

Transparency in Nepal's Forest Sector: A Baseline Assessment of Legal Indicators, Provisions and Practices

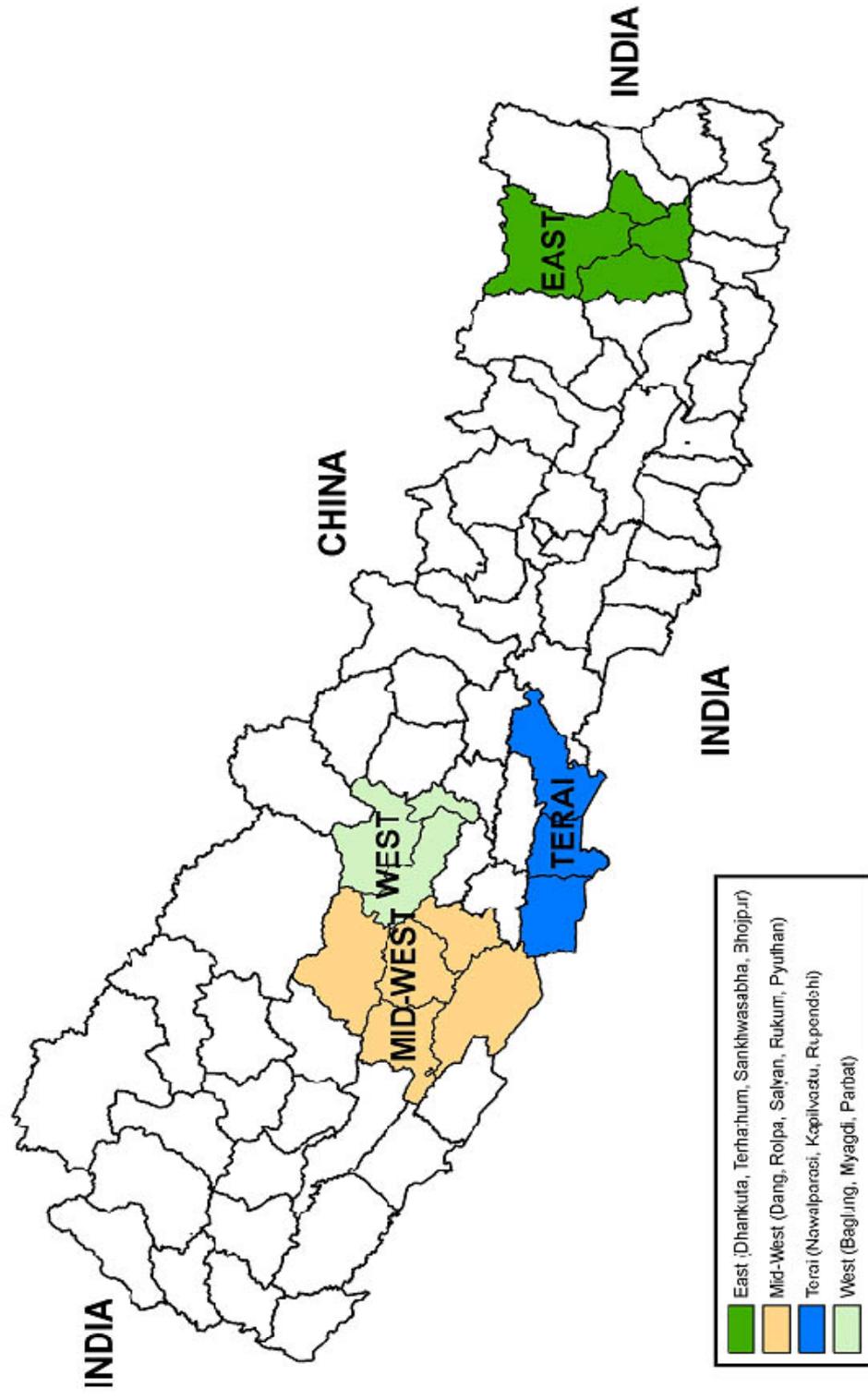


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LIVELIHOODS & FORESTRY PROGRAMME



Acronyms

| | |
|---------|--|
| CBD | Convention on Biodiversity |
| CBO | Community Based Organisation |
| CDO | Chief District Officer |
| CFUG | Community Forestry Users Group |
| CIAA | Commission for the Investigation of Abuse of Authority |
| CITES | Convention on International Trade in Endangered Species |
| CSO | Civil Society Organisation |
| DDC | District Development Committee |
| DFCC | District Forest Coordination Committee |
| DFO | District Forest Office |
| EIA | Environmental Impact Assessment |
| FCPF | Forest Carbon Partnership Facility |
| FECOFUN | Federation of Community Forestry Users Groups of Nepal |
| FSCC | Forest Sector Coordination Committee |
| GDP | Gross Domestic Product |
| GoN | Government of Nepal |
| IEE | Interim Environmental Examination |
| ILO | International Labour Organisation |
| INGO | International Non-Government Organisation |
| ITTA | International Tropical Timber Agreement |
| ITTO | International Tropical Timber Organisation |
| LSGA | Local Self-Governance Act |
| MFSC | Ministry of Forests and Soil Conservation |
| MFSP | Multi-Stakeholder Forestry Programme |
| NBCC | National Biodiversity Coordination Committee |
| NGO | Non-Government Organisation |
| NPC | National Planning Commission |
| NTNC | Nepal Trust for Nature Conservation |
| OFMP | Operational Forest Management Plan |
| REDD | Reducing Emissions through Deforestation and Degradation |
| RPP | Readiness Preparation Proposal |
| TCN | Timber Corporation of Nepal |
| USD | United States Dollar |
| VDC | Village Development Committee |
| VFCC | Village Forest Coordination Committee |

Forward

Forest sector governance is not always easy to define and is even harder to measure. This report, commissioned by LFP, has tried to quantify transparency in Nepal's forest sector in a way that follows an internationally recognised system as developed by Global Witness. This is the first attempt to measure forest sector transparency in Nepal and doing it has highlighted some important achievements and issues for future consideration.

Firstly, it clearly shows some very positive aspects (green lights) that really demonstrate some significant achievements by different actors working together on Nepal's forest sector development over the past two decades. In terms of Nepal's forestry laws and the legal status of its community groups and civil society stakeholders, Nepal has achieved much and we have much to be justifiably proud of. There are other areas in the sector where yellow and red lights could be fairly easily shifted to become green. These need to be our immediate targets. What actions can be taken? By whom? How? These things all need to be discussed in an honest and open way as we continue to develop Nepal's forest sector and develop our forward looking National Forest Strategy.

The findings of this report will contribute much to future debates on forest sector transparency and governance in Nepal. It sets a baseline against which future assessments of transparency can be compared and it clearly identifies areas where actions can be taken to improve forest sector transparency by different stakeholders working together. I believe this report will stimulate some valuable discussions that will contribute to ensuring that our forest sector can continue to provide sustainable and valuable social, environmental and economic services that Nepal needs for the future.



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Executive Summary

This report assesses the current level of transparency in Nepal's Forest Sector. It serves as a baseline against which future assessments of forest sector transparency can be measured. The report uses a system of indicators (a series of questions) included in a forest sector transparency report card originally developed by Global Witness. These questions and indicators have been modified slightly to ensure a better fit with Nepal's unique forestry context. There are 70 indicators in 15 groups all of which have been used in this report. Each indicator is given a "traffic light" rating. Green (yes) means that it has been fulfilled; yellow (partial) means it has been partially fulfilled and green (no) means it is not yet fulfilled. Of the 70 transparency indicators assessed for this baseline, 14% are completely fulfilled, 37% are partially fulfilled and 49% are unfulfilled in Nepal's forestry sector in 2011.

Forest sector transparency is an important ingredient of forest sector governance. This first attempt to try to quantify it is important because, despite the internationally acclaimed successes of Nepal's forestry sector such as its community forestry programme, sector governance is still weak and appears to be deteriorating. Unless this situation can be reversed, it is likely that the essential environmental services, the contribution to rural livelihoods and the potential contribution of forests to Nepal's inclusive economic growth will not be realised. Significant sector reforms are needed to enhance forest sector governance and improve transparency and this report provides an indication of where the main weaknesses lie and what can be done to address them. This report does not aim to offer solutions – these will need to come through wider dialogue amongst different stakeholder groups. It simply registers information that will contribute to this wider debate and highlights the areas where transparency is weakest and where improvements are required.

Nepal's forest sector appears to have a sufficiently robust legal framework to ensure transparency in various ways. For example, there are laws and directives that aim to ensure transparency across all sectors – although few are specific to the forestry sector. There are also significant legal rights for forest sector institutions of various kinds including community groups and civil society organisations. One key deficiency in the current status of forest sector transparency is that there is only limited access to decision-making and consultation by many key stakeholder groups at all different levels from national to local – although in practice good governance and transparency are far better developed at sub-national and local community levels than that at national level. There are also some fundamental issues relating to lack of clarity and widespread uncertainty over forestland use and tenure – particularly since forestland tenure is often separate from forest use rights. This is likely to become increasingly important now that environmental services from forests are being valued financially since the question arises as to who should benefit from these i.e. forestland owners, managers or right-holders?

Another major deficiency in forest sector transparency relates to the rules, regulations and procedures for assigning rights to harvest, utilise and benefit from forest products – especially timber. Many aspects of these require fundamental reform to ensure that there is better public knowledge and awareness of how forests are being utilised productively and how the resulting benefits are being distributed. Illegal harvesting, forestland encroachment and widespread corruption amongst different actors involved in timber harvesting activities (and other forest products) are a direct result of these transparency weaknesses. There are also transparency issues relating to other sectors where these impinge on, or affect, the forestry

sector. This leads to a lack clarity over roles, responsibilities and decision-making between individuals and institutions (including between different government institutions) meaning that *ad-hoc* and personal interests can thrive. This again requires significant reforms to put forest sector decision-making on a clear and transparent basis within the wider framework of Nepal's laws and policies.

Arguably, the single most important deficiency regarding forest sector transparency concerns law enforcement and monitoring. A robust legal and policy framework alone is insufficient to ensure a transparent and fully accountable forest sector unless there is widespread compliance with it. Unfortunately rule of law in Nepal and especially in the forest sector is weak and appears to be deteriorating. There are widespread reports of corruption and law-breaking as well as high levels of impunity. Unless these can be tackled through more transparent and accountable forest sector governance and increased public awareness, monitoring and participation, forests in Nepal will continue to be threatened by a frontier mentality that permits or justifies free-for-all forest resource exploitation for personal or political gain, rather than legitimate common or national interests.

The 70 forest sector transparency indicators used in this report allow for a comprehensive analysis of Nepal's forest sector of the situation in 2011. However some indicators are considered to be more important or more relevant in Nepal than others. Of these 70 transparency indicators the 10 key indicators that are listed below are considered to be the most critical. Although all indicators are important, these 10 are the indicators that it would be most fruitful to continue to monitor closely as a way of assessing Nepal's progress towards significant forest sector reform.

Ten Critical Forest Sector Transparency Indicators

-  1.3 Forest sector-specific laws/rules/statements that provide for transparency?
-  3.1 An agreed and publically available forest policy document?
-  4.1 National forest forum?
-  5.1 Published policy on forest tenure?
-  5.6 Dispute settlement process for tenure conflicts?
-  6.9 Logging/permit contracts documents made public?
-  11.1 Strategic process to assess priorities on between development options?
-  13.4 Independent forest monitor?
-  13.6 Lists of debarred/suspended operators published?
-  14.3 Uncommon for authorities to ignore their obligations?

Numbers refer to sections in this document

Transparency Overview for Nepal

Governance and Transparency

Transparency International's Corruption Perception Index (2010)¹ gives Nepal a score of 2.3/10 placing it at 146th position out of 178 countries. Nepal is the most corrupt country in South Asia (except for Afghanistan) and its ranking continues to fall (e.g. it was ranked as 121st in 2006 with a score of 2.5/10).

Governance Indicators for Nepal²

| | 2006 | 2009 |
|---|-------|-------|
| Control of Corruption | 22.82 | 25.24 |
| Rule of Law | 25.71 | 17.92 |
| Regulatory Quality | 26.83 | 23.81 |
| Government Effectiveness | 19.42 | 18.1 |
| Political Stability and Absence of Violence/Terrorism | 2.4 | 5.19 |
| Voice and Accountability | 18.27 | 30.81 |

World Bank Governance indicators (2009) show that despite improvements in political stability and absence of violence following the end of Nepal's conflict in 2006, rule of law, regulatory quality and government effectiveness have all declined even further from their already low starting point. Voice and accountability has shown a significant increase since the reintroduction of democracy in 2006.

Development Indicators for Nepal

| | Value | World Rank |
|--|---------------------|------------------------------|
| GDP per capita (2010 estimate) | US\$ 1,200 | 172 nd out of 194 |
| UNDP Human Development Indicator (2010 estimate) | 0.428 | 138 th out of 169 |
| Per capita CO ₂ e emissions (2010) – including those from land-use change | 6.3 tonnes per year | 93 rd out of 185 |
| Percent population living below national poverty line (2010) | 30.9% | |

Forestry Sector Statistics

| | |
|--|---------------------------|
| Population (2009) | 29.3 million ³ |
| Forest Area as % of land area (including shrubland) ⁴ | 39.6% |
| Population per km ² of forest | 502.6 persons |
| Deforestation rate (estimated) | 1.4% |

¹ Transparency international Corruption Perception Index (2010)

² Available on info.worldbank.org/governance/wgi/pdf/c166.pdf (accessed on 30/05/2011)

³ World Development Indicators (2011). World Bank, Washington.

⁴ Ministry of Forests and Soil Conservation (2010) The Future for Nepal's Forests

Introduction

A well-established relationship exists between governance and development outcomes⁵. Where good governance exists development outcomes are normally greater and more sustainable. Whilst there are many different definitions of governance, they all invariably include transparency as a key ingredient for ensuring accountability, public involvement in decision-making and reducing graft (corruption). Indicators of transparency have been developed for various specific sectoral and local contexts.

Forestry sectors are normally expected to deliver mix of social, economic and environmental development outcomes and good forest sector governance is critical for ensuring this. Forest sector transparency indicators have been developed by Global Witness⁶ which periodically publishes forest sector transparency reports for various countries e.g. Liberia, Ghana, Cameroon, Peru. For this report, the same indicators were used although in a slightly modified format to better fit Nepal's unique situation. 70 forest sector transparency indicators (in the form of questions) in 15 groups are analysed here. The report provides explanations for the rating assigned to each of these in the form of a 'traffic light' (red, yellow or green) (see Annex 1).

Forests cover about 40% of Nepal's geographical area and they are one of the country's main natural resources since they are major sources of rural livelihoods, income and employment. The forest sector generates about 9% of Nepal's GDP⁷ and about 70% of the population depends directly on forests for their forest product needs (timber, fuelwood, fodder and compost); for subsistence farming; and for environmental services such as soil and water conservation; biodiversity conservation and climate change mitigation.

Nepal's forest sector is characterised by its somewhat contradictory achievements and weaknesses. On one hand Nepal has, for 2 decades, successfully implemented a large-scale and globally recognised community forestry programme that has brought about 23% of the country's forests under community management and has delivered livelihoods benefits for about 40% of the country's people including many poor and forest dependent households. It has also brought approximately 1.3 million ha of previously degraded forest under sustainable management resulting in better forest condition, increased availability of forest products and improved environmental services. The 15,000 or so community forestry groups that manage these forest patches generate cash incomes⁸ which they utilise for a range of community development activities, they create local employment and they practice democratic and inclusive governance in a situation where elected local bodies do not presently exist. The implementation of a successful community forestry programme in Nepal is paralleled by the emergence of empowered and active civil society organisations of various kinds. These are increasingly being seen and accepted as part of a wider group of stakeholders and providers of services in the forestry sector alongside the more traditional government agencies.

