to any other penalty, confiscate or dispose of the offending property, impose the cost of cleaning up, order restoration or the payment of compensation on the offender.

- Art. 19 Any person engaged in an activity pertaining to any of the provisions of this proclamation or any other related law shall provide any information on his activity as required by the Authority or the relevant regional environmental agency.
- Art. 19.2 The Authority shall have access to all environmental data and information.
- m. Labour Proclamation (No 42/1993 Amended by Pro. No 377/2003)**
- Art. 92 An employer is generally obliged to take necessary measures to safeguard the health and safety of workers.
- Art. 92.3 Imposes obligations on an employer to provide protective equipment and materials train workers in their use.
- Art. 92.4 The employer is required to register accidents and occupation diseases and notify labour inspectors of same.
- Art. 92.5 Any employer is to arrange at his expense the regular medical checks for those engaged in hazardous work.
- Art. 96 The employer is liable irrespective of fault for injuries sustained at work unless intentionally caused.
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**Annexe 2****List of Persons Met****Environmental Protection Authority**

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