

Environmental Law – Foundation for a Sustainable Future for Ethiopia

Ethiopia is a pioneer in shaping a climate-resilient green economy. To realise this requires a very substantial reform of laws and institutions – to protect natural capital, to manage it sustainably, to increase peoples’ benefits from it, and to halt its degradation. This note tells the story of OPF working with the Ethiopian government in an extensive process of environmental legal reform and capacity development.

It’s the end of the dry season in the Ethiopian highlands and farmers wait in anticipation of the first rains. These will soon transform the dry and dusty landscape into rolling fields of lush green teff, Ethiopia’s staple grain and a food source gaining international attention as a ‘new’ superfood. The livelihoods and food security of almost 80% of Ethiopia’s population are dependent on rainfed substance agriculture. Yet Ethiopia is amongst those countries most vulnerable to climate change.ⁱ The Ethiopian government is acutely aware of the potentially disastrous impacts that climate change and natural resource degradation could have on farmers and the country as a whole, and is taking the threat seriously.

Ambitious vision

With its relatively low per-capita carbon emission levels, Ethiopia is striving to achieve carbon neutrality by 2025 and a carbon-negative economy by 2030. Ethiopia’s hope is in its hydro-electrical potential, which is so significant that it is sometimes referred to as the ‘water tower of Africa’. The country will need its ‘water tower’ to function well if it is to meet the ambitious climate targets, as well as to provide farmers’ water needs.

Natural assets such as watersheds constitute 40 per cent of Ethiopia’s total wealth, according to the World Bank. Ethiopia intends to leverage the economic potential of these assets, not only through conserving them but also by regenerating lost or damaged assets such as soils,

biodiversity and water bodies. For example, its indigenous coffee strains can earn coffee farmers over six times as much as ordinary commercial strains.

This ambitious environmental vision is embedded across Ethiopia's policy priorities – in the Ethiopian Growth and Transformation Plans, the Climate Resilient Green Economy Strategy, as well as the National Climate Action Plan (which forms the Nationally Determined Contributions submitted under the UNFCCC).ⁱⁱ This is not just an environmental side-story. Ethiopia knows that significant sectors that are fundamental to the country's economic success are tied to the health and sustainable use of the Ethiopian environment. In short, Ethiopia envisages what amounts to a complete overhaul of how the country's natural assets are governed and managed.

Implementation gap

Despite extensive new national policies and targets, and the growing number of international environmental commitments made by the government, tangible changes to everyday practice have been slow to materialise. Federal environmental laws – ranging from pollution control and forestry to biosafety and wildlife conservation – have been developed rapidly and in piecemeal ways in response to pressing national issues as they emerge. Yet this rapid and uncoordinated proliferation of federal environmental laws has left many Regional States struggling to catch up. The results have been disappointing: patchy implementation and weak enforcement, which gradually undermines the country's ambitious environmental ambitions. The courts too have struggled to keep pace. Members of the Regional State courts have observed how the country's environmental laws had emerged so quickly over recent years that many members were already appointed judges by the time environmental law emerged as a discipline. As a result, few judges are familiar with the country's environmental laws or the unique legal considerations they require.

Change in approach

The Law, Policy and Standards Research and Development Directorate General of the Ethiopian Environment, Forest and Climate Change Commission (EFCCC)ⁱⁱⁱ recognised that, for practical implementation to improve, a long-term strategic approach to the country's growing environmental pressures was needed. Under the leadership of Dr Ayele Anabo, and with the support of the Oxford Policy Fellowship, it produced a co-ordinated ten-year national programme to develop and implement environmental laws for Ethiopia and keep them under review. This was developed in parallel with UNEP's Montevideo Programme^{iv} for a decade of action on promoting and implementing environmental rule of law. Two successive OPF Fellows were involved as an embedded part of the Ethiopian team.^v The first step was to find out what the challenges and opportunities were in the field.

Getting to grips with the challenges

It was sitting in the cramped office of a regional environmental protection agency, with files stacked on every available surface, and concerned officials voicing their frustrations, that the full extent of the difficulties impeding the country's ambitious goals became clear. Charged with the responsibility of implementing and enforcing Ethiopia's environmental laws across a vast area, the officials faced huge obstacles to practical change.

But those obstacles reached far beyond legislative frameworks, their implementation and enforcement. They ranged from a widespread lack of awareness of the cross-cutting impacts of environmental degradation, to technical and human capacity challenges, to restricted access to environmental justice, with weak institutional co-ordination and collaboration, mandate gaps and overlaps, and inadequate civil society and citizen engagement. Uncoordinated, parallel, and siloed government and development partner activities were creating fragmented systems and putting a strain on the limited resources of environmental protection authorities across the country. This strain compounded what already felt like insurmountable challenges. A far more robust and ambitious strategy was clearly required. A drastic shift from 'business as usual' was needed – in short, a plan to encourage environmental rule of law.

“The support of the Oxford Policy Fellow throughout the Programme development process has allowed the Environment Commission to take a step back and gain a broad overview of the situation and the different options available before developing strategic forward-facing laws and implementation activities. It has allowed us to define a programme of action that works for Ethiopia and provides the space for truly homegrown sustainable solutions.”

