

**‘BENEFIT SHARING SCHEMES’ AS A MEANS TO ENFORCE  
FOREST LEGISLATION: WITH PARTICULAR FOCUS ON SHEKA  
FOREST, SOUTH WEST ETHIOPIA**

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**ABSTRACT**

*Forest is among the precious resources which is vital for human beings and other living creatures. As forest degradation has a global effect, every nation’s forest law implementation has also a global importance. Most countries’ constitutions, including the FDRE Constitution recognize the right of every citizen to live in a ‘clean and healthy’ environment. But, its implementation is encircled with various challenges. Sheka Zone is among the high potential corridors for forest development, conservation and utilization. But, nowa days, the Sheka forest is dwindling with alarming rate mostly because of man-made factors. Thus, the focus of this article is on one means of enforcement of forest legislation: the need for developing ‘benefit sharing’ schemes to conserve Sheka Forest which is registered as biosphere reserve by UNESCO. The findings of the article vividly show that benefit sharing scheme, a vital tool of forest law enforcement mechanism, is totally ignored in the research area. Thus, the article argues that devising effective benefit sharing schemes for the local community and its effective implementation is one of the means of enforcing forest legislation. Endeavoring to enforce the law with positive participation and thereby visible benefits for the stakeholders has a tremendous value. In order to write this article, the authors employed literature reviews, legal analysis, observations, focus group discussions and intensive interviews.*

**Key words:** *Benefit Sharing Schemes, Forest, Forest Legislation, Sheka Forest.*

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## 1. INTRODUCTION

Forest is among the precious resources that is vital for human beings and other living creatures. From the very beginning of creation, mankind was believed to be dependent on attributes of plants for its food security and other basic needs, but the first plants were not of course cultivated by man, rather they were part of natural forests. Till now a days, significant share of the world community depend on forest resources for livelihood.<sup>1</sup> Beyond the economic gain, there is another grand benefit of forest resources which activated deep attention of the global community: moderating global climate. The value of forests has become much clearer now more than ever as the planet is faced with looming environmental crises.<sup>2</sup> Though, environmental<sup>3</sup> issues have been hot spots in the global forum for longer time, the problem is escalating with alarming rate.<sup>4</sup> Thus, the global community in general<sup>5</sup> and the Ethiopian government in

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<sup>1</sup> About 31% of the global land area is covered by forests and more than 1.6 billion people around the globe depend on forests for various daily functions. Even though estimates of total economic contributions of forests vary widely, FAO estimates that formal forest industries contribute nearly 1% of global GDP yearly or more than \$450 billion, with more than 10 million people employed by the forest sector. See FAO, 'Forest Accounting Sourcebook Policy Applications and Basic Compilation' also available on; <http://www.fao.org/state-of-forests/en/> <accessed on Apr.16, 2019>

<sup>2</sup> Sisay Nune, Policies to Increase Forest Cover in Ethiopia: A Policy Oriented Discussion Paper, 2007. Available on: [http://efdinitiative.org/sites/default/files/forest\\_workshop\\_proceedings\\_080227\\_am.pdf](http://efdinitiative.org/sites/default/files/forest_workshop_proceedings_080227_am.pdf) <accessed on March 12, 2019>.

<sup>3</sup> The environment comprises the biosphere (the actual livable space covering the Earth), the atmosphere (the air component of the environment), the hydrosphere (the water component of the environment), and the lithosphere (the soil component of the environment); See: H.V. Jadhav and S.H. Purohit, *Global Warming and Environmental Laws*, 1st Edition, Himalaya Publishing House, Mumbai, 2007, P.17, as cited in: Dejene Girma, *Environmental Democracy in Ethiopia: Emphasis on Public Participation in Environmental Impact Assessment Process*, Bahir Dar University Journal of Law, 2010, Vol.1 No.2, P.205.

<sup>4</sup> For instance, in 2019 the situation in New Delhi, capital of India which become the most polluted city, has caused declaration of health emergency in which doctors advised even schools to be shut and simply breathing air in New Delhi streets was estimated to be equal with smoking 50 cigarettes in a day. See: <https://www.vox.com/energy-and-environment/2017/11/22/16666808/india-air-pollution-new-delhi> <accessed on Nov, 20/2019>.

<sup>5</sup> Forests were mentioned explicitly under MDG 7 – 'Ensuring environmental sustainability'. As the MDGs target date of 2015 is reached, the UN has just completed a new process for the creation of 17 Sustainable Development Goals (SDGs) covering all countries and with a heightened coverage of environmental factors. Under the CBD, a Strategic Plan for Biodiversity for 2011-2020 has been developed. The plan includes 20 Aichi Biodiversity Targets, and provides a framework for addressing biodiversity issues. Many of the targets are related to forests including halving deforestation and loss of other natural habitats by 2020 (Target 5) and restoring 15% of degraded lands by 2020 (Target 15) See: FAO, Forest

particular<sup>6</sup> were endeavoring in view of developing and conserving the forest resources without sacrificing economic gains that can be acquired from the sector.

Ethiopia has come up with new Forest Development, Conservation, and Utilization Proclamation No.1065/2018 to effectively implement the constitutional right of citizens to live in safe and healthy environment.<sup>7</sup> According to this Proclamation, the term “forest” refers to “*trees, plants and other biodiversity accumulation at and in the surrounding of forest lands, roadsides, riverside, farm and grazing lands as well as residential areas or parks that grow naturally or developed in some other ways*”.<sup>8</sup> Furthermore, Ethiopia is signatory to most of the key international environmental conventions<sup>9</sup> focusing on the forest and biodiversity. These laws and treaties vividly show to some extent how much the Ethiopian government is committed for forest resource conservation.

Coming to the research area, Sheka Zone,<sup>10</sup> it is among the South Western Ethiopian areas with remnant dense natural forests. The Sheka Forest is

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Accounting Sourcebook Policy Applications and Basic Compilation available on: <http://www.fao.org/state-of-forests/en/> < accessed on Apr.16, 2019>.

