ADDIS ABABA UNIVERSITY

SCHOOL OF GRADUATE STUDIEs

THE LEGAL AND INSTITUTIONAL ASPECTS OF THE CLEAN DEVELOPMENT MECHANISM (CDM) FORESTRY PROJECT IN HUMBO AND DAMOTE AREAS IN ETHIOPIAN

A. A. University
Box 1176 Addis

By:

ZEKARIAS ERKOLA YIMAM

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Approved by:

Board of Examiners

Tsegaye Tamrat ---------- ----------

Advisor *Signature*

Mekete Bekele ---------- ----------

Examiner *Signature*

---------- ----------

Examiner *Signature*

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Abstract

Changes in climate become common concern of all mankind. Consequences resulting from global warming such as rise in the sea level, frequent occurrence of natural calamity, agricultural breakdown, melting of the polar ice, worsening human heath effect, disruption of the water cycle, to mention some, urged the international community to seek remedy. In response to these consequences the GA urged governments and intergovernmental and non-governmental organizations to collaborate in a concerted effort to prepare conventions.

After long and tiresome negotiation the international community adopted UNFCCC in 1992 and it's Kyoto Protocol in 1997 to stabilize GHG. The Kyoto Protocol requires the industrialized countries specified in Annex 1 to reduce their average emissions of six GHG by 5.2% from 1990 levels between the years 2008 and 2012. The Protocol adopted the principles of differentiated commitments between the industrialized north and non-industrialized south. To meet the different ends of the north and south flexible mechanism is adopted in the protocol. CMD A/R is one of these flexible mechanisms adopted in the Protocol.

CDM A/R aims to achieve climate change mitigation through the market based approach: Industrialized countries receive emission rights in exchange for financing emission abatement projects in countries without emission target. It also aims to assist developing countries in achieving sustainable development by promoting environmentally friendly investment from industrialized countries.

The procedure for the implementation of CDM A/R project is cumbersome. Apart from the procedure, the implementation of CDM A/R project raises number of legal and institutional issues. Ethiopia as part of the international community ratified the UNFCCC and its Kyoto Protocol and currently pilot CDM A/R project in the SNNPRS. While implementing CDM A/R project there must be institutional setup and legal framework to realize the project. The writer believes that this paper points out the legal and institutional gaps for the implementation of CDM A/R project and contributes to benefit from the CDM A/R regime.

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Acronyms

ADLIP= Agriculture Development Led Industrial Policy

A/R = Afforestation and Reforestation

CER= Certified Emission Reduction

CDM = Clean Development Mechanism

COP= Conference of Parties

COP/MOP= Conference of Parties serving as Meeting of Parties

CSE= Conservation Strategy of Ethiopia

DNA= Designated National Authority

DOE= Designated Operational Entity

EB= Executive Board

EC= Environmental Council

EIA= Environmental Impact Assessment

EPA= Environmental Protection Authority

EPE= Environmental Policy of Ethiopia

EU ETS= European Union Emission Trading System

FAO= Food and Agricultural Organization

FDRE= Federal Democratic Republic of Ethiopia

FCCC= Framework Convention on Climate Change

GEF= Global Environmental Facility

GHG= Green House Gas

IEE= Initial Environmental Examination

IPCC= Intergovernmental Panel on Climate Change

INC= Intergovernmental Negotiating Committee

ILC= International Law Commission

LULUCF= Land Use, Land Use Change and Forestry

lCER= Long term Certified Emission Reduction

MoARD= Ministry of agriculture and Rural Development

OECD= Organization for Economic Cooperation and Development

PDD= Project Design Document

PEIA= Preliminary Environmental Impact Assessment

SNNPRS= Southern Nations, Nationalities and Peoples Regional State

SBSTA= Subsidiary Body for Scientific and Technological Advice

SBI= Subsidiary Body for Implementation

tCER= Temporary Certified Emission Reduction

UNEP= United Nation Environmental Program

UNFCCC= United Nations Framework Convention on Climate Change

UN= United Nation

UNGA= United Nation General Assembly

U.S.A= United Sates of America

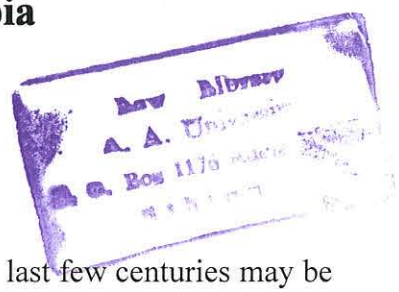
WMO= World Metrological Organization

Chapter One

The Legal Aspects of Clean Development Mechanism Forestry Project in Humbo and Soddo areas in Ethiopia

1. Introduction

1.1. Background



The climatic stability that humans have grown used to over the last few centuries may be ending sooner than we think.[1] Burning coal, oil, and natural gas to heat our homes, power our cars and illuminate our cities produces carbon dioxide and other gases as by-products.[2] Deforestation and clearing of land for agriculture also release significant quantities of such gases.

Specific consequences resulting from global warming such as rise in the sea level, frequent occurrences of natural calamity, agricultural breakdown, melting of the polar ice, worsening human health effect, disruption of the water cycle, to mention some, draw the attention of the International Community towards change in climate. In 1988 and 1989, the General Assembly passed resolution that "climate change is a common concern of mankind" and urged governments and intergovernmental and non-governmental organizations to collaborate in a concerted effort to prepare, as a matter of urgency, a framework convention on climate change.[3] Hence, the song of the time is threat because of change in climate.

As compared to the other environmental regulations the protection of the atmosphere was a relatively latecomer to international environment regulation but is now well established. The earth's climate is determined in large part by the presence in the atmosphere of naturally occurring greenhouse gases, including in particular water vapour, carbon

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[1] Carbon Trading – a critical conversation on climate change, privatization and power- development dialogue no. 48 Sept. 2006 www.thecornerhouse.org.uk

[2] Eldon D. Enger and Bradley F. Smith (2000) Environmental Science-A study of Interrelationships 7th ed (Mc Graw Hill)

[3] UNGA Res. 43/53 (1988); UNGA Res. 44/207 (1989)

dioxide (CO_2), methane (CH_4), CFC, nitrous oxide (N_2O) and tropospheric ozone (O_3).[4] These greenhouse gases are transparent to incoming shortwave solar radiation but absorb and trap long wave radiation emitted by the earth's surface.[5] Their presence beyond required natural amount exerts a warming effect on the earth. Scientific evidence suggests that continued increases in atmospheric concentrations of selected greenhouse gases due to human activities will lead to an enhanced greenhouse effect and global climate change.[6]

In 1988, UNEP and the WMO established the Intergovernmental Panel on Climate Change (IPCC) to provide scientific guidance necessary to take further action.[7] The first IPCC report, published in august 1990, predicted that, on a 'business-as-usual' emission scenario, global mean temperature could rise by an average rate about 0.3^0c per decade (with an uncertainty range of 0.2^0-0.5^0c) during the next century.[8] The second as well as the third reports of IPCC indicated that there could be extreme change in weather conditions and such change could cause floods and droughts in different corners of the world.

In December 1990, the UN General Assembly established a single intergovernmental negotiating process under the auspice of the General Assembly, supported by UNEP and WMO, for the preparation by an Intergovernmental Negotiating Committee for the Framework Convention on Climate Change (INC/FCCC).[9] There after "[t]he UN Framework Convention on Climate Change (1992 Climate Change Convention) was signed…and comprises a package which contains elements for almost all the negotiating states but left none entirely satisfied."[10]

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[4] Philippe Sands (2003),The principles of International Environmental Law (2nd ed.) (CAMBRIDGE UNIVERSITY PRESS) p.357
[5] Id.
[6] IPCC, WGI, 'Climate Change 2001: The Scientific Basis', in Third Assessment Report: Climate Change 2001 (2001) as cited by Philippe Sands
[7] Supra note 2
[8] IPCC, *Climate Change*: The IPCC Scientific Assessment (1990) as cited by Philippe Sands
[9] UNGA Res. 45/221 (1990) as cited by Id
[10] Supra note 2

On 11th December, 1997, delegates from 159 nations attending the World Climate Conference reached a historic accord calling for mandatory cuts in emission of green-house gases by industrialized nations in the next millennium to help save the planet from potentially devastating global warming.[11] The accord came after the ten day UN Climate Conference in Kyoto and was adopted in the form of a protocol, which requires the industrialized countries stated in Annex I to reduce their average annual emissions of six green-house gases by 5.2% from 1990 levels between the years 2008 and 2012.[12]

The Kyoto Protocol adopted the principle of differentiated commitments between the industrialized north and non-industrialized south as burden sharing that the industrialized countries are main polluters of the atmosphere in the past decades. The debate over the cause for the change in climate was high and still high in areas which are not covered. It was said that, to meet different ends of the south and the north debate flexible mechanism is adopted in the protocol. Especially the industrialized countries argued that rather than relying on domestic action to meet the modest target contained in the Kyoto Protocol, flexible mechanism is sound to achieve the obligation. Hence, three flexible mechanisms are adopted in the protocol. These are: Emission Trading, Joint Implementation and Clean Development Mechanism.

Emission Trading is a system which allows the industrialized countries to buy and sell emission credits. In this system countries that keep emissions below their commitment target will be able to sell the excess emission credits to countries that find it more difficult or more expensive to meet their own targets.[13]

Joint Implementation is a mechanism which allows industrialized countries to gain credits from financing emission reduction projects in other industrialized countries.[14] It means countries can claim credit for emission reductions that arise from investment in

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[11] P.S.Jaswal and Nishtha Jaswal, (2004) Environmental law, Environment Protection and Sustainable Development and the Law

[12] Kyoto Protocol: To the United Nations Framework Convention on Climate Change, Art. 3.1

[13] FERNE BRIEFING NOTE IN CO-OPERATION WITH BOTH ENDS, Sinking the Kyoto Protocol, www.greennet.apc.org. uk/ferne(12/4/2008)

[14] Id

other industrialized countries, which result in a transfer of equivalent "emission reduction units" between the countries.[15]

The Clean Development Mechanism was added to the Kyoto Protocol at a later stage of the negotiations that culminated in Kyoto.[16] It goes back to a Brazilian proposal to create a "Clean Development Fund" as part of the Kyoto Protocol.[17] The proposal was based upon penalizing those industrialized counties not complying with the emission target set in Kyoto Protocol and to make available the Fund to non-industrialized countries. Industrialized countries strongly opposed this idea and Clean Development Mechanism was created as a compromise.[18]

The CDM aims to achieve climate change mitigation through the market based approach: Industrialized countries receive emission rights in exchange for financing emission abatement projects in countries with out emission target /south/. The mechanism also give countries and private sector companies the opportunity to reduce emissions anywhere in the world-wherever the cost is lowest-and they can then count these reductions towards their own targets.[19] The CDM in particular, aims to assist developing countries in achieving sustainable development by promoting environmentally friendly investment from industrialized country governments and business.[20] The funding channeled through the CDM should assist developing countries in reaching some of their economic, social, environmental, and sustainable development objectives, such as cleaner air and water, improved land use, accompanied by social benefits such as rural development, employment, and poverty alleviation.[21]

The critical look to the CDM A/R shows that the mechanism is not yet properly utilized by countries. Now-a-days the "majority of the CDM credits, and projects, are

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[15] UNEP, Introduction to the Clean Development Mechanism CDM, http://www.climenet.org/pubs/Unepcdmintro(4/15/2008)
[16] See Supra note 12
[17] Id
[18] Id
[19] See supra note 15
[20] Id
[21] Id

concentrated in a handful of countries: China, India, Brazil, Mexico and Korea."[22] The reason could be these countries have capacity to develop projects and utilize the mechanism.

1.2 CDM Potentials of Ethiopia

The scope of this paper is limited to CDM A/R. But it seems sound to shed light as what potentials we have in other sectors to benefit from the CDM regime. The EPA of Ethiopia conducted cursory survey of sectors for potential CDM projects in Ethiopia.

The survey states that the energy balance of the country is heavily skewed towards traditional fuels. It is stated that biomass fuels, mainly used for cooking, meet more than ninety percent of the energy requirements, followed by petroleum products and electricity. Alternative sources of power, which are eligible for CDM, are enumerated.
In this regard the use of sugar cane bagasse to generate heat and power is an ongoing practice in Ethiopia's three main sugar plantations, Fincha, Metahara and Wonji/Showa. Therefore, "the expansion of bagasse based cogeneration can be an excellent CDM project if additional power displaces diesel fuel powered generation."

The survey further shows ethanol from molasses distillation could also be potential source of CDM project. Finchaa, Metahara and Wonji Sugar plantation currently produce ethanol. Ethanol for domestic consumption can also displace diesel or gasoline for transport, or kerosene and wood fuel for cooking. Therefore, ethanol production can become a CDM eligible project if the project is designed to incorporate sales, and ultimate, end use of ethanol.

The aforementioned potentials are from the supply side. From the demand side also there are number of potentials. Projects that involve blending ethanol with diesel or gasoline, or replacing diesel with bio-diesel for fleet of vehicles such as buses or trucks would qualify for CDM projects. Further more projects that involve replacing kerosene and kerosene stoves with ethanol and ethanol stoves are also proposed for CDM.

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[22] Jane Ellis and Sami Kamel, (2007) Overcoming Barriers to Clean Development Mechanism Projects; Organization for Economic Co-operation and Development and UNEP RISOE Centre,

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Ethiopia

Waste management is the other potential area for CDM project. Waste organic materials when decompose without oxygen, methane gas forms, which is categorized under climate convention to be reduced. Landfills or dumpsites that have been operating for over 10 years are suggested good for methane gas capture. The captured methane gas through turbine or engine could be used to produce electricity. Or separation of organic waste materials to prevent creation of methane and using it as fertilizer by local farmers is another means.

Cement production is also stated as potential area for CDM. It is suggested that, changing the formula of the cement blend is an excellent CDM project for cement producers. Applying the appropriate technology to reduce GHG emissions and cause no real change in the quality of product. These types of projects can provide a new revenue source from CDM to Ethiopia's cement manufactures.
Using natural fertilizer instead of petroleum is recommended as good potential for CDM. Therefore, comprehensive study is required to benefit from the CDM regime.

1.3 Statement of the Problem

The Clean Development Mechanism (CDM), a cooperative mechanism established under the Kyoto Protocol, has the potential to assist developing countries in achieving sustainable development by promoting environmentally friendly investment from industrialized country governments and businesses.[23] After the collapse of block trading and the downfall of the Derg Regime, "Ethiopia has made poverty reduction and economic development its main target through designing different policies and strategies that can move step forward to the end it aspires."[24]

The Constitution of Federal Democratic Republic of Ethiopia under Art.92 provides the environmental objectives. This general objective of the constitution is subsequently supported by other bye-laws to harness the protection of the environment. In addition to

[23] See supra note 15
[24] Agricultural Development Led Industry policy document (ADLI)

its domestic laws Ethiopia demonstrated its international commitments by ratifying different international instruments related to environmental protection. Out of these different international instruments those relevant to our concern are the Frame work Convention on Climate Change (FCCC), which is ratified on 2nd of May 1994 by proclamation number 97/1994 and the Kyoto Protocol on 21st of Feb. 2005 by Proclamation number 439/2005. It is in this later protocol that the Clean Development Mechanism after long exasperating debate between North and South and included by the pioneering of the U.S.A.

Kyoto Protocol Article 12.2 "[t]he purpose of the Clean Development Mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their qualified emission limitation and reduction commitments under Article 3."

In order to participate in the CDM, there are certain eligibility criteria that countries must fulfill. There are three requirements and all parties are subject to these requirements. These are:

-Voluntary participation in the CDM,

-The establishment of a National CDM Authority, and

-The ratification of Kyoto Protocol.

Apart from these, the industrialized countries have some other additional obligations. The above mentioned requirements are not sufficient by themselves and hence there are other legal and institutional matters which may need proper articulation.

Ethiopia, after the ratification of Kyoto Protocol for the first time is going to implement the Clean Development Mechanism that is provided in the protocol for Annex I non-members to trade on carbon. The initiation of the project idea is pioneered by the World Vision Ethiopian and World Vision Australia. Hence, the Humbo/Damota/ reforestation and afforestation /A/R/ project in Southern Nations Nationalities and Peoples State

/SNNPRS/ is considered as a case study in this paper. As has been stated earlier, since carbon trading is a novel concept incorporated into international environmental law, it raises novel legal and conceptual issues to be addressed by the national legal regime, policy consideration and also demands special institutional arrangements for the implementation.

Since carbon trading is a novel concept it is sound to say that there must be policy direction to guide the CDM A/R. As the approach in different corners of the world show, some countries have an independent policy to treat the implementation of CDM while others take into account other national policies like forest policy, environmental policy etc. Thus the approach in Ethiopia needs further investigation and articulation.

Both the FDRE and the Regional Constitution of SNNPRS state about the property rights of the citizens. With regard to land and natural resources the ownership of both urban and rural land as well as all natural resources is exclusively vested in the State and in the Peoples of Ethiopia. Therefore, there is no doubt about that land is under ownership of state. But conflicting claim could arise with regard to the access to the proposed CDM project area. There are communities within the project area and out side the project area those enjoy access to the land and the resource. Thus, questions that demand response are how community could be defined? Who should be included in the project as community? Do we have the legal mechanism to recognize the communal holding of lands and forest? How could they be organized to get a kind of legal status? Who should be excluded from the access? All these issues require legal analysis and articulation.

The legal nature of the right to sequestered carbon, /Certificate of Emission Reduction/ (CER) is not defined under the current Ethiopian legal system.[25] As the Protocol shows Carbon is tradable. So to trade within the legal context it has to be defined in the property concept. Article 40.2 of the FDRE constitution defines private property "...shall mean any tangible or intangible product which has value and is produced by the labour,

[25] Imeru Tamrat , ETHIOPIA HUMBO/SODO ASSISTED FOREST REGENERATION PROJECT LEGAL AND INSTITUTIONAL ASPECT, Report Submitted to the World Bank, March 2006(Unpublished)

creativity, enterprise or capital of an individual citizen, association which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common." So where can we fall Carbon? Is it produced by labour? Who owns it? Some would say the emission of oxygen from the forest is the result of labour invested in it. But some others may argue it is natural resource part of the atmosphere so that individual can not own. Thus, all these require clarity to ensure legal stability and predictability in the implementation of the CDM projection for sustainable development.

The term forest is defined in the Federal Forestry Conservation, Development and Utilization Proclamation No. 542/2007 and the SNNPRS Forestry Proclamation No. 77/2004 basically in a similar manner. But for CDM afforestation and reforestation projects, "forest" consists of single minimum trees with at least a height of 2 to 5 m, single minimum tree crown density from 10 to 30%, and a single minimum area from 0.05 to 1 ha.[26] So, what is the connotation of this definition to our context? Thus how forest is defined and classified in Ethiopia to meet the requirements of CDM demands assessment and suggestion.

Taking into account different organs of government (Federal, Regional or local) and the concerned community within and/or out side the project area, who can enter into contractual agreement with the buyer of CER is an issue to deal with. Should it be regulated by some sort of law or on contract basis is also point of discourse. To respond on this issue the existing laws must be perused and local community must be consulted.

Since land on which CDM A/R project implemented may have occupants who may not necessarily be project participants, or may provide ecosystem services to nearby groups or communities, benefit sharing is one dimension of CDM A/R projects that deserves close attention.[27]The question of benefit sharing also goes with the question that who can

[26] Decision 11/CP.7
[27] IUCN Environmental Policy and Law Paper No. 59, *Legal Aspects in the Implementation of CDM Forestry Projects, 2005*

enter into contractual agreement. Thus, how the benefit could be shared, the mechanism, and to whom could it be shared requires legal response.

As a fundamental prerequisite to implement the CDM project, Designated National Authority /DNA/ is required. Under Ethiopian scenario, Proclamation number 439/2005 which is enacted to ratify the Kyoto Protocol under Article 3 states that "[t]he Environmental Protection Authority /EPA/ is hereby authorized to take, in cooperation with appropriate Federal, Regional and City Administration Government Organs, actions necessary to implement the Protocol." Since the issue of CDM is one aspect of the Kyoto Protocol it is possible to say that EPA is Nationally Designated Authority. But the way it is established, the mandate it has and its capacity has to be assessed. The practices of some other countries show us the establishment of some independent organ so as to properly implement and utilize the investment opportunity that CDM opens for the developing countries. Hence, the existing EPA statute, the function expected of it and possible suggestion and if there are any alternatives requires assessment.

The last but not least, issue that necessitates legal and institutional response is that the way how the appropriate federal, regional, local government and organs and the concerned community could cooperate in the implementation of the project.

1.4 Research Question

Since the concept of Carbon trading is novel concept it raises new legal and institutional issues. The paper's fundamental point therefore rests in examining what legal and institutional frame work we have and what is expected in terms of legal and institutional framework to implement CDM A/R.

1.5 Objective of the Study

The objective of the research is to analyze the existing legal and institutional frameworks for the implementation of CDM A/R project and to recommend possible solution for the legal and institutional gaps found in the research work and how to interpret different laws so as to accommodate the CDM A/R.

1.6 Scope of the Study

The research work pays due attention in examining the policy, legal, institutional and regulatory frame works which are so important for the realization of the CDM A/R project. The research also addresses issues related with land tenure system, ownership of Carbon, accommodative community rights, sharing of benefits and other related issues which are pertinent for the implementation of the CDM A/R.

The researcher also discussed the core principles adopted in this new area of law and highlighted practices of some countries which are relevant to our context, if there are lesson to learn.

1.7 Significance of the Research

Let alone in Ethiopian, the concept is new to any legal system. There is no developed jurisprudence in this regard. Hence, the outcome of the research may help:

- those interested in the area to gain some basic knowledge on CDM;
- as guide line to implement such Carbon sequestration projects in the future;
- as step for those interested in the area to conduct further research; and
- the policy makers to take note of the legal and institutional problems and thereby to achieve sustainable development and to contribute to stabilizing greenhouse gas concentration in the atmosphere at a safe level.

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1.8 Methodology

Both doctrinal and non-doctrinal methods of research employed. To achieve the objectives stated hereinabove relevant literatures, laws and regulatory frameworks are reviewed. Observational methods like field visit to the project area and focus group discussion with the local community is conducted. Hence the researcher used the following methods to get the required information:

1. The researcher reviewed legislative and policy documents related to environment and implementation of CDM A/R project. The review includes international conventions and protocols related to climate, foreign laws, the FDRE and

SNNPRS Constitutions, national policies, Federal and regional proclamations and regulations.

2. The researcher also reviewed reports of some UN organs, abroad experiences and some literatures written in the area.
3. The researcher conducted two focus group discussions in each project implementing kebeles (seven kebeles at Humbo and five kebeles at Damote Soddo) with the members of the cooperative society and non-members of the cooperative. The compositions of members include house hold wives, youth and household husbands. Each group consisted of more than seven participants.
4. Very few, but appropriate interviews were conducted with two relevant expertise working in MoARD and EPA.

1.9 Organization of the Paper

To meet the objective of the research, the paper is organized in such a way that it discusses in the initial chapter about the statement of the problem, objective of the research and the methodology used. The second chapter is devoted to international instruments related to climate change. Special attention is paid to UNFCCC and the Kyoto Protocol. In the third chapter the Ethiopian regulations and regulatory frameworks are discussed. The fourth chapter is the main part of the paper and the existing legal and institutional framework are analyzed in light of the Kyoto Protocol for the implementation of CDM. Finally, conclusion and recommendations are provided.

1.10 Limitations

It is important to inform beforehand the problems encountered by the writer during the course of the preparation of the paper. One major problem confronted the preparation of this paper is lack of reference materials. The other big problem was unwillingness from project initiators to give some information and lack of adequate knowledge and information for those who are willing to supply information. The scorching weather accompanied by scarcity of transport facilities has also limited the activity. Therefore, this research paper is not comprehensive of CDM A/R activities in general, but it is supported by appropriate sources.

Chapter Two

2. Climate Change in General and International Instruments Regulating Climate

2.1 General

It is high time that the international community is concerned about the change of climate. As some scientists witness that, earth is a living planet where human beings and other living creatures can enjoy life. But, now this suitable planet is being sick of different factors such as anthropogenic /human induced/ and natural changes that took place.

The lower layer of air above earth is known as atmosphere and it has the capacity to determine the climate of the earth. The atmosphere is composed of greenhouse gases (GHGs) such as carbon dioxide (CO_2), methane (CH_4), chlorofluorocarbons (CFCs), nitrous oxide (N2O) and tropospheric ozone (O_3). These gases are transparent to incoming short-wave solar radiation but absorb and trap long-wave radiation emitted by the earth's surface.[28] It is the presence of these gases in an appropriate amount that makes life suitable on earth. In the right quantities, GHGs help support life and ecosystems on earth by maintaining a relatively constant surface temperature that averages nearly 60^0F.[29] But their increase above the required amount has negative impact on the atmosphere of the earth and result in global climate change.

At the international arena there are organizations exclusively dedicated for the environmental issues. In this regard it is worth to note that United Nations Environmental Program (UNEP) had played key role. UNEP was formally established in 1972 by the General Assembly Resolution.[30] Hence, in 1988, UNEP and the World Metrological Organization (WMO) established Intergovernmental Panel on Climate Change (IPCC) to

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[28] . Supra note 4 p. 357

[29] Lakshman D. Guruswamy and Brent R. hendericks, International Environmental Law in a Nutshell (1997) (West Publishing) p. 124.

[30].(Sweden) UNGA Res. 2997 (XXVII) (1972)

provide the scientific guidance necessary to take further action.[31] The initial report of IPCC estimated that, global mean temperatures could rise by an average rate of about 0.3^0C per decade (with an uncertainty range of 0.2-0.5^{0}C) during the next century.[32] The IPCC third assessment report in 2001 predicted that anthropogenic warming is likely to lie in the range of 0.1-0.2^{0}C per decade over the next few decades, leading to a likelihood of increased precipitation and a greater risk of extreme weather conditions such as floods and droughts.[33] Climate models predict that the global temperature will rise by about 1.4-5.8^{0}C by the year 2100 and this change would be much larger than any climate change experienced over at least the last 10,000 years.[34] The report of IPCC played a great role for the subsequent work in the area.

At the UN level an international conference on the incident of global warming were first held in 1980s. Then after, the General Assembly formally addressed the issue of climate change in 1988 resolution. It was in this resolution that the General Assembly determined that 'climate change is a common concern of mankind' and urged actions to be taken by all States and non-state actors.[35] In 1990 the Ministerial Declaration of the Second World Climate Conference, called for negotiations of a Framework Convention on Climate Change incorporating appropriate commitments.[36] By Resolution number 45/221 in 1990; the UN General Assembly established an intergovernmental negotiating process under the patronage of the General Assembly, supported by UNEP and WMO, for the preparation by an Intergovernmental Negotiating Committee for a Framework Convention on Climate Change. Hence, the UN Framework Convention on Climate Change was signed in 1992 and after five years, the Kyoto protocol with more detailed commitment of the parties was adopted in 1997.

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[31]. Supra note 4 p. 357

[32] IPCC, Climate Change: The IPCC Scientific Assessment (1990)
[33] IPCC, WG I, 'Climate Change 2001: The Scientific Basis', in Third Assessment Report: Climate Change (2001)
[34] UNEP and UNFCCC, Climate Change Information Kit, (2003), available at www.unep.ch/conventions accessed on 4/14/2008
[35] UNGA Res. 43/53 (1988)
[36] UN Doc. A/45/696/Add.1, Annex III (1990).

2.2 The Effect of Climate Change

Though there are uncertainties and imperfections in the prediction of climate change, now-a-days there is general consensus that the impact of climate change is immense. To evaluate the scientific phenomenon of global warming and its impact on the earth's community, in 1988, the Intergovernmental Panel on Climate Change (IPCC) was formed. Under IPCC, there are three individually working groups with well versed scientists participating in each to evaluate the impact. These are; "Working Group I: Scientific Assessment", Working Group II: Impacts, Adaptation and Mitigation" and Working Group III: Socio-economic and Cross-cutting Issues".

The IPCC is best known for its comprehensive assessment reports, incorporating findings from all three working groups, which are widely recognized as the most credible source of information on climate change.[37] The first report of the IPCC suggested that global climate change might have its greatest impact in the Polar Regions, melting polar ice caps and causing a rise in sea level of about 1 meter by 2100 and a rise in temperature of the surface ocean layer of between 0.2°C and 2.5°C.[38] In this report the IPCC predicted in generic terms that climate changes will affect agriculture, forestry, natural terrestrial ecosystems, hydrology, water resources, human settlements, ocean and costal zones, seasonal snow cover, permafrost and ice.

The IPCC Synthesis report envisages that "[f]rom 1900 to 2005, precipitation will have increased significantly in eastern parts of North and Southern America, northern Europe and northern and central Asia but declined in the Sahel, the Mediterranean, southern Africa and Parts of Southern Asia."[39] The report commented on the scarcity of data from developing countries. Of the more than 29,000 observational data series, from 75 studies, that show significant change in many physical and biological systems, more than 89% are

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[37]. Guide to The Climate Change Convention Process; Preliminary version: Climate Change Secretariat Bonn (2002).

[38]. IPCC, Climate Change: The Intergovernmental Panel on Climate Change Impact Assessment 1-1 (1990)

[39]. IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II, III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds)]. IPCC, Geneva, Switzerland, p.2

consistent with the direction of change expected as a response to warming.[40] The IPCC assessment further exposed that the impact of climate change will rise the temperature and change the pattern of precipitation, melt polar ice causing rise in the sea level and challenge coastal land use, cause change in human settlement, result in extreme health problem in the low land areas and developing countries because of change in the water and food supplies and cause social instability.

2.2.1 Climate Change in Africa

The historical climate records for Africa shows warming of approximately 0.7 degree cent grade over most of the continent during the 20th c, a decrease in rainfall over large portions of the Sahel, and an increase in rainfall in east central Africa.[41] The IPCC, indicate future warming across Africa ranging from 0.2^0C to more than 0.5^0C per decade.[42] According to IPCC, Africa is the most vulnerable region to climate change, due to the extreme poverty of many Africans, frequent natural disasters such as droughts and floods, and agricultural systems that heavily depend on rainfall.[43] The situation in East Africa as compared to the other parts is severe.

> *In 1997/8, El Nino caused extensive floods in Somalia and Kenya. The phenomena led to disease, damage to property and crops. With the projected global warming and the associated intense precipitation and more extended dry periods, the frequency and severity of droughts, floods and storm surges are expected to increase. Moreover, crop yield will fall, planting dates of annual crops would change, fungal outbreaks and insect infestation would increase, risk of food would increase, and the biodiversity would decline. Such chain of process*

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[40]. Id

[41] James J. McCarthy et, al, Climate Change 2001: Impacts, Adaptation, and vulnerability, Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change , CAMBRIDGE UNIVERSITY PRESS P489

[42] Id

[43] IPCC 2001b. Climate Change 2001:Impacts, adaptation, and vulnerability, Summary for Policymakers, http://www.ipcc.ch. April, 2002 in Daniel Kassahun, Global Climate Changes and Ethiopia's Vulnerability to the Environmental Hazards, Forum For Environment, Public Meeting paper (2006)

would increase the vulnerability of developing countries. Food and water supply are just two of a plethora of worries.[44]

IPCC issued its projected regional impact of climate. Africa:

By 2020, between 75 and 250 million of people are projected to be exposed to increased water stress due to climate change;

By 2020, in some countries, yield from rain-fed agriculture could be reduced by up to 50%. Agricultural production, including access to food, in many African countries is projected to be severely compromised. This would further adversely affect food security and exacerbate malnutrition.

Toward the end of 21st century, projected sea level rise will affect low-lying coastal areas with large populations. The cost of adaptation would amount to at least 5 to 10% of Gross Domestic Product.

By 2080, an increase of 5 to 8% of arid and semi-arid land Africa is projected under a range of climate scenarios.[45]

As has been stated the problem is very severe for the poor continents and countries because of resource constraints and lack of coping capacity.

2.2.2 Climate Change in Ethiopia

It has been stated that the major victims of global warming are poor countries in the tropics, like Ethiopia. It requires comprehensive research in the area but the official reports of government has some message to convey.

Ethiopia as part of the Eastern Horn of Africa experiences the same climatic problem. Ethiopia's agriculture is mainly dependent on rainfall, therefore; rainfall is an important climatic element, which plays a vital role in Ethiopia.

According to UNFCCC, for over the decades, rainfall in Ethiopia remained constant when averaged over the whole country. However, a declining trend was observed over the northern and southwestern parts. Contrarily increasing trend was observed in the central part of Ethiopia. With respect to the temperature, there has been an overall trend of warming. The average annual minimum

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[44] Id

[45] See supra note 39 p.11

temperature has been increasing by 0.25^{0}C per decade, while average annual maximum temperature has increased by 0.1^0 C per decade.[46]

It is well known fact that, Ethiopia already faced recurring cycles of drought, crop failures and flood. The climate change in Ethiopia in addition to lack of ability to cope with, increase risk of food shortage and famine. The UN estimates that in Ethiopia …together with five east African countries, cereal crop yields will decline by up to five percent by the 2080s mainly due to climate-linked factors.[47]

Generally, the impact of climate change globally, regionally or nationally is enormous. The resultant effect of the climate change is more severe in developing countries and coastal areas when comparison is made. Mainly the change is reflected in the water cycle and rainfall amount.

