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**ADDIS ABABA UNIVERSITY,
SCHOOL OF GRADUATE STUDIES,
SCHOOL OF LAW**

**REDD+ AS A FLEXIBILITY MECHANISM TO DEAL WITH
THE CLIMATE CHANGE PROBLEM: ANALYSIS OF LEGAL
AND INSTITUTIONAL FRAMEWORKS IN ETHIOPIA**

By

Mesud Gebeyehu Reta

June, 2017

Addis Ababa, Ethiopia

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AND INSTITUTIONAL FRAMEWORKS IN ETHIOPIA**

**A Thesis Submitted to Addis Ababa University, School of
Graduate Studies, School of Law, in Partial Fulfillment of the
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International Law**

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June, 2017

Addis Ababa, Ethiopia

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ACRONYMS

Acronym

stands for

Dedication

Ad Hoc	The Ad Hoc Working Group of Experts on the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action under the Convention
CDM	Clean Development Mechanism
CO ₂	Carbon dioxide
CONF	Conference of Parties
CRGE	Climate Resilient Green Economy
ECRE	Ethiopian Climate Research and Networking
EPE	Environmental Policy of Ethiopia
FAO	Food and Agriculture Organization of the United Nations
FGF	Forest
FDRE	Federal Democratic Republic of Ethiopia
GHG	Greenhouse gases
GOE	Government of Ethiopia
GTP I	The first Growth and Transformation Plan of Ethiopia (2010/11 – 2014/15)
GTP II	The second Growth and Transformation Plan of Ethiopia (2015/16 – 2019/20)
IGCC	Intergovernmental Panel on Climate Change
KP	Kyoto Protocol
MECC	Ministry of Environment, Forest and Climate Change
MRV	Measurable, Reportable and Verifiable
OFLP	Oromia Forest and Landscape Program
PFM	Participatory Forest Management
REU	REDD+ Regional Coordinating Unit
RED	Reducing Emissions from Deforestation
REDD	and Forest Degradation in Developing Countries (up to 2012)
REDD+	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries and the role of Conservation, Sustainable Management of Forests and Enhancement of Forest carbon stocks in Developing Countries (after 2012)
R-PP	Readiness Preparation Proposal
RLSC	Regional Level REDD+ Steering Committee
RLTWG	Regional Level REDD+ Technical Working Group
RSC	Federal Level REDD+ Steering Committee
RTWG	REDD+ Technical Working Group
SBI	SBSTA Subsidiary Body for Implementation
SBSTA	UNFCCC Subsidiary Body for Scientific and Technological Advice
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations REDD program

to the victims of the 'Koshe' trash dump.

ACRONYMS

Abbreviation	stands for
AWG-KP	The Ad Hoc Working Group under the KP
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action under the Convention
CDM	Clean Development Mechanism
CO ₂	Carbon dioxide
COP	Conference of Parties
CRGE	Climate Resilient Green Economy
ECRN	Ethiopian Climate Research and Networking
EPE	Environmental Policy of Ethiopia
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FDRE	Federal Democratic Republic of Ethiopia
GHGs	Greenhouse gases
GoE	Government of Ethiopia
GTP I	The first Growth and Transformation Plan of Ethiopia (2010/11– 2014/15)
GTP II	The second Growth and Transformation Plan of Ethiopia (2015/16-2019/20)
IPCC	Intergovernmental Panel on Climate Change
KP	Kyoto Protocol
MEFCC	Ministry of Environment, Forest and Climate Change
MRV	Measurable, Reportable and Verifiable
OFLP	Oromia Forest and Landscape Program
PFM	Participatory Forest Management
RCU	REDD+ Regional Coordinating Unit
RED	Reducing Emissions from Deforestation
REDD	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (up to 2008)
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R-PP	Readiness Preparation Proposal
RRSC	Regional Level REDD+ Steering Committee
RRTWG	Regional Level REDD Technical Working Group
RSC	Federal Level REDD Steering Committee
RTWG	REDD+ Technical Working Group
SBI	SBSTA Subsidiary Body for Implementation
SBSTA	UNFCCC Subsidiary Body for Scientific and Technological Advice
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations REDD program

Abstract

REDD+ is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands thorough conservation and sustainable management of forests as well as enhancement of forest carbon stocks. Ethiopia is focusing on utilizing the emerging international framework and financial support for REDD+ to assist in addressing the problems of climate change. The importance of community participation and consultation is enshrined in the FDRE Constitution, the CRGE Strategy, the REDD+ Strategy, the EPE as well as the EIA, forest and land proclamations. However, these laws do not necessarily reflect the extent to which they are translated into practice. Clarifying status of individual, community and state rights and duties over forests in the legal framework of the country is the first step to determine the rights over carbon and related benefits. Ethiopia is at the second phase of the REDD+ implementation, many of the existing laws governing forestry are in the process of revision through the involvement of the REDD+ Secretariat which could be a good progress for the REDD+ implementation for the third phase from which Ethiopia expects huge investment which can support both early demonstration activities and future investment flows. The main problem in relation to REDD+ implementation remained fragmented forest governance. Therefore, addressing this problem requires intervention. The REDD+ institutional set up shall also be strengthened by establishing a strong working ties between vertical and horizontal stakeholders. It is also important to utilize the advice and research outputs of Universities and Research Organizations. The inputs from Civil Society and prominent individuals over policy construction shall also be considered.

Key Words: *Green Economy, Climate Change, CRGE Strategy, REDD+,*

REDD+ Strategy, Flexibility Mechanism

CHAPTER ONE: INTRODUCTION

1.1. Background of the study

Climate change has remained to be one of the biggest challenges facing the planet and is viewed as a leading human and environmental crisis of the 21st century.¹ Since it emerged as an international issue, the international community has responded in many ways to address it. The adoption of the United Nations Framework Convention on Climate Change (UNFCCC) is viewed an important first step in bringing about significant action in addressing climate change.² The UNFCCC is an international environmental treaty (also known as a multilateral environmental agreement) that was opened for signature at the Earth Summit held in Rio de Janeiro in 1992.³

The UNFCCC itself is not legally binding as it does not set mandatory limits on GHGs emissions for individual countries and doesn't contain any enforcement mechanisms. Hence, the Kyoto Protocol (KP) to the UNFCCC was negotiated as the first step towards implementing the UNFCCC. The KP is a cornerstone to introduce the three flexibility mechanisms to deal with the climate change problems. The Flexibility mechanisms, also sometimes known as flexible mechanisms or Kyoto mechanisms were defined in the KP (COP-3) as different ways to achieve emissions reduction as part of the effort to address climate change issues.⁴ Accordingly, the KP broke new ground by defining three innovative flexibility mechanisms to lower the overall cost of achieving its emission targets: Emissions Trading (ET), Clean Development Mechanism (CDM) and Joint Implementation (JI). These mechanisms enable parties to access cost effective opportunities to reduce emissions. However, there are arguments in favor and against the Flexibility Mechanisms. One of the main arguments in favor of flexibility mechanisms is that of cost effectiveness.⁵ Banuri, T. *et al* argue that the principle of cost effectiveness is included in the UNFCCC.⁶ However, a number of concerns were raised about flexibility in the lead up to negotiations of the KP. Accordingly, reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in

¹ Costenbader, John (Ed.), *Legal Framework for REDD: Design and Implementation at the National Level*, (IUCN, Gland, Switzerland, 2009). P. 23.

² United Nations Framework Convention on Climate Change, adopted May 9, 1992, 1771 U.N.T.S. 107, in force 24 March 1994.

³ 194 countries signed the UNFCCC showing near universal agreement that there is a problem and that action is required against climate change

⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 10 December 1997.

⁵ Charlene Watson, Emily Brickell and Will McFarland, *Integrating REDD+ into a Green Economy Transition: Opportunities and challenges* (ODI, June 2013).

⁶ Banuri, T, "Setting the stage: Climate change and Sustainable Development", TAR WG3, (2001).

developing countries (REDD+⁷) began to develop as a key issue in the international climate change negotiations as one of the flexibility mechanisms to deal with climate change problems at the 11th Conference of the Parties (COP-11) in Montreal, Canada, in 2005. A group of countries led by Papua New Guinea and Costa Rica proposed a new agenda item on 'Reducing Emissions from Deforestation in developing countries (REDD): approaches to stimulate action'. Despite challenges, for example related to measurement and the risk of displacement of deforestation ('leakage'), many countries were keen to embrace the proposal as evident in its adoption at later stages. The UNFCCC Subsidiary Body for Scientific and Technological Advice (SBSTA) was mandated to consider the issue and several in-depth workshops and debates took place over the next couple of years on what shape and form the REDD+ issues should take.⁸ Since the introduction of the idea to the climate change negotiations, REDD+ has spawned a huge range of studies, discussions and projects. Donor countries have pledged billions of dollars to forest-rich developing countries to help them prepare for a full-fledged REDD+ mechanisms.

Many countries are actively building technical and institutional capacities (REDD+ Readiness) to benefit from the international REDD+ mechanism. Along with significant bilateral initiatives, the Forest Carbon Partnership Facility (FCPF) led by the World Bank and the UN-REDD Program support developing countries in their readiness efforts.⁹ REDD+ is likely to be an important component of the legal regimes around forests, as it develops norms, rules and procedures to be followed by States in order to benefit from a system of positive incentives for reducing emissions from the forest management. However, the extent to which the REDD+ regime will achieve its goal depends on its capacity to influence national policies in developing countries through various channels such as multilateral treaties or organizations, international norms and discourse, market channels and direct influence through technical assistance. In turn, the likelihood of achieving REDD+ goals at the national level depends on the ability of the specific national governance structures adopted for REDD+ to deliver proper incentives to the agents of deforestation.

On April 25, 2014 the World Bank contracted Climate Focus to conduct an "Analysis of the Legal and Institutional Framework for a National and Regional REDD+ Program in Ethiopia".¹⁰ The consultancy pursued the double purpose of supporting the national government in achieving REDD+ readiness and creating a framework for the implementation of REDD+ and of preparing the results-based transaction of the World Bank's Bio Carbon Fund for the Oromia Forest and Landscape Program (OFLP).

⁷ With reference to decision 1/CP.16 of the UNFCCC, REDD+ comprises reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks in developing countries.

⁸ Banuri T., cited above at note 6, p.6

⁹ Aquino, A., Guay, B., *Implementing REDD+ in the Democratic Republic of Congo: An Analysis of the Emerging National REDD+ Governance Structure, Forest Policy and Economics*, (2013).

¹⁰ Dr. Yitebu Moges. Legal and institutional framework for the Ethiopian REDD+ program_(National REDD+ Secretariat, Ministry of Environment, Forest and Climate Change, Addis Ababa, Ethiopia, unpublished, 08 May 2015).

1.2. Statement of the problem

The implementation of REDD+ in developing countries requires strong political commitment of the governments as it involves adjustment of policies, strategies and laws to be REDD+ responsive. As part of the global community who is potentially victim of the climate change problem, Ethiopia is leading the African countries in the international climate change negotiations and the current government of Ethiopia is politically willing to implement REDD+.¹¹ Accordingly, Ethiopia is focusing on utilizing the emerging international framework and financial support for REDD+.¹² Ethiopia developed a Climate Resilient Green Economy (CRGE) Strategy in 2012 which aims to build a climate resilient green economy to make the country carbon neutral by 2025. The REDD+ Secretariat at the Ministry of Environment, Forest and Climate Change (MEFCC) is coordinating and following up the implementation of the National REDD+ Readiness process, including the Readiness Preparation Proposal (R-PP)¹³, which started in January 2013. Ethiopia has also established REDD+ Regional Coordination Units mandated to coordinate the Regional readiness and capacity building activities and REDD+ piloting.¹⁴

With regard to the legal regime on REDD+, the 1995 FDRE Constitution¹⁵ is the one that provides the basic essence as a starting point for assessing the compatibility of REDD+ programs with existing national laws, by conferring a right to a clean and healthy environment¹⁶ and sustainable development to every citizen.¹⁷ It also vested the ownership of land and natural resources exclusively in the State and the peoples of Ethiopia.¹⁸ Provided that the role of regional states in relation to the land and natural resources is administration in accordance to the federal laws, the sustainable management of forests and natural resources requires an active involvement of communities at the low level of the government structure.

Although private and state forest ownership is introduced in the forest proclamation (Proc.542/2007), there is not yet any regulation entitling community/private ownership of forests and benefits arrangement for the sustainable management of the forests. The implementation of REDD+ requires revision and

¹¹ Late Prime Minister Meles Zenawi took on leadership roles in international climate discussions and acted as Ethiopia's principle climate diplomat. He also led the Conference of African Heads of State on Climate Change for two terms, beginning with COP15 in Copenhagen and ending at COP17 in Durban. During COP15, he was among the advocates who helped to secure a pledge of US\$100 billion per year in climate finance by 2020. He co-chaired the high-level advisory group on climate financing with Norwegian prime minister Jens Stoltenberg to find ways to meet this pledge (available at <http://pubs.iied.org/17381IIEDpdf>, last retrieved on March 2017, p.1)

¹² National REDD+ Strategy, 2014, Federal Democratic Republic of Ethiopia, (Ministry of Environment and Forest, National REDD+ Secretariat, Addis Ababa)

¹³ Readiness Preparation Proposal (R-PP), 2011, Federal Democratic Republic of Ethiopia, (Forest Carbon Partnership Facility, Addis Ababa)

¹⁴ Piloting REDD+ is an important part of REDD+ Readiness aiming at generating lessons to the national REDD+ strategy. Piloting is targeted in three different Regional States (SNNPR, Amhara and Tigray regional states) while the Oromia Region is well underway in the design of state level REDD+ program.