<sup>6</sup>During the reign of Emperor Haile Selassie I in 1965, there were three consecutive proclamations; No. 225, No. 226 and No. 227, which respectively recognized three forms of forests, namely; state forest, private forest and protected forest. Following these proclamations, the concerned organ, the then Ministry of Agriculture, issued nine consecutive regulations Nos. 343 up to 351 in 1968 in order to ensure implementation of the proclamations. During the Derg regime there came a change of ideology regarding property ownership including forest resource ownership in which it proclaimed a new law that reflects its ideology on Forest and Wildlife Conservation and Development Proclamation No. 192 / 1980. A few years after the fall of the Derg regime, another new Proclamation came into picture during the period of the transitional government: forest conservation, development and utilization proclamation no. 94/1994. Currently, there is a clear constitutional provision which provides for individuals right to live in clean and healthy environment (Art 44 (1). The right of living in clean and healthy environment is unthinkable without proper conservation of forests. Forest Development, Conservation and Utilization Proclamation no.1065/2018 at Federal level is meant to enforce the constitutional right for clean and healthy environment.

<sup>7</sup> Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, (FDRE Constitution), Art. 44 (1).

<sup>8</sup> Federal Forest Development, Conservation and Utilization Proclamation No.1065/2018, (Federal Forest Proclamation), Art.2 (1).

<sup>9</sup>Such as the Convention on Biological Diversity (CBD), the UN Convention to Combat Desertification (UNCCD), the UN Framework Convention on Climate Change (UNFCCC) and the Convention on International Trade in Endangered Species (CITES)...

<sup>10</sup>Sheka is an administrative zone in South West Ethiopia Peoples Regional State, where one of the few remaining wet forests is found in Ethiopia, which covers more than 47% of the total

source of various direct uses for the local community.<sup>11</sup>For instance, studies have identified about 139 plant species which have medicinal value in Sheka Forest and 7 of them are endemic to the area and to Ethiopia.<sup>12</sup>The local community practiced ecologically sustainable agriculture for longer time as there was deep rooted culture in forest conservation.<sup>13</sup> Consequently, Sheka Forest is registered as biospherereserve by UNESCO<sup>14</sup> and Ministry of Science and Thechnology in 2012 by the intiation of MELCA-Ethiopia<sup>15</sup> and support of the local government.<sup>16</sup>

Despite the facts stated above, Sheka Forest is currently threatened<sup>17</sup> mainly by forest unfriendly government investment policy,<sup>18</sup> expansion of small scale agricultural activities, increasing need for energy<sup>19</sup>, and the diminishing

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area. It comprises an extraordinary natural and cultural landscape mosaic of dense natural forest, sacred/cultural forest, managed forests for coffee and beekeeping, bamboo thicket, wetlands, agricultural land, historical sites, natural landmarks like waterfalls, caves, interspersed with settlements. The rich culture is an omnipresent part of the biosphere reserve, shaping the landscape and the sustainable development of the area. See the detail at: <http://melcaethiopia.org/sheka-project-area-in-snnpr/> <accessed on Nov, 28/2018>.

<sup>11</sup>Which includes; construction materials from climbers/liana, tree ferns (locally called Shesheno), timber, fuel wood, logs for beehive construction, wood for utensils, bee forage and traditional hanging beehives, spice production and medicinal plants collection. See the details at: <http://www.unesco.org/new/en/natural-sciences/environment/ecologicalsciences/biosphere-reserves/africa/ethiopia/sheka-forest/> <accessed on Nov, 28/2017>.

<sup>12</sup>Bizuneh Adinew, et al; Ethno Botany Study of Medicinal Plants and Associated Indigenous Knowledge among Shekacho people, South west Ethiopia, Mizan-Tepi Univesity, 2017, P.195 (unpublished).

<sup>13</sup> Interview with Atestata Dakito, Leader of Atesso clan, Masha (September 2017).

<sup>14</sup>UNESCO: United Nations Educational, Scientific and Cultural Organization.

<sup>15</sup> MELCA (Movement for Ecological Learning and Community Action) is a local NGO effectively working in the research area in forest development and conservation and supporting forest dependent residents.

<sup>16</sup>Interview with Mr. Biruh Tesfaye, Sheka Biosphere Reserve Manager, Masha, September 2017.

<sup>17</sup>The total area under dense forest cover was on average 55% in most of the Derg time (1973-1987). There has been massive decline in forest cover from 1987 to 2005 in the area. A radical change occurred from 2001 to 2005. In four years the dense forest cover declined from 32% in 2001 to 20% by 2005. <http://melcaethiopia.org/sheka-project-area-in-snnpr/> <Accessed on Nov.28, 2017>.

<sup>18</sup>Large scale farms mainly Coffee and spice which need partial clearance of the forest and tea plantation which need total clearance of the forest are grossly licensed in the area. According to the data from Sheka Zone investment office (accessed in August, 2018) there are forty (40) licensed large scale farms in three districts of Sheka Zone and they hold more than 10,000 hectare of land which is within or adjacent to natural forest.

<sup>19</sup> During data collection time, the researcher observed many rural residents who were transporting fire wood using horses. Charcoal was also provided to cities by low income rural classes. Mostly, Masha and Gecha towns along with many villages were totally dependent on

traditional and cultural protection systems.<sup>20</sup> Thus, this article focuses on the need of developing effective benefit sharing schemes as a means of enforcing forest legislation with particular focus on Sheka Forest.

This article contains four sections. The first section contains introductory remarks. The second section discusses the concept of benefit sharing scheme. The findings and discussions have been included under the third section. Lastly, the fourth section contains the concluding remarks.

