

Annex 5 to Project Design Document

ETHIOPIA HUMBO ASSISTED NATURAL REGENERATION PROJECT LEGAL AND INSTITUTIONAL ASPECTS

1. Introduction

This report is an elaboration prepared in 2009 of an earlier legal and institutional study draft report prepared in 2006, concerning the above-mentioned project. It is aimed at analyzing and clarifying legal and institutional issues that are directly or indirectly related to the proposed implementation of the reforestation carbon project and to suggest measures that need to be taken to address such issues.

The Terms of Reference to carry out this draft report work, included:

- Analysis of land tenure issues and associated rights and responsibilities;
- Identification of possible conflicts that may arise in relation to land tenure and land rights issues, if any, and making concrete proposals to address those issues;
- Clarification of who owns the right to the carbon sequestered by afforestation/reforestation on the different project sites;
- Determination of best institutional arrangements for ensuring carbon sequestration and sale by the communities to the carbon buyer and payments from the carbon buyer to communities;
- Making propositions regarding the entities which will sign the carbon contract, analyzing the pros and cons of each option;
- Determination of the responsibilities of the different stakeholders of the project;
- Definition and preparation of contractual arrangements; and
- Completing annex 7 of the CFD on carbon ownership.

Accordingly, a legal and institutional consultant prepared the first version of this draft report addressing the main issues identified in the TOR. In section 2 of the draft report, the national legal framework regarding issues of land ownership, land tenure, land rights as well as title to carbon have been addressed. Legal analyses of national laws regarding

such issues have been made taking into account their relevance to the reforestation carbon project. The findings made during the World Bank/World Vision visit to the project area have been discussed where these findings were related and relevant to some of the legal and institutional issues elaborated in this report. In addition, relevant sectoral laws, such as the forestry laws at both the federal and regional level (SNNPRS), as well as the environmental law with special emphasis on the requirements of Environmental Impact Assessment under national law has been discussed in section 2.

Section 3 deals with the roles and responsibilities of different stakeholders in the implementation and monitoring of the proposed project while section 4 of the report discusses the relevant legal issues that arise with respect to the establishment and registration of the community forest management group.

In all of the above discussions, there have been suggestions and recommendations made in regard to the legal and institutional issues discussed. The last and final section, Section 5, raises a few points for follow up activities in relation to the legal and institutional issues dealt with in the report.

The text has been revised as a response to requests made during project validation mission in March-April 2009 to remove obsolete sections and to clarify decisions made and steps taken after the preparation of the original draft report.

2. The Legal Framework

2.1 Ownership, Land Tenure and Land Rights

2.1.1 Land Ownership

The Constitution of the Federal Democratic Republic of Ethiopia is the supreme law in the country, and any policy or law issued by the legislative body or governmental sectors at both the federal and regional levels, should be consistent with the provisions stipulated in the Constitution on any given subject matter. Since Ethiopia has a federal system of government, Regional States are also empowered, and have issued, their own Constitutions that are in line with the Federal Constitution.

There are several provisions that pertain to property rights, land tenure and land rights in both the Federal and the Southern Nations, Nationalities and Peoples' Regional State (SNNPRS) Constitutions in which the potential reforestation carbon project sites are found. Since there are no significant differences between the latter two Constitutions as far as property rights are concerned (Articles 40), the discussions below apply to both unless there is an explicit reference to one of them.

Ownership of both rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Thus, the land in the potential project sites is under State ownership with the Southern Nations, Nationalities and Peoples Regional State (SNNPRS), and more specifically the Woreda (district), having authority in making decisions regarding the allocation and transfer of land rights over the project site to the communities. It is to be noted that currently, the communities living within and outside of the potential project sites have common access rights over the land for use as livestock grazing (feed), fuel wood, making of charcoal etc.

The Constitutions also provide that land is not subject to sale or to other means of exchange. The meaning of the phrase 'other means of exchange' is not elaborated. What is clear, however, is that land is not legally considered as private property and cannot be alienated by any means.

2.1.2 Access Rights

As mentioned above, the community living within and outside the potential project sites have common access rights over the land that is used for grazing their livestock, fuel wood etc.

During the field visits made by the 2006 mission to the potential project sites for the carbon reforestation project, the discussions with the communities indicated that there might be conflicting claims over access to the project area. Another pertinent lesson learned from World Vision field visits was derived from the experience of the ‘Integrated Forest Management Project’ implemented in Adaba-Dodola in the Oromia Region. According to focus group discussions, members of the community from non-forest areas, who had been excluded from the project, claimed that they had been adversely affected as a result of the enclosure of the forested area since they have been forbidden access to grazing land and taking wood for fuel wood purposes. Thus, they subsequently paid for fuel wood taken from the enclosed area. They said that they should have been included in the project and equally contribute to and benefit from the activities of the afforestation program.