⁵ Kaufmann D, Kray A & Zoido P (1999) *Governance Matters*, World Bank Policy Research Paper No. 2196, Washington DC.

⁶ Launched in 2009 and available on www.foresttransparency.info/

⁷ Department of Forest Research and Survey (2008). Contribution of forestry sector to GDP in Nepal.

⁸ Paudel D, Khatri DB & Paudel G (2010) in '*Financial transactions in community forestry user groups in Nepal*' (RRI/Forest Action, Kathmandu), estimate that total income of user groups from forest product sales in 2009 was USD 11.43 m (an average of USD 450 per group)

On the other hand, forest sector governance (perhaps reflecting wider governance issues in Nepal) is still recognised as being weak and is perhaps deteriorating – especially since the end of the decade-long armed conflict in 2006. There are regular media reports of deforestation and encroachment, illegal logging and corruption in forestry organisations. Recent estimates claim that some 84,000 ha of forest annually⁹ are being lost through illegal encroachment. Persistent reports of high levels of illicit or unsustainable logging have resulted in a green felling ban being imposed across large parts of the country¹⁰ and a report on Investigation of Deforestation and Illegal Timber Trade produced by a sub-committee of the Parliamentary Committee on Natural Resources and Means (2010) has publically accused a range of institutions of being involved in illegal logging and corruption and has recommended radical changes in the organisational structure of the Ministry of Forests and Soil Conservation (MFSC). The preliminary draft report of this committee highlighted that in 2009-10, Nepal experienced its worst deforestation for 30 years, particularly in government-managed forest. The report also highlighted government officials, leaders of political parties, police and members of forest user groups who were involved in timber smuggling, illicit trade and corruption. In a recent speech, the Secretary of the MFSC pointed out that “there have been incidences of corruption [in the Ministry] and some corrupt officials are under trial by the Commission for Investigation of Abuse of Authority (CIAA)”¹¹. It is widely believed that the level of illegal activities is highest in government-managed as opposed to community managed forests - although there is little empirical evidence to substantiate this view.

Widespread commercialisation of forest products, especially the trade in high-value timber from the Terai, has been one of the least successful aspects of Nepal’s Forest Sector Master Plan (1988-2010). Timber trade is regulated by government and is partially executed by a semi-governmental company (the Timber Corporation of Nepal) as well as by private contractors, and to some extent by local community groups. Timber trade practices are characterised by government price controls and distortions (by government and traders), obscure licensing procedures, bureaucratic controls and *ad hoc* provisions. In addition, poverty, unemployment, impunity, lawlessness, political instability and conflict persist in Nepal, especially in the Terai, and these are significant factors affecting forest sector governance and the effectiveness of regulatory controls. Consequently, there is a widely acknowledged loss of economic revenue from forests and of the forestry sector’s potential to contribute to Nepal’s economic growth and pro-poor development due to widespread circumvention of regulatory controls as well as illegal practices in harvesting and trade in timber.

1. Transparency Norms

Do official mechanisms – policies, laws, regulations, decrees, procedures, international agreements, and public statements of commitment, etc – exist that permit public access to information?

Nepal’s Interim Constitution (2007) and various legal provisions enacted by the Government of Nepal (GoN) aim to ensure transparency and public accountability of government and others. Transparency provisions are scattered through many legal documents. They can be

⁹ MFSC (2010). Readiness Preparation Proposal (RPP) for the Forest Carbon Partnership Facility (FCPF) of the World Bank.

¹⁰ A ban on tree felling in 24 districts (largely the Terai) was been imposed by the MFSC in July 2010

¹¹ 14th January 2010

confusing, sometimes contradictory and/or overlapping making it difficult for the public to understand and use them. Having many institutions involved creates confusion about roles and responsibilities thus creating space for corruption and mismanagement to thrive.

Nepal's Parliament recently ratified the United Nations Convention against Corruption (2003) after considerable public and international donor pressure to do so. Previously, the political leadership and state bureaucracy were reluctant to ratify this – possibly because of their own involvement in corruption and because of the history of bureaucratic control over public decision-making processes in Nepal's public affairs.¹²

1.1 Is there a Freedom of Information Act?

Yes, the Rights to Information Act (2007) was enacted by Parliament after many years of struggle by civil society organizations (especially human rights-related NGOs) and following a special order from the Supreme Court in 1994¹³. Subsequently, GoN endorsed the Rights to Information Regulation (2008). Under this law, every citizen has a right to information and concerned agencies have obligations to provide it. The Constitution of Nepal (1990) listed freedom of information as a fundamental right of people and similar provisions are made in article 13 of the Interim Constitution of Nepal (2007).

Few people are aware of these provisions and they have little effect on making government activities transparent. There are no follow up mechanisms and institutional know-how on the provisions is weak. Clauses on confidentiality in the Rights to Information Act and its regulations are used as an excuse for agencies to deny information to the public, particularly on commercial and economic matters.

1.2 Do other rules and regulations provide for transparency?

In addition to any specific freedom of information laws, are there references to transparency in the Constitution, general laws, regulations, decrees etc. that all public institutions must adhere to

The preamble of the Interim Constitution of Nepal (2007) states that the state is committed to implementing democratic systems, freedom of citizens, fundamental rights, human rights, freedom of press, independency of judiciary and rule of law and that these constitutional commitments must be followed by all public institutions. Freedom of the press and publication is guaranteed as a fundamental right in article 15 of the Interim Constitution. According to article 33(c) of the Interim Constitution, the state has obligations to maintain people's sovereignty, rule of law, judicial independence, civil society monitoring, press freedom, rights to information, transparency, people's participation, impartial-competent-fair administration and elimination of corruption and impunity. Likewise, every constitutional body¹⁴ is required to submit an annual report to Parliament for discussion and approval. Despite this constitutional framework for transparency, the provisions are not properly implemented due to political instability and the reluctance of bureaucracy to maintain transparent procedures.

¹² Manandhar, N., (2009), Will they ever? Politicians and civil servants are afraid to ratify the UN anti-corruption convention, *Kathmandu Post* - a national daily news paper, 09/12/2009

¹³ Gopal Sivakoti Chintan vs. government of Nepal, Ministry of Finance, *Nepal Law journal*, 1994, Volume 4, p.255

¹⁴ The constitutional bodies in Nepal are: Commission on Investigation of Abuse of Authority (CIAA); Auditor General; National Human Rights Commission; Public Service Commission and Election Commission.

Apart from constitutional provisions, legislation in place includes the Rights to Information Act (2007); Good Governance (Management and Operation) Act (2008); Private Financing in Building and Operation of Infrastructures Act (2006); The Prevention of Corruption Act (2002); Commission on Investigation of Abuse of Authority Act (1991), Local Self-governance Act (1999); and The Public Procurement Act (2007). All these have procedures for maintaining transparency and explain the various legal procedures that must be followed by public institutions to inform the public and the various ways by which the public can get information. The Good Governance (Management and Operation) Act (2008) emphasises that every government official should act transparently while making decisions. The Local Self-governance Act (1999) includes a provision for maintaining transparency at local government level. Section 3 of LSGA states that local government should work to establish democratic practices in society based on transparency, public accountability, and public participation. The above-mentioned laws all accept the general principle of public participation in decision-making although government agencies are often reluctant to act on this.

Provisions for ensuring transparency are scattered through many documents and can be confusing and sometimes contradictory and/or overlapping making it difficult for the general public to understand or use them properly. For example the Commission for the Investigation of Abuse of Authority (CIAA) has the right to conduct inquiries and investigate improper conduct or cases of corruption by public persons (office holders), but the CIAA Act (1991) does not allow the CIAA to register cases against judges and members of parliament. At district level there are many legal agencies responsible for maintaining transparency including the Chief District Office (CDO), District Court, District Development Committee, etc. The many institutions involved create confusion about roles and responsibilities thus creating space for corruption and mismanagement to thrive. The Good Governance Act is meant to maintain transparency at higher level government offices whereas the Local Administration Act is for local level transparency but there is a lack of coordination between these two laws, creating further confusion and overlapping of responsibilities. For example, local government is not compelled to comply with the Good Governance Act.

Furthermore, it is the responsibility of the public to ask for information. This disadvantages those who are illiterate and live in remote areas. There are no specific provisions for those who cannot follow the procedures properly and legal documents are not easily available, are written in an advanced Nepali language and are often difficult for the public to understand.

1.3 Are there any sector specific laws/rules/statements that provide for transparency?

Are there any forest-specific written laws and regulations, key announcements or speeches that develop the right to access public information on the sector, for example a Service Charter?

The various rules and Acts mentioned in section 1.2 apply to all sectors including forest but there are few specific or additional forest sector statements on transparency. The Forest Act (1993) and the associated regulations do not specifically mention measures for ensuring transparency. However, the most recent guidelines issued by the MFSC for the Community Forestry Development Programme (2009) do make provision for public hearings and public audits (sections 5.2, 5.9 and 7.1/7.2) and for transparency in fund mobilisation (section 3.8). CFUGs are expected to include such provisions in their constitutions and operational plans. In fact the overall importance of transparency in community forestry is specifically

emphasised in the preface to these guidelines. However, various studies and monitoring reports indicate that the situation of transparency in CFUGs is not always satisfactory in practice and that they need considerable capacity building and governance support to improve this.

In addition, the Forest Product (Timber and Firewood) Collection and Sales Directive (2001) in section 5.2 requires DFOs to publish notices to assign permits to contractors for logging in allocated forest plots through a competitive process. Similarly, section 11(2) requires DFOs to publish notices for timber auctions from government-managed forest. However, the directive is not specific about how such notices should be published i.e. whether through notice boards in DFO offices or in the print media. Section 28 of the same directive states that MFSC can form a monitoring and evaluation team (consisting of government officials) to prepare and submit a monitoring report on timber logging and sales from government managed forests. In practice, this provision has not been used for many years and only after recent questions raised by the parliamentary committee has it been proposed to do so.

Various NGOs and associations in the forest sector do have their own rules and statements on transparency. For example, the Federation of Community Forestry Users Nepal (FECOFUN) has its own bylaws and code of conduct to maintain transparency in its organisation¹⁵. The basic values of FECOFUN as incorporated into its bylaws include transparency, rule of law, public auditing of funds and public hearings of programmes (section 6 of FECOFUN bylaws). According to chapter 8 of FECOFUN's regulations, it will maintain internal auditing and annual auditing systems, submit reports to its meetings and assemblies (half-yearly and annual reports) and ensure information flows from the centre to district and local levels including on its funds and their utilisation.

Bilateral and multilateral development organisations, I/NGOs and CBOs are heavily involved in natural resource governance programmes in the forestry sector. There are no clear legal provisions for them to maintain transparency.

1.4 Is there any settlement process for disputes regarding access to information?

Are there clear, documented, and understood steps for resolving conflicts between transparency and confidentiality norms, or where / when authorities fail or refuse to provide information? If so, is the dispute-settlement process not prohibitively costly and therefore realistically accessible to most people?

The Rights to Information Act (2007) has provision for filing complains if information is denied by the authorities. This has never been implemented because the provisions are unclear and registering a complaint (and obtaining a response) are cumbersome and expensive. Moreover, registration of a complaint does not guarantee access to information and sometimes it can take a long time to get a response from the responsible authority.

Section 11 of the Rights to Information Act (2007) requires that an Information Commission should be established at national level. This would monitor the implementation of rights to information and receive complaints. This Commission has not been formed and there is no national institution or body pursuing or supporting this. According to the Act, if the Information Officer of any public agency denies access to information, provides only partial

¹⁵ FECOFUN constitution sections 1 & 2

or incorrect information, or refuses to provide information on the grounds that the applicant is not considered as a stakeholder, the concerned person can make a complaint to the chief of the concerned agency, and the chief has the right to decide. Appeals against such decisions can be presented to the Commission within 35 days. The Commission has authority to settle such disputes by following the procedures defined by the Rights to Information Rules (2009). Although there are no application charges, the process is lengthy and also costly for citizens due to the centralised process of government. Some media houses, local activists and community groups started to exercise their rights to request information from District Forest Offices (DFOs) about timber trade in the Terai but have had limited success. At community level, some forestry groups do practice different mechanisms for maintaining transparency but there is still much room for improvement.¹⁶

In Nepal, individuals or organizations often use informal channels or personal networks to get access to information. These methods can be effective and timely but also favour those with social and economic powers (contractors, political leaders, higher caste, educated, rich etc). Bribery of officials to get information is also common.

2. Legal Standing

Do groups of ordinary citizens have collective legal standing? This indicator is not about transparency per se, but is required to understand the extent, if any, that communities (or NGOs) have rights.

Communities and NGOs have rights as independent legal entities. The forest sector has been proactive in recognising community groups as sovereign units at local level who can take decisions autonomously. The long history of development interventions in Nepal has influenced such policy provisions in constitutions and other legal practices. Traditionally local communities behaved independently and organised their affairs using indigenous knowledge and practices. Community forestry provided an opportunity for these practices to be given legal recognition.

Article 12 of the Interim Constitution of Nepal (2007) gives citizens the freedom to form unions or associations, and therefore citizens do have rights to be organised into groups for their collective legal standing. A community is recognised as a legal entity or a 'person', if registered for specific purposes. The NGO Registration Act (1977) similarly allows for registration of NGOs.

2.1 Do Communities have legal standing?

Does any part of the codified law recognize 'a community' as 'a legal person', for example able to hold property titles or sue and be sued?

The Forest Act (1993) recognises communities as sovereign and independent entities that can manage and utilise forest resources under their own jurisdiction. Other natural resource-related laws, e.g. the Water Resource Act (1992) and Community Electricity Act (?) make similar provisions and the Education Act (1971) ensures the rights to establish community groups as a legal entities for educational purposes.

¹⁶ Legislature-Parliament (2010), Study report on issues of forest protection in Nepal, Parliamentary Committee on Natural Resources, Kathmandu, Nepal

Sections 41 and 43 of Forest Act (1993) recognize that communities have rights to form and register user groups as sovereign entities for the management and utilisation of forest resources. Once registered with the concerned government agencies,¹⁷ groups are recognised as autonomous, corporate bodies having perpetual secession. The community, as a legal person may acquire, possess or transfer or otherwise manage property. Likewise a community as a legal person can sue or be sued in its own name.

The creation of an association, NGO or user group is difficult because of inefficient bureaucratic procedures, a reluctance to devolve powers away from government within a centralised bureaucracy and various administrative hurdles. This is time consuming and requires financial resources. It is mainly elite groups in society who are able to enjoy the autonomy and freedom of being organised into groups or associations.

Recently, the forest bureaucracy has drafted new legal provisions that would curtail community rights and independence although it seems unlikely that these amendments to forest laws will get endorsement from parliament given the increased anti-amendment public pressure and resistance from the association of community groups. Nevertheless this move shows that the process of making communities independent and self-reliant is not yet complete.

2.2 Do NGOs have legal standing?

Does any part of the codified law recognize NGOs as ‘a legal person’, for example able to hold property titles or sue and be sued?

NGOs are recognized as ‘legal persons’ in Nepal. According to section 4 of NGO Registration Act (1977) citizens have rights to register NGOs for social welfare and professional development purposes. The same provisions as mentioned in 2.1 apply to NGOs for holding property title or litigation. These provisions are mentioned in the sections 5 and 6 of NGO Registration Act (1977). NGO registration is fairly simple in Nepal and more than 12,000 NGOs have been registered so far.

