

REDD-Forestry and Climate Change Cell

Ministry of Forests and Soil Conservation

Babarmahal, Kathmandu, Nepal

Terms of Reference

Study of Forest Carbon Ownership (FCPF/REDD/S/QCBS-11)

1 Background and Rationale

Reducing Emissions from Deforestation and Forest Degradation (REDD) is evolving as a means to reduce forest sector carbon emissions through forest management and enhanced forest governance in forestry and related sectors. The World Bank's Forest Carbon Partnership Facility (FCPF) is assisting Nepal with support to develop and apply strategies to address the drivers of deforestation and forest degradation.

Especially in Nepal's Mid Hills community involvement in forest management significantly contributes to reducing deforestation and forest degradation and notably adds to the enhancement of carbon stocks. Communities possess management and usufruct rights and all benefits produced by forests (including both timber and non-timber) are enjoyed by local communities after formal handed over to them as a community forests

Currently, there is no internationally accepted operational definition of 'carbon rights'. Very few countries have adopted definitions in their national legal systems. Therefore, carbon rights can only be defined broadly as 'intangible assets created by legislative and contractual arrangements that allow the recognition of separate benefits arising from the sequestration of carbon in the biomasses. In this case, stored carbon would be a self-contained property independent of the physical biomass. The right to trade carbon needs to be created by virtue of legislative and/or contractual arrangements.

The term 'carbon rights' comprises two fundamental concepts: 1) the property rights to sequestered carbon itself (but contained in land, trees, soil, etc.); and 2) the rights to benefits that arise from the transfer of these property rights, for example through emissions trading schemes.

The Forest Act (1993) defines forest products as 'all the products available in the forests including timber, leaf, branches, stone, sand, soil, minerals, wild animals and water'. As the concept of forest carbon is new to Nepal, no provision has been made under legislation for clarifying carbon ownership yet, and thus remains unclear. Forest carbon exists both within plants and within the soil. The definition of ownership rights to forest carbon could therefore be very challenging in community forests where rights to ownership of the forest and the underlying land are separated. Carbon could be treated as a forest product (or service). In this case existing benefit-sharing mechanisms based on currently prevailing practices would apply (at least for above-ground carbon).

In a carbon market context, once the authorized entity has been identified, it has to be decided whether this entity is also the appropriate one to act as the seller of the projected carbon credits. If this is the case, the primary owner of the carbon rights will also act as the seller of the carbon credits. If the primary owner of the carbon rights is not equipped, willing or able to take on such responsibility, s/he would have to transfer the rights to sell carbon benefits of the activity to an intermediary or agent who sells the carbon on behalf of the primary owner (a practice which is very common in many existing forest carbon projects). Similar considerations may be required for non-market REDD+ mechanisms where decisions need to be made on who claims benefits, what is the nature of the benefits (if applicable), and who is the recipient of the benefits within the community.

When Nepal takes the view that REDD+ benefits and ownership of tradable carbon credits are retained by the government, based on government ownership of the forest, this needs to be analyzed and applied in the context of the constitution, forest law, land law, and international obligations. When reviewing these laws it is often possible to identify rights to access, use, management, and benefit from forests separately.

2 Objectives

To meet the requirements of the Readiness Package Content, Nepal should come to a clear definition of carbon ownership and carbon rights. In line with this requirement, the main objective of the study is:

- To establish a solid cross-sectoral understanding for defining forest carbon ownership and usufruct rights.

Forest carbon ownership and usufruct rights should be linked to land ownership and forest tenure arrangement. These aspects should have a clear legal basis as a first step. Their implementation should be promoted by trained national/local resource persons as a second step.

In addition, the study will have to address the following questions:

- What would be the impacts of the carbon ownership and usufruct rights on livelihoods if payments for environmental services schemes (including carbon) exists?; and
- What would be the implications for the design and implementation of incentive-based mechanisms for REDD and how can these be put into place during the readiness phase?

A transparent and equitable system needs to be made operational, including a national geo-referenced registry that manages (amongst others) information on carbon ownership. Remaining gaps in the framework including imminent legal or regulatory changes have to be clearly identified.

3 Tasks of the consultant

3.1 Overall approach

Nepal does not have a specific legislation dealing with or defining tradable carbon credits from forests. Hence, other existing national laws will have to be applied to understand the legal nature of tradable carbon credits for any REDD+ project that will be developed in the country.

In the absence of a national REDD+ legal framework, principles of national law have to be applied in order to understand which entities have rights to the benefits from REDD+ and/or tradable carbon credits. Community forest management generally devolves ownership and control on forest resources to local communities entailing most likely the carbon ownership as well. This requires a thorough analysis of the legislative and policy framework.

The study methodology will include a series of analytical steps carried out through a literature review and stakeholder consultation (including government officials, NGO representatives, private sector organizations, academics, legal experts and others who might have a significant stake in the forest sector).