2.2.2.1 GHG Emissions in Ethiopia

Poor countries like Ethiopia have no reduction commitment. This is because the status of GHG emission is very minimal as compared to the industrialized countries. For instance the contribution of carbon dioxide emission in the Eastern African Counties (Ethiopia, Djibouti, Uganda, Kenya, Eritrea, Rwanda and Burundi) is not more than 2 per cent of the total global carbon emission.[48] Ethiopia is a developing country whose economy is mainly agriculture with very low level of industrialization therefore; there is hardly any source of GHG other than that which comes from the agricultural sector.[49]

But the report shows that there was a general increasing trend of GHG emissions in Ethiopia in the period 1990-1995.[50]

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[46] UNFCCC 2001: Initial National Communication of Ethiopia to the United Nation Framework Convention on Climate Change (UNFCCC) June 2001 in Daniel Kassahun

[47] Id

[48] The Federal Democratic Republic of Ethiopia, State of Environment Report For Ethiopia, Environmental protection Authority (August 2003) Addis Ababa p. 68

[49] Id

[50] ibid p.69

2.2.2.2 Climate Change and Environmental Problems in Ethiopia.

Climate change is a global issue which creates problem in every corner of the world. Ethiopia can not be excluded from this scenario. The August 2003, the state of environment report provides number of problems associated with climate. Most of the country being arid and semi- arid, it is threatened by desertification and recurrent drought.[51] Forest water and bio-diversity are all liable to desertification by climate change.[52] Vector-born diseases such as malaria and trypanosomiasis are wide spread in Ethiopia, and climate change will create a favourable environment for other further expansion.[53]

The study conducted by National Meteorological Services Agency indicated that 'there would be a likelihood of shortfalls in rainfall amounts in the northern and south-western parts of the country and a likelihood of increases in rainfall amount in the central parts of the country.[54]

The main problems as stated in the report which may arise from climate change are declining productivity of the grazing land both in quantity and quality, decreasing productivity of livestock resources as well as expansion and prevalence of human and animal diseases. The climate change has implication in every aspect of natural resources. In the forest sector, climate change brings about changes in the forest types and in the environment surrounding them as well as the fragmentation and thinning of the forest cover.[55] In the similar token, 'water resources will face the same problem associated with climate change. It was revealed that 'if the Awash and Nile basins become warmer by 2^0C, their run-off would diminish even if there were no decrease in the amount of

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[51] ibid p 70

[52] Id

[53] Id

[54] Id

[55] Id

rainfall.[56] Therefore, although limited, studies conducted show that climate change has its own contribution for the occurrences of environmental problems in Ethiopia.

2.3 International Instruments Regulating Climate Change

As has been discussed, international instrument to address change of climate was formally set in motion by the United Nations General Assembly and also further supported by the Ministerial Declaration of the Second World Climate Conference. The Intergovernmental Negotiating Committee for a Framework Convention on Climate Change established by the General Assembly after short and effective sessions came up with the package of articles which reflect the interests of almost all negotiating parties.

The convention is the first one of its kind. In the words of Philippe Sand, the FCCC reflected a compromise between those States which were seeking specific target and time tables for emission reductions and those which wanted only a bare-bone skeleton Convention which could serve as the basis for future protocol... But it should be noted that '[u]nlike some areas of international environmental law ...there are no prior bilateral or regional treaties to consider' in the analysis of climate issues and[57]therefore, our analysis will focus on the FCCC and the more detailed one Kyoto Protocol.



2.3.1 United Nation Framework Convention On Climate Change (UNFCCC)

2.3.1.1 General

Before delving into the discussion of the content of the Convention, it is sound to touch upon the criticism posed against this Convention. International lawyers disagree with the nomenclature 'framework' glue to the Convention. Though it is not the aim of this writer, literally, a framework convention is a 'set beliefs, ideas or rules that is used as the basis for making judgment, decisions or the structure of a particular system'[58] and mainly does

[56] Id
[57] See supra note 29 p 131
[58] Oxford Advanced learners Dictionary (2000)6th ed. P. 471(Oxford University Press)

not deal on specific matters and 'substantive rules await further elaboration.'[59] But the UNFCCC deals on specific commitments to stabilize greenhouse gases, provide financial mechanism for the realization of the convention, and establish subsidiary bodies, dispute settlement mechanisms and other important guiding principles. One can draw implication from the nomenclature that it is the reflection of different interest groups that participated in the negotiation of the Convention. UNFCCC as a framework Convention had no binding target to be adhered by the parties except hortatory political will and/or commitment.

It was during the negotiation that the business-as-usual scenario North-South approach left and even the developed countries divided among two groups, oil producing countries united, coal reserve countries acted together, forest reserve countries reflected their ideas and Alliance of Small Island States created. It was with this fragmentation that diverse opinions were reflected and package of commitments intertwined with the nomenclature 'Framework Convention'. Having said this, let us see the specific contents of the Convention.

2.3.1.2 Objective of the Convention

It is uncovered by the environmental scientists and IPCC that the climate change and thereby global warming are the effect of presence of green house gases as blanket above the required amount in the atmosphere. Thus the fundamental objective of the convention is to stabilize these green house gases concentrations in the atmosphere. The Convention under article 2 sets out this objective together with the other related issues. In summarized words, the ultimate objective of the Convention is to stabilize GHG concentration in the atmosphere within time frame set, to the level that would not endanger climate system and allow ecosystems to adapt naturally to the climate change without threatening food production and sustainable economic development.

[59] See supra note 29 p. 132

The objective further aspire the enactment of other related legal instruments by the Conference of Parties and together with the prospective legal instrument aim to achieve stabilization of the concentration of green house gases. It is also stated in the objective that the human induced interference with the climate is aimed to be regulated and the naturally occurring events are not under the realm of the objective. On top of this '...the Convention implicitly recognizes that some climate change is inevitable since the objective is to be achieved within a timeframe sufficient to allow[60]'ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.[61]

2.3.1.3 Main Principles of the Convention

Principles are guiding rules for the practical implementation of certain convention. Article 3 of the Convention states several principles from paragraph 1 to 5 so that States shall adhere to them in achieving the objective of the Convention. Several principles could be drawn from the five sub-articles but for the purpose of convenience we shall limit ourselves to some important ones. As provided under sub-article 1, the implementation of the Convention is on the basis of ***equity (intergenerational equity)*** with their ***common but differentiated responsibilities.*** It is in this provision that principle of ***sustainable development (benefit of present and future generation)*** is taken into cognizance.

Under sub-article 2, special ***circumstances of developing countries*** taken into consideration owing to their vulnerability and lack of coping capacity. The other most important and emerging principle reflected in the Convention is the ***precautionary principle*** i.e. lack of scientific evidence for the time being can not dispense measures to be taken by parties.

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[60] Supra note 4 P. 361

[61] UNFCCC Art. 2

Considering the difficulty of implementation of international agreements, under sub-article 4, ***integration of the principles of the convention with national development program (right to development)*** is set as guiding principle. In the last paragraph, protection of free trade for economic development is provided and the measure taken to stabilize climate change should not constitute means of arbitrary or unjustifiable discrimination or disguised restriction on international trade.

Generally, it could be summarized that the Convention holds five major principles i.e., common concern of human kind; common but differentiated responsibilities of the international community; precautionary principle, intergenerational equity and the right to development.

2.3.1.4 Commitments

Commitments provided in the Convention are some of the factors which seem to raise the status of Convention above framework agreement. But for all practical purposes, the Convention is framework as it has no binding nature. Hence, article 4 of the Convention lay down non-binding two different categories of commitments. These are the general (commitments of developed and developing countries) and specific (Annex I and former Eastern Bloc parties) commitments. The general commitments are applicable to all parties irrespective of their economic status but 'taking into account common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances.'[62]

I. Commitments to All parties

The general commitments are wide ranging and stated under article 4 (1) from paragraph (a) to (j). From these commitments the green house gases controlled by the Montreal Protocol are excluded.

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[62] UNFCCC Article 4 (1)

In a summarized statement; parties are committed to develop, periodically update, publish and make available national inventories of anthropogenic emissions by sources and removals by sinks of all GHG to the COP; regularly update national and regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all GHG.

Further more, parties are committed to transfer of technologies to reduce GHG; promote and cooperate in sustainable sinks and reservoirs; in preparing for adaptation to the impact of climate change for vulnerable areas; take climate change considerations into account to relevant social, economic and environmental programs; in scientific research works; exchange relevant scientific information; promote and cooperate in education, training and public awareness; and communicate to the COP information related to the implementation, are some to mention. Thus, as these commitments are concern of all parties Ethiopia is expected to observe.

II. Specific Commitments

The specific commitments of the Convention as the phrase implies are specific to the economically strong groups of the parties and are stipulated under article 4 (2). The specific commitments focus on the Organization for Economic Cooperation and Development (OECD) and Former Eastern Bloc Parties those emit the lions share of the global GHG emissions to reduce their release.

Hence, Article 4(2) (a) and Art 4 (2) (b) in general stipulate target and timetable to return to earlier levels (to 1990) by the end of the present decade (in 2000) all GHG. Parties can act jointly or individually to return to the level required. Environmental scholars are critical that the specific commitments are hortatory and do not impose mandatory obligation. Therefore, with the view to implement the specific commitment and to provide quantified target and timetable Conference of Parties are supposed to deal on.

Further more; Annex I parties undertake specific financial commitments. According to article 4 (3) and the subsequent provisions, financial and technology transfer is required

form the aforementioned countries to developing parties with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change.

2.3.1.5 Organs

There are five different organs established by the Convention. These are: Conference of Parties (COP), Secretariat, and Subsidiary Body for Scientific and Technological Advice (SBSTA), Subsidiary Body for Implementation (SBI) and Financial Mechanism or Global Environmental Facility (GEF).

I. Conference of Parties (COP)

Conference of Parties is the Supreme Body of the Convention, and conferred with the power to 'keep regular review of the implementation of the convention and any related legal instruments it may adopt and make decisions necessary to promote effective implementation of the Convention.[63] Conference of Parties has number of functions stated under article 7 (2) from (a) to (m).

COP has responsibility to periodically examining the obligation of parties and institutional arrangements facilitate exchange of information on measures adopted and parties to the convention, promote, guide and refine comparable methodologies. It also assess implementation of the convention by parties on the basis of information available, adopt regular reports on the implementation of the convention and ensure their publication. Further more it can make recommendation on any matters necessary for the implementation of the convention, establish such subsidiary bodies as are necessary for the implementation of the Convention, review reports submitted by its subsidiary bodies and provide guidance to them, and adopt rules of procedures for it, subsidiary bodies and financial mechanisms are some to mention.

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[63] Id Article 7 (2)

II. Secretariat

Article 8 (1) of the Convention declares the establishment of the Secretariat. Secretariat of the Climate Change Convention is entrusted with administrative and clerical works for the COP. Its functions are stated under article 8 (2) (a) to (g) of the Convention, to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with the services as required. With regard to developing countries, it facilitates assistance particularly in compilation and communication of information; prepare reports on its activities and present them to the Conference of the parties; and ensure necessary coordination with the secretariats other relevant international bodies. Under the guidance of COP it can also enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

III. Subsidiary Body for Scientific and Technological Advice /SBSTA/

The issue of climate change is very complex and still there are imprecision in the area. Therefore, to alleviate the problem it requires versed scientific knowledge in the area. Hence, article 9 (1) of the Convention declares the establishment of this subsidiary body to provide the COP with timely information and advice on scientific and technological matters relating to the Convention.

The specific functions of the SBSTA as stated under article 9(2) (a) to (e) are: assessment of the State scientific knowledge on climate; preparation of scientific assessments on the effects of measures taken; identifying innovative, efficient and state-of-art technologies and know-how and advice on the ways and means of promoting development and/or transferring such technologies and provision of advice on scientific programs. Further more it facilitates international cooperation in research and development related to climate change and support endogenous capacity-building programs in developing countries and providing response to scientific, technological and methodological questions that the COP and SB may put.

IV. Subsidiary Body for Implementation

This is the other Subsidiary body established under article 10 of the Convention to assist COP in the assessment of the implementation of the Convention. As provided under sub article 2 and article 12 of the Convention this body is entrusted with the power to review national communications on implementation. It also assists the COP in the preparation and implementation of its decisions.

V. Financial Mechanism

The Convention under article 11 provides financial mechanism to deploy resources on a grant or concessional basis. The mechanism operates in an equitable and balanced representation of all parties within a transparent system of governance.[64] Inter alia, the mechanism ensures modalities to the funded projects evaluate policies programs, priorities and eligibility for the project and predict and identify manner and amount of funding necessary.[65] As provided under article 21(3) the Global Environmental Facility of the UN Development Program, the UN Environmental Program and the World Bank are entrusted with interim power to operate this mechanism. But latter on this arrangement was reviewed by the COP.

2.3.2 The Kyoto Protocol (1997) to the UNFCCC

2.3.2.1 General

As the nomenclature implies the UNFCCC is a framework convention and needed further negotiation to produce binding agreement with specific commitments. Hence established an ongoing process of review, discussion, and information exchange, the Convention makes it possible to adopt additional commitments in response to changes in climate in scientific understanding and in political will.[66]

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[64] Id Article 11 (2)
[65] Id Article 11 (3) (a) to (d)
[66] Information Unit of the Convention: Climate Change Secretariat, available at http://www.unifccc.de visited 15/9/2008

The first review of the adequacy of developed countries commitments was conducted as required at the first session of the COP-1, which took place in Berlin in 1995.[67] It was in this session that participants decided returning their emission to 1990 levels by the year 2000 insufficient to achieve the long term objective of the preventing the dangerous GHG. It is in this context that "Ministers and other senior officials responded by adopting the 'Berlin Mandate' and launching a new round of talks on strengthening developed country commitments."[68] This Berlin Mandate set up an Ad hoc Group (AGBM) to draft an agreement and after eight rounds of discussion produced the draft of Protocol and forwarded to COP-3 for final negotiation.

Kyoto, Japan in December 1997, the Conference resulted in a consensus decision[69] to adopt a protocol under which industrialized countries will reduce their combined GHG emissions by at least 5% compared to 1990 levels by the period 2008-2012. The targets cover the six main GHG: carbon dioxide, methane, nitrous oxide, hydropluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride. Generally, the Kyoto Protocol reiterated the UNFCCC 'common but differentiated responsibilities'[70] and the Berlin Mandate's stipulate that there be no new commitments for developing countries.[71]

The Protocol further covers activities like land-use change and forestry sector, such as deforestation and reforestation that emit or absorb carbon dioxide from the atmosphere. But the implementation of Kyoto Protocol was not an easy task. Therefore after years of debate parties agreed to comprehensive rule-book-the Marrakech Accord in 2001-on how to implement the Kyoto Protocol. It should be noted that the Kyoto Protocol is annex to UNFCCC.

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[67] Id

[68] Id

[69] Decisions Adopted by the Conference of Parties (12th Plenary meeting, 11 December 1997) Decision 1/CP.3 Adoption of the Kyoto Protocol to the UNFCCC

[70] See UNFCCC, Preamble

[71] See the Berlin Mandate (decision adopted at the First Conference of the Parties, 1995), Article 2(b)

2.3.2.2 Key Flexible Mechanisms of the Kyoto Protocol

To make real the commitments entered, the Kyoto Protocol provides new accommodative rules called 'flexible mechanisms'. The flexible mechanisms are designed with the view to accommodate all participating countries i.e., those developed countries to reduce their emission reduction targets domestically and/or elsewhere, whereas, to those with no binding commitments to assist them in their sustainable development in environmental sound manner. The following are key elements of the protocol.

I. Joint implementation among Annex I Parties

Article 6 of the Kyoto Protocol declares this flexible mechanism. In this mechanism emission reductions achieved through individual projects in Annex I countries can be credited towards achieving commitments under Article 3, if they can be demonstrated to reduce emissions beyond what would have occurred otherwise. Companies (legal entities) are allowed to undertake such activities. Such joint implementation projects are to be supplemental to domestic actions for the purpose of meeting commitments under Article 3.

II. Advancing Commitments of all parties

Article 10 of the Kyoto Protocol states this general commitment. All parties taking into account their common but differentiated responsibilities, shall formulate, implement publish and update programs including measures to mitigate, and adapt to, climate change, covering energy, industry and transport sectors. Parties should also develop and promote modalities for the transfer of environmentally sound technologies.

III. Financial Resources

Poor and underdeveloped countries can not discharge their obligation stated under article 10. Considering the financial problems article 11 of the Protocol states Annex I Parties (most OECD countries) shall provide financial resources needed by developing country Parties for full incremental costs of Article 10 commitments.

IV. Clean Development Mechanism.

The carbon sequestration and storage project ("sinks" or "Land Use, Land use-change and forestry or LULUF") is the core of attention for this paper. A clean Development Mechanism is established to assist non-Annex I Parties in achieving sustainable development. Certified emission reductions achieved through individual projects which reduce GHG emissions beyond what would have occurred in the absence of that project, can be used by Annex I Parties to help meet part of their commitments in Article 3.

With the view not to disregard former efforts, CERs achieved between 2000 and 2008 can also be credited against commitments under the first commitment period (2008-2012). It is worth to note that a share of proceeds from this certified project activities is to be used to assist developing countries vulnerable to the adverse effects of climate change to meet costs of adaptation.

As compared with the other mechanisms there are number of requirements for CDM projects than for Joint Implementation and others. The stringent requirements of CDM causes higher transaction costs but emission trading may cost zero as there is no need to develop a project.

V. Emission trading among Annex B Parties

Article 17 of the Protocol provides this opportunity for the developed parties. Parties included in Annex B to the Protocol may participate in emissions trading. Any such trading shall be supplemental to domestic actions to achieve commitments under Article 3. As it is provided in the Protocol the highest organ of the Convention COP/MP shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability.

Article 12 of the Protocol, which deals on CDM, is the focus of this paper. There are number of complex issues attached to these mechanisms. To make some points more

understandable, in the following section some fundamental issues of CDM afforestation/reforestation will be discussed in depth.

2.3.2.3 General Overview of the CDM

As stated, "the objectives of the CDM are to assist non-Annex I Parties to achieve sustainable development and to contribute to the ultimate objective of the Convention while assisting compliance by Annex I Parties"[72]

The CDM allows a project to reduce emissions, or possibly to enhance sinks, in a country without national commitment to generate certified emission reductions (CERs) equal to the reduction achieved.[73] The CDM gives countries and private sector companies the opportunity to reduce emissions anywhere in the world-wherever the cost is effective and they can then count these reductions towards their own targets.[74] Through emission reduction projects, the mechanisms could stimulate international investment and provide the essential resources for cleaner economic growth in all parts of the world.[75] It is said to be clean development mechanism, because of the rational that '...CDM should assist developing countries in reaching some of their economic, social, environmental, and sustainable development objectives, such as cleaner air and water, improved land use, accompanied by social benefits such as rural development, employment, and poverty alleviation and in many cases, reduce dependence on imported fossil fuels.[76]

Though the Kyoto Protocol does not make such distinction, there are energy related emission avoiding CDM and LULUF or sink related CDM. The former mechanism may

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[72] UNFCCC 1997, Article 12 (2)

[73] Bert Metz...et, al., Climate Change 2001: Mitigation, Contribution of Working Group III to the Third Assessment Report of the Intergovernmental Panel on Climate Change, (CAMBRIDGE UNIVERSITY PRESS)p.426

[74] The Clean Development Mechanism, UNEP Collaborating Center on Energy and Environment Risø National Laboratory Roskilde, Denmark, available at http://www.climnet.org/pubs/unepcdmintro. accessed on 04/15/2008 p. 7

[75] Id p. 8

[76] Id

be cost effective (low cost) and buyers' interest may be high. The LULUF or sink related CDM, rules and procedures are cumbersome and the transaction costs are very high. Therefore, there is less interest from industrialized world. The main difference between sink related CDM and energy related CDM is that "the former one is temporary or it has nature of non-permanence i.e.; carbon stored in biomasses and soil can be re-emitted to the atmosphere through decomposition and mineralization, fire, pests etc."[77]

2.3.2.4 Reaction against Clean Development Mechanism

In the international sphere there are sharp criticisms against emission trading. It was said, the political, economic and social relationship between the north and south is not based on genuine ground. It is in this line that Southern governments and critical environmentalists had objected CDM by saying that atmospheric assets have given away to big polluters.[78]

The market aspect of emission trading assumed to have negative implication. It was said "emissions trading encourages corporations sooner or later to treat global warming not as a social and environmental problem to be solved but as a business and public relations problem to be kept out of ordinary people's hands and to be managed at the least possible relative financial and market loss to themselves."[79]

Furthermore, some critics demand structural change in the Northern economies and contend that in relation to other environmental policy principles, emission trading has negative impact. In this regard, Jo' Burg Memo observed that "the 'polluter pays' principle has been turned into a 'polluter buys' (polluter earns' rather than the polluter

[77] See supra note 27 p.6

[78] . Supra note 1, p. 86

[79] . Ibid p. 89

pays principle) his way out principle and decarbonisation will not really take place in this manner, since the resource base of Northern economies is not being restructured."[80]

The ownership of carbon is also another controversial issue. In this regard, initially India belated, quixotic 1999 demand for assurances that the Kyoto Protocol 'has not created any asset, goods or commodity for exchange'.[81] The other exciting condition observed is: plantation owners in New Zealand joined battle with the government in 2003 over who owns the carbon in 200,000 hectares of trees planted after 1989, which are eligible under Kyoto Protocol to count as carbon sinks that soak up the country's industrial emissions.[82]

The other criticism to be cited at length is Sathaye's opinion:

> *Jayant Sathaye of the US's Lawrence Bekeley National laboratory once observed breezily that anxieties about rich cleansing their emissions by taking over the poor's land for forestry projects could be believed simply by 'ensuring that the title to the land is separated from the title to carbon. This reality is not simple. First, most plantations that are candidates for carbon finance are already in the hands of powerful corporation or state bureaucracies. Many of these corporations or bureaucracies are already embroiled in conflict with local people over their takeover of local land and water. Second, land whose area and soil carbon has been signed over to a utility is going to be less able to provide livelihood goods to local people. Since, under the CDM, the land in question lies in the South, carbon plantation projects are likely to magnify existing North-South inequalities.*[83]

Some other scholars point out policy consideration of the concerned countries and suggest avoidance of large emissions. In this regard, Hermann Ott and Wolgang Sachs point out, 'a country which, for reasons of equity, promotes biodiversity habitats,

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[80] . Wolf Ganga Saches et al., The Jo'Burg Memo, Heinrich Boll Foundation, Berlin, (2002), p. 38 in Carbon Trading Critical Conversation, P. 117
[81] . UNFCCC, Document FCCC/SB/1999/8, 149 f. in Carbon Trading Critical Conversation, P. 86
[82] . Ibid P. 127
[83] . Ibid P. 27

resource light- productions, livelihood agriculture or the institution of community rights may not own, or be able to sell, carbon credits for doing so.[84]

There are number of sharp criticisms, but these are to mention some. Though there are objections, the UNFCCC and its Kyoto Protocol had come into force. The debate is there but the real carbon market is boosting in different corners of the world. Hundreds of project ideas are developed and registered by host countries and submitted to EB for registration. Of these India accounts 294 projects, China 133, Brazil 113, Mexico 97; and from African countries South Africa accounts 12, Morocco 3, Egypt 3, Uganda 1 project and the like.[85]

2.3.2.5 Requirements Attached to the CDM

The Kyoto Protocol sets certain requirements /conditions/ to involve in the CDMs. The project designed to secure CERs must meet some standards. As spelt out under article 12, the project must be approved by all parties involved, meet the standards of sustainable development of the host country, must result in real, measurable and long terms of climate change mitigation. The CERs must also be additional to any that would have occurred without the project.

There are other requirements for countries to be eligible to participate in the CDMs. Generally speaking the requirements could be categorized into two: the general and special requirements. The first types of requirements apply to all parties without taking into consideration their economic backgrounds into account. Under this category there are three requirements. They are: i), Voluntary participation of parties in the CDM, ii) Designation of National CDM Authority and iii), the Ratification of the Kyoto Protocol.[86]

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[84] . Hermann Ott and Wolfgang Sachs, 'Ethical Aspects of Emissions Trading', Wuppertals Papers No. 110, Wuppertal Institute Fur Kilima, Umwelt, Energie, Wupelta, (2000), In Carbon Critical Conversation, P. 171

[85] . www. cdm. Unfccc. Int-Status: Accesse on 27/11/2007

[86] Decision 17/CP.7 Modalities and Procedures for a Clean Development Mechanism, as defined in Article 12 of the Kyoto Protocol, Annex F Para. 28-30

The second types of requirements are special for those characterized as Annex I with the commitment stated under in Annex B. These includes: the assigned amount has to be calculated and recorded in accordance with COP decisions;[87] put in place national system for the estimation of anthropogenic emissions by source and anthropogenic removals by sinks of all GHG;[88] put in place national registry in accordance with Article 7, paragraph 4;[89] submitted annually the most recent required inventory[90] and submits the supplementary information on assigned amount in accordance with the modalities set.

The aforementioned conditions are conditions for countries to participate in the CDM. But for a certain CDM project to be eligible it must also meet the technical and legal standards set and elaborated in Article 12 of the Kyoto Protocol and as well in the Marrakesh Accord.

I. Ratification of Kyoto Protocol

Article 25 of the protocol states twofold requirements for the coming into effect of the Protocol i.e.; number of parties plus total carbon dioxide they release. It reads:

> *This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.*

This article shows that 1990 is the base year and the aim of reduction commitment is to bring the GHG emissions to the level that existed in 1990. For the Protocol to come into force has two fold requirements i.e.; (55% of parties including Annex I and 55% of total carbon emission envisaged in 1990 must commensurate)

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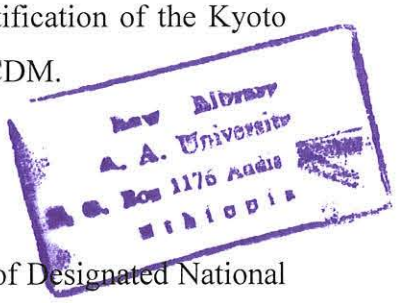
[87] Id para. 31 (b)

[88] Id para. 31(c)

[89] Id para. 31 (d)

[90] Id para. 31 (e)

It is a conventional practice that sovereign states must make sure their agreement to be bound by the international instruments. The way they adhere to international agreements may vary depending on the national regulatory systems. Thus ratification of the Kyoto Protocol to UNFCCC is cardinal requirement to participate in the CDM.



II. Designation of National Authority/DNA/

It is not only ratification of the Kyoto Protocol but also setting up of Designated National Authority /DNA/ accountable for the CDM activity is a mandatory requirement for all developing countries aspiring to participate in the CDM. As the Marrakesh Accord shows, the DNA has a lot of responsibilities to carry on. It is this authority that is authorized to ensure that the participation in the CDM is voluntary, confirm that the projects proposed will contribute to the sustainable development of the country and will result in real and measurable benefits to mitigate the climate change.

On the basis of the countries demand for the CDM the DNA may draw up national policies on CDM, strategies, guidelines, approval processes and procedures. For the poor developing countries meeting these requirements could be burdensome. Support in the form of capacity building could be supplied to this effect.

III. Voluntary Participation

This is the other requirement essential to participate in the CDM activities. Decision 17/CP.7 paragraph 28 states this. Further more, paragraph 40(a) of this Decision 17/CP.7 states that the Operational Entity (OE) shall:

> *Prior to the submission of the validation report to the executive board, have received from the project participants written approval of voluntary participation from the designated national authority of each Party involved, including confirmation by the host party that the project activity assists it in achieving sustainable development.*

Therefore, the DNA is responsible to issue written confirmation that participation is voluntary. This activity is giving a kind of authorization to participate in the project. To

secure this authorization it seems that information on voluntariness of the stakeholders has to be collected from the grass-root level as well. In effect this confirmation makes the authorizing designated body responsible for the fulfillment of its obligations under the Kyoto Protocol and shall ensure such participation is consistent with the Marrakesh Accord and its annex.[91]

2.3.2.6 Issues Related to the Implementation of CDM

There are numerous issues related to the CDM. The CDM established by the Kyoto protocol merits special focus for number of reasons. First, it is a means by which nations that have not yet adopted legally binding emissions limits may participate in the climate protection activities of the Protocol.[92] Second, the absence of emission limits for CDM host nations necessitates special attention when designing rules to assure the environmental integrity of CDM-origin emissions reductions.[93] Thirdly, there are number of technical and legal hurdles must be overcome if CDM projects may being earning tradable reduction.[94]

I. Project Eligibility

What kind of projects are eligible to CDM is point of discussion here. It is not only the sink projects (Afforestation/Reforestation) eligible to CDM but also Annex A of the Kyoto Protocol provides lists of eligible projects. These are: end-use energy efficiency improvements; supply-side energy improvements; renewable energy; fuel switching; agriculture (reduction of CH_4 and $N2_o$ emissions); and industrial processes (CO_2 from Cement etc., HFCs, PFCs, SF_6).[95]

Marrakesh Accord puts limitation in the application of the afforestation and reforestation projects. Hence, the eligibility of land use land-use change and forestry (LULUCF)

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[91] Decision 17/CP.7 Paragraph 33

[92]. Annie Petsonk, Daniel J. Dudek and Joseph Goffman, Policy: Market mechanisms & Global Climate Change, An Analysis of Policy Instruments Pew Center, (1998) p. 24

[93].Id

[94] Id

[95] Annex A of the Kyoto Protocol

project activities under the CDM is limited to afforestation and reforestation and for the first commitment period (2008-2012), the total of additions to a party's assigned amount resulting from eligible LULUCF project activities under the CDM shall not exceed 1% of base year emissions of that party, times five or for each year."[96] The Marrakesh Accord further provides green light that LULUCF under the CDM in the future commitment periods shall be decided as part of the negotiations on the second commitment period.

II. Contribution to the Sustainable Development

The concept sustainable development came to picture in the international environmental policy circles by the Brundtland Report.[97] It is defined in the Brundtland Commission as "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.[98]

Of course the concept is composed of different components. In this regard the term development has a lot to do with economics. Hence the 'economists distinguish between four main components of the resource base: natural capital, reproducible capital, human capital and social capital.[99] In this construction, development is sustainable if some aggregate index across all forms of capital is non-decreasing.[100]

Scholars have characterized that some approaches are strong while others are weak in terms of sustainability. The strong sustainability approach holds that different types of capital are not necessarily substitutable, so that sustainability requires the maintenance of a fixed or minimum stock of each component of natural capital. Under this notion, any development path that leads to an overall diminishment in the stock of natural capital

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[96] Modalities and Procedures for a Clean Development Mechanism as defined in Article 12 of the Kyoto Protocol, Decision 17/CP.7 Para 7 (a) and (b)

[97]. Report of the World Commission on Environment and Development (WCED) (the Brundtland Report), Our Common Future (1987), 43).

[98]. ibid p. 8

[99]. See supra note 73 p.94

[100] Id

fails to be sustainable even if other forms of capital increases.[101] The second approach asserts that the different forms of capital can substitute for one another to some degree. The substitutability of different types of capital implies that the preservation of natural capital in particular, is crucial. The second approach is consistent with the idea that some loss of climate capital could be consistent with sustainability if increase in other forms of capital could compensate for the loss.[102]

As Philippe Sands noted, the concept 'sustainable development' has four recurring legal elements in the international arena:

1. *the need to preserve natural resources for the benefit of future generations (the principle of intergenerational equity);*
2. *the aim of exploiting natural resources in manner which is 'sustainable', or 'prudent', or 'rational', or 'wise' or 'appropriate' (the principle of sustainable use);*
3. *the 'equitable use of natural resources, which implies that use by one state take account of the needs of other states (the principle of equitable use, or intragenerational equity); and*
4. *the need to ensure that environmental considerations are integrated into economic and other development plans, programs and projects, and that development needs are taken into account in applying environmental objectives (the principle of integration)*[103]

International community tried to define sustainable development in a more concrete manner at different times. Article 33 of the Lomé Convention combines the definition in one paragraph. In one way or the other the approached used to define sustainable development may vary but conveys the same meaning. There was hot debate on CDMs contribution to sustainable development in Marrakesh Accord. Particularly, host countries have been concerned about their sovereignty and considered it as intrusion in

[101] Id
[102] Id
[103]. Supra note 4 p. 253

their internal affairs if sustainable development is defined by external body.[104] Therefore, this led the phrase sustainable development undefined and it is the mandate of the host country to determine whether the proposed project is sustainable or not on the basis of its national policy instruments.

III. Baseline /Additionality/

One of the critical aspects of the CDM project is the baseline scenario or additionality. Article 12 (5) (c) of the Kyoto Protocol reads: "[r]eductions in emissions that are additional to any that would occur in the absence of the certified project activity." The greatest and most critical challenge to the CDM is the formulation of the guidelines for project baselines-that is, for determining what would have occurred in the absence of the project, and for measuring actual emissions performance against that base line.[105] Decision 19/CP.9, paragraph 18 stipulates that:

> *"an afforestation or reforestation project activity under the CDM is additional if the actual net greenhouse gas removal by sinks are increased above the sum of the changes in carbon stocks in the carbon pools within the project boundary that would have occurred in the absence of the registered CDM afforestarion or reforestation project activity."*

The project participant must show that the additionality of the project in the project design document (PDD). The baseline from which this additionality is measured must be properly described in the PDD. The baseline scenario represents the GHG emissions that would have occurred in the absence of the project.[106] The main issue for the environmental integrity of the CDM project is the additionality of emission reductions or removal by sink.

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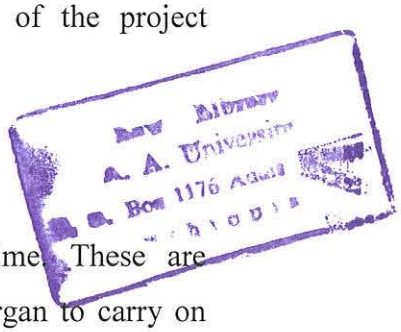
[104]. UFCCC, Report of the Conference of Parties Serving as the Meeting of Parties to the Kyoto Protocol on its Second Session, held at Nairobi from 6 to 17 November 2006, FCCC/KP/CMP/2006/10/Add.1 http://unfccc.int/resource/docs/2006/cmp2/eng/10a01.pdf accessed March 26/2008

[105]. See supra note 92 p. 25

[106]. Christina Voigt, Is the Clean Development Mechanism Sustainable? Some Critical Aspects, available on http://ssrn.com/abstruct=1145262 Accessed on 03/10/2008.

IV. Leakage

Leakage is also closely related with additonality requirement. It aims to detect if there is any increase of emission some where else by the project activity underway as CDM and then adjust for net changes in GHG. Specially, if CDM activities in one country in effect 'cause' economic shifts to other emissions-increasing activities in that country or in another country lacking a legally binding emissions limit, the emissions reductions ostensibly gained by the investment or project could be extinguished.[107] This means that a project must calculate all GHG emissions under the control of the project participants that are significant and reasonably attributable to the project activity. To determine leakage effectively the project boundaries and emissions under the control of the project participant must be determined or defined.