3. Forest Legal Framework

Is the forest legal framework available to the public?

Yes, in theory, legal and policy documents related to the forest sector are available to the public although in practice, people in remote rural areas and those who are illiterate cannot access them. The language used is complex and not easily understandable.

Section 3 of the Some Public Documents Authentication (Procedures) Act (2006) states that the constitution and constitutional declarations, act/ordinances, rules/regulations, ratified treaties/conventions, constitutional and legal notices and other information, if they have constitutional and legal value, should be published in Nepal *Gazette* – the authentic publisher for the GoN. Likewise, decisions of the Supreme Court should be published in the Nepal Law Journal. Legal documents published by GoN are freely distributed to government offices and courts although they are not made available to the public free of charge. A few government websites are starting to provide such documents. Policy decisions made by the cabinet

¹⁷ Community Forest user Group can register with the DFO, Water Users Association (User group) can register with the District Water Resource Committee of the District Development Committee (DDC)

(ministerial meetings) are not published and are not available to the public. These are usually kept as confidential documents and access to them requires a lengthy process, often without success. An informal network or 'through a friend' typically works for obtaining them.

The Forest Act (1993) has been critical for forestry sector development. Many guidelines and regulations have been developed under it through a relatively participatory process when compared to that under other Acts. This has allowed local forestry groups to have basic knowledge of forest legislation. FECOFUN and other organisations distribute these documents freely and some projects also use them for creating awareness.

3.1 Is there an agreed national forest policy document? Is it available?

Is there an explicit current document described as the national forest policy that has been agreed by all sector stakeholders? If so, has it been used to inform the forest law and other norms (or has it been produced after the forest law)? Is it up-to-date or does it require revisions in the light of REDD, mining, or other threats and opportunities?

Nepal's forest sector is one of the best planned in the country and the sectoral plan for forestry is relatively well-established and its preparation has frequently involved participation of concerned stakeholders. The Master Plan for the Forestry Sector (1989) provided the basis for forest policy over the past 20 years and all forestry programmes and regulations were intended to be implemented within this framework. The Master Plan was never widely distributed and only the summary was ever translated into Nepali. The process of preparing a new National Forestry Strategy has recently started under the initiation of the MFSC and will involve wide-level stakeholder consultation. Changes are required to incorporate a number of new aspects including REDD, consistency with other legislation (e.g. on mining, local government), and to bring consistency with national planning processes which emphasise addressing poverty, climate change, decentralised governance, economic growth and sectoral reforms.

The Master Plan provided the policy that launched the community forestry programme in Nepal and subsequently the Forest Act (1993) and Forest Rules (1995). GoN has somewhat deviated from the Master Plan framework by introducing new provisions for the management of Terai forest and for the collection of taxes from CFUGs and a revised forest policy was produced in 2000 although this was never widely accepted or endorsed. GoN has recently submitted its readiness preparation plan (RPP) to FCPF (World Bank)¹⁸. This acknowledges that changes in forest policy and laws are required to enable REDD to work effectively. Although legislation changes are required to deal with forest sector corruption and sector governance, recent attempts to revise forestry legislation are not based on first having a widely endorsed forest sector policy (or strategy) in place (i.e. legislation should follow policy) and may therefore be used to reinforce central level and potentially less accountable control of the sector.

3.2 Is the forest law available?

Forest laws and procedural guidelines are available to the public. These include the Forest Act (1993), Forest Regulations (1995), Community Forestry Directive (1995), Guidelines for

¹⁸ Government of Nepal (2010), Nepal's Readiness Preparation Proposal for FCPF, Ministry of Forest and Soil Conservation, Kathmandu, Nepal

Community Forestry Development Programme (2009), Inventory Guidelines (2005), Collaborative Forest Management Guideline (2003), National Park and Wildlife Conservation Act (1973), Conservation Area Management Regulations (1996/2000), Buffer Zone Management Regulations (1995), Manual of IEE for the Forestry Sector (2005), and Environmental Protection Act (1997). These can all be purchased in the market in Kathmandu but not generally elsewhere.

3.3 Are all forest regulations, procedures, decrees, etc. available?

Are all lower level norms (regulations, procedures, decrees, technical directives etc) that make the forest laws operative available?

As for 3.2 such all directives, including social, environmental and technical guidelines are published by government and available, but not necessarily outside Kathmandu.

For CFUGs, forest management plans approved by DFOs are more relevant than national legal documents. Usually these are easily available within the community group. This is not the case for buffer zone management groups, government-managed forest, and private-leasehold forest areas for which management plans are not readily available (or are non-existent). Forest-related court decrees are published and are available from the courts but they are hard to understand as they are written in complex legal language.

3.4 Are forest-related policies, laws, agreements etc public?

Are all other significant regulations, procedures, decrees, technical directives etc. that affect forests available (for example norms related to carbon and REDD; agriculture and bio-fuels; conservation and national parks; roads, energy and other infrastructure)?

Generally, all such documents are published in the Nepal Gazette or in other places and are thus publicly available (either in printed format or on the internet). Nepal's RPP submission (for REDD) has recently been developed and is available in the internet. Key legislation, policies and rules that affect the forestry sector include the Ozone Depleting Substances Consumption Control Rules (2001); the Subsidy for Renewable (Rural) Energy Rules (2006); the National Agriculture Policy (2004), Agriculture Enterprise Promotion Policy (2007), Agro-biodiversity Policy (2006), National Tea Policy (2001), National Coffee Policy (2004), National Dairy Product Policy (2007), National Seed Policy (1999), National Irrigation Policy (2004), Public Road Act (1974), Electricity Act (1992), and Private Financing in Building and Operation of Infrastructures Act (2006). All are nominally available to the public although not necessarily easily accessible. Infrastructure development is a national priority in Nepal and there is therefore potential for conflict between forestry and infrastructure development related activities¹⁹ (according to section 68 of Forest Act (1993) especially those with national priority. There are no concrete legal provisions on bio-fuels although GoN through its development budget, has given emphasis to bio-fuel cultivation on farmland.

¹⁹ Annex-7 of Industrial Policy 2010

3.5 Has the country Signed up to international agreements?

Which forest-related international agreements or processes has the country signed up to, for example EU Voluntary Partnership Agreement (VPA), free trade agreement, ITTO, CITES, UNFCCC, Convention on Biological Diversity (CBD), World Bank Forest Carbon Partnership Facility (FCPF), UN-REDD...

Nepal has signed over 30 international agreements/treaties/conventions/protocols which affect (directly or indirectly) the forestry sector (see Table below). Few of these are known to the public, nor publicised nor are fully implemented. For example, the illegal trade in wildlife uses Nepal as a trade route for several banned species enroute between India and China. This has threatened the implementation of CITES in Nepal. Similarly, Nepal has ratified ILO 169 but it has yet to be implemented creating confusion among Indigenous Peoples about their rights to natural resources.

Forest Sector Related International Conventions to which Nepal is a Party

| SN | Name of Convention | Came into force in Nepal |
|----|--|--------------------------|
| 1 | Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 1971 | 17 Apr 1988 |
| 2 | Convention on for the Protection of the World Cultural and Natural Heritage, 1972 | 20 Sep 1978 |
| 3 | Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973 | 16 Sep 1975 |
| 4 | Convention on Biological Diversity, 1992 | 21 Feb 1994 |
| 5 | United Nation Framework Convention on Climate Change, 1992 | 31 Jul 1994 |
| 6 | Convention to Combat Desertification in those Countries Experiencing devious Drought and or Desertification, Particularly in Africa 1994 | 15 Jan 1997 |
| 7 | International Tropical Timber Agreement (ITTA), 1994 | 1 Jan 1997 |
| 8 | Kyoto Protocol to the UNFCCC, 1997 | 19 Apr 2005 |
| 9 | International Treaty on the Plant Genetic Resource for Food and Agriculture, (2001) | 29 Jul 2004 |
| 10 | ILO convention No. 169, Indigenous and Tribal Peoples Convention, (1989) | 2007 |
| 11 | Forest Carbon Partnership Facility of World Bank | 2009 |
| 12 | UN- REDD (observer status) | 2009 |
| 13 | Agreement Establishing the World Trade Organization | 23 Mar 2004 |

4. Transparent Access to Decision-Making

Are there legal mechanisms for civil society participation in public decision-making on issues relevant for the management of forest resources? If so, to what extent are these actually implemented?

The Forest Act (1993) and Regulations (1995) make no specific legal provision for participation of civil society and others (stakeholders²⁰) in decision-making except at community level. But in practice, forest sector planning, especially for community forestry programmes, has been based on a certain level of multi-stakeholder participation in decision-making processes for many years.

²⁰ Stakeholders are those whose interests are potentially affected by forestry related policy, laws and programmes.

4.1 Is there a national forest forum?

Is there any form of national level roundtable dialogue which meets annually (or more often) to allow citizens to raise issues of concern with the national forest authorities? If so, what is the status of any discussions or decisions made (are they documented; are they legally binding in any way)?

There is no formal national forum that allows citizens to raise issues of concern with forest authorities. There are various sub-sectoral committees under the MFSC to develop strategies and programmes based on consultation with stakeholders. For example, the National Biodiversity Strategy (2002) has provision for a National Biodiversity Co-ordination Committee (NBCC) representing government, the private sector, academia, civil society, and donors.²¹ Likewise, RPP preparation involved both a multi-stakeholder working group as well as a national level REDD stakeholders forum.

Following preparation of Forestry Sector Master Plan (1989), an informal Forestry Sector Coordination Committee (FSCC) at national level was formed under the leadership of MFSC. This had representation of stakeholder across the forestry sector including civil society and donors – although it was government dominated. FSCC started to function in 1993 but has unfortunately been inactive since about 2003.

In 2007 the MFSC formed a new multi-stakeholder task force to develop a strategy for democratisation of the forestry sector. This had civil society, community and federation representatives although its recommendations have yet to be formally endorsed. Similar forums were formed for REDD (in 2009) and design of a new large scale forestry programme (MSFP) (in 2010). Due to this wider exercise of multi-stakeholder concepts in the forestry sector GoN has recently agreed to reform the national level coordination committee – especially for the preparation of a new National Forest Strategy. This will be a significant step in raising transparency issues in Nepal's forestry sector but has yet to be tested in practice.

Civil society organizations have therefore been represented and consulted in forest sector policy formulation although usually without clear legal provisions. Decisions made in these forums are documented but are not necessarily legally binding.

In practice, civil society is still relatively weak in forest sector decision-making since government invariably has the final say on critical matters and frequently decisions are made solely by government representatives. Often the arrangements are temporary and there is no broader level forum for roundtable dialogue on the whole forestry sector with the participation of civil society. For example, the government recently decided to draft amendments to the Forestry Act without any public consultation. Several new National Parks were recently declared without widespread consultation.

4.2 Are there local forest forums?

Are there any local roundtable dialogue forums which annually (or more often) to allow citizens to raise issues of concern with the forest authorities? If so, what is the status of any discussions or decisions made (are they documented; are they legally binding in any way)?

²¹ MFSC 2002, National Biodiversity Strategy, Ministry of Forest and Soil Conservation, Kathmandu, Nepal

In many districts, District Development Committees have formed District Forest Coordination Committees (DFCCs) for forest sector related activities. These consist of forest officials, political parties, community representatives, civil society and the private sector. In some districts DFCCs have prepared and endorsed District Forest Sector Plans (DFSPs). In others they deal with specific aspects such as NTFPs, fire, sand and gravel extraction or climate change. Whilst not exactly roundtable forums for forest sector dialogue DFCCs can be utilised for this purpose and civil society does have an opportunity to raise concerns in them. Decisions made by DFCCs are documented and become legally binding for the concerned district. DFCC directives (2006) allow districts to develop operational guidelines according to their local situation.

At sub-district level, citizens and communities can raise their voice at Range-post level planning meetings coordinated by DFOs. In many VDCs, VDC-level forestry coordination committees (VFCCs) have been formed involving individuals, community groups, local and central government representatives, civil society organisations and the private sector. These are increasingly becoming active in planning, coordinating and implementing local-level forestry activities although without a strong legally binding mandate.

Non-government organisations such as FECOFUN and local NGOs have organised public hearings at district and community levels for discussing forestry related issues. Government officials are invited to these, and they have become an useful mechanism for local level sharing and transparency.

4.3 Is there a procedure for consultation on new norms?

Are there any documented procedures (in the form of regulations, official guidance notes etc) that lay out the methodology for consultations that should take place regarding new forest-related policies, laws, regulations etc?

There are no specific legal procedures that guide the changing/developing forest related policies through a consultation process. There is a Law Drafting Manual (2009) which provides methodological guidelines for drafting of laws (Acts and Rules) but it does not mention involvement of civil society and citizens in the process. There are some sectoral policy statements²² that do recognize the concept of rights to stakeholder participation in policy-making and programme planning in the forest sector although there is no specific guideline or document that describes how consultation in policy formulation should be carried out. MFSC does use its powers to define the consultation processes on a temporary basis with the result that consultation with stakeholders in decision-making has frequently been *ad-hoc*, based on the personal interest of concerned officials or on the relationships that exist between officials and civil society stakeholders (often political linkages).

4.4 Is there an established list of stakeholders?

Is there an official list of individual stakeholders or stakeholder types whom the government is obliged to consult or to share information with?

No. There is no official (documented/recorded) list of stakeholders with whom the government (MFSC) is obliged to consult or share information. Normally, MFSC invites a few civil society members for any consultation on policy changes and programme planning.

²² Medicinal plants and Non-Timber Forest Product Development Policy, (2005); Nepal Biodiversity Strategy (2002); National Wetland Policy, (2003).

Such invitations usually go to those civil society individuals or organisations who have good relations with the concerned government officials. Civil society organizations have themselves developed a comprehensive list of forest sector stakeholders in Nepal.²³

4.5 Are reports on consultation process public?

Does government publish the results of any forest-related consultation processes?

Concerned departments do normally prepare reports on any forestry-related consultation processes but these are not necessarily published and there is no concrete procedure that has to be followed in this regard. Advertisements, public notices of publications and media notices are used to publicise decisions if they are for immediate action but there is no mechanism for monitoring such consultation and publication processes.

5. Tenure and Land Use

Is most forest land under a clear ownership title, so that (theoretically) it is possible to point to any part of the country's forested land and there is a clear ownership of that location?

There is a clear ownership structure for Nepal's forests. The Forest Act (1993) says that all national forest areas, excluding those registered as private forestlands, fall under the ownership of the state. Different forest management and utilisation regimes are in operation for these areas but according to section 67 of the Forest Act (1993) forest land under community forestry, leasehold forestry and religious forestry is still owned by the government. Community groups and user groups have rights over the forest products but do not have land title. There are many overlaps between government ownership, community entitlement and private landholding which create conflicts between government agencies, community groups, and individuals. The Local Self-Governance Act (1999) also gives ownership rights over natural resources (including forests) to local governments causing another confusion.

5.1 Is there a published policy on forest tenure?

Is there an explicit current document which defines or describes land and forest tenure policy? If so, has it been used to inform the forest law and other norms (or has it been produced after the forest law)? Is it up-to-date or does it require revisions in the light of REDD, mining, tenure conflicts, or other threats and opportunities?