These examples of potential conflict among the communities over access rights to common land and the issue of who should be included in the project have important legal implications to any carbon reforestation project in terms of defining the community to be included in the project and to defining who should have the rights to the land and to the accruing benefits when it is transformed to community holding. Accordingly, the issue of clearly defining the communities to be included and participate in the project was further examined and clearly defined in consultations with the communities after the 2006 study. Conflicting claims were partly the reason for the decision not to implement the project in some of the originally planned sites (Sodo, Damote).

2.1.3 Property Rights to Land

Private property is defined in the Constitutions as any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an

individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

The right to immovable property built on land as well as permanent improvements brought about on the land by the labour or capital of land holders is guaranteed, including the right to alienate, bequeath and, where the right of use expires, to remove the property, transfer the title or claim compensation for it. Accordingly, apart from the land, which is not subject to sale, all immovable and movable property such as crops, trees and other vegetation on the land is considered private property and the holder of a right over the land has the right to alienate such property, bequeath it to heirs and transfer title to the property. In case such property is subject to expropriation, the right holder is entitled to claim compensation for it. The Constitution provides that the government may expropriate private property for public purposes subject to advance compensation commensurate to the value of the property.

The term “public purpose” has been defined in a Proclamation providing for “the expropriation of land holdings for public purposes and payment of compensation (Proclamation No. 455/2005) as *‘the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable development objectives’*. Thus, expropriation for public purposes can be operational only when it is ascertained that it is in accordance with development plan and that it meets the interests of the people that should acquire direct or indirect benefits from the public undertaking. This definition seems to be directed in ensuring that public authorities do not carry out expropriation of land for public purposes in a discretionary manner.

A Proclamation has also been issued at the Federal level regarding payment of compensation where expropriation of landholdings takes place for public purposes (Proclamation No. 455/2005). Detailed provisions on how expropriation can take place, notification order, basis and amount of compensation, valuation of property etc. is provided in the Proclamation.

The Constitution also provides that peasants and pastoralists have the right to obtain land without payment and the protection of eviction or displacement from their possession the implementation of which shall be specified by law.

Thus, with respect to the site of the Humbo project, as the communities have secured title to the land upon the conditions that are examined below, they have a private property right over the vegetation and trees or other permanent improvements made on the land including immovable property and such right includes the right to alienate, bequeath, and transfer title to third parties.

2.1.4 Land Holding Rights

The Federal Rural Land Administration and Land Use Proclamation No. 456/2005, and the SNNPRS (Regional) Rural Land Administration and Utilization Proclamation No. 53/2003, are the two legal instruments that further specify the content of rights a rural landholder or cooperative may have over the land. Within SNNPRS proclamation no 53/2003 a possessory right is defined as ‘the right any peasant or pastoral shall have to use rural land for agriculture or natural resource development activities’. Natural resource is defined as ‘living things and non-living things, which are gift of nature found on the land’. Legal counsel and confirmation from the EPA, state, and Woreda level natural resource management specialists confirm that this includes rights to carbon sequestered in the forest. The two proclamations also specify the types of holdings pertaining to rural land; provisions on land measurements, registration and holding certificate; duration of rural land use rights and transfer of such rights; obligations of rural land users etc. The Federal Proclamation provides that each regional council (parliament) shall enact its own land administration and land use law consisting of detailed provisions necessary to implement the federal law.

“Holding Right” or “Possessory Right” (the term used in the SNNPRS Proclamation) is defined as the right of any peasant or pastoralist (semi-pastoralist) *to use* rural land for the purpose of agricultural and natural resources development and the right includes the right *to lease* and *bequeath* it to family members. Similar to what is provided in the respective Federal and Regional Constitutions, the Rural Land Administration and Use

Proclamations also provide for the right to acquire property produced on the land by the labor or capital of the holder of the right and to sell, exchange and bequeath same. Thus, the bundle of rights included within the term “land holding right” includes the right to use, lease and bequeath the land to heirs and acquire private property over both immovable and movable property that is produced by the labor or capital of the landholder concerned.

There are three different types of land holdings provided in the Proclamations, namely, private holding, state holding and communal holding. The definition given to the latter types of land holdings in both the Federal and Regional Proclamations is more or less similar in nature. “Private holdings” is defined as rural land under the holding of peasants or pastoralists or other bodies legally entitled to use rural land (e.g. private investors). “State holdings” is defined as rural land demarcated or to be demarcated as Federal or Regional state holding and includes forest lands, wildlife protected areas, state farms etc. “Communal holdings” are defined as rural land which is allocated by the government to local communities for common grazing, forestry and other social services. The SNNPRS Proclamation defines “community holdings” in a slightly different manner. It stipulates that “community holdings” is land which is not designated as state or private holding and is being used by the local community as common holding for the purpose of grazing, forestry or other social services”. Thus, the Regional Proclamation takes into account the existing use of land. Land which is currently being used by the community in common for grazing, forestry (e.g. for fuel wood) falls under the term “community holdings”.