2.3.2.7 Responsible Organs under the CDM

There are three different organs established under the CDM regime. These are COP/MOP, EB, and DOE. Of these organs COP/MOP is a decisive organ to carry on several important activities. For more clarity we shall see the function of each organ in the following section.

I. Conference of Parties as Meeting of Parties (COP/MOP)

Conference of Parties as Meeting of Parties to this Protocol is a decisive body in the implementation of the CDM.[108] The CDM is subject to the authority and guidance of the COP serving as meeting of the Parties.[109] Parties to the Kyoto Protocol are members to COP/MOP and non-members and UN Agencies and International Atomic Energy Agency have observer status.

Article 13 of the Protocol lists the functions of the COP/MOP i.e., pass decisions necessary to promote effective implementation of the protocol, assess overall measures,

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[107]. See supra note 92 p. 26

[108]. UNFCCC Article 13 (1)

[109]. Id Article 12 (4)

periodically examine obligations, facilitate the exchange of information, make recommendation in any matter necessary, seek to mobilize financial resource, establish subsidiary bodies necessary, are to mention some.[110] This body is also authorized to define the relevant principles, modalities, rules and guidelines in particular for verification, reporting and accountability for emission trading[111] for the flexible mechanism adopted in the protocol.

Article 12 (3) (b) of the Kyoto Protocol further states that "[p]arties included in Annex I may use the CERs accruing from the CDM project activities to contribute to compliance with part of their quantified emission limitations and reduction commitments under Article 3, as determined by the COP serving as meeting of the Parties to this protocol.

Therefore, COP as meeting of Parties is a decisive body to assure compliance, accredit the contribution to compliance, and approve CERs. It is this approval that allows the Annex I Parties to count the CERs against their targets for the commitment period.

II. Executive Board (EB)

This is a supervisory organ for CDMs activity. The EB shall supervise the CDM, under the authority and guidance of the COP/MOP, and be fully accountable to the COP/MOP.[112] The composition of the EB is: "one member from each of the five UN regional groups (Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe, and OECD), two other members from the Parties included in Annex I, two other members from Parties not included in Annex I, and one representative of the small island developing States, taking into account the current practice in the Bureau of COP."[113]

EB has number of functions; inter alia, it can make recommendations to the COP/MOP on further modalities and procedures, amendments, approve new methodologies, review

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[110]. Id Article 12 (5) and Article13 (4) a to j

[111] Id Article 3 (4) and Article 17

[112]. Decision 17/CP.7, Modalities and Procedures for a CDM as defined in Article 12 of the Kyoto Protocol Annex C (5)

[113]. Id Annex C (7)

provisions, accredit operational entities, report on regional CDM projects, publicize information, develop approval and maintain CDM registry, and also carry out any relevant function.[114] The decision of the EB shall be taken by consensus, if not possible to reach agreement decision shall be taken by three-fourths majority of the members present and voting at the meeting.[115] The Secretariat established by the UNFCCC serves as secretariat to the EB.

III. Designated Operational Entity /DOE/

A process of independent review for the certification of emission reduction achieved is necessary for credibility of the CDM. As provided under Article 12 (4) of the Protocol, apart from EB the Protocol provides establishment of an independent operational entity. The emission reductions must represent real, measurable, and long-term benefit related to the mitigation of climate change and be certified by the designated independent operational entities /DOE/.

The DOE is an independent responsible body to certify the emission reductions resulting from each CDM project activities. Article 12 (5) of the Protocol further states that the DOE is to be designated by the COP/MOP to this protocol and authorized to certify emission reductions resulting from CDM activities.

The EB has authority to recommend the appropriate DOE to COP/MOP for accreditation. For EB to select the appropriate DOE there are standards to be observed. Standards inter alia, require: legal entity, have sufficient number of competent expertise staffs to the rules and modalities of CDM, financial stability and the like.[116] The Appendix A further states that if any Entity applies to act as DOE it must produce documents on credibility, declaration of the entities involvement in CDM project activities, if any, demonstrate that no conflict of interest, and shall not have pending any judicial process for malpractice, fraud and/or other function incompatible with its function as DOE.

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[114]. Id Annex C (a to P)
[115] Id Annex C (15)
[116] Id Appendix A paragraph 1 and 2

The DOE has number of functions to carry on. It shall inter alia; validate proposed CDM project activity; verify and certify reductions in anthropogenic emissions by sources of GHGs; and comply with applicable laws of the Parties hosting CDM project activities when carrying out its functions...[117] It should be note that this body is an external body to be accredited by the joint action of EB and COP/MOP on the basis of standards set. Though it is external body it acts within the rules and working procedures developed by the COP/MOP for the CDM project activity.

2.3.2.8 Steps in the CDM Project Activity

There are number of rules and steps formulated by the COP/MOP and the EB for CDM. About eight basics steps are formulated for CDM project cycle. These are: Project design and formulation, national approval, validation, registration, monitoring, verification, certification and issuance of CERs,

I. Project Design and Formulation

This is the first step in CDM project cycle. The parties to the project are required to submit information on their proposed CDM A/R project activity using the Project Design Document /PDD/ for afforestation and reforestation project activity, which has been developed by the EB.[118] Under this step number of issues such as assessment of legal, social and economic aspects will conducted.

II. National Approval

This is the step where national appropriate organ involves in evaluating the CDM project. States wishing to participate in the CDM must designate a National Authority to evaluate and approve the projects, and serve as a point of contact. The DNA before issuing written confirmation of the voluntary participation in the project evaluates the description of the project, baseline methodology, timeline and crediting period, monitoring methodology and plan, calculation of GHG emission by source, statement of environmental impact and

[117] Id Annex E paragraph 27
[118] See supra note 27 p. 9

stakeholders comment.[119] To conduct this evaluation the host country shall have some guidelines for sustainable development. Then after, letter that approves the project will assist the host country in achieving sustainable development could be issued.

III. Validation

Validation or review of the project design document is conducted by the DOE. CDM A/R project document will be submitted to the DOE and on the basis of the guide line developed it "evaluates whether correct methodology applied and consistency of the PDD (Appendix B Marrakesh Ministerial Declaration)[120]observed. It is a process of independent evaluation of a project activity by DOE.[121]

IV. Registration

If the CDM project is validated by the DOE it will forward to the EB for formal registration. Thus, "[r]egistration is the formal acceptance by the EB of a validated project as a CDM project activity.[122] Registration is the prerequisite for the verification, certification and issuance of CERs related to that project activity.[123]

V. Monitoring

Monitoring the project activity according to the PDD is the responsibility of the project participants. Hence, the project participants shall include, as part of the PDD, a monitoring plan that provides for: data necessary for estimating or measuring anthropogenic emissions; baseline of anthropogenic emission; and increased anthropogenic emissions by source of GHG occurring within the project boundary during the crediting period.[124] The result of monitoring report is essential to the DOE for

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[119]. See Supra note 15

[120]. Report of the COP on its Seventh Session, held at Marrakesh, FCCC/CP/2001/13/Add.2: Available http://unfccc.int/resource/docs/cop7/13a01.pdf. Visited on 03/10/2008

[121]. ibid Annex G paragraph 35

[122] ibid Annex G paragraph 36

[123] Id

[124]. ibid Annex H paragraph 53ff

verification work to be conducted. Therefore, [i]n between verification period, project participants are expected to monitor the project in accordance with the monitoring plan that is submitted with the PDD.[125]

VI. Verification

Verification is the periodic independent review and *ex post* determination by the DOE of the monitored reductions in anthropogenic emissions by sources of GHG that have occurred as a result of a registered CDM project activity during the verification period.[126] A CDM A/R project generates either temporary CERs (tCERs) or long-term CERs (lCERs) on the basis of the project type. Verification processes designed specifically, to measure and audit the carbon component. Thus, "every five years, the DOE will conduct a review of the monitored variations in not anthropogenic GHG removals by sinks that have occurred as a result of the CDM A/R project activity since the last verification if it is lCERs and/or since the project start if it is tCERs.[127]

VII. Certification

Certification is the written assurance by the DOE that, during a specified period, a project activity achieved the reductions in anthropogenic emissions.[128] The certification report will be the basis of the amount of CERs to be issued by the CDM registry or "constitute a request for issuance to the EB of CERs equal to the verified amount reductions of GHG."[129] As the task of DOE is diverse "[t]wo different DOEs are expected to conduct the validation on the one hand and the verification and certification on the other.[130] In the Small Scale CDM A/R however, the project proponents may use the same DOE for validation, verification and certification.[131] Therefore, certification is prerequisite for the issuance of CERs of GHG.

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[125]. See supra note 27 p.10
[126]. See supra note 120 Annex I paragraph 61
[127]. See supra note 27 p. 11
[128]. See supra note 120 Annex I paragraph 61
[129]. ibid Annex I paragraph 64
[130] See supra note 27 p.11
[131] .Id

VIII. Issuance of CERs

Upon being instructed by the executive board to issue CERs for a CDM project activity, the CDM registry administrator, working under the authority of the EB, shall, promptly, issue the specified quantity of CERs into the pending account of the executive board in the CDM registry.[132] Unless a party involved in the CDM project activity or at least three members of the EB requests a review within 15 days after the date of receipt of the request for issuance, the EB will instruct issuance of CDM registry to issue the CERs.[133] It should be noted that all the aforementioned steps are very important for carbon purchase agreement that could be signed between the seller and buyer.

2.3.2.9 Land Use, Land-use Change and Forestry/LULUCF/ in the context of CDM/

Initially there was uncertainty about the meaning of terms like forest, afforestation, reforestation and deforestation. United Nations Food and Agricultural Organization /FAO/ initiated discussion to use FAOs definition to avoid the ambiguity. But latter on for the land use, land-use change and forestry activities under article 3, paragraphs 3 and 4 of the Kyoto Protocol; the Marrakesh Accord defines forest, afforestation, reforestation, re-vegetation and forest management.

At this juncture it is proper to cite Annex A of the Marrakesh accord at length.

> *"Forest" is a minimum area of land of 0.05-1.0 hectares with tree crown cover (or equivalent stocking level) of more than 10-30 per cent with trees with potential to reach a minimum height of 2-5 meters at maturity in situ. A forest may consist either of closed forest formations where trees of various stories and undergrowth cover a high proportion of the ground or open forest. Young natural stands and all plantations which have not yet reached a crown density of 10-30 per cent or tree height of 2-5 meters are included under forest, as are areas normally forming part of forest area which are temporarily unstocked as a result*

[132] See supra note 120 Annex J paragraph 66
[133] Ibid Paragraph 65

of human intervention such as harvesting or natural causes but which are expected to revert to forest;

"Afforestation" is the direct human-induced conversion of land that has not been forested for a period of at least 50 years to forested land through planting, seeding and/or the human-induced promotion of natural seeds sources;

"Reforestation" is the direct human-induced conversion of non-forested land to forested land through planting, seeding and/or the human-induced promotion of natural seed sources, on land that was forested but that has been converted to non-forested land. For the first commitment period, reforestation activities will be limited to reforestation occurring on those lands that did not contain forest on 31 December 1989;

"Re-vegetation" is a direct human-induced activity to increase carbon stocks on sites through the establishment of vegetation that covers minimum area of 0.05 hectares and does not meet the definitions of afforestation and reforestation contained here; and

"Forest management" is a system of practices for stewardship and use of forest land aimed at fulfilling relevant ecological (including biological diversity), economic and social functions of the forest in a sustainable manner.

These definitions are basis for the implementation of CDM A/R project activity. Whatever activity takes place as CDM A/R must be compatible with these definitions.

Chapter Three

3. Review of Ethiopian Environmental Policies and Laws

As the supreme law of the land, the Constitution of Federal Democratic Republic of Ethiopia (FDRE) incorporates National policy principles and objectives under Chapter Three and Chapter Ten. One of these policies and objectives is the environmental policies and objectives. Therefore, in this chapter the Constitutional principles, objectives and other national laws and policies which have relevance to the CDM project will be discussed. CDM A/R project is not only carbon selling; rather it has close linkage with other environmental policy issues and the benefit extends to other development related issues. It is in this line that different policies and laws will be reviewed to show the relationship.

3.1 The Environmental Policies and Objectives of the FDRE Constitution.

Chapter three of the FDRE Constitution pronounces fundamental rights and freedoms. It is in this chapter that environmental rights are declared. Hence, article 44 reads:

> *1). All persons have the right to a clean and healthy environment.*
>
> *2). All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programs have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.*

The categorization of the environmental rights under the fundamental rights of the citizens envisages, as professor Khushal Vibhute stated '...countries deep concern for the environment.'[134] Under article 43 (1) and (3) the right to development, the Constitution further provides the fundamental environmental principle which took its present position by Brundt Land report i.e.; Sustainable Development. The article reads:

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[134] Khushal Vibhute, (2008) Environmental Policy and Law of Ethiopia: A Policy Perspective, *Journal of Ethiopian Law,* Vol. XXII No.1 p.76

1). The people of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.

2). All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.

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By reading the aforementioned two Constitutional provisions it is possible to draw important environmental principles. These principles are: clean and healthy environment, right to livelihood and sustainable development. If we pick one of these principles, for example, sustainable development, it is a fundamental criterion for the CDM project. International climate rules require that CDM A/R projects contribute to sustainable development in the host country. Not to indulge into sovereign power of countries, international community agreed to leave the mandate for the host country to ensure that the project helps for the sustainable development of the country.

Furthermore, as stated, Chapter Ten of the Constitution provides national policy principles and objectives. Article 92 provides environmental objectives. It reads:

1). Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.

2).The design and implementation of programs and project of development shall not damage or destroy the environment.

3). People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.

4). Government and citizens shall have the duty to protect the environment.

The environmental principles and objectives stated under fundamental constitutional rights and environmental policy objectives have some thing in common. Hence, the constitution imposes obligation on government not to affect the livelihood rights of citizens in the name of development, to be vigilant when signing international agreements not to affect the environment, to consult the people in planning and implementing

environmental policies, to check any developmental activity on the basis of its environmental sustainability and also imposes duty to protect environment.

In this regard question could be raised as what is the relationship of these principles with that of the CDM A/R. It should be noted that, the constitutional environmental principles and objectives have a lot to do with CDM A/R. If we take sub-article 2 and 3 they provide pack of message. As has been discussed the participation in the CDM A/R project is voluntary. The implementation of CDM A/R project must not affect the environment and the livelihood of the adjacent community and the community must be consulted before the implementation of the project and volition must be secured from them before commencement. It is not only consultation but also the willingness and voluntary participation of the community must be envisaged in reduced document evidencing the agreement.

3.2 Environmental Policies

The Conservation Strategy of Ethiopia (CSE) is a holistic document that incorporates almost all important environmental concerns. The CSE has five interconnected volumes i.e.; Vol. I Natural Resource Base, Vol. II Policy and Strategy, Vol. III Institutional Framework, Vol. IV Action Plan and Vol. V Compilation of Investment programs.

The environmental policy of Ethiopia (EPE) is developed from Vol. II of the CSE and is required to guide all environment related activities which are undertaken or must be undertaken by the Environmental Protection Authority and other sectors. In this regard question could be raised. What shall come first, policy or strategy? It is accepted notion that policy is expected to guide all laws and strategies. But the way Ethiopian Conservation Strategy is designed prior to environmental policy is different approach. Any ways, it does not make difference in application of the environmental policies, strategies and laws. Therefore, let us see some important issues from the CSE which are pertinent to the CDM A/R in a nutshell.

3.2.1 Conservation Strategy of Ethiopia (CSE)

The Conservation Strategy of Ethiopia integrates into a coherent whole all the existing and future federal and regional government planning in all sectors that impinge on the environment, including agriculture, forestry, wildlife, fisheries, soil, water, minerals, energy, urban planning and cultural heritage conservation. Therefore, CDM A/R project could be seen as part of conservation strategy for forest regeneration and conservation since it is reflected in CSE. It should be noted that Volume II CSE provides the overall policy goals, specific policy objectives, key guiding principles and strategies on each Sectoral and Cross-sectoral policy objectives, principles and strategies which may have direct relationship with CDM.

3.2.2 The Overall Environmental Policy Goal

The overall policy goal is:

> *to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.*[135]

As the heading implies, the overall policy objective provides the general framework from which other specific policies and guiding principles could be drawn.

Though there is standard model Project Design Document (PDD) for CDM A/R, the host countries environmental policy goal must also be observed. As has been discussed, sustainable socio-economic development which is requirement for CDM A/R is envisaged in the overall policy goal and due consideration must be given to it. The experiences of other countries show that, any socio-economic developmental activity conducted within countries must be aware of CDM A/R potential in the activity.

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[135]. Environmental Protection Authority and Ministry of Economic Development and Cooperation, The Federal Democratic Republic of Ethiopia, *Environmental Policy (1997) p.3*

3.2.3 Specific Environmental Policy Objectives

The CSE provides nine[136] specific policy objectives to seek. The specific policy objectives inter alia, seek to ensure that essential ecological processes and life support systems are sustained, biological diversity is preserved and renewable natural resources are used in such a way that their regenerative and productive capabilities are maintained...and ensure the empowerment and participation of the people and their organizations at all levels in environmental management activities.

Therefore, the project developers and participants in the CDM A/R project are expected to observe and adhere to these specific policy objectives. As stated, particularly, sustaining biological diversity, enhancing and empowering the community to participate in the project are mainly expected to make the project sustainable.

3.2.4 Key Guiding Principles

It is stated that key guiding principles are provided to shape all subsequent policy, strategy and program formulations and their implementations. Therefore, the EPE provides about 19 (a to s) key guiding principles. These principles are provided in such a way to guide any project initiation that may have impact on environment.

The key guiding principles include: acquisition of power by community to make their own decisions on matters that affect their life and environment so that sustainable environmental and economic production be possible; creating condition that will support community and individual resource users to sustainably manage their own environment and resources; gender equality in policy, program and project design, decision making and implementation; assuring social equality in resource use; increased awareness creation in resource conservation; recognition of local, regional and international environmental interdependence. In addition to the sustainable development criteria, CDM A/R project must be guided by these principles.

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[136]. Id pp 3-4

In the context of CDM A/R, particularly, enhancing the role of community in decision making, creating equal opportunity for women in project participation and protecting extinct species are more pertinent. Therefore, CDM A/R project must be guided by these principles.

3.3 Sectoral Environmental Policies

The key guiding principles of EPE state that integration of sectoral and cross-sectoral policies and strategies are very much important to achieve the policy objectives of the natural resource and environment. In light of this, EPE provides sectoral environmental policies.

Though the current purpose of CDM A/R project is carbon sale, the project is not only limited to carbon sale but it has other various benefit. Particularly, in maintaining soil fertility, protection of genetic resources, restoration of biodiversity, and enhancing natural resource management. Therefore, the sectoral environmental policies like soil husbandry and sustainable agriculture; forest wood land and tree resources protection; genetic species and ecosystem biodiversity protection; water resources management have direct relation ship with CDM A/R.

The environmental concerns are interdependent to each other and separation of one from the other may not supply full scale of the protection. But to be more focused, areas which are very much pertinent to CDM A/R such as, soil fertility and sustainable agriculture; climate change; and forest, woodland and tree resource management will be discussed in the following section.

3.3.1 Soil Husbandry and Sustainable Agriculture Sectoral Policies

The sectoral environmental policies contain number of components and one of them is soil husbandry and sustainable agriculture. These policies seek to safeguard the integrity

of the soil to protect its physical and biological properties, through management practice for the production of crops and livestock.

Further more it aspire to institute the stall feeding of domesticated animals through a combination of providing agricultural residues, on-farm produced forage and fodder as well as the cutting and carrying of grass and browse from meadows and hillsides in order to encourage re-vegetation of grazing lands and the reduction of soil erosion; and to develop forestry on the farm, around the homestead and on eroding and/or eroded hillsides in order to increase the stock of trees.

These sectoral policies have direct relationship with CDM A/R project, as it encourages the re-vegetation of the degraded grazing lands, introduces stall feeding by cutting and carrying grass to domesticated animals and thereby reduce soil erosion.

3.3.2 Forest Woodland and Tree Resources Sectoral Policies

These policies have direct implication to CDM A/R project. Under this sectoral policy different interrelated issues are addressed. Concern of community, resource management, and introduction of exotic species, sustainable development and other similar issues which have direct relation with CDM A/R are provided.

To mention some; this policy aspires to recognize the complementary roles of communities, private entrepreneurs and the state in forestry development; to encourages all concerned individuals and communities as well as the government to actively involve in the planning and implementation of forestry programmes to ensure sustainability, minimize cost, and forestall conflict; and to ensure that forestry development strategies integrate the development, management and conservation of forest resources with other resources.

The other policy issues stated are: to ensure that afforestation with exotic species be restricted to backyard woodlots, to peri-urban plantations and to plantations for specific

industrial and other projects; otherwise until reliable information and knowledge on exotic species are available afforestation shall be used local species.

Furthermore, the policy seeks to adhere to the principle that "sustainable forest management" is achieved when social acceptability and economic viability; to pursue agricultural and other policies and programs that will reduce pressure on fragile woodland resources and ecosystems; and to promote changes in agricultural and natural resource management systems which will limit the need for free grazing of animals in protected forest areas; and to find substitutes for construction and fuel wood whenever capabilities and other conditions allow, in order to reduce pressure on forest.

These sectoral policies have a lot to do with CDM A/R. The most pertinent ones stated in these policies are restriction on the introduction of exotic species and encouragement of afforestation by local species for sustainable forest management. The CDM A/R project shall observe this policy direction.

3.3.3 Atmospheric Pollution and Climate Change Sectoral Policies

It is well known fact that under developed countries like Ethiopia has no commitment for reduction of GHG. But these policies are more pertinent to the CDM issue which this paper takes for discussion. To mention at length, these policies seek to promote a climate monitoring program as the country is highly sensitive to climate variability; and to recognize that Ethiopia's environmental and long term economic interest and its energy prospect coincide with the need to minimize atmospheric inputs of greenhouse gases as it has a large potential for harnessing hydro-geothermal and solar energy, non of which produce pollutant gases in significant amounts and to develop its energy sector accordingly.

In this regard it should be noted that other industrialized countries may use this policy opportunity to involve in CDM project development to meet their reduction commitments. Particularly, in the energy sector to generate hydro-power which could be potential area for CDM even though it is not the objective of this paper.

Further more these policies aspire to maximize the standing biomass in the country through a combination of reforestation, agro-forestry, the rehabilitation of degraded areas, re-vegetation of the land and the control of free range grazing in the highlands and to seek financial support for these from industrialized countries for offsetting their carbon dioxide emission. Hence, these policies open CDM A/R as investment opportunity for industrialized countries to meet their commitment of GHG reduction.

3.3.4 Energy Resource Policies

The energy policies have a lot to do with the climate change and CDM A/R. Our domestic energy consumption is mainly dependent on fuel wood. This in turn causes great environmental damage to the local flora. In the CDM A/R project area, domestic fuel consumption is potential threat for the sustainability of the project.

Therefore, these policies aspire to promote the development of renewable energy sources and reduce the use of fossil fuel energy resources both for ensuring sustainability and for protecting the environment, as well as for their continuation into the future; and focus extension programs on farm and homestead tree planting to ensure that each homestead grows enough trees to satisfy its wood requirements.

Hence, the communities' satisfaction of domestic fuel consumption from homestead grown trees has big advantage for CDM A/R project sustainability in reducing the threat to the re-generated forest.

3.4 Cross-Sectoral Environmental Policies

Part IV of the EPE deals on the cross-sectoral policies. In the cross-sectoral policies population; community participation; tenure and access rights to land and natural resources; land use plan; social and gender issues; environmental economics; environmental information system; environmental research; environmental impact assessment; and environmental education and awareness are dealt. Of the cross-sectoral policies the more pertinent ones to CDM A/R project will be discussed in the following section.

3.4.1 Community Participation

Environmental protection and conservation requires participatory approach. CDM A/R project requires inclusive community participation for its sustainability. In this regard the policy document seeks to ensure that all phases of environmental and resource development and management, from project conception to planning and implementation to monitoring and evaluation are undertaken based on the decisions of the resource user; to develop effective methods of popular participation in the planning and implementation of environmental and resource use and management of projects and programs.

In line with community participation the policy document further aspires that through training and financial support local community be empowered for decision making and also aims to authorize all levels of organization to raise funds locally from the use of natural resources to fund the development, management and sustainable use of those resources. Community participation in an inclusive and more transparent way is consistent with the objectives of the CDM in general and CDM A/R in particular. This policy must also be observed at any level of project development and implementation.

3.4.2 Tenure and Access Rights to Land and Natural Resources

Resources are scares. Access to land and natural resource is potential conflict area where problems could arise. CDM A/R project has special character to restrict the access right of the community to the project area. The policies guarantee the right of user of land to

uninterrupted access to it and to renewable natural resources such as trees, water, wildlife and grazing on it; and recognize and protect wherever possible the customary rights of access to and use of land and natural resources which are constitutionally acceptable, socially equitable and are preferred by local communities.

Appropriate measure must be provided to ensure the rights of the local community when their right is restricted from access to nearby communal land or natural resource. In this regard the prospective carbon sale benefit that could commensurate the current restriction must be inculcated in the minds of the community through training.

3.5 Policies and Laws Relevant to CDM A/R

As has been stated, CDM A/R is one of the flexible mechanisms adopted in the Kyoto Protocol to meet the emission reduction targets of the industrialized countries by investing in afforestation and reforestation of carbon sinks in developing countries. By its very nature CDM A/R project touches upon different environmental issues related to it. Because of the very nature of CDM A/R, in the above headings different environmental policies and their relationship with CDM A/R project are discussed. To be more precise, the implementation CDM A/R project mainly interconnected with the laws related to land and forest. Though some of the environmental policy issues are addressed in the above section, in the following part particularly, the writer opted to discuss policies and laws related to land and forest.

3.5.1 Rural Land Policies and Laws

Rural land policy was drafted by the Ministry of Agriculture and Rural Development (MoARD) but it was commented by the top policy makers that Agricultural Development Led Industrial Policy (ADLIP) which incorporates land issue suffice to address the policy concerns of land.[137] Hence, for the time being the draft policy is put aside. So in the following part in a nutshell discussion of constitutional provision pertaining to land

[137] Interview with Ato Ahmed Nassir Ahmed, State Minister, Ministry of Agriculture and Rural Development Natural Resources Sector, 15/10/2008

policy and other Federal and Regional laws regulating land and its expropriation will be dealt.

3.5.1.1 The FDRE Constitution

From the constitutional provisions Article 40 provides the fundamental basis of the land policy of the country. The constitution defines land as common property of the Nations Nationalities and Peoples of Ethiopia and assert that every Ethiopian peasant has right to obtain land without payment. As defined in the constitution, land is common property of the people of Ethiopia but administered by the State on behalf of the people and can not be subjected to sale or to any other means of exchange. This shows that peasant farmers possessing land have use right over their possession.

The Constitution further envisage that, apart from sale and/or use as a means of exchange, peasants have right to hold land for unlimited time, to transfer, lease and compensation for the properties he/she developed on the land in the event of expropriation. The Constitution of Southern Nations Nationalities and Peoples Regional State (SNNPRS)[138] on the similar token reiterate the same rights and obligations pertaining to land. As the constitutions share common ideas no need of duplication.

3.5.1.2 Land Policy

In addition to the Constitutional provisions of FDRE, Rural Development Policies, Strategies and Techniques provide detail policy grounds and justifications for the land holding system. It states that FDRE land Policies that the constitutional provision provides can not be perceived for granted. And it goes on to say that State ownership of land means that "state has right to allocate land free of charge to peasants who want to till, right for the redistribution of land when need arises, right to allocate land not in the possession of peasants for investors and/or to other purposes on the basis of lease" and

[138] Revised Constitution, (2001), of the Southern Nations Nationalities and Peoples Regional State, *Debub Negaret Gazetta,* Proc. 35/2001

compensation for the possessor of the land in the event of expropriation for public interest. (Emphasis added; translation is my own)[139]

The policy document further provides justification for the redistribution of land. Periodic redistribution of land has objective to allocate land for youth who were not part in the former distribution of land.[140] To guarantee the usufruct right of peasant, issuance of certificate as one means is stated. To use land efficiently, the policy characterizes land and discourages plough of sloppy lands and encourages covering it with forest and also protection of existing forests that may generate high income to the local community.[141]

The closer reading of the policy statement shows that land policy has potential connotation to promote CDM A/R projects. This is because it discourages plough of sloppy lands and encourages re-generation with forest to get high income. The Humbo/Damote project site selected for the CDM A/R project is sloppy hillside and corresponds with the policy objectives. In the last statement, the policy document aspire enactment of comprehensive policy, regulation and institutional arrangements for the realization of the objective.

3.5.1.3 Federal Land Proclamation

Federal Proclamation pertaining to land initially enacted by Federal Government Rural Land Administration Proclamation No.89/1997, this has been replaced by a Rural Land Administration and Land Use Proclamation No.456/2005. On the same day with preceding number, Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 enacted by the federal government.

Rural Land Administration and Land Use Proclamation inter alia states, acquisition and use of rural land by peasants, pastoralists and community in general. The size of holding

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[139]. The FDRE Rural Development Policies, Strategies and Techniques, Ministry of Information, (Press and Audiovisual Department), (2001) pp. 67-68)

[140]. ibid p. 82

[141] ibid p.92

and duration of holding is left for the determination of respective regional land administration laws. To guarantee the security of holding rights, article 6 (3) of the proclamation entitles the holder of rural land to get holding certificate prepared by the competent authority. Further more article 9 talks about redistribution of rural land and article 10 states obligation of rural land users.

Proclamation which declares expropriation of land for public purpose defines what pubic purpose is and kind of compensation may be paid. But is does not define what property is to warrant compensation. It says payment to be made in cash or in both to a person for his property situated on his expropriated landholding. Article 10 of this proclamation states valuation of property by the expert committee designated by the woreda administration. Forest as carbon sinks, how to be treated is point of discussion in our later chapter.

3.5.1.4 Regional Land Proclamation

The FDRE Constitution states that Regional States are responsible 'to administer land and other natural resources in accordance with Federal Laws.'[142] This connotes that any law promulgated by the Regional State shall meet the terms of the Federal laws. It is inline with this that the SNNPRS has enacted Land Administration and Use Proclamation No.53/2003 which has been replaced by Proclamation No.110/2007 and Rural Land Administration and Use Regulation No.66/2007.

The proclamation recognizes three types of land holding i.e; private, communal and State holding. It also provides that holding rights could be recognized by issuing certificate of holding. Article 5 of the proclamation states the right to hold and use rural land. Under sub article 10 it specifically reserves the right of getting land for communal use of peasant, semi pastoralist and pastoralist that is for grazing, social and cultural affairs and religion purposes. But sub article 4 states the right of rural youth to get and use land which is possessed by the community or government. In the similar token article 9 sub 4 states land under the community or government possession could be reallocated for landless rural use.

[142]. FDRE Constitution, Art 52 (2) (d)

Article 13 states land use planning and proper use of sloppy, gully and wetlands. It is under this article that community rights are broadly stated.

Rural Land Administration and Use Regulation provides similar rights and in a more detail manner. Issue pertinent to this paper is stated under article 13 sub article 6(A). The provision states: "with the participation of the community, efforts shall be made in order to utilize properly communal lands such as undulating, bare, unproductive, sloppy and hilly areas which can be easily damaged either privately or jointly".

3.5.2 Forest Policies and Laws

In Ethiopia, starting from the reign of Minilik II, with different ideological perspectives those governments in power had enacted forest laws. But all these are not backed by policy documents to guide the implementation of the forest laws. It is for the first time in the history of Ethiopia Forest Conservation and Utilization Policy and Strategy (EFCUPS) document issued (2007). Let us see this policy in a nutshell.

3.5.2.1 Forest Conservation and Utilization Policy and Strategy

As has been stated the previous forest laws of the country were enacted without policy guide. The Forest Conservation and Utilization Strategy document is produced in 2007. The cardinal objective of the new policy and strategic document is "to meet the forest product demands of the citizens and increase the contribution of forest resources to the national economy through appropriate conservation and management of the country's forest resources."[143] The policy document further provides specific policy strategies. These specific policy strategies inter alia, include: promotion of private forest development and conservation; expansion of forest development technologies; promotion of market for forest product; administration, utilization and management of state forest; prevention of deforestation, and establishing up-date information database.

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[143]. Federal Democratic Republic of Ethiopia, Forest Conservation and Utilization, *Policy Document*, (2007) the Preamble

The way the policy document is designed is by providing for each policy principle number of strategies commensurate to it. For expanding market development one of the strategies adopted state the 'designation and granting of production sites by way of organizing, in association or other groupings, those farmers/agro-pastoralists living in and within the vicinity,.

Training and educating communities about forest conservation and management as well as production techniques of forest and forest products through the preparation of implementation manual is also the other strategy adopted.

Further more the policy document aspires to 'design and implement participatory management strategy that can be utilized by the surrounding communities through designation of forest as protected areas, forests and forest lands that have the potential to protect basin systems as well as conserve and rehabilitate areas and water bodies the soil cover of which has and will be washed away as a result of poor delineation and protection schemes.

Enabling the nearby communities, individuals, associations or investors to conserve and make use of natural forests by issuing certificate of ownership rights and assigning community guards with the view to preventing illegal settlement, deforestation for various purposes as part of the strategies stated. For the CDM A/R project implementation this policy document has big importance as it enhances forest conservation, management and lays down enabling ground for community participation.

3.5.2.2 Forest Proclamation

On the basis of the policy and strategy document, the previous Forest Conservation, Development and Utilization Proclamation No. 94/1994 replaced by a Proclamation to provide for the Development, Conservation and Utilization of Forests No. 542/ 2007.
As spelt out, the objective of the proclamation is for the development, sustainable utilization and conservation of countries forest resources by ensuring the participation of, and benefit sharing by the concerned communities. The objective also recognizes the role

of forest in preventing soil erosion, expansion of desertification, disturbance of ecological balance, depletion of biodiversity and reduction of agricultural production.

