CARBON RIGHTS IN THE CONTEXT OF JURISDICTIONAL REDD+

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Objective: To present progresses made by forest countries in clarifying who owns and/or has the capacity to transfer ERs generated in the context of REDD+ ERs programmes and share emerging related issues.

Acknowledgments: Country counterparts, Key UN-REDD and external partners such as White & Case LLP, Climate Focus. Special thanks to all FAO colleagues.
METHODOLOGY

STOCK-TAKING
- Previous CRs/tenure studies
- GCF REDD+ RBPs
- ART-TREES, FCPF, JNR VERRA

OUTLINE & GUIDING QUESTIONS
- Who owns ERs/under which conditions?
- Is there clarity on beneficiaries’ rights?
- Entity entitled to administer RBPs?

EXTENSIVE RESEARCH
- Review of forest and climate change legislation: more than 20 countries from November 2021 to June 2023

LEGAL ANALYSIS

KEY FINDINGS

CONCEPTUALIZATION
INTERNATIONAL CONTEXT

The UNFCCC and REDD+

Article 5 & REDD+
Policy approaches and positive incentives for activities relating to REDD+ include alternative approaches

Article 6

The Paris Agreement & benefits beyond carbon
**ERs LEGAL REQUIREMENTS UNDER DIFFERENT INTERNATIONAL SCHEMES**

![Image of logos: ART, Verra, Green Climate Fund, The World Bank, Forest Carbon Partnership Facility]

### Jurisdictional and Nested REDD+ Framework

<table>
<thead>
<tr>
<th>Programme/standards</th>
<th>Legal requirements linked to carbon rights/emission reductions rights under REDD+ programmes and standards</th>
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<tbody>
<tr>
<td><strong>GCF REDD+ Pilot Programme</strong></td>
<td><strong>World Bank Carbon Fund</strong></td>
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<tr>
<td>Legal implications for the forest country</td>
<td></td>
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<tr>
<td>Existing legal and regulatory frameworks clarifying ERs rights.</td>
<td>Not required</td>
</tr>
<tr>
<td>Arrangements for the ownership, registration, and transfer of forest carbon rights (ERs) in place.</td>
<td>Not required</td>
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<tr>
<td>Sub-arrangements with land tenure or resource rights holders, identified as primary owners of ERs rights.</td>
<td>Not required</td>
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<tr>
<td>Agreements/arrangements clarifying the allocation of benefits.</td>
<td>Yes</td>
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<tr>
<td>Benefit-sharing plan and/or designation of eligible REDD+ beneficiaries.</td>
<td>Yes</td>
</tr>
<tr>
<td>Avoiding competing claims on REDD+ results.</td>
<td>Yes</td>
</tr>
<tr>
<td>Jurisdictional and Nested REDD+ Framework</td>
<td>Yes</td>
</tr>
</tbody>
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WHY IS CLARITY ON ER RIGHTS KEY TO ACCESS FOREST CLIMATE FINANCE?

- To maximize environmental integrity and ERs efforts under the Paris Agreement
- To help developing countries in complying with international instruments and ERs legal requirements under different modalities & stimulate investments
- To value ERs efforts made by different actors, protect local benefits & improve livelihoods
- To guarantee legal protection to contracting parties
- To avoid conflicts and claims by third parties
REDD+ benefits are not strictly linked to forest land owners, but forest tenure rights if secured can constitute a solid basis to allocate ER rights.
Each country has its own legal order, which forms an integral part of its legal system and is based on its own sources of law.

**WHAT ARE THE TYPES OF INSTRUMENTS TO REGULATE ERS RIGHTS?**

- Political will → Legal reforms
- Legislative Body → National Laws
- Executive Body → Secondary legislation (Decrees, resolutions etc)
- Contracting parties → Contracts, formal agreements
PRIMARY OWNERSHIP, DEVOLVEMENT
TRANSFER OF RIGHTS

GOVERNMENT
SERVICE PROVIDERS
FOREST LAND OWNERS & LOCAL COMMUNITIES
VULNERABLE GROUPS, OTHERS

NATIONAL LEVEL
JURISDICTIONAL LEVEL
PROJECTS
Key findings

- Some of the countries opted to: Wait for further developments concerning Article 6 of PA before enacting such legislation (and are currently framing legislation to regulate access to carbon market, e.g. Argentina etc).