The Forest Act (1993) and Forest Regulations (1995) define forest tenure in Nepal. There are three main tenure practices – state ownership, community entitlement, and private ownership of forestlands and forest products. Ownership of private-land (mainly cultivated land) is defined by the Land Act (1964), Land (measurement) Act (1963), and Land Revenue Act (1978). There are a few contradictions between these two sets of legislation. For example, section 16 of the Forest Act explicitly mentions that no part of national forest should be privatised or registered in the name of an individual, but the private-land related laws do allow a person to register such lands if they have been used for many years (period is not defined) for private cultivation and a person who has been using such land for many years

²³ Federation of Community Forestry Users, Nepal (FECOFUN) has been coordinating a quarterly meeting of REDD+CSO Alliance, and it has also developed a list of forestry stakeholders in Nepal

can apply for registration in their own name. Such land entitlement provisions are also found in the Mine and Mineral Act (1985), the Water Resources Act (1992) and the Public Road Act (1974).

A high-level commission on decentralization, which was formed in 1996, suggested that all laws related to forest, land, mine and water resources should be reviewed to harmonise their contradictory provisions but the report of this commission has yet to be implemented. Most probably the laws related to natural resources will be reviewed only after the new constitution is in place.

Constitutionally the state can regain title to land even if it belongs to private individuals. This has to go through a lengthy legal process but if there are national priority projects to be implemented on the private lands, the government can revoke its private ownership. Potentially this law may be misused by government and other agencies to intervene in the rights of forest communities.

5.2 Is there a register of private forestland owners? Is it accessible to the public?

Where private forestland ownership is possible within the Constitution and legal framework, can the ownership of each area of forest be publicly accessed?

According to Article 19 of the Interim Constitution of Nepal (2007), every citizen has the right to acquire, own, sell, and dispose of property as defined by existing laws. Sections 38-40 of Forest Act (1993) describe management and use rights of private forestlands. Although constitutional and legal frameworks recognise ownership of private forestlands, there are various controls over their use for different purposes e.g. the government can ban logging in private forest if there are complaints about environmental consequences. According to the Forest Regulations (1995), private forests are registered by DFOs and records of registered private forest lands are available to the public. Cadastral maps and registers (also available to the public in each district) show all areas (including forest) under private ownership.

5.3 Is there a difference in law between ownership and use?

Does the law make a clear difference between owners and users of forests/forest products?

In the forest sector, there is a clear difference between who owns the forests and who has the rights to use the forest products. In government managed forests, both the ownership of the forests and use rights of the products lies with the state. In community forestry, the land belongs to the state, and the communities have rights to manage and utilise the products. Ownership of forest land and use-rights to forest products is summarised in the table below:

| Forest Ownership | National Forest (National forestlands are managed under 6 different management regimes) | | | | | | Private Forest |
|-------------------------------|--|---------------------------|----------------------------|-------------------------------------|---------------------------|------------------|-----------------------|
| | Community Forest | Leasehold Forest | Religious Forest | Collaborative Forest | Government-managed Forest | Protected Forest | |
| Who owns the land? | GoN | GoN | GoN | GoN | GoN | GoN | Private owners |
| Who uses the forest products? | CFUGs | Leasehold forestry groups | Religious community groups | Local government & community groups | GoN | GoN | Private owners |

Source: Forest Act (1993), Forest Regulation (1995) and Collaborative Forest Management Guidelines (2003)

This difference between ownership and use rights has created confusion about who should invest in forests and uncertainty about what will happen in the future. For example, CFUGs feel that GoN may revoke their use rights because the land still belongs to the state.

5.4 Is the ownership of different forest products clear?

Is it codified and understood who has rights to timber, minerals, non-timber forest products, wildlife, water, carbon etc? Are all these types of product available to all, or is there some form of differentiation?

There are clear rules about ownership of forest products. In general, the manager of the resources has the right to use the products. But the different definitions of ownership in different legal documents creates some confusion. There are contradictions over forest product ownership in laws on forests, mines, water resources, and local government. According to the Forest Act (1993), communities, central government and individuals (private owners) have ownership rights over timber and non-timber forest products from respective forests. The Local Self-Governance Act (1999) says that the local government has rights to use forest products from the forestlands in their areas of jurisdiction. The National Park and Wildlife Reserve Act (1973) gives rights to manage forests to the government (in National Parks). Similarly, ownership of water remains with the state according to the Water Resource Act (1992).

The rights to own and benefit from certain ‘services’ such as carbon are not clear. This is becoming increasingly important because of the ‘carbon trade’ opportunities. Based on existing legal provisions in different laws a picture of carbon rights can be summarised as the following:

Ownership of carbon pools under various forest tenure systems in Nepal

| Tenure regimes | Carbon pools | | | | |
|--------------------------------|--|---------------------------|----------------------------|--|-----------------------------|
| | Dead wood | Litter | Soil organic carbon | Above ground biomass | Below ground biomass |
| Community forestry | Group ownership | Group ownership | State ownership | Group ownership | State ownership |
| Leasehold forestry | Group ownership | Leasehold group ownership | State ownership | Group ownership | State ownership |
| Religious Forest | Group ownership | Leasehold group ownership | State ownership | Group ownership | State ownership |
| Collaborative Forestry | Joint ownership of group and the state | group ownership | State ownership | Joint ownership of group and the state | state ownership |
| Government managed Forest | State ownership | State ownership | State ownership | State ownership | State ownership |
| Protected forest/areas | State ownership | State ownership | State ownership | State ownership | State ownership |
| Buffer Zone Community Forestry | Joint ownership of group and the state | Group ownership | State ownership | Joint ownership of group and the state | State ownership |
| Private forestry | Individual ownership | Individual ownership | Individual ownership | Individual ownership | Individual ownership |

Source: Forest Act (1993), Forest Regulation (1995), Collaborative Forest Management Guideline (2003), National Park and Wildlife Conservation Act (1973)

5.5 Are forest tenure disputes unusual or rare?

What information can you provide on the extent of disputes over either (i) the right to land, (ii) the right to forest use or products, or (iii) the ways in which these rights are administered?

There are a series of different types of dispute over land rights, forest usage and forest tenure between different stakeholders including local communities, local government, central government agencies, private sector, and individuals. These include disputed ownership claims, unfulfilled requests to transfer use-rights (e.g. to communities), illegal settlements inside forests etc. These are partly caused by the unclear or overlapping aspects of different legislation (see table below), but also because there is no overall land-use policy or dispute settlement process (see section 5.6).

Overlapping rights regarding forest and forest products

| <i>Forests Products</i> | <i>Forest Act (1993)</i> | <i>Local Self Governance Act (1999)</i> | <i>Mines and Mineral Act (1966)</i> | <i>Water Resources Act (1992)</i> |
|--|--|---|-------------------------------------|-----------------------------------|
| Fuelwood, dry timber, twigs, branches, bushes | Users groups or managers | Village Development Committees (VDCs) | | |
| Mines (stone, sand, soil) | User groups and government | District Development Committees (DDCs) | Central Government | |
| Medicinal plants, herbs and Non-timber Forest Products | User groups and government | VDCs and DDCs | | |
| Resin | CFUG & Gov | DDC | | |
| Stray timbers | CFUG & Gov | DDC | | |
| Straw, grass | CFUG | VDC | | |
| Water Resources, wetland | CFUG | VDC/DDC | Government | State |
| Natural heritage | CFUG | VDC/DDC | | |
| Forest land | CFUG, Gov mega projects and individual | VDC/DDC | Government | State |

Source: Forest Act (1993), Local Self Governance Act (1999), Mines and Mineral Act (1966), Water Resources Act (1992)

5.6 Is there a dispute-settlement process for tenure conflict?

Are there clear, documented, understood and accessible steps for resolving the types of conflicts identified in indicator 5.5?

There is no specific dispute settlement mechanism in the forest sector. Legal overlaps or disputes identified in 5.5 emerge from a lack of coordination and agreement between right holders and stakeholders. This has promoted unequal and unjustifiable benefit sharing between different actors and has also induced a poor governance practices at local level. Although there is no specific institutional mechanism established for the settlement of disputes, judiciaries²⁴, quasi-judicial bodies²⁵, and both formal and informal networks²⁶ play

²⁴ For the settlement of dispute on forest tenure, the judiciary follows the general civil procedures and adversarial system, because Nepal is a common law country.

²⁵ The District Forest Office (DFO) and Chief District Officer (CDO) are main quasi-judicial bodies for the settlement of disputes on forest tenure which should follow proceeding as defined in the Special Courts Act (2002)

²⁶ FECOFUN and other informal networks in the forestry sector are also supporting settlement of local level disputes on forest tenure through community mediation.

an important role in debating and settling such disputes at different levels. Examples of these are shown in the table below:

| <i>Possible conflicts in forest tenure</i> | <i>Level</i> | <i>Current practices/institutions for dispute settlement</i> |
|---|-----------------------------|---|
| Tenure rights <ul style="list-style-type: none"> • Land rights vs. rights on the forest • Rights of indigenous peoples vs. local communities | Local and National Local | <ul style="list-style-type: none"> • No specific institutions • Informal practices • Judicial remedies |
| Legislative overlaps <ul style="list-style-type: none"> • Customary rights vs. state laws • Land related laws vs. forest laws • Industrial laws vs. forest laws | National | <ul style="list-style-type: none"> • No national level coordinating body • Judiciary |
| Conflicting actors <ul style="list-style-type: none"> • Local government vs. local communities • Government vs. local communities • Communities vs. private interest | Local and National | <ul style="list-style-type: none"> • No appropriate mechanisms at any level • Political negotiation and judicial intervention |
| Benefit sharing <ul style="list-style-type: none"> • Poor vs. elite groups • Poverty vs. community development | Local | <ul style="list-style-type: none"> • Facilitation by local informal networks, CSOs, FECOFUN • Intervention by DFO |
| Governance <ul style="list-style-type: none"> • Corruption • Illegal decisions • Illegal logging | National and Local | <ul style="list-style-type: none"> • Investigation and legal action by Commission on Investigation of Abuse of Authority, and the courts |

Frequently, poor people bear the costs of the lack of conflict settlement mechanisms. This is because there is no clear framework for distributing rights over resources between communities and the state and also amongst various conflicting interest groups involved in the management of forests. Less powerful groups or individuals are most vulnerable. Management of conflicts through the formal judicial structure is common practice but formal legal mechanisms for resolving conflicts related to benefit sharing of natural resources within communities and between communities and government are lacking and many drag on for many years without being resolved.

5.7 Are ownership and forest land use maps available?

It is possible, at national or sub-national level, to view or obtain maps indicating forest ownership and current permit-holders for different forest use? So, for example, it is possible to calculate what proportion of forest land has documented title, or what proportion is under logging concessions? Are such maps digitized?

Land-use maps are available in Nepal prepared by the Land Resource Mapping Project (1987). They contain only general information and do not separate out private-lands and state forest areas. At district level, land distribution maps (cadastral maps) are available to identify and separate boundaries between national forest, private forests and privately owned land.

Information on permit holders for different forest uses may be available, particularly in Terai districts. Districts have to produce district level forest management plans as a part of Environmental Protection Act and Regulations (1997) and some donor-funded projects have prepared digitised maps of land-use distribution. At community level, every Community

Forest Users Group or Collaborative Forest Users Committee or Leasehold Forest Users Group has its own forest management plan containing maps of different kinds that are used for boundary separation, forest management activities and harvesting. These plans and maps provide information on what proportion of forestland is under which ownership title and what proportion of the forests is under logging concessions.²⁷ Increasingly maps are being digitised.

6. Allocation of Permits/Use Rights

Is the permit allocation process transparent? Allocation refers to all types of permit including those for logging, conservation, ecotourism, conversion, environmental services, carbon, non-timber forest products etc.

There are permit allocation systems in place for different products. Procedures tend to be ambiguous, confusing and biased in favour of powerful elites. Permits may be allocated for logging, conservation, ecotourism, conversion to other land uses, environmental services, carbon, NTFP collection, sand/gravel/stone collection etc. and they operate under different legal provisions. It is generally agreed that process of permit allocation is not transparent particularly in ecotourism and conservation subsectors. Concessions are not generally preferred as a means for logging from community and private forests but generally managers carry out logging by themselves using local labour and technology. Allocation of permits for collection of NTFPs is the responsibility of government according to the provisions of the Forest Act and Regulations. Legal provisions for permit allocation for conservation, environmental services and eco-tourism are complicated and scattered in various laws.

6.1 Do permits exist for all uses/services?

In addition to logging permits, are there any permits for conservation activities, environmental services (e.g. water conservation, carbon storage), or eco-tourism services provided by forests?

There is provision for permits for various uses/services for logging as well as for conservation, provision of environmental services, and implementing eco-tourism. The systems are summarised in the table below:

| <i>Permits</i> | <i>Authority</i> | <i>Legal Provisions</i> | <i>Time period</i> |
|------------------------------------|------------------|---|------------------------------------|
| Logging | DFO | <ul style="list-style-type: none"> Section 20 of Forest Regulations (1993) : The government may make available any part of national forest to any organization for management purposes | As prescribed in contract document |
| | | <ul style="list-style-type: none"> DFO can allocate any part of national forest to any contractor or other agencies for logging operation | According to the agreement |
| Other forest products | DFO | <ul style="list-style-type: none"> DFO has rights to auction forest products based on the Forest Product Auction Directives 2004 | As per provision of directives |
| Non-Timber Forest Products (NTFPs) | DFO and CFUGs | <ul style="list-style-type: none"> Section 11 of Forest Regulation (1993) : DFO can allocate any part of national forest to any contractor or other agencies for collection of NTFPs | As per agreement and license |
| | | <ul style="list-style-type: none"> CFUGs can also give a permit to any person or company to collect the NTFPs from community forest. | As per agreement paper |

²⁷ Legally, there is provision for logging concession for the private sector in rule 20 of Forest Regulation (1995), but this provision is contested by communities and therefore not practiced.

| | | | | |
|------------------------|--------------------|---------------------|--|--|
| Conservation | | GoN | <ul style="list-style-type: none"> According to Procedure for handing over the protected areas to NGOs & other agencies, (2003) GoN can hand over any protected areas²⁸ to NGOs & other agencies for conservation according to an approved management plan | As per agreement paper (generally for 10 years) |
| Eco-tourism | | MFSC) | <ul style="list-style-type: none"> According to National Park and Wildlife Reserve Act (1973), MFSC can give permits to private sector to establish hotels in certain site of protected areas | As per agreement paper(generally 10-15 years) |
| | | | <ul style="list-style-type: none"> According to Forest Regulation 1995, MFSC can hand over leasehold forest to the private sector for tourism activities. | For 40 years and potential for renewal |
| Environmental services | Water conservation | GoN | According to Water Resource Act (1992) and Electricity Act (1992), GoN can provide a license for river/watershed conservation and generation of electricity to the private sector | Generally it is provided for long periods (such as 50 years) |
| | Carbon storage | GoN and communities | There is no specific legal provision on carbon storage, however a few private companies/industries are negotiating with CFUGs for allocation of a part of their forest for carbon storage. This is not yet widespread. | |

Corruption, lack of transparency and power relations play all play an important role in the timber trade and allocation of logging permits. Timber collection permits (logging) are largely allocated based on personal interest, influence and pressure from the bureaucracy and political leaders.²⁹ The Timber Corporation of Nepal (TCN) which is a government parastatal, is also allocated logging permits in Terai forests by government. This situation is not locally popular but TCN is largely protected by political leadership. Permits inside national parks and protected areas e.g. for tourism developments are obtained by the private sector often through undue influence, corruption and bribery and by using the nexus between bureaucratic and political interests.

MFSC in their policy of 2000 decided to assign larger blocks of Terai forest to be managed as block forests.³⁰ This policy decision has been contested by communities and as a consequence government has been unable to pursue strictly controlled management practices. Logging permits for larger state forests (especially in the Terai) are not normally allocated to local communities who reside nearby but they are allowed to use other forest products from such areas such as fodder, grass and fuelwood, but only for subsistence use.

