

Analysis of the Legal and Institutional Framework for a National and Regional REDD+ Program in Ethiopia

—Terms of Reference—

1. CONTEXT

Ethiopia is the second-most populous country in Sub-Saharan Africa and one of the world's poorest countries, with a population of more than eighty-five million. Ethiopia is not a major emitter of greenhouse gases, but does store substantial carbon stocks (over 2.7 billion tons of CO₂e) in more than 12 million hectares of forests and wood lands. Due to the increase in population and the expansion of agricultural activities, these forests are being lost at an alarming rate. In the context of Ethiopia's development prospects, there is an opportunity to capture and deploy climate finance in pursuit of the country's aims to improve livelihoods, build resilience and reduce poverty.

The Government of Ethiopia (GoE) has developed a Climate Resilient Green Economy (CRGE) vision and strategy. The CRGE vision is to build a climate resilient green economy and to make the country carbon neutral by 2025. The Strategy identifies eight key sectors that play key roles in sustainable development: Reducing Emissions from Deforestation and Forest Degradation (REDD+), soils, livestock, energy, buildings and cities, industry, transport and health. To support the implementation of these priorities, the Government set up a national financial mechanism called the Ethiopia CRGE Facility under the Ministry of Finance and Economic Development (MoFED). The CRGE Facility is the primary mechanism to mobilize both domestic and foreign funds and integrate climate finance toward the broader aims of the CRGE. Sectoral ministries and other government entities, including subnational, are expected to develop Investment Plans as a means of articulating priorities and accessing the CRGE Facility (and demonstrating preparedness to international standards). The Facility is at an early stage of becoming operational and is receiving technical and financial support from several development partners, including the United Nations Development Programme (UNDP), the United Kingdom's Department for International Development (DfID), Government of Austria, the Global Green Growth Institute (GGGI), the World Bank and others.

REDD+, Agriculture and Livestock are key elements of the CRGE vision and strategy, because of the level of emissions under the business as usual scenario and their positive contribution to resilience building. To achieve the GoE's CRGE related goals on agriculture, forestry and other land use change (AFOLU), the Ministry of Agriculture (MoA) is implementing a National REDD+ Readiness Program. Since 2008, Ethiopia has been an active member of the Forest Carbon Partnership Facility (FCPF). The Government started preparation of a Readiness Preparation Proposal (R-PP) in April 2010, led by the Environmental Protection Authority (EPA). The country's final R-PP was endorsed by the FCPF Participants Committee in March 2011. With assistance from the World Bank's BioCarbon Fund, Ethiopia also achieved the first emission reduction project in Africa to be registered under the Clean Development Mechanism (Kyoto Protocol). The highly regarded Humbo Community Assisted Natural Regeneration Project has transformed a 2,780 ha degraded landscape into a productive community managed landscape space, generating carbon payments for seven local forest cooperatives.

In May 2013, the Government of Ethiopia recognized the proposed Oromia REDD+ program as a national REDD+ pilot program. This pilot will focus on reducing the deforestation of its Afromontane and woodland forests. Under this initiative a total of 11.7 million ha of Afromontane forests and woodland will be targeted to reduce global carbon emissions and attract revenues to foster sustainable growth and improved livelihoods of diverse rural communities. The Regional State of Oromia comprises 60% of Ethiopia's high forests and the vast majority of its woodlands. The State has been engaged with REDD+ activities since 2007 when the Bale REDD+ Project was started. The Bale project will complete its PDD in 2013 and this process has generated many lessons and significant local capacity which will support this program. As such the GoE has determined that

Oromia is the most appropriate jurisdiction to host this REDD+ Program. GoE institutions requested assistance of the World Bank FCPF and BioCarbon Fund (BioCF) to prepare a REDD+ Program which the Royal Government of Norway (RGN) has indicated its willingness to support financially. A key stakeholder workshop was held in Hawassa, Ethiopia on May 2-3, 2013 to establish a better level of understanding, initial consensus and buy-in from the key national stakeholders about a wide variety of issues related to the design of the REDD+ program.