¹⁵ Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No.1, Federal Neg.Gaz. 1st Year, No.1.

¹⁶ Id, FDRE Constitution, Art. 44.

¹⁷ Id, FDRE Constitution, Art. 43(1).

¹⁸ Id, FDRE Constitution, Art. 40(3).

customization of these existing policies, laws and regulations to establish a fair and stable forest property rights regime to achieve emission reductions, ensure transparent benefit sharing and influence non-compliance accountability in the context of REDD+ strategies.¹⁹ With a devolved governance institutional structure operating at both federal and regional levels, REDD+ strategies aim to engage local communities and at the same time maintain links to the centralized political decision-making processes.²⁰

Working to clarify how existing legal and institutional frameworks could support REDD+ implementation and how new REDD+ specific adjustments and customization will be regulated in the Ethiopian legal system will help to ensure that Ethiopia's national program comply with the emerging principles of the UNFCCC and other international expectations regarding the implementation of REDD+ at the national level. Hence, this paper attempts to examine the institutional and legal framework in the Ethiopian context from the perspective of the international REDD+ requirements that the State commits itself to comply with.

1.3. Objectives of the Study

1.3.1. General Objective

The general objective of the study is to analyze the legal and institutional frameworks for the implementation of the REDD+ in Ethiopia as flexibility mechanism of climate change problems.

1.3.2. Specific Objectives

The study has the following specific objectives:-

- ✦ To analyze the crux of REDD+ in the international climate change negotiations,
- ✦ To examine how the international negotiations on climate change influenced the emergence of REDD+ to harmonize the divergent interests of developed and developing countries to address issues of climate change problems as flexibility mechanism,
- ✦ To analyze whether the existing Ethiopian legal and institutional regime is responsive to REDD+ requirements,
- ✦ To analyze prospects and challenges of REDD+ implementation in Ethiopia from the legal and institutional setup.

¹⁹ Dr. Yitebu Moges, cited above at note 10, p.12

²⁰ FDRE REDD+ Strategy, cited above at note 12, Par. 9, para 3.

1.4. Research Questions

As stated under the statement of the problem section, REDD+ requires a unique legal as well as institutional setup for its implementation as it needs revision of the existing laws and institutional arrangements to be REDD+ responsive. Consequently, the core-guiding question of this paper is: *What are the legal and institutional frameworks of the operation of REDD+ in Ethiopia?*

This broad question is unpacked to address the following questions.

1. How the concept of REDD+ originated and developed?
2. How did international negotiations of climate change influence the emergence of REDD+ to harmonize the divergent interests of developed and developing countries to address issues of climate change problems as flexibility mechanism?
3. How did the existing Ethiopian legal and institutional regime respond to REDD+ requirements?
4. What are the prospects and challenges in the implementation of REDD+ in Ethiopia?

1.5. Significance of the Study

This research which examines the legal and institutional framework of REDD+ implementation in Ethiopia will have a significant contribution to the policy makers, stakeholders, and researchers on the area. Apart from other studies the REDD+ secretariat undertake, this research could add to the existing literature on the Ethiopian REDD+ program. It could also serve as a springboard for other potential researchers to conduct further study in the area.

1.6. Research Methodology

The research method used in this study is analytical. It involves extensive desk review on the existing literatures by way of referring to laws, polices and strategies, books, journal articles, other relevant reports and official documents on the concept of REDD+ as flexibility mechanism of climate change problems. Thus, the primary sources of data reviewed in this study include basic international legal instruments include the UNFCCC, KP, Bali Action Plan, Copenhagen Accord, Cancun Agreement, the Durban Platform for Enhanced Action, the Paris Agreement on Climate Change, and the main decisions and declarations of the UN. National laws such as the 1995 FRDE Constitution, the National REDD+ Strategy, the CRGE Strategy, the GTP II Document, Environmental Policy of Ethiopia, the Rural Land and Forest Proclamations are analyzed. Furthermore, the UN and the REDD+ secretariat and other relevant websites that contain most of these important documents and information are visited.

1.7. Literature Review

The issue of reducing emissions from deforestation as a flexibility mechanism of climate change problem was first introduced into the negotiations under the UNFCCC at COP-11 in 2005. Then, at UNFCCC COP-13, held in 2007 at Bali, REDD+ it became part of the Bali Action Plan. In 2008 and 2009, policy approaches and positive incentives relating to this issue were considered in the negotiations under the Bali Action Plan. The COP-16 in Cancun made a series of recommendations including encouraging developing country Parties to contribute to GHG mitigation. Under the decision 2/CP.17 at Durban, the Conference of Parties (COP) decided to continue a process of clarifying developed country Parties' emission reduction pledges. In Doha the COP adopted the Agreed outcome pursuant to the Bali Action Plan (decision 1/CP.18). Parties in Warsaw at COP-19 agreed on a series of decisions, designated as the Warsaw Framework for REDD+, on finance and institutional arrangement mechanisms. However, Lima's main success during the COP-20 was the Lima call for climate action's unanimous approval by all 196 Parties to the Convention so that all Parties. Finally, the COP-21 in Paris resulted for the first time in over 20 years of UNFCCC negotiations, a binding and universal agreement on climate problems.

The main idea of REDD+ is about giving financial support to the developing countries for reducing emissions from deforestation and degradation through implementation of new policies and measures that fit to the sustainable management of forests.²¹ Citing the heterogeneity among communities and localities, the three-phased approach was suggested by experts in the 2009 Meridian report for the implementation of REDD+²² as it will help the countries to be ready for implementation of REDD+ through capacity building. Most developing nations are not currently able to implement REDD+ and so a phased approach was agreed at the 2010 Cancun climate negotiations. Similarly, if REDD+ is applied in phases, it can use both fund-based and market-based financial resources. However, the way and order according to which these phases will be applied depends upon the situation of the site and opportunities available for funding. The phased approach generally consists of the preparatory/readiness phase, policy and measures phase and performance based phases.²³ In the first Preparatory/Readiness phase, participation of all kinds of stakeholder is important for the success of any program related to REDD+ implementation. In this phase, REDD+ strategies are planned and designed by involving various groups who have attachment with natural resources and forests for ensuring active participation.²⁴ Capacity building activities are also

²¹ The UNFCCC REDD web platform: <http://unfccc.int/methods/science/redd/items/4531.php>, decision 12/CP.17, last seen on 01/01/2017.

²² Verbist, B., Van Goidsenhoven, M., Dewulf, R., Muys, B.. "Reducing emissions from deforestation and degradation", *KLIMOS working paper 3*, (Leuven, Belgium), P.11.

²³ Ibid

²⁴ Angelsen A. et al, *Reducing Emissions from Deforestation and Forest Degradation (REDD): An Options Assessment Report*, Meridian Institute.

carried out to prepare them and sensitize about various aspects of REDD+. Likewise, different studies have been conducted by governments, UN-REDD, and private sectors to identify and analyze the reasons for deforestation and degradation²⁵, so as to develop suitable REDD design based on problems identified. The second, Policies and Measures phase focuses on adopting regulatory framework for implementing REDD+ mechanism through new or reformed national policies on forest and other allied sectors. In this phase, focus is on designing instruments for implementing REDD+ without any hurdles. Likewise, the key issues such as equity in benefit sharing, carbon rights issues and issues related to distribution of benefits are to be clarified at this phase.²⁶ For this, in depth understanding of regulatory framework, instruments for implementing REDD+ is needed, training activities focused on different ideas are to be conducted. In this phase, pilot program would be implemented to have better understanding of Measurable, Reportable and Verifiable (MRV) emission reduction system, results on actions of REDD+ and the effectiveness of the participation of different groups.²⁷ In the third, Performance based payments phase, the activities such as reducing deforestation and degradation, and managing forest sustainably help in to increase carbon stock and reduce emissions of GHGs, which under REDD+ mechanism deliver monetary payments.²⁸ Hence, in this phase, communities would be paid for their activities, monitoring and auditing mechanism to foresee the activities would start working and mechanisms to develop the way to share the benefits from carbon trading in equitable manners would be implemented. The majority of countries were in phase 1 or 2 as of 2013.²⁹ REDD+ is intended to scale up during 2015-2020 and suggested projects during this period are likely to require between 3 and 33 times more funding than is currently expected, if they were to be all fully implemented.³⁰

Till June 2011, 35 countries from Africa, Asia-Pacific and Latin America have adopted REDD+ mechanism, which are under various phases of implementation.³¹ In all these countries, REDD+ strategies are being formulated and implemented under the assistance of UN-REDD program, FAO, the UNDP and the UNEP. In 13 countries³², UN-REDD program directly supports the National Program of the countries, where as other countries are getting indirect support from UN-REDD program by gaining observer status³³ in program's policy board, through participating in regional workshops, and through online networking. According to Gordon and Tam, the Forest Carbon Partnership Facility (FCPF) was set up

²⁵ Verbist et al, cited above at note 22, P.12.

²⁶ Angelson A.et al, cited above at note 24, p.12

²⁷ Verbist et al, cite above at note 22, P.11

²⁸ Angelson A.et al, cited above at note 24, p.12

²⁹ *Reducing Emissions from Deforestation and Forest Degradation (REDD+)* POST note 466, (Aug. 2014), available at www.parliament.uk/post accessed on March 2017, last seen on 12/03/2017

³⁰ Id, p.2.

³¹ The UNFCCC REDD web platform, cited above at note 21

³² These developing countries are the Bolivia, Cambodia, Democratic Republic of the Congo (DRC), Ecuador, Indonesia, Panama, Papua New Guinea, Paraguay, the Philippines, Solomon Islands, Tanzania, Viet Nam and Zambia.

³³ Ethiopia acquired an observer status as of 2008 to the UN-REDD.

during the COP-13 to support developing countries to reduce carbon emissions from forest sector by valuating the standing forests in monetary terms.³⁴ Hence, both developing and industrialized countries in coordination with the World Bank are working together for creating the system of giving incentives for REDD+ and also to build the capacities of developing countries.

1.8. Limitation and Scope of the Study

The concept of REDD+ is introduced to the international climate change negotiation since 2005 and the REDD+ implementation in Ethiopia is at an infant stage. Therefore, the concept is most recent that, there are no sufficient written materials in the Ethiopian context to be referred, apart from numerous reports. Since REDD+ is a recent development to our legal system, there are not well practiced and well organized institutional establishments except the REDD+ Secretariat. Therefore, the scope of the study is limited to analyze the newly emerging concept of REDD+. Accordingly, this study aims at exploring and providing a clear picture of the legal and institutional framework for the implementation of REDD+ as a flexibility mechanism to deal with climate change problems in Ethiopia.

1.9. Organization of the Study

This research is organized into four chapters. The first chapter focuses on the general introductory remarks on the background of the study, statement of the problem, research questions, objectives, significance, methodology, limitation and scope of the study, and literature review that give highlight about the research. The second chapter deals with the origin, evolution and adoption of REDD+ at international level. In the third chapter the legal and institutional framework for REDD+ implementation in Ethiopia is examined. The Policies, Strategies and currently applicable laws on forest and other natural resources as well as institutional arrangements relevant to REDD+ implementation and the status of REDD+ implementation are examined. The fourth chapter provides conclusion and recommendations.

³⁴ Verbist et al, cited above at note 22, P.12.

CHAPTER TWO: THE ORIGIN, EVOLUTION AND ADOPTION OF REDD+

REDD+

2.1. Evolution of Regulatory Mechanisms for REDD+

2.1.1. Clean Development Mechanism in the Kyoto Protocol

Global climate has been subjected to dramatic alterations due to increased levels of CO₂ and other GHGs emissions to the atmosphere through activities such as increased use of fossil fuel for industrial purpose, deforestation and other economic activities. According to a study by Karky in Joshi (2011), climate change concerns were put forth for the first time during the First World Climate Conference (1979), held in Geneva.³⁵ As concerns about climate change problems increased, Intergovernmental Panel on Climate Change (IPCC) was founded in 1988 to scientifically assess the climate change process. The panel suggested the need of global treaty to tackle the climate change problem issues, which led to formulation of United Nations Framework Convention on Climate Change (UNFCCC) in 1992.³⁶ In the influential review by Sir Nicholas Stern 'The Economics of Climate Change (2006), curbing deforestation was identified as a highly cost-effective method to reduce carbon emissions.³⁷

In 1997, during the 3rd session of the COP (held in Kyoto, Japan), UNFCCC put forth and adopted a global treaty, the Kyoto Protocol (KP)³⁸, to battle climate change by regulating emission by setting a cap³⁹ and allowing trade of carbon for reducing GHGs. The KP came into effect as of February 2005. However, the implementation of the KP has not yet been realized for the north south politics on the effects of climate change is not settled.⁴⁰ The KP permits regulation of the carbon trade, which led to establishment of three kinds of global carbon market namely Joint Implementation (JI), Clean Development Mechanism (CDM) and Emission Trading (ET).⁴¹ Among these three market mechanisms only in CDM developing countries can participate for GHG emission reductions. According to the CDM mechanism, developing countries

³⁵ Joshi, Kanchan, *Is Nepal Ready for REDD+? An Analysis of Institutional Preconditions and Implications for further Research*, (unpublished, 2011).