6.2 Is there any forest land unallocated to users?

Is there a “pool” of forest, owned by the state or others, for which permits or user-rights are potentially available?

Almost 25% of Nepal’s forest has been handed over to community groups - largely to CFUGs whilst the area covered by other groups including leasehold, religious, collaborative management and buffer zones is still relatively small. About 20% of the forest area is under protected national park status which largely excludes it from any public use. Therefore a

²⁸ Protected areas which are listed as World Natural Heritage sites and are very large will not be handed over to NGOs and the private sector

²⁹ Legislature-Parliament (2010), Study report on issues of forest protection in Nepal, Parliamentary Committee on Natural Resources, Kathmandu, Nepal

³⁰ FECOFUN has registered a writ petition in the Supreme Court (SC) against that decision of government. The SC has decided that government has the obligation to maintain equal treatment in all regions of the nation for the utilization of forest products by local people (Supreme Court, 2003, Nepal law Journal)

significant proportion of Nepal’s forest (over 50%) especially in the Terai and high altitude areas, remains unallocated and is nominally under state control. Permits may be issued for different use-rights for these areas.

6.3 Is it clear how the decision to start a round of permit allocation is made?

The first step in the allocation of permits is to decide where: Are there clear, documented, and understood steps for deciding to allocate permits, for example when to allocate which parts of the state forest to logging, mining, carbon, ecotourism or other concessions?

The steps are somewhat unclear. GoN has identified parts of state forest areas for allocation of permits for logging, conservation, leasing for eco-tourism and mining. As per the provisions of the Environmental Protection Act and Rules (1997) an Environmental Impact Assessment (EIA) or Initial Environmental Examination (IEE) is needed before the allocation of any permit. The steps for EIA are the main decision-making tools regarding permit allocation. These are shown in the table below:

| Steps for permits | Permits | | | |
|----------------------|--|--|---|--|
| | Logging | Conservation | Leases for Eco-tourism | Mining |
| 1 st step | Submission of an application to DFO | Submission of a letter of intent | Application to the Department, or Public auction for leasing of identified forest areas | Submission of application to Department of Mines for the possibility of study for mining |
| 2 nd step | Payment of fee, price or charge, and Issue license | Letter of intent for the feasibility study and management plan | Submission of management plan for approval | Review of the plan and capacity of applicant |
| 3 rd step | Allocation of forest and marking trees for logging | Submission of management plan for approval | Plan evaluation and recommendation by a technical team | Agreement and permit allocation for mining |
| 4 th step | Logging, transport, and marketing | Review and recommendation by a technical team | Agreement and handover for eco-tourism | |
| 5 th step | | Agreement and handover of protect areas for conservation | | |

Permit allocation processes differ for different products/services. However, whilst individuals may need permits even for collecting small quantities products e.g. NTFPs, they are often unable to invest in conducting IEE/EIAs and may be deprived of getting permits because of this. Consequently small-scale illicit collectors (even for subsistence use) are vulnerable and under threat of punishment if caught.

6.4 Is there a stakeholder consultation process prior to permit allocation?

At the time an area of forest is identified for allocation to any sort of concessionaire, are stakeholders (other than the forest owner) consulted, for example on any conditions to be attached to the permit?

This is very unusual in Nepal. However, Rule 7 of Environmental Protection Rules (1997) makes it compulsory for concerned stakeholders to be consulted prior to allocation of

permits. In practice this rarely happens because both GoN and permit applicants are reluctant to engage with other people in this process. As a result of inadequate consultation processes there are frequent conflicts of interest and permit seekers try to influence and manipulate the allocation process in their favour.

Getting permits for logging on private-land is cumbersome. It needs a recommendation from the concerned VDC and a report documenting agreements made about harvesting with neighbours. A technical report from government officials is also needed before a harvesting permit can be issued. Again this disadvantages smaller landowners who are unable to invest and consequently bribery may be the only way to get a get harvesting permit for a private-forest.

6.5 Are the areas assigned for each round of permit allocation advertised?

When an area of forest is identified for allocation to any sort of concessionaire, is this publicly advertised so that the opportunity for new permits / user rights is open to anyone?

There is no legal provision to advertise the allocation of permits for logging, ecosystem services, conservation and mining. According to the rule 39a of Forest Regulation (1993), advertisement is required before allocating permits to concessionaire. Likewise, the government should allocate permits in protected areas for eco-tourism on the basis of public auction which requires advertisement before the auction. However such advertisements do not always happen and even if they do few people will be aware of them. This often prevents local people and communities from seeking opportunities for new permits/use even though they may be interested to do so.

6.6 Is there transparent independent verification (due diligence) of the eligibility of any applications for the forest permits?

Prior to the final allocation of any area of state forest to logging, mining, carbon, ecotourism or other concessions are there 'due diligence' checks on the eligibility, suitability, or (technical and/or financial) capability of applicants, and is this analysis made public?

For verification of the eligibility of applications for forest permits, the following provisions are made in various laws and policies:

| <i>Permits</i> | <i>Laws</i> | <i>Verifiers</i> | <i>Criteria for verification</i> |
|-------------------------------|---|--|---|
| Logging | Forest Regulation (1995) | DFO | License, forest area, quantity of timber, use of timber, payment of fees, price and charge |
| Leased forest for Eco-tourism | Forest Regulation (1995) | Technical and financial evaluation committee | Environment and biodiversity conservation, sustainability, royalty for government, income generation for local people, support for industrial development |
| Conservation | Procedure for handing over the protected areas to NGOs & other agencies, (2003) | Recommendation committee | Conservation measures, economic opportunities for local people, EIA or IEE |
| Mining | Mines and Mineral Act (1966) | Department of Mines | Economic and technical capacity, experience on mining, area, time period, share of government and royalty benefit |

The provisions regarding verification are clear but the verification authority is not usually independent. Normally this consists of bureaucrats without any representation of civil society or the private sector. Permit seekers therefore seek to influence the authority (team) for allocation of permits in their favour. There is no legal provision for publishing verification reports or the rationale for the decisions made.

6.7 Is the final permit allocation decision-making process transparent?

Is the final decision to allocate any permit made in way which allows citizens to assure themselves that the correct process has been followed? – is the process documented and published?

The process of permit allocation is not transparent. Decisions are recorded in the government recording system (government notes or *tippani*) but these are not publically available except to authorized government officials. Consequently there is no general public awareness of how such decisions are made and who is responsible for them. This creates potential opportunities for bribery and collusion between contractors and officials.

6.8 Have there been efforts to reform the permit allocation system?

Have there been recent attempts to make improvements to the permit allocation system? Have there been recent changes to the system to accommodate 'newer' forms of permits such as conservation, carbon storage, or ecotourism? Were these successful?

There has been no significant attempt made to improve or change the existing permit allocation systems despite that fact that citizens, affected communities, some policy makers, and civil society organizations of various kinds have raised their voices against the non-transparent permit allocation system in place at present. As part of a growing dissatisfaction with the system, the CIAA has ordered government agencies to review their permit allocation procedures. This order is specifically for permits relating to: eco-tourism e.g. to establish and manage hotels in National Parks and protected areas; farming of wild animals; handing over of protected areas to NGOs or other agencies; logging in Terai forests; resin collection (in the Middle Hills); licensing for hydropower development and use of wetlands in the Terai.³¹ There are some ongoing discussions within MFSC about revision of permit allocation systems but progress is slow and reports on these discussions are not published.

6.9 Are the final permit/contract documents made public?

Are all contracts/concession agreements/permits in the public domain? If so, which law or regulation specifies that they should be? Are they entirely in the public domain or are certain 'commercially confidential' clauses hidden?

Names of permit holders are not published or advertised although people come to know about them through their informal sources. However by law, all contract/concession agreements/permits should be publicised. For example, annex 6 of Environmental Protection Regulation (1997) directs all concerned agencies to publicise relevant documents including agreements/permits/contracts in the final EIA reports. Similarly, section 3 of Rights to Information Act (2007) gives the public the right to get information about government

³¹ CIAA (2009 & 2010), Annual reports of Commission on Investigation of Abuse of Authority (CIAA) Kathmandu

decisions. However the same Act (section 3.3) also mentions that the public bodies may choose not to publicise such documents if they are confidential and especially if they are related to economic development, trade or monetary interests of the country, intellectual property of individuals, or related to banking or trade privacy.

6.10 Are any environmental/social impact assessments for forest operations available to the public?

Where an EIA or similar is a requirement for any concession, is it published? Is there any public consultation during the EIA, or any public presentation of the conclusions and recommendations?

Yes, in theory. One of the main steps in EIA is consultation with the public. By law this is compulsory for project development and implementation. Anyone who wishes to obtain permits or concessions for forest operations (as listed in Annex-2 of Environmental Protection Rules (1997), must go through the EIA steps to get final approval from the authorities. Once a report is prepared, permit seekers must organise public consultations and hearings with stakeholders and people from affected areas. During such consultation the report must be publically presented. It should contain details about the programme, including its likely positive and negative impacts. Such reports are submitted to the Ministry of Environment after approval from the review committee, but they are never published and therefore not available to the public.

7. Logging Operations

Once a logging permit or concession has been finalised and issued, are citizens informed about subsequent logging operations?

There are no legal provisions that require provision of information to the public about the status of logging operations once the initial logging permit or concession has been issued. People are thus prevented from getting informed about the location and volume of logging. This creates difficulties in monitoring the legality of actual logging operations and creates space for manipulation, bribery and over-harvesting. People rely on informal networks and connections to get informed about logging operations, but they are generally not publically disclosed.

In community forests, group members usually know where operations are occurring and the rough quantity being harvested. Logging operations happen differently in different forest management regimes. For example, in government managed forest DFOs allocate permits directly to the contractors and there is no public consultation neither while allocating permits nor during logging operations. Whereas, in community forestry, CFUGs must advertise for bidding and the winner gets the permit only after the approval from the DFO.

7.1 Is information on logging locations given to the public?

Are local people informed of where permits holders will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if loggers are legally in that location?

Local people know about the operations of permit holders by on-site local knowledge rather than through information from the government. Logging locations are shown on maps attached to operational plans but these are normally only available only to government officials and logging contractors. GoN prepared Operational Forest Management Plans (OFMP) for a number of Terai districts in 1995. Because of the secrecy around the subsequent logging operations, loggers were able to log other forest areas not allocated in the plans. After protests by local people, local government and civil society organizations the yearly logging permits were scratched and all the 16 OFMPs became non-functional.³² In government controlled forest, the DFO decides on logging sites, quantity of timber, methods used for logging, time period for logging and logging permit holders. DFOs use their discretionary powers to make decisions and there is no public consultation or information sharing.

In community forestry, CFUGs must provide permit allocation information to all members of CFUG and they must publish a notice in a newspaper to call for bidding (for timber of NTFPs). Logging procedures, location, quantity and transportation methods are mentioned in the approved operational plans of community forest and they must follow this plan or get additional approval from the DFO. For internal distribution of forest products (within the CFUG) they can make decisions based on their requirements and on the availability of the products.

7.2 Is there a stakeholder consultation process on individual logging location?

In addition to any consultation on the general location, timing and allocations of logging concessions (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of logging at the local level, for example as part of developing a forest management plan?

Usually not. But when loggers encounter public pressure or protests, negotiations (either formal or informal) may be used to settle such disputes. Formal negotiation happens with coordination from forest officials whereas informal negotiation occurs between community leaders and contractors. To avoid such situations contractors develop relationships with local elites and perhaps share some of their profits with them by excess logging or paying reduced labour charges.

After the failure of OFMPs in the Terai changes were made to forest management plan preparation process and procedures for logging. According to these DFOs must present the forest management plan and logging details to the District Forest Coordination Committee (DFCC) which must approve them Concerned stakeholders including local communities thus have an opportunity to raise their concerns and to comment on locations and any mitigation measures needed to reduce damage. Despite this, actual practices are commonly quite different and logging operations are still conducted primarily on the basis of satisfying the interests of officials and contractors – rather than local people. The DFO as the member secretary of the DFCC is able to have considerable influence whilst community representatives have little knowledge or opportunity to express their views. DFCC approval is sometimes used to legitimise the logging operations rather than ensure genuine consultation with all stakeholders.

³² Khanal D.R, *et.al* (2008), Forest for Local Communities or Large Company, (A case study on Community-based Civil Society-led Movement for Bara forest in Nepal), Advocacy Forum for Revitalizing Equitable Societies in the Himalayas (AFRESH), Kathmandu, Nepal

7.3 Is information on permitted logging volumes (quotas) public?

Once all preparations and forest management plans are completed and logging operations start, can local people find out how much timber is permitted to be extracted (for example on an annual basis from a specific area)?

No. Almost invariably government officials and contractors withhold such information from the public. It is very difficult to determine permitted logging volumes and even more difficult to know actual harvested/extracted volumes (which are often higher). Contractors pay cash to officials and local elites (usually political leaders) to enable them to harvest more than the permitted volume without interference. Consequently government officials produce false information about actual logging quantities to disguise illegally logged quantities.³³

The recent report commissioned by the Legislature-Parliament³⁴ stated that the actual harvested timber quantity is usually double that permitted - particularly from government-managed forests in the Terai although this also happens in community forests where a share of the bribe goes to community leaders as well as government officials. This type practice means that even if information were available (e.g. from MFSC) it cannot be relied on. Although people have the right to get information on logging operations, no-one spends time and resources to find out the true information. In community forests, permitted harvesting volumes are written in the approved Operation Plan and group members have access to that information.

The Directive on Timber Auctioning Procedures (2005) section 8 indicates that the following steps should be taken by DFOs for timber auctions:

- Publish a notice in a national daily newspaper to inform the general public and contractors about the time-table for timber auctioning and the quantity of timber available
- Post a timber auctioning or tender notice in Regional Forest Offices, Chief District Office, Land Revenue Office, Office of DDC, Municipality and VDC, Range (Ilaka) Forest Office, DFO office and in the office of the association of timber traders in the district.

8. Extraction of Other Forest Products

Are citizens informed about the extraction of other forest products? What rules apply to collection of non-timber forest products and other tangible forest products like wildlife hunting?

The collection of permits and extraction methods are different for different forest management regimes – government managed, community managed and private forest. The public are informed differently under these different management systems. The Forest Act (1993), Forest Regulation (1995), Environmental Protection Act and Rules (1997), Fiscal Act, and National Park and Wildlife Reserve Act (1973) outline the various legal provisions for the collection of NTFPs and hunting of wildlife in Nepal.

³³ Dahal, S., and Yadav, B., (2010), Special report on *Rule of Smugglers in the Forest*, Himal Khabar Patrika (<http://himalkhabar.com>, visited 9/20/2010)

³⁴ Legislature-Parliament (2010), Study report on issues of forest protection in Nepal, Parliamentary Committee on Natural Resources, Kathmandu, Nepal

8.1 Is information on locations for other forest products given to the public?

Are local people informed of where permits holders for non-timber forest products, or wildlife hunting, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

NTFP collection locations are known to the public through informal networks. Especially in community forests, local people are aware of NTFP collection sites. In government-managed forests, since NTFP collection permits are distributed from the centre local people are not informed about who get the permits and about the location of collection sites. NTFP permit holders deal directly with the Department of Forests through a centralised contract system in which permit holders pay their permit levy directly to the department. The Department of Forests does not entertain the practice of auction therefore it prevents competition and favours those individuals who maintain close relationships with officials. Due to the lack of legal awareness local people are unable to defend their rights over NTFPs in their locality.