In the definitional part forest is defined as 'community of plants, either naturally grown or developed by planting and mainly consisting of trees and other plants having woody character.[144] Tree is also defined as any woody plant regardless of its species, age or size and includes bamboo, reeds and palms as well as other plants to be designated as such by the Ministry. Whether this definitions match with CDM definition of forest and tree will be discussed latter. Local community is also defined to include the community residing inside and adjacent to State forest.[145]

Article 3 of the proclamation provides two types of forests i.e. private and state forest. Private forest is meant forest other than state forest developed by any private person and includes a forest developed by members of a peasant association or by an association organized by private individuals, investors and government and non-governmental organizations.[146]

To promote forest development the proclamation states that private individuals, associations, governmental and non-governmental organizations and business organizations shall have right to obtain rural land for forest development in accordance with regional land administration laws. Holding right of the forest land through certification and transfer of the forested land in accordance with land laws is also provided.

The SNNPRS, Forest Management, Development and Utilization Proclamation No.77/2004 share in common the definition of forest, trees, types of forest and rights of forest developers.

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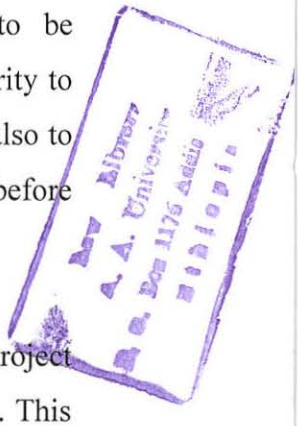
[144]. A Proclamation to provide for the Development, Conservation and Utilization of Forest, *Negaret Gazetta* Proc. No. 542/2007 Article 2 sub (3)

[145]. Id Art. 2 sub 17

[146]. Id Art.. 2 (9)

3.5.2.3 Environmental Impact Assessment

In the CDM regime as well as in the national environmental legislation, environmental impact assessment is prerequisite for the CDM A/R project implementation. Hence, Environmental Impact Assessment Proclamation No. 299/2002 is relevant to be reviewed. As has been discussed, the Federal EPA as DNA is a responsible authority to ensure whether environmental impact assessment is conducted for the project and also to ensure that the project contributes for the sustainable development of the country before approving the project.



As stated under article 3 (1) …no person shall commence implementation of any project that requires environmental impact assessment as determined in a directive issued… This provision presupposes issuance of directive which lists down projects require environmental impact assessment. Generic characterization is made to projects requiring environmental impact assessment under article 5. Article 5 provides two categories of determination. The directive issued is expected to determine:

(a) projects not likely to have negative impacts, and so do not require impact assessment;

(b) Projects likely to have negative impacts and thus require environmental impact assessment.

The proclamation states that the project proponent is duty bound to undertake an environmental impact assessment, provide report of the likely adverse impacts of the project and include the mitigation plan designed. Based on this report the relevant Authority or regional environmental agency will conduct evaluation and authorization of the implementation of the project.

On the basis of this proclamation EPA developed in 2004 Environmental Impact Assessment guidelines and procedures for forestry projects. The EIA procedural guidelines provide the requirements and processes of conducting EIA and also activities that may cause significant environmental impacts and that are deemed not to have impact.

The activities characterized to cause significant EIA requires a full scale EIA and those do not have impact are exempted from EIA. Inter alia, forest plantation, afforestation and introduction of exotic/new species fall under the activities that may have significant impacts.

There are two/three steps of assessment process. As a first step, initial environmental examination (IEE) will be conducted. If the IEE report shows that there is no need of EIA, then it will be final. Otherwise if the IEE report states that the project has some impact or where the need of EIA is unclear or it contain insufficient information, then a preliminary environmental impact assessment (PEIA) will be conducted. Thirdly, if the IEE shows that there is adequate ground for detailed EIA, then full scale EIA will be conducted.

As the project area is mainly barren and degraded land the afforestation/reforestation project is expected to provide advantage rather than disadvantage. The Project Design Document /PDD/ states plantation of "tree species include those indigenous to the project area, and other exotic species which are widely utilized," and will deliver the maximum biodiversity benefit, and will have no threat of negative impact. It should be noted that as article 14 of the proclamation stipulates it is the mandate of the SNNPRS to evaluate the report of impact assessment and then forward for approval by EPA.

Chapter Four

4. Legal and Institutional Aspects with respect to Humbo/Soddo Reforestation and Afforestation Project

This chapter is the main part of the paper. The writer in this part of the paper aims to analyze the legal and institutional issues that are directly or indirectly have relation with the A/R CDM carbon project and to provide some possible measures to be taken for problems identified as legal or institutional gaps. Apart from the legal and institutional issues at this juncture it is sound to introduce the project area and the project itself to provide some brief glance.

Ethiopia is a Federal country with a Constitutional set up whereby power is shared between the Federal Government and States. It is in-line with this that the 1994 FDRE Constitution declares the establishment of nine Regional States. Hence, the Southern Nations, Nationalities and Peoples Regional State /SNNPRS/ is one of the nine federal states of the Federal Democratic Republic of Ethiopia. As the name implies the SNNPRS is located in the southern part of the country. The seat of the region is Hawassa. The SNNPRS borders the Oromia National Regional State to the north and east, the Gambella National State to the west, Kenya to the south, and Sudan to the southwest.

The Constitution of SNNPRS under article 45 states the administrative hierarchies of the regional state. Accordingly, "the Regional State is organized in Zones, Special Weredas, Weredas and Kebeles."[147] Wolayta Zone is one of the zonal administrative structures established in the Region. The Humbo/Damote project area is located in Wolaita Zone, Humbo and Soddo Zuria Weredas. The Humbo Damote area is approximately located 6^0 43'60''N latitudes and 37^0 45' 0"E longitudes.

The Soddo site is found on Mount Damote which is North of Soddo town. Kebele Associations included in the Soddo site are eight in number and of these two are found in

[147]. The Constitution of SNNPRS Supra note 138, Art. 45 (1)

Damot Gale wereda. The Humbo site is located South of Soddo town on the way to Arbaminch and on the northern part of Lake Abaya. The project area includes 7 Kebele Associations.

4.1. General Description of the Humbo/Soddo A/R CDM Project

It should be noted that, within Ethiopia there is no similar project in operation. For CDM A/R project activities, model PDD is prepared and approved by the COP. For the Humbo/Soddo A/R assisted re-vegetation project PDD is prepared in accordance with this model. The following general description of the project is excerpted from the PDD and communications conducted with the groups of the local community. The project involves the restoration of locally indigenous, biodiverse forest species in the mountainous area of Humbo/Soddo.

It is stated in the PDD that the project will compliment with the natural resource management goals of Ethiopian Agricultural, Rural Development and Forestry Development Coordination Office, and also offers significant social development objectives. On the basis of available aerial photograph and community conversation it was verified that the area where the project is located was cleared at the beginning of the Derg (1972-1975) and now it is barren hill except some minor shrubs.

The project established seven Community Forest Management Group at Humbo and eight at Soddo in the form of cooperative societies. The PDD document show that the community is organized in the form of cooperative society and secured communal holding right of approximately 4,961 hectares of community land (2,728 ha. at Humbo and 2,233 ha. at Soddo). The bylaws agreed by each cooperative society in accordance with the cooperative society establishing proclamation of govern the administration of forest management group.

Additionality test of the project is also stated in the PDD. As the local community witness the area where the project is implemented has been substantially cleared for at least 40

years, with the small areas of remaining vegetation being progressively removed. The net anthropogenic GHG removals by sinks can only be realized with the proposed project, and will not occur in its absence.

4.1.1 Objectives of the Project

The overall objectives of the project are sequestration of carbon, the establishment of biodiverse native forest, and the alleviation of poverty in the Humbo and Soddo districts, with flow of benefits in the areas of education, health and food security.

More specifically, the project aims to sequester CO_2 through the regeneration of native forest by utilizing the farmer managed natural regeneration technique, monitor, and measure and certify carbon sequestration from the project sites, and to pilot the development of this expertise in Ethiopia. Further more it aims to enhance biodiversity of the region; reduce soil erosion, and help maintain supply of the subterranean stream which deliver the water supply; and provide an income for local families through the sustainable harvesting of the forest resources.

4.1.2. Activities of the Project

To achieve the aforementioned objectives, the project aspires to undertake several activities. Among others, the activities include:- demonstration of sustainable development formation of a model community holding and management of public land with core values of carbon sequestration and natural resource management development of biosequestration model which can be replicated; securing legal title for the community in the form of cooperative society; empowering community to protect the environment; and establish legal structure by which the carbon sequestered on the site can be used to generate CERs within the framework being established by the DNA.

The free access of the adjacent community to the project area is restricted because of the inception of the project. This had caused negative impact in the livelihood of the community. To alleviate this problem alternative temporary mechanism is designed as

part of the project activity. Members of the cooperative society stated that, for those who are severely affected because of the implementation of carbon project, World Vision Ethiopia arranged revolving fund to support them. With this fund, they are supported to involve in income generating activities like fattening animals and harvesting honey from beehives.

4.1.3. Participants of the Project

The participants of the project embrace organs of the Federal Government, Regional government organs, local community members and Non-governmental organizations. To be more specific it includes: local farmers, local herdsmen, members of the Forest Management Groups of the Cooperative Society, Staff of the Ethiopian Agricultural, Rural Development and Forestry Development Coordination Office, EPA, World Vision Ethiopia, World Vision Australia and the World Bank as Trustee for Biocarbon Fund.

It should be noted that the description of the participants of the project will help us in the latter discussion as who can enter into carbon sale contractual relations and deployment of carbon sale money. The local communities adjacent to the project area are organized in the form of a cooperative society to manage the forest and to get the benefit of carbon sale. Whether the cooperative society is the appropriate organization for such activity is also a point of contention as it is not inclusive of all the adjacent community.

4.1.4. Legal title to the Land, Land Tenure, Access and use right of the Project Area

The local kebele leaders' witness that, the land upon which the project is established was forest at a point prior to 1960s, but was cleared at the beginning of the Derg period. The land on which the project implemented is, as like that of all land in Ethiopia owned by the Government of Ethiopia. Earlier, the local communities living adjacent to the project area had free access to the land and it was not managed by any community group. The landscape is steep in some areas and gentle in some others but not occupied. However,

the area was utilized by the community members for fuel wood collection, grazing herds and other related purposes.

The introduction of the CDM A/R project changed the status of land title, tenure system and access rights of the community. It is stated in the PDD that grazing by livestock is restricted during the vulnerable period after shoot pruning; however, once trees are tall enough to withstand the presence of livestock, grazing will be permitted to minimize the danger of wild fire. Restriction of access right has a lot of implication on land title to the project area and on the access of the community to the area.

4.1.5. Risks of the Project

There are some risks that are considered a threat to the project. Of the stated risks, fire and pest risks are the major ones. The risk of burning is a threat to the forests. Risk of burning of the forest could be caused either from the wild fire or the deliberate setting of fire to damage the forest. The other risks are that many current forest users, particularly charcoal makers and fuel wood collectors may affect the project area. The community may also fail to protect the project area or respecting enclosure area. The PDD suggests some remedies to alleviate these through technical and awareness training to local farmers/communities, strengthening patrolling and monitoring, as well as maintaining a fire belt/break around the forest areas.

The risks are far reaching. The writer is of opinion that the suggested remedies are not adequate enough. At this point in time, the suggested remedies are not yet reality. Other alternative measures inclusive of the adjacent local community to sustain their pre-existing needs are expected.

4.1.6. Addressing permanence of the project

In the CDM A/R project approval there are two approaches for certifying emission reductions. These are long term certified emission reduction (lCER) and short term certified emission reduction (tCER). This project chose the lCER mechanism for the

anthropogenic GHG removals by sinks. Hence, the duration of the proposed A/R CDM project activity or crediting period is agreed to be for 30 (thirty) years starting July 01, 2006. To be conservative and make the monitoring cost-effective, only carbon stock changes in above-and below-ground biomass are proposed to be measured and monitored. This is because other carbon pools like soil organic carbon, litter and dead wood under the project control are unlikely to decrease, or decrease more than the base line. The project document further states that the crediting period is not renewable.

The issue regarding permanence is proposed to be addressed through education of land managers in the benefits of tree protection; provision of economic gains to the communities; employment of wardens for protection of vegetation; establishing alternative sources for fuel wood and building materials and motivating individuals of families to protect and benefit from their portion of forest.

Permanence of the project for the proposed years is very important for the sequestration of carbon. Taking into account the current urgent needs of the community immediate measure is required to realize the permanence of the project. It is revealed in the focus group discussion that the plot of land they hold do not warrant their fuel wood consumption and other household needs. The proposed alternative measures must be reality in the near future.

4.1.7 Forest definition

The ordinary definition of forest and tree is provided in the federal and regional forest conservation and utilization proclamation. For the purpose of CDM A/R project the Ethiopian DNA communicated the harmonized definition of forest to the EB. The PDD reiterates the harmonized definition of forest for the purpose of CDM A/R. Hence, it is defined: a single minimum tree crown cover value 20 percent, a single minimum land area value 0.05 hectare, a single minimum tree height value 2 meters and A/R project activities among others include Palm trees and Bamboos. The actual project boundary is also measured and set by Geographic Information System (GIS).

The writer is of opinion that the DNA's communication of forest definition to EB is good initiative for the implementation of the CDM A/R project. But the legal status of the communication is not known. At federal level as well as at regional level there is another formal definition provided for forest. Thus, dispute may arise with regard to the definition and it requires further analysis.

4.2 Legal Aspects

In the discussion of the legal aspects, the writer focuses on the legal issues which may have specific implications to the CDM A/R project. But there are possible side issues related to the legal aspects which may invite the writer to address issues beyond the scope of the CDM A/R project. There are also other technical issues which are out of the legal regime. In this regard proper care is taken to manage the paper so that the paper could address only the substance of CDM A/R project to the extent required. It should also be noted that the legal aspects discussed in this study only address the legal issues that could negatively or positively contribute to the implementation of the CDM A/R project and the technical and scientific issues are excluded.

4.2.1 Security of Land holding rights

The debate over the holding rights of land is hot in Ethiopia. In the review of the domestic laws and policies, the writer has discussed the policy direction of the FDRE and SNNPRS Constitution with regard to land.

Both Constitutions stipulate that the right to ownership of urban and rural land and natural resources is exclusively vested in the states and in the people. Land is the common property of the people of the Regional State and shall not be subject to sale or to other means of exchange. Therefore, the land in the project areas is the common property of the people of SNNPRS and particularly the Woreda, having the authority to

"Preserve, protect, develop natural resources and mobilize the inhabitants for development activities."[148]

The SNNPRS Rural Land Administration and Utilization Proclamation No. 110/2007 under article 6 (3) with regard to land measurement, registration and certification stipulates competent authority to describe the size of the land, land use type and cover, level of fertility and borders, as well as the obligations and rights of holders. Though this competent authority is not defined in the definitional part of the Proclamation, the Wereda and concerned Kebele administration are the bodies responsible to discharge these duties. Therefore, these organs are jointly responsible in making decisions with regard to land measurement, registration and certification.

Holding security of land for the CDM A/R project is very much fundamental since forest is attached to land. How the forest grown on the land and sequestered carbon could be owned also requires appropriate response. The Constitution characterizes "private property" as "any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common."[149] In light of this definition the holding security ensures the right to own property when there is investment of labour, creativity, enterprise or capital. With regard to the persons to enjoy this right the constitution guarantees these rights for both natural and legal persons.

As has been discussed land is the common property of the people of Ethiopia and shall not be subject to sale or any other means of exchange. But it should be noted that the Constitution guarantees under article 40(7) full right to immovable property built on the land or to the improvements made out on the land by labour or capital, including the right to sell, exchange, or bequeath, and where the right of use expires to remove his property, to transfer the title or to claim compensation for the property. Consequently, the holder of

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[148]. Ibid Art 98 (f)

[149]. The Constitution of Federal Democratic Republic of Ethiopia, *Federal Negarit Gazetta,* Proclamation No. 1/1995, Art 40 (2)

the right has right to exchange all moveable and immovable properties be it agricultural crops, trees or vegetation grown on the land by the labour or capital, except the land which is not subject to exchange.

The other issue that needs further discussion is the expropriation of private property. The Constitution states that "...Government may expropriate, on account of public interest, private property subject to advance payment of compensation commensurate to the value of the expropriated property." The term "public interest" is a fluid and deceptive term. It may depend on the policy concern of the country concerned. With the view to define what public purpose means and to put into practice the generic constitutional principle of expropriation, "Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005 enacted. The purpose of the proclamation is clear from the nomenclature of the proclamation. But the preamble also conveys some message:

> *Urban centers of the country have, from time to time, been growing and the number of urban dwellers has been increasing and thereby land redevelopment for the construction of dwelling houses, infrastructure, investment and other services has become necessary in accordance with their respective plans as well as preparation and provision of land for development works in rural areas has become necessary...*

The preamble states some of the public purposes and how they are to be defined and the reasons for the expropriation. In addition to the preamble article 2 (5) defines "public purpose"

> *"the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefit from the use of the land and to consolidate sustainable socio-economic development."*

The manner in which public purpose is defined presupposes development plan that directly or indirectly meets the needs of the public at large. Therefore, "the definition

seems to be directed in ensuring that public authorities do not carry out expropriation of land for public purposes in a discretionary manner."[150] Expropriation for public purpose is conventional issue accepted in every jurisdiction. Providing legal framework for such action is a promising but the proclamation is not detail and does not provide as to what kind of valuation formula to be followed in determining the amount of compensation. It is stated in the proclamation that detail prescriptions applicable to compensation payable shall be provided for by regulation. Accordingly, Payment of Compensation for Property Situated on Land Holdings Expropriated for Public Purposes Council of Ministers Regulation No. 13/2007 enacted. But this regulation does not address compensation of carbon rights.

The other point worth noting is the establishment of property valuation committees. Article 10 of the proclamation states that, "where the land to be expropriated is located in a rural area, the property situated thereon shall be valuated by a committee of not more than five experts having the relevant qualification and to be designated by the wereda administration."

Of course, to enjoy the right of compensation for the expropriated property over the land, the local community must hold or secure title to the land. Therefore, securing title to land for the project area entitles private property right to the community to get compensation for the private property be it vegetations/trees or any permanent improvement made on the land in case of expropriation.

4.2.2. Access to Land

In the review of the policy document, the writer has reviewed the policy considerations. The community has right of use of land to uninterrupted access to it and to renewable natural resources such as trees, water, wildlife and grazing on it; and the policy recognizes and protects wherever possible the customary rights of access to and use of land and natural resources which are constitutionally acceptable, socially equitable and are preferred by local communities.

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[150]. See Imeru Tamrat, Supra note 25

The community living within and outside the CDM project area had common access right over the land that is currently used for the project. The cessation of preexisting benefits of the community from the project area such as grazing their livestock, collection of fuel wood, and charcoal are potential causes for conflicting claims.

In this regard, initially, at the inception of the project, "at the Damote site members of the community living adjacent to the project site at Kakote kebele claimed exclusive access rights to the land and resources on the project site while other members of the community living near to or a bit far from the project sites believe that they have equal claim to the area."[151] The writer conducted group discussion with different sections of the society[152]and similar conflicting claims were envisaged in the Humbo site at Hobicha Bada, Bola Wanch and Bossa Wanch Kebeles. In these localities the communities adjacent to the project site are claiming to settle in the project area and even some members refused to vacate from the site.

This conflicting claim raise socio-legal issues "who should be included in the project area as community member?" This in turn urges us to define what the term "community" means. Black's Law dictionary defines "Community" as neighborhood, vicinity, or locality; a society or group of people with similar rights or interest.[153] Or it could also be defined as "a society of people having common laws, place of residence, rights, privileges etc.[154] In the similar token other scholars define community as "a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges."[155] This shows that the definition attached to community can not be perceived in simple literary terms but it must be used contextually on the basis of the social unit.

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[151] . Id.
[152] . Group discussion is conducted with leaders and members of the cooperative society, non-members, women and youth residing around the project area: (from Nov 20 to 29/2008)
[153] . Campbel Black's, Black's Law Dictionary 8th ed. p. 297
[154] . S.L. Salwan, U.Narang, (2005) Legal Dictionary 16th ed. (New Delhi)
[155] . K. J. Aiyar (2001) Judicial Dictionary, 13th ed. (New Delhi, Butter Worth)

The group discussion conducted within and outside the project sites showed divergent needs raised by the community. In the entire project sites, the adjacent communities incorporated in the CDM A/R project and established cooperative society declare that they are the only right holders of the project area. But those not incorporated in the CDM A/R project or non-members to the cooperative society contend that customarily that they have right of access and there is no restriction for their rights though the cooperative bye-law prohibits.

The bye-law developed by the cooperative society stipulates only the rights and obligations of the cooperative society. But the PDD states overall community benefits. In the discussions, the non-members have shown their grievance. For the time being the problem seems not acute as the cooperative society is backed by the local government machinery and the CDM A/R project area is protected by the paid guards. But in the future, at the time when benefit sharing of the Carbon purchase accrues to the cooperative society, part of the community who are not members of the cooperative society may act negatively to affect the project.

4.2.3. Land Holding

The Constitution of FDRE states that the Regional States shall administer land on the basis of laws promulgated by the Federal Government. The Federal Rural Land Administration and Use Proclamation 456/2005 inter alia, specifies acquisition and use of rural land, type of holding, duration, obligation of land user and restrictions on rural land use. It is in this Proclamation that article 17 provides the responsibility of the regional governments. The regional governments are obliged to enact rural land administration and land use law, which consists of detailed provisions necessary to implement this proclamation and establish institutions at all levels that shall implement rural land administration and land use systems.

On the basis of the federal rural land administration and use proclamation, the SNNPRS enacted Proclamation No. 110/2007 which replaces proclamation number 53/2003 and

also enacted Regulation No. 66/2007 to administer rural land with detailed provision and appropriate institutions.

The definition given to land holding rights under article 2(6) of both proclamations is almost similar. It is defined as:

> *"...right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for the purpose of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same."*

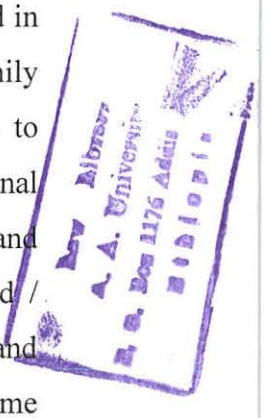
The purpose of land holding and the bundle of rights incorporated in the land holding rights are discussed in the definition. The land holding rights include: the right to use, lease, bequeath to his lawful heirs and also enjoy private property right over the property produced by his labour or capital on the land.

Both the Federal and regional land proclamations recognize three types of land holding systems. These are State holding, Communal holding and Peasant holding. State holding is defined as rural land demarcated and those lands to be demarcated in the future as federal or regional State holdings; and include forest lands, wildlife protected areas, state farms, mining lands, lakes, rivers and other rural lands.[156] Communal holding in the SNNPRS proclamation defined as "land out of government and individual possession and is being under the common use of the local community as a common holding for grazing, forest and other social services."[157] But the definition provided in the Federal Land proclamation states that the communal land holding is land given by the government to the community for common use. There is some difference in definitions. The definition provided in the SNNPRS recognizes the preexisting use of the land by the community but the federal proclamations seems to depart and states that the communal land is a land given by the government to the local community.

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[156]. Southern Nations Nationalities and Peoples Regional State Land Administration and Use Proclamation *Debub Negarit Gazetta*, Proc.No. 110/2007 Art. 2 (15)
[157]. Id. Art 2 (14)

Private holding is also defined as a rural land which is occupied by peasants, semi pastoralists, and pastoralists or by others that have legal rights to possess rural land.[158] For the purpose of this paper and CDM/ A/R project the definition given for the "community holdings" is very much important. The land selected for the project area is a common grazing and fuel collecting land. Holding rights could be established by the issuance of certificate by the competent authority. Thus the proclamation recognizes the land holding rights of the community. As stated earlier the purpose of holding right could be for the development of natural resource. The community, as preexisting right holder can claim the issuance of certificate for the land under their common use. As provided in the Proclamation the content of rural land use certificate includes holder's name, family size, neighbors, area, and other basic data.[159] The content of certificate seems to recognize the private individual holding rights. But to avoid this uncertainty the regional Land Administration Authority developed model certificate for the communal land holding. The content of this model certificate states inter alia, location of the land / region, zone, wereda and kebele/, total area, boundaries of the land /north, south, east and west/, declaration that the stated land is granted to the local community living in the same zone, wereda and kebele for common use.



The other proclamation, a Proclamation to Provide for the Development, Conservation and Utilization of Forest No. 542/2007 under article 4 encourages forest development. Under paragraph one of this article it is stated that associations, non-governmental organizations and business organization who want to develop forest shall have right to obtain rural land in areas designated for forest development in accordance with regional land administration and utilization laws. The SNNPRS, Forest Management, Development and Utilization Proclamation No.77/2004 under article 7 (B) also allows conservation and development of private forest by individuals, associations and organizations in their private areas given to them by government to meet their needs.

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[158]. Id. Art 2 (13)

[159]. Southern Nations Nationalities and Peoples Regional State Land Administration and Use Regulation *Debub Negarit Gazetta*, Regulation .No. 66/2007 Art. 6 (2) (B)

The above discussion shows that there is clearly defined legal regime for the communal holdings of land and forest, which is very crucial for CDM A/R. But the problem is that the issuance of certificate for the land holding seems not guarantee to protect the land from re-allocation. This is because, the proclamation sates that, "[l]ands under the possession of community or government which are potential for agriculture shall be re-allocated to landless youths and peasants who have less farm land."[160] The Proclamation as well as the Regulation does not make a distinction on the certified land and non-certified ones. Furthermore, the land use and administration regulation of the region states that the re-allocation could be conducted by the two third majority vote of the local community. When re-allocation demand is raised by the community, which part of the community is going to vote on such re-allocation is a challenging question. If the voters are member of the cooperative society, there could be no problem. But if the other non-members involve in the voting process it could possibly affect the project.

During the field visit and group discussion the writer recognized that there are potential areas for agriculture in the project areas like Bola Wanche, where some members of the communities contend as holder. Unless some other mechanism is designed, the only safest and secured area for project could be land which is not potentially important for agriculture. The potential threat hover over the project may emanate from the non-members of the cooperative society and youth. The writer traveled through both sites where there is huge population pressure, steep slopes are used for agricultural purposes by disregarding the land use and administration laws of the region which prohibits farming of such sloppy and gully areas. For such threats there must be some remedy to ensure security for carbon project.

4.2.4. Legal Nature of Carbon

Carbon as property right is a novel concept to the international or domestic legal regime. The status/legal nature of the right to sequestered carbon (CERs) is not characterized or defined under the current legal regime of Ethiopia. In the international sphere, it is for the

[160]. See supra note 156 Art. 5(4) and Art 9 (4)

first time that a market mechanism for a global public good had been created. The legal study conducted to commence the CDM A/R project provides constructive interpretation for the private property rights provided in the constitution and autonomy or privities of the principle of law of contract.

The legal nature of carbon as seen from the Annex I Parties, the Marrakesh Accords – the 'rule book' for the Kyoto Protocol- states in bold that the Protocol 'has not created or bestowed any right, title or entitlement to emissions of any kind.[161] The EU ETS creates discrete permits under a regulation, not property rights. But this does not mean that it is not tradable or transferable.

Today, there are property rights governing everything from land and water to birds' nests, ideas and DNA.[162] As the British Jurist Sir Henry Maine observed the diversity and complexity of property when he compared different kinds of property systems to different 'bundles of sticks'. Though this is true, carbon as marketable product is a new concept and could not be envisaged in the past legal regime as property rights or the bundle of rights within the legal concept of property. In the international arena International Law Commission (ILC) as international institution is mandated by UNGA to follow up progressive development of international law and to codify such development. But the ILC yet not defined such developments as it mainly falls under domestic legal regime.

With regard to international agreements it is important to note that the FDRE constitution under article 9 (4) declares that "[t]he international agreements ratified by Ethiopia are part of the law of the land." It has been stated that the UNFCCC and its Kyoto Protocol are ratified by the House of Peoples Representative of Ethiopia. This means that the Protocol, together with the recognition of CDM regime and the CERs as a novel and assignable commodity, are deemed integrated into the law of Ethiopia. But the ratification and enforcement of international agreements have their own problem

[161] . Gerald Torres, 'Who Owns the Sky?', Pace Environmental Law Review. 19, 2001, pp. 515-574, in Carbon Trading Development Dialogue N. 48 (2006)
[162]. Carbon Trading, (2006) a Critical Conversation on Climate Change, Privatization and Power, Development Dialogue no. 48

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[162]. Carbon Trading, (2006) a Critical Conversation on Climate Change, Privatization and Power, Development Dialogue no. 48

associated with promulgation into *Negaret Gazetta* and translation into working language of the country, which I do not want to delve in. But the writer is of opinion that ratification of these climate agreements provides generic principles and demands further guidance for the implementation of CDM at National and/or Regional level. The guidance needed may be, characterization of the right to CERs in a manner that is consonant with the Constitution, which could afford legal protection and security to contracting parties and other national organs empowered to issue license for the carbon trading.

When we see the right to land holding it gives the right to taking over any and/or all fruits of the land, i.e., everything which is produced on or by such land be it natural fruit, industrial fruit or civil fruit. The FDRE constitution recognizes the rights of holders' of the land to the fruits or improvements created on land by investment of labour, capital or creativity on it. Article 1170 of the Civil Code of Ethiopia also states "whosoever owns a thing shall own the natural fruits thereof." If we relate these assertions to land, apart from the land it-self, all the fruits of land which may fall in the above three categories considered to be private property and subject to alienation through sale, bequeathed to heirs, transferred to third parties through mortgage etc.

Issues like, where does the sequestered carbon fall? Who has the right to own? What those rights cause in terms of land, demand appropriate response. One can logically argue that it is the result of labour invested for the plantation of trees or forest, therefore, the owner of CERs is the owner of the forest.

Or as it is defined in a proclamation to provide for the development, conservation and utilization of forest,[163]"forest product" is "any product that is obtained from a whole tree or part thereof or any primary woody or non-woody product processed manually or industrially". In this regard it is also possible to argue that the definition says "any

[163] . A Proclamation to Provide for the Development, Conservation and Utilization of Forest, *Federal Negarit Gazetta*, Proc. No. 542/2007, Art, 2 (14)

product" that is obtained from tree and CER could possibly fall under the category of any product.

The other contending argument that can be posed against this angle of argument is that the FDRE constitution declares that State is the owner of the urban and rural lands and natural resources, hence, CERs is natural resource, therefore; State is the owner of it. And also the definition of forest product does not include CERs as it is not the intention of the drafters of the proclamation. Therefore, providing tenable argument to assert the right of CERs without authoritative legal definition seems difficult.

But some scholars propose recommendations to the possible problems that could arise. As the carbon sequestration potential can not be seen separately from the land on which it is developed the academics opinion usually associates carbon sequestration to the land on which it is attached.

K.L. Rosenbaum conducted through analysis on the possible legislative responses for national or sub-national governments.[164] He states two wide-ranging possible ownership systems and shows their implication to the carbon ownership rights.
The first ownership system that he raises as point of reference is, "the owner of the property owns the potential"[165] or on the assumption that carbon sequestration potential belongs to the owner of surface rights on the land in question.[166] He says, in this regard, the potential of sequestration does not exist as a separate property right. The property owner can not sell or give it away independent of selling or giving away the property.[167]

Under this scenario he also states that, "[t]he potential does not exist as a separate property rights as such, however the owner/holder of a property can grant an agreement affecting the potential." In such case, unlike a contractual obligation, the agreement

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[164] . K.L. Rosenbaum, (2001) 'Climate Change and the Forestry Sector: Possible Legislative Responses for National and Sub-national Governments', United Nations Food and Agriculture Organization (FAO), FAO Legal Paper Online #14 (Available at: www.fao.org/legal/prs-ol/paper-e.html). accessed on 10/3/2008
[165]. Id. at 19
[166] See S.A Kennett infra note 174 at 260
[167] See supra note 161

would "run with the land," binding the present owner/holder and anyone who happened to become an owner/holder of the property in the future.[168]

He further says, the other system in which the right could be transferred to some one or others is in the form of servitude. As a servitude right the carbon potential "...may attach to a dominant estate /land/ in which case it can be transferred to another person independently of any transfer of underlying land."[169] But, if "the potential is a separate, alienable property, such as usufructuary right or *profit à prendre,* it could be governed under the laws concerning ownership of land..."[170] In this regard the owner can convey that right to other without conveying the whole property ownership.[171] This allows the new owner of the property inherent right to affect how the property is to be used unless some legal mechanism is designed to grant separately to treat the potential carbon

The second scenario as possible ownership system Resonbaum provides is the "status of public good." This shows that the carbon sequestration potential could be "owned and/or ownable by no one" like air or sunshine and no one can claim to own it, buy it, or take credit for the goods it does for others[172]until someone owns the potential through LULUCF activities. In this regard if the government is owner, its authority regarding carbon sinks could be exercised using its proprietary rights regarding public property and its general regulatory powers.

All the aforementioned property rights are old ones as seen in light of Carbon trading. But the practice in the U.S.A Clean Air Act has some close resemblance with carbon trading.

> *U.S.A Clean Air Act, the largest sources of sulphur dioxide in the nation have been assigned emission allowances. A source may only emit as much sulphur dioxide as it has allowances. A source with too few allowances must either reduce*

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[168]. Ibid at 20
[169]. Id
[170]. Id
[171]. Id
[172]. Id

its emissions or acquire more allowances. These allowances are alienable, and there is an open market in them.[173]

Although these offsets are established through contracts between new and existing emitters, government regulators alter the air pollution permits of the parties in accordance with their agreements.[174]

Initially, the concept of carbon trading came to the international arena by the initiation of U.S.A. It should be noted that U.S.A Clean Air Act Amendments of 1990 are likewise careful to specify that sulphur dioxide allowances 'does not constitute a property right'.[175] Therefore, the experience developed in U.S.A could not help us to alleviate the legal status of carbon as tradable property. Its relation with land is not fairly defined in the U.S.A Clean Air Act. The question still persists as what is the nature of CERs.