For the purpose of the Humbo project, the most important definition is that given to “community holdings”. Accordingly, the definition given under both the Federal and Regional laws allows the designation of the project site as community holdings. The law also provides that holding certificates (title deeds) will also be issued as proof of rural land use right. Indeed, after the Humbo project site was designated as communal holdings, holding certificates or title deeds were given to the holders of the right (see Art 8 of the SNNPRS Proclamation No. 53/2003) that is, the seven cooperative societies.

With regard to the duration of rights, the Federal land administration and land use Proclamation provides that a rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit. Since the local community within and around the

projects sites are peasants, there will be no time limit regarding their user rights over the land holdings they will be allocated.

Another issue that arose in this respect is defining the specific user rights of the community over the land within the project site. The issues were: a) Were blocks of land (in ha) to be allocated to a group of households? b) Should individual households be given user rights over a certain block of land? c) Should the community as whole have equal user rights over the block of the project site assigned to it? And d) Should all communities around site 1 and those around site 3 jointly hold the rights? These issues were answered in subsequent communication in 2006 as outlined below.

In initial discussions with some members of the communities during World Vision field visits on this issue, there were mixed responses. Following intensive consultations with all the communities concerned, this issue was clarified. Unfortunately, some of the communities originally planned to be included in the project had to be excluded partly because clarity could not be reached. In the communities at the Humbo site, the specific user rights of the members of the community needs have been clearly articulated in the bye-laws that have been prepared subsequently and which has been the basis for entering into a user rights agreement with the relevant authorities at the Woreda level.

2.2 Title to Carbon

The legal nature of the right to sequestered carbon (CERs) is not defined under the current Ethiopian legal system. This is not surprising in light of the fact that carbon, as a marketable product, is a 'novel' form of property and could not be envisaged in the past when defining property rights or the bundle of rights within the legal concept of property.

As discussed earlier on, holding rights over land under the Ethiopian legal system includes the right to any fruits of the land that is produced by the labour, capital or creativity of the landholder, be it immovable or movable property. Except the land itself, which is state property, all fruits of the land are considered private property and may be subject to alienation through sale, bequeathed to heirs, transferred to third parties etc., be

it privately held or communally. Viewed from this aspect, one may argue that the sequestered carbon is the result of planting trees and allowing natural re-growth through the reforestation project and is therefore a product of the labour of those who planted the trees or protected them to allow re-growth. On the basis of this legal interpretation, one can give title over the sequestered carbon to the households or communities who reforested the area under consideration.

In the original legal study, the above interpretation was considered also from the point of view that the right to sequestered carbon does not seem to have been contemplated in the current legal system. According to that line of thought, since carbon emission reduction is a novel concept one cannot with certainty claim that it is covered under current Ethiopian law and that the sequestered carbon could thus be considered a natural resource. If so, the State could have a rightful claim over it since the Constitution provides that “the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia”.

As mentioned above, legal counsel and confirmation from the EPA, state, and Woreda level natural resource management specialists after the preparation of the initial legal report draft has confirmed that carbon sequestered in the forest is equated to “fruits of the land that is produced by the labour, capital or creativity of the landholder” and the landholder thus has the property rights to the carbon.

Even though no dispute over ownership of sequestered carbon exists, the recommendation of the original legal report draft is still valid, that in the future, national legislation be enacted that defines the nature of the sequestered carbon (CERs) and the rights thereon in order to provide legal stability and clarity over the title to carbon. As the designated national authority for the clean development mechanism (CDM), it is proposed that the Federal Environmental Protection Authority (EPA), initiate such legislation.

To clearly state the ownership of carbon, the project parties have entered into contractual agreements clearly defining the nature and title to sequestered carbon. Under the law of contracts, the contracting parties have established terms and conditions as they deem

appropriate so long as such stipulations are not contrary to other laws, public order, morals etc.

Another issue that follows from the above was, who would be parties to the Emission Reductions Purchase Agreement (ERPA) and how would the flow of funds (the carbon fund in this case) be administered and treated? The direct beneficiaries of the reforestation carbon project are the local communities living in and around the project area. To represent these communities, community cooperative societies could be established as legal entities, they would be able to enter into contracts and therefore, would have the legal capacity to sign the carbon purchase agreement and directly be the recipient of the funds.

A second option was for World Vision Ethiopia to be the signatory of the ERPA and the recipient of the carbon fund, as a primary proponent of the reforestation carbon project as well as acting as representative of the communities involved in the project and then allocating the funds to the communities. If World Vision was to act on behalf of the communities, there should be an express consent of the communities to the effect that World Vision can act as their representative for signing the ERPA. The latter option was chosen as it was mutually recognized by all involved parties that the new cooperatives might not have the capacity for financial management and, probably, for technical or other aspects of the project at an early stage. At the same time, seven community cooperatives were set up in respective communities of the Humbo site, and an arrangement to hand over the rights and responsibilities of the project to the cooperatives in due schedule was agreed on.