## **2. CONCEPTUAL FRAMEWORK OF BENEFIT SHARING**

### **2.1. DEFINITION OF BENEFIT SHARING**

The concept of benefit sharing is currently becoming common research agenda in various fields of environmental science. UN Convention on Biological Diversity (CBD) used the term `benefit sharing` very frequently starting from its preamble without clearly defining it. Under Article 11, the Convention obliges the contracting parties to adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity. We can infer from this provision that `benefit sharing` is replaced by the term `incentives`. But the preamble of the Convention has clearly used the term `benefit sharing` and provides that equitable benefit is expected to be shared directly to indigenous and local community for their role in conservation of biodiversity.<sup>21</sup>

In the same way, the relevant FDRE Proclamation on Access to Genetic Resources, Community Knowledge, and Community Rights` No.482/2006 is silent on the definition of benefit sharing while dealing it throughout the provisions.<sup>22</sup>

Moreover, it will be clearer if we define both words forming the phrase separately. Hence, `Benefit` generally implies an advantage or gain from

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fire wood and charcoal as there was no sufficient electric power supply. During data collection times in two districts (16 days), there was no even a single day in which the towns got full day electric power.

<sup>20</sup> <http://www.unesco.org/new/en/natural-sciences/environment/ecologicalsciences/biosphere-reserves/africa/ethiopia/sheka-forest/> <accessed on Nov 28, 2017>

<sup>21</sup> Preamble of the UN Convention on Bio Diversity (CBD).

<sup>22</sup> Sharing benefits derived from utilization of genetic resources and community knowledge is stated as one objective of the proclamation. Moreover, under Articles 6 (3), 18, 19 and others deal with benefit sharing concept without defining it well.

something ... and `sharing` describes in more general ways exchanges between those who provide access to resources and those who provide compensation or rewards for their use.<sup>23</sup> Benefit sharing scheme is a vital concept for sustainable utilization of resources as it balances conservation and commercialization of resources.<sup>24</sup>

As per the FDRE Forest Proclamation, “*benefit sharing is the allocation of benefits between government and community and among community from forests which have been collectively developed.*”<sup>25</sup> This is a very narrow definition which is exclusive of many issues. Firstly, it provides only for relations between government and community and among community members. Secondly, it is restricted to collectively developed forests only. Thus, it misses benefit sharing relations between the community and research institutions, Universities, investors, NGOs, and others which are potential users of forest biodiversity. This all stake holders have potential roles for development of forest and can be benefited based on their contribution. The other exclusion from the given definition is about natural forests which are not `collectively developed`, but protected and conserved by the community for time immemorial.

Therefore, we need to understand the concept of benefit sharing by resorting to both international documents and the national laws. In our case, as Ethiopia is signatory to the CBD, we need to cumulatively read CBD with the FDRE Forest Proclamation and we can draw a consistent definition.

In a nutshell, benefit sharing is allocation of benefits among users of biodiversity and those who allow access to the biodiversity. Users may include government, investors, researchers, NGOs... and those who allow access may include mainly local community and other actors who have positive impact on the forest conservation.

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<sup>23</sup>BA Nkhata1, *et al*, A Theoretical Framework for Understanding Benefit Sharing Arrangements with Particular Reference to the Water Sector Report to the Water Research Commission, P.3.

<sup>24</sup>Jayanta Boruah, Access and Benefit Sharing Mechanism: A Theoretical Framework. North-Eastern Hill University, Shillong, P.4. Accessed on: <https://ssrn.com/abstract=3815252> <12/08/2018>.

<sup>25</sup> Federal Forest Proclamation, *Supra* note 8, Art. 2 (31).

## 2.2. RIGHTS OF LOCAL PEOPLE ON THE FOREST LAND

According to the FDRE constitution, land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.<sup>26</sup> Hence, any plot of land (including forest land) is under common property scheme. Under Rural Land Administration and Utilization Proclamation, rural land is defined as any land outside of municipality holding or town designated as such by relevant law.<sup>27</sup> The phrase 'any land outside of the town demarcation' is inclusive of the forest lands. Whereas, the Forest Proclamation defines forest land as any plot of land demarcated or designated for the purpose of forest development and conservation.<sup>28</sup> From these relevant national legislations it is clearly understandable that forest and land are highly interrelated. Obviously, forests are grown on the plot of land.

Thus, the land tenure system and property rights accorded for the local community will have significant impact on the forest development and utilization program. In contrast to an effective institution of property rights, unfair and unstable property relations create insecurity. Such a system invites conflict, wards off investment and discourages sustainable resource management.<sup>29</sup>

Moreover, the depth of rights given to the local community has a vital role for the implementation of the forest laws and should be seriously considered in the laws as such. Hence, Ethiopia's 2007 Forest Policy recognizes the participation and benefit sharing of local communities in the development and conservation of state forests. In the same way, the FDRE Constitution accords a right for nationals to participate in national development and be consulted with respect to policies and projects affecting their community.<sup>30</sup>

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<sup>26</sup> FDRE Constitution, *Supra* note 7, Art. 40 (1).

<sup>27</sup> FDRE Rural Land Administration and Land Use Proclamation No.456/2005, Art.2 (1).

<sup>28</sup> Federal Forest Proclamation, *Supra* note 8, Art. 2 (4).

<sup>29</sup> Melaku Bekele, *et al.* Institutional, environmental and distributional aspects, The context of REDD+ in Ethiopia: Drivers, agents and institutions, Center for International Forestry Research, 2015, P.18

<sup>30</sup> FDRE Constitution, *Supra* note 7, Art. 43 (2).

Specifically, the Forest Proclamation classifies forest tenure system as private, community, association and state forest.<sup>31</sup> The Proclamation provides different tenure system for different forest ownerships. Among these the state forest remains under government ownership as a communal property of nations, nationalities and peoples of Ethiopia and the others (private forest, community forest and association forest) are under different forms of private ownership with title deeds. In private ownerships there is always direct benefit from utilization of the property and the rights are well defended by direct users. Communal properties have no such advantage. Unfortunately, in Ethiopian legal system all land holdings including forest lands were made communal property to be regulated by central government since 1975 revolution.