3.2 Specific tasks

Specific tasks to be performed by the consultant under this study include:

1. **Review of REDD-readiness activities:** Review REDD-readiness activities, including past studies in Nepal (reports on various components) and experiences gained from other countries with a particular emphasis on issues relating to carbon ownership;
2. **Review of Nepal's forest and land use policy:** Review Nepal's forest and land use policies and legislation regarding forests, forest management and forest land tenure to establish possible precedents and processes for development of an institutional mechanism to establish forest carbon ownership and management;
3. **Identification of central entity regulating the use and sales of REDD+ carbon rights:** Identify the entity authorized to explore the REDD+ benefits of forests. This entity is generally recognized as the holder of enforceable rights to use and exploit the forest, such as rights to clear the land, harvest timber and/or rights to non-timber forest products. The selection of this entity might have to be undertaken even in the absence of any legislation dealing explicitly with REDD+;
4. **Gap assessment of forest legislation:** Assess gaps in existing forest ownership legislation related to forest carbon and recommendations on appropriate ways for these to be addressed through legislation and other channels (i.e., a roadmap); and
5. **Strategy formulation to adapt the regulatory framework:** Identify effective ways through which policies, institutions and laws can be adapted to encompass forest carbon ownership in a way that will ensure benefit flows for forest-dependent communities and maintain democratic rights under the new constitution of Nepal. This could be supported by discussions with different international and national forest sector stakeholders, academics and legal experts.

3.3 Synthesis

The consultant will synthesize the analysis and highlight the potential implications for REDD+ carbon markets in Nepal. The synthesis should take into consideration that rights to benefits and to tradable carbon credits belong to the entity owning a forest right. This entails important implications for the design of any mechanism that rewards credits for emissions reductions.

4 Expected Output and Deliverables

The REDD Cell receives a well referenced and comprehensive report on:

- How rights to carbon as property, and the associated rights to transfer and trade carbon, shall be determined in Nepal.

The report will be a key document to guide the REDD strategy formulation process. The consultant will also prepare an eight page summary of the study, highlighting the approach followed, the work undertaken, key findings as well as implications for REDD+ readiness in Nepal.

5 Study Approach

5.1 Methodology for the study

The study will be desk-based by reviewing available secondary information followed by structured interviews, consultation and interactions with key stakeholders in the field.

The consulting firm is encouraged to collect information from field interviews and observations. For the collection of primary information, the team is expected to spend sufficient time in the field. Participatory appraisal techniques should be adopted to obtain quantitative and qualitative factual information. The process requires information from a variety of sources that include:

- Key person interviews and discussions with local forest authorities;
- Local communities;
- Protected area authorities and
- Local NGOs working in the forestry sector; and
- Direct observations at a group level.

5.2 Study Team

The study team will be comprised of a national team leader (preferably with International exposure/experience) with intimate knowledge on carbon ownership and carbon use rights worldwide and national experts with a sound understanding of Nepal's legislation regarding ownership over natural resources and pertinent tenure regulations.

The Team Leader will be responsible for the overall process and the reporting while the other experts will help the Team Leader in specific activities. The Team Leader is expected to have good understanding and experience in REDD+ and Environmental Law. S/he will be responsible for the coordination of the overall process and for the compliance of all specific tasks of the ToR.

Other team members are also expected to have a clear understanding and experiences in REDD+ mechanism in addition to their specific subject matter expertise.

1. **Team leader:** National, preferably with International experience and at least Master in Environmental law or Justice.
2. **Environmental Lawyer:** National with at least Master in Environmental Law, and at least five years of specific experience.
3. **Sociologist:** National at least Master in Sociology and at least five years of specific experience.
4. **Forestry Expert:** National at least B. Sc. in Forestry or Natural Resource management and at least five years of specific experience.

5.3 Work plan

The consulting firm / consortium of consulting firms will prepare an inception report with a detailed work plan to guide the process, including a work schedule, methodology for data collection related to each key question, framework, information collection and analysis, and reporting. Based on the work plan, a detailed plan of study will be discussed and finalized jointly by the study team and the REDD Cell.

5.4 Time Frame

The consultant's services shall be required for up to four months.

6 Qualification/experiences and competency of the consulting firms

The consulting firm or consortium of consulting firms to be involved in this assignment should demonstrate the ability to carry out this study with sufficient experience in leading multi-disciplinary teams. The firm has to have the proven capability of studying and producing consistent high quality reports. The consulting firm or consortium of consulting firms has to demonstrate proven expertise in the thematic areas specified above (possibly one member can cover more than one field of expertise).

7 Client's Input to the Consultant

The REDD Cell will provide a supervising officer to oversee the contract and to support implementation of the study by providing feedback and coordinating with other government agencies, as necessary.

8 Reporting Requirement

The consultant shall submit an inception report within the first week of the contract agreement describing the consultant's plan of actions. This report shall also be accompanied by a work/time schedule to ensure that the final submission will be made on time. The inception report must be approved by the client in order to proceed with further work.

Draft copies of the final must be submitted to the client within eight weeks of signing the contract agreement. Following the final review by the client of the submitted draft documents and the ensuing communication, the consultant will prepare and submit five hard copies and one e-copy in Win-Word of the required documents to the REDD Cell.