

Community Based Forest Management Implementation

Draft Analytical Report

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Acronyms

ANRMC	Area Natural Resources Management Committee
BCFP	Blantyre City Fuel wood Project
CEPA	Centre for Environmental Policy and Advocacy
FD	Forestry Department
DFO	District Forestry Office
EU	European Union
FA	Forestry Act
FCA	Forest Co-management Agreement
FMA	Forest Management Agreement
FMP	Forest Management Plan
GoM	Government of Malawi
IFMSLP	Improved Forest Management for Sustainable Livelihoods
LGA	Local Government Act
NGO	Non Governmental Organization
PE	Programme Estimate
VDC	Village Development Committee
VFA	Village Forest Area
VNRMC	Village Natural Resources Management Committee

Executive Summary

This report examines critical legal issues relating to implementation of community based forest management in Malawi. The Forestry Department is implementing community based forest management programmes. The National Forestry Policy (1996), Community Based Forest Management – Supplement to the National Forestry Policy of Malawi (2003) and the Forestry Act (1997) provide an enabling policy environment to promote community livelihoods and sustainable forest management. The adoption of the National Decentralization Policy (1998) and the Local Government Act (1998) has introduced new institutional and management frameworks that could potentially form another important aspect of community based forest management.

By analyzing the institutional framework for community based forest management, incorporation arrangements, and by identifying the challenges to smooth implementation of community based forest management, this report has been able to deal with legal implications for effective community based forest management.

Traditional leaders are performing important functions relating to forestry resources. However, there are unclear lines of authority between Village Natural Resources Management Committees (VNRMCs) and traditional leaders. This has tended to result in conflicts. It was also established that politicians are undermining the local authority of traditional leaders.

Forestry Department staff currently facilitating community based forest management such as Forest Guards and Patrol Men were not trained in forestry extension. This tends to constrain their capabilities. In addition, like other public sector institutions, they are also not being provided with adequate financial resources to undertake their mandates effectively.

The police have been working closely with forestry officers in mounting forest produce confiscation operations. The law allows them to seize and detain forest produce. However, although the VNRMCs have powers to seize and detain forest produce, their aspirations to deal with offenders have often not been fulfilled. Presently the Director of Forestry has not formally appointed VNRMCs as enforcement officers.

Consultations with stakeholders across the country revealed that there are a number of formal and informal institutions which play an important role in the implementation of community based forest management in Malawi. For instance VNRMCs are playing a valuable role in community based forest management, although they are facing numerous challenges. Most of the VNRMCs which are active are the ones which receive regular extension advisory services either from Forestry Department projects such as the Improved Forest Management for Sustainable Livelihoods or other service providers. Most of the VNRMCs are not accountable to the local population as a whole. They also do not relate well to traditional leaders. The incorporation of VNRMCs under the Trustees Incorporation Act has been problematic. As a result there are just a few VNRMCs which have developed constitutions, by-laws and are legally registered. In the course of implementation, new regulatory mechanisms have emerged within Forestry Department, through the Local Forestry Organizations although it is not clear as to under which law they have been set up.

Although both Forest Management Plans (FMP) and Forest Management Agreements (FMA) are ideal instruments for effective management of Village Forest Areas, it appears most of the VFAs have not been able to conclude these. The necessity to prepare an FMP and negotiate an FMA presents an enormous challenge to both the communities and forestry personnel. Insistence of central government excessive oversight and control over forestry resources on customary land is constraining the process of empowerment as expected under community based forest management.

Linkages between decentralization of local assemblies and forest management are progressing slowly. Not only is it being challenged by diversity of interests, it also faces a vacuum created by absence of ward councilors, hence, district assemblies have not been able to formulate by-laws in which they would have factored forestry by-laws.

In devolving its functions to district assemblies, Forestry Department seems to have held on to lucrative opportunities such as management of forest reserves and plantation forests, that would have enabled local assemblies to make decisions over the disposition and use of forests. The central authority seems to have only transferred burdens of management to local assemblies such as forest extension services, district forest information management, which will not bring any significant economic returns.

There has been partial implementation of benefit sharing schemes of proceeds from forest produce. However these have been challenged by lack of transparency and accountability of some of the local level institutions involved in community based forest management.

One of the most disturbing issues which have risen is that institutions involved in community based forest management have limited understanding of the forest policy and legislation. Effective implementation of community based forest management is also threatened by the influence of local leaders who are involved in illegal activities; hastily formed and ineffective VNRMCs and inappropriate resource transfer arrangements.

Finally, this report provides a set of concrete recommendations to ease implementation of community based forest management. Strengthening and clarifying the roles of institutions involved in community based forest management especially VNRMCs and traditional leaders appear to be one of the most promising means to smoothen implementation of community based forest management. During this process, legal personality issues need to be addressed following the fastest means for public interest institutions. In addition, to these measures a number of changes need to be made to both the Forestry Legislation and Rules. This might include amendments to section 33 and removing restrictions on activities of VNRMCs to VFAs.

1.0 Introduction

1.1 Background

The Forestry Department (FD) of the Ministry of Energy, Mines and Natural Resources is implementing the Improved Forest Management for Sustainable Livelihoods Programme (IFMSLP). The programme is funded by the European Union and the Government of the Republic of Malawi. The programme involves the implementation of community based forest management in twelve districts in Malawi and by doing so contributing to an improvement in the living conditions of the forest dependent communities. An important aspect of this programme is to empower local communities to effectively participate in forest management through institutional as well as individual entitlements and mechanisms provided for under the National Forestry Policy (1996), Community Based Forest Management - Supplement to the National Forestry Policy of Malawi (2003) and the Forestry Act (1997).