³⁶ The UNFCCC was adopted during the United Nations Conference on Environment and Development (Earth Summit) held in Rio de Janeiro, Brazil in 1992 as an effort to reduce GHGs emissions in the atmosphere and to mitigate adversity from climate change.

³⁷ Signe Howell and Elna Bastiansen, *REDD+ in Indonesia 2010-2015*. (Report of a Collaborative Anthropological Research Program, 2015)

³⁸ Kyoto Protocol, cited above at note 4

³⁹ The cap is a legally binding emission targets put for the annex one countries

⁴⁰ Signe Howell et al, cited above at note 37.

⁴¹ Kyoto Protocol, cited above at note 4.

(non-Annex I countries) are provided funds for implementing CDM projects, whereas Annex I countries buy the Certified Emission Reduction (CER) credits to fulfill the emission reduction criteria set by KP.⁴²

CDM was the first initiative that created conducive atmosphere for environmental investment and marketing of previously non tangible environmental goods.⁴³ CDM permits developed countries to run emission reduction projects in a developing countries through afforestation and reforestation activities⁴⁴, energy efficiency or a renewable energy project that do not emit GHGs. These projects are planned to support the sustainable development within the host country through use of innovative environmental friendly technology, and slow down global warming.⁴⁵ However, CDM allowed only afforestation and reforestation as two major categories that qualify forests as sink projects. For forests to be qualified for the CDM project, they should have a minimum area of land of 0.5 to 1.0 Hectare with crown cover greater than 10%.⁴⁶ Henceforth, scholars argue that the community managed forests and other sustainably managed forests were left out from CDM mechanism of KP as there was uncertainty in quantifying and controlling leakage from avoided deforestation.⁴⁷ Thus, the CDM did not address the huge emissions due to deforestation; whereas the carbon emission from developing countries is more due to deforestation. For instance two of the developing countries (Brazil and Indonesia) with dense forests in the world account for half of the emissions from deforestation- Brazil contributing 25% and Indonesia contributing 23% respectively.⁴⁸ Even in other developing countries deforestation and forest depletion due to mismanagement have been of prime concern. Due to this, the need for more practical mechanism addressing deforestation and degradation through improved and sustainable management of forest and biodiversity was felt: REDD+. To address these issues, new mechanism of carbon financing - REDD was developed during the COP-13 of the UNFCCC, held in Bali in 2007.⁴⁹ This carbon financing to prevent deforestation under REDD policy has been proposed under the voluntary framework of the UNFCCC is being implemented since 2009.⁵⁰

⁴² Kyoto Protocol cited above at note 4

⁴³ UNFCCC, cited at note 2. 2011

⁴⁴ Kyoto Protocol, cited above at note 4, defined "afforestation" as converting of the land to forests that had not been forested for 50 or more years, whereas "reforestation" is defined to be the conversion of previously deforested land to forest.

⁴⁵ UNFCCC, cited above at note 2, 2011: These projects are then allowed to sell Certified Emission Reduction (CER) credits. Each CER was made equivalent to one tonne of CO₂.

⁴⁶ Kyoto Protocol, cited above at note 4.

⁴⁷ Joshi, cited above at note 35, p.14.

⁴⁸ Joshi, cited above at note 35, p.13.

⁴⁹ Brunner, R., Ali, F., Ambel, C. C., Aquino, P., Bautista, K., Bendandi, B., Karpati, A., Lai, K., Barbour-McKellar, J., Roos, M., Rudder, N., Soergel, E., & Valencia, N. (2010). "Back to its roots: REDD+ via the Copenhagen Accord", *Reconsidering Development*, Vol. 1, No. 1 (2010), p.24. available at <http://pubs.lib.umn.edu/reconsidering/vol1/iss1/3> , last seen on 12/03/2017.

⁵⁰ Ibid.

2.1.2. Conceptual Development from RED to REDD+

Over many sessions of the COP, REDD+ has evolved from two previous forms: Reducing Emissions from Deforestation (RED) and Reducing Emissions from Deforestation and Forest Degradation (REDD).⁵¹ At the 2005 COP-11 in Montreal, RED was put on the agenda and the main idea behind this initiative was that developed nations would provide incentives to developing nations to keep their forests standing. Later, in 2007, at COP-13 in Bali, the extra "D" in REDD, signifying forest degradation, was added to address problems of overgrazing and the degrading effects of deforestation on remaining forest systems. REDD recognizes and addresses the major objections about RED under the CDM. It is based on the principle that developing countries that are strong and able to reduce their deforestation rate at a reference time period receive financial compensation in terms of carbon credits.⁵² Carbon credit transfers are based either on foregone opportunity costs or on the value of carbon market prices.⁵³ REDD is more about acknowledging communities for avoiding bad than committing for good.⁵⁴ Though emissions reduction is the primary focus of REDD, it has also a potential to deliver a range of co-benefits. Hence, REDD is being pushed not only as the tool for resolving climate change problem but also as tool for addressing social issues as it promises to alleviate poverty, improve livelihoods of local communities and derive benefits from preserving biodiversity and generating ecosystem services.⁵⁵ Thus, REDD has provided a new framework to curb the trends of deforestation by bringing sustainable forest management activities under global carbon market, which previous global approaches have been unsuccessful at. However, to transform potential benefits into actual climate benefits, several critical issues need to be addressed in potential REDD policy frameworks. During the first commitment period 2008-2013, under business-as-usual (BAU) scenario⁵⁶, the potential market for carbon credits is estimated to be 24 Billion tons of CO₂ equivalents per annum.⁵⁷ Hence, developing countries rich in forest resources can generate substantial sum of revenue in the form of carbon trading, which can be used for development of local communities and to avoid deforestation. Similarly, the REDD program will provide help to generate revenue from standing forest, and the incentive generated through this program will discourage further deforestation and degradation. This will help in conserving biodiversity and maintaining ecosystem services generated by these forests, thereby promoting co-benefits in developing countries.

⁵¹ Id, p.9.

⁵² Verbist et al cite above at note 22, p.11.

⁵³ The UNFCCC REDD web platform, cited above at note 21.

⁵⁴ Joshi, cited above at note 35, p.12.

⁵⁵ Verbist et al, cited above at note 22, P.16.

⁵⁶ Climate-Resilient Green Economy: Green Economy Strategy, 2011, Federal Democratic Republic of Ethiopia, (Addis Ababa), p.14. The business-as-usual (BAU) estimation of GHG emissions forms the baseline for the development of a green economy strategy. The estimation answers the question: how would domestic GHG emissions develop if no actions to limit emissions were taken?

⁵⁷ Verbist et al, citeed above at note 22, p.23.

However, there were problems felt by scholars associated with the implementation of REDD. These include; REDD might not be beneficial for the community forest owners for successfully managing the forests and this might displease them as they will not be rewarded for their conservation efforts. REDD might also restrict the forest tenure rights of indigenous communities preventing them from using forests for sustaining their livelihoods, increasing their vulnerability situation.⁵⁸ The Bali Action Plan marked an important crossroads for REDD+⁵⁹, as it called for the role of conservation, sustainable management of forests and enhancement of forest carbon stocks, that transformed REDD into REDD+.⁶⁰ Therefore, it is necessary to address and acknowledge the carbon stock enhancement and sustainable forest management practices besides activities addressing deforestation and forest degradation.⁶¹ This led to the formulation of REDD+ regime at the UNFCCC negotiations.

2.2. Historical Development of REDD+ at Global Level

The idea for including reductions in emissions from forest sector with REDD in the post-Kyoto climate change regime gained prominence in 2007 when the Bali Action Plan laid the foundation for the scope of a forest-based mitigation mechanism by Decision 1/CP.13, known as the 'Bali Action Plan', which provides the basis for the negotiations in the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA).⁶² COP-13 in Bali adopted Decision 2/CP.13 on 'reducing emissions from deforestation in developing countries: approaches to stimulate action', which encouraged capacity-building, technical assistance and technology transfer.

At the 29th meeting of the UNFCCC SBSTA in December 2008 in Poznan, the SBSTA recommended methodological guidance on REDD+. The SBSTA report referred REDD+⁶³ which was a priority issue in the negotiations at Copenhagen in 2009. Many countries hoped that agreement would be reached in Copenhagen on several issues related to REDD+ and that this would be a basis for starting to implement REDD+ under the UNFCCC. However, one of the challenging aspects of REDD+ in the Copenhagen negotiation relates to how countries with different levels of forest cover and countries with different

⁵⁸ Joshi, cited above at note 35, p. 62.

⁵⁹ Decision 2/CP.13, Reducing emissions from deforestation in developing countries: approaches to stimulate action, (FCCC/CP/2007/6/Add.1). It is worth noting that there is some debate about the term "sustainable management of forests" in the context of REDD+. As used in the Bali Action Plan, the term refers to forest management for the purpose of sustaining constant levels of carbon stocks; beyond REDD+, it may be used to refer to management activities designed to serve other goals.

⁶⁰ Brunner et al, cited above at note 49, p.7

⁶¹ Ibid.

⁶² Decision 1/CP.13, The Bali Action Plan, Report of the Conference of the Parties on its Thirteenth Session, held in Bali from 3 to 15 December 2007. (FCCC/CP/2007/6/Add.1), available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page>, last seen on 05/01/2017.

⁶³ The 29th meeting of the UNFCCC SBSTA's report in Poznan, Poland, December 2008. See paragraph 38 of the report, available at <http://unfccc.int/resource/docs/2008/sbsta/eng/13.pdf>, last seen on 02/20/2017.

historical rates of deforestation could be included.⁶⁴ In decision 4/CP.15, at COP-15, the COP requested developing countries to identify drivers of deforestation and forest degradation, activities that result in reduced emissions and increased removals and stabilization of forest carbon stocks, use the most recent Intergovernmental Panel on Climate Change (IPCC) guidance as a basis for estimating emissions and establish robust and transparent forest monitoring systems.⁶⁵ The Copenhagen Accord at the COP-15 not only recognized the crucial role of REDD+ but also acknowledged the role of conservation, sustainable management of forests and enhancements of forest carbon stocks in developing countries. The accord also recognized the need to establish a mechanism to enable the mobilization of financial resources from developed countries to achieve this.⁶⁶

At the AWG-LCA meeting in August 2010 (at Cancun in Mexico), differences in view regarding REDD+ emerged.⁶⁷ However, a substantial improvement on REDD+ was made in Cancun at COP-16 with a decision that set out the broad scope of REDD+, in line with Bali Action Plan.⁶⁸ The outcome document of the AWG-LCA addressed REDD+ by encouraging developing countries to find ways to: reduce pressure on forests, including actions to address drivers of deforestation, develop a national strategy or action plan, a national forest reference emission level, form transparent national forest monitoring system and address drivers of deforestation and degradation. The COP also requested the AWG-LCA to explore financing options for the full implementation of results-based REDD+ actions.⁶⁹

At the Durban Climate Change Conference in 2011, the COP adopted decision 2/CP.17 'Outcome of the work of the AWG-LCA under the Convention', which addressed REDD+. COP-17 agreed that regardless of the source or type of financing, REDD+ activities should be consistent with decision 1/CP.16 from Cancun.⁷⁰ The Progress made in Durban resulted in a mixed bag for REDD+, where the negotiations on REDD+ centered on four key areas: finance, safeguards, reference levels and MRV of carbon emissions from forest activities. In Durban, the COP also launched the Green Climate Fund (GCF), which will

⁶⁴ Louis V. Verchot and Elena Petkova, *The state of REDD negotiations: Consensus points, options for moving forward and research needs to support the process (an update following COP 15 in Copenhagen)* (CIFOR, Bogor, Indonesia, August 2010), P.3

⁶⁵ United Nations Conference of the Parties. *Framework Convention on Climate Change, Draft Decision -/CP.15. Copenhagen Accord.* (2009). Available at <http://unfccc.int/resource/docs/2009/cop15/eng/107.pdf>, last seen on 12/03/2017.

⁶⁶ Lang, C. *What came out of Copenhagen on REDD? REDD-Monitor, Analysis, opinions, news and views about Reduced Emissions from Deforestation and Forest Degradation.* (2009). Available at <http://www.redd-monitor.org/2009/12/22/what-came-out-of-copenhagen-onredd/>, last seen on 13/04/2017.

⁶⁷ M. J. Sanz-Sanchez, *Current status and outcomes of REDD negotiations under UNFCCC: COP 16 – Cancun Outcomes.* (Jan. 2011), available at http://unfccc.int/methods_science/redd/items/4531.php, last seen on 01/04/2017.