*The revolutionary nationalization of all land holdings in 1975 was a major institutional turning point in Ethiopia, at which land and forest administration responsibilities were shifted from local to central institutions and authorities, effectively overnight. However, it soon became clear that the change of an institutional setting and the transfer of rights and duties from one institutional system to another does not necessarily bring a change for the better, that the passing of rules and regulations does not guarantee their enforcement in reality, and that the setting up of new administrative bodies does not mean that they are actually effective in achieving their objectives.*<sup>32</sup>

Thus, theoretically government has the duty to hold on behalf of the People, land and other natural resources and to deploy them for their common benefit and development.<sup>33</sup> On the other side, people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.<sup>34</sup>

To sum it up, effectively decentralized forest management, clear tenure over land and forests, improved technical and administrative capacity and clarification of benefit sharing mechanisms are vital for the enforcement of

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<sup>31</sup> Federal Forest Proclamation, *Supra* note 8, Art.4.

<sup>32</sup> Stellmacher, Till: Local forest governance in Ethiopia: Between legal pluralism and livelihood realities, ZEF Working Paper Series, No. 110, University of Bonn, Center for Development Research (ZEF), Bonn, 2013.

<sup>33</sup> FDRE Constitution, *Supra* note 7, Art.89 (5).

<sup>34</sup> FDRE Constitution, Art.92 (3).



forest legislation. And the Forest Proclamation envisages, environmental, social and economic benefits for the local community residing inside or at the periphery of the forest.<sup>35</sup>

### 3. FINDINGS AND DISCUSSION

#### 3.1. THE LEGAL AND PRACTICAL CHALLENGES

Basically, benefit sharing from forest conservation comprises three dimensions: the benefits, associated beneficiaries and benefit sharing mechanisms. What kind of benefits to be awarded, who should be the beneficiaries, and what benefit sharing mechanisms to be applied are challenging concepts in practice. On this topic, noting experiences of some African countries which have similar concern with the research area will have significance. For instance, in Mozambique monetary benefits, rural jobs, food security, biodiversity protection, water quality and quantity provision are considered to be benefits.<sup>36</sup> Regarding the beneficiaries; local community, private sector actors, local, regional and national government bodies with their proportionate benefits are listed in Mozambique's benefit sharing plan (BSP).<sup>37</sup>

Private sector actors who contribute to reducing emissions through specific activities will benefit through Matching Grant Scheme (MGS).<sup>38</sup> The objective of MGS is improving the ability of small and medium enterprises to increase investments and create value addition through market oriented investments.<sup>39</sup> According to the BSP, the beneficiary will be selected through competition based on demonstrative evidence of contribution on emission reductions (ERs) and it is demand driven.

The case of Mozambique is important here for its detail benefit sharing plan (BSP) and it is relatively well practiced. Thus, contexts of countries should be properly studied in advance so as to identify possible benefits, associated beneficiaries and appropriate benefit sharing mechanisms that can effectively

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<sup>35</sup> FDRE Constitution, Art.15 (3).

<sup>36</sup> Sustenta, cited in, Benefit Sharing Plan of Mozambique REDD+ Emissions Reductions Program: the Zambézia Integrated Landscape Management Program (ZILMP), 2019, P.7.

<sup>37</sup>Benefit Sharing Plan of Mozambique REDD+ Emissions Reductions Program: the Zambézia Integrated Landscape Management Program (ZILMP), 2019, P.12.

<sup>38</sup> *Id.*, P.17.

<sup>39</sup>*Ibid.*

foster forest conservation and efforts to reduce poverty.<sup>40</sup> If such care is not taken in advance, it is clear that forest dependent communities will less likely comply with forest laws. And at whatever time they think that complying with forest laws will endanger their livelihoods, they tend to violate the law even at the cost of being criminally punished. In this regard, the benefit sharing concept and its components are not yet familiarized for different actors in the forest sector of Sheka zone.

The other challenge is insufficiency of enabling documents including legislations. Good progress in this perspective is the existence of detailed law on access to genetic resources and benefit sharing from use of the resources. In this regard Ethiopia has a transparent legal frame work and arguably good experiences.

Proclamation on Access to Genetic Resources and Community Knowledge and Community Rights (Proclamation No 482/2006) and Regulation No.169/2009 are enacted to ensure the country's commitment to CBD. Based on these frameworks, the country has showed commitments to achieve the objective of the CBD. The Proclamation includes a range of issues such as ownership, user rights, and conditions for access, benefit sharing, types of benefits, powers and responsibilities among the others. The above law bears the necessity of prior informed consent (PIC) to access genetic resources or community knowledge. Following PIC, the Bio Diversity Institute and relevant stakeholders has to negotiate on mutual agreed terms (MAT) with the user of the genetic resource.

Genetic resource is "any genetic material of biological resource containing genetic information having actual or potential value for humanity and it includes derivatives."<sup>41</sup> The term genetic resource in this sense is much broader than forest. So, specific laws regulating forest will have more significance in this regard. But, still the proclamation on genetic resources will have relevance as most of the genetic resources are located in the forest.

The FDRE Forest Proclamation provides for multiple of preconditions for benefit sharing. Accordingly, "the local community residing inside or at the

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<sup>40</sup> Benefit Sharing in Uganda's Forestry Sector, Issues and options for REDD Implementation in Uganda, October 2010, P.3.

<sup>41</sup> Proclamation on Access to genetic Resources and Community Knowledge and Community Rights Proclamation No.482/2006, Art. 2 (6)

periphery of the forest may obtain environmental, social and economic benefits depending on local situations, in line with forest management plan and up on obtaining permit from the responsible authority.”<sup>42</sup>

The components of benefit sharing listed in this provision as `environmental, social and economic` are not defined at all. The preconditions identified in the Proclamation include local situation, forest management plan and permit. These preconditions are cumbersome and at the same time non-applicable. Because of forest management plan (FMP) is not yet developed and the permitting authority is not clearly known. In this regard, subsidiary laws which were envisaged by the proclamation are not yet enacted and the necessary details are still vague.

Because of this, the Sheka Forest resources are exposed for unsustainable utilization. And it is impossible to apply benefit sharing without the FMP and BSP. These two main documents would have determined local communities to be paid in terms of money, number of people to get the benefits, selection procedure of beneficiaries, or even develop other schemes of benefits like infrastructures which are meant for communal usage.