2. OBJECTIVE OF ASSIGNMENT

The objective of this assignment is to propose an institutional and legal framework for the implementation of the national REDD+ strategy at the federal and regional levels – taking the Oromia State Region as an example.

3. SCOPE OF WORK AND MAIN RESPONSIBILITIES

The consultant firm will be responsible for analyzing and proposing the appropriate legal and institutional arrangements to adequately support and manage implementation of the REDD+ program, both at the national and regional (Oromia State Region) levels. This two-level analysis should be carried out in parallel, with different sets of tasks and deliverables. More specifically, the work should address the following issues:

I. Analysis of Legal, Institutional and Related Issues at the National level

- A. ***Legal and Institutional Arrangements:*** The consulting firm will review the existing legal framework relevant to the REDD+ Program at the national level, and determine whether it adequately provides a basis for the overall objectives of the program. The consulting firm will also review the mandate and assess the functional adequacy of the institutions currently responsible for land tenure, land use planning and forest management at the national level. These may include institutions such as MoA, Ministry of Environmental Protection and Forestry, MoFED, Wondo Genet College of Forestry, Agricultural Transformation Agency, among others that could play a relevant role in the implementation of REDD+. The objective here is to identify gaps in the institutional structure, clarity or conflict in the institutional mandates or otherwise, and propose options to address issues highlighted in the review. More concretely, the output of this assignment should answer the following questions and take in consideration the issues below:
- What is the legal framework relevant to the REDD+ agenda and strategy in Ethiopia and how can it be improved so as to lay a solid regulatory basis for effective implementation in the country? Particular focus should be paid to the Federal Constitution (Articles 40(3) and 40(6)), land tenure laws (Proclamation № 456/2005), land use planning laws, forest laws (Proclamation № 542/2007), forest use rights and related legal frameworks.
 - What are the existing institutional arrangements to support the REDD+ program and strategy? What are their mandates, specific roles, functional capacities and how do they coordinate in carrying out their various mandates? How can these arrangements and their level of coordination be improved both vertically (federal to state level) and horizontally (across sectors)? On the specific issue of inter-sectoral coordination, how would policies (especially on land use planning and allocation) at the national and regional levels impact the REDD+ program? Besides policies on land use planning and allocation, are there other policies that may pose a challenge for achieving REDD+ program goals if contradictory at the federal and state levels?

Output 1: A comprehensive report on the findings of the review covering each of the issues and based on the identified legal gaps, the consultant will propose amendments to existing legislation or new legislation for REDD+.

- B. **Benefit Sharing:** The consulting firm will propose a reliable and transparent mechanism for sharing benefits from REDD+ activities in the country. The analysis should take into consideration any existing sharing mechanisms both at the national and local levels, as well as discussions at the international level on best practice in the design of effective benefit sharing approaches. The analysis should pay special attention to how to integrate PES schemes (for carbon and other services) could be integrated in a REDD+ benefit sharing mechanism. The outcome of this assignment should recommend options for sharing benefits from REDD+ activities appropriate to the national context. In this part of the assignment, the consulting firm should aim to identify the benefits to be shared, amongst whom the benefits are to be shared and effective and accountable ways of ensuring that the benefits reach the intended beneficiaries. Towards this end, the consultant should answer the following questions and take in consideration the issues below:
- Defining benefit: there are different notions of what constitutes a benefit in the context of REDD+. Does it only include net benefits (profits), or the broader concept of benefits? Is it only monetary benefits? Which of these concepts adopted will determine the nature and scope of the benefit sharing system;
 - Benefit transfer: how to transfer such benefits, if in cash, direct or indirect may have important implications in terms of the ability of beneficiaries to use it; the possible mechanisms (e.g. funds, direct transfer, direct payments, market-based mechanisms) for benefit sharing should be identified and their advantage and disadvantages assessed and it should be evaluated how different mechanisms (including PES schemes for non-carbon services) can be combined.
 - Scale: the REDD+ system in Ethiopia will involve both national and pilot projects. Therefore, it is necessary to examine the options for these two scales and links between them.
 - Recipients: different criteria exist to determine who can and should be benefited from REDD+. This issue should be assessed in tandem with the question of emissions reductions ownership (below).
 - What is the legal framework for emissions reductions ownership in Ethiopia, both in forest lands and on other types of land (including cropland / agriculture and grazing areas)? In this regard, the consultant will analyze how the existing legislation deals with forest carbon ownership, the main regulatory gaps and recommendations for clarification or amendments to existing laws. The consultant should also pay particular attention to the role and mandate of government and local communities in REDD+ transactions.
 - The institutionalization of the system: the consultant should propose legislative and regulatory procedures for the institutionalization of the REDD+ benefit sharing system;
 - Other themes and issues relevant in the context of benefit-sharing