Wildlife hunting is regulated by the National Park and Wildlife Reserve Act (1973). There is only one hunting reserve in Nepal (Dhorpatan) and GoN distributes the hunting quotas. MFSC fixes an annual quota for hunting and allocates permits for foreign tourists who pay the fixed royalty to government. There is no provision or practice for informing local people about wildlife hunting quotas and the permit allocation processes.

8.2 Is there a stakeholder consultation process on non-timber permit locations?

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the extraction of non-timber forest products at the local level, for example as part of developing a forest management plan?

No. Most of the valuable NTFPs are in the hills - usually remote and far from the district centres and there are no legal provisions for consulting stakeholders about permit allocation and site selection. CFUGs incorporate NTFP collection in their forest management plans but there is no such plan at district levels and NTFPs are usually collected without knowing sustainable harvest levels from government-managed forests. The Department of Forest allocates permits to private companies/individuals for NTFP collection but information on permit allocation is not accessible to local people even those who are most affected by the collection. Often conflicts between various rival collecting parties emerge as both they claim collection rights for NTFPs. Recently, district level coordination committees on NTFPs were formed in some districts to try to establish a more transparent system of permit allocation and to try to reach consensus amongst stakeholders and local communities.

8.3 Is information on permitted quotas of non-timber products public?

Once all preparations and permits are completed and extraction non-timber forest products starts, can local people find out how much of a product (for example wildlife hunting) is permitted to be extracted (for example on an annual basis from a specific area)?

No. No one knows about permitted quotas except government officials and permit holders themselves. Since in many cases it is local people who actually collect the NTFPs on behalf of the permit holders they may be able to provide information on potential quantities and inform the permit holders but they are unaware of permitted quotas and any related regulations. Since local people are often used as labour and frequently are exploited by permit holders, they may be pressurised into using unsustainable collecting practices.³⁵

9. Environmental Services

Are citizens informed about permits for environmental services? Do the public know about any permits for water or carbon storage, biodiversity conservation or other services provided by forests?

There are no specific laws yet developed for regulating environmental services in Nepal. Some concepts are being considered and some pilot projects are underway as a way to conceptualise and test a regulatory framework for environmental services. As this is a relatively new field, citizens, communities, the private sector and government agencies are largely unaware of permit allocation procedures for environmental services. Nevertheless, there are some existing legal provisions related to environmental services as shown below.

| <i>Policy and law</i> | <i>Environmental services related objectives</i> |
|--|--|
| Nepal Biodiversity Strategy (2002) | The Nepal Biodiversity Strategy 2002 recognizes that there is a need for a comprehensive approach, aiming to conserve forests, soil, water, and biological diversity |
| Terai Arc-Landscape, Nepal Strategic Plan (2004-14) | Special conservation of Churia watersheds for increasing ecological services in the Terai |
| Revised Forest Sector Policy (2000) | Churia hill management as a protected forest as they are geologically very fragile, and absorb rainwater to recharge ground water for the Terai |
| Sacred Himalayan Landscape - Nepal Strategic Plan (2006-16) | Target 4: improve conservation outside protected areas Target 11: integrated water resource management in river basins a using watershed approach |
| Water Resource Strategy Nepal 2002 (2007-27) | Strategy 3: Management of watershed and aquatic ecosystem |
| National Water Plan (2007-27) | Implementation of Churia conservation programme Ecological services for the Terai – to improve irrigation and increase ground-water level |
| Environment Protection Act (EPA) (1997) and Regulations (1997) | Conservation of environment and natural resources including watershed areas |
| Soil and Watershed Conservation Act (1982) | Conservation of protected watershed areas Land use planning for agriculture in watershed area |
| Water Resource Act (1992) | Conservation of environment and water source areas |
| Local Self-Governance Act (1999) | Protection of soil and watershed, and water systems Community mobilization for conservation |

Based on the above legal framework GoN allocates permits to increase water storage for the production of hydropower from rivers and wetlands and the National Trust for Nature Conservation (NTNC) which is an autonomous semi-governmental organization, receives permits for the management of conservation areas. In neither case are local communities

³⁵ IDRC/MAPPA (2004), A study on Marketing Opportunities for Medicinal, Aromatic, and Dye Plants in South Asia, (ed. Arun Nagpal & Madhav Karki), New Delhi, India

involved in making these decisions for allocating permits. Permit holders tend to be powerful organizations with potential to undermine the importance of local consultation processes. Affected communities do demand equitable benefit-sharing from the resources that the permit holders are utilising.

9.1 Is information on locations of environmental services permits given to the public?

Are local people informed of where permits holders for environmental services, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

No, there is no systematic flow of information about such permits. When issued, people learn about them through the media and informal sources. There is no specific legal mechanism that ensures the public's access to information on the permits. For example, NTNC was granted permits for the management of two conservation areas of Nepal (Annapurna and Manaslu) 15 years ago, but no one was consulted and there was no information given to the public at that stage. Similarly, central and local governments (District Development Committees) have allocated permits to private sector organisations for conservation activities and water storage services in many wetlands of Terai region but indigenous peoples and local communities are neither informed nor involved in this process. Likewise GoN has given permits for construction of dams and generation of hydro-power from many rivers in the Middle Hills without informing/consulting with local communities who depend on these water bodies. The Environmental Protection Act (1997) makes it mandatory to consult with affected communities in making such decisions but in practice this is not happening.

9.2 Is there a stakeholder consultation process on environmental service locations?

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the environmental services permits at the local level, for example as part of developing a forest management plan?

There is no such provision at the moment, but it is in the process of development. Conservation of watersheds for gravity flow-based rural drinking water systems, and generation of hydropower and irrigation through water source development are some best examples of environmental services management in Nepal. Conservation areas are considered successful, but they are not very popular among local people who feel their livelihoods are adversely affected by the imposition of rules and regulations (including in buffer zones).

District Development Committee (DDC) meetings are the platform for discussing the location, impacts, and mitigation of environmental services permits in their districts. EIA/IEE requires public consultations and such public hearings are usually organised by local government (DDCs), Chief District Offices or permit holders. This is applicable to all permit holders whether they are private sector investors or semi-governmental national institutions. Stakeholders can also get a chance to comment on the location, impact and mitigation of environmental services permits during meetings of the EIA/IEE review committee. However,

it is unlikely that they will be able to effectively raise their concerns in such technical meetings. Consequently their participation becomes a tool for legitimacy for permit holders. In general, the process of allocating permits is controlled by central government institutions and the involvement of local institutions is largely to inform them about decisions that have been made.

In 2010 GoN declared 3 new conservation areas and 7 protected forests without consulting local communities and stakeholders. This triggered various local protest programmes not only against these decisions, but also against the entire concept of conservation and the approaches being used.

9.3 Is information on the quality/quantity of environmental services made public?

Once all preparations and permits are completed and a provision of environmental services contract starts, can local people find out about the size / value / or limits on these services?

Not in practice. But according to the Environmental Protection Rules (1997), permit holders of environmental services must prepare an annual report and submit it to the Ministry of Environment and affected local governments. Local people can access to these documents from local government offices. The Rights to Information Act also allows people to ask for information regarding size, volume and limits of environmental services, although the process of acquiring information is complex. In many cases, those who require/regulate EIA procedures also carry out the evaluation leading to considerable potential for conflict of interest. For example many DFOs carry out EIAs (as consultants hired by the companies they regulate). The companies say that if they do not employ them then the EIA report will not be approved.

10. Cultural Services

Do the public know about any specific permits for (eco) tourism or other cultural services provided by forests?

There are no legal provisions for allocation of permits or concessions for cultural services. Cultural services are managed by the government, public trusts and local communities as defined by the Ancient Monuments Act (1965). Local governments are responsible for creating awareness among the citizens who reside around Ancient Monuments and the local government can assign contractors for the collection of entrance fees and other charges as per their decisions. Generally, people are aware of the protection system for ancient monuments.

10.1 Is information on locations of (eco) tourism or other cultural services permits given to the public?

Are local people informed of where permits holders for tourism, ecotourism, or other cultural services, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

Generally, stakeholders are informed if permits are allocated to individuals or institutions for the collection of fees and charges from cultural sites since this is done by local governments after getting approval during meetings of the local government councils. However there is no specific legal mechanism to inform indigenous and local people about the allocation of such permits. ILO 169 recognised the idea of free and prior informed consent (FPIC) from the indigenous population before allocating permits and the government has responsibility to comply with this.

10.2 Is there a stakeholder consultation process on (eco) tourism locations?

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the tourism or ecotourism concessions at the local level, for example as part of developing a forest management plan?

Local governments are responsible for allocating permits for the collection of fees and charges. If local people or stakeholders experience any issues or identify any illegal activities they can raise these with their local government or with other government agencies (such as the Department of Archaeology) or they can take them to court. Similarly they can raise such issues in council meetings and discuss their impacts and mitigation measures. These practices are especially common in some of the cultural sites in cities in Nepal.

10.3 Is information on the quality/quantity of (eco) tourism services made public?

Once all preparations and permits are completed and a provision of tourism or ecotourism services contract starts, can local people find out about the size / value / or limits on these services?

Central government institutions are responsible for the management and protection of Nepal's cultural heritage. Support from local governments and communities is sought for this. The responsible government agency prepares maps and detailed descriptive reports of cultural sites and since these are posted in public places, local people can get basic information about the cultural sites and the services provided.

11. Extra-Sectoral Activities Affecting Forests

Are decisions about extra-sectoral operations such as mining, road building, large-scale agriculture, hydropower or other infrastructure transparent? What transparency rules apply to these? Are there extra-sectoral threats to the forest? How?

GoN has ranked mining, road building, large-scale agricultural programmes, hydropower, and other national infrastructure development programmes as nationally prioritised development activities.³⁶ Decisions related to these national priority programmes are made by central government. The current 3-year interim plan recognises that poor and marginalised groups, especially from remote areas are deprived of the benefits of development. The same

³⁶ NPC (2010), Concept/background paper for the 3-year interim plan of Nepal, NPC, Kathmandu, Nepal

report cites that a lack of good governance and transparency in decision making has further exacerbated the situation by increasing the gap between urban and rural areas and by allowing environmental conditions to deteriorate as a result of uncoordinated implementation of national infrastructure development programmes.

Extra-sectoral activities that affect forests such as mining, road building, large-scale agriculture and hydropower are regulated by separate laws but these do not contain specific provisions to maintain transparency in decision-making. Transparency and participation of the public in evaluating and implementing such programmes is ensured using general laws such as the Interim Constitution of Nepal (2007) and the Rights to Information Act (2007) as mentioned in section 1. The effects of extra-sectoral activities on forests are recognised in Nepal's RPP for REDD³⁷. Forest areas are frequently seen as land available for implementation of nationally prioritised development activities.

11.1 Is there a strategic process to assess priorities between development options?

Is there a Strategic Environmental Assessment to identify and resolve conflicting land uses between forests, mining, large-scale agriculture and infrastructure development? Does the National Forest Policy document seek to address this? Do any policy documents from the other sectors?

The Environmental Protection Act (1997) requires the government to conduct strategic environmental assessment of different competing land use programmes before prioritising development plans. Nepal is party to more than 30 international environment related conventions including the Convention on Biological Diversity (1992) which require signatories to craft appropriate mechanisms for Strategic Environmental Assessment (SEA) for national development activities. The Environmental Protection Act (1997) aims to ensure environmental integrity while implementing development programmes but otherwise there are few specific or separate laws on Strategic Environmental Assessment except for some initiatives in the hydropower sector.³⁸

Without comprehensive environmental assessment of infrastructure development programmes, the rights of local communities may be undermined and the consequences of environmental degradation may not be mitigated. This has led to increased conflict between local communities and infrastructure developers. These issues were not dealt with in the Master Plan for the Forestry Sector (1989), therefore the MFSC issued a general guideline in 2008 on allocation of forestlands for prioritised infrastructure development programmes. The Land Acquisition Act (1986) and section 68 of the Forest Act (1993) provide a legal basis to allocate forestlands for the development of infrastructure in Nepal.

However, no single legal provision discusses the involvement of affected communities in decision-making around national development priorities and acquisition of forestlands. Central government, specifically the National Planning Commission (NPC) makes decisions with regard to its national development priorities. Hydropower development programmes have been particularly criticised for being irresponsible towards local people and there have been conflicts and violent protest in many places as a result.

³⁷ MFSC (2010) Nepal's Readiness Preparation Proposal REDD, 2010-13.

³⁸ MOE (2006), A Handbook on Licensing and Environmental Assessment Process for Hydropower Development in Nepal, Ministry of Environment (MoE), Kathmandu Nepal

11.2 Is it clear who decides if/when to make decisions between development options?

Are there clear, documented, and understood steps for making decisions over the use or conversion of forest lands for other purposes such as mining, large-scale agriculture or infrastructure development?

Yes, GoN has developed a procedural document for making decisions between different development options. According to the *Procedure for Providing Forest Areas for Other Purposes* (2007)³⁹ and section 68 of the Forest Act (1993), forest areas can be allocated for the implementation of national priority projects. A cabinet meeting of ministers with recommendations from NPC can allocate some part of Nepal's forests for the use of infrastructure and development programmes. Normally such decisions are only made if no other options are available.

Once the decision is made, the development project must conduct EIA/ IEE and develop mitigating strategies for the damage it may cause to the environment. The development project must make appropriate arrangements for plantation and protection along with the project activities. In community forestry the same provisions and processes are applied in order to acquire community forests for national development programmes. Additionally, development projects must provide compensation to CFUGs as stated in EIA report if the project destroys forest areas and products.

11.3 Is there a stakeholder consultation process on deciding between different development options?

At the time an area of forest is identified for allocation to any sort of non-forest purpose, are stakeholders consulted, for example on any conditions or mitigation commitments?

Usually there is no stakeholder consultation while acquiring forestlands for development projects or for prioritising conflicting land uses. The *Procedure for Providing Forest Areas for other Purpose* (2007) does mention that EIA/IEE is compulsory for conversion of national forests for non-forest purposes and EIA requires that stakeholder consultation is carried out. Projects need to fulfil all the mitigation conditions and commitments as stated in the lease agreement⁴⁰ and EIA report before they can be carried out.

11.4 Is the final decision-making process on different development options transparent?

Is the final decision to allocate any forest to non-forest use made in way which allows citizens to assure themselves that the correct process has been followed? – is the process documented and published?

No – for two main reasons. Firstly, people do not know the correct legal process for allocating forest areas for non-forest purposes now which development options are most likely to bring them prosperity. Secondly, in most cases, government agencies and development projects are reluctant to provide such information to the public (affected people)

³⁹ Government of Nepal has developed *Strategy to Develop and Operate Infrastructure in Protected Areas (2009)*, and the main objective of this strategy is to allocate part of protected areas for infrastructure development

⁴⁰ Generally, government allocates part of forest areas for non-forest purposes following the legal provisions for leasehold forest management system, and it is usually allocated for 40-80 years

because they are either afraid of protests or they fear that misconduct or corruption will be publicised. As a consequence, affected communities are deprived from clear information about how decisions are made and what impacts it might have on their locality. GoN decisions on development projects are not published for the public, although this should form parts of EIA reports.

11.5 Is information on implementation of non-forest use/conversion given to the public?

Once the final decision has been made, are local people informed of where mining, large-scale agriculture or infrastructure development in forests will be / is occurring, so that they are aware operations should be happening in their area, and to give them the opportunity to know if operations are legally in that location?