In Sheka Zone, it is vivid that deforestation is commonly conducted for self-subsistence. The lion's share is taken by clearing forest lands for cultural small scale farming, local fuel consumption as charcoal and local construction materials which are basic necessity. Hence, if the law simply says `cutting trees from natural forest is illegal` without devising how the previously forest dependent community members should gain their livelihood, it will be good for nothing. We may end up punishing wrongdoers again and again without achieving any progress in enhancing forest conservation. Elias N. Stebek nicely articulated this fact as follow.

*In spite of legal sanctions against deforestation, every extra Birr obtained through illegal cutting of trees for market or the increasingly growing need for fuel-wood, farm land and grazing lands are steadily accelerating the pace of deforestation in Ethiopia.*<sup>43</sup>

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<sup>42</sup> Federal Forest Proclamation, *Supra* note 8, Art. 15 (3)

<sup>43</sup> Elias N. Stebek, *Dwindling Ethiopian Forests: The Carrot and Stick Dilemma*, Mizan Law Review Vol.2, No. 2, 2008, P.284.

Thus, it is not wiser to levy severe penalties for the act of deforestation rather than showing what will the community gain by complying with forest legislation. This is not only done by devising legal framework for benefit sharing, but also by awareness creation program.

The benefits gained from forest resources are multi-faceted<sup>44</sup> in which the local community is not well informed. Users commonly focus on short term economic advantages (provisioning service of the forest), ignoring other services like; regulating, supporting and cultural services. In this regard there is clear knowledge gap or lack of foresight on what will the nature inflict on us if we continue harming it. Therefore, the nonmonetary benefits need serious awareness creation program.

As the awareness creation part needs relatively longer time, we need also to focus on vivid economic returns for positive activities which have significant role in either forest conservation or development. In this regard, we can take a lesson from a debate about the financial viability of sustainable forest management in the context of the new regulations which established new forest fees in Bolivia. In Bolivia, it was found that while sustainable forest management practices of the new rules were capable of earning positive rates of return, they were less profitable than traditional logging practice.<sup>45</sup> In view of that, the analysis of the benefit sharing scheme showed that loggers, therefore, would not be motivated to comply with the new law.<sup>46</sup> So as to

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<sup>44</sup>These gains and services from forest include provisioning, regulating, cultural and supporting services. By provisioning services, we are referring to products obtained from natural environment, such as natural medicines, fibers, fresh water, food, genetic resources and bio-chemicals. Regulating services includes benefits obtained through the regulation of natural processes. Water purification, air quality, climate, buffering pollution, disease and pest control and pollination are typical examples of regulating services. There are also non material benefits obtained from natural resources through spiritual enrichment, cognitive development, recreation and aesthetic enjoyment. These non-material benefits are called cultural services. The last but not the least category of services is supporting services. These services are necessary for the production of all other ecosystem services. Services, such as soil formation, photosynthesis, primary production, nutrient recycling and water recycling are included under this category. Among the four broad categories of services, only provisioning services have market price. Other ecosystem services provide services outside of the markets (See the detail at: Tim Everett *et al*, Economic Growth and Environment as cited in, Defra Evidence and Analysis Series Paper, 2010, P.14).

<sup>45</sup> Best Practice for improving Law Compliance in the Forestry Sector: FAO Forestry Paper 145, Food and Agriculture of the United Nations International Tropical Timber Organization, Rome 2005, P.24 (box 11)

<sup>46</sup> *Ibid.*

ensure motivation to comply with forest legislation and to ensure equitable distribution of community forestry, there must be deliberate and conscious efforts to address poorer, marginalized and vulnerable members of the community who are more dependent on the forest.

REDD<sup>47</sup> and Village Saving and Loan Associations (VSLA) are among the benefit sharing mechanisms adopted by many developing countries to deal with the problem of deforestation and forest degradation. The Benefit sharing mechanism, in the context of REDD+, is defined as agreements between stakeholders such as: private sectors, local communities, government and non-profit organizations about the equitable distribution of benefits related to the commercialization of forest carbon.<sup>48</sup> There are three main types of payment in this regard.<sup>49</sup> The first payment is a compensation to be paid for the opportunity cost of changing land use. Implementation of the REDD+ program may oblige local communities or other stake holders to change previous means of livelihood. In such occasion, they deserve payments in the form of compensation to ensure sustainability of the program and compensate those who have changed their land use. The following quote presents attributes of the second and the third types of payment in the REDD+ project.

*We can also consider the situation where local communities and private sectors are involved in some productive activities required to enhance conservation of forest and implementation of the program. Payments prepared for Participants in such productive activities are another form of payment in reference to REDD+. The third payment is a distribution of REDD rent (the “Plus” in the “REDD+”). In other words, people are paid for concrete outputs achieved in absorbing carbons.<sup>50</sup>*

Hence, devising appropriate rationale for redistribution of forest management benefits is critical so as to ensure the achievement of goals in forest legislation. According to studies conducted in Tanzania and Nepal,

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<sup>47</sup>Reducing Emissions from Deforestation and Forest Degradation, plus (+) refers to: conservation of forest carbon stocks, the sustainable management of forests, and the enhancement of forest carbon stocks.