⁶⁸ This idea was reflected in decision 1/CP.16: 'The Cancun Agreements: Outcome of the work of the AWG-LCA'.
⁶⁹ The Cancun Agreements: Outcome of the work of the AWG-LCA, Decisions adopted by the Conference of the Parties, Report of the Conference of the Parties on its sixteenth session, Cancun, November-December 2010, Doc. No. FCCC/CP/2010/7/Add.1, 70 (2010). Par.70.

⁷⁰ Id, Cancun Agreement: paragraph 63-67

include REDD+. ⁷¹ In Doha, at COP-18, the COP adopted the “Agreed outcome pursuant to the Bali Action Plan” (decision 1/CP.18), which brought the phase of negotiations following from the Bali Action Plan to a conclusion passing a decision to undertake a work program on results-based finance for REDD+ in 2013. The aim of the work program is to contribute to efforts to scale up and improve the effectiveness of REDD+ finance. The focus is on results-based finance.

At COP.19/CMP-19 in 2013 at Warsaw ⁷², Parties requested the Durban Platform for Enhanced Action (ADP) to further elaborate, beginning at its first session in 2014, elements for a draft negotiating text, taking into consideration its work on mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support. ⁷³ Thus, a pathway was set for governments to make the necessary preparations to contribute to the formulation of the future global climate change regime and take steps to reach a final agreement in Paris, in 2015. Developed country Parties were urged to communicate and implement their respective quantified economy-wide emission reduction targets without further delay, revisit and evaluate these targets periodically and increase technology, finance and capacity building support to enable increased mitigation ambition by developing country Parties. Developing country Parties were equally urged to communicate and implement their NAMAs and consider further action. ⁷⁴ Parties in Warsaw agreed on a series of decisions ⁷⁵, designated as the Warsaw Framework for REDD+, on finance and institutional arrangements for the mechanism. Taken together, the decisions constitute ‘comprehensive technical guidance and elements that will facilitate result-based finance for REDD+’, but there were several issues of contention along the way to getting agreement. ⁷⁶

During COP-20 in Lima, in December 2014, no real progress on emission reduction was made because of the persistent sharp division between poor and rich countries over how to share the burden of emission reductions under a global deal. However, Lima's main success might be that the final text, ‘Lima call for climate action’, was approved without dissent by all 196 Parties to the Convention so that all Parties will be under a common legal framework and all will contribute to the reduction of GHGs. ⁷⁷ This is a positive signal after two decades of difficult climate negotiations where only a small group of countries (the Annex

⁷¹ Id, Cancun Agreement: paragraph 35

⁷² The outcome document of the Warsaw COP-19 Decision 1/CP.19, held from 11-23 November 2013.

⁷³ Janna Tenzing et al, *Warsaw Outcomes and Key Issues for Lima: An Overview*, *Sean-Cc Negotiation Briefing Paper*, (2014). P.6

⁷⁴ *Framework for REDD plus action adopted in Warsaw*, published by Third World Network, (Nov. 2013). Available at www.twn.my, last seen on 23/03/2017.

⁷⁵ Decisions 9/CP.19, cited above at note 71.

⁷⁶ Janna et al, cited above at note 73, p.12-15.

⁷⁷ Anke Herold et al, *The Development of Climate Negotiations in View of Lima (COP 20)*, (Nov. 2014), available at <http://www.europarl.europa.eu/studies> Last seen on 25/03/2017.

I countries of the 1997 KP) were bound by the decisions. It reflects the new reality where the majority of GHGs are emitted in developed countries.

At Paris (COP-21), a binding and universal agreement on climate from all the nations of the world was reached for the first time in over 20 years of UNFCCC negotiations.⁷⁸ Think tanks such as the World Pensions Council have argued that the keys to success lay in convincing U.S. and Chinese policy makers.⁷⁹ The overarching goal of the Convention is to reduce greenhouse gas emissions to limit the global temperature increase to 2 °C above pre-industrial levels. On 12 December 2015 the participating 195 countries agreed by consensus to the final⁸⁰ global pact, the Paris Agreement, to reduce emissions as part of the method for reducing GHGs. The members agreed to reduce their carbon output "as soon as possible" and to do their best to keep global warming "to well below 2°C⁸¹. There was doubt whether some, like the U.S. with its Republican-dominated Congress,⁸² will agree to do so.⁸³ The good thing is, President Obama used his executive powers to sign the Paris Agreement. However, the election of Donald Trump as new president of the U.S. has major implications for progress in tackling climate change, at U.S. and international levels. In his election campaign, Donald Trump said that he would "cancel" the Paris climate agreement adding that all US finance to climate institutions will cease.⁸⁴ Under his presidency, U.S. could pull out of the Paris Agreement if he uses his presidential executive power to leave the Agreement: but it would take 4 years for the process to be completed. The UNFCCC was ratified with a vote through the Senate. Many legal commentators believe that a decision to withdraw from the UNFCCC will also need Senate approval. This will be an opportunity for both Democratic and Republicans to come together to show that the anti-science approach of the Trump Presidency is not shared by everyone.⁸⁵

It might seem that REDD+ isn't explicitly mentioned in the final Paris agreement, an accord that over 190 countries negotiated. However, REDD+ is already in place legally and technically. Those decisions over the last eight years since 2007 Bali action plan solidified the role of REDD+ in the UNFCCC framework and mitigation before and after 2020, regardless of whether it is called out by name in the Paris

⁷⁸ Ministry of Foreign Affairs of French, *Issues and reasons behind the French offer to host the 21st Conference of the Parties on Climate Change 2015*, (22 May 2013), last seen on 02/02/2017.

⁷⁹ M. Nicolas J. Firzli, *Climate: Renewed Sense of Urgency in Washington and Beijing*. *Revue Analyse Financière*, (03/07/2015), last seen on 01/03/2017.

⁸⁰ Chappel, Bill, *Nearly 200 Nations Adopt Climate Agreement At COP21 Talks In Paris*. NPR. (12 December 2015), last seen on 01/01/2017.

⁸¹ *Historic' Paris climate deal adopted*, CBC News, last seen on 23/03/2017.

⁸² Pengelly, Martin, *Obama praises Paris climate deal as 'tribute to American leadership'*, The Guardian (London, England). (12/12/2015), last seen on 12/03/2017.

⁸³ Sutter, John D.; Berlinger, Joshua, *Final draft of climate deal formally accepted in Paris*. CNN. (12/12/2015), last seen on 28/12/2016.

⁸⁴ Financial Times, 2016. Seven Donald Trump policies that could change the US. Available at <https://www.ft.com/content/01a377fa-a63c-11e6-8b69-02899e8bd9d1>, November 9th 2016, last seen on 23/03/2017.

⁸⁵ <http://www.foe.org/news/news-releases/2016-11-the-environmental-resistance-will-stand-against-trump>, last seen on 23/03/2017

agreement.⁸⁶ Many terms in the Paris agreement implicitly refer to REDD+. The land sector is the only sector that can absorb a significant amount of greenhouse gases, so any reference to carbon “sinks” or “removals” is alluding to REDD+. For example, one paragraph of the text refers to “results-based payments”, which refers to a method where donors pay for verified emissions reductions achieved through REDD+. In the final Paris climate agreement, Parties recognize the role forests have in offsetting human actions and explicitly include the REDD+ mechanism in the final agreement (Art.5). The Paris Agreement enters into force, November 2016.⁸⁷

⁸⁶ Rebecca Willis, Paris 2015: getting a global agreement on climate change. Green Alliance. August 2014, P.12.
⁸⁷ REDD+ Context in Africa: Contexts, Challenges and Next steps of REDD+ mechanisms in the continent, (AfDB Knowledge series, Oct. 2016)

CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORK FOR REDD + IMPLEMENTATION IN ETHIOPIA

3.1. Introduction

According to the Central Statistical Agency of Ethiopia (CSA), the population of Ethiopia was estimated to be above 90 million in 2015, which makes Ethiopia the most populous nations in Eastern Africa and the second-most populous in Africa after Nigeria.⁸⁸ The country's natural resources are the foundation of Ethiopian economic development, ensuring food security and providing basic necessities to its growing population. Given its dependence on climate sensitive sectors of the economy, such as agriculture, Ethiopia remains one of the most vulnerable countries to the effects of climate change problems.⁸⁹ The country's vulnerability to climate problems and the urgency for a national adaptive response to climate change has long been recognized by the government of Ethiopia. For this, Ethiopia has been an active participant in international climate change negotiations and is among the pioneers in adopting Plans, Strategies, and Policies to mitigate and adapt to climate change.⁹⁰

Accordingly, Ethiopia was selected as a REDD+ country participant in the FCPF and submitted its REDD+ Program Idea Note (RPIN) in 2008. Based on the development of REDD+ R-PP⁹¹, Ethiopia has taken key institutional and policy measures.⁹² The main ones include the re-establishment of the Ministry of Environment, Forest and Climate Change (MEFCC), revision of Forest Policy and Proclamation, and developing a national REDD+ Strategy among others. REDD+ is part of a the Climate Resilient Green Economy (CRGE). Ethiopia considers REDD+ as an opportunity and viable source of sustainable finance for investment in sustainable forest management, forest conservation, and forest restoration to enhance multiple benefits of forests. In line with this, MEFCC is coordinating, among other development programs, the implementation of the CRGE strategy, and overall environmental and forest management, including the REDD+ readiness program in the country.

⁸⁸ Central Statistical Agency of Ethiopia: Population Projection of Ethiopia for all Regions at Woreda Level from 2014 – 2017. Addis Ababa, 2013. Available at www.csa.gov.et, last seen on 22/03/2017.

⁸⁹ *The National Regional State of Oromia: Oromia Forested landscape program*, Finfinnie, June 2016.

⁹⁰ Ethiopia launched a Climate Resilient Green Economy (CRGE) strategy in 2011 which is now fully integrated in to the Growth and Transformation Plan II (GTP II). The content of these documents will be discussed latter.

⁹¹ FDRE R-PP, cited above at note 13. The R-PP was approved in 2011 and later officially launched on January 15, 2013.

⁹² National REDD+ Secretariat, Ministry of Environment and Forest, Federal Democratic Republic of Ethiopia *Overview of REDD+ Process in Ethiopia*. (2014).

3.2. International conventions governing REDD+ adopted by Ethiopia

After the 1992 Rio Declaration, the interest of the global community widened to include concerns for biodiversity, forest environmental services and sustainable forest management – a move from the early focus on rehabilitation of depleted tree-stocks to protect the various goods and services that forests provide.⁹³ Ethiopia is either a party or a signatory to about 23 international and regional environmental conventions and agreements⁹⁴ that are relevant to REDD+ activities.⁹⁵ Some of the main multilateral environmental conventions Ethiopia ratified include:⁹⁶ the UNFCCC (ratified by Proclamation No. 97/1994 on May 2/1994), the United Nations Convention to Combat Desertification (ratified by Proclamation No. 80/1997), the United Nations Convention on Biological Diversity (UNCBD) (ratified by Proclamation No. 98/94, on May 31, 1994), the Convention on International Trade in the Endangered Species of Fauna and Flora (CITES) (ratified in 1989), the Rotterdam Convention (on informed consent in the context of international trade in specific hazardous industrial chemicals and pesticides, ratified this Convention by Proclamation No. 278/2002, on July 2, 2002).⁹⁷ The other initiative at African level is the Great Green Wall Initiative of the Sahara and the Sahel (GGWSSI) conceived as a sound initiative towards ensuring sustainable environmental management to African countries by arresting loss of biodiversity, control desert encroachment, and improve resilience of the local community to climate change impacts. It is also an initiative with a broader target of increasing food security and reduces poverty by diversifying livelihood opportunities through climate resilient development approaches. This initiative was emerged to protect the expansion of the Sahara Desert via planting a wall of trees which stretches from Dakar to Djibouti with a width of 15 kilometers and a length of up to 7000 kilometers. Ethiopia ratified the “Convention related to the Creation of The Pan African Agency of the Great Green Wall Ratification Proclamation No. 842/2014” in July 2014.⁹⁸ In 2004, the Ethiopian Environmental Protection Authority (EPA) developed an implementation document for the three Conventions (UNFCCC, UNCBD and UNCCD).⁹⁹

⁹³ Melaku Bekele, Yemiru Tesfaye, Zerihun Mohammed, Solomon Zewdie, Yibeltal Tebikew, Maria Brockhaus and Habtemariam Kassa, “The Context of REDD+ in Ethiopia: Drivers, agents and institutions”, *Occasional Paper 127*, CIFOR, (2015)..

⁹⁴ Some of the conventions ratified by Ethiopia relevant to the REDD+ include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), United Nations Framework Convention for Climate Change (UNFCCC) (1992), the United Nations Convention on Biological Diversity (UNCBD) (1992), and the United Nations Convention to Combat Desertification (UNCCD) (1994).

⁹⁵ Melaku Bekele et al cited above at note 93. P.4-5.

⁹⁶ Ministry of Environment, Forest and Climate Change, The Federal Democratic Republic of Ethiopia, *Oromia Forested Landscape Program Environmental and Social Management Framework (ESMF) (Updated)* (Addis Ababa, Feb. 2017), available at the ESMF website, last seen on 09/04/2017.