There is no systematic procedure to provide information to the public about the implementation of development projects in forest areas. In practice, once a decision is made to allocate forest areas for non-forest use (conversion), the project implementer usually informs any local political leaders, representatives of local government, police offices and other groups who might create obstacles for implementation. Such consultation is informal. Usually, local communities (except perhaps local leaders) are not involved in such informal sharing mechanisms. Mining companies are particularly reluctant to share their actual information with the public. This has led to public legal conflicts between affected communities and developers. In 2008 mine-affected people and forestry groups organized a huge mass rally in Kathmandu against the non-transparent activities of mining companies operating in community forests.

12. Fiscal Regime: Tax Collection and Redistribution

To what extent does the law provide for taxes, royalties, or other benefits to be collected from permit holders and given to affected communities? Are any laws or regulations regarding this implemented effectively?

These fiscal provisions are not very clear for natural resource management. Tax and royalty collection and redistribution systems differ in different sectors and fiscal policies are separately developed for sectors such as forestry, hydropower, protected areas (mainly conservation areas), eco-tourism and mining. Fiscal policies are not usually explicit about provisions for benefit redistribution to affected communities. Usually local government takes responsibility for ensuring such redistribution. In community forestry CFUGs are responsible for acquiring and distributing benefits to their members. There is no separate monitoring mechanism for collecting taxes and existing legal provisions are complicated and change frequently. Local people are not informed about these changes and this has created confusion among tax payers and allows space for tax avoidance.

Benefit sharing mechanisms in all natural resources sectors are unclear and complicated. There is no legal provision that allows local communities to participate in making decisions about tax collection and redistribution. At community level CFUGs and other types of group can raise funds and use them for implementation of their operational plans. If taxes are paid, a major share goes to central government via the treasury and local government bodies and communities receive little – especially from hydropower, protected areas, forests, mines and eco-tourism. In some districts, district forest development funds have been created to finance

district level forestry activities through locally raised taxes on forest products. These funds are not utilised and are currently kept as ‘untouched’ money because of the lack of legal provisions and guidelines that determine how they should be used. In buffer zones, the buffer zone council (composed of central and local representatives) has the authority to decide about the utilisation of funds raised from national parks although local communities do not have direct access to this.

12.1 Is there a system of tax/royalties redistribution?

Does the law provide for a portion of the taxes or royalties collected from permit holders to be redistributed to affected communities?

There are no specific legal provisions for the distribution of collected tax/royalties to affected communities. According to the LSGA (1999), some tax or royalty collected from permit holders can be redistributed to local government (but not specifically to affected communities). Local governments can get a proportion of the tax raised from the central treasury if the tax raised is higher than the required minimum. This can then be utilised according to the guidelines developed and there is provision for local government to use it for the specific benefit of affected communities – although this does not necessarily happen in practice. Some examples of tax and royalty redistribution are shown below:

Examples of tax or royalty redistribution systems in Nepal

| Law | Permit holders | | Tax/royalty distribution | | | |
|---|---------------------------------------|---------------------------|--------------------------|--|---|--|
| | | | Central government | Local government | | Local (affected) communities |
| Electricity Act (1992), LSGA (1999) | Hydropower projects | | 50% | 50% | | Not fixed (DDC can make guidelines for the allocation of benefits to the affected communities for watershed conservation ⁴¹) |
| | | | | 12% for concerned district where the hydropower is located | 38% for districts of concern development region | |
| Procedure for handing over the protected areas to NGOs & other agencies, (2003) and LSGA (1999) | Conservation area management agencies | | Not clear | 30-50% amount of total income from national parks or wildlife reserves or conservation areas should go to local development governments and Buffer zone council/conservation areas management councils. This money should be used for conservation related development activities. | | |
| Tourism Board Act (1997) and LSGA (1999) | Eco-tourism | Tourist entrance fee | 70% | 30% | | Not fixed |
| | | Mountain climbing royalty | 70% | 30% | | Not fixed |
| | | District entrance fee | 70% | 30% | | Not fixed |
| Mines and Mineral Act (1966) and LSGA (1999) | Mines | | 50% | 50% | | Not fixed |
| National Park and Wildlife Conservation Act (1993) | Government agencies | | 50% | Buffer zone council (30-50%) | | According to the guidelines of Buffer Zone council |
| Forest Act (1993) | Community Forestry | | 15% | CFUGs (85%) | | According to management plan of CFUGs |
| LSGA (1999) (forestry sector) | Private sector | | 80% | 10% | | Not fixed |

⁴¹ The Makwanpur DDC has developed a guideline for this purpose and has allocated 20% of the hydropower royalty to the affected communities of Kulekhani Hydropower Project.

12.2 Is the system of tax/royalties redistribution effective in meeting any legal obligation?

Does any tax / royalties redistribution system work in practice?

No because they are somewhat *ad-hoc*, unclear and are developed largely for central and local government rather than for meeting legal obligations to those affected. Communities are not considered as separate beneficiaries. Although tax or royalty redistribution is the legal obligation of central and local governments, mechanisms even between central and local governments are very weak. There is no clear procedure for redistributing taxes and government agencies tend to create bureaucratic hurdles at various levels. For example forest development funds remain largely unused in many districts because of this.

12.3 Is there a stakeholder consultation process regarding the use of community fund?

Are stakeholders aware of the tax redistribution system and are they given a chance to influence the use of any funds dedicated for their use?

At district level some key stakeholders such as political leaders, NGO representatives, lawyers and the media may have some awareness of tax/royalty redistribution within the district. However, there is no formal consultation process for this. The majority of people including those most affected communities are not aware of how much tax is collected and how it will be used. A national guideline has been developed to regulate such distribution for development activities.

At community level forestry groups collect and redistribute their own funds amongst their members and sometimes also to those who are not members. Community funds differ from those held by central or local government because they are managed collectively and their use is highly consultative. CFUG funds give greater awareness and control over financial resources to local people and group members have access to decision-making including the redistribution of funds locally. According to the community forestry guidelines (2009), CFUGs must invest 35% of their income for pro-poor activities, 25% on forestry and 40% for community development.

12.4 Are figures for collection and distribution published?

Does the relevant authority regularly publish the taxes collected from each forest area and the amount redistributed to those communities entitled to receive a share? If so, how often do they publish this information?

There is no legally binding provision which forces government agencies to publish and distribute reports on tax collection and redistribution to the public. In practice, sectoral departments, such as Department of Forest, the Department of Mines, the Department of National Parks and Wildlife Conservation, the Tourism Board, and the Department of Hydropower do publish annual reports on taxes collected i.e. as a section of their annual report. However, this is quite general information and disaggregated data are not presented.

At community level, the status of local forestry group funds (and income and expenditure statements) are published annually – this being a compulsory legal provision for the renewal of their community group status.

12.5 Is there a system of social obligation, where concession holders have to provide benefits directly to affected communities?

In addition to taxes, are there any obligations for permit holders to provide benefits to affected communities, in cash or in kind?

The EIA document acts as a binding agreement to fulfil social as well as other obligations. Generally, EIA reports include a section on social obligations which concession holders are required to implement since EIA/IEE is an integral part of environmental development programmes. Such obligations are usually related to the general welfare of affected communities. For example, some hydro-power projects are obliged to implement various social activities by providing cash support or other forms of development, such as education, income generation, alternative energy, agricultural improvements, livestock, and community development programmes.⁴² Affected communities have formed networks of their own to create group pressure especially in the hydro-power, mining and tourism sectors.

In the forest sector, social obligations are not formalised and only a few industries and private companies allocated nominal funds for plantations and flood control activities in Terai region. Similarly, 30-50% of the income that goes to the Buffer Zone Council ends up in various infrastructure development activities rather than in fulfilling direct livelihoods related needs for affected communities.

12.6 In practice does the social obligation system meet any legal obligation?

Does the social obligations system work in practice?

According to the Annex 6 of the Environmental Protection Regulation (1997), developers need to include specific mitigation measures in the EIA report to minimise any negative impacts to the environment and on local communities. As part of EIA/IEE approval, these measures become legally binding and must be complied with. However, due to weak and largely ineffective monitoring, effective implementation of such provisions does not always take place.

In the forest sector, timber contractors are not obliged to fulfil any social responsibility. They have no direct communication/contact with local communities if timber is being harvested from government-managed forests, other finding local labour for logging and timber transport.

12.7 Is there a stakeholder consultation process?

Are stakeholders aware of the social obligation system and are they given a chance to influence the projects or use of any funds provided directly to them by the concessionaire?

The hydro-power sector has a consultation process where stakeholders are made aware of the social obligations that the project has to fulfil. Concession holders provide cash benefits directly to the funds of affected communities which are used for local development activities. This allows local communities to manage and utilise funds locally as per their interests. In the other sectors such as mining, tourism and forestry a similar stakeholder consultation process

⁴² Upadhyaya, SK., 2003, How can Hydropower Royalty Lead to Social Equity and Environmental Justice? Equitable Hydro Working Paper 2, Winrock International, Kathmandu, Nepal

on the use of such funds does not exist. After protests by communities, the parliamentary committee on natural resources has recommended that the government should consult with affected communities and allocate funds to compensate from mining and tourism.⁴³

12.8 Is information on social obligations published?

Is the social obligation agreement publicly available? Are there regular reports on its implementation? If so, who is responsible for producing these?

In the hydro-power sector some projects publish their social obligation agreements in their annual reports but these are not widely distributed. According to the Annex-6 of the Environmental Protection Act (1997) the government is supposed to set up a monitoring mechanism to ensure the implementation status of such social obligations. In other sectors such as forestry, mining, conservation, tourism and agriculture, there is no established practice for this.

13. Forest Law Enforcement

Are citizens encouraged to assist with law enforcement? For example, are there any formal or semi-formal ways for citizens to help forest law enforcement agents do their job?

The Forest Act (1993) gives authority to District Forest Officers (DFOs) to enforce forest laws with quasi-judicial powers. DFOs are responsible for protecting national forests, regulating forest related activities and enforcing forest laws. They can seek support from citizens to enforce the forest laws. According to the section 58 of the Forest Act, the investigating officer can take necessary support from local people and representatives of local government to collect evidence on forest offences. Likewise the National Park and Wildlife Reserve Act (1973), the Prevention of Corruption Act (2002), and the Commission on Investigation of Abuse of Authority Act (1991) have mentioned that the government should protect and empower citizens who act as witnesses and who support the collection of evidence against illegal activities. According to section 25 of National Park and Wildlife Reserve Act (1973), government may also reward/award people who support law enforcement. In many parts of the country local communities are themselves forming people's anti-poaching groups and anti-corruption groups⁴⁴.

13.1 Are there opportunities for citizens to discuss law enforcement issues as they arise?

Do any forest forums (see Section 4) include representatives from the police or judiciary for example? Or are there other formal mechanisms to discuss law enforcement issues with officials from other (non-forest) agencies?

In many districts multi-stakeholder committees have been formed where there are high levels of illegal collection of NTFPs, timber and wildlife trafficking. This is usually headed by the Chief District Officer (CDO) and also has representation from the police, the office of the

⁴³ Legislative-parliament, 2009, Annual Report (2008-2009), Parliamentary Committee on Natural Resources, Secretariat of parliament, Kathmandu, Nepal

⁴⁴ TIN (2009), Report on the Facts and Issues on Poaching of Mega Species and Illegal Trade of Their Parts in Nepal, Transparency International Nepal (TIN), Kathmandu, Nepal

attorney general, civil society organizations and the public as well as forestry officials. In the Terai DFCCs can also take this roles as many district level stakeholders are represented on this, including quasi-judicial bodies such as CDO, DFO, and Wardens of protected areas. In the meetings of these forums, citizens have opportunities to discuss issues relating to forest law enforcement and in many places citizens are playing an active role in helping to enforce forest laws.

The Local Self Governance Act (1999) indicates that local governments are also responsible for protection of forest resources. They can collect local taxes from forest products but they have only a very limited role in enforcing forest laws. Local government can mediate local disputes related to forest resources. This still remains a grey area because LSGA has a provision that central government must delegate its authority to local government through a public notice and this has never been done.

13.2 Are citizens actively participating in control operation?

Is there any form of joint operations including citizens and forest law enforcement (e.g. 'vigilancia verde' or forest monitoring)?

The Terai region is highly susceptible to forest encroachment, illegal logging, overharvesting, smuggling of timber/NTFPs and trafficking of wildlife and wildlife parts. Recognising this, communities have started to try to enforce their own controls – often with the encouragement of the MFSC. Without such joint operations between local communities and forest law enforcement agencies controls on illegality may not be achieved. Although joint operations have been taking place in the Terai on a regular basis they largely depend on the personal relationships between communities and the DFO. When these are good, collaborative operations can be effective but if they fail, then they are ineffective. In many cases where communities have not been able to regain control of their local forests in the Terai there is some enmity between them and the DFO.

13.3 Do (some) forest communities condone 'illegality'?

Do any communities regard some laws as inequitable and so argue that they are justified in supporting or participate in illegal activities?

Forest resources are the main sources of livelihoods for many indigenous and forest dependent communities. However, some provisions in the Forest Act (1993) (such as section 70a) and many provisions in the National Park and Wildlife Reserve Act (1973) are anti-community in terms of restricting livelihood opportunities for such people. This works against the prevailing legal framework because it leads to indifference regarding illegal activities in forests by adjacent communities – especially in government-managed forests. Local forestry groups of various kinds have in place their own systems of management and control of illegal activities. This empowers communities and encourages them to respect and comply with the law.

13.4 Is there an independent forest monitor?

Is there any organization contracted to conduct Independent Forest Monitoring (IFM) to monitor forest governance and operations? For how long has this existed? What, if any, benefits does this bring?

There is no an independent forest monitoring body in Nepal. In 2010, the parliamentary committee on natural resource management formed a sub-committee to look after the forest sector, and it has prepared an independent monitoring report for submission to parliament. There is a demand in parliament to form an independent monitoring mechanism for the forest sector. Transparency International Nepal (TIN) is planning to prepare an Independent Forest Monitoring (IFM) report. A few other commissions and committees have been formed by government and by civil society organizations to study forest encroachment, illegal logging and corruption especially in the Terai.

13.5 Does the government publish list of infractors?

Does any authority regularly publish a list of infractors of the forest law? Is it obliged to do so under any law or other norm? Does such a list show the progress of each case through the legal system, and the amount of any fines paid?

The Department of Forests publishes a list of forest related offences in its annual report, but it does not publish the names of infractors and there is no legal provision for them to do this. However, the Supreme Court, the CIAA and the Department of National Park and Wildlife Reserve do publish the names of infractors every year e.g. forest offenders or corruption seekers. The annual report (2009/010) of CIAA strongly recommends fining those infractors who are charged by the courts but progress with this is slow.

13.6 Does the government publish lists of debarred/suspended operators?

Does any authority regularly publish a list of individuals or companies barred or temporarily suspended from holding forest-related permits (perhaps as a penalty for a previous infraction)? Is it obliged to do so under any law or other norm?

According to the rule 26 of National Park and Wildlife Reserve Rules (1974), the government may temporarily suspend permits of permit holders but there is no legal obligation to publish such suspensions. GoN does not regularly publish lists of individuals or companies that have been barred or temporarily suspended from holding forest related permits. In the Forest Act (1993) there is no legal provision for this.

14. “Anti-Transparency” Norms

Are there laws, procedures etc. that obstruct transparency? Do any caveats in the laws on public access to information (for example for reasons of commercial confidentiality or national security) significantly diminish the availability of information?

Article 27 of the Interim Constitution of Nepal (2007) guarantees rights of information to every citizen but also provides an exception to this by stating that “Provided that nothing in this Article shall be deemed to compel any person to provide information on any matter about which confidentiality is to be maintained according to law.” Likewise the Rights to Information Act (2007) also makes some exceptions for reasons of commercial confidentiality and national security, to its provision for transparency.