<sup>48</sup> Benefit Sharing in Uganda’s Forestry Sector, Issues and options for REDD Implementation in Uganda, October 2010, P.7

<sup>49</sup>*Ibid.*

<sup>50</sup>*Ibid.*

implementation of the Participatory Forest Programs has created a recurrent debate. The core of this debate is the issue of ensuring that sufficient benefits are devolved and shared with community level managers to increase local incentives for sustained forest management and to achieve a broader goal of poverty reduction.<sup>51</sup> They identified a considerable lack of clarity regarding the basis for redistribution of forest management benefits at the community level.<sup>52</sup>

The other challenge is related with common misunderstanding of Participatory Forest Management (PFM) strategy. PFM is seen by different countries differently. It is used primarily as poverty reduction mechanisms in some countries, whereas, it has been used as forest management strategy in other countries. For instance, relative poverty and social marginalization were used as basis for the redistribution of forest management benefits in Nepal; whereas Tanzania used an approach aimed at attempting to balance various forest management costs with benefits.<sup>53</sup> The first approach does not primarily treat the PFM as a forest management process, rather it uses the PFM as a means to mobilize and accumulate capital for the purpose of tackling poverty and social marginalization. The model used by Tanzania is “cost-benefit –equity” model. This model considers the PFM as main forest management strategy and the sharing of benefits as a means to reinforce a forest management strategy.<sup>54</sup>

The FDRE Forest proclamation defines PFM as follows:

*A forest management approach executed through the agreement between the state and the local community that inhabits inside or around the forest area over the management, protection and utilization of forests owned by the state on the basis of predefined responsibilities and benefit sharing mechanisms.*<sup>55</sup>

Thus, PFM is one of the common mechanisms in which the community within, and adjacent to forest land can actively participate in the development,

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<sup>51</sup> Tom Blomley et al., Exploring the Rationale for Benefit Sharing in Community Forestry: Experience from Tanzania and Nepal, Towards a Conceptual Framework for Equitable Benefit Sharing in Community Forestry, P.1

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Federal Forest Proclamation, *Supra* note 8, Art 2 (9).

conservation and utilization of the forest while benefiting from it. In this regard there is practical progress in two districts of Sheka Zone namely, Andiracha and Masha.<sup>56</sup> In these two districts, there were ninety two (92) forest blocks under the umbrella of Ganiti and Woditi PFMs.<sup>57</sup> Forest blocks under the control of PFM were better protected from large scale investments as the PFM members effectively defended for their interests.<sup>58</sup> But, according to informants, there were significant numbers of forest blocks in the area which were not under the control of PFM. As can be easily observed on the ground, the demarcation and designation<sup>59</sup> of core, buffer and transition areas were not clear and vulnerable for threats including from PFM. Thus, many forest blocks were still in open access and waits for the risks like being handed over for commercialization as usual.

### 3.2. COMMUNITY PARTICIPATION AND BENEFIT SHARING

Obviously, community participation is a proviso to benefit sharing. Thus, effective implementation of laws and policies in general and forest legislation in particular call for meaningful public participation. In Ethiopia, public participation is the basic principle enshrined in different laws including the FDRE Constitution.<sup>60</sup> For the purpose of forest resources development and conservation, community participation is required both in case of demarcation and designation of forest lands and in case of licensing of the forest land for different purposes including for commercialization.<sup>61</sup> Any decision regarding the forest resource should not be made without the knowledge of the

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<sup>56</sup>In Andiracha district under the umbrella of Ganiti PFM there are 48 forest blocks which have already entered to agreement with the local government and among these number 41 forest blocks have secured forest land holding certificate. In the same way in Masha District under the umbrella of Woditi PFM there are 44 forest blocks which have already signed contract with the local government and among these forest blocks 23 have already secured title deed. Interview with Yingaling Bizuayehu, Focal Person, Sheka Zone REDD+ Project (Masha, August 2017).

<sup>57</sup>Interview with Tarekegn Alemu, Head, Department of Forest and Environmental Protection, Sheka Zone Administration (Masha, August 2017).

<sup>58</sup> Focus Group Discussion, held with experts from all sectors in Masha District (December 14, 2017), participants in Masha district listed the instance of 200 hectare land given for large scale coffee plantation in Uwwa kebele in which the Woditi PFM effectively resisted the decision and the area was returned back to the PFM in 2006 E.C.

<sup>59</sup> Federal Forest Proclamation, *Supra* note 8, Art 12 (10). All types of state forests need to have certificate of title deed which is to be supported by maps.

<sup>60</sup>FDRE Constitution, *Supra* note 7, Art. 43 (2)

<sup>61</sup> Federal Forest Proclamation, *Supra* note 8, Art. 19 (3)

community as the right to be informed pre-supposes meaning full participation.

In practice, the investors always send brokers to the local people whenever they need forest land for investment.<sup>62</sup> The brokers use the infrastructural problems in many localities as a pretext. One key informant (forester) bitterly claimed:

*While we preach for forest development and conservation, the brokers intrude deep in the community and preach for infrastructural supports promised by the investors like construction of roads, schools, health center, bridges and other sensitive issues. Then, the eager locality members support the investment even without considering environmental impacts of the investment proposed.*<sup>63</sup>

But, the promises are never fulfilled. When the investors processed the license at regional or zonal level, the local people had no information.<sup>64</sup> There is no valid contract or legal ground that obliges the investors to develop the promised infrastructures.<sup>65</sup> Obviously, fulfilling basic infrastructures for the community is the duty of government. What can be expected from the investors is assisting the government in this regard as they will be users of the infrastructure for different purpose. When the investors commenced harvesting their yields, the community requests fulfillment of the false promises of investors in which the investor commonly declined to do so. Afterwards conflict often arises between the investor and the locality.<sup>66</sup>

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<sup>62</sup>Interview with Getahun Ayasho, Expert in investment department, Sheka Zonal Administration, Masha, August 2017; Interview with Samuel Shaweno, the former Chief Administrator of Andiracha District, Mizan, December 2017; Interview with Tamiru Digo, Expert, Investment Department, Sheka Zone Administration, Masha, August 2017; Interview with Kife Ayele, Expert, Department of Agriculture and Natural Resource, Sheka Zone Administration, Masha, August 2017

<sup>63</sup>*Ibid.*

<sup>64</sup>*Ibid.*

<sup>65</sup>*Ibid* (As informants clearly claim the investment office is not authorized to oblige the investor to develop infrastructure, rather according to the investment policy the government is duty bound to fulfill infrastructures in order to facilitate the investment activity).

<sup>66</sup>Currently, most of the large scale farms are in clear quarrel with local community. Even some times the local youths take physical measure on the estate of the investments.