The terms and conditions of the flow of funds and the rights and responsibilities of the primary project proponent and allocation of the funds are clearly spelt out between the parties in separate agreements. World Vision has had to take some of the major responsibilities in ensuring the sustainability and viability of the project as a signatory of the ERPA as well as ensuring that the terms and conditions of the agreement are adhered to for the duration of the project or until the time the cooperatives can take over the responsibilities from it. As such, some staff of the World Vision are constantly actively

engaged in the project in supporting the communities in capacity building, monitoring the project etc.

The communities who are the direct participants and beneficiaries of the carbon fund have been thoroughly consulted and their consent given on this issue, which helps avoid possible challenges and claims that may be made in connection with benefit sharing arrangements and management of the project in the future. The Woreda authorities have also been consulted on this matter.

2.3 Relevant Sectoral Laws

2.3.1 Forestry Law

The “Forestry Conservation, Development and Utilization Proclamation” was issued at the Federal level in 1994 (Proclamation No.94/1994). The term “forest” is defined as ‘...a community of plants either naturally grown or developed by planting and in many respects are trees and other plants having a woody character’ (Art.2.3). Forests are thus defined into natural forests (e.g. naturally growing indigenous trees) and forests established by planting (e.g. afforestation or reforestation). Again, “trees” are defined as ‘...any woody plant regardless of its, species, age, size including bamboo, reeds and palms as well as other plants to be designated as “trees by the Ministry” (Art.2.4). The definition given to “forest” and “trees” in the SNNPRS Forestry Proclamation is similar to that given in the Federal Proclamation (Arts.2.3 and 2.8 of Proclamation No.77/2004).

The Ethiopian Designate National Authority for CDM, EPA, has communicated to the UNFCCC CDM Executive Board the definition of forest used for CDM projects in Ethiopia, which is as follows:

- A minimum area of 0.05 hectares;
- A minimum tree crown cover of 20 per cent;
- A minimum average tree height above 2 m.

Of more importance to the proposed reforestation carbon project, is the Forestry Proclamation issued by the SNNPRS, namely, the “SNNPRS Forest Management, Development and Utilization Proclamation No. 77/2004. The Proclamation classifies forests into:

- State-owned forest- a forest in a given area that is not private, developed naturally or artificially by the region and described as such in the region’s official gazette (Art2.4).
- Reserved forest land- an area forest reserved for local genetic resources and biodiversity conservation purpose (Art 2.5).
- Private forest- a forest developed by any person or group of persons organized under Kebele administration or association (Art2.6).

On the basis of the above cited definitions given in the Proclamation regarding the different types of forest areas, a community-based forestry project falls under the term ‘private forest’.

Two types of ownership are provided in the Proclamation, namely, state-owned forest and private forest. Thus, once the area to be developed under the project is transferred to the community, it will be designated as private forest ownership. One issue related to transfer of forestland into private forest and which was analyzed in the original legal study, is a provision in the proclamation defining the term “concession”. “Concession” is defined as ‘the act of contracting out a forest resource to an individual, a group, association or organization for a limited period of time’ (Art.2.10). This definition seems to imply that, distinct from the land itself, forest land will be allocated to groups, associations or organizing through a concession *for a limited period of time*. Thus, in other words, with respect to the Humbo project, there might have been a need to get a concession permit from the Woreda authorities (the forestry department) for use of the proposed land for forestry purposes as distinct from the community holding certificate that also needed to be given for the land. It may be pointed out here that the term ‘forest land’ is defined in the proclamation as ‘an area reserved for forest development and conservation, which includes natural or artificially developed tree having woody features.

The land also embraces bush lands and barren lands on sloping areas' (Art.2.12). The duration of time for which the concession would be given is not fixed in the proclamation. In the continued communications with the Woreda authorities that were carried out since the above analysis on the legal implications, it was confirmed that the regulation regarding concession right does not apply to the type of activities carried out in the project on the type of land for which user right certificates have been granted.

Another important provision provided in the Regional Forestry Proclamation stipulates that "individuals, associations and organizations are encouraged to engage in forest development activities with a view to nurturing various species of trees useful for fuel wood, construction and environmental conservation" (Art. 7.a). Furthermore, it provides that "individuals, associations and organizations have the right to develop forest on private area or on area given to them by the government to meet their demand for forest products and enhance their source of income" (Art. 7.b). These two provisions clearly show that the Regional Government is committed to community-based forestry development and management that promotes community livelihoods and increase their income and would encourage projects such as the proposed reforestation carbon project.

The participation of local communities in forestry resources management, development and utilization is also underlined in the Regional Proclamation which provides, among others: "the local people should directly participate in identifying the problems associated with afforestation as well as forest conservation and development and the preparation of relevant plans" (Art. 11.1). It further provides that the government will render the necessary support to increase their awareness on forestry management and environmental conservation and for them to benefit from forestry projects (Art. 11.2).

In sum, the legal framework regarding community-based forestry projects in the SNNPRS is conducive to the proposed reforestation carbon project. Clear understanding of the legal considerations has been further promoted during project preparation through repeated consultations with the relevant Woreda authorities.