⁹⁷ Melaku Bekele et al cited above at note 93. P.6.

⁹⁸ REDD+ process in Ethiopia, cited above at note 92.

⁹⁹ National Action Program Document, 2004, Federal Democratic Republic of Ethiopia, (Environmental Protection Authority, Addis Ababa)

According to Melaku Bekele *et al*, the apparent link between climate change and sustainable forest management *vis-a-vis* poverty alleviation has convinced Ethiopian national and regional governments to consider forest development in their programs.¹⁰⁰ However, the same authors argue that the realization of the international conventions failed partly because the former EPA was not able to establish environmental databases and exchange information between the focal institutions, the inability to create awareness on the objectives of the conventions among implementing agencies, lack of incentives and low capacity of executive bodies responsible for the implementation of the conventions, and low level of involvement by the regional states. As a result, such weaknesses, not only limited the implementation of the conventions, but also prevented the country from using earmarked international support for related projects.¹⁰¹ Surveys in eight regional states were also completed by the REDD+ secretariat and showed a lack of awareness of existing international conventions and national legal frameworks by the regional focal persons themselves.¹⁰² Lack of effective forestry institutions to deal with forestry issues at all levels and weak enforcement of the laws were identified as the biggest challenges for the sector, according to the REDD+ focal persons.¹⁰³ Most also identified an absence of coordination among concerned government bodies within a region, as well as a lack of established working relations between the regional offices and federal bodies like MEFCC.¹⁰⁴

3.3. Review of Policies, Strategies and Laws relevant to REDD+ in Ethiopia

As nation with a federal form of government, which devolves significant power to Regional States, Regional States have the power to raise revenues, plan and implement their own development activities, including natural resources management, within the framework of the policies and proclamations issued by the federal government..¹⁰⁵ While federal laws can apply directly in regional states, laws on forestry and land use are often designed as framework laws, based on which more specific laws can be adopted by the regional states.¹⁰⁶ Ethiopia has increased its focus on sustainable environmental management and development over the past decades. This is reflected with the incorporation of several environmental and

¹⁰⁰ Id, p. 3.

¹⁰¹ Melaku Bekele et al, cited above at note 93. p.7

¹⁰² The current effort by the national REDD+ Secretariat to enhance the awareness level of the federal and regional officials and experts on the objective and purpose of REDD+ is encouraging.

¹⁰³ REDD+ process in Ethiopia, cited above at note 92.

¹⁰⁴ MEF was established recently in 2013 after the absence of such a ministry for over two decades. The name of the ministry is now changed to the Ministry of environment, Forest and Climate Change (MEFCC). Currently the national REDD+ Secretariat, which is under MEFCC, is working to engage regions in its effort to implement its objectives.

¹⁰⁵ FDRE Constitution, cited above at note 15, Art.52

¹⁰⁶ For instance, the legal framework in Oromia has diverged from the Federal legal framework in a number of significant aspects. The majority of differences between the federal and regional proclamations do not indicate any legal conflict, with some exceptions. For instance, penalties for forestry infringements in Oromia are significantly greater than those prescribed by Federal law.(up to 15 years of imprisonment), see the Oromia Forest and natural resources proclamation.

development issues in the constitution, as well as the adoption of various Strategies, Policies and Proclamations related to sustainable development of land, forests and other natural resources.¹⁰⁷

3.3.1. National Policies and Strategies

Some of the national policies and strategies with direct impact on REDD+ performance include: CRGE (2011), GTP II (2015), Environmental Policy (1997), and the National REDD+ Strategy of Ethiopia. Hereunder, I have tried to show the aspect of each policy and strategy relevant to REDD+ implementation in Ethiopia.

3.3.1.1. Climate-Resilient Green Economy: Green Economy Strategy

Some countries and organizations have made explicit links between REDD+ and a green economy.¹⁰⁸ Indonesia, for example, is currently making efforts to integrate REDD+ into its green economy approach, supported by international agencies such as the UN-REDD Program, and Ethiopia has explicitly included the protection and re-establishment of forests within its CRGE strategy.¹⁰⁹ The CRGE is a comprehensive document concerning the sustainable development and utilization of natural resources to combat climate change problems.¹¹⁰ The CRGE strategy also aims to protect the country from the adverse effects of climate change problems and build a green economy that will help realize its ambition of reaching middle income status by 2025. If Ethiopia were to pursue a conventional economic development path to achieve its ambition of reaching middle-income status by 2025, GHG emissions would more than double from 150 Mt CO₂e today to 400 Mt CO₂e in 2030.¹¹¹ To achieve the intended objective, the CRGE policy states that there will be a strong global collaboration on the climate finance programs.

REDD+ is among the four initiatives¹¹² to realize the target of the CRGE by 2025.¹¹³ These initiatives offer the chance to immediately promote growth, capture large abatement potential, and attract available climate finance for implementation. Under the CRGE strategy, a series of REDD+ pilots will be identified that range from PFM and Conservation approaches.¹¹⁴ Other key activities of this work are the development of a REDD+ learning network and a REDD+ good-governance project that supports the

¹⁰⁷ Dr. Yitebu Moges., cited above at note 10, p.15.

¹⁰⁸ UNEP defines a green economy as one that 'results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities. In its simplest expression, a green economy can be thought of as one which is low carbon, resource efficient and socially inclusive' (UNEP, 2011a).

¹⁰⁹ Charlene Watson et al, cited above at note 5, p.14

¹¹⁰ FDRE CRGE Strategy, cited above at note 56, executive summary, p.2

¹¹¹ FDRE CRGE Strategy, cited above at note 56, p.11

¹¹² These four initiatives are: attracting financing to exploit Ethiopia's vast hydropower potential, promoting advanced cooking technologies on a large scale, monetizing reduced emissions from livestock, and REDD+

¹¹³ FDRE CRGE Strategy, cited above at note 56, P.54

¹¹⁴ PFMs support strengthened local user rights and sustainable forest management

development of good governance around REDD+ pilots.¹¹⁵ REDD+ and the associated activities are intended to help capture the mitigation potential from forestry that has been estimated to be up to 130 Mt CO₂ in 2030.¹¹⁶ The CRGE initiative also outlines the structure of a permanent institutional setup to drive implementation, and to promote the participation of a broad set of stakeholders.¹¹⁷ The CRGE document also states that the main changes in the regulatory environment to enable the proposed mitigation mechanisms to be implemented should, according to the consultations made in the preparation phase, focus on local people's rights, develop a dedicated forestry institution, and better coordinate land-use planning.¹¹⁸

3.3.1.2. The Environmental Policy of Ethiopia

There is as yet no overall comprehensive formulation of cross-sectoral and sectoral issues into a policy framework on natural resources and the environment till the enactment of the Environmental Policy of Ethiopia (EPE).¹¹⁹ Therefore, developing a comprehensive environmental policy on natural resources and the environment was vital as the environmental sustainability is recognized in the Constitution and in the national economic policy and strategy as a key prerequisite for lasting success.¹²⁰ The overall goal of the policy is, among others, to promote sustainable social and economic development through the sound management and use of natural resources and the environment so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.¹²¹ The policy includes ten sectoral (like Forests, Atmospheric Pollution and Climate Change) and cross-sectoral environmental policies (such as Pollution and the Environment, Community Participation and the Environment and Environmental Impact Assessment).¹²²

Different key guiding principles for these general and specific Policies were incorporated in the EPE. Sustainable environmental conditions and economic production through the acquisition of power by communities to make their own decisions on matters that affect their life and environment was one. In relation to the role of the community participation in the environment protection, the policy promises the need for participation at all phases of environmental and resource development and management, develop the necessary legislation, training and financial support to empower local communities so that they acquire the ability to prevent the manipulated imposition of external decisions in the name of participation, and to

¹¹⁵ The Oromia Forest and Landscape Program is among these initiatives.

¹¹⁶ FDRE CRGE strategy, cited above note 56, p.46.

¹¹⁷ Dr. Yitebu Moges., cited above at note 10, p.15

¹¹⁸ FDRE CRGE Strategy, cited above at note 56, P.56

¹¹⁹ Environmental Policy, April 1997, Federal Democratic Republic of Ethiopia

¹²⁰ Melaku Bekele. et al, cited above at note 93, p.16

¹²¹ FDRE Environmental Policy, cited above at note 119, p.2

¹²² FDRE Environmental Policy, cited above at note 119, p.8

ensure genuine grassroots decisions in resources and environmental management. The decision making organs shall also recognize and protect wherever possible, the customary rights of access to and use of land and natural resource which are constitutionally acceptable, socially equitable and are preferred by local communities.¹²³ Policy makers, government officials and the population shall also have an increased awareness and understanding of environmental and resource issues. Concerning the Forest, Woodland and Tree Resources, the policy recognizes the complementary roles of communities, private entrepreneurs and the state in forestry development and adheres to the principle that sustainable forest management is achieved when social acceptability and economic viability have been achieved.¹²⁴

In relation to the Climate Change, the Policy also states that there will be an effort to promote a climate monitoring program and recognize that a combination of reforestation, agroforestry, 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 this from industrialized countries for offsetting their carbon dioxide emission.¹²⁵ To implement the policy, institutional frameworks, responsibilities and mandates are to be vertically divided and distributed among the Federal, Regional, *Zonal* and *Woreda* levels. A legally established coordination and management from the federal down to the community level is also sought. Framework laws are also to be enacted to enable the concerned stakeholders properly coordinate.¹²⁶

3.3.1.3. The Second Growth and Transformation Plan

The GTP II¹²⁷ of Ethiopia encompasses qualitative and quantitative targets set in the areas of macro-economic performance, performance of economic and social sectors and cross cutting sectors.¹²⁸ It particularly emphasizes the fact that consideration of the environment plays a pivotal role in sustainable development. The Plan aims at building a 'Green Economy' and implementing the existing environmental laws as part of the key strategic directions to be pursued during the GTP II period (2015/16-2019/20).¹²⁹ In the process of building a CRGE, the Plan identifies two key issues: adaptation to climate change impacts and mitigation of GHGs.¹³⁰ During the GTP I period, the CRGE strategy was formulated to embark on building green economy. A series of consultations at all levels had been conducted before the

¹²³ FDRE Environmental Policy, cited above at note 119, p.19

¹²⁴ FDRE Environmental Policy, cited above at note 119, p.4

¹²⁵ This is the incentive mechanism for REDD+

¹²⁶ FDRE Environmental Policy, cited above at note 119., p.28

¹²⁷ Growth and Transformation Plan II (GTP II) (2015/16-2019/20), 2016, Federal Democratic Republic of Ethiopia, (National Planning Commission, Addis Ababa)

¹²⁸ This includes gender and children affairs, youth and sports development, HIV/AIDS prevention and control, social welfare, population development, labor affairs, culture and tourism, science and technology development and environment and climate change.

¹²⁹ Growth and Transformation Plan 2010/11– 2014/15, Federal Democratic Republic of Ethiopia, 2010 (Ministry of Finance and Economic Development, Addis Ababa).

¹³⁰ FDRE GTP II, cited above at note 127. p.80

CRGE Strategy was approved.¹³¹ To implement the CRGE, new institutions and/or organizational structures have been put in place since then as formulating and effectively implementing environmental strategies and laws are essential to accelerate the process of building climate resilient green economy.¹³²

With regard to CRGE implementation, one of the priorities has been to mobilize adequate resources, which would assist environmental developers.¹³³ The REDD+ Secretariat at the MEFCC was established with USD 13.5 million grants from the Government of Norway. Similarly, for Oromia Pilot Forest Development and Protection project, about USD 50.0 million and for capacity building in the other regions USD 9.0 million was obtained from the Government of Norway.¹³⁴ Leadership commitments, new organizational arrangements, active participation of communities, conducive policies, strategies, action-plans, strong working relationship with relevant stakeholders, communities and implementing agencies were opportunities witnessed during the GTP I period.¹³⁵ However, limited implementation capacity as well as inadequate adaptation and promotion of Green Technology Packages have remained as challenges in the course of implementation, which need to be taken and addressed in GTP II.¹³⁶ The action plans following the REDD+ Strategy are incorporated into the GTP II and are planned to be implemented by the relevant sectors in line with the existing sectoral policies and strategies to address the drivers of deforestation and forest degradation.

3.3.1.4. The National REDD+ Strategy of Ethiopia

The development of the National REDD+ Strategy¹³⁷ builds on the existing experience and structures developed locally, and were aimed to enable a broader learning experience for all stakeholders. The Strategy targets to assess the main initiatives to mitigate deforestation and forest degradation, identify implementing options, and define the key enablers required at regulatory and institutional levels.¹³⁸ REDD+ contributes to the achievement of the CRGE targets through improved management of forests. The national REDD+ Strategy of Ethiopia addresses key issues pertaining its effective implementation.¹³⁹ The Strategy identifies and thoroughly analyses key sectors that are directly or indirectly involved in

¹³¹ FDRE GTP II, cited above at note 127. p.61

¹³² Key among these is the establishment of the Ministry of Environment, Forest and Climate Change (MEFCC) to oversee and coordinate the implementation of the CRGE strategy. This ministry was established recently by Proc.916/2015

¹³³ In this context the GTP II document states about Birr 4.6 million, from the 5th and 6th Global Environment Facility (GEF), USD 7.5 million and 27.23 million respectively financial resources have been mobilized from various donors.