Dr Ayele Anabo (Director of the Law, Policy and Standards Research Directorate General, EFCCC)

Ethiopian-driven solutions

Steps had to be taken to bridge the gaps between federal and state-level institutions, to encourage sectoral ministry engagement, and to engage the untapped potential of Ethiopia's citizens. The EFCCC team consulted many stakeholders on what would work for them. They travelled to the different regional institutions and met with Ethiopian academia, line ministries, regional environmental protection authorities, civil society, justice bureaus and the courts. This led the EFCCC team to two important decisions. Firstly, solutions should build on the impressive human resources that the team met across the country, and should leverage existing initiatives. Secondly, the country's environmental laws could be used not only to set out environmental duties and requirements, but also to establish the institutional systems and practices that were so urgently needed.

All of this informed the National Environmental Law Development and Enforcement Programme, which was formally adopted as an Ethiopian government programme in May 2020. Incorporating international best practices identified by the OPF Fellows and drawing on the Fellows' extensive legal analysis, the Programme provides a structure across three thematic areas: justice and education; institutional strengthening and enforcement; and citizen and civil society engagement. That structure helps to coordinate and manage diverse sectoral ministry and development partner activities.

Small changes for big impacts

Although the National Environmental Law Development and Enforcement Programme was adopted only recently, it is already leading to practical improvements. For example, the Oxford Policy Fellow has already assisted the Commission with the national Biosafety legal framework. A comprehensive review of the existing biosafety legislative framework and processes was conducted, including of mandate 'underlap and overlap'. A Memorandum of Understanding was developed, following consultation, to set out the duties and obligations of each institution, presented in an accessible and understandable format. In this way, existing legal provisions were combined into practical and implementable systems so that the biosafety regime functions well. This streamlined system will not only support the development of Ethiopia's as-yet untapped biodiversity and biotechnology potential, but also ensure citizen voices are heard and the integrity of Ethiopia's environment is preserved.

“With their outstanding expertise, the two Oxford Policy Fellows have further boosted the conceptual and strategic capacities of their partner institution, the EFCCC. They have added significant value to the joint battery lifecycle management project of EFCCC and GIZ.”

Till Serafimov, GIZ Ethiopia

Getting the best from development partners

Because the Programme articulates both the goals of the Commission and concrete steps to achieve them, development partners and the Commission are now better able to combine their energies and resources. Partners are aligning their projects with the Programme elements that are most relevant to their expertise and their funding priorities – helping with activities like inspection capacity improvement, regulated community engagement, sectoral mandate reviews, and standards development. For example, GIZ's Used Lead Acid Battery (ULAB) project has developed safe disposal systems for the hundreds of thousands of ULABs resulting from increased off-grid solar electrification.

Looking forward

The National Environmental Law Development and Enforcement Programme is a long-term and ambitious undertaking. It will require consistent and considered implementation over the next ten years. But the confidence, clarity, capacities and connections built through the programme will now see the vision achieved through more relevant and implementable solutions. With resources necessarily limited, the programme is now also keen to leverage untapped local skills and enthusiasm. A key potential is in Ethiopian universities. With their regional reach and relevant skills and energies, these form a real asset that the Programme and Federal Environment Commission can build on. Engaging universities is expected to provide a far more sustainable model for generating the legal capacity and environmental knowledge needed to achieve sustainable development everywhere in Ethiopia.

Fellow reflection

A surprising concern that emerged as the Programme developed is how undervalued the role of national laws seems to be in development. The capability of laws to translate burgeoning numbers of national policies and international commitments into practice has been neglected for too long. The number of development partner activities that fail to align with the national legal frameworks – and in effect create fragmented and unintegrated systems – is also concerning, threatening to undermine overall development objectives in the long term. Ethiopia's partnership with OPF has helped to articulate the value of law and legal processes in securing Ethiopia's environment and natural resources for its sustainable development. As remote as it may seem, these environmental laws will help to ensure the soil remains fertile, teff remains the property of all Ethiopians, and – for the farmers anxiously waiting – that the rains do arrive on time. ^v

Nathaniah Jacobs, June 2020

“As a lawyer working within the Ethiopian Environment Forest and Climate Change Commission, my perspective of how law can be used to build good systemic practices and navigate the challenges faced by a developing country has shifted completely. I have enjoyed every moment. I have learnt more than I could have ever imagined, and feel as though I have been able to contribute towards something that will have tangible long-term impacts.”

Nathaniah Jacobs – Oxford Policy Fellow June 2020

ⁱ ND-GAIN Index, which summarizes a country’s vulnerability to climate change and other global challenges, as well as the readiness to improve resilience. Ethiopia is currently ranked as 163rd out of 181 countries. <https://gain-new.crc.nd.edu/ranking/vulnerability> and <https://gain-new.crc.nd.edu/country/ethiopia>

ⁱⁱ GTPII-Federal Democratic Republic of Ethiopia - Europa EU; CRGE- https://www.adaptation-undp.org/sites/default/files/downloads/ethiopia_climate_resilient_green_economy_strategy.pdf; NDC- <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Ethiopia%20First/INDC-Ethiopia-100615.pdf>

ⁱⁱⁱ <https://www.efccc.gov.et/>

^{iv} <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-1>

^v Joanna Venkov (cohort 2) October 2016 – May 2019; Nathaniah Jacobs (cohort 4) September 2018 – September 2020.

The OPF is a demand-led Fellowship Programme that works with governments to deliver legal capacity support and development. We do this through Fellows, networks, and learning. We source high performing early-career advisors to work within current government systems and processes for two years so that their work contributes to ongoing policymaking, rather than creating parallel structures for getting things done. By providing governments with key support that they themselves have defined and requested, we deliver sustainable and locally-owned development impact. We also host a network of government practitioners working at the interface of law and public policy, promoting a culture of knowledge sharing and learning across governments and the wider community.