2.3.2 Environmental Law

The Environmental Protection Authority (EPA) is the body that is responsible for environmental management and protection of the country at the federal level. Among its responsibilities is the preparation of policies, strategies and laws in consultation with other relevant government sectors at both the federal and regional level and the public at large and upon approval, monitor and enforce their implementation (Art. 6.2 of Proclamation No. 295/2002).

To date, three legal instruments have been issued by the parliament relating to the environment, namely:

- The Environmental Protection Organs Establishment Proclamation No. 295/2002;
- The Environmental Pollution Control Proclamation No. 300/2002; and
- The Environmental Impact Assessment (EIA) Proclamation No.299/2002.

For the purpose of the Humbo project, the relevant law that needs to be examined is the EIA Proclamation since the project proponent is required, under the CDM requirements as well as the national legislation, to conduct an environmental impact assessment of the possible environmental impacts of the proposed project. Moreover, as the designated national authority (DNA) for CDM projects, the EPA is required to review the project design document (PDD) to ensure that the project proponent has conducted an appropriate EIA prior to issuing a letter of endorsement. EPA has also issued EIA procedural guidelines and several sectoral EIA guidelines including EIA guidelines on Forestry projects in 2004 which have been considered.

Generally, no person may commence implementation of any project that requires an environmental impact assessment without the authorization of the EPA or the relevant regional environmental agency (Art 3.1). In the same vein, it is also provided that any licensing agency empowered by law to issue an investment permit or a trade or operating license shall ensure that the EPA or the relevant regional environmental agency has

authorized the implementation of the project prior to the issuance of any permit (Art 2.5 and 3.3). It is further provided in the Proclamation that a directive will be issued that categorizes projects that require EIA and that classifies projects that are not likely to have negative (environmental) impacts and thus do not require EIA and those that are likely to have negative impacts and thus will be subject to EIA (Article 5). However, when the EPA or the relevant regional environmental agency believes that the possible impacts of the project are insignificant, it may decide not to require the project proponent to conduct an environmental impact assessment (Art. 3.2).

The Proclamation stipulates that the proponent shall undertake an EIA identifying the likely adverse impacts of the project and incorporate planned mitigation measures and submit an environmental impact study report including relevant document to the EPA or the relevant Regional Environmental Agency (Art. 7.1). The minimum contents that should be incorporated in the report are specified in Article 8 which also provides that the necessary elements to prepare and evaluate the EIS report will be issued as guidelines by the EPA. It is also provided that the EPA or the relevant regional environmental agency shall ensure comments made by the public and in particular by the communities likely to be affected by the implementation of the project are incorporated into the environmental impact study report (Art. 15). The EPA or the regional environmental agency has to review and make decisions on the EIS report within fifteen working days (Art. 9.2).

As mentioned earlier, the EPA has issued EIA procedural guidelines as well as EIA guidelines for forestry projects. The EIA procedural guidelines describe the process and requirements for conducting an EIA. It also provides annexes which has a list of activities that may have significant environmental impacts and therefore may require a full EIA and activities that are deemed not to have impact and therefore do not require EIA. Schedule 1 of the procedural guidelines, which has a list of projects that may have significant environmental impacts, forestry activities are included. Included under this general list are: “forest plantation and afforestation and introduction of new species.” It thus seems that reforestation projects are considered to have likely significant environmental impacts and may therefore require a full EIA. However, there are distinct stages that an EIA process has to pass through before the EPA or the relevant regional

environmental agency may require a full EIA to be conducted. The first stage is known as the screening process where the proponent undertakes an initial (preliminary) environmental assessment (IEE) of the given project and submits such report (a project profile) to the relevant environmental agency. The screening report or IEE would normally include: the proposed activity and its potential impacts; characteristics of the location (sensitivity of the area); size of project (small, medium and large scale); degree of public interest and institutional requirements, environmental enhancement and monitoring considerations. This will be reviewed by the relevant environmental agency and the outcome of the report may be that no environmental assessment will be required. However, if the project has limited impacts or where the need of environmental assessment is unclear or it contains inadequate information, then a preliminary environmental impact assessment will be required. It is only when the IEE indicates that there is sufficient ground for a detailed environmental assessment that a full scale EIA is required.

In essence, since the reforestation carbon project is directed to rehabilitate an already degraded land and has more environmental and social benefits than adverse impacts, there was no requirement for a full scale EIA to be made for the project. In fact, one incentive provided in the EIA Proclamation is that “the Authority (EPA) or the relevant regional environmental agency shall, within the capacity available to it, support implementation of a project destined to rehabilitate a degraded environment” (Art. 16).

According to the above, the EPA reviewed the PDD of the Humbo project, including the management of environmental safeguards issues, and issued a Letter of Approval on 28 January 2008. Because the negative environmental impacts of the project are assessed to be insignificant, an EIA is not required. In fact it is anticipated that the project has several positive environmental impacts outside the scope of carbon sequestration. Instead of an EIA, a system of monitoring possible environmental impacts is included in the overall monitoring plan of the project.