The law clearly provides for environmental, social and economic benefits that the local community living inside or adjacent to the forest land might get.<sup>67</sup> But, the detail was not yet devised. The regulation and the forest management plan intended by the proclamation were not yet come to picture. Thus, practically there was no incentive for the community for protecting the surrounding forest. The law restricts the community member's economic activities<sup>68</sup> without devising incentives in return which is mandatory for their livelihood and economic development.

Economic development is crucial to any society as it improves quality of life by raising standard of living. This is one side of the coin. Other side of the coin is that economic growth has also resulted in the depletion of natural resources and degradation of ecosystems.<sup>69</sup> This scenario triggers a debate. The debate is: whether it is possible to achieve economic growth without unsustainably depending on the environment.<sup>70</sup>

There are four theories that demonstrate the relationship between economic growth and the environment: Environmental Kuznets Curve, the Limits theory, Race to the Bottom model and New Toxics View. These theories demonstrate that the relationship between economic growth and the environment is complex and multi-dimensional. While there may be conclusive evidence on the shape of economy-environment relationship, these theories provide a useful starting point for thinking about the factors that drive this relationship.<sup>71</sup>

It is a firm fact that natural environment is fundamental to the economy for the reason that it provides both direct and indirect inputs to economic activity and acting as a sink to absorb the by-products of production and consumption.<sup>72</sup> Economic growth and environmental performance must go hand in hand, and the complementarities between a healthy environment and prosperity has been proved by different studies.<sup>73</sup> According to the conclusion of studies, environment is not a foe for economic development rather it is central to

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<sup>67</sup> Federal Forest Proclamation, *Supra* note 8, Art. 15(3)

<sup>68</sup> Federal Forest Proclamation, Art. 23

<sup>69</sup> Tim Everett *et al.*, Economic Growth and Environment, Defra Evidence and Analysis Series Paper, 2010, P.12.

<sup>70</sup>*Id.*, P.13.

<sup>71</sup>*Id.*, P.20.

<sup>72</sup>*Id.*, P.41.

<sup>73</sup>*Id.*, P.5.

economic activity and growth because it provides the resources needed to produce goods and services. Moreover, it absorbs and processes unwanted by-products in the form of pollution and waste. By regulating flood risks and local climate and maintaining the supply of clean water and other resources, it contributes a lot for management of risks to economic and social development.<sup>74</sup>

Sheka Zone is blessed with all these benefits of the environment. There is no flood risk. Clean springs for drink are available everywhere, and moderate local climate with elongated rain fall season and moderate sun shine. But, there was acute shortage of infrastructures, such as road access, electricity and pure water, and health centers. The living standard of the local community was not changed. Thus, most of marginalized community groups opted to engage in deforestation for livelihood or developmental desires. The saying `poverty is the biggest polluter` holds truth!

As raised by FGD participants at zonal level, the local workers were needed only for unskilled labour in which they weremistreated and poorly paid. After acquiring the investment license, the investors became deaf eared for the promised infrastructural supports. Investment offices were not able to oblige them for the promised infrastructural supports because the absence of legal ground.

### **3.3. BENEFITS FROM CARBON TRADE**

A meaningful benefit sharing scheme is expected from carbon trade. Up to 2012, forest carbon trade was limited to afforestation and reforestation projects only.<sup>75</sup> Thus, reduction of deforestation or conservation of already existing natural forest was not considered for carbon trade. This factor blocked the locality around Sheka Forest as they focus on conservation of natural forests already existing rather than reforestation or afforestation projects. But, this system is changed by international environmental discussions conducted 2012 onwards.

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<sup>74</sup> *Id.*, P.15

<sup>75</sup> Kyoto, Think Global Act Local, Research Project Sokoine University of Agriculture, Morogoro, Tanzania. P.32

*Reduced Emissions from Deforestation and Forest Degradation-plus (REED+) is a set of policies to prevent or slow down deforestation and forest degradation and to increase forest carbon stocks in developing countries. Integral to most models of REDD+ is the idea of an incentive mechanism through which rewards are provided to parties which take action to reduce emissions from forest lands.<sup>76</sup> REDD+ actions are targeted at maintaining existing forests and creating new ones.<sup>77</sup> (Emphasis added)*

But, FGD participants in the research area (most of them were professional foresters) were not informed about the new REED+ concept. Their understanding is on the pre- 2012 concept of carbon trade. They commonly said:

*Regarding the benefit sharing, we thought we will get some payment from the REDD+, but REDD+ is not applicable for the natural forest which already exist. The calculation is on the increment in carbon emission. But, we are not developing man-made forest.<sup>78</sup>*

On the other hand, the focal person for the REED+ project in Sheka Zone informed us that they have started forest inventory and other preliminary activities which are vital for REED+ project implementation.<sup>79</sup>

Hence, issues related with carbon trade needs more clarity. The new forest proclamation has also allotted a few provisions in this regard. In the preamble, it claims for necessity of further enhancement of the environmental, social and economic benefits that may arise from multi-lateral and bilateral agreements. The carbon trade issue concerns bilateral and multilateral agreements which are expected to be done by the federal government.

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<sup>76</sup>Yitebitu Moges (PhD) and Eyob Tenkir, Overview of REDD+ Process, 2014, P.1 (unpublished).

<sup>77</sup>*Id.*, P.3

<sup>78</sup>Interview with Abebe Atto, Expert, Forest and Environmental Protection Office of Masha District (Masha, Ethiopia 3 August 2018), Interview with Tarekeng Alemu, *Supra* note 32, FGD conducted at Masha District and Sheka Zone, August 15/2018 (Masha, Ethiopia).

<sup>79</sup>Interview with Yingaling Bizuayeh, *Supra* note 56.