¹³⁴ Oromia Forest Landscape Program, cited above at note 89, p.5

¹³⁵ FDRE GTP II, cited above at note 127. P.65

¹³⁶ Growth and Transformation Plan: Annual Progress Report for the 2012/13 fiscal year, 2014, Federal Democratic Republic of Ethiopia, (Ministry of Finance and Economic Development, Addis Ababa)

¹³⁷ FDRE National REDD+ Strategy, cited above at note 12. p.16

¹³⁸ FDRE National REDD+ Strategy, cited above at note 12. p.3

¹³⁹ FDRE GTP II, cited above at note 127. p.61

emissions reduction, focusing on sectorial policies. It also identified international and national policies and conventions relevant to REDD+ implementation and proposes appropriate REDD+ legal framework.¹⁴⁰

As institutional arrangement is a key to effective implementation of REDD+, the Strategy forwards workable institutional setup that guarantees effective inter-sectorial, regional and sub-regional coordination. Specifically, the Strategy intends to outline the mechanism for effective cross-sectoral coordination in the implementation of strategic options, ensure that policy, legal and institutional issues related to forest governance are effectively addressed for a successful REDD+ implementation. It also intends to establish and operationalize a fair and transparent REDD+ financial mechanism and incentive schemes, identify mechanisms to effectively overcome the forces and incentives that drive deforestation and forest degradation.¹⁴¹ Active participation of a wide range of stakeholders in REDD+ processes, capacity building (in terms of training, infrastructure, systems and equipment to support the REDD+ policy) and strengthening public awareness, communication and information sharing systems on REDD+ issues are planned. The Strategy also envisages that implementation of REDD+ is based on a set of principles that ensures climate benefit along with co-benefits (biodiversity and livelihoods) while respecting the rights of local communities and forest dependent communities. The five cardinal principles of Ethiopia's National REDD+ Strategy are¹⁴² equity¹⁴³, effectiveness¹⁴⁴, transparency¹⁴⁵, accountability¹⁴⁶ and commitment¹⁴⁷.

In essence, for REDD to become an internationally accepted mitigation mechanism, it will need to secure actual emission reductions (be effective) at minimum cost (be efficient), while reducing undesired social and ecological trade-offs (be equitable) and provide co-benefits.¹⁴⁸ These three criteria – effectiveness, efficiency, equity (3E) and co-benefits (3E+) are used in the climate debate to assess proposed options and their expected outcomes, or to evaluate actual outcomes.¹⁴⁹ In light of these international REDD+ requirements, Ethiopian REDD+ Strategy meets all the requirements with an emphasis of the governance issues (like accountability, transparency and political commitment). As deforestation and forest degradation in Ethiopia is largely driven by activities including those in the other sectors mainly agriculture, energy, infrastructure, etc., the success of this strategy and achieving the desired goals of

¹⁴⁰ FDRE National REDD+ Strategy, cited above at note 12. p.4

¹⁴¹ FDRE National REDD+ Strategy, cited above at note 12. p.12

¹⁴² FDRE National REDD+ Strategy, cited above at note 12. p..

¹⁴³ sustainable and equitable development by strengthening the livelihoods of forest-dependent communities

¹⁴⁴ demonstrably contributes to the national greenhouse gas emission reduction goals while working towards a global objective

¹⁴⁵ activities are transparently undertaken to ensure a clear and easy to understand implementation process for all stakeholders

¹⁴⁶ implementation is fully accountable to the people of Ethiopia and the international community in terms of relevance, process, funding, and results obtained

¹⁴⁷ implementation demonstrates Ethiopia's commitment to global climate change mitigation initiatives

¹⁴⁸ Verbist, B. et al, cited above at note 22, P.11

¹⁴⁹ Ibid.

emission reductions including other co-benefits is highly dependent on a coordinated planning and implementation among the key sectors.¹⁵⁰ For instance, recently, in the Oromia Forest Landscape Program, all the stakeholders who have interest in the forest sector vertically and horizontally have signed a memorandum of understanding under the facilitation of the Oromia REDD+ Coordinating Unit.¹⁵¹

3.3.2. The Legal frameworks for the REDD+ implementation in Ethiopia

Efficient and effective implementation of REDD+ requires revision and customization of existing sectoral and non-sectoral Policies, Laws and Regulations. Revisions of laws may be considered in areas of land use, property rights and permission issuance system for logging (agricultural investment).¹⁵² To achieve the objectives of REDD+, the Public, Private and Community participation is taken as the main management approach which can play a dual role: protect and use the forest in sustainable ways, and introduce good forest governance that guards community rights and use local knowledge.¹⁵³ In light of this understanding, I will try to analyze some of the existing laws pertinent to REDD+ below.

3.3.2.1. The FDRE Constitution

The 1995 FDRE Constitution has special articles on sustainable development, natural resource and the environment. Some of the provisions under the constitution with this respect include Art.40, Art.43, Art.44, Art.51, Art.52 and Art.92. Article 40 of the Constitution proclaims that land and natural resources are commonly owned by the people of Ethiopia and shall not be subject to sale or other means of exchange. It stipulates the rights of Ethiopian farmers and pastoralists to obtain land for cultivation and for free grazing without payment and the protection against eviction from their possession.¹⁵⁴ Further, Art.43 explains about people's right in development while Art.44 (1), Art.51 and Art.52 focus on natural resource governance, and Art.92 focus on the environmental policy. Art.43 stresses the people's right to improved living standards and to sustainable development, and consultation and participation regarding matters that may affect their wellbeing. Art.44 (1) states that all persons have the right to live in a clean and healthy environment. Art.51 gives authorization to the federal government to enact laws for the utilization and conservation of land and other natural resources¹⁵⁵, while Art.52 authorizes the regional states to

¹⁵⁰ Melaku Bekele et al, cited above at note 93, p.26

¹⁵¹ Memorandum of Understanding among Oromia Environment, Forest and Climate Change Authority, Oromia Bureau of Agriculture and Natural Resources, Oromia Forest and Wild life Enterprise, Oromia Bureau of Rural Land Administration and Oromia bureau of Water, Mineral and Energy, Oromia bureau of Livestock and Fishery Development for the joint implementation of the Oromia Forest and Landscape Program Vertically and horizontally, April 2017, (Addis Ababa, Ethiopia)

¹⁵² Dr. Yitebu Moges, cited above at note 10, p.31

¹⁵³ Melaku Bekele et al, cited above at note 93, p.23

¹⁵⁴ FDRE Constitution, cited above at note 15, Art.40(3)

¹⁵⁵ FDRE Constitution, cited above at note 15, Art.51(5)

administer land and other natural resources in accordance with federal laws.¹⁵⁶ Art.92 (3) focuses on public consultation and participation and to the expression of views in the planning and implementation of environmental policies or projects that affect them directly. Art.92 (4) states that Government and citizens shall have the duty to protect the environment.¹⁵⁷

3.3.2.2. The Forest Conservation and Utilization Proclamation

The Forest Conservation and Utilization Proclamation (Proc.542/2007)¹⁵⁸ is a comprehensive legislation on the forest management and use which aims to increase the contribution of forest resources to the national economy.¹⁵⁹ It also promotes markets for forest development. It recognizes two types of forest ownership¹⁶⁰: state and private forests¹⁶¹ and provides for the designation, demarcation and registration of major forestlands as state forests including providing legal recognition to privately held forests. The proclamation also provides a number of incentives for non-state actors such as local communities and the private sector to get involved in the management of forest reserves or to rehabilitate and/or reforest new areas. For example, Art.4 (3) states that provided that a management plan has been developed and approved, the State may give protected or productive state forests to communities, associations or investors for their continuous use and management. Art.4 (5) also states that 'any person who develops forest on his land holding or in a state forest area given to him on concession shall be given assurance to his ownership of the forest'.¹⁶² The proclamation gives priority to community in the process of designation and demarcation of state forests in case the process resulted in eviction of local communities. This is done through consulting the respective communities and understating their priorities. It also emphasizes the participation of local communities in the management of, and sharing of benefits from, state forests. The proclamation also mandates regional states to establish land administration and land use proclamations appropriate to respective regional states. Most importantly, the forest proclamation provides framework

¹⁵⁶ FDRE Constitution, cited above at note 15, Art. 52(2d)

¹⁵⁷ FDRE Constitution, cited above at note 15, Art.92

¹⁵⁸ This Proclamation is currently under revision, and a revised version is expected to be tabled for enactment soon.

¹⁵⁹ Forest Development, Conservation and Utilization Proclamation, 2007, Proc. No. 542, Fed.Neg.Gaz., 11th Year, No. 56. preamble

¹⁶⁰ As per Art.2(6) of the proclamation, "state forest" means any protected or productive forest, which is under the ownership of the Federal Government or a Regional State whereas private forest is defined as "private forest" means 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; as per Art.2(9) of the same.

¹⁶¹ However, with the forest law currently under revision, it has been suggested that community forest stand as an independent property-rights regime. That is, community forest is to include forests under Participatory Forest Management (PFM), and those resources purely under community ownership. The importance of this amendment, among others, rests in that it allows certification of individual (private) forests, as the current land registration and certification program only recognizes agricultural cropland.

¹⁶² Forest Proclamation, cited above at note 159, Art.4

for transferring land rights to individual users, communities, and private investors through the issuance of land holding certificates, concessions, or other agreements.¹⁶³

3.3.2.3. Environmental Protection Organs Establishment Proclamations

The objective of Proc. No. 295/2002¹⁶⁴ was to establish a system that fosters coordinated but differentiated responsibilities among environmental protection agencies at federal and regional levels as well as sector environmental units so as to foster sustainable use of environmental resources, thereby avoiding possible conflicts of interests and duplication of efforts.¹⁶⁵ Moreover, the former Environmental Protection Authority has been upgraded to a Ministry level (MEF) by the Proclamation No. 803/2013 and the duties and responsibilities of the authority¹⁶⁶ and the power and duties of the ministry of Agriculture with respect to matters related to forest are given to the ministry of environment and forest.¹⁶⁷ Proc.295/2002 established Sectoral Environmental Units and Regional Environmental Protection Agencies (REPAs) and every competent agency (line ministry) is required to establish or designate an environmental unit that shall be responsible for coordination and follow up so that the activities of the competent agency are in harmony with the Proclamation and with other environmental protection requirements.¹⁶⁸ Accordingly, some sectoral agencies such as Ministry of Agriculture, mines, and investment have established environmental units to deal with environmental issues and CRGE.¹⁶⁹ The Proclamation also provides that each national regional state shall establish an independent regional environmental agency or designate an existing agency that shall, based on the Ethiopian Environmental Policy and Conservation Strategy and ensuring public participation in the decision making process.¹⁷⁰

Furthermore, the proclamation on Definition of Powers and Duties of the Executive Organs Proclamation No.916/2015 redefined the mandates of several federal government agencies including that of the environment. For instance, it amends all previous laws and provides for expanded responsibility to the Ministry of Environment and Forest. One significant development was the addition of "Climate Change" in the naming of the Ministry thereby amplifying its mandate regarding climate change mitigation and adaptation activities. As per Art.3 of this proclamation, one of the responsibilities of the MEFCC is preparation of a mechanism that promotes social, economic and environmental justice and channel the

¹⁶³ Yitebtu Moges, Zewdu Eshetu and Sisay Nune. *Ethiopian Forest Resources: Current Status and Future Management Options in View of Access to Carbon Finances*. Addis Ababa, Ethiopia, (ECRN and the UNDP (Ethiopian Climate Research and Networking and UNDP, Oct. 2010).

¹⁶⁴ Environmental Protection Organs Establishment Proclamation, 2005, Proc. No. 295, *Fed.Neg. Gaz.*, 9th Year, No.7.

¹⁶⁵ Id, Environmental Organs Proclamation, Art. 3-6,

¹⁶⁶ Definition of Powers and Duties of the Executive Organs Proclamation (amendment) Proclamation No.803/2013. Art.2(6) states that Art.37(11) is added, which transfers of powers of the authority to this ministry.