The EIA guidelines for forestry projects provides for a list of elements that should at least be covered when conducting an EA. These are:

- Project location and siting, including location map.
- History of forest management in the area.
- Land tenure and uses.
- Affected groups (directly and indirectly).
- Existing and proposed location of human settlements and public services such as health centres and accident and emergency units.
- Natural and human resources requirements.
- Socio-cultural factors or constraints, such as customs and beliefs.
- Project characteristics: planting and/or forest management activities, harvesting or protection methods, expected production, etc.
- Targeted tree species and justification.
- Use of fertilizers and chemicals.
- Fire and pest management plan.
- Forest products transportation.
- Forest products marketing methods.
- Construction activities (land preparation, use of heavy machinery, forest roads, facilities such as workers' camps etc).
- Anticipated liquid, solid (including waste) and gaseous emissions, and sources of nuisances (at construction and operation stages).
- Investments schedules and costs.
- Maintenance works and associated costs.
- Consultation mechanisms and participation mechanisms.

It is to be noted that the above cited elements seem to have been envisaged for incorporation when conducting a full scale EIA and some of the elements are also related to commercial forestry projects. Thus, not all the above cited elements need to be incorporated in community based afforestation/reforestation projects and only the relevant elements applicable to such projects need to be incorporated in the proposed reforestation carbon project. Most of the above cited elements were already incorporated in the World Bank Carbon Finance Document prepared earlier on, and the social impacts

that the project would have on the community and the results of consultations that were made with the community and the level of support they have for the project, was included in the PDD and its annexes, as also requested by the EPA in discussions with it in 2006.

3. Roles and Responsibilities of National Stakeholders for Project Implementation and Monitoring

3.1 Federal Government Bodies

3.1.1 The Environmental Protection Authority (EPA)

Proclamation No.9/1995 initially established the Environmental Protection Authority as an autonomous government body at the federal level responsible for environmental management and protection of the country's resources. It was subsequently re-established by the "Environmental Protection Organs Establishment Proclamation No. 295/2002" as an autonomous public institution accountable to the Prime Minister (Art. 3).

One of the mandates of the EPA is to take part in the negotiations of international environmental agreements and, as appropriate, initiate or cause the initiation of a process of ratification (Art.6.8). Accordingly, Ethiopia has ratified the Kyoto Protocol in February 2005 and EPA has been designated as the national implementation body in the ratification instrument. In line with this, therefore, EPA is the Designated National Authority (DNA) for activities that fall within the ambit of the Clean Development Mechanism (CDM) under the Kyoto Protocol such as the reforestation carbon project that is currently proposed for implementation in the SNNPRS.

As the DNA for the implementation of CDM projects, the EPA is required to issue a letter of endorsement to confirm that the proposed reforestation carbon project is in line with the country's sustainable development priorities. Thus, the project proponent was required to submit the project design document (PDD) to the EPA and get the letter of endorsement.

The PDD was required to show, among other things, that:

- the reforestation carbon project contributes to achieving the sustainable development objectives of the country;
- the project is based on the voluntary participation of the communities;
- an environmental and social impact assessment, if required by the EPA, has been conducted in accordance with the national laws and procedures put in place.

With respect to the determination of whether or not the project contributes to meeting the ‘sustainable development’ objectives of the country, there are not very specific criteria for EPA to determine how this requirement is to be met. However, there are several national policies and development goals that have been considered by the EPA to determine whether the project meets this criterion. The policy documents that have been considered may have included: the national sustainable development and poverty reduction strategy; the environmental policy; the biodiversity policy; etc. Generally, it may have also considered that the project promotes the livelihoods of the communities participating in the project.

The voluntary participation of the communities in the reforestation carbon project and their full support for its go-ahead is also reflected in the PDD. During the World Bank/World Vision team visit to EPA in 2006, one of the points that were raised by EPA was that there should be some documentation showing community acceptance of the project, preferably, the minutes of the discussions made with the community. Such documentation has been provided in the PDD and its annexes.

As stated above, the EPA reviewed the PDD, including the management of environmental safeguards issues, and issued a Letter of Approval on 9 October 2007 (28th day of 1st month in year 2000 in Ethiopian calendar)..

In addition to above documentation, additional documentation was provided to the EPA prior to its Letter of Approval. These documents basically relate to registration and certification requirements. The seven community cooperatives have been registered as legal entities and certificates of registration have been submitted to the EPA. Some of the legal issues related to the cooperatives will be discussed in the next section.

As a general note, the original legal study made in 2006 recommended that, to discharge its responsibilities as the designated national authority for CDM projects, the EPA needs to develop appropriate national regulations and guidelines in the future and have the necessary staff to this effect. The Humbo reforestation carbon project is the first of its kind in Ethiopia and if successfully implemented would create experience on the ground at both the federal and regional level so that such projects could be scaled up in the future. In this respect, EPA has underlined that there is a need for capacity building in order for it to effectively facilitate and oversee implementation of CDM projects including those similar to the proposed reforestation carbon project.