As it is mentioned in the Forest Proclamation, the term forest carbon trade stands for a carbon market system in which payment made for carbon emission reduction by reducing deforestation and forest degradation or carbon stored by increasing forest coverage.<sup>80</sup> With the same understanding, the proclamation provides for a situation where a government may demarcate a forest or forest land for the purpose of carbon trade.<sup>81</sup> The proclamation is talking about demarcation of forests already existing for the purpose of carbon trading. This legal stipulation is in line with the new REDD+ project concept. Thus, stakeholders in the Sheka Zone need to understand what the law provides and push the implementation of the project accordingly.

On the issue of what is expected from signatories (states), the Cancun Agreement has listed seven points. The seven Cancun REDD+ safeguards include: 1) actions complement or are consistent with the objectives of national forest programs and relevant international conventions and agreements, 2) transparent and effective national forest governance structures, 3) taking into account national legislation and sovereignty, 4) respect for the knowledge and rights of indigenous peoples and members of local communities, 5) full and effective participation of relevant stakeholders (including, in particular, indigenous peoples and local communities), 6) actions that are consistent with the conservation of natural forests and biological diversity and 7) actions to address the risks of reversals and actions to reduce displacement of emissions.<sup>82</sup>

The intention of these safeguards is to ensure that REDD+ does not cause harm to local people and the environment, and to verify that new institutions put in place under REDD+ are complementary to other environment and development policies.

In the same way, initiative led by the Climate, Community and Biodiversity Alliance (CCBA) and CARE International, and bilateral and multilateral donors have safeguard policies of their own (e.g. the World Bank Group's

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<sup>80</sup> Federal Forest Proclamation, *Supra* note 8, Art. 2 (24 ).

<sup>81</sup> Federal Forest Proclamation, Art.19 (2).

<sup>82</sup> UNFCCC 2011. The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperation under the Convention. Decision 1/CP.16. Report of the Conference of the Parties on its Sixteenth Session, Cancun, 29 November – 10 December 2010. FCC/CP/2010/7 Add.1. Bonn, Germany: United Nations Framework Convention on Climate Change. [https://www.cifor.org/publications/pdf\\_files/SafeguardBrief/5183-brief.pdf](https://www.cifor.org/publications/pdf_files/SafeguardBrief/5183-brief.pdf)

Forest Carbon Partnership Facility (FCPF), the United Nations Program on REDD (UN-REDD) and the United States Agency for International Development (USAID)).

Hence, as the carbon trade issue concerns bilateral or multilateral agreements, the federal government must genuinely select forest resourceful corridors and seriously abide by the safeguards required by donors. Obviously, fulfillment of the required safeguards will maximize the bargaining power of states. Generally, the main problems in this regard include lack of common understanding of relevant institutions about carbon trade and the REDD+ concept. There are also financial and technical difficulties related with implementation of carbon trade. Moreover, the mechanisms that enable us to easily determine how the benefits should revolve to the community members also need due care and management plan.

#### **4. CONCLUDING REMARKS**

Currently, our planet is in vivid peril which is inflicted by human activities. Flooding, droughts, famine, erosion, loss of productive land are among the vivid results of depletion of the eco-system. The forest resource is at the center of the eco-system as it has vital role in moderating the overall environment. The atmospheric air condition, water resources, animal and micro-organism, human beings, etc. all depend on forests for their well-being.

Thus, if we endeavor in development and conservation of natural resources focusing on forests, the environment will pay back with enormous values. And if we act to the contrary and continue causing harm to the environment, the effect will backfire for sure, sooner or later. After all, at the end, whether it is good or bad all residents of the earth will share it. Thus, we will co-exist with the environment as good friends or perish together as foolish enemies.

For the fulfillment of the right of citizens to live in clean and healthy environment, the Ethiopian government has committed by signing hand full of treaties and international agreements. As most of environmental issues have trans-boundary effect, commitment of states to sign and execute treaties is vital. As located in Sub-Saharan region, Ethiopia is among drought prone countries so that its government has actively enrolled in international and regional environmental deals. Even, Ethiopia takes the leading role

representing the continent Africa at global level. But, the problem exists as it is or is going worst.

Hence, the question is which strategy is best one to enable the local community living with in or adjacent to the natural forest to comply with forest legislations. Based on foreign experiences like Uganda, Tanzania, Bolivia and response of the community members participated in this study, the authors founded that effective benefit sharing scheme (which is totally ignored) can be used as a mechanism of conserving and developing the precious Sheka Forest .

The benefits include infrastructures in which the investors are using to deceive the community to take their forest land, consideration of forest conservation for budget allocation and effectively acting on direct monetary benefits from carbon trade. Both environmental and investment objectives must be treated side by side. Further professional studies need to be conducted on forest friendly investments<sup>83</sup> rather than blindly moving on land intensive investments as it happens now.

In this regard the authors have observed that the Sheka Zone is ignored in infrastructural developments. Basic facilities such as road, hospital, pure water supply, and electric light were not provided. Investors used this weak side as pretext to take forest land. Lack of electric light make the community (rural and urban residents) dependent on natural forests for their energy source.

Regarding REDD+ project, there are prospect and challenges. The positive part was that REDD+ has already been launched in Sheka zone. We have observed their office and few employees. The challenges regarding REDD+ project were related with technical and financial difficulties. The local community was expecting more from the project. But, the officials in the environment and forest conservation office were not well informed about the project. The new proclamation is also concerned about carbon trade and there

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<sup>83</sup> In this regard the key informants and FGD Participants, who were also professionals, suggested investment activities like bee-keeping, animal herding, eco-tourism, private forest cultivation and utilization and the like. Though the area is very conducive for private forest cultivation and utilization there was no awareness and promotion in this regard and thus, there was no private forest.

were institutional changes for the interest of REDD+ project. Forest inventory, carbon stock emission and absorption capacity and the like need high amount of resources and technical efficiency. Thus, the local government is advised to contact many NGOs and interested international organizations as much as possible to overcome technical and financial challenges.

To sum it up, all relevant stakeholders must shift from paper work to field work. The impact of constitutional provisions, the Forest Proclamation, international instruments and national policies must be seen on the ground and the benefit sharing schemes must come in the fore front of enforcing forest legislations by devising a detail legal and policy frame work in this regard.

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