With regard to enactment of legislation addressing the carbon sequestration rights there is no adequate experience in the international arena. In Australia, New South Wales State established a legal basis for ownership of sequestered carbon by amending the Conveyance and Forestry Act.[176] This Act in its preamble states that "rights associated with carbon sequestrated by trees and forests from the atmosphere may be a ***species of forestry right*** and subject of a forestry covenant and thus amended the Forestry Act..."to enable the Forest Commission to acquire and trade in such rights. The Act in its definitional part defines 'forestry covenant or agreement' to include access to or the maintenance of trees or forests on land that is the subject of any carbon sequestration rights.[177] This amendment created a transferable property right for carbon sequestration from the existing or future trees and forests on the land in dealing.[178]As the right is

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[173]. Clean Air Act (as amended 1990), 42 USC §§7401

[174]. Journal of Energy & Natural Resources Law, Vol. 21 No 3 (2003), Steven A Kennett, Carbon Sinks and the Kyoto Protocol: Legal and Policy Mechanisms for Domestic Implementation, Journal of Energy and Natural Resources, p. 262

[175]. US Environmental Protection Agency, Clean Air Act Amendments (1990), Section 403 (f), Title IV, http://www.epa.gov/air/caa/title4.html, in Carbon Trading Critical Conversation p. 74

[176]. New South Wales (Australia), Carbon Rights Legislation Amendment Act 1998 No. 124

[177]. Id

[178]. Id

attached to the land it is enforceable to the subsequent holders or owners of the land, trees and forests.

The Act further defines 'carbon sequestration right' in relation to land 'a right conferred on a person by agreement or otherwise to the legal, commercial or other benefits of carbon sequestration by any existing or future trees or forest on the land after 1990. Forest right in relation to land is also defined to include a carbon sequestration right in respect of the land and other conventional rights. Furthermore, the Act states forest right consists in whole or in part of a carbon sequestration right, the profit a *prendre*[179] deemed to exist in relation to the carbon sequestration. From the New South Wales legislation number of lessons could be obtained.

The other experience worth to note is, for such legal problems the "project proponents and developers were resorting to the range of contractual...property options existing under the Civil Law system."[180] Argentine has such experience.

The Argentinean experience could possibly work for Ethiopia too, that the Civil Code of Ethiopia, general contract provisions from article 1714 to article 1716 stipulate that contracting parties may determine conditions as it deem feasible for them without violating other laws, moral and public policies and orders. But it is worth to note that still the problem persists and whether the administrative bodies and courts of law could recognize and enforce such rights in case of dispute in the absence of laws defining the legal nature of the CERs /carbon sequestered/ as tradable. Leaving such contentious issue without legal characterization may lead to confusion and conflict among the parties and the condition will be very severe when it is seen in the context of the local community.

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[179] . Defined as a right of privilege to go on another's land and take away something of value from its soil or from the products of its soil, ...or taking either the soil, the natural product thereof...and the thing taken must at the time of taking be susceptible of ownership, in supra note 153 p. 1247

[180] Juan Rodrigo Walsh, (2005) Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects: The Argentinean Experience.

4.2.5. Definition of Forest

In the review of the international and national laws the writer has discussed the definition of forest. The definition provided in the national forest proclamation is "community of plants, either naturally grown or developed by planting and mainly consisting of trees and other plants having woody character.[181] But, as discussed, the Marrakesh Accord provides strange definition. Unless this definition is harmonized with the definition given to forest in the domestic law, implementation of CDM A/R project in accordance to Kyoto Protocol will face challenge.

In the international arena several countries submitted their revised forest definition to UNFCCC. For example, the government of India "taking into account the practical consideration of the national circumstances,...proposed revised country definition of CDM forest:

> *Tree crown cover value between 10 and 30%:15% or equivalent stocking level*
> *Land area value between 0.05 and 1 hectare: 0.05 ha*
> *Tree height value between 2 and 5 meters: 2 meters.*[182]

Uganda, also in a similar token submitted its definition to UNFCCC. Accordingly it is stated as:

> *A single minimum tree crown covers value between 10 and 30%: 30%*
> *A single minimum land area value between 0.05 and 1 hectare: 1.0 hectare*
> *A single minimum tree height value between 2 and 5 meters: 5 meters.*[183]

Republic of Ghana has also submitted its national forest definition. It reads:

> *"A piece of land with a minimum area of 0.1 hectares, with a minimum tree crown cover of 15% or with existing tree species having the potential of attaining more that 15% crown cover, with trees which have the potential or have reached a minimum height of 2.0 meters at maturity in situ".*[184])

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[181]. See supra note 144

[182]. http://cdm.unfccc.int/DNA/cdf/files/2008/0707-india , Accessed on 18/12/2008

[183]. http://cdm.unfccc.int/DNA/ARDNA.html?CID=222 , Accessed on 17/12/2008

[184]. Environmental protection Agency of Ghana, Ref. GD 65/229/01, available on http://cdm. Unfccc.int/DNA/files/2008/1706-ghana.pdf, accessed on 18/12/2008

Democratic Republic of Congo also provided its definition as minimum crown cover area 30%, with minimum land area of 0.5 hectare and minimum tree height of 3 meters.[185]
All the above definitions took into consideration the very circumstances of the countries ecologic conditions or practical consideration of national circumstances. But it is worth to note that all the definitions fall within the limits of the UNFCCC. It is not surprising if the countries situated in the equatorial rain forest areas used the maximum height of the trees.
Countries like Philippine adopted the basic definition of the Food and Agricultural Organization.[186]

In the Humbo/Damote CDM A/R pilot project, the Ethiopian DNA provided definition for the purpose of CDM A/R in harmony with the definition provided in the Marrakesh Accord. EPA as DNA provided the forest definition: a single minimum tree crown cover value 20 percent, a single minimum land area value 0.05 and a single minimum tree height value 2 meters. With regard to land area and tree height the definition opted to accept the minimum threshold.

But the other dilemma is that the definition of forest provided in the Forest Conservation and Utilization proclamation is still in force. Question could be raised, what is the legal status of the communication of DNA to EB? Is this communication prevailing over the definition of forest provided in the proclamation? How could it be resolved if, dispute arises considering the definitions provided in the proclamation and the DNA communication? The writer is of opinion that such possible contention must be addressed by law.

4.2.6. Sustainable Development Criteria

The DNA is responsible authority in the host country to make sure that the project activity assists in achieving the sustainable development of the country. The international

[185] . http://cdm.unfccc.int/DNA.cdf/files/2008/111-DRC.pdf, accessed on 18/12/2008
[186]. Ma. Cecilia G. Dalupan: (2005) Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects: The Philippine Experience (Domain Research Institute and Domani, LLC)

rules governing CDM leaves this power for the host country as a sovereign right. It is in this line that EPA developed draft Sustainable Development Criteria for the approval of CDM projects. The draft criterion is not authoritative document but it is sound to show the general skeleton of the criteria. Therefore, the draft document begins by providing sustainable development vision i.e., "to achieve productive environment, self-reliance, improved quality of life, equity within and between generations of Ethiopia through environmentally sustainable development and stewardship". This vision has economic, social and cultural, and ecological dimensions.

Among others, economically it envisions, to emancipate the generation from cyclic dependency syndrome for livelihood, by way of transforming locally available environmental resources to tangible social and economic benefits through wise use of natural resources, indigenous knowledge and local capabilities.

Socially, it envisions ensuring improved qualities of life for Ethiopians through the provision of environmentally sound social service; realizing meaningful community participation and gender equality in environmental management and decision making; and fostering good environmental governance and stewardship.

Ecologically, it aspires to achieve the optimal use of non-renewable resources; attain productive ecosystems through protecting, restoring and enhancing soil, vegetation, water, wildlife, and aquatic resources within their regenerative capacity; and ensure that a working and efficient system is laid down so that the resource and sink function of the environment shall not be degraded.

The draft document further provides certain criteria for the economic, ecological and social considerations and lists detail indicators in support of the project approval. The draft document seems good initiation and green light for the implementation of CDM A/R project, but it is still a draft document.

4.2.7. Guidelines for Licensing CDM Activities

In the interview, Ato Misikir stated that it was two years a go that investors requested trade license for carbon trading, but Ministry of Trade and Industry refused to issue trade license, stating that carbon trading is not provided in the commercial laws as tradable activity and then asked EPA whether Carbon is tradable. Considering this and the CDM A/R project, EPA of Ethiopia as the DNA is responsible to provide guidelines for licensing the CDM activities. The draft guideline developed by EPA looks for enactment of comprehensive law regulating CDM activities in the future. It further states the purpose of CDM project as it is provided in the UNFCCC.

The draft guideline provides two activities as eligible activities in the context of CDM and could be given license. These are project based and service based activities. The project based activities generally include GHG sequestration (LULUF), energy supply, energy demand, transport, and waste management. The service based activities include: CDM project development; Carbon consultancy, sale and brokerage; participation as DOE of the Kyoto Protocol; and participation as buyer of CERs or carbon credits.

With regard to the eligible participants the guideline allows public enterprises; sole proprietorship or Business organizations; local communities appropriately organize; and foreign nationals or companies situated in or outside Ethiopia. Any application to involve in CDM activities are expected to follow the application formalities of business or investment and pertinent registration and licensing laws and requirements. The draft guideline reserves the power of EPA as DNA and states that the issuance of trade license or a license or a license to operate CDM by the Licensing Agency shall not entitle implementation of the CDM project before a national approval process finalized.

In sum, the draft is still draft and not an authoritative guideline. The draft guideline also lacks procedures for the national approval of CDM A/R for project and/or service based once.

4.3. Institutional Aspects

Designated National Authority /DNA/ of Ethiopia

As has been stated in the introductory part, Ethiopia ratified the Kyoto Protocol for UNFCCC by Proclamation Number 439/2005 and entered into force as of 21st day of February 2005. This proclamation, under article 3 declares that, the "EPA" is a responsible authority to take actions necessary to implement the protocol in cooperation with the appropriate Federal, Regional and City Administration Government organs. Since CDM is a mechanism devised in the Kyoto Protocol, the EPA is a Designated National Authority (DNA) for the purpose of its implementation.

Proclamation No. 295/2002 which replaces proclamation number 9/1995 establishes the environmental protection organs. The EPA is established as an autonomous public institution of the Federal Government being accountable to the Prime Minister (PM). Structurally, EPA has Environmental Council (EC) chaired by the PM or his designate composed of members designated by the Federal Government, National Regional States, representatives of the Ethiopian Chamber of Commerce, representative of local environmental non-governmental organizations, representative of the Confederation of Ethiopian Trade Unions and the Director General of the Authority.[187] The EC is responsible to review environmental policies, strategies, laws, directives, guidelines and environmental standards and to provide recommendations to the government and the EPA.[188]

The powers and duties of EPA are numerous and listed under article 6 of the proclamation from sub article 1 to 26. Sub article 5 of article 6 which may have relevance to this study states that:

> *Where projects are subject to federal licensing, execution or supervision or where they are likely to entail inter-regional impacts, review environmental impact study reports of such projects and notify its decision to the concerned licensing agency*

[187] . Environmental Protection Organs Establishing Proclamation, Federal, Negarit Gazetta, Proc. No. 295/2002 Art. 8.
[188] . Id Article 9

and as may be appropriate, audit and regulate their implementation in accordance with conditions setout during authorization.

Sub article 9 of article 6 further states "in consultation with competent agencies, formulate, or initiate and coordinate the formulation of polices, strategies, laws and programs to implement international environmental agreements to which Ethiopia is a party; and upon approval, ensure their implementation." When acting as a DNA these sub provisions could guide EPA to implement the Kyoto Protocol. But the implementation of CDM projects demands more than the simple declaration as DNA.

Of course, there is no one best approach to establish DNA. But it is expected from DNA to have capacity to act as an effective and efficient entity that will make the host country to exercise all relevant functions. The experience of other countries may provide some lesson.

For example, from the Latin American countries Argentina has designated its National Authority known as Argentine Clean Development Mechanism Entity as a unit specially created by the Environmental Secretariat and is directly subordinate to the office of the Secretary for Environment and Sustainable Development, as set up by Secretary Resolution 168/01.[189] Subsequent to this the other resolutions Resolution No. 845/04 establishes the guidelines for project evaluation and Resolution No. 169/01 lays down the detailed procedures for submission of proposal and outline draft for CDM project.[190] Further more, the Argentine DNA is assisted by an advisory Board, made up of various sector-specific committees or working groups focusing on particular kinds of CDM projects. Representatives of the advisory board include the Energy, Transport, Industry and Agriculture Secretariats, International trade from the Foreign Ministry, Secretariat for Science and Technology and the Ministry of education.[191]

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[189] . Supra note 180. p. 14
[190] . Id p. 15
[191] . Id, the representative of the Advisory Board is established by Environmental Secretariat Resolution No. 372/03

From the Gulf States, the Yemeni experience shows that "...Prime Minister's Resolution No. 238 declares regarding the establishment of a Designated National Authority for the approval of projects under the CDM.[192] This resolution provides for the institutional and legal frame for the DNA such as composition, tasks of the DNA Board and the requirements for the DNA Secretariat.[193]

From the Asian countries, the experience of Philippine could provide some lesson. In Philippines, Executive Order No. 320, which is issued by the President of the Country, designates the Department of Environment and Natural Resources as a National Authority for the CDM.[194] It is in this Ordinance that powers and functions of the Philippines DNA is provided and, inter alia, it is authorized to formulate the national CDM policy; develop criteria, indicators, standards, systems and procedures, and evaluation tools for the review of the CDM projects; undertake assessment and approval of CDM projects that will be submitted to the UNFCCC and Kyoto Protocol; and create technical committee necessary for the efficient and effective implementation of its functions.[195]

In the similar token from the African countries the Ghanaian DNA is its Environmental Protection Agency and the Ugandan's DNA is the Ugandan Ministry of Lands, Water and Environment.[196]

The writer of this paper has tried his best to access, if any; rule or guideline enacted to institutionalize DNA and to implement CDM. There is no formally enacted and approved rule or guideline for the DNA to implement CDM project except the two draft documents i.e., the draft guideline for licensing CDM activities, and the draft sustainable development criteria. To fill the gap interview with EPA Climate expert is conducted.[197] Ato Miskir stated that there is a draft guideline for the DNA how to approve CDM

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[192] . Lia Carol Sieghart, Clean Development Mechanism, An experience from Yemen (2008), Ministry of Water and Environment, Republic of Yemen. P. 37
[193] . Ibid p. 38
[194] . See Supra note 186 at p. 9
[195] . Id pp 9-10
[196] . http://cdm.unfccc.int/DNA.html. accessed on 17/12/2008
[197] . Interview with Ato Misikir, EPA Climate Expert, on 28/11/2008

projects and draft sustainable development criteria which the writer discussed earlier in this chapter.

Though there is no document to substantiate, an interim committee is organized to examine the CDM PDD.[198] He further quoted the Kyoto Protocol ratification proclamation and stated that other appropriate Ministries are invited (but no official letter is issued) to assign appropriate personnel with expertise knowledge in the area to work with EPA. He said, on the basis of this invitation National Body composed of Ministry of Energy and Mine, Ministry of Trade and Industry, Ethiopian Electric Light and Power Corporation, Ministry of Agriculture and Rural Development, Ministry of Health, Ministry of Water Resources and others are formed.[199]

It should be noted that there is no formal guideline or procedure developed for the interim National Body to conduct meeting and to deliberate on the CDM A/R project proposals. In this regard the interviewee stated that, if any; project proposal is presented to EPA it will be distributed to each National Body to obtain their suggestion and then session will be organized to deliberate on the project proposal. In his words the Humbo/Soddo CDM A/R project is approved in such a method. This in effect shows that at federal level there is no well organized and structured sectoral and inter-sectoral relationship between different government organizations to implement CDM project activities.

Ato Misikir further expressed the problems for the implementation of CDM. As he stated the main problem is lack of technical capacity. In addition to technical inadequacy there is also lack of awareness in the area. He said, to alleviate the problem EPA organized awareness creation training on what CDM is and its importance for countries like Ethiopia.

The other issue worth noting is that Ethiopia is a federal state. The institutional set up to implement CDM A/R project must take into account this federal arrangement. The

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[198] . Id
[199] . Id

current defacto institutional set up do not reflect the involvement of regional organs or do not show the link with regional bureaus and the local government units for the implementation of CDM A/R project.

Hence the writer is of opinion that appropriate institutional set up with requisite personnel at all level i.e., federal, regional and local level is very much important for the implementation of the CDM A/R/.

4.4. Other Issues Related to CDM Project

4.4.1. Organization of the Community

The local communities participating in the CDM A/R project activity are organized in the form of cooperative society. The proclamation to provide for the development, conservation and utilization of forest recognizes two types of forest ownership i.e. private and state forest. Private forest is defined as "a forest other than state forest developed by any private person and includes a forest developed by members of a peasant association or by an association organized by private individuals, investors and governmental and non-governmental organizations."[200]

As the definition provides individuals can unit together to form association with the view to develop forest. The private forest definition literally states association. What type of association is appropriate for the CDM project implementation is important issue to be addressed.

The adjacent communities of the Humbo/Damote CDM A/R project area are organized in the form of cooperative society. Cooperative society is defined "a society established by individuals on voluntary basis to collectively solve their economic and social problems

[200] Supra note 163, Proclamation No. 542/2007 Art 2 (9)

and to democratically manage same."[201] As the objective of the cooperative society is spelt out in the preamble of the establishing proclamation, they are organized "for creating savings and mutual assistance among themselves by pooling their resources, knowledge and property." The other specific objectives of cooperative societies are stated under article 4 of the same proclamation. These objectives include, solving problems collectively which can not be solved individually; achieving better result by coordinating knowledge wealth and labour; promotion of self reliance; improving living standards; promoting saving and credit services; minimizing and reducing individual risks and uncertainty and enhancing social and economic culture through education.

The objectives and general principles of the cooperative societies establishing proclamation and different literatures show that cooperative societies are organized to pool resources together to make them-selves financially strong and to share benefits or profits accruing from their activities. Taking this general perception into account particularly if we see the community participating in the development of forest to get the benefit of carbon sale it seems that the organizational style in the form of cooperatives society is not the appropriate one. It is stated in the PDD that the sale of CERs money will be allocated for health, education and for the construction of infrastructures like road. But the objective of cooperative society is to share the benefit among them-selves; hence, the way they are organized in the form of cooperative society is against the objective of the PDD.

The organization of community in the form of cooperative society could negatively affect the protection and conservation of the forest and may increase the magnitude of risk of damage to the forest. The risk could arise from the non-members of the cooperative society who had prior access to the communal land, but currently unable to afford sum amount of money to join the cooperative society. In the group discussions members of the cooperative society in each kebele state that they were consulted and agreed on the

[201] Federal Democratic Republic of Ethiopia: Cooperative Societies Proclamation, *Negarit Gazetta* Proc. No. 147/1998 Art 2(2)

type of association that it should be cooperative society. But the non-members contend the otherwise, and state that initially they were not aware of such exclusion.

In the field trip and group discussion conducted in the Humbo/Soddo project area it is revealed that initially the amount of contribution was eleven birr ($ 11 Birr) to be member of the cooperative society but the amount increased from time to time and now it become $30 birr (thirty Birr). Members of the community allege that thirty birr is huge money as per their standard. Those who are willing to be member of the cooperative society but unable to afford the required amount of money could act as a threat for the project. In the group discussions members of the cooperative society were asked whether the non-members could affect the project. What all members share in common is that, if they cause damage to the forest, they will be prosecute them on the basis of the criminal law. The writer is of opinion that the cooperative society is not inclusive of the local community adjacent to the forest. Even the objective of cooperative society is different from the preexisting right of community.

The other issue is that, for the membership in the cooperative society there is periphery in the kebeles'. In some areas there is no clear demarcation for the peripheries. In other areas high ways, small valleys and roads are taken to restrict the membership in the cooperative societies. This in turn restricts membership of the community with out convincing justification. As it is disclosed in the group discussion, such restriction excluded almost half of the dwellers of the adjacent kebeles from membership in the cooperative society. The dwellers of the periphery restricted from membership claim that they had free access to the area before the commencement of the CDM A/R project. But the members of the cooperative society state that they had no access to the area.

Could there be some other appropriate form of association is a big issue requires response. The Civil Code under article 404 defines association. Association is a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits.[202] The writer opines recognition of the existing adjacent

[202]. Civil Code of the Empire of Ethiopia, *Negarit Gazeta* , Proclamation No. 165/1960 Art. 404

Kebele Association and formalizing it by providing legal frame work with rights and obligation seems palatable. This is, because, the kebele association will not exclude any members of the Kebele Association, to be potential threat for the protection of forest. The threat for this proposition is that there could be "tragedy of commons". But the legal frame work with duties and obligations could alleviate such problem.

4.4.2. Entering Contract

In the CDM A/R project activities there are number of role players. The current project activity is under the trustee of World Bank and supported by the World Vision Australia, and World Vision Ethiopia. The regulatory authorities of the Federal and Regional Governments are also involved in the activities. The Wolaita Zone MoARD Department, Cooperative Society division and the woreda cooperative society sections are also the active participants in the project implementation.

At this point in time it seems there is no problem. But at the time when the sale of CERs accrues, who can enter into contractual relation with buyer of the carbon sale is not yet determined. Assuming that if the Australian Government buys the CERs, should the contract be entered between the two governments (i.e. Ethiopia and Australia) or between the government of Australia and the heads of the cooperative society (local community living around the project area) or between the Regional state and the government of Australia or the Wolaita Zone MoARD department and the government of Australia? Of course, the bye-laws of the cooperative societies under article 23 states that the Chair Person of each cooperative society has power to enter into contract with government and non-government organizations on behalf of the Cooperative Society. In addition to the bye-laws the Forest Management Group in the form of Cooperative society established as a legal entity and also obtained communal land holding certificate, therefore; it has capacity to enter into contractual relation.

But, dealing on such contractual issue is not an easy task. The writer is of opinion that technical support shall be rendered to the Cooperative society when entering into contract and it seems insufficient to leave the issue to the cooperative society.

4.4.3. Benefit Sharing

This is sensitive area where conflicting interests may arise. It is closely linked with who enters into carbon purchase agreement with the buyer. If not properly handled the carbon sale money could be squandered or may attract corrupt hands of the persons in charge of the Cooperative society. The bye-law of the Cooperative society under article 39 stipulates that the income gained from the sale of the CERs is common property of the members of the Cooperative society and it will be used on the basis of the consensus reached in the meetings of the General Assembly and it could also be allocated to development activities in accordance with agreement of the members.

The writer is of opinion that benefit sharing has to be regulated in transparent manner so as to avoid possible conflicts and mismanagement. I have traveled through the kebeles and met with the heads of cooperative society and observed their human resource, offices and professional capacities of the persons in charge. It revealed for me that they are not in a position to run and apportion money, unless some measure is taken. In this regard the bye-law would have stated not only consensus to share the carbon purchase money but also consensus of members to enter into carbon purchase agreement. On the basis of the members agreement it could be possible to delegate World Vision Ethiopia or Wolaita Zonal Forestry Section or Woreda Forestry Unit to enter into contract or to facilitate the benefit sharing.

Should the benefit of carbon sale be allocated only to the members of the cooperative society is another dimension of the problem. The Zonal and woreda structure of government appear to look for the share of money to cover some running costs or to put it in developmental activity. The writer is of opinion that comprehensive mechanism must be designed how to share the benefit.

Conclusion and Recommendations

Conclusion

It is high time that the international community is concerned about the change of climate. At the UN level international conference on the incident of global warming were first held in 1980s. Then after, the GA formally addressed the issue of climate change in 1988 resolution. It was in this resolution that GA determined that climate change is common concern of mankind and urged actions to be taken by all states and non-state actors. In 1990 the Ministerial Declaration of the Second World Climate Conference, called for negotiations of framework convention on climate change with appropriate commitments. Based on resolution UN GA established intergovernmental negotiating process under the patronage of the GA, supported by UNEP and WMO, for the preparation by an Intergovernmental Negotiating Committee for a FCCC. Hence, the UNFCCC signed in 1992 and after five years the Kyoto protocol with more detailed commitments of parties and adopted in 1997.



There were no prior bilateral or multilateral treaties to address issues of climate. UNFCCC and the Kyoto Protocol of the UNFCCC are the main documents to regulate climate. The objective of the UNFCCC is stabilization of green house gases concentrations in the atmosphere at the level that would prevent dangerous anthropogenic interference with the climate system. Such a level would be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to the climate change, to ensure that food productions not threatened and to enable economic development to proceed in sustainable manner.

UNFCCC has principles to be adhered. These are the principle of common concern of human kind; common but differentiated responsibility; intergenerational equity; the right to development and the precautionary principle. The Convention further provides commitments. There are two categories for commitments i.e.; commitments to all parties and specific commitments to industrialized /economically strong/ countries. For the realization of the objective of the Convention there are five different organs established

by the convention. These are: Conference of Parties, Secretariat, SBSTA, SBI, and Global Environmental Facility.

The UNFCCC is a framework convention and needs further negotiation to produce binding agreement with specific commitments. The first review of the adequacy of developed countries commitments was conducted and at the first session of the COP-1, which took place in Berlin in 1995. It was in this session that participants decided returning their emission to 1990 level by the year 2000 insufficient to achieve the long term objective of preventing the dangerous GHG. December 1997, Kyoto Japan, the Conference resulted in a consensus decision to adopt a protocol under which industrialized countries will reduce their combined GHG emissions by at least 5% compared to 1990 levels by the period 2008-2012. The emission reduction target covers six main GHG: Carbon dioxide, methane, nitro oxide, hydropluorocarbons, perfluorocarbon and sulphur hexafluoride.

To realize the commitments entered, the Kyoto Protocol provides new inclusive rules called 'flexible mechanism'. The flexible mechanisms are designed with the view to accommodate all participating countries i.e., those developed to reduce their emission reduction targets domestically and/or elsewhere, whereas, to those with no binding commitments to assist them in their sustainable development in environmentally sound manner. Hence, the key elements of the flexible mechanisms are: joint implementation among Annex I parties, transfer of technology, provision of financial resources, clean development mechanism, and emission trading among Annex B parties.

The concept of Clean Development Mechanism goes back to a Brazilian proposal to create a "Clean Development Fun" as part of the Kyoto Protocol. The objective was penalizing those industrialized counties not complying with the emission target set in Kyoto Protocol and to make available the Fund to non-industrialized countries. The developed countries courageously opposed this idea and Clean Development Mechanism was created as a compromise.

The CDM aims to achieve climate change mitigation through the market based approach. Industrialized countries receive emission rights in exchange for financing emission abatement projects in countries with out emission target /south/. The mechanism also give countries and private sector companies the opportunity to reduce emissions anywhere in the world-wherever the cost is lowest-and they can then count these reductions towards their own targets.

The CDM in particular, aims to assist developing countries in achieving sustainable development by promoting environmentally friendly investment from industrialized country governments and business. The funding channeled through the CDM should assist developing countries in reaching some of their economic, social, environmental, and sustainable development objectives, such as cleaner air and water, improved land use, accompanied by social benefits such as rural development, employment, and poverty alleviation.

There are sharp criticisms against the CDM. Of these some critic said 'the polluter pays' principle has turned into a 'polluter buys', atmospheric assets are given away to big polluters and the rich cleansing their emissions by taking over the Poor's land. Despite the criticism the carbon market is boosting in the world.

To participate in the CDM there are two big requirements i.e., general and special. The general requirements are: ratification of the Kyoto protocol, voluntary participation of parties in the CDM, and designation of national CDM authority. As it is general, it applies for all parties. The special requirements apply for Annex I parties and among others it includes calculating and assigning amount and putting in record, putting in place national system of the estimation of anthropogenic emissions, and submit annual most recent report.

For the implementation of CDM there are responsible organs. These are Conference of Parties, Executive Board, and Designated Operational Entity. CDM is subject to the authority and guidance of the COP serving as meeting of parties. EB is a supervisory

organ for CDMs activity. The composition of EB is from five regional groups, two from Annex I parties, two from non-annex I parties and one from small island developing states. Secretariat established by UNFCCC serves as secretary for EB. DOE is an independent organ for review of certification of emission reductions achieved. DOE is an external body to be accredited by the joint action of EB and COP/MOP on the basis of standards set.

CDM has other very technical and cumbersome requirements. In this regard the CDM project must be eligible, contribute for the sustainable development, must be additional and leakage must be detected. In addition, CDM project has its own steps to be followed. These are project design and formulation, national approval, validation, registration, monitoring, verification, certification and issuance of CERs.

Federal Democratic Republic of Ethiopia as part of the international community has shown its commitment to stabilize GHG by ratifying the UNFCCC and its Kyoto Protocols on 2nd of May 1994 and 21st of Feb. 2005 respectively. At this point in time the country began to implement CDM A/R project as pilot in SNNPRS at Humbo/Soddo area.

A/R CDM project has direct or indirect relationship with other environmental policies and laws of the country. From the FDRE Constitution articles 43, 44 and 92 declare environmental rights and policy objectives. On the basis of these policy objectives the Conservation Strategy of Ethiopia is developed and adopted. The CSE integrates into a coherent whole all the existing and future federal regional government planning in all sectors that impinge on the environment, including agriculture, forestry, wildlife, fisheries, soil, water, minerals, energy, urban planning and cultural heritage conservation.

Environmental policy is part of this conservation strategy of Ethiopia. The Environmental Policy has specific policy objectives and guiding principles which have implication with CDM A/R project. EPE further states sectoral and cross-sectoral policies and strategies to adderss it in an integrated approach. From the sectoral environmental policies soil

husbandry and sustainable agriculture, forest wood land and tree resources, atmospheric pollution and climate change, and energy resource sectoral policies have relationship in one way or the other with CDM A/R project. The flexible mechanism of the Kyoto Protocol aspires to assist the developing countries in their endeavor of development and CDM A/R project as part of it not only aims carbon sale but also contributes in the achievement of aforementioned policy.

From the cross-sectoral environmental policies community participation, tenure and access rights to land and natural resources have a lot to do with CDM A/R project. As the CDM A/R project is implemented on the land, laws relating to land and forest are very much relevant. With regard to land the constitution states that land is the common property of the people Ethiopia and administered by the regional governments on the basis of laws enacted by the federal government.

The Federal government of Ethiopia has enacted Rural Land Administration law and the SNNPRS has also promulgated Rural Land Administration and Use Proclamation and detail Regulation to implement the proclamation. The Regional land proclamation recognizes three types of land holding i.e., private, communal and State holdings. Holding rights are recognized by issuing certificate of holding.

With regard to forest, there is policy document to address forest resources. The cardinal objective of the policy states: "to meet the forest product demands of the citizens and increase the contribution of forest resources to the national economy through appropriate conservation and management of the country's forest resources." To attain the policy objective both the federal and regional governments have enacted Forest Conservation, Development and Utilization proclamation. The proclamations lay down the enabling grounds for communities, individuals, associations or investors to conserve and make use of natural forests by issuing certificate of ownership rights.

Humbo/Damote CDM Reforestation and Afforestation project is the first of its kind in Ethiopia. The project is pioneered by the initiation of World Vision Ethiopia and World

Vision Australia. The site selected for the project is 4961 hectare and customarily used by the adjacent local community for grazing animals and fuel wood collection. Before the implementation of the project the local community had free access and the area is not protected. As the local elders witness and aerial map taken envisage that the forest of the area was cleared since 1960s and at this point in time mainly the area is degraded.

At the federal level EPA is Designated National Authority for the Kyoto Protocol and thereby for the implementation of CDM A/R. Even though the project is under way there are number of legal and institutional problems to be addressed for the implementation or realization of CDM A/R project.

The institutional problem is that the DNA is not well positioned and supported by rules, expertise knowledge and human resources required to evaluate the CDM project whether it assists the sustainable development of the country and to approve the activities of the project. On top of this, how to cooperate with the regional states is not reflected in any rule.

Apart from the institutional problems there are also legal problems associated with the implementation of CDM A/R project. The most critical problem is the appearance of Carbon sink as tradable substance. As carbon trading is novel concept, the legal nature of CERs is not characterized in the national laws. Without defining the legal nature of carbon CERs licensing and certifying carbon trading and conducting any juridical act like CDM A/R project may lead to confusion and problem.

Of course there is proclamation dealing on the impact assessment of the project. But, evaluation of the project whether it assists the sustainable development of the host country or not, is left to the sovereign power of the host country. To conduct evaluation of the sustainability of the project it requires development of sustainable development criteria for the approval of the project apart from impact assessment. Even though there is draft rule, the sustainable development criteria for the approval of CDM A/R project

implementation is not well defined and approved as mandatory rule by the appropriate authority.

Like any other trade activity, carbon trading also requires law or guideline for licensing the CDM A/R activities. Under CDM A/R there are service based and/or project based activities to be regulated by law. Except the draft guideline for licensing CDM activities there is no promulgated binding law or guideline to apply for CDM A/R project or activity.

CDM A/R activities are called LULUCF activity. For the implementation of CDM A/R project COP developed new definition for forest. Of course EPA as DNA of Ethiopia communicated the harmonized definition of forest to EB. The forest definition provided in the forest utilization and conservation definition also exists side by side. So what is the legal status of the communication of EPA as DNA to EB requires legal clarity.

Several countries in the world are using the opportunity of CDM as investment opportunity. To this effect they conducted national survey for the CDM potentials. To attract investment national survey must be conducted to know the potential. The CDM potentials of Ethiopia are not well researched and studied.

Land laws of the federal and the regional government allows redistribution of communal land to the landless youth or peasant. This in turn happens to be possible threat to CDM A/R project.

Apart from the above mentioned problems there are other problems associated with the implementation of the project. The land laws and the forest proclamations recognize the community rights. For the current CDM A/R project implementation the community is organized in the form of cooperative society. In the group discussions conducted with the community it was disclosed that part of the community unable to afford the required threshold amount of money for the membership in the cooperative society and some others on the basis temporary demarcation made for this project are excluded. This is

alleged by some members of the community to be potential threat for the project. Thus, question could be raised, is the cooperative society appropriate way of organization for such CDM A/R activity?