Output 2: A comprehensive report on the findings of the review covering each of the issues and based on the identified legal gaps, the consultant will propose amendments to existing legislation or new legislation for REDD+.

II. Analysis of Legal, Institutional and Related Issues at the Oromia Regional level

- A. **Legal and Institutional Arrangements:** The consulting firm will review Regional Proclamations on land tenure (Rural Land Proclamation № 130/2007), land use planning, forest tenure (Forest Proclamation № 72/2003) and carbon rights to the extent they exist, and assess their adequacy for supporting a successful REDD+ program at the regional level and analyze any legal or regulatory risks to project implementation. The consulting firm will also review the existing institutional arrangements for the implementation of REDD+ at the regional level, taking into account the decentralized nature of public administration in Ethiopia, paying particular attention to key federal institutions such as MoA, MEF, and MoFED, as well as regional institutions such as OFWE (Regulation No. 122/2009) and the Enterprise Branches in Bale (Regulation No. 88/2007) and Arsi (Regulation No. 86/2007), in addition to the other 6 branches that make up OFWE. The objective here is to identify gaps in the institutional structure, clarity or conflict in the institutional mandates or otherwise, and

propose options to address issues highlighted in the review. More concretely, the consultant should:

- Conduct a comprehensive legal analysis of the relevant Regional Proclamations, including those on land tenure, land use planning, forest tenure and rights to emissions reductions to the extent they exist and assess their adequacy for supporting a successful REDD+ program at the regional level and PES scheme implementation (for carbon or non-carbon services). With specific regard to land tenure, forest tenure and land-use planning, provide clear guidance as to whether the current land tenure situation in the Region provides an adequate basis for the implementation of a Payment for Ecosystem services Scheme, and if not, what reforms would be needed to make it work.
- Conduct an in-depth review of the mandate, establishment and functioning of OFWE, paying particular attention to its capacity to enter into binding contractual relationships, and its capacity to acquire, hold or dispose of assets and to enter into commercial contractual obligations including carbon transactions. The review should also consider OFWE's capacity to sue and be sued in its own name as well as any available channels for resolving disputes between OFWE and third parties, including other entities that would be part of the Oromia REDD+ program implementation arrangements.
- Identify the most appropriate institutional arrangement to implement the Oromia REDD+ Program currently under preparation, propose the role of each institution responsible for the implementation of the policies, regulations, plans and activities part of this Program. Assess these institutions against criteria such as background of the institution, operational capacity, presence in regional level, woreda level, and community level (e.g. OFWE has forest and wildlife district offices, but BOA has offices at woreda level). The identification of an appropriate institution should consider the following issues:
 - What will be the legal vehicle for assigning rights and responsibilities at the ground-level?
 - What fiduciary standards will apply and who will ensure compliance?
 - What rights communities will have?
 - What contractual arrangements would be needed between concerned entities?
 - Whether there is a prima facie assumption of legal title to the implementing agency for carbon credits generated?
 - How to deal with forests areas and other types of land uses beyond OFWE control?
 - How to ensure coordination of activities across forest and non-forest areas?
- Analyze how the Participatory Forest Management Programs (PFM) and the institutions responsible for implementing these programs – whether associations, cooperatives, private limited companies - could be used as part of the institutional arrangements for the Oromia Program.
- Identify how the Oromia REDD+ could fit the arrangements for operations financed by the CRGE Facility, and identify the main risks and opportunities for channel Emissions Reductions payments to the Oromia REDD+ Program funds through the CRGE Facility. Identify potential other channels for collecting and disbursing ER payments.