- Others have adopted secondary legislation (e.g. decrees) to implementation ERs jurisdictional initiatives (for example, Forest Carbon Partnership Facility negotiations in Ivory Coast and Vietnam).

- Countries like Peru or Indonesia recently adopted secondary legislation aiming to regulate the transfer of ERs Units, through a national registry, and implying previous authorization from the government, in order to ensure transparency and avoid double counting.
DIFFERENT LEGAL CONCEPTUALIZATIONS

COUNTRY LEGISLATION MIGHT REFER TO:

- The right to claim or receive payments derived from REDD+ RBPs (e.g. Colombia, Argentina, Paraguay, Papua New Guinea),
- The legal capacity to administer those payments (e.g. Chile),
- The rights to transfer benefits arising from such RBPs (e.g. Vietnam, PNG, Ghana) or derived from forest carbon trading (Lao People's Democratic Republic), and
- ER rights or property rights on certified Ers (e.g. Australia, Democratic Republic of Congo, Fiji, Gabon and New Zealand).
- Responsibility to manage ER rights/carbon services (eg. Nepal)

Ex. Ghana, the FC obtain EERs rights from customary land owners and beneficiaries by signing framework agreements duly covering their interests, based on their FPIC.
Schedule 5(27) of the Constitution has identified carbon as a service; according to Article 57(1) and Schedule 5(27), and carbon services are vested by the federal power, therefore under the responsibility of the federal level Government of Nepal.

Section 44(1.a) of the Forests Act states that the government shall make appropriate arrangements for the management, utilization and distribution of benefits arising out of environmental services (including carbon services).

The Environment Protection Rule (2020) specifies that the Government of Nepal can sell reduced carbon emissions or increased carbon reserves (ERRs) in the national or international market.

Section 28: Before trading carbon, the government agency, the organization participating in the carbon trade or the private sector and shall obtain the free prior informed consent of the local community that will reduce emissions or increase the carbon stock and the community affected by the related activities.

Secondary CRs- Section 28 of the Environment Protection Rule Organizations or private sector can participate but require the previous authorization from the Government of Nepal, as the primary entity entitled to transfer ERs rights is vested with the Federal Government.
Local communities etc have the right to use their own decision-making institutions rather than imposed systems (such as government appointed leaders).

Some communities may choose to engage with a REDD+ proponent using a hybrid of a traditional decision-making institution with the addition of participants from the village’s administration or those holding roles relevant to REDD+ (e.g. management board). Other communities may choose to create a novel institution to make decisions.
Carbon Rights are not regulated by law.

Rights to ERs generated from the accounting area will be regulated by contracts.

**Rights of the Customary Owners and Beneficiaries**

- Interested parties participating to the FA are designated as beneficiaries and will benefit from RBPs based on a consultative BSP.
- The title to ERs do not entail any rights, titles or interests to lands and territories.

FC obtain EERs rights from customary land owners and beneficiaries by signing framework agreements duly covering their interests, based on their FPIC.
To Implement the ENCCRV and the GCR RBPs

CONAF signed CA with small and medium land owners to distribute non-monetary benefits

ERs will be accounted against the NDC, in line with the ENCCRV, no other transactions are allowed to avoid double counting

Vary according to the modality chosen and the counterpart
• More **clarity in the interpretation of ERs rights** to enhance trust among the actors involved in REDD+ schemes (substantive vs procedural rights).

• Recognition of the **validity of national legal, policy and forest governance instruments** is crucial.

• Drafting **benefit sharing mechanisms** through participatory and inclusive processes to build trust (as well as establishing registries that guarantee integrity in ERs transactions).

• Generation of **right incentives** to protect forest, promote their multifunctional purposes, and enhance carbon stocks – by empowering and engaging actors and developing capacities.