The land laws allow redistribution of community lands for the landless youth. So what remedies could be available to secure the rights of community? How could the benefit of carbon sale be shared to the community? Who can enter into carbon sale contract with the buyer? These are some of the problems demand recommendations.

Recommendations

- As CERs is a new concept the provision of legal security for sequestered carbon is very important. Further more, lack of legal guidance and uniform definition could likely lead to confusion in the treatment of transactions dealing with CERs. Hence, there are number of options to address it. One option is attributing property nature. If this is the case standard property and contract rights will apply. The second option is through regulation approving, registering and certifying sequestered carbon and guaranteeing enforcement by the justice machinery. This may guarantee credibility and facilitate market demand for carbon sequestration. The third option is enforcing contractual agreements through liability rules and enforcement mechanisms. As the experience of other countries show classifying CERs as "forest resources" which is akin to wood or forest products and ownable by any one who owns the forest seems sound. In all cases laws or regulations must be consonant with the constitution, national land and forest policy. EPA as DNA is responsible to initiate this in collaboration with other appropriate Ministries and agencies.

- The communication of DNA with regard to the definition of forest makes the definition eligible for CDM A/R projects. Apart from the NDA communication there is also another formal forest definition provided in the Forest Conservation and Utilization Proclamation. Since the status of DNA communication is not known the two definitions may lead to confusion and disagreement. Thus the

forest definition communicated to EB must be proclaimed in the official *Negaret Gazetta* of the country to avoid potential disputes in the future. Therefore, EPA as DNA in consultation with MoARD forest section must initiate the definition of forest to the law makers to promulgate and make it consonant with Marrakesh Accord.

- Right now there is no formally adopted appropriate regulation and guideline to approve CDM A/R projects. Therefore, appropriate national law/regulations and guideline for the approval of the CDM A/R must be put in place. And also appropriate and consistent strategy for CDM must be developed to identify and verify the areas that are eligible for CDM A/R projects. EPA as DNA together with appropriate federal and regional institutions should shoulder this responsibility.

- When a CDM A/R project is implemented at regional level it is the power of the regional government to evaluate whether the project contributes to the sustainable development of the region. To conduct this evaluation formal Guideline for Sustainable Development Criteria must be adopted. The regional environmental agency must also be aware and well positioned with expertise knowledge and human resources to practicalize the guideline.

- The National Body be it Steering Committee or National Environmental Council deliberating on the CDM A/R project has no governing rule for coordination. At this point in time they act on ad hock basis. Structured formal rule must be developed how to meet and deliberate on CDM.

- The practice in different corners of the world shows that inter-Ministerial conflicts arise as who should be in charge of the DNA and whose office the CDM A/R project proposals should have to pass. In Ethiopian context already the DNA is assigned. But there is still doubt if the assigned DNA is not well organized. In Ethiopia EPA is assigned as DNA but the writer observed that there is no

structure, either in the form of unit or department with appropriate experts in the area. Therefore, the DNA must be well positioned with clear mandate, human resources or necessary staff and capacity to achieve its goal.

- There was National Strategy Studies (NSS) which run from 1998 to the end of 2003 mainly funded by Switzerland and other countries (Finland, Canada, Germany, Australia, Austria and Italy) and the World Bank. Ethiopia was not beneficial from this study. The writer opines that mechanism must be designed to conduct national survey on the CDM potentials in the different sectors of the country.

- Marrakesh Accords provide detail cycle of projects with a series of steps to be followed which requires expertise/professional knowledge of all participants. Therefore, in-depth awareness creation training must be organized to enhance the knowledge of the local participants. Knowledge of domestic lawyers must also be enhanced in this area of the law and in Emission Reduction Purchase Agreements (ERPA) templates developed by the International Emissions Trading Association. Therefore, at all level capacity building activities must be done to enhance awareness in the CDM A/R regime.

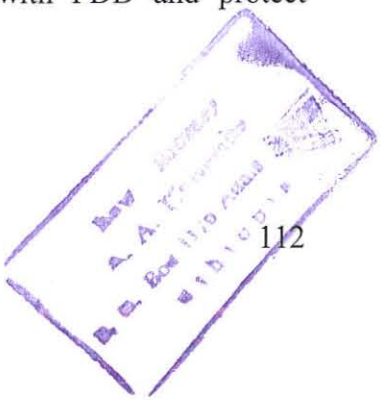
- The CDM A/R project is multi-dimensional. It has relation with different natural resources. Therefore, sectoral and inter-sectoral coordination both at federal and regional level must be arranged backed by law.

- CDM A/R project designing and the approval procedure is cumbersome. In the similar token, cost of project development is huge and may also create perverse effect which is environmentally damaging and against sustainable development objectives. To benefit from the CDM regime other countries integrate CDM into their national development endeavors. Therefore, in depth study must be conducted by the coordination of EPA in an integrated approach with other

sectors to reduce the risks or CDM A/R possible negative effects and to benefit the country and concerned local community.

- Though it is conducted by the two third vote of the local community, land re-distribution is possible threat to the communal land holding rights and thereby for carbon sequestration agreements. As has been discussed the safest option is using land which is not potentially good for agriculture. Taking into cognizance the population pressure this is also not that much secured. Special legal security must be provided for such carbon projects so that the land may not be re-distributed to landless youths or farmers. If special arrangement is not possible incorporation of landless youth or farmers in the community association by changing the type of organization from the cooperative society to some other appropriate and inclusive form of association seems sound justification.

- The organization of the local community in the form of Cooperative society has its drawback. The certificate issued for the land holding recognizes communal holding right without exclusion of any member of the local community living adjacent. But some members of the community are excluded from the cooperative society because of lack of resource to afford for membership. Having communal holding certificate and being excluded from the membership in the cooperative society are contradictory in nature. Unless some arrangement is made to incorporate this part of the community it will be risk for the protection of the forest and the CDM A/R project as well. The writer is of opinion that the needy part of the community must be incorporated in the project by contributing either their labour or skill. But the rules of cooperative society do not allow contribution of labour or skill. Therefore, the writer of this paper recommends that the type of community organization must be changed to association as provided in the Civil Code. As carbon sequestration has no nature of profit making, shaping the nature of the community organization to association match with PDD and protect inclusive interest of the community.



- CDM A/R project restricts the previous community use rights such as grazing animals and fuel wood collection. If alternative measure is not provided the community living around the project site may be negatively affected or they may negatively affect the project. To make the project sustainable, alternative measures must be provided for the community to avoid potential danger for the project and for the community as well. Among others, provision of fuel consuming stoves is recommended.

- The bye-laws of the cooperative society recognize that the chairperson has mandate to conduct juridical acts like reaching agreement on contractual issues. But making a carbon sale contract with buyer seems beyond the capacity of the cooperative society. Therefore, by the consent of the members of the cooperative society either one of the local or regional government or World Vision Ethiopia must be delegated to enter into carbon sale agreement. Or the cooperative society may make amendment in their memorandum of association to incorporate such provision.

- Benefit sharing must also be regulated in a transparent manner. The bye-laws of the cooperative society states that by the decision of the members of the cooperative society, the carbon sale money could be allocated for developmental purposes. As the writer observed the capacity of the cooperative society, they are not in a position to discharge such responsibility. Therefore, it appears not wise to leave benefit sharing issue to the decision of the cooperative society alone, until they are made capable through capacity building. The local and/or the regional government must also involve and support the community in capacity building and on the sharing of money based on the amount of money they secure from the sale.

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8. *Eligible participants*

The following persons are allowed to participate in CDM activities in Ethiopia.

a. Public enterprises

b. Private limited companies

c. Local communities organized under the pertinent Ethiopian laws,

d. Foreign nationals or bodies corporate whose permanent business is situated in a country other than Ethiopia.

9. *Forms of investment*

1. CDM investment activities may be implemented through one of the following forms:

   a. Sole proprietorship;

   b. Business organizations incorporated in Ethiopia or abroad;

   c. Public Enterprises established in accordance with the relevant law;

   d. Cooperative societies formed in accordance with the relevant law;

2. Any business organization specified under Sub Article (1) (b) of this Article shall be registered in accordance with the Commercial Code of the country or any other relevant law.

10. *Licensing of CDM related business activities*

1. The Licensing Agency shall, prior to issuing license in accordance with these Guidelines, ensure that the proposed project or activity falls within the eligible project and/ or service categories under Articles 5 and 6 these guidelines.

2. The issuance of a trade license or a license to operate by the Licensing Agency under these Guidelines shall not entitle implementation of the project before a national approval process pursuant to Article 15 herein is finalized.

11. Licensing Requirements

Any application for engagement in CDM eligible activities shall abide with pertinent registration and licensing requirement laws, and shall in particular follow the application formalities under the Investment Proclamation No. 373/2003.

12. Payment of licensing fees

The project proponent shall be required to pay a licensing fee according to the requirements and procedures of the Licensing Agency.

13. Incentives

The existing laws and regulations applicable on investment promotion shall also apply with regard to the CDM related investment activities.

14. Sustainability criteria

1. The Authority shall ensure that the ecological, social and economic sustainability criterion is met for project based CDM activities.
2. The criterion of the ecological component of sustainability, under sub Article 1 of this Article, is to facilitate the realization of the Sustainable Development Vision of Ethiopia. Accordingly the project shall, during its life cycle, comply with the following requirements:
   a. Not impairing ecosystem capacity to provide environmental service and goods
   b. enhancing resource use efficiency

c. soundness of the management of hazardous and other wastes

d. Reasonableness of measures to reclaim, rehabilitate or manage residual effects

3. The criterion of the socio-economic component of sustainability is to facilitate implementation of the Sustainable Development Vision of Ethiopia while ensuring compliance of a CDM project activity with the following requirements:

a. Not lowering the current coverage or quality of public services

b. reducing risk on property, animal and human health and safety

c. enhancement of local knowledge and practices that are relevant for sustainability

d. contribution to or creation of useful job

e. transfer of appropriate technology, skill or practices

f. adequate compensation for residual effect or leakages

g. contribution to enhance capacity of the workforce to adjust to current needs

15. CDM Project National Approval

1. The Environmental Protection Authority shall, within 3 working days, examine a project idea note submitted to it by the proponent and inform the result thereof accordingly.

2. The Environmental Protection Authority shall, within 30 working days, evaluate the adequacy of a project design document submitted by the proponent in fulfilling the sustainability criteria specified under Article 14 of these guidelines and inform the result thereof accordingly.

3. The Authority shall issue guidelines or a law on the procedures required for the national approval process on CDM projects.

16. Effective date

These guidelines shall be effective as of the ----day of 2008.

Done at Addis Ababa this --- day of -----, 2008.

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2. ለሕጋዊ ሰውነት ማረጋገጫ የቀረቡ ሰነዶች 1 ፎርማት፣

አስፈላጊነት አያይዘን መላካችንን እንገልጻለን::

ከሠላምታ ጋር

ሚስክሌ አየለ
Mieskele Ayele
የኅብረት ሥራ ማስፋፊያ ኤጀንሲ
ኃላፊ
Cooperative Promotion Agency Head

ግልባጭ፣
- ለ-ወላይታ ዞን ኅብረት ሥራ ማስፋፊያ ጽ/ቤት ---ለዞኑ----------
- ለ-ፋፋ-ጎሎ ወረዳ/ ልዩ ወረዳ ኅብረት ሥራ ማስፋፊያ ጽ/ቤት ---ለወረዳ-
- ለቢሮአችን ማ/ማ/ማ/መምሪያ

አ ዋ ሣ፣

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ኅብረት ሥራ ማኅበራት መስፋፋት ስምታደርጉልን ትብብር በቅድሚያ እናመሰግናለን!
Thank You. for your support in cooperative promotion!

Tohossa D/M/ Kawotettan Wolaytta Zooniya
Gaxare Dichaa Huuphe Kaaletaa
በደ/ብ/ብሔረሰቦችና ሕዝቦች ክልል መንግሥት
የወላይታ ዞን ግብርናና ገጠር ልማት መምሪያ
የተፈጥሮ ሀብት ገጠር መሬት አስተዳደር ዴስክ

ቁጥር ወጋገመ/ተፈጥ/ገጠመ/ገ/ተ/ቁ/ተ/ሃ/
Ref. No.
ቀን 7/6/13

ለ---(ሪቢኒ)---
---ክ/ከ/አ---
ወረዳ ግብርናና ገጠር ል/ጽ/ቤት

ጉዳዩ፡- የወል መሬቶች ጊዜያዊ ይዞታ ማረጋገጫ ደብተር አሠጣጥን ይመለከታል፤

ከላይ በርዕሱ ለተጠቀሰው በዞናችን በያዝነው ዓመት የወል፣ የተቋማት እንዲሁም ሌሎች መሬቶች እየተለኩ መሆኑ ይታወቃል። ከዚህም ጋር በተያያዘ የተለያዩ መንግስታዊ ያልሆኑ ድርጅቶችም በዞኑ አንዳንድ ወረዳዎች የሚገኙትን የወል መሬቶች በማህበር በማደራጀት ለማልማት ዝግጅት እያደረጉ ይገኛሉ። ይህንንም የልማት እንቅስቃሴ ካለው የመንግስት መሬት አስተዳደርና አጠቃቀም አዋጅ፣ ደንብና መመሪያ ጋር በማዛመድ አስፈላጊው ልማት እንዲካሄድ መደገፍ አስፈላጊ ነው።

ስለዚህ ባለው አዋጅ፣ ደንብና መመሪያ መሠረት፡-

1. የወል መሬቱ በየትኛው ቀበሌ እንደሚገኝ በመለየት፣
2. የወል መሬት መሆኑ በቀበሌና ንዑስ ቀበሌ መሬት አስ/አጠ/ ኮሚቴዎች በማረጋገጥ፣
3. የወል መሬቱ መረጃ በቅጽ1፣ቅጽ2 እንዲሁም በቀበሌና ወረዳ ባህረ መዝገብ በመመዝገብ፣

በወረዳው ግብርናና ገጠር ልማት ጽ/ቤት ከዚህ ደብዳቤ ጋር በተያያዘው ጊዜያዊ የይዞታ ማረጋገጫ የምስክር ወረቀት ተረጋግጦ እንዲሰጥ እየገለጽን፣ ወርልድ ቪዥን ኢትዮጵያ በሶዶና ሁምቦ ወረዳ ለሚያካሂደው ካርበን ፕሮጀክት ማህበራቱ የይዞታ ማረጋገጫ የምስክር ወረቀት እንዲያገኙ የጠየቀን በመሆኑ በድርጅቱ በየቀበሌያት ተለይተው የተለኩ የወል መሬቶችን የሚያሳይ ካርታ አባሪ ያደረገን ሲሆን በካርታው ላይ የተጠቀሰውን ሄክታር መጠን በመጠቀም ማህበራቱ በመመሪያውና ደንቡ መሰረት እየተረጋገጠ የይዞታ ማረጋገጫ የምስክር ወረቀት እንዲሰጣቸው እንዲደረግ አስታውቃለሁ።

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ለወርልድ ቪዥን ኢትዮጵያ ሶዶ ቅርንጫፍ፣
ሶዶ፣

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የተገልጋዮቻችንን በመጠበቅ፣ በማልማትና በአግባቡ በመጠቀም የምንገባ ዋስትናን እናረጋግጣለን።
ሙልስ ሲጽፉልን የደብዳቤያችንን ቀንና ቁጥር ይጥቀሱ።

ቀን----------

ቁጥር----------

በደቡብ ብሔሮች ብሔረሰቦችና ሕዝቦች ክልላዊ መንግሥት

ሰወል መሬት የሚሰጥ ጊዜያዊ የይዞታ ማረጋገጫ የምስክር ወረቀት

1. መሬቱ የሚገኝበት ክልል----------ዞን/ልዩ ወረዳ----------ወረዳ--------
ቀበሌ----------

2. የመሬቱ ስፋት በሄክታር ----------

3. የመሬቱ አዋሳኞች

ሀ. ሰሜን---------- ለ. ምስራቅ----------

ሐ. ደቡብ---------- መ. ምዕራብ----------

ከላይ የተጠቀሰው መሬት በወል ይዞታነት በ----------ዞን በ----------ወረዳ በ----------ቀበሌ ያሉ ----------
----------ማህበረሰብ አባላት በጋራ የሚጠቀሙበት የ----------
መሬት ነው::

ይህን መሬት ለማህበረሰቡ

ሀ. ያረጋገጠው ስም----------

ፊርማ----------

ለ. ያፀደቀው ስም----------

ፊርማ----------

ማህተም

Cooperative

Group discussion questions to assess the interest of community within and outside /adjacent/ to the HUmbo/Soddo CDM A/R project area.

Common questions for all:

1. Please, describe the importance of the project area before the inception of the project?
2. What were the benefits of the local community from the project area before the commencement of the project?
3. What are the alternative measures taken to address the community benefits?
4. Who are beneficiaries of the current CDM A/R project and the alternative measures?
5. How the CDM A/R project area is demarcated?

Questions for members of the cooperative society:

1. What are the requirements for the membership in the cooperative society?
2. Who are the role players in the project area?
3. What are the risks of the CDM A/R project?
4. What is your plan to mitigate the risk and to make the project sustainable?
5. What if, the non-members happen to be risk for the project?
6. Is there possibility for non-members and youth to join the cooperative society?
7. Please, describe whether there are landless members of community? So, how could their problem be addressed?

Questions for non-members, youth and household wives

1. Please, describe some of the reasons for your failure to join cooperative society?
2. Is there possibility for you to join the cooperative society in the future?
3. What are the risks for the permanence of the project?
4. What would be your feeling and/or reaction if the members of the cooperative society share the benefit of carbon sale money among themselves?

Designated National Authorities (DNA)

Back to the DNA list · List all Country A/R infos

Country Click name to get information on DNA	For afforestation and reforestation project activities - Host Party's selected single minimum:			Host Party's minimum selected values for A/R project activities include:	
	A single minimum tree crown cover value between 10 and 30 per cent	A single minimum land area value between 0,05 and 1 hectare	A single minimum tree height value between 2 and 5 meters	Palm trees	Bamboos
Ethiopia	20	0.05	2		

http://cdm.unfccc.int/DNA/ARDNA/html?CID=71 Accessed on 20/01/2009

የአክሱም ሐውልትና ጋሪሳኩዋ..... ትራራ የደን ማኔጅሜንት
ኃላፊነቱ የተወሰነ የህብረት ሥራ ማህበር
መተዳደሪያ ደንብ

1999

የ.ኢሰሳ.ኮንደና.ንግ.ሰሎማየደን ማነጅሜንት ኃላፊነቱ የተወሰነ
የህብረት ሥራ ማህበር መተዳደሪያ ደንብ

አንቀጽ 1

የማህበሩ ስያሜ

ማህበሩ የ.ኢሰሳ.ኮንደና.ንግ.ሰሎማ..... የደን ማነጅሜንት ኃላፊነቱ የተወሰነ የህብረት ሥራ ማህበር ተብሎ ይጠራል።

አንቀጽ 2

አድራሻ

2.1. ማህበሩ የሚከተለው አድራሻ ይኖረዋል

ክልል: ደቡብ ብሔር ብሔረሰቦችና ህዝቦች ክልል

ዞን: ወላይታ

ወረዳ: ሀምቦ

ቀበሌ: ኢሰሳ ኮንዶ

2.2. ማህበሩ በቀበሌዉ የራሱ ጽ/ቤት ይኖረዋል።

2.3 ማህበሩ እንደአስፈላጊነቱ ለስራው አመቺ በሆኑ ቦታዎች ቅርንጫፍ ጽ/ቤት ይኖረዋል።

አንቀጽ 3

ለደን ልማትና ጥበቃ የተከለለው ቦታ

ማህበሩ ለደን ልማትና ጥበቃ የከለለው መሬት ሰሞን ሃያ ሄክታር ሲሆን ይህም በ.....ኢሰሳ ኮንደና.....ቀበሌ አስተዳደር ሰሞን..... ወረዳ ሰዴሌ ዞን .....ሰዳሌ/ጉራጌ/ሐላባ ልዩ ወረዳ..... ክልል ይገኛል።

አንቀጽ 4

የማህበሩ መለያ ዓርማና ማህተም

1. የማህበሩ መለያ ዓርማ .....ቦንሳ..... ይሆናል።
2. ማህበሩ .....ኢሰሳ ኮንደና ንግ ስራ ኃላ..... የሚል ስምና ዓርማው ያለበት ማህተም ይኖረዋል።
3. የማህበሩ ማህተም በዚህ መተዳደሪያ ደንብ ሀላፊነት በተሰጠው ሰው እጅ ተቀምጦ ለፊርማ ኃላፊነት የተሰጠዉ ሰዉ ሲፈርም ብቻ በስራ ላይ ይውላል።

አንቀጽ 5

የማህበሩ ዓላማና ተግባር

5.1 ዓላማ

ማህበሩ የሚከተሉት ዓላማዎች ይኖሩታል

5.1.1 ከላይ በአንቀጽ 3 በተጠቀሰው በማህበረሰቡ በተከለለዉ የደን መሬት ላይ ደን የማልማት እና የእንክብካቤ ስራዎችን የማከናወን፣

5.1.2 በአካባቢው የሚገኙና በተፈጥሮ የበቀሉትን የዛፍ ዝርያዎች በመንከባከብና በባዶ ቦታዎችም ላይ በመትከል የተፈጥሮ ሀብት መመናመንና የአየር ጠባይ መዛባትን መቀነስ፣ የተፈጥሮ ሚዛንን መልሶ ማቋቋም

5.1.3 የተከለለውን የደን መሬት ለማልማት፣ ለመጠበቅና ለመንከባከብ እንዲቻል በአካባቢው ነዋሪ የሆነው ህብረተሰብ ሙሉ ቁጥጥርና ንቁ ተሳትፎ ማድረጉን ማረጋገጥ፣

5.1.4 የቁጠባ ባህልን በማዳበር የማህበሩን አባላት የኑሮ ሁኔታ ማሻሻል፣

5.1.5 ዘላቂነት ያለው የደን አጠቃቀምንና የተፈጥሮ ሀብት ጥበቃን ማበረታታት፣

5.1.6 ለደን ጥበቃ ከተከለለው ቦታ የማህበሩ አባላት ተጠቃሚ በመሆን ሃላፊነትም መቀበላቸውን ማድረግ፣

5.1.7 ማህበሩ በሚያስተዳደረው መሬት ላይ የደን ሽፋን እንዲጨምርና የደኑ ሁኔታ እንዲሻሻል ማድረግ፣

5.1.8 ከከርቦን ሽያጭ የሚገኘውን ገቢ ለማህበሩ አባላት ለተለያዩ የልማት ፍላጐቶች እንዲጠቅምና፣ ከካርቦን ሽያጭ የሚገኘው ገቢ በአባላት ውሳኔ ብቻ ጥቅም ላይ እንዲውል ማድረግ

5.1.9 በደን ልማትና ጥበቃ የሴቶችን ተሳትፎ [illegible]ግ።

5.2. ተግባራት

ማህበሩ ቀጥሎ ያሉትን ተግባራት ያከናውናል

5.2.1 በማህበሩ አባላት በሚዘጋጀው ፕሮግራም መሰረት ላቋቋልለው የደን መሬት ላይ የዛፍ ችግኝ ተክላ፣ የማሳሳት፣ የምልማለ፡ የአረም ላቢድ የመቁረጥ፡ የጥበቃና የመሳሰሉትን የደን ልማት ስራዎች ማካሄድ፣

5.2.2 የወደመዉን ደን መልሶ ለመተካት አካባቢውን በአጥር እና ወይም ከእያንዳንዱ ንዑስ ቀበሌ /ቀበሌ/መንግስታዊ ቡድን/ በተወጣጡ አባላት በተራ በማስጠበቅ ደኑን ከጥፋት መከላከል፣

5.2.3 በተፈጥሮ የሚበቅለውን ችግኝ መንከባከብና ችግኝ አፍልቶ በባዶ መሬት ላይ መትከል፣

5.2.4 ለማህበሩ አባላት የደን ማነጅሚንትን በተመለከተ ስልጠናና ትምህርት መስጠት

5.2.5 አስፈላጊ ሆኖ ሲገኝ በአባላት ውሳኔ ለአባላት ገቢ የሚያስገኝ ሌሎች በደኑ ላይ ተጽእኖ የማያስከትሉ ሥራዎችን ማከናወን

አንቀጽ 6

ማህበሩ የሚመራባቸው መርሆዎች

6.1. የፆታ፣ የማህበራዊ አቋም፣ የዘርና የፖለቲካ አመለካከት ልዩነት ሳይኖር አባልነት በፈቃደኝነት ላይ የተመሰረተና የአባልነት ግዴታዎችን ለመወጣት ፈቃደኛ ለሆኑ ሁሉ ክፍት ነው::

6.2. ማህበሩ በዲሞክራሲያዊ መርህ የሚመራ ሲሆን አባላት የራሳቸውን ፖሊሲ በማውጣትና ውሳኔዎችን በማስተላለፍ ንቁ ተሳትፎ የሚያደርጉበት ይሆናል፣

6.3. ከሌሎች ድርጅቶች ጋር የሚደረጉ ማናቸውም ስምምነቶች ወይም ከማህበሩ ውጭ የሚገኝ የገንዘብ ምንጭ በአባላት ቁጥጥርና የራስ ገዝ ባህሪውን በማይነካ ሁኔታ መሆኑን መረጋገጥ ይኖርበታል፣

6.4. ማህበሩ ዓላማዎቻቸው ተመሳሳይ ከሆኑ ከሌሎች ማህበራት ወይም የሕብረት ስራ ማህበራት ጋር ትብብር ያደርጋል አስፈላጊ በሆነ ጊዜም አንድነት ሊፈጥር ይችላል::

6.5. ማህበሩ በሚያወጣቸው ፖሊሲዎችና ፕሮግራሞች መሰረት በአካባቢው ለሚገኝ ህብረተሰብ ዘላቂ ልማት ለማምጣት አስተዋጽኦ ሊያደር ይችላል።
6.6. ማህበሩ የተፈጥሮ ሀብትን በአግባቡ ለማስተዳደርና ለመጠበቅ የትብብር መድረክ ጠቃሚነትን ለህዝቡ ያስተዋውቃል።
6.7. ትምህርት፡ ስልጣናና መረጃ ለሁሉም በእኩልነት ማዳረስ ይጠበቅበታል
6.8. የማህበሩን ስራ ለማስፋፋትና የአባሉትን ኢኮኖሚ ለማሳደግ ጥረት ያደርጋል

አንቀጽ 7

አባልነት

ተጥሎ የተመለከቱትን መስፈርቶች የሚያሟላ ማንኛውም ሰው የማህበሩ አባል መሆን ይችላል።

7.1. ዕድሜው ከ14 ዓመት በላይ የሆነ፣
7.2. የመመዝገቢያ ክፍያና ዝቅተኛውን ዕጣ መግዛት የሚችል፣
7.3. በአንቀጽ 3 በተጠቀሰው በማህበሩ የሥራ ክልል ነዋሪ የሆነ፣
7.4. የማህበሩን መተዳደሪያ ደንብና ልዩ ልዩ የአፈፃፀም መመሪያዎችን የተቀበለና ግዴታውን ለመፈፀም ፈቃደኛ የሆነ፣
7.5. መብቱ በህግ ያልተገፈፈ
7.6. የማህበሩን ዓለማ የተቀበለ
7.7. ቤተሰብ ያለዉ ሰዉ ከሆነ ከቤተሰቡ አንድ ሰዉ ብቻ አባል ይሆናል

አንቀጽ 8

የአባልነት ማመልከቻ

8.1 ማንኛውም አባል መሆን የሚፈልግ ሰው ለዚሁ ተብሎ በተዘጋጀው ቅጽ መሰረት በራሱ ፊርማ የአባልነት ማመልከቻ ማቅረብ ይኖርበታል።
8.2 ማህበሩ በማንኛውም ጊዜ በአንቀጽ 7 የተጠቀሱትን መስፈርቶች የሚያሟላ ሰው በአባልነት መቀበል ይችላል።
8.3 የስራ አስፈፃሚ ኮሚቴ አዲስ አባል መቀበሉን ለጠቅላላ ጉባኤ ያሳውቃል፣
8.4 አመልካቹን የማይቀበል ከሆነ ምክንያቱን በደብዳቤ በመግለጽ ያሳውቃል፣
8.5 አባል ለመሆን አመልክተው ተቀባይነት ያላገኙ አመልካቶች ቅሬታቸውን ለጠቅላላ ጉባኤ ማቅረብ ይችላሉ።

አንቀጽ 9

የመመዝገቢያ ክፍያ

9.1 አባል ለመሆን የጠየቀ ሰዉ አባልነቱ ከተፈቀደለት የመመዝገቢያ ክፍያ ፭፫፭ ብር በአንድ ጊዜ ይከፍላል፣
9.2 የመመዝገቢያ ክፍያው ሲከፈል የአባልነት ሀጋዊ ወረቀት ይሰጠዋል።
9.3 ለመመዝገቢያ የተከፈለ ገንዘብ በማንኛዉም ሁኔታ ለአባሉ ተመላሽ አይሆንም

አንቀጽ 10

የዕጣ ክፍያ

10.1. ማህበሩ ብዛታቸው ፭፫፭... የሆኑ ዕጣዎች እያንዳንዱ አክሉ ዋጋ ብር ፭፫፭ የሆነ፣ ጠቅላላ ብር ፭፫፭ ካፒታል ያለው ዕጣ ይሸጣል።

10.2. እያንዳንዱ የማህበሩ አባል ቢያንስ አንድ ዕጣ መግዛት ይኖርበታል፣
10.3. አንድ አባል ዕጣውን በዓይነት ወይም በጥሬ ገንዘብ ሊገዛ ይችላል፣
10.4. አንድ አባል የገዛውን ዕጣ በአንድ ጊዜ ከፍሎ በማጠናቀቅ አቅም የሌለው ከሆነ በ... ጊዜ ውስጥ ከፍሎ ማጠናቀቅ አለበት። ሆኖም የክፍያው ጊዜ ከአንድ ዓመት መብለጥ አይችልም።
10.5. አንድ አባል በአንቀጽ 10 ንኡስ አንቀጽ 10.1 መሰረት ከተወሰነው ጠቅላላ ዕጣ ውስጥ ከ1/10ኛ በላይ መያዝ አይችልም። ሆኖም አባላት እኩል ዕጣ በመግዛት መስማማት ይችላሉ።
10.6. በየዓመቱ ስለሚሸጠው ዕጣ ብዛት መጠን የማህበሩ የስራ አስፈፃሚ ኮሚቴ ከስራው ጋር እያቀደ ለጠቅላላ ጉባኤ ውሳኔ ያቀርባል።

አንቀጽ 11

የአባላት መብት

ማንኛውም የማህበሩ አባል ቀጥሎ የተመለከቱት መብቶች ይኖረዋል፣

11.1 በማህበሩ በተለያዩ ኮሚቴዎች የመምረጥ፣ የመመረጥና፣ ድምፅ የመስጠት
11.2 በማህበሩ ስብሰባዎች የመሳተፍና አስተያየት የመስጠት እንዲሁም ማህበሩን በተመለከተ ማናቸውንም ጥያቄዎችና ቅሬታዎች የማቅረብ፣
11.3 በማህበሩ የደን መሬት በጋራ የመጠቀም መብት፣
11.4 ማህበሩ ከሚያከናውናቸው ተግባራት ከሚገኘዉ ጥቅምና ገቢ የመካፈል፣
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11.8 ከአባልነት የወጣዉ አባል የሚያገኘዉ ጥቅም በማህበሩና በአባላት መካከል በሚደረገዉ ስምምነት መሰረት ይሆናል

አንቀጽ 12

የአባላት ግዴታ

12.1 የጠቅላላ ጉባዔው በሚስማማበት የውስጥ ደንብ መሰረት የተከለለውን የደን ቦታ ማስተዳደር፣ መንከባከብ፣ መጠበቅ
12.2 የጠቅላላ ጉባዔው ከሚወሰነው በስተቀር በተከለለው የደን መሬት ውስጥ አባላትም ሆኑ አባላት ያልሆኑ ሰዎች እንዳይገቡ መከልከል፣
12.3 በተከለለው የደን መሬት ውስጥ ዛፍ መቁረጥ፣ ከብት ማስጋጥ ከሰል ማክሰል የመሳሰሉት ድርጊቶች እንዳይከናወን መከልከል፣
12.4 በቤተሰብ ደረጃ በሚወከል ሰው ደኑን በተራ መጠበቅ፡ የደን ጥበቃው ዘበኞች የሚቀጠሩ ከሆነ የዘበኞች ክፍያ በጠቅላላ ጉባዔው ይወሰናል
12.5 ጠቅላላ ጉባዔው ከተስማማበት ደንብ ውጪ ከደን መሬቱ ውስጥ የደን ውጤቶችን ከመውሰድ መታቀብ፣
12.6 በደን ልማትና እንክብካቤ በሚከናወኑ የተለያዩ ስራዎች የጉልበት አስተዋጽዎ ማበርከት፣
12.7 የህብረት ስራ አዋጅ፡ የመተዳደርያ ደንብና የማህበሩን ውሳኔዎች ማክበር
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12.9 ማህበሩ የሰብሰባ ጥሪ ሲያደርግ በሰብሰባው መገኘት፣
12.10 ማህበሩ በሚያከናውናቸው ሌሎች ማናቸውም ተግባራት ላይ በጉልበትም ሆነ በሌላ ተሳትፎና አስተዋፅዎ ማድረግ፣
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አንቀጽ 13

በውርስ ማስተላለፍ

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13.2 ይህ ሳይሆን ቀርቶ አባል በሞት ቢለይ ህጋዊ ወራሽ ሊወርስ ይችላል
13.3 ወራሾች ውርሱን ማግኘት የሚችሉት ማህበሩ ከግለሰቡ የሚፈለገው ብድር ወይም ዕዳ ከተቀነሰ በኋላ በህግ ወራሽ ለሆነ ሰዉ ይመለስለታል
13.4 የአንድ አባል ጥቅምና ድርሻ የሚጠበቅለት የማህበሩ ሂሳብ ከተጣራ በኋላ ነዉ

አንቀጽ 14

ከአባልነት ስለመወገድ

ማንኛውም አባል ከዚህ ቀጥሎ በተመለክቱት ምክንያቶች ከአባልነት ሊወገድ ይችላል፡-
14.1 በራሱ ፈቃድ ከማህበሩ ሲለቅ
14.2 የማህበሩን መተዳደሪያ ደንብ፣ የውስጥ ደንብ ወይም ማህበሩ የሚያሳልፋቸው ውሳኔዎችን ባለማክበር፣
14.3 ከ3 ወር በላይ ከማህበሩ ጋር ግንኙነቱን ሲያቋርጥ::
14.4 ከዚህ በላይ በተጠቀሱት ሁኔታዎች ከአባልነት መወገድ የሚቻለው የስራ አስፈፃሚ ኮሚቴ ሁኔታውን አረጋግጦ በጠቅላላ ጉባዔው ውሳኔ ብቻ ነው::
14.5 የማህበሩን አላማና ተግባር የሚቃወም ወይም የሚያዳክም ተግባር ፈጽሞ ሲገኝ
14.6 ማህበሩ የሚገኝበትን አካባቢ ለቆ መሄድና ንብረቱን አዲስ ወደ ሚሄድበት ቦታ ማሸሸ/ማዛወር
14.7 አባሉ በሞት ሲለይ

አንቀጽ 15

የማህበሩ ድርጅታዊ መዋቅር

ማህበሩ የሚከተለው ድርጅታዊ መዋቅር ይኖረዋል::
1. ጠቅላላ ጉባዔ
2. የስራ አስፈፃሚ ኮሚቴ
3. የቁጥጥር ኮሚቴ
4. የብድር ኮሚቴ
5. የደን ልማት ኮሚቴ
6. የደን ጥበቃ ኮሚቴ
6. የቅጥር ሰራተኞች

List of Annexes

1. Annex No.1 indicates Draft Sustainable Development Criteria for approval of CDM Projects
2. Annex No.2 indicates Draft Guideline for Licensing CDM Activities in Ethiopia.
3. Annex No. 3 indicates Temporary Model Land Holding Certificate drafted by SNNPRS
4. Annex No. 4 indicates group discussion questions
5. Annex No. 5 indicates forest definition of FDRE communicated to EB
6. Annex No. 6 indicates Memorandum of Association for one of the Cooperative Societies (Abala Longena Gamo Salua) cooperative society
7. Annex No. 7 indicates Article of Association for one of the Cooperative Societies (Abala Longena Gamo Salua) cooperative society
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Appendices

Environmental Protection Authority of Ethiopia

the Designated National Authority (DNA)
of the Kyoto Protocol to the UNFCCC

Sustainable Development Criteria for approval of Clean Development Mechanism (CDM) Projects

August 2007

1. Background

Host country project approval is one of the prerequisites of the registration of a potential CDM project with the United Framework Convention on Climate Change and the Kyoto Protocol. The rules which govern the CDM require a letter from the DNA of the host country which confirms that the project activity assists it in achieving sustainable development. The CDM procedures leave the definition of what sustainable development means as a sovereign decision of each developing country.