¹⁶⁷ Id, Executive Organs Establishment Proclamation. Art.2(1)(establishment), Art.33(powers and duties of the MEFCC),

¹⁶⁸ Environmental Organs Proclamation, cited above at note 164. Art.14

¹⁶⁹ Ararsa Regassa, "Emissions Reductions at the landscape level in the Oromia Region", (MOA, FDRE). p.6

¹⁷⁰ Environmental Organs Proclamation, cited above at note 164. Art.15

major part of benefit derived thereof to the affected communities to reduce emissions of GHGs that would otherwise have resulted from deforestation and forest degradation. The other mandate is to coordinate actions on soliciting the resources required for building a climate resilient green economy in all sectors and at all Regional levels; as well as provide capacity building support and advisory services. The MEFCC also prepares programs and directives for the synergistic implementation and follow up of environmental agreements ratified by Ethiopia pertaining to the natural resources base, desertification, forests, hazardous chemicals, industrial wastes and anthropogenic environmental hazards with the objective of avoiding overlaps, wastage of resources and gaps during their implementation in all sectors and at all governance levels. The ministry also will take part in the negotiations of international environmental and climate change agreements and, as appropriate, initiate a process of their ratification; play key role in coordinating the nationwide responses to the agreements. The other responsibility is the development of environmental cost-benefit analysis and formulates an accounting system to be integrated in development plans and investment programs.¹⁷¹

3.3.2.4. Environmental Impact Assessment Proclamation

EIA¹⁷² in Ethiopia was introduced by Proc. No.299/2002¹⁷³ as a tool to predict and manage the environmental effects of a proposed development activity during its design, construction, operation or an ongoing industry as a result of its modification. The objective of undertaking the assessment study is to ensure the impacts of a development project and the incorporated mitigating measures for the adverse significant impacts, and policy programs are adequately considered while decisions are put into effect. As per the procedures in the Proclamation, a proponent is required to undertake a timely environmental impact assessment, assess the possible adverse impacts of the proposed project, and propose the means of mitigation, and shall submit the study report to the relevant body for review and decision. This Proclamation clearly indicates that major development programs, plans and projects of the private or public enterprises shall be subjected to EIA study before their approval for implementation. It also provides a legal base for the effective means of harmonizing and integrating environmental, economic, cultural and social considerations in to the planning and decision making processes thereby promoting sustainable development. Further, it serves as a basic instrument in bringing about administrative transparency and accountability, to involve the public and the communities in particular, in the planning and execution of development programs that may affect them and their environment. So far, the problem with this proclamation is that there is poor enforcement record, the government has little economic

¹⁷¹ Definition of Powers and Duties of the Executive Organs (ammendment) Proclamation No.916/ 2015, Art.3

¹⁷² EIA is a pro-active legal tool used to prevent potential damage and unintended outcomes of development projects by federal or regional governments and individual investment schemes. This principle goes well with that of REDD+ safeguards.

¹⁷³ Environmental Impact Assessment Proclamation, 2002, Proc. No.299, Federal Neg. Gaz., 9th Year, No 11.

incentive to enforce the law and the authority to implement the law assigned to different ministries with conflict of interest as well as there is no regulation to facilitate implementation. In practice, the effectiveness of the law and regulations is undermined by the current inappropriate placement of the EIA authority under different agencies at the Federal level. It is very unlikely that the agencies would vote against their development plans if in case the EIA outcome stands against the projects.¹⁷⁴ It is recommended to retract the dispersed EIA implementation authority from different agencies and place it under the MEFCC regional extensions, while the federal office assumes a monitoring and evaluation role. The EIA would be carried out by the government and a project owner bears the costs.

3.3.2.5. Environmental Pollution Control Proclamation

This Proclamation¹⁷⁵ is aimed at eliminating or, when not possible, to mitigate pollution as an undesirable consequence or social and economic development activities. It also states that the protection of the environment and safeguarding of human health, as well as the maintaining of biota and the aesthetic value of nature are the duty and responsibility of all citizens. It further considers other important issues such as control of pollution, management of hazardous waste, chemical and radioactive substances; the importance and need to respect environmental standards; and punitive and incentive measures.

3.3.2.6. Land Administration and Land Use Proclamation

The main aim of the Land Administration and Land use Proclamation¹⁷⁶ is to conserve and develop natural resources in rural areas by promoting sustainable land use practices. In order to encourage farmers and pastoralists to implement measures to guard against soil erosion, the proclamation introduces a Rural Land Holding Certificate, which provides a level of security of tenure. The Proclamation states that if a land, that has already been registered, is to be acquired for public works or for investment, compensation commensurate with the improvements made to the land shall be paid to the land use holder or substitute land shall be offered. The most relevant provision of the Proclamation regarding the government's effort to increase forest cover is Art.13(6) states that rural lands with slope of more than 60%, shall not be used for farming and free grazing; they shall be used for development of trees, perennial plants and forage production.¹⁷⁷ As land use plan is one of the strategic agenda that is going to be implemented in REDD+ implementation phase, the Proclamation will help reduce risk and enhance the benefit related to land use planning.

¹⁷⁴ Study of causes of deforestation and forest degradation in Ethiopia and the identification and prioritization of strategic options to address those, (Oy Arbonaut Ltd, May 2016). p.45

¹⁷⁵ Environmental Pollution Control Proclamation, 2002, Proc. No. 300, Fed.Neg. Gaz., 9th Year, No.2.

¹⁷⁶ Rural Land Administration and Land Use Proclamation, 2005, Proc. No. 456, Fed. Neg. Gaz., 9th Year, No. 44.

¹⁷⁷ Id, FDRE Rural Land Proclamation, Art.13(6)

However, the constitutionally accepted customary land rights are not recognized in Proclamation No. 456/2005. To the contrary, the Proclamation undermines the constitutional prerogative given to common property holders. Art.5(3) of the same proclamation reads: "Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary." Proclamation 456/2005 establishes cadastral mapping and certification of land, and provided no time limit for rural land holding rights of farmers. Although, it allows the transfer of use rights through inheritance to family members, and also leasing of land to investors for a limited period of time, the law commonly applies to farmers engaged in agricultural crop production but not to pastoralists or forest dependent communities.

3.4. The Institutional arrangements for REDD+ Implementation

In any given REDD+ country, the forest management institutions, governance context and decentralization policies are likely to influence the outcome of REDD+ on the ground.¹⁷⁸ Ethiopia follows a decentralized approach for its REDD+ institutions and hence responsibilities are vertically divided between national, regional and *woreda* levels. Regional level actors can implement REDD+ functions at their jurisdictions with some degree of independence from the national level authority. The principles on which the institutional arrangement for REDD+ is based include: good governance, decentralization to appropriate levels, inclusiveness, cost effectiveness and accountability in all REDD+ implementation activities.¹⁷⁹

Three entities have already been formed for REDD+ management arrangements at the federal level.¹⁸⁰ The Federal Level REDD Steering Committee (RSC) comprises ministers from relevant sectors, high level representatives from regional government, relevant bureaus, and non-governmental representatives (from academia, media, one umbrella NGOs) and one member from a forest user group (the last is yet to be identified).¹⁸¹ It is chaired by MEFCC. Its main functions are an advisory and guiding role, and the linking of REDD+ issues and activities to senior government agencies. The REDD Steering Committee also serves as the Technical Committee for the national CRGE initiative and both report to a Multi-sectoral Steering Committee that informs the Environmental Council and Parliament of the REDD+ and CRGE process.¹⁸²

The REDD Technical Working Group (RTWG) is comprised of experts and active practitioners in the REDD+ field, with representation from research, academia, government, NGOs and other development

¹⁷⁸ Demetrius K, *The Context of REDD+ in Tanzania: Drivers, agents and institutions* (2015). Available at CIFOR website.
Last seen on 08/04/2017.p.35.

¹⁷⁹ FDRE National REDD+ Strategy, cited above at note 12. P.30

¹⁸⁰ Dr. Yitebu Moges, cited above at note 10.p.18

¹⁸¹ FDRE National REDD+ Strategy, cited above at note 12. p.13

¹⁸² Dr. Yitebu Moges, cited above at note 10.p.23

organizations. These technical experts are responsible for the day to day management of the REDD+ strategy development. The RTWG also plays a key role in ensuring good coordination between the activities related to REDD+ and the other sectors, as a selection of its members take part in the REDD+ Sub Technical Committee.¹⁸³ The Federal level REDD+ Secretariat with a national coordinator and key technical and administrative staff is established under the State Minister of MEFCC. The REDD+ Secretariat is the main unit for managing day-to-day REDD+ activities and for implementing REDD+ on behalf of the Ministry. This unit is headed by a REDD+ coordinator. The REDD+ Secretariat is also one of 8 Sub-Technical Committees to the CRGE Technical Committee and it reports jointly to this and the REDD+ Steering Committee.¹⁸⁴ The REDD+ Secretariat is supported by the Federal Level REDD Technical Working Group (RTWG).¹⁸⁵

At the regional level management and coordination will follow a similar structure to the federal level with a Regional Level REDD Steering Committee (RRSC) and Regional Level REDD Technical Working Group (RRTWG) in each region, supported by *Woreda* (District) Level Technical Working Groups.¹⁸⁶ REDD+ focal points have been identified at 8 out of 11 regions and towns (in total 9 regions and 2 two chartered cities) to act as coordinators of the REDD+ readiness process at the regional level, and at present these will be the same as the CRGE focal points.¹⁸⁷ The regional REDD+ focal points will act as an intermediary between the federal and the regional level and will coordinate implementation of R-PP activities through existing regional structures, where Bureaus of Agriculture or regional state forestry enterprises will implement and provide technical support to REDD+ activities on the ground. The regional state enterprises are semi-autonomous government institutions that generate their own revenues in order to support their operations.¹⁸⁸

Regarding technical linkages and communication, the REDD+ Secretariat, under the leadership of the State Minister of MEFCC will have strong linkages with the Steering Committee and also provide guidance to the RCU. The RCU in turn shall have strong working relations with the REDD+ secretariat and also guides and supports the *Woreda* level implementation Unit. The *Woreda* level implementation Unit regularly communicates with the RCU and also ensures the implementation of the REDD+ actions on the ground through technical support to the *Kebele* level implementation. The validation and verification processes related to GHG calculations carried out at various levels from local sites to regional and national levels will be facilitated by the REDD+ Secretariat. In the long run and in consultation with stakeholders,

¹⁸³ FDRE National REDD+ Strategy, cited above at note 12. p.13

¹⁸⁴ Dr. Yitebu Moges, cited above at note 10.p.24

¹⁸⁵ FDRE National REDD+ Strategy, cited above at note 12. p.13

¹⁸⁶ FDRE National REDD+ Strategy, cited above at note 12. p.14

¹⁸⁷ Dr. Yitebu Moges, cited above at note 10.p.18

¹⁸⁸ Melaku Bekele et al, cited above at note 93, p.27

an accredited separate body that will take up this task will be instituted in the country. This independent third party will function in line with UNFCCC's modalities.¹⁸⁹ There is a strong need to strengthen the working relationships among implementing parties, including through strengthened federal, regional and local level government institutions and NGOs. Coordination on land use related implementation policies among different government institutions both at national and regional levels is needed to ensure consistency in REDD+ policies and measures. The REDD+ Secretariat supports effectiveness of thematic coordination among various ministries/institutions and between national, regional and local governments.¹⁹⁰

REDD+ is still at very early stages in Ethiopia and the institutional arrangements for managing and coordinating REDD+ activities are still in the process of being set up. In October 2013 the REDD+ Secretariat was housed by the Ministry of Agriculture (MoA) but later transferred to the recently established Ministry of Environment Protection and Forestry (July 2013) currently named Ministry of Environment, Forest and Climate Change (MEFCC) by Proc. No.916/2015. Since REDD+ is being rolled out as part of the wider CRGE initiative some of the advisory and coordinating functions are shared between the two. Sectors like forestry that is based on long-term planning and investment must be built on a stable institutional ground. Without stability organizations will always remain weak and deprived of their institutional memory, a critical tool that helps to enrich policies. Unfortunately, Ethiopia's forestry institutional stability and experience is the most undermined and unstable from among the government agencies.¹⁹¹ Regional institutional assessment shows that except in Oromia and now in Amhara the hierarchical position of forestry in the regional bureaucracy is close to the ground. Even the Oromia and Amhara enterprises, unless they reorganize themselves to include all aspects of forestry, their current structure as related to REDD+ is less convenient and much tilted towards the business portion of the forestry sector.¹⁹²

The other possible solution is an effective cross-sectoral coordination as REDD+ actors can be categorized into three primary categories.¹⁹³ The first category consists of the Federal MEFCC represented by the REDD+ Secretariat and its regional counterparts, wildlife and biodiversity agencies, communities, as well as financiers, and coordinating institutions (e.g. World Bank). In the second category, those who are responsible in shaping REDD+ policy and the legal frameworks contents, planning and implementing activities are the main actors. Under this category the ministries and agencies of agriculture, energy, mines, municipality administration, road construction, which are somehow linked with deforestation and

¹⁸⁹ Ararsa Regassa. et al, cited above at note 169. p.6

¹⁹⁰ Ibid.

¹⁹¹ Melaku Bekele et al, cited above at note 93, p.29

¹⁹² Study of causes of deforestation, cited above at note 174, p.75

¹⁹³ Ibid.

forest degradation, or in some cases rehabilitation works are included. In the third category, we find institutions supporting the operations financially including those environmental NGOs, CSOs, higher education institutions engaged in policy research and policy advocacy. MEFC has taken an active role and registered countable successes in mobilizing the support of research organizations (e.g. CIFOR), NGOs (e.g. Farm Africa) and a number of individual experts, indicated in the third category. The remaining challenge is how to require actors, especially government agencies, to accommodate the REDD+ objectives formally in their mandates, and coordinate planning of the activities with all others agencies affiliated with REDD+.