3.1.2 The Ministry of Agriculture and Rural Development (MoARD)

The MoARD, particularly the forestry department under the Vice-Minister of Natural Resources, needs to be involved in the Humbo project, since it is the federal arm of the government responsible for developing policies and laws with respect to the management, development and conservation of forestry resources of the country as well as for land administration and land use.

3.2 Regional Government Bodies

In the SNNPRS, the Regional Agricultural and Rural Development Bureau is responsible for the implementation of the rural land administration and utilization proclamation as well as the regional forest management, development and utilization proclamation. Under the Bureau, the Natural Resources and Rural Land Administration Department is

responsible for the implementation of the rural administration and land use while the Forestry Department is responsible for forest management.

At the Woreda (local) level, the Agricultural and Rural Development Bureau will be the responsible body for the implementation of the relevant provision of the rural land administration and utilization and forestry proclamations respectively.

As such the role of the Regional Bureau will be to ensure that the law on rural land administration and the forestry laws are properly implemented at the local level and to issue further regulations and directives for implementation of same. The Woreda (local) level Agricultural and Rural Development Bureau (office) is the main responsible government body that will be responsible for allocating the land to the community in the reforestation project area and issue community holdings certificate as title to the land. In regard to the reforestation activity that is to take place in the project areas, there may be a need for a separate concession agreement with the office as discussed earlier on.

The Woreda Cooperative Office has also an important role to play in discussing the draft bye-laws with the communities concerned and in providing technical support in finalizing the bye-laws in accordance with the law on cooperative societies. It is also the body that gives permission for registering the community cooperatives as legal entities.

Furthermore, the Woreda office responsible for land administration and forestry management will have the additional roles of providing technical support to the community cooperatives during the implementation of the project as well as participating in monitoring the proper implementation of the project. This is reflected in the community bye-laws.

3.3 World Vision Ethiopia

World Vision (WV) Ethiopia, in collaboration with World Vision Australia, is the primary initiator (proponent) of the proposed reforestation carbon project and has played

the prominent role in the formulation of the project, organizing the communities concerned and in soliciting as well as mobilizing funds for the project. WV is committed to continue supporting the project by giving technical and human power support and in facilitating the management and flow of funds to the community. The ERPA has been signed by World Vision [Ethiopia \(WVE\)](#) on behalf of the communities via an account of World Vision [Ethiopia](#). This responsibility also entails that the WVE has an active role in monitoring the project to ensure that the terms and conditions incorporated in the ERPA are adhered to during the implementation of the project. The role of the WVE is also articulated in the bye-laws.

3.3 Local Communities

As the reforestation carbon project is designed to directly involve and benefit the local communities living in and around the project area, it will be necessary that the communities participate and make their own decisions regarding the project starting from the formulation and design of the project. Much has been done up to now to get the communities actively involved in the process particularly by the World Vision who has had a long presence in the project area. Since 2006, the communities have been fully supportive of the project and are aware of the benefits of the reforestation project.

Extensive consultations have been carried out with the communities, in identifying the future beneficiaries of the project in order to avoid the possibility of excluding members of the community who should participate in the project as well as exploring alternative livelihood mechanisms for those who may be excluded from the project but had access to the project area prior to the proposed project. In addition to this, the communities need to be aware of the carbon sequestration aspect of the reforestation project and the benefits that are accrued from this type of project as well as their responsibilities in this respect. World Vision has carried out such awareness raising and consultations with the communities since 2005, and the community members are well aware of the different aspects the project entails, as explained in the PDD and its annexes. Participation in the community cooperatives is open to all interested community members, the cooperatives

have been successful in attracting the majority of community members, and membership numbers continue to increase.

The communities have also strongly involved in making major decisions on the content of their bye-laws and elect their representatives for the management and implementation of the project as well as decide on matters such as benefit-sharing and contribution of shares. The types of user rights outlined in the user right certificates and bye-laws has also been discussed and decided by the community.

Encouraged by the progress so far, work with the communities continues in order to make the project sustainable and successful.

4 Legal Issues with Respect to the Establishment and Registration of the Community Cooperatives

From 2006, discussions were held with relevant authorities at the national level, and pertinent national laws regarding the establishment and registration of a community forest management group were examined. One of the findings was that the forest management groups to be established under the reforestation carbon project could not be registered as non-profit entities since the association would be an income generating entity and members actually benefit from the income derived from the reforestation carbon project.

The governing legislation for community based organizations formed for a specific purpose is currently the Cooperative Societies Proclamation No. 147/1998 as amended by Proclamation No. 402/2004. A Council of Ministers Regulation No. 106/2004 has also been issued for the implementation of the Cooperative Societies Proclamation.