Therefore, for Ethiopia's participation in the CDM there has to be a procedure in place for deciding whether a proposed CDM project does assist the county in achieving sustainable development. The criteria to be used by the DNA in evaluating whether a project supports sustainable development are provided below.

2. Environmentally Sustainable Development Vision

The Environmentally Sustainable Development Vision of Ethiopia is "to achieve productive environment, self- reliance, improved qualities of life, equity within and between generations of Ethiopia through environmentally sustainable development and stewardship". This vision has economic, social and cultural, and ecological dimensions.

(a) Economically it envisions:

- Emancipate the generation from cyclic dependency syndrome for livelihood, by way of transforming locally available environmental resources to tangible social and economic benefits through the wise use of natural resources, indigenous knowledge and local capabilities;
- Achieve fair and equitable access and economic benefits through the realization of community's rights to economic development and environmentally sustained economic opportunities;
- Attain a diversified economic system to release the pressure on the natural resource through value adding environmentally sound alternative resources or technology at community/ local level;
- Transfer the rent component of non- renewable resources to other productive assets.

(b) Socially it envisages to:

- Ensure improved qualities of life for Ethiopians through the provision of environmentally sound social services;
- Realize meaningful community participation and gender equality in environmental management and decision making;
- Foster good environmental governance and stewardship.

(c) Ecologically it envision to:

- Achieve the optimal use of non renewable resources;
- Attain productive ecosystems through protecting, restoring and enhancing soil, vegetation, water, wildlife, and aquatic resources within their regenerative capacity;

- Ensure that a working and efficient system is laid down so that the resource and sink function of the environment shall not be degraded.

3. Criteria for CDM Project Approval

Three core criteria will be used to assess the contribution of the proposed project to sustainable development in Ethiopia. These are supported by additional criteria to allow the DNA to effectively regulate clean development mechanism project activity in Ethiopia.

Sustainable development criteria

The DNA will evaluate CDM projects submitted to it through consideration of the following three criteria:

1. **Economic: Does the project contribute to national economic development?**
2. **Social: Does the project contribute to social development in Ethiopia?**
3. **Ecological: Does the project contribute to sustainable development?**

These are that "sustainable development requires the consideration of all relevant factors including the following:

- That the disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be avoided, are minimized and remedied
- That pollution and degradation of the environment are avoided, or where they cannot be altogether avoided, are minimized and remedied
- That the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimized and remedied
- That waste is avoided, or where it cannot be altogether avoided, minimized and reused or recycled where possible and otherwise disposed of in a responsible manner
- That the use and exploitation of non-renewable resources is responsible and equitable, and takes into account the consequences of the depletion of the resource
- That the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardized
- That a risk averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions
- That negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimized and remedied."

In determining the answers to questions 1-3 the DNA should be informed by consideration of the project indicators provided in Table 1.

Table 1. Indicators in support of the project approval criteria

Criteria	Indicator
Impact on local environmental quality	• Impact of the project on air quality • Impact of the project on water pollution • Impact of the project on the generation or disposal of solid waste • Any other positive or negative environmental impacts of the project (such as impacts on noise, safety, visual impacts, or traffic)
Change in usage of natural resources	• Impact of the project on community access to natural resources • Impact of the project on the sustainability of use of water, minerals or other non-renewable natural resources
	• Impact of the project on the efficiency of resource utilization
Impacts on biodiversity and ecosystems	• Changes in local or regional biodiversity arising from the project
Economic Impacts	• Impact of the project on foreign exchange requirements • Impact of the project on existing economic activity in the area • Impact of the project on the cost of energy • Impact of the project on foreign direct investment
Appropriate technology transfer	• Positive or negative implications for the transfer of technology to Ethiopia arising from the project • Impacts of the project on local skills development • Demonstration and replication potential of the project
Alignment with national and local development priorities	• How the project is aligned with provincial and national government objectives • How the project is aligned with local developmental objectives • Impact of the project on the provision of, or access to, basic services to the area • Impact of the project on the relocation of communities if applicable • Contribution of the project to a any specific sectoral objectives (for example, renewable energy targets)
Social equity and poverty alleviation	• Impact of the project on employment levels? (specify the number of jobs created/lost; the duration of time employed, distribution of employment opportunities, types of employment, categories of employment changes in terms of skill levels and gender and racial equity) • Impact of the project on community social structures • Impact of the project on social heritage • Impact of the project on the provision of social amenities to the community in which the project is situated • Contribution of the project to the development of previously underdeveloped areas or specially designated development nodes
General project acceptability	• Are the distributions of project benefits reasonable and fair?

4. Application of Criteria

The DNA with support from the relevant organizations advisory committee will consider each project application against the three core criteria and will make an assessment of whether on balance the project supports sustainable development in the country. The DNA will provide reasons for the decision. In these reasons the DNA will set out the analysis behind the decision and will note the expected performance of the project against the relevant indicators used.

If a project is deemed by the DNA to be contrary to the spirit of the Kyoto Protocol or contrary to the intention of stated government policy the DNA reserves the right to refuse project approval until such time as suitable alterations are made to the project design. In such instances the DNA must provide clear reasons for the rejection of a project.

DRAFT

Guidelines for Licensing CDM Activities in Ethiopia

WHEREAS the Clean Development Mechanism (CDM) is recognized to assist developing countries like Ethiopia in achieving sustainable development, thereby contributing to the ultimate objective of balancing the global climate system,

WHEREAS the government of Ethiopia has ratified the Kyoto Protocol on 21 February 2005 and has henceforth committed itself to assisting developed country Parties to the Protocol in achieving compliance with part of their quantified emission limitation and reduction commitments under Article 3 of the Kyoto Protocol,

WHEREAS, it is deemed necessary to put in place a Guidelines to direct the licensing process required for promoting as well as regulating CDM activities in Ethiopia,

NOW THEREFORE, these Guidelines is issued by the Environmental Protection Authority of the FDRE in accordance with -------/20002.

1. Short title

These Guidelines may be cited as the "Guidelines for Licensing CDM Activities in Ethiopia."

2. Status of the guidelines

These guidelines shall be operational until such time that a comprehensive law regulating CDM activities is enacted.

3. *Definitions*

1. "Authority" means the Federal Democratic Republic of Ethiopia, Environmental Protection Authority.

2. "CDM Activity" means any project-based activity under which developed-country Parties to the Kyoto Protocol cooperate with Ethiopia in order to meet part of their Green House Gas emission reduction obligations through the acquisition of "Certified Emission Reductions" (hereinafter referred to as "CERs") generated by the projects implemented in Ethiopia.

3. "Domestic Investor" means an Ethiopian or a foreign national permanently residing in Ethiopia having made an investment, and includes the Government, public enterprises as well as a foreign national, 'Ethiopian by birth and desiring to be considered as a domestic investor;

4. "Foreign Investor" means a foreign or an enterprise owned by foreign nationals having invested foreign capital in Ethiopia.- and includes an Ethiopian permanently residing abroad and preferring treatment as a foreign investor;

5. "Green House Gases" means natural and industrial gases that make up the one-way insolating layer trapping heat around the surface of the Earth, and shall include Carbon dioxide, methane, sulfur hexafluoride, nitrous oxide, hydroflourocarbons and perflourocarbons.

6. "Licensing Agency" means any organ of government empowered by law to issue a trade or operating license or a work permit or to register a business organization, as the case may be.

7. "Person" means any natural or juridical person.

4. Purpose

The purpose of a CDM Project shall be to assist Ethiopia in achieving sustainable development and in contributing to the realization of the ultimate objective of the United Nations Framework Convention on Climate Change, as well as to assist the developed-country party in achieving compliance with its quantified GHG emission limitation and reduction commitments.

5. Eligible Project based Activities

1. Abatement of emission of greenhouse gases or CO_2 Sequestration activities is allowed within the context of the CDM under the Kyoto Protocol.

2. Without the generality of sub Article 1 of this Article, the fields of activities that are eligible for undertaking business under the CDM are energy supply, energy demand, transport, waste management, land use change and forestry.

3. Without the generality of sub Article 2 of this Article, in the forestry sector, the following project or activities are eligible to carry out CDM transaction in Ethiopia.
   a. Rehabilitation of degraded lands to forest or agro forestry
   b. Reforestation of degraded lands by tree planting
   c. Establishing tree/shade crops over existing crops (e.g. coffee)
   d. Plantations for wood products; including but not limited to, small scale

landholder driven and Commercial scale

e. Landscape rehabilitation through planting corridors
f. Fuel wood plantings at a commercial scale
g. Forest Management
h. Improved forest management
i. Improved fire management
j. Reduced impact logging
k. Alternatives to fuel wood for forest/environmental protection
l. Revegetation of semi-arid and arid lands with shrubs or grasses
m. Improved livestock management leading to vegetation and soil recovery

6. *Eligible service based activities*

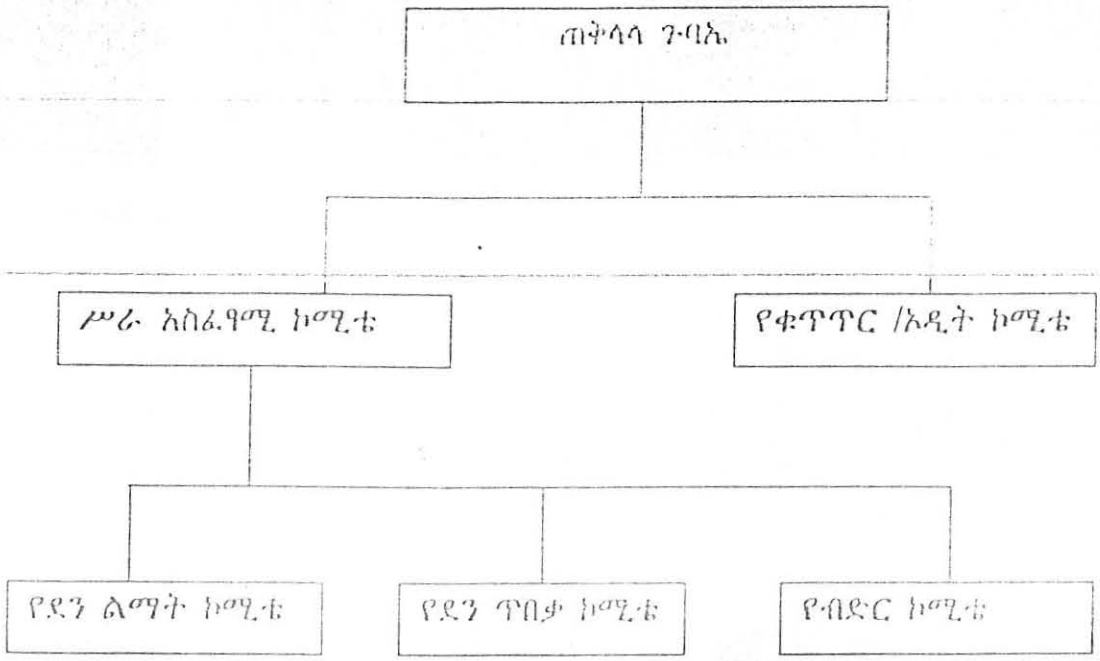
1. Any person is allowed to engage in the following services within the context of the CDM under the Kyoto Protocol:
   a. CDM project development,
   b. Carbon consultancy, sale and brokerage,
   c. Participation as a designated operational entity of the Kyoto Protocol,
   d. Participation as buyer of certified emission reductions or carbon credits

2. Any person desirous of engaging in the provision of the above listed services shall comply with the business license requirements of the country.

7. *Excluded activities*

CDM activities that may have an effect of diverting official development assistance or emission reductions from nuclear facilities shall not be considered as CDM eligible in Ethiopia.

የማህበሩ ድርጅታዊ መዋቅር



አንቀጽ 16

የጠቅላላ ጉባዔው ስልጣንና ተግባር

16.1 ጠቅላላ ጉባዔው የማህበሩ የበላይ አካል ነው፣

16.2 የማህበሩ ጠቅላላ ተግባራት የደን ሀብቱን አስተዳደር፣ ጥበቃና አጠቃቀም፣ የማህበሩን የገንዘብ ገቢና አስተዳደር በተመለከተ ውሳኔ ያስተላልፋል፣

16.3 የማህበሩን መተዳደሪያ ደንብና ውስጠ ደንብ ያፀድቃል፣

16.4 የማህበሩን ስራ አስፈፃሚ ኮሚቴ የውስጥ ቁጥጥር ኮሚቴ፣ የብድር ኮሚቴና ሌሎች ንዑስ ኮሚቴ አባላትን ጨምሮ የማህበሩን ሊቀመንበር ም/ሊቀመንበር፣ ፀሐፊና ገንዘብ ያዥ ይመርጣል፣

16.5 የማህበሩን ዓመታዊ የስራ ዕቅድና በጀት መመርመርና ማጽደቅ፣

16.6 ዓመታዊ የስራ አፈፃፀምና የአዲት ሪፖርት መመርመርና ማጽደቅ፣

16.7 ለማህበሩ የአዲስ አባልነት ጥያቄ ሲቀርብ ውሳኔ መስጠት፣

16.8 በመተዳደሪያ ደንቡ የተቀመጡትን ግዴታዎች ያላሟላ አባል ሲኖር ከማህበሩ እንዲሰረዝ ውሳኔ ማስተላለፍ፣

16.9 የስራ አስፈፃሚ ኮሚቴ የሚያቀርበው የስራ አፈፃፀም ሪፖርት እንዲሁም የፀደቀው የስራ ዕቅድ ከማህበሩ ዓላማዎች ጋር መጣጣሙን ማረጋገጥ፣

16.10 አስፈላጊ ሲሆን መተዳደሪያ ደንቡን ማሻሻል፣

16.11 የማህበሩን ዋና ጽ/ቤት ወይንም ቅርንጫፍ ጽ/ቤት መለወጥ አስፈለጊ ውሳኔ መስጠት፣

16.12 የማህበሩ ሂሰብ በውጭ አዲተር እንዲመረመር ማድረግ፣
16.13 ለሽያጭ የሚቀርቡ የደን ውጤቶችን ማፅደቅና ስነ-ስርዓቱንም ይደነግጋል፣
16.14 በዚህ መተዳደሪያ ደንብ መሰረት ለተቋቋመ አካላት የተሰጠ ሌሎች ተልዕኮ ተሰጡ ሌሎች ጉዳዮች ላይ ውሳኔ መስጠት::
16.15 የማህበሩ የብድር አፈጻጸምና ጣርያ ይወስናል
16.16 የማህበሩን የተጣራ ትርፍ ድልድል ይወስናል

አንቀጽ 17

የማህበሩ ጠቅላላ ጉባዔ ሰብሰባዎች የምርጫና የውሳኔ አሰጣጥ ስነ ስርዓት

17.1 የጠቅላላ ጉባዔው መደበኛ ስብሰባ በዓመት 2 ጊዜ ይሆናል::
17.2 የመደበኛ ጉባዔ ጥሪ ከ15 ቀናት በፊት በጽሁፍ የስብሰባው አጀንዳና ሰዓት ተገልፆ በእያንዳንዱ ቀበሌ አስተዳደር ጽ/ቤት በኩል አባላት በግልጽ በሚያዩበት ቦታ ይለጠፋል::
17.3 ከጠቅላላ ጉባዔው አባላት ከ50% /ግማሽ/ በላይ ሲገኙ ምልአተ ጉባዔ ይሆናል::
17.4 በመጀመሪያ የመደበኛ ሰብሰባ ጥሪ ምልዓተ ጉባዔው ካልተሟላ በ15 ቀን ውስጥ ሁለተኛ መደበኛ ስብሰባ ይጠራል:: በሁለተኛ ጊዜ በተጠራው መደበኛ ሰብሰባ ምልዓተ ጉባዔ ካልተሟላ በተገኙ አባላት ስብሰባው ይካሄዳል::
17.5 በተራ ቁጥር 17.4 መሰረት የሚሰጠው ውሳኔ በሁሉም አባላት ላይ ተፈፃሚ ይሆናል::
17.6 ምርጫ የሚካሄደው ምልዓተ ጉባዔው ሲሟላ ነው፣
17.7 ምልዓተ ጉባዔው ሲሟላ ጠቅላላ ጉባዔው በሚያዐድቃቸው መስፈርት መሰረት የምርጫውን ስነ-ስርዓት የሚያካሂድ ሶስት የአስመራጭ ኮሚቴ አባላት በጠቅላላ ጉባዔው ይመረጣሉ::

አንቀጽ 18

አስቸኳይ የጠቅላላ ጉባዔ ሰብሰባ

18.1 እንደ ሁኔታው አስገዳጅነት የማህበሩ አስቸኳይ ጠቅላላ ጉባዔ ሰብሰባ ሊጠራ ይችላል::
18.2 አስቸኳይ ሰብሰባ ከጠቅላላ ጉባዔው አባላት 1/3 ሲጠይቁ ሊጠራ ይችላል::
18.3 የማህበሩ ስራ አስፈጻሚ ኮሚቴ አስቸኳይ ሰብሰባ ሊጠራ ይችላል፣
18.4 አስቸኳይ ሰብሰባ ከመካሄዱ ከ15 ቀናት በፊት ጥሪው በጽሁፍ አባላት በግልጽ በሚያዩበት ቦታ ይለጠፋል፣
18.5 የአስቸኳይ ሰብሰባ ምልዓተ ጉባኤ ከጠቅላላይ አባላት 2/3ኛው የተገኘበት ይሆናል::
18.6 የተጠራው አስቸኳይ ጠቅላላ ጉባዔ ምልዓተ ጉባዔው ካልተሟላ በ15 ቀናት ውስጥ የስራ አስፈፃሚ ኮሚቴው ለሁለተኛ ጊዜ ጥሪ ያደርጋል:: ለሁለተና ጊዜ የተጠራ አስቸኳይ ጠቅላላ ጉባዔ ምልዓተ ጉባዔው ካልተሟላ በተገኙ አባላት ስብሰባው ይካሄዳል፣
18.7 ከላይ በተራ ቁጥር 15.6 መሰረት የሚተላለፈው ውሳኔ በሁሉም አባላት ላይ ተፈፃሚ ይሆናል::

አንቀጽ 19

የስራ አስፈፃሚ ኮሚቴ

19.1 የስራ አስፈፃሚ ኮሚቴው 7 አባላት ያለው ሲሆን ተጠሪነቱ ለጠቅላላ ጉባዔው ይሆናል።

19.2 የስራ አስፈፃሚ ኮሚቴው ማህበሩን ከሚያቋቁሙት ከእያንዳንዱ ቀበሌ /ንዑስ ቀበሌ/ ውክልና ያለው ይሆናል።

19.3 የስራ አስፈፃሚ ኮሚቴው የሴት አባላት እንዲኖሩት ጥረት ይደረጋል።

19.4 የስራ አስፈፃሚ ኮሚቴው የስራ ዘመን ሶስት ዓመት ይሆናል። ማንኛውም የስራ አስፈፃሚ ኮሚቴ አባል የስራ ዘመን ከሁለት ተከታታይ የስራ ዘመን መብለጥ የለበትም።

19.5 ማንኛውም የስራ አስፈፃሚ ኮሚቴ አባል ሃላፊነቱን በሚገባ ካልተወጣ በጠቅላላ ጉባዔው 2/3ኛ ድምፅ ከስራው ሊወገድ ይችላል። በሥራ ላይ በነበረበት ጊዜ እጁ ያለዉን ማንኛዉንም ንብረት የማስመርመርና የመመለስ ግዴታ አለበት።

19.6 ኃላፊነት የተሰጠዉ የስራ አስፈጻሚ ኮሚቴ አባል ከአዋጅ ከደንቡና ከጠቅላላ ጉባኤ ውሳኔ ውጭ ለፈጠረዉ ኪሳራ ተጠያቂ ይሆናል።

19.7 ሀላፊነት የተሰጠዉ አንድ የሥራ አስፈጻሚ ኮሚቴ አባል ከአዋጁ፡ ከደምቡና የጠቅላላ ጉባኤ ውሳኔ ውጭ ለተፈጠረዉ ኪሳራ ተጠያቂ ይሆናል

19.8 ማንኛዉም ኮሚቴዉ የሚወስናቸዉ ውሳኔዎች በድምጽ ብልጫ ይሆናል ሆኖም የተሰጠዉ ድምጽ እኩል ለእኩል ከሆነ ሊቀመንበሩ ያለበት ወገን ይጸድቃል

19.9 ኮሚቴዉ ስራን በጋራ ወይም በመከፋፈል ሊያከናዉን ይችላል

አንቀጽ 20

የስራ አስፈፃሚ ኮሚቴ ስልጣንና ተግባር

20.1 የማህበሩን ዓመታዊ የስራ ዕቅድና በጀት ማዘጋጀትና በጠቅላላ ጉባዔው ሲፀድቅ በተግባር ማዋል፣

20.2 የደን ማኔጅሜንት ዕቅድና ሌሎች የተያያዙ ተግባራትን ማዘጋጀትና ለጠቅላላ ጉባዔው አቅርቦ ከፀደቀ በኋላ በተግባር ማዋል።

20.3 የተከለለው ደን በአግባቡ የሚጠበቅበትንና ለአባላት ጥቅም የሚውልበትን ዘዴዎች በመቀየስ ለጠቅላላ ጉባዔው አቅርቦ ማፀደቅ፣

20.4 ሌሎች ከደን ማኔጅሜንቱ ጋር የተያያዙ መሰረታዊ ጉዳዮችን ለጠቅላላ ጉባዔ ውሳኔ ማቅረብ፣

20.5 የስብሰባዎችን ቃል-ጉባዔ በጽሁፍ መያዝ፣

20.6 በመተዳደሪያ ደንቡ ድንጋጌዎች መሰረት የጠቅላላ ጉባዔ ስብሰባዎችን መጥራት፣

20.7 የማህበሩን ሂሳብ በውጭ አዲተር ማስመርመር፣

20.8 የማህበሩን የፋይናንስ አቋም ማዘጋጀትና ለጠቅላላ ጉባዔው ሪፖርት ማቅረብ፣

20.9 የማህበሩ ሂሣብ በአግባቡ መያዙን ማረጋገጥ፣

20.10 የማህበሩን ዓመታዊ የስራ እንቅስቃሴ ሪፖርት ለጠቅላላ ጉባዔው ማቅረብ፣

20.11 ስራተኞችን ይቀጥራል ፡ ያስተዳድራል ፡ ያሰናብታል

20.12 በተሰራዉ የሂሳብ ስሌት መሰረት ያደገና የትርፍ ክፍፍል ለማስወሰን ለጠቅላላ ጉባኤ አቅርቦ ሲወሰን ስራ ላይ ማዋል

20.13 የማህበራት ማደራጃ አዋጅ የመተዳደርያ ደንብና የስራ መመርያን ተግባራዊ ማድረግ

20.14 በጠቅላላ ጉባኤ በተሰወሰነዉ መሰረት ድረሻዎችን መመደብ ወይም የድርሻዎችን ሰዉጥ መወሰን

አንቀጽ 21

ለኮሚቴ አባልነት ለመመረጥ ስለማያበቁ ሁኔታዎች

21.1 የማህበሩ ተቀጣሪ ሰራተኛ መሆን
21.2 የህግ መብቱ የተገፈፈ ወይም ከአሁን በፊት በወንጀል ተከሶ የተፈረደበት ወይም በሌላ ማህበር ውስጥ ተመርጦ ንብረት ያጠፋ ወይም ሀላፊነትን የማያሟላ ስራ ሰርቶ ከሆነ
21.3 ~~የህብረት ሥራ ማህበሩን ገንዘብና ንብረት ያባከነ ወይም ከማህበሩ የተበደረዉን ብድር በወቅቱ ያልመለሰ~~
21.4 በተደራራቢ የአመራር ወይም የስራ ሃላፊነት የተመደበ
21.5 የማህበሩን ዓለማና ተግባር የሚጻረር ስራ ከሰራና ይሽዉ ከታመነበት
21.6 አባል ሆኖ እድሜዉ ከ18 ዓመት በታች ከሆነ
21.7 የአእምሮ ህመም ያለበት ከሆነ
21.8 ከማህበሩ ስራ አስኪያጅ ጋር የቅርብ ዝምድና ያለዉ ከሆነ

አንቀጽ 22

ከኮሚቴ አባልነት ስለመሰናበት

22.1 ያለበቂ ምክንያት አዘውትሮ በስብሰባ ላይ የማይገኝ ከሆነ ወይም በተከታታይ ፈ ያልተገኘ

አንቀጽ 23

የስራ አስፈፃሚ ኮሚቴው ሊቀመንበር ም/ሊቀመንበር፣ ፀሀፊና ገንዘብ ያዥ ኃላፊነትና ተግባር::

23.1 ሊቀ መንበር

23.1.1 ሊቀመንበር በማህበሩ ጠቅላላ ጉባኤ ይመረጣል:: ተጠሪነቱም ለጠቅላላ ጉባኤ ነዉ::
23.1.2 የስራ አስፈፃሚ ኮሚቴንና የጠቅላላ ጉባዔውን ስብሰባ በሊቀመንበርነት ይመራል::
23.1.3 የጠቅላላ ጉባዔና የስራ አስፈፃሚ ኮሚቴው ውሳኔዎችን በተግባር መዋላቸውን ያረጋግጣል፣
23.1.4 ከማህበሩ እንቅስቃሴዎች ጋር የተያያዙ ማናቸውንም ጉዳዮች በተመለከተ ማህበሩን በመወከል ይሰራል፣
23.1.5 ማህበሩን በመወከል ከመንግስታዊና መንግስታዊ ካልሆኑ ድርጅቶች ጋር ውል ይዋዋላል፣
23.1.6 የጠቅላላ ጉባዔውን መደበኛ አስቸኳይ ስብሰባዎች እንዲሁም የስራ አስፈፃሚ ኮሚቴ ስብሰባዎችን ይጠራል፣
23.1.7 የማህበሩን የሂሳብ ሰነዶች ማጽደቅ እንዲሁም ከገንዘብ ያዥ ጋር ወይንም ከቅጥር ሰራተኛ ጋር በማምራ በቼክ ላይ መፈረም፣
23.1.8 የስራ አስፈፃሚ ኮሚቴ ዓመታዊ የስራ ሰቅድ ለጠቅላላ ጉባዔው

ማቅረብና ማፀደቅ፣

23.1.9 የስራ አስፈፃሚ ኮሚቴ ዓመታዊ የስራ ክንዋኔ፣ የሂሳብ ወቅታዊ ሁኔታና የኦዲት ሪፖርት ለጠቅላላ ጉባዔው ማቅረብና እነዚሁኑ ሰነዶች ለሚመለከታቸው መንግስታዊና መንግስታዊ ያልሆኑ አካላት ማስተላለፍ፣

23.1.10 ጠቅላላ ጉባዔው የሚሰጠውን ሌሎች ስራዎችን ማከናወን።

23.2 ምክትል ሊቀመንበር

23.2.1 በማህበሩ ጠቅላላ ጉባኤ ይመረጣል።

23.2.2 ዋና ስራው ሊመንበሩን መርዳት ሲሆን ሊቀመንበሩ በሌለ ጊዜ እሱን በመወከል የሱን ስራዎች ማከናወን፣

23.2.3 በሊቀመንበሩ ወይም በስራ አስፈፃሚ ኮሚቴው ተለይቶ የሚሰጠውን ሌሎች ተግባሮች ማከናወን።

23.3 ፀሀፊ

23.3.1 ሊቀመንበሩ የተሰጠውን ስራዎች ማገዝ፣

23.3.2 የጠቅላላ ጉባዔውንና የስራ አስፈፃሚ ኮሚቴውን ቃለ-ጉባዔ መያዝ፣

23.3.3 ከሊቀመንበሩ ጋር በመመካከር የጠቅላላ ጉባዔውንና የስራ አስፈፃሚ ኮሚቴውን አጀንዳዎች ማዘጋጀት፣

23.3.4 የማህበሩን አባላት የምዝገባ ሰነድ እንዲሁም ማናቸውንም የማህበሩን ሰነዶችና ፋይሎች መያዝ፣

23.3.5 በስራ አስፈፃሚ ኮሚቴው ሊቀመንበር የሚሰጠውን ሌሎች ስራዎች ማከናወን

23.3.6 የማህበሩን ስራዎች ይከታተላል በቼክም ላይ አብሮ ይፈርማል

23.4 ገንዘብ ያዥ

23.4.1 የማህበሩን ገቢዎች በደረሰኝ መረከብ፣

23.4.2 የማህበሩን ገቢ ባንክ በማስገባት ደረሰኙን በአግባቡ መያዝ፣

23.4.3 ከ...3ሺ0..... ብር የማይበልጥ ሳጥን ውስጥ የሚቀመጥ ገንዘብ መያዝ፣

23.4.4 የማህበሩን ሂሳብ በየወሩ ማመሳከር፣

23.4.5 በካዝና መቀመጥ ከሚገባዉ በላይ ገንዘብ ሲኖር ወዲያዉኑ ባንክ ማስገባት

23.4.6 የማህበሩን ቼክ መያዝ፣

23.4.7 ከማህበሩ ሊቀመንበር ጋር በቼክ ላይ በመፈረም ከባንክ ገንዘብ ማውጣት

23.5 ሂሳብ ሹም

23.5.1 የሂሳብ ሹም በጠቅላላ ጉባኤ ይመረጣል

23.5.2 ማንኛዉም የማህበሩን ገቢና ወጪ አያያዝና የገንዘብ አጠቃቀም ስራ ላይ የሚዉልበትን ዘዴ ያመቻቻል

23.5.3 በጠቅላላ ጉባኤ የተፈቀዱትን ብድሮች ከሊቀ መንበሩና ከፀሀፊ ጋር በመሆን ይከታተላል

23.5.4 የማህበሩን ወጪና ገቢ ይቆጣጠራል

23.5.5 የማህበሩን ወጪና ገቢ ያዘጋጃል

23.5.6 ከቁጥጥር ኮሚቴ ጋር በመሆን ያልተመለሱ ብድሮችን በጊዜዉ እንዲከፈሉ ያደርጋል ያልተስተካከሉ ሂሳቦችን በመከታተል ያስተካክላል ችግር ቢያጋጥም የመፍትሄ ሀሳብ ያቀርባል

አንቀጽ 24

ቁጥጥር ኮሚቴ

24.1 ማህበሩ በጠቅላላ ጉባዔው የሚመረጡ 3 የቁጥጥር ኮሚቴ አባላት ይኖሩታል። ተጠሪነታቸውም ለጠቅላላ ጉባዔው ይሆናል።

24.2 የቁጥጥር ኮሚቴ የስራ ዘመን ሶስት ዓመት ይሆናል። ሆኖም አባላቱ ከሁለት ተከታታይ የስራ ዘመን በላይ ሊመረጡ አይችሉም።

24.3 የማህበሩ ጠቅላላ ጉባዔ በስራ ዘመኑ ውስጥ የቁጥጥር ኮሚቴ አባላትን በከፊል ወይም ሙሉ በሙሉ ሊሽር ይችላል።

አንቀጽ 25

የቁጥጥር ኮሚቴ ስልጣንና ተግባር

25.1 የማህበሩ አባላትና አባል ያልሆኑ ሰዎች የማህበሩን ህግና ደንብ ማክበራቸውን ያረጋግጣል፣

25.2 የማህበሩ ንብረትና ገንዘብ በተደነገገው ህግና ደንብ መሰረት በአግባቡ መያዛቸውን ያረጋግጣል፣

25.3 የማህበሩ የስራ አስፈፃሚ ኮሚቴ እንዲሁም ሌሎች የማህበሩ አካላት የተሰጣቸውን ስልጣንና ተግባር በአግባቡ መወጣታቸውን ያረጋግጣል፣

25.4 በኦዲት ሪፖርት የቀረቡ የውሳኔ ሃሳቦች በአግባቡ መተግበራቸውን ያረጋግጣል፣

25.5 ቢያንስ በየአንድ ዓመቱ የስራ ክንዋኔ ሪፖርት ለጠቅላላ ጉባዔው ያቀርባል።

25.6 ማንኛውንም የማህበሩን ገቢና ወጭ ህጋዊ በሆነ ሰነድና በደንቡ መሰረት መሆኑን እንዲሁም መዝገቦችና የሂሳብ ሰነዶች በተገቢው ሁኔታ መያዛቸውን ስራ ላይ መዋላቸውን ይከታተላል።

አንቀጽ 26

የብድር ኮሚቴ ሥልጣንና ተግባር

26.1 የብድር ኮሚቴ አባላት ብዛት 3 ሆኖ በጠቅላላ ጉባኤ ይመረጣል

26.2 የአባላቱ የስራ ዘመን 3 ዓመት ይሆናል

26.3 የብድር ኮሚቴ ተጠሪነቱ ለስራ አስፈጻሚ ኮሚቴ ይሆናል

26.4 የብድር ኮሚቴ አባላት በተከታታይ ከሁለት ጊዜ በላይ ሊመረጡ አይችሉም በተመረጡበት የስራ ዘመን በማናቸውም ጊዜ በጠቅላላ ጉባኤ ሊሻሩ ይችላሉ

26.5 ለማህበሩ የሚቀርበውን የብድር ጥያቄ ተመልክቶ በማህበሩ ውስጠ ደንብና ማህበሩ በሚያወጣው የብድር መመርያ መሰረት መሆኑን ያረጋግጣል። ለስራ አስፈጻሚ ኮሚቴም ያቀርባል

26.6 በብርድ የተሰጠው ገንዘብ ስለሚመለስበት ሁኔታ በቅርብ ክትትል ያደርጋል

26.7 ስለስራው እንቅስቃሴ በየጊዜው ለስራ አመራር ኮሚቴ ሪፖርት ያቀርባል

አንቀጽ 27

ብድር ስለመስጠት

28.1 ማህበሩ ብድር የሚሰጠው ለአባላቱና ለተመሳሳይ ማህበራት ነው

28.2 የማህበሩ አባል የወሰደውን ብድር በተወሰነ ጊዜ ውስጥ አጠናቆ መመለስ

28.3 ማህበሩ ብድሩን ለተበደረለት ዓላማ ብቻ ማዋል ይኖርበታል

28.4 ለአባላት የሚሰጠው ብድር በብድር ኮሚቴ የሚወሰን ይሆናል።

አንቀጽ 28

ለብድር ስለሚከፈል ወለድ

29.1 ማህበሩ ለአባላት የሚሰጠዉ ብድር ወለድ በዓመት --- % ይሆናል

29.2 አንድ አባል ብድሩን መክፈል በሚገባዉ የጊዜ ገደብ ከፍሎ ያልጨረሰ ከሆነ ካሳለፈበት ጊዜ ጀምሮ በቀሪዉ ገንዘብ ላይ ---- % ቅጣት ጋር ከፍሎ ይጨርሳል

29.3 የማህበሩ አባል የተፈቀደለትን ብድር ለተፈቀደለት ዓላማ ላይጠቀም መቅረቱ የብድር ኮሚቴ ካረጋገጠ የብድሩ መመለሻ ጊዜ ሳይደርስ ከነወለዱ ለማህበሩ ይመልሳል

አንቀጽ 29

ስለብድሩ ዘመን

30.1 የአጭር ብድር ከ 1 እስከ 2 ወር/ዓመት ነዉ.