14.1 Is it uncommon for other laws affecting forests to limit transparency?

Are there caveats or exclusions to transparency laws, for example 'commercial confidentialities' or 'national security'? What exactly do they exclude?

No, it is not uncommon. There are various provisions that allow transparency to be withheld under certain circumstances. For example, there various conditions under section 3 of the Rights to Information Act (2007) that are commonly used to deny information to the public. The Act states that information may be withheld if:

- It seriously jeopardises the sovereignty, integrity, national security, public peace, stability and international relations of Nepal
- It directly affects the investigation, inquiry and prosecution of a crime
- It seriously affects the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy
- It directly jeopardises the harmonious relationship subsisting among various castes or communities
- It interferes with the individual privacy and security of body, life, property or health of a person

These kinds of exceptions undermine the principles of transparency and are often used to limit efforts to enhance transparency.

14.2 Are extra-sectoral operations consistent with forest laws?

Do mining, road building, large-scale agriculture, hydropower or other infrastructure development have automatic veto over forest laws, thereby eliminating transparent access to decision-making?

No, there are various situations where extra-sectoral operations can over-rule forestry laws. For example, Annex 4 of the Industrial Enterprise Act (1992) and Annex 7 of Nepal's Industrial Policy list nationally prioritised industries/infrastructure development projects. Section 16 of the Industrial Enterprise Act (1992) indicates that forest land is required by industries of infrastructure development projects then it should be provided for these by the government. This provision over-rules those in the Forest Act (1993).

Nepal is experiencing political instability at present. Consequently there are frequent policy changes. Recently GoN has initiated a process for distributing forestlands to landless people (kamaiyas) as a way of solving the problem of landlessness. As a consequence forest encroachment and deforestation has increases as has the incidence of illegal logging.

Some forest areas are under control of the Nepal Army and the Armed Police Force for their training purposes. These forest areas were sometimes taken from communities without their consent. Similarly cantonments established for Maoist Army ex-combatants have sometimes also been established in community forests without the consent of the local forestry group. Several National Parks and Wildlife Reserves are also under control of the Nepal Army for the purposes of protection. In general such security forces are not accountable to the government forestry authorities nor are they subject to forestry laws effectively giving them a veto.

14.3 Is it uncommon for authorities to ignore their obligations?

Has it become normal operating procedure for any public institution to avoid obligations to transparency?

No there are many examples in the forestry sector where authorities ignore their obligations to be transparent and accountable. For example, more than 23% of Nepal's land area is under the protected area system. The National Park and Wildlife Reserve Act (1973) gives a high level of discretionary powers to the authorities of such protected areas. As a result of these powers, they undermine public transparency requirements and tend to avoid their obligations in the name of biodiversity conservation and protection of the national interest. Security forces controlling protected areas do not have direct contact with local communities again jeopardising transparency and accountability. A similar situation exists in government-managed forests where in the name of national interest, transparency and accountability concerns are sidelined.

14.4 Are there any reforms to improve transparency or reduce confidentiality?

In particular, are there any 'quick wins' - issues where transparency could be improved and no significant vested interests are against this?

There have been some recent moves such as the enactment of the Rights to Information Act (2007) and the Good Governance (Management and Operation) Act (2008) which were major steps towards improving transparency in Nepal. Similarly, a parliamentary committee was formed by parliament to investigate illegal mining operations in ecologically sensitive areas. This strongly recommended the implementation of IEE/EIA rules (which implies greater transparency and public consultation).

15. Publications

How proactive is the forest authority in publishing? What, if any systems does it have in place for managing and providing information?

The Extension Division of the Department of Forest publishes annual reports, policies, laws, directives, and guidelines. The MFSC has appointed a spokesperson and an information officer, who is responsible for providing information to the public. Publications are generally distributed to government agencies and occasionally to the public.

15.1 Do the forest authority and other forest sector organisations publish their annual reports?

Is there an annual summary of activity by the forest authority and others they regulate? If so, how long after the year-end is it published? How comprehensive is it? Is it debated, for example by a 'forestry commission board' or by the legislature?

Each of the five departments under the MFSC publishes an annual reports which highlights annual activities, achievements and issues for the year. These reports are not presented to parliament for debate or discussion and they are a regular publications usually done in a conventional format.

Forest-based enterprises are also required to submit regular reports to concerned government agencies stating the quantity of material collected and processed. However they are not compelled to provide this information or report to general public even though they may be affected by this collection or enterprise operation. All NGOs are required to produce annual reports (including financial reports) – although compliance with this is relatively weak. At community level, local forestry groups are required by law to prepare annual reports to be submitted to the DFO – although again many fail to do so without any redress. In practice, for DFOs to ensure such compliance would be an enormous task since in many districts there are now several hundred such forestry groups.

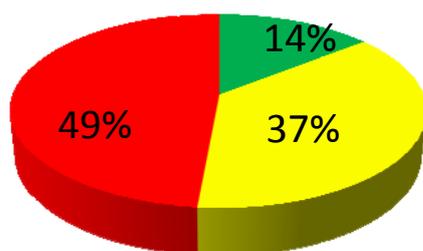
15.2 Does the forest authority have a central point of information?

Is there a person or office advertised and functioning as the source of public information? Is there any written statement (for example a regulation) about its roles and responsibilities? Is it committed to respond to enquiries with a certain amount of time?

Yes, the spokesperson in MFSC is the central point of information and is the person responsible for providing information to the public. According to the Rights to Information Act (2007), all public institutions should appoint an information officer for the purpose of disseminating information although this has not yet happened in many public institutions. The role and responsibilities of information officers are mentioned in the Act. Information Officers should provide information immediately if, by its nature, it is easy to provide, and within 15 days from the date of application if it cannot be provided immediately.

Conclusions

The overall picture of transparency in Nepal’s forest sector in 2011 is a mixed one. Out of the 70 indicators analysed in this report, the current situation is as shown in the diagram:



10 out of 70 forest sector transparency indicators (14%) are completely fulfilled

26 out of 70 forest sector transparency indicators (37%) are partially fulfilled

34 out of 70 forest sector transparency indicators (49%) are not fulfilled

There are various reasons for this situation. Firstly, despite the widespread successes of community forestry programmes, they still cover less than 25% of Nepal’s forests and the remaining forest areas are not yet under clearly defined and/or transparent governance mechanisms. This includes forests which lie within protected areas where the Nepal Army still plays a major role and where information is not widely known or publicised. Other forests are still under nominal state control although not being effectively utilised or managed. Secondly, despite the success of community forestry this has not been matched by

significant attempts to fundamentally reform the forest sector and its institutions (including those of government). These institutions are still trapped in outdated modes of operation that were developed many decades ago where government was not obliged or even committed to be transparent and where pressures on forests were very different from today. Despite some positive shifts in the forest sector which have increasingly recognised the importance of civil society and community as significant stakeholders these older systems and modes of operation still persist. Thirdly, as Nepal has gradually moved away from subsistence level dependency on forests to one where commercialisation and contributions to national economic development, jobs and environmental services are increasingly important, systems for transparency and sector governance have not shifted accordingly. Important current questions remain unanswered such as who should benefit and who should gain from Nepal's forests and who should manage them. Finally, it appears that the deterioration in law and order that started during the conflict period has continued after the peace agreement of 2006. This means that vested interests and criminal activity of various forms are now rife in the forestry sector. Those involved are obviously resistant to any changes that would increase transparency since their opportunity for illegal gains would decline as a result.

Looking into more detail at the positive and negative aspects of forest sector transparency some further conclusions can be drawn. Importantly, the overall legal framework for forest sector transparency and the organisations within it is relatively strong (parts 1-3). However the lack of a clear, widely agreed and publically available forest sector policy is still an important hindrance to sector transparency. In the areas of tenure and forestland use and in the allocation of permits and use rights there are various serious transparency deficiencies (parts 5-8). For example logging operations and forest product extraction rules and frameworks do not seek to ensure transparency and no doubt, as a result, contribute to high levels of illicit activity and unsustainable use. There are also significant transparency weaknesses concerning the relationships and influences of other sectors on forests and forest sector transparency may be undermined by these (parts 11 and 14) since confusion between institutions over their roles, responsibilities and accountability creates a vacuum where non-legal activities can persist. In general, some important decisions affecting forests are made outside the forestry sector and the public (or certain sector stakeholders) still tend to be regarded as passive recipients of these decisions rather than as active participants in the decision-making processes.

The most serious deficiencies in transparency lie with the limited effectiveness of forest law enforcement and the high levels of non-compliance with the legal frameworks for transparency that already do exist in Nepal (parts 13 and 14). This means that rule of law takes second place to the avoidance of legal compliance by all types of organisations in the sector. Increased transparency would result in more openness about levels of compliance, greater levels of compliance, clearer accountability and more success in reducing transgressions. Forests in Nepal still continue to be threatened by a frontier mentality that permits or justifies free-for-all resource exploitation for personal or political gains, rather than for common or national interest. This can only change through enhancing compliance, law enforcement and accountability with greater transparency being an important contributing factor for achieving this.

Annex: Report Card on Forest Sector Transparency

Refer to full report for further details of each question and response.

| Key | Yes  | Partial  | No  | |
|---|---|--|--|---|
| 1. Transparency norms | 1.1. | Is there a freedom of information Act? | |  |
| | 1.2. | Do other rules and regulation provide for transparency? | |  |
| | 1.3. | Are there any sector specific laws/rules/statements that provide for transparency | |  |
| | 1.4. | Is there any settlement process for disputes regarding access to information? | |  |
| 2. Legal standing | 2.1. | Do communities have legal standing? | |  |
| | 2.2. | Do NGOs have legal standing? | |  |
| 3. Forest legal framework | 3.1. | Is there an agreed national forest policy document? Is it available? | |  |
| | 3.2. | Is the forest law available? | |  |
| | 3.3. | Are all forest regulations, procedures, decrees, etc. available? | |  |
| | 3.4. | Are forest-related policies, laws, agreements etc. public? | |  |
| | 3.5. | Has the country signed up to international agreements? | |  |
| 4. Transparent access to decision-making | 4.1. | Is there a national forest forum? | |  |
| | 4.2. | Are there local forest forums? | |  |
| | 4.3. | Is there a procedure for consultation on new norms? | |  |
| | 4.4. | Is there an established list of stakeholders? | |  |
| | 4.5. | Are reports on consultation processes public? | |  |

| | | |
|---|---|---|
| 5. Tenure and land use | 5.1. Is there a published policy on forest tenure? |  |
| | 5.2. Is there a register of private forestland owners? Is it accessible to the public? |  |
| | 5.3. Is there a difference in law between ownership and use? |  |
| | 5.4. Is the ownership of different forest products clear? |  |
| | 5.5. Are forest tenure disputes unusual or rare? |  |
| | 5.6. Is there a dispute-settlement process for tenure conflicts? |  |
| | 5.7. Are ownership of forest land use maps available? |  |
| 6. Allocation of permits/user rights | 6.1. Do permits exist for all uses/services? |  |
| | 6.2. Is there any forest land unallocated to users? |  |
| | 6.3. Is it clear how the decision to start a round of permit allocation is made? |  |
| | 6.4. Is there a stakeholder consultation process prior to permit allocation? |  |
| | 6.5. Are the areas assigned for each round of permit allocation advertised? |  |
| | 6.6. Is there transparent independent verification (due diligence) of the eligibility of any applicants for forest permits? |  |
| | 6.7. Is the final permit allocation decision-making process transparent? |  |
| | 6.8. Have there been efforts to reform the permit allocation system? |  |
| | 6.9. Are the final permit/contract documents made public? |  |
| | 6.10. Are any environmental/social impact assessments for forest operations available to the public? |  |
| 7. Logging operations | 7.1. Is information on logging operations given to the public? |  |
| | 7.2. Is there a stakeholder consultation process on individual logging locations? |  |
| | 7.3. Is information on permitted logging volumes (quotas) public? |  |

| | | | |
|---|-------|---|---|
| 8. Extraction of forest products | 8.1. | Is information on locations for other forest products given to the public? |  |
| | 8.2. | Is there a stakeholder consultation process on non-timber permit locations? |  |
| | 8.3. | Is information on permitted quotas of non-timber products made public? |  |
| 9. Environmental services | 9.1. | Is information on locations of environmental services given to the public? |  |
| | 9.2. | Is there a stakeholder consultation process on environmental services locations? |  |
| | 9.3. | Is information on the quality/quantity of environmental services made public? |  |
| 10. Cultural services | 10.1. | Is information on locations of (eco)tourism or other cultural services permits given to the public? |  |
| | 10.2. | Is there a consultation process on (eco)tourism locations? |  |
| | 10.3. | Is information on the quality/quantity of (eco)tourism services made public? |  |
| 11. Extra-sectoral activities affecting forests | 11.1. | Is there a strategic process to assess priorities between development options? |  |
| | 11.2. | Is it clear who decides if/when to make decisions between different development options? |  |
| | 11.3. | Is there a stakeholder consultation process on deciding between different development options? |  |
| | 11.4. | Is the final decision-making process on different development options transparent? |  |
| | 11.5. | Is information on implementation of non-forest use/conversion given to the public? |  |
| 12. Fiscal regime: tax collection and redistribution | 12.1. | Is there a system of tax/royalties redistribution? |  |
| | 12.2. | Is the system of tax/royalties redistribution effective in meeting any legal obligations? |  |
| | 12.3. | Is there a stakeholder consultation process regarding the use of community funds? |  |
| | 12.4. | Are figures for collection and distribution published? |  |
| | 12.5. | Is there a system of social obligations where concession holders have to provide benefits directly to affected communities? |  |

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| | 12.6. In practice does the social obligations system meet any legal obligations? |  |
| | 12.7. Is there a stakeholder consultation process? |  |
| | 12.8. Is information on social obligations published? |  |
| 13. Forest law enforcement | 13.1. Are there opportunities for citizens to discuss law enforcement issues as they arise? |  |
| | 13.2. Are citizens actively participating in control operations? |  |
| | 13.3. Do (some) forest communities condone 'illegality'? |  |
| | 13.4. Is there an independent forest monitor? |  |
| | 13.5. Does the government publish lists of infractors? |  |
| | 13.6. Does the government publish lists of debarred/suspended operators? |  |
| 14. "Anti-transparency" norms | 14.1. Is it uncommon for other laws affecting forests to limit transparency? |  |
| | 14.2. Are extra-sectoral operations consistent with forest laws? |  |
| | 14.3. Is it uncommon for authorities to ignore their obligations? |  |
| | 14.4. Are there any reforms to improve or reduce confidentiality? |  |
| 15. Publications | 15.1. Do the forest authority and other forest sector organisations publish annual reports? |  |
| | 15.2. Does the forest authority have a central point of information? |  |

Initiative Sharing Series of LFP:

- ◆ **Innovations for Sustainable Services:**
Training local people in forestry techniques
July 2004
- ◆ **Innovations for Pro-Poor Forestry:**
Community forest land allocation
December 2004
- ◆ **Increasing the voice and influence of poor and excluded people in community forestry:**
Tole and Interest Groups in FUGs
February 2006
- ◆ **LFP's Animation and Social Mobilisation:**
Empowering local communities to access benefits and resources
July 2007
- ◆ **Pro-Poor and Social Inclusion Strategy:**
Creating a common understanding and approach for social inclusion
July 2007
- ◆ **Armed Conflict and Safe & Effective Development:**
Learning from the Livelihoods and Forestry Programme
December 2007
- ◆ **Working with Local NGOs in the Forestry Sector:**
Improving livelihoods of rural people
January 2009
- ◆ **Community Forestry in Nepal:**
Promoting Livelihoods, Community Development and the Environment
December 2009



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