Like-minded inhabitants in a sub-kebele, kebele or woreda may establish these associations for furthering their common interests. This law requires associations to be voluntary organizations open to all those able to use their services and willing to accept

the obligations of membership irrespective of gender, social, racial, political or religious affinities. They are required to be autonomous, democratic self-help organizations controlled by their members. Members are expected to actively participate in policy and decision-making. Any agreement with third parties (including government) or capital raised from external sources is required to be on terms that ensure democratic control by members and maintain their autonomy. Each member has an equal voting right. Upon fulfilling all legal registration requirements they become vested with juridical personality. This law also provides that associations are not liable beyond their total assets.

The original plan was to have a single entity representing the communities in all communities of the Humbo area, and another one in another site (Sodo) that had to be later excluded. However, through consultation with the respective communities, it turned out to be a better option to have a separate cooperative society for each of the seven communities in the Humbo area.

The Cooperative Societies are governed by byelaws. The byelaws clearly specify objectives and activities, membership criteria, rights and duties of members, the powers, responsibilities and duties of the management bodies, the conditions of withdrawal and dismissal, the conditions for re-election, appointment; terms of service and suspension or dismissal of management committee members or other management bodies, the conditions for convening a meeting and voting procedures as well as the conditions of recruitment of workers and auditing. The byelaws of each of the seven cooperative societies have been finalized after being discussed, commented and consensus reached among the community and the concerned Woreda government body through focus group discussion. The cooperatives have been exercising (applying) the byelaws since the project implementation and forest management was started.

The structure of the cooperatives consists of a general assembly (the highest authority of the Association), an executive body (accountable to the general assembly) and, where necessary, recruited staff. The executive bodies are elected by the general assembly.

The cooperative societies have been established with the assistance of the Woreda Cooperative Office for organizational matters. This organ has provided generic model byelaws, provided advice on the contents and assisted in cooperative establishment. The generic byelaws have been adopted with appropriate modifications regarding rights and obligations, contributions to be made for use by the association on expenditures to be approved by the members, penalties to be imposed on members who might default with respect to their obligations, etc.

The proclamation provides that the cooperative societies shall be exempt from income tax although members shall pay income tax on their dividends. Each member of the cooperative society must contribute a share of the amount of which is to be decided by the general assembly. Although not specifically stated in the proclamation such share may be in cash or in kind.

The issue of benefit-sharing is an issue that has been discussed with the community at length. In regard to the Humbo project, there will be two main sources of income for the community. One is from the sale of forestry products and the other is from the sale of sequestered carbon (the carbon fund). The members of the communities will decide how those will be shared among the communities in line with the provisions on benefit sharing provided in the cooperative societies proclamation.

The communities, as the direct beneficiaries of the project form the cooperative societies and make decisions regarding the management and implementation of the project. However, the The World Vision Ethiopia and the Woreda Rural Development and Agricultural Office also figure as important stakeholders in supporting the communities both for funding purposes and giving technical and human power as well as monitoring the proper implementation of the project, and [participate](#) in the cooperative societies as members of their Boards of Trustees.

Post Assessment Conclusions to pending issues – Legal Assessment.

Issue	Resolution
1. Transfer of user rights required	SNNPRS transferred the user rights over the project site to the 7 cooperatives
2. Concession agreement may be required with communities	This provides insufficient legal basis for communities to exist as a legal entity. Other legal entity options available under the federal and state constitutions were considered, and the formation of community forestry cooperatives was considered the only legally robust entity that could be established by the community for transfer of user rights and the associated natural resources flowing from them.
3. Model bye-laws must be established	Model bye-laws were established and have been used by the communities to establish the constitution for each of the community cooperatives.

References:

Treaties:

United Nations Framework Convention on Climate Change, 1992, internet source
Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997, internet source.

Articles:

IUCN Environmental Policy and Law Paper No.59, *Legal Aspects in the Implementation of CDM Forestry Projects*, 2005.

Dalupan, Cecilia, *Legal Aspects in the Implementation of CDM Afforestation and Reforestation Projects*, 2005.

Laws and Regulations:

The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1 1995.

Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation, Proclamation No. 456/2005.

A Proclamation to Provide for the Expropriation of Landholdings for Public Purposes and Payment of Compensation, Proclamation No. 455/2005.

The Southern Nations, Nationalities and Peoples Region Rural Land Administration and Utilization Proclamation, Proclamation No. 53/2003

Forestry Conservation, Development and Utilization Proclamation, Proclamation No. 94/1994.

Southern Nations, Nationalities and Peoples Regional State, Forest Management, Development and Utilization Proclamation, Proclamation No. 77/2004.

Environmental Protection Organs Establishment Proclamation, Proclamation No. 295/2002.

Environmental Impact Assessment Proclamation, Proclamation No. 299/2002.

Cooperative Societies Proclamation, Proclamation No. 147/1998.

Cooperative Societies (Amendment) Proclamation No. 402/2004.

Council of Ministers Regulation to Provide for the Implementation of Cooperative Societies Proclamation, Regulation No. 106/2004.

Appendix 1: Humbo Assisted Regeneration Project Chart of Management