30.2 ተበዳሪዉ ብድሩን በተወሰነለት ጊዜ ውስጥ ከፍሎ መጨረስ ቢያቅተዉ የብድር ኮሚቴዉ ምክንያቱ በቂ ሆኖ ካገኘዉ የብድሩን ጊዜ በ 3 ወር/ዓመት ማራዘም ይችላል

አንቀጽ 30

ለአባላት ብድር ሊሰጥ የሚቻልበት ሁኔታ

31.1 ከማህበሩ እዳ የሌለበት ከሆነ

31.2 በማህበሩ እንቅስቃሴ ውስጥ ጉልህ ሚና ያለዉ ከሆነ

31.3 በቂ መስያዣ ንብረት ወይም ዋስ ሊያቀርብ የሚችል ከሆነ

31.4 የስራ አመራር ኮሚቴ ሊፈቅድ የሚችለዉ ከ/ደመወዝ ያልበለጠ ይሆናል

አንቀጽ 31

የደን ልማት ኮሚቴ

የደን ልማት ኮሚቴ በጠቅላላ ጉባኤ የሚመረጥ ሲሆን ከየንኡስ ቀበሌዉ ተወካይ ይኖረዋል። ኮሚቴዉ፡

32.1 ደኑ አሁን ያለበትን ሁኔታ በባለሙያ አስጠንቶ በመዝገብ ይይዛል

32.2 ደኑን በብለሃክ በመከፋፈል በየብለሃኩ ሊከናወኑ የሚገባቸዉን የልማት እቅድ አውጥቶ ለስራ አስፈጻሚ ኮሚቴ ያቀርባል ሲጸድቅም ሰዉ መድቦ ተግባር ላይ እንዲዉል ያደርጋል።

32.3 ስለ እቅድ አፈጻጸም ለስራ አስፈጻሚ ኮሚቴ በየ ዉሩ ጊዜ ርፖርት ያቀርባል።

32.4 ከሚመለከተዉ አካል ጋር በመነጋገር አርሶ አደሮች ስለደን ልማት በቂ ግንዛቤ እንዲያገኙ የደርጋል አስፈላጊ ሆኖ ሲገኝ ስልጠና እንዲያገኙ ያደርጋል።

አንቀጽ 32

የደን ጥበቃ ኮሚቴ

የደን ጥበቃ ኮሚቴ በጠቅላላ ጉባኤ የሚመረጥ ሲሆን ከየንኡስ ቀበሌዉ ተወካዮች ያኖሩታል። የኮሚቴው ተግባር የሚከተለዉ ይሆናል።

33.1 የተከለለዉ ደን በክብትና በሀገ ወለባች እንዳይበላሽ በየአለቱ ከአርሶአደሮች በተራ ሰዉ መድቦ ደኑን ማስጠበቅ

33.2 በስራ አስፈጻሚዉ ያልተፈቀደለት ሰዉ ከተከለለዉ ደን ምንም ዓይነት ዛፍ እንዳይቆርጥ መከላከል።

አንቀጽ 33

የባለ አደራ ቦርድ

34.1 ከስራ አስፈፃሚ ቦርድ አባላት ሊቀመንበር፣ ም/ሊቀመንበር እና በሐፊ እንዲሁም ቢያንስ ..... አባላት ያሉት ከወርልድ ቪዥን ኢትዮጵያ ከመሪዳ የገጠር ልማትና ግብርና ቢሮ እና ሌሎች ከማህበሩ ዓላማዎችና ስራዎች ጋር ግንኙነትና ቁልፍ ሚና ያላቸው የመንግስታዊ ዘርፎችን የሚያካትት የባለ አደራ ቦርድ ይቋቋማል /በባለ አደራ ቦርድ የሚካተቱ መንግስታዊና መንግስታዊ ያልሆኑ ድርጅቶች ስም በዚህ መተዳደሪያ ደንብ ላይ ላይገለፅ ይችላል/፣

34.2 ከውጭ የሚመደቡ የባለ አደራ ቦርድ አባላት በጠቅላላ ጉባዔው ይመረጣሉ፣ /በአማራጭ ከውጭ የሚመደቡ የባለ አደራ ቦርድ አባላት በስራ አስፈፃሚ ኮሚቴው አብላጫ ድምፅ ይመረጣሉ/

34.3 ከውጭ የሚመደቡ የባለ አደራ ቦርድ አባላት ድምፅ ሳይሰጡ በጠቅላላ ጉባዔው ሰብሰባ መሳተፍና አስተያየት መሰጠት ይችላሉ::

34.4 የባለ አደራ ቦርድ ሰብሰባ በዓመት ውስጥ በየሶስት ወሩ ይሆናል::

አንቀጽ 34

የባለ አደራ ቦርድ ስልጣንና ተግባር

35.1 ለማህበሩ የምክር፣ የቴክኒክና የሙያ ዕገዛ ያደርጋል፣

35.2 ከስራ አስፈፃሚ ኮሚቴው ጋር በመሆን የደን መልሶ መተካት ፕሮጀክቱን ይከታተላል፣

35.3 ፕሮጀክቱ በአግባቡ እንዲተገበር ከሚመለከታቸው መንግስታዊ፣ መንግስታዊ ካልሆኑና ዓለም አቀፍ የገንዘብ ለጋሽ ድርጅቶች ጋር አገናኝ ሆኖ ይሰራል፣

35.4 የማህበሩ የውስጥ ደንብና የደን አስተዳደር ዕቅዶችን ለማዘጋጀት ዕገዛ ያደርጋል፣

35.5 በህገወጥ የደን አጠቃቀም የተነሳ ሊከሰት የሚችል አለመስማማት ቢኖር ለማህበሩ ዕገዛ ያደርጋል፣

35.6 ፕሮጀክቱን ለማስተዳደር ብቃት ያለው ስራ አስኪያጅ ለስራ አስፈፃሚ ኮሚቴ አቅርቦ ያፀድቃል::

አንቀጽ 35

ስራ አስኪያጅ

36.1 ከስራ አስፈፃሚ ኮሚቴው አመራር ስር በመሆን የማህበሩን የቀን ተቀን ስራ ያከናውናል፣

36.2 የስራ አስኪያጅ ቅጥር በስራ አስፈፃሚ ኮሚቴ ተከናውኖ ጠቅላላ ጉባዔው ያፀድቀዋል፣

36.3 በስራ አስፈፃሚ ኮሚቴ ስብሰባ ላይ ያለድምፅ ይሳተፋል::

አንቀጽ 36

የስራ አስኪያጅ ስልጣንና ተግባር

37.1 ከማህበሩ ዓላማ ጋር የተጣጣመ የፕሮጀክቱን የስራ ዕቅድ በማዘጋጀት ለስራ አስፈፃሚ ቦርድ ለውሳኔ ያቀርባል፣

37.2 በስራ አስፈፃሚ ኮሚቴው የተላለፉ ውሳኔዎችንና መመሪያዎችን በተግባር ያውላል፣

37.3 የማህበሩን ዓመታዊ የስራ ክንዋኔና የፋይናንስ ሪፖርት አዘጋጅቶ ለስራ አስፈፃሚ ኮሚቴው ያቀርባል፣
37.4 የማህበሩን ማህተም፣ሰነዶችና መረጃዎች በአግባቡ መያዛቸውን ያረጋግጣል፣
37.5 የማህበሩን የዕለት ተዕለት ስራ በበላይነት ይመራል፣
37.6 ለማህበሩ ስራ ውጤታማነት የሚረዱ ውሳኔዎችን ለመወሰን የሚያስችል ወቅታዊ መረጃዎችን ለስራ አስፈፃሚ ኮሚቴ ያቀርባል።

አንቀጽ 37

ሊሰሟች የቅጥር ሰራተኞች

ማህበሩ ብዛታቸው እንደ ስራው ስፋት የሚወሰንና የተለያዩ የዕለት ተዕለት ስራዎችን የሚያከናውኑ ሰራተኞች ማለትም የሂሳብ ሰራተኞች ገንዘብ ያዥ፣ ዘበኛ መዘተ ሊቀጥር ይችላል።

አንቀጽ 38

የማህበሩ የገንዘብ ምንጭ

38.1 የአባላት መዋጮ
38.2 ከደን ውጤቶች ሽያጭ የሚገኝ ገቢ፣
38.3 ከደን መልሶ መተካት ከሚኘዉ የካርቦን ዳይኮሳይድ ሽያጭ የሚገኝ ገቢ፣
38.4 ከአገር ውስጥ እና ከዓለም አቀፍ እርዳታ ድርጅቶች የሚገኝ የገንዘብና የግቴሪያል አስተዋጽኦ፣

አንቀጽ 39

ጥቅምና ገቢ ክፍፍል

39.1 ማንኛዉም ከካርቦን ሽያጭ ከሉላ የሚገኘው ገቢ የማህበሩ አባላት የወል ንብረት ይሆናል።
39.2 የገቢው አጠቃቀም ጠቅላላ ጉባዔው በተስማሙበት የማህበሩ ውስጠ ደንብ በሚደነግገው መሰረት ይሆናል።
39.3 ከካርቦን ሽያጭ የሚገኘው ገቢ የማህበሩ አባላት በሚስማሙበት የልማት ስራዎች ሊዉል ይችላል።

አንቀጽ 40

ስለ ፋይናንስ አስተዳደር

40.1 የባንክ ሂሳብ የሚከፈተው በማህበሩ ስም ይሆናል፣
40.2 የማህበሩ ገንዘብ በሚከፈተው የባንክ ሂሳብ ውስጥ ይቀመጣል፣
40.3 ከማህበሩ ባንክ ሂሳብ የሚደረጉ ማናቸውም ገቢና ውጭዎች ያሚከናወኑት በሊቀመንበሩና በገንዘብ ያዥ ጣምራ ፊርማ ይሆናል።

አንቀጽ 41

የማህበሩ የተጣራ ትርፍ አመዳደብ

41.1 የማህበሩ ካፒታል -- ብር እስኪሞላ ድረስ ከተጣራ ትርፍ 30% በሚከተለው ሁኔታ ይመደባል

41.2 ለመጠባበቂያ ፈንድ 20%

41.3 ለስራ ማስፋፊያ ፈንድ 50% ቀሪዉ 70%

41.4 አባላት ለማህበሩ ባደረጉት ያለ ተሳትፎ 50%

41.5 የካፒታል/ የአክ / ወለድ 20 %

ሌሎች ለዕንድ ሚፈልጉ ጉዳዮች ---- 5%

የመጠባበቂያ ሂሳብ የማህበሩ ሀብት ሆኖ ከማህበሩ ቁጥጥር ውጭ በሚደርሱ ጉዳቶች ወይም ኪሳራን ለመሸፈን ይዉላል። በማናቸዉም ሁኔታ ለአባላት በብድርም ሆነ ለሌላ ስራ አይዉልም

አንቀጽ 42

የውሎ አበልና ሌሎች ክፍያዎች

42.1 በዚህ መተዳደሪያ ደንብ በሚቋቋሙት የተለያዩ የኮሚቴ አባላት ለሚሰጡት አገልግሎት ምንም አይነት ክፍያ አይከፈላቸውም!! ሆኖም ለማህበሩ ስራ በሚያደርጉት አገልግሎት ከማህበሩ አድራሻ ክልል ውጭ ለሚያደርጉት የጉዞና የስራ ቆይታ ልዩነ ብር የቀን አበል ይከፈላቸዋል።

42.2 የስራ አስፈፃሚ ኮሚቴው የውሎ አበል ክፍያ መጠን የወሳኔ ሃሳብ ለጠቅላላ ጉባዔው አቅርቦ ይወሰናል።

አንቀጽ 43

የንብረት ባለቤትነት

43.1 ማህበሩ ህጋዊ ሰውነት ካገኘ በኋላ የራሱ የሆነ ንብረትና ይዞታ ይኖረዋል፣

43.2 ማህበሩ በማናቸውም መንገድ ያፈራቸውን የሚንቀሳቀሱና የማይንቀሳቀሱ ንብረቶች ባለቤት ይሆናል፣

43.3 ማህበሩ በይዞታው የመጠቀም፣ ሀብት የማፍራት እንዲሁም የማከራየትና በጉልበቱ ያፈራውን የመሸጥና ዋስትና የመስጠት መብት ይኖረዋል።

43.4 ማህበሩ ተከልሎ በተሰጠው የደን መልሶ መተካት መሬት ላይ በህግ የተሰጡት መብቶች ይኖረዋል። እነዚህም መብቶች በሶስተኛ ወገኖች ላይ መጠቀም ይችላል።

አንቀጽ 44

የማህበሩ ሂሳብ አዲት ስለማስደረግ

44.1 ማህበሩ በኢትዮጵያ የበጀት ዓመት /ከሐምሌ -ሰኔ/ በየዓመቱ ሂሳቡን በውጭ አዲተሮች ያስመረምራል፣

44.2 ሂሳቡ አዲት የሚደረገው ህጋዊ ሰውቅና ባለው አማባብ ባለው አካል ይሆናል፣

44.3 የአዲት ምርመራው በተጠናቀቀ በአንድ ወር ጊዜ ውስጥ የአዲት ሪፖርት ለጠቅላላ ጉባዔው ይቀርባል።

አንቀጽ 45

ውስጠ ደንብ

የስራ አስፈፃሚ ኮሚቴው በዚህ መተዳደሪያ ደንብ ላይ በመመሰረት የተለያዩ ዝርዝር ተግባራት ለመተግበር ውስጠ ደንብ አዘጋጅቶ በማህበሩ ጠቅላላ ጉባዔ ያፀድቃል።

አንቀጽ 46

ደንቦችን ስለ ማሻሻል

ይኽ መተዳደሪያ ደንብ ሊሻሻል የሚችለው ከጠቅላላ ጉባዔው አባላት መካከል ቢያንስ ከሶስት በላይ 1/2ኛው ሲወስን ብቻ ነው።

አንቀጽ 47

ማህበሩ የሚቆይበት ጊዜ

ማህበሩ ላልተወሰነ ጊዜ እንደተቋቋመ ይቆጠራል።

አንቀጽ 48

የማህበሩ ህጋዊ ሰውነት

48.1 ማህበሩ አግባብ ባለው የክልል መንግስታዊ አካል ተመዝግቦ ህጋዊ ሰውነት ይኖረዋል፣

48.2 ማህበሩ ህጋዊ ሰውነት የሚረጋገጫ ምስክር ወረቀት ካገኘ በኋላ ለመክሰስ፣ ለመከሰስ፣ ውል ለመዋዋልና ሌሎች ህጋዊ ተግባሮች ለመፈፀም ይችላል።

አንቀጽ 49

ደንቡን ስለማሻሻል

49.1 ጋሪ መተዳደርያ ደንብ ሊሻሻል የሚችለዉ ከጠቅላላ ጉባኤ አባላት በሁለት ሶስተኛ (2/3ኛ) ሲወሰን ነዉ

49.2 በደንቡ ውስጥ ሊሻሻሉ የሚችሉ ወይም የሚጨመሩ ወይም የሚቀነሱ አንቀጾች ካሉ በጠቅላላ ጉባኤ ከተወሰነ በ15 ቀናት ውስጥ ለሚመለከተዉ አካል ቀርቦ መመዝገብ አለበት

49.3 ጉዳዩ የሚመለከተዉ መ/ቤት የተሰጠዉ ማሻሻያ ከአዋጅ ጋር የማይጋጭ ወይም የማይቃረን መሆኑን ካረጋገጠ በ15 ቀናት ውስጥ ለማህበሩ የማሻሻያ ሰነዱን ይመልሳል

አንቀጽ 50

መተዳደርያ ደንቡ የሚጸናበት ጊዜ

ይህ መተዳደርያ ደንብ በማህበሩ በጠቅላላ ጉባኤ ጸድቆ የክልሉ ሠራተኛ ጽ/ቤት ፈቃድ ከመዘገበበት ቀን ጀምሮ የጸና ይሆናል።

የኦሮሚያ ክልላዊ መንግሥት የደን ማኔጅሜንት ኃላፊነቱ የተወሰነ መሰረታዊ
የህብረት ሥራ ማህበር
የውስጥ ደንብ



1999

የአዲስ አበባ ከተማ አስተዳደር የደን ማኔጅሜንት ኃላፊነቱ የተወሰነ መሰረታዊ የህብረት ሥራ ማህበር የውስጥ ደንብ

1. መግቢያ

ይህ የአዲስ አበባ ከተማ አስተዳደር የደን ማኔጅሜንት ኃላፊነቱ የተወሰነ መሰረታዊ የህብረት ሥራ ማህበር በህብረት ሥራ ማህበራት አዋጅ ቁ.147/1991 እና በደንብ ቁ.147/1996 መሠረት የተቋቋመና የተመዘገበ የህብረት ሥራ ማህበር በመሆኑ፣

እኛ የአዲስ አበባ ከተማ አስተዳደር የደን ማኔጅሜንት ኃላፊነቱ የተወሰነ መሰረታዊ የህብረት ሥራ ማህበር አባላት በቀበሌያችን ~~_____~~ በሚገኘው ቦታ በተሰጠን ምክንያታዊ ~~ያጠፋውን ደን መልሶ ለመተካት ቀሪዉን ደን ለበለጠ ጥቅጥቅ በመጠበቅ~~፣ በመንከባከብና በባዶ ቦታዎች ላይ ተክላ በማካሄድ ደኑ ለማህበሩ አባላትና ለመጪው ትውልድ ጥቅም እንዲውል ለማድረግ ባለን ጽኑ እምነት ቀደም ብሎ የተስማማንበትን መተዳደሪያ ደንብ ውጤታማ በሆነ መንገድ ተግባራዊ ለማድረግ ይህን የውስጥ ደንብ በማዘጋጀት ተግባራዊ ለማድረግ ተስማምተናል። በመሆኑም በመተዳደሪያ ደንቡ አንቀጽ 43 መሠረት ይህን የውስጥ ደንብ ደንግገናል።

2. ዓላማ

የውስጥ ደንቡ ዓላማዎች የሚከተሉት ናቸው፡-

2.1 ደኑን ለመጠበቅ፣ ለመንከባከብና በውስጡ በመትከል ውጤታማ መሆን ይቻል ዘንድ አባለት ግልጽ የሆነ መተዳደርያ እንዲኖረን ለማስቻል፣

2.2 በደን ጥበቃዉ፣ በእንክብካቤዉና በልማቱ የሁላችንም ንቁ ተሳትፎና ኃላፊነትን ለማረጋገጥ፣

2.3 የደን ውጤቶች ዘለቂታዊ በሆነ መንገድ በእቅድ ጥቅም ላይ መዋሉን ለማረጋገጥ፣

2.4 ከዓለም ባንክ የሚገኘዉን ገቢ በአግባቡ ጥቅም ላይ ለማዋል ይቻል ዘንድ ልንመራበት የሚያስችል ሰነድ እንዲኖረን ለማድረግ፣

2.5 በመተዳደሪያ ደንቡና በእዚህ ውስጥ ደንብ የተደነገጉትን አንቀጾች ~~ጥሰው~~ የሚገኙ አባላት ላይ ቅጣቶችን ለመወሰን።

3. የደን አስተዳደርና ልማት ንዑስ-ኮሚቴ ማቋቋም

3.1 3 አባላት ያሉት የደን አስተዳደርና ልማት ንዑስ ኮሚቴዎች በማህበሩ ጠቅላላ ጉባዓ ይመረጣል።

3.2 ንዑስ ኮሚቴው ለህብረት ሥራ ማህበሩ ሥራ አስፈፃሚ ኮሚቴ ተጠሪ ይሆናል።

4. የደን አስዳደርና ልማት ንዑስ-ኮሚቴ ኃላፊነትና ተግባር

ንዑስ-ኮሚቴው የሚከተሉት ኃላፊነትና ተግባር ይኖረዋል፡-

4.1 የሥራ አስፈፃሚ ኮሚቴው በሚያዘጋጀው የሥራ ዕቅድ መሠረት ~~ዓመታዊ~~ እቅድ መጠበቅ፣ ዘር መልቀም፣ ችግኝ መትከል፣ አረም ማረም፣ ሀረግ መቁረጥ፣ ምልማሉና ማሳሰት የመሳሰሉትን ተግባራት ለማከናወን እንዲያስችል በእያንዳንዱ ንዑስ-ቀበሌ የሚገኙትን የማህበሩን አባላት መለየትና ለሥራ ማንቀሳቀስ፣

4.2 ከእያንዳንዱ ንዑስ-ቀበሌ ~~5~~ አባላትን በመመደብ የተከለለውን ደን በተራ እንዲጠብቁ ማድረግ።

4.3 አባላት በሚመደቡበት የማህበሩ የሥራ ዕቅድና ክንውን ላይ ንቁ ተሳትፎ እንዲያደርጉ ማድረግ።

4.4 የደን አስተዳደሩ የሥራ ዕቅድ በአግባቡ መተግበሩን በመከታተልና በመቆጣጠር ለስራ አስፈጻሚ ኮሚቴ በየ15 ቀን ርፖርት ማቅረብ።

4.5 ደኑን ለመንከባከብና ለማስተዳደር የሚያስችሉ ተግባራትን በአግባቡ ሥራ ላይ ለማዋል ለሥራ አስፈጻሚ ኮሚቴው የሚመጡ ሌሎች ተግባራትን ማከናወን።

7.4 ከተከለለው የደን መሬት ውስጥ ጭራሮ መሰበሰብ፣ ሳር አጭዶ መወሰድና በምልማሱና በማሳሳት የተቆረጠወን የእንጨት ውጤቶችን መጠቀም ይቻላል። ይህም ለሁሉም ጥቅም እንዲሰጥ ለማድረግ በአቅድ የሚመራ ይሆናል።

7.5 ቋሚ ሆነወ እንዲቀዩ የተመረጡ ዛፎችን ቆርጦ መጠቀም የሚቻለው ከወርልድ ባንክ ጋር የተገባወ የፕሮጀክቱ ስምምነት ጊዜ ገደብ ሲያበቃ ብቻ ነው።

8. ቅጣቶች

8.1 ማንኛውም የማህበሩ አባል የተከለለውን ደን ለመጠበቅና ለማስተዳደር በኃላፊዎች ተወሳነ ተሰጥቶት ግዴታውን ካልተጠጣ ለመጀመርያ ጊዜ ብር 5 ለሁለተኛ ጊዜ ብር 10 መቀጫ ይከፍላል። ከዚያም ሁኔታወን ካላሻሻለ ከማህበሩ ይወገዳል።

8.2 ማንኛውም የማህበሩ አባል በተከለለው ደን ውስጥ ካለፈቃድ ዛፍ ሲቆርጥ ወይም የእጅ ምዝ ሲያስናውን ከተገኘ በደን አስዳደርና ልማት ስራ አስፈጻሚ ኮሚቴው ተተምኖ የተቆረጠውን ዛፍ ዋጋ እጥፍ በቅጣት ይከፍላል። ወደ ወረዳው ሕግ አስፈፃሚ አካልም ተወስዶ አግባብ ባለው ህግ መሠረት ቅጣት ይፈፀምበታል። ድርጊቱን በድጋሚ ቢፈጽም ከማህበር አባልነት ይሰረዛል።

8.3 ማንኛውም የማህበሩ አባል ህገ ወጥ የከሰል የማክሰል ሥራ ሲያከናውን ከተገኘ ለማህበሩ ብር 50 ከፍሎ ከአባልነት ይሰረዛል።

8.4 ማንኛውም የማህበሩ አባል በተከለለው የደን አካባቢ ውስጥ ያለስራ አስፈጻሚ ኮሚቴ ፈቃድ እንስሳትን ሲያስግጥ ከተገኘ ለእያንዳንዱ እንስሳ ብር 5 ቅጣት ይከፍላል።

8.5 ማንኛውም የማህበሩ አባል የዛፍ ዕድገትን የሚገታ እንደቅርፊት መላጥ፣ እንጨት ማቃጠል ወዘተ የመሳሰሉትን ድርጊቶች ካከናወነ በደን አስተዳደርና ልማት ኮሚቴ ተተምኖ የጠፋውን የደን ውጤቱ ሁለት እጥፍ የገበያ ዋጋ ቅጣት ይከፍላል።

8.6 ማንኛውም የማህበሩ አባል በተከለለው ደን ውስጥ እሳት ሲያስነሳ ከተገኘ ወደ ወረዳው ህግ አካል ተወስዶ በህጉ መሠረት ይቀጣል። እንዲሁም ይኸው አባል ከማህበሩ አባልነት ይሰረዛል።

8.7 ማንኛውም የማህበሩ አባል ያለመንግስት ፈቃድ በተከለለው ደን ውስጥ የዱር እንስሳ አዕዋፍ ሲያድን ከተገኘ በወረዳው ህግ አስፈጻሚ አካል ተወስዶ በህግ መሠረት ይቀጣል እንዲሁም ከአባልነት ይሰረዛል። ሆኖም ለቤት እንስሳትና ለሰብል አደገኛ የሆኑ እንስሳት ለወረዳወ የተፈጥሮ ሀብት ጥበቃ ዴስክ በማመልከት እርምጃ እንዲወሰድ ማድረግ ይቻላል

8.8 ማንኛውም የማህበሩ አባል ካለፈቃድ ከተከለለው ደን ውስጥ የደን ውጤቶችን ለግሉ ሲወስድ ቢገኝ ወይም በማስረጃ ቢረጋገጥበት በደን በስራ አሰፈሚ ኮሚቴው የሚተመነውን የደን ውጤቱን ሁለት እጥፍ የገበያ ዋጋ በቅጣት መልክ ይከፍላል። እንዲሁም ይህ አባል ይህንኑ ድርጊት ሦስት ጊዜ ሲፈጽም ከተገኘ ከማህበሩ አባልነት ይሰረዛል።

8.9 ማንኛውም አባል ያለፈቃድ አባልነቱን ለሌላ ሰው ካስተላለፈ ከማህበር አባልነት ይሰረዛል።

8.10 ማንኛውም የማህበሩ አባል ያለበቂ ምክንያት ከጠቅላላ ጉባዔው ስብሰባ ከቀረ 5 ብር በቅጣት ይከፍላል።

9. ማሻሻያ

9.1 የማህበሩ የሥራ አስፈጻሚ ኮሚቴ የተከለለውን ደን በአግባቡ ለማስተዳደርና ለመጠበቅ እንዲቻል ይህንን ውስጠ ደንብ ለማሻሻል ለጠቅላላ ጉባዔው የውሳኔ ሃሳብ ማቅረብ ይችላል።

9.2 ይህ ውስጠ ደንብ በጠቅላላ ጉባዔው 2/3ኛ ድምፅ ሲሻሻል ይችላል።

10 **የውስጠ ደንቡ የሚጸናበት ጊዜ**

ይህ ውስጠ ደንብ ከ [illegible] ቀን [illegible] ጀምሮ የጸና ይሆናል።

New South Wales

Carbon Rights Legislation Amendment Act 1998 No 124

Act No 124, 1998

An Act to amend the *Conveyancing Act 1919* to recognise that rights associated with carbon sequestrated by trees and forests from the atmosphere may be a species of forestry right and be the subject of a forestry covenant: to amend the *Forestry Act 1916* to enable the Forestry Commission to acquire and trade in such rights and to confer additional powers on the Commission; to amend various other Acts to enable electricity generators and distributors to trade in such rights; and for other purposes. [Assented to 26 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Carbon Rights Legislation Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendments

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

forestry right, in relation to land, means:

(a) an interest in the land pursuant to which a person having the benefit of the interest is entitled:

(i) to enter the land and establish, maintain and harvest (or to maintain and harvest) a crop of trees on the land, or

(ii) to enter the land and establish, maintain and harvest (or to maintain and harvest) a crop of trees on the land and to construct and use such buildings, works and facilities as may be necessary or convenient to enable the person to establish, maintain and harvest the crop, or

(b) a carbon sequestration right in respect of the land, or

(c) a combination of the interest and right referred to in paragraphs (a) and (b).

[4] Section 88AB Forestry rights to be deemed to be profits a prendre

Insert at the end of the section:

(2) If a forestry right consists in whole or in part of a carbon sequestration right, the profit a prendre deemed to exist by subsection (1) in relation to the carbon sequestration right consists of the following:

(a) the profit from the land is taken to be the legal, commercial or other benefit (whether present or future) of carbon sequestration by any existing or future tree or forest on the land that is the subject of the carbon sequestration right,

(b) the right to take something from the land is taken to be the right to the benefit conferred by the carbon sequestration right.

Schedule 2 Amendment of Electricity (Pacific Power) Act 1950 No 22

(Section 3)

Section 9 Principal functions of Pacific Power

Insert after section 9 (1):

(2) Pacific Power may acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights within the meaning of section 87A of the *Conveyancing Act 1919*.

Schedule 4 Amendment of Forestry Act 1916 No 55

(Section 3)

[1] Section 11 Powers and duties of the commission

Omit "corporation or" from section 11 (1) (m1) wherever occurring.

[2] Section 11 (1) (m1) (iii)

Omit "or" where lastly occurring.

[3] Section 11 (1) (m2)–(m4)

Insert after section 11 (1) (m1):

(m2) may form a corporation (whether by joining with any other person or otherwise) for the purpose of facilitating the exercise of any of the commission's functions under this Act,

(m3) may do any one or more of the following:

(i) procure the use of land on behalf of investors under a forestry right or by purchase, lease or otherwise,

(ii) establish and maintain timber plantations on behalf of investors or other persons,

(iii) harvest and market timber grown on behalf of investors or other persons,

(m4) may exercise any of the powers referred to in section 33C, or

[4] Part 4A

Insert after Part 4:

Part 4A Carbon sequestration rights

33B Definitions

In this Part:

carbon sequestration has the same meaning as it has in section 87A of the *Conveyencing Act 1919*.