3.5. Status of the REDD+ Implementation in Ethiopia

To implement REDD+ on the ground, countries need to go through a process of policy design, consultation, and consensus building, testing, and evaluation. Government ownership of the process and commitment from key actors in a country are essential prerequisites for successful REDD+ planning and implementation.¹⁹⁴ Scholars in the field agree that there are three, possibly overlapping, phases for REDD+ implementation.¹⁹⁵ In the first 'readiness' phase, countries prepare a national REDD+ strategy through inclusive multi stakeholder consultations, start building capacity in monitoring, reporting and verification (MRV), and begin demonstration activities.¹⁹⁶ The second phase is 'more advanced readiness', but the focus is to implement policies and measures to reduce emissions as set out in the national REDD+ strategy. The third phase is full UNFCCC 'compliance', in which developing countries are compensated solely for reduced emissions and enhanced carbon stocks relative to agreed reference levels.¹⁹⁷

The REDD+ policy process in Ethiopia aims at developing a framework that is firmly embedded in the country's development plan and in an increasingly enabling political environment. Ethiopia is a participant country of the Forest Carbon Partnership Facility (FCPF) and submitted an R-PP¹⁹⁸ in 2011, which was approved in October 2012. The REDD+ Readiness Program, funded jointly by FCPF and the Governments of Norway and the UK, was launched in January 15, 2013.¹⁹⁹ Among the various activities planned for the readiness phase, the development of a national REDD+ Strategy is one of the most important milestones. As part of achieving REDD+ readiness Ethiopia is currently preparing its national

¹⁹⁴ Charlene Watson et al, cited above at note 5

¹⁹⁵ Angelsen A. et al, cited above at note 24. p.4-7.

¹⁹⁶ Verbist, B. et al, cited at note 22, p.21

¹⁹⁷ Ibid.

¹⁹⁸ The national R-PP involves set of activities including the preparation of a REDD+ strategy proposing a set of program or policy actions to reduce deforestation and/or forest degradation and enhance and conserve carbon stocks, that directly addresses the key drivers of deforestation and degradation.

¹⁹⁹ Dr. Yitebu Moges, cited above at note 10.p.21

REDD+ strategy. The draft National REDD+ Strategy was presented to the donors in November 2014 as one of the priority building blocks of the Readiness process. The core of the national REDD+ strategy is to curb deforestation, forest degradation and related emissions, while considering local livelihoods and preserving high biodiversity still found in Ethiopia for the future generations. The strategic options identified are translated into the GTP II.²⁰⁰ REDD+ is also embedded in Ethiopia's national CRGE Strategy as well. Ethiopia established the MEFCC in July 2015 with the mandate to facilitate the implementation of the CRGE Strategy, including through development programs in environmental management and forestry. Ethiopia is receiving international support to achieve REDD+ readiness and prepare itself for receiving results-based payments for emission reductions in the forestry sector. The national REDD+ Readiness program, coordinated under the REDD+ secretariat intends to serve as a vehicle through which the CRGE objectives on land use and forestry sector are achieved. The Readiness Phase of Ethiopia was completed by June 2016. Ethiopia is now in the second phase of REDD+ process (the policies and measures phase, which focuses on adopting regulatory framework for implementing REDD+ mechanism through new or reformed national policies on forest and other allied sectors). In this phase, focus is on designing instruments for implementing REDD+ without any hurdles. Likewise, the key issues such as equity in benefit sharing, carbon rights issues and issues related to distribution of benefits are to be clarified. For this, in depth understanding of regulatory framework, instruments for implementing REDD+ is needed. In this phase, pilot program would be implemented to have better understanding of MRV emission reduction system, results on actions of REDD+ and the effectiveness of the participation of different groups. Currently, the Oromia Forest Landscape Program is under implementation which is to be expanded at the National level. To this end, the National REDD+ secretariat commissioned the study at the Federal and Oromia regional state levels to examine the existing legal and institutional frameworks for the REDD+ program.²⁰¹ In February 2014 the National REDD+ Secretariat also commissioned the strategic environmental and social assessment (SESA) for mainstreaming sustainable development principles into the REDD+ strategy options. The study is consisted of detailing an environmental and social management framework (ESMF), process framework and resettlement policy framework.²⁰² The final reports of the studies were presented at different stakeholder consultations and the revision process of forest and natural resources laws is underway.²⁰³

²⁰⁰ Mulugeta Lemenih and Melaku Bekele, *Participatory Forest Management best practices, lesson learnt and challenges encountered: the Ethiopian and Tanzanian Experiences* (FARM Africa and SOS Sahel 2008). P.8

²⁰¹ Dr. Yitebu Moges, cited above at note 10.

²⁰² Study of causes of deforestation, cited above at note 174, p.77

²⁰³ The researcher was informed recently that almost all relevant laws to the forest management are under revision.

Participatory Forest Management (PFM)²⁰⁴ plays a pivotal role for successfully implement REDD+.²⁰⁵ Success and sustainability of PFM should therefore be weighed against the structural transformation initiated in state-community relationship in the context of forest governance and beyond, with clear positive contribution to REDD+ best performance. Ethiopia has been slowly adopting a PFM concept, which is now starting to gain momentum in the country – particularly in Oromia, but there are also a few zones with PFM areas designated in SNNP and Amhara.²⁰⁶ The Bale Eco Region (BER) in Oromia, which is part of the 34 global biodiversity hotspots, has National Regional and Global importance mainly in biodiversity conservation and as a source of diverse eco system sources. The BER is rich in natural resources that could support the livelihoods of communities living in the eco region. To sustainably manage the natural resources in the eco region, PFM community based organizations (CBOs) was one of the strategies. However, the assessment of these CBOs showed that most of PFM cooperatives lack integration and proper organizational management, limited implementation capacity of sustainable natural resource management and use.²⁰⁷

The major constraints to the REDD+ implementation success in Ethiopia are related to lack of land use planning, clear land/forest tenure, and land administration, serious institutional shortfall at all levels, lack of sectoral coordination, particularly horizontally, and severe lapse in enforcement of existing laws. According to a study by the REDD+ secretariat (2016), most of the regional legal frameworks appear to give adequate pledge to protect local community rights including their participation in decision-making, but enforcement and implementation of the regional and federal laws were found to be poor in many regional states as well as the forestry institutions remain weak from the perspective of effective REDD+ performance.²⁰⁸ Hence, identification and prioritization of the problems is one of the critical undertakings in the process of policy and institutional analysis of such kind. The same study suggested that developing forest ownership and tenure law which is fair, stable and unambiguous with clear rights and duties (state, communal common, private), developing the insightful legal instruments (policy, law and regulation) that consider the PFM approach as the main driver of forest management in the country shall be adopted as REDD+ enabling forest governance and law enforcement interventions.²⁰⁹

²⁰⁴ PFM is essentially a political and socio-economic arrangement through which communities and their elected leaders are made autonomous and accountable in their decision concerning forest governance. It is a mechanism where partnership between the state and community is negotiated over forest resource ownership, management and benefit sharing, as the case may be.

²⁰⁵ Angelsen A, Brockhaus M, Sunderlin WD and Verhot LV., *Analyzing REDD+: Challenges and Choices*, (Bogor, Indonesia: CIFOR, 2012).

²⁰⁶ Study of causes of deforestation, cited above at note 174, p.78

²⁰⁷ Eco-Region, SHARE BER Project consortium, *Newsletter No.1*, Addis Ababa, 2016.

²⁰⁸ Study of causes of deforestation, cited above at note 174, p.75

²⁰⁹ Ibid.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

REDD+ is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low carbon paths to sustainable development. It goes beyond deforestation and forest degradation: including the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks. REDD+ activities require cross sectoral and multidisciplinary undertaking that require strong cooperation in the policies, laws and development program preparation and implementation. As part of their R-PP, Indonesia, Tanzania, DRC and Ethiopia have acknowledged the importance of clarifying issues arising from forest carbon ownership and governance.

In Ethiopia, the REDD+ scheme relies on national responsibility (with global extension) to execute the goals and objectives of climate change mitigation. As one of the most recent countries to submit an R-PP to the FCPF, Ethiopia is focused on utilizing the emerging international framework and financial support for REDD+ to assist in addressing the challenges of climate change. The FDRE REDD+ Strategy aims at engaging local communities and at the same time maintaining links with the centralized political decision-making processes.

The FDRE Constitution vests the ownership of land and natural resources in the State. This establishes a precondition for centralized forest management and tenure arrangements. If forest carbon is defined as a natural resource, it could be argued that forest carbon rights also vest in the State. However, the FDRE Constitution permits every Ethiopian to the right to own private property.²¹⁰ If forest carbon is defined as something produced by the communities that manage a REDD+ project and/or the private operators who invest in projects, the forest carbon rights might be considered to be private property – even though there is a presumption of State ownership over natural resources.

The 1997 EPE deals with Forest, Woodland and Tree resources with practical provisions aimed at the drivers of unsustainable forest use. To implement the policy, the 2007 Forest Proclamation outlines more specific forestry provisions, and establishes both private and State forest ownership. It allows for private development²¹¹ of rural forests in accordance with regional laws, and concessions to be taken out in State forests. However, this law would need to be reconciled with the interpretation of “forest carbon rights” in

²¹⁰ Where private property is either a tangible or intangible product flowing from the work of individuals, collectives or communities.

²¹¹ If “development” catches conservation for the purposes of creating forest carbon assets, it might be possible to use existing concession arrangements to secure either private ownership or use rights over forested land.

the constitutional context, that is, whether forest carbon is a natural resource owned by the State, or an intangible form of private property derived from use rights over the forested land.

The importance of community participation and consultation is enshrined in the FDRE Constitution, the CRGE Strategy, the REDD+ Strategy, the EPE as well as the EIA, forest and land proclamations. However, these laws do not necessarily reflect the extent to which they are translated into practice, and the emphasis on participation/consultation rather than ownership and control may result in an unfavorable power differential between communities and the State. If community rights are limited to procedural issues that rely on State authorities to realize them, then forest dependent peoples need some assurance about the capacity and willingness of governments to respect their interests.

The FDRE REDD+ Strategy also recognizes the role that existing or future demonstration projects capable of creating carbon credits may have in testing key mechanisms relevant to REDD+ implementation. This is a positive approach in that recognition of the role such projects can play in the development of a national approach enhances the attractiveness of Ethiopia as a location for private co-investment in such projects. Another positive point is the reported success of business oriented forestry enterprises being used to manage forest resources at a regional level and thus also take the lead in implementing REDD+ activities in the Amhara and Oromia regions.²¹² The lessons from such enterprises might assist in creating strategies to address the reported under-engagement of the private sector in REDD+ pilots, with a view to considering a possible role for public-private cooperation in REDD+ projects. Sustainable economic progress should be built on stable, fair and secure tenure system to make REDD+ to succeed. Clarifying status of individual, community and state rights and duties over forests in the legal framework of the country is the first step to determine the rights over carbon and related benefits.

Generally, there are many positive signs for the development of REDD+ in Ethiopia. Notwithstanding the challenges posed by fragmented governance between the federal and regional levels, existing regulatory structures (in the form of constitutional mandate, policy and proclamations) could potentially support REDD+. Many of the existing laws governing forestry are also in the process of revision through the involvement of the REDD+ Secretariat which could be a good progress for the REDD+ implementation in the second and third phase from which Ethiopia expects huge investment which can support both early demonstration activities and future investment flows.

²¹² FDRE R-PP, cited above at note 13. p 41, para 3. p 99, para 2 A particular example is the Oromia Region's Forest and Wildlife Enterprise, which is also involved in the implementation of the Bale Eco-Region Sustainable Management Project, which covers some 500,000 hectares and involves forest rehabilitation, sustainable forest management and the testing of different forest management models.

4.2. Recommendations

Based on the key findings of this study and the attached potential prospects of REDD+ to tackle climate problems, the following recommendations are suggested.

- ✓ Ethiopian well-constructed policies and laws on forests and natural resources have remained unimplemented. Addressing these problems requires interventions such as awareness creation, capacity building to law enforcement bodies, increased public participation and putting in place a transparent system among others.
- ✓ Community forest and participatory forest managements also need to get a legal basis and the currently under revision laws shall provide communities with sufficient autonomy and allow them to fully exercise their rights.
- ✓ To make REDD+ performance effective, the forest resources in the country should be established on fair and stable forest property rights regimes. Hence, more explicit benefit-sharing provisions relating to the revenues from REDD+ credits should be drafted into existing legal instruments which could provide greater legal certainty for investors and promote community confidence and support for the REDD+.
- ✓ The REDD+ institutional set up from the federal to the regional and local levels shall be strengthened by extending the MEFCC structure from the federal level to *Kebele* level, aligning institutional responsibilities with human capacity, ensuring the lower body of policy/program implementers (including communities) exercise sufficient authority in decision making concerning local natural resources assessment and avoiding ambiguity and overlaps in the laws forming institutions and assigning duties are also recommended.
- ✓ The policy direction of forest development of the country as a long time venture should be revised in line with the REDD+ objectives and safeguards, international environmental (forest) and community rights conventions and principles, and consider both societal material needs as well as environmental concerns.
- ✓ It is also important to utilize the advice and research outputs of Universities and Research Organizations and seek inputs from Civil Society and prominent individuals over policy construction.

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