Output 3: A comprehensive legal and institutional due diligence report on the findings of the review for the Oromia REDD+ program taking into account each of the specific issues mentioned above.

B. ***Benefit Sharing arrangements:*** The consulting firm will propose a reliable and transparent mechanism for redistributing benefits from REDD+ in the country. The analysis should take in consideration any existing distribution systems at regional level. The following 3 key questions should be answered: (a) what are the benefits to share; (b) who is eligible and (c) how the transfer could be managed? More concretely, the consultant should answer the following questions and take in consideration the issues below:

- Defining benefit: there are different notions of what constitutes a benefit in the context of REDD+. Does it only include net benefits (profits), or the broader concept of benefits? Is it

only monetary benefits? Which of these concepts adopted will determine the nature and scope of the benefit sharing system;

- Recipients: different criteria exist to determine who can and should be benefited from REDD+.
- Benefit transfer: how to transfer such benefits, if in cash, direct or indirect may have important implications in terms of the ability of beneficiaries to use it; the possible mechanisms (e.g. funds, direct transfer, direct payments, market-based mechanisms) for benefit sharing should be identified and their advantage and disadvantages assessed and it should be evaluated how different mechanisms (including PES schemes for non-carbon services) can be combined;
- The institutionalization of the system: the consultant should propose legislative and regulatory procedures for the institutionalization of the REDD+ benefit sharing system and how it could include a PES scheme;
- Other themes and issues that seem relevant in the context of benefit-sharing

Output 4: A comprehensive report summarizing the findings of the review of benefit sharing arrangements and proposals on how an effective benefit sharing mechanism for the Oromia REDD+ program should be established.

4. METHODOLOGY

- In conducting this study, all relevant stakeholders – both at the federal and regional levels – should be consulted throughout.
- Through the study, the consultant is expected to make use of opportunities for providing capacity building and knowledge dissemination to counterparts and stakeholders at the national and regional levels. Targeted stakeholders include executives of government agencies, members of the National REDD+ Coordination, key members of the of civil society. The inception report, mid-term progress report and final report of this consultancy should be validated with both the National REDD+ Technical Working Group, and with the Oromia REDD+ Working Group.

5. DURATION

The assignment is to be carried out over a period of eight months. The national and the regional-level parts of the assignment should be conducted in parallel.

6. DELIVERABLES

- Assignment Inception report, to be submitted 15 days after the start of the contract;
- Quarterly progress reports;
- Mid-term progress report
- Final report with drafts of legal instruments that need to be developed as annexes to the report.

7. REPORTING ARRANGEMENTS

The consulting firm will report to:

- The WB team, led by the Task Team Leader
- National REDD+ Secretariat and the National Technical Working Group
- Oromia REDD+ Program Coordinator and the Oromia REDD+ Technical Working Group

8. CONSULTANT QUALIFICATION

The consulting firm should provide a team of national and international experts as follows:

1. ***Lead Climate Change Policy/Legal Expert*** to serve as a coordinator of the team. Should have at least 10 years of broad climate change, or natural resources law and governance experience, at least a Master's degree in natural resources law, climate change, public policy or a closely related field.
2. ***Senior Expert in Natural Resources Management/Institutional Economics***. Should be familiar with participatory forest management systems, and how such systems can be made to work in a developing country context. Should have at least 10 years of experience in the field of forestry and/or economic development.
3. ***Senior Expert on Legal Environmental or Natural Resources Law***. Should have broad experience in drafting national or subsidiary legislation and be familiar with international legal instruments relevant to climate finance. Should have at least 10 years of experience in legislative drafting in natural resources, preferably in the forestry sector.
4. ***Other experts*** as needed in order to deliver the expected outputs.