The Government of Malawi places high priority on the active participation of communities in development programmes and projects, including those in the forestry sector. It recognizes the important contribution that communities and other stakeholders play in sustainable forest management. It approved a new Forestry Legislation in 1997, which constitutes an endorsement of many important principles of community based forest management as a remedy to deforestation. In its long title it provides that it is, "An Act to provide for participatory forestry..."¹. IFMSLP seeks to utilize this enabling policy environment to promote community livelihoods and sustainable forest management. A number of policy changes which were effected offer new opportunities for enhancing community participation in forest management. The National Forestry Policy and the supplement thereto give power to communities through Village Natural Resources Management Committees (VNRMC) and Village Headmen to participate in licensing of forest produce.

Prior to the new policy and legislation framework it had been the sole responsibility of FD to punish offenders who contravene the Forestry Act. The National Forestry Policy (1996) and the Forestry Act (1997) give power to communities through VNRMCs to punish offenders who contravene either the Forestry Act or the Regulations made under the Act. FD facilitated the formulation of the "Guide to the Registration of Local Forest Organizations" in early 2007. The Department is using these guidelines to register local forest management institutions. These institutions are approved by the respective local District Forestry Offices and District Commissioners. It is not clear as to under which legal framework these have been developed.

During the early stages of implementation of the IFMSLP a number of legal implications that require clarification have been noted. It is specifically for this reason that this work was commissioned. The objective was to identify, investigate and clarify critical legal issues relating to the on going community based forest management process, and where necessary, to recommend how best to address any apparent conflicts or shortcomings. As such the document reviews the policy and legislative framework for empowering local communities in forestry management including institutional mechanisms for effective community participation. An important element is the involvement of communities in enforcement of forestry legislation; hence the procedural rules for community participation in forestry law enforcement have also been reviewed.

¹ See page 4, Forestry Act (1997);

This review together with the consultations also provided the material for establishing the minimum requirements to be fulfilled in order for local communities to become legal entities and enter into agreements with FD and other stakeholders.

1.2 The IFMSLP

The purpose of IFMSLP is to improve the livelihoods of forest dependent communities through improved sustainable collaborative management of forests both in forest reserves and customary land². IFMSLP is a wide range forestry development programme and is being implemented within the context of Malawi's prevailing poverty reduction, rural development, forestry and other related natural resources policies and strategies. Key areas which the programme is addressing are: governance issues which include poor policy and legal implementation; poor participation and equity among beneficiaries; weak local structures for decision making; weak relationships within and between stakeholder groups; and unclear tenure and usufruct arrangements.

The programme covers twelve districts spread equally in all the three regions of the country. The districts are Nsanje, Chikwawa, Zomba, Machinga, Ntcheu, Dedza, Ntchisi, Kasungu, Mzimba, Rumphu, Karonga and Chitipa. In all the districts visited there are VNRMCs which are the principle institution responsible for community based forest management. In Zomba district, efforts were at an advanced stage to register Local Forest Organizations. At the time the consultations were being conducted 8 organizations had already been registered.

1.3 Methodology

The assignment commenced with desk review of project documentation as well as policy and legislation relating to community based forest management. At the same time meetings and discussions were held with various stakeholders involved in community based forest management³ over a period of two weeks. The stakeholders included FD staff at headquarters, regional, district and field levels; VNRMC members; traditional leaders; district assembly staff and police personnel who work with forestry law enforcement officers. The meetings were aimed at obtaining first hand information on the operations of community based forest management, with emphasis on forest rules, institutional frameworks and their implementation. In addition, there was also an opportunity to get impressions of community enforcement of forestry legislation.

Based on the literature review and stakeholder consultations, this report has made certain recommendations on what needs to be done to improve implementation of community based forest management. Subsequent to the desk review and meetings this draft analytical report was prepared. The report has been submitted to FD for internal review.

2.0 The Findings

2.2 Current Status of the Institutional Framework for Community Based Forest Management

There are a number of formal and informal institutions which play an important role in the implementation of community based forest management in Malawi. These institutions include District Forest Offices, forestry extension personnel, Local Forest Organizations

² See GoM / EU Improved Forest Management for Sustainable Livelihoods Programme PE # 1;

³ The list of people and institutions consulted is provided in Annex I;

(in isolated instances), VNRMCs, traditional leadership, political leaders and other service providers. At local level the decentralization process that commenced with the adoption of the National Decentralization Policy, 1998 and the Local Government Act (LGA), 1998 have introduced new institutional and management frameworks that could potentially form another important aspect of community based forest management. The existence of these institutions is providing different opportunities and challenges in the implementation of community based forest management.

Village Natural Resources Management Committees

A VNRMC is defined as a committee elected by stakeholders of a Village Forest Area (VFA)⁴. According to the supplement to the National Forestry Policy which deals with community based forest management⁵, the VNRMC represent the interests of the village or group village and act as a point of liaison in dealings with forest extension workers and other government officials. However, many of the VNRMCs visited have no connection with any VFA; hence the definition under section 2 of the Forestry Act does not apply to them, though they would qualify as a community under the Forestry (Community Participation) Rules, 2001.

During the consultations it was noted that VNRMCs are playing a valuable role in community based forest management. Most of these VNRMCs had received basic training in forest management. In addition, they had also attended a number of training courses in areas such as leadership, business management; impacts of charcoal making, modern bee keeping and mushroom growing to enable them get additional income and in the long term reduce dependence on forest resources. Some of the roles and responsibilities of the VNRMCs consulted include:

- Assisting local forestry personnel in the management of adjacent forest reserves, like case of Chimaliro Forest Reserve in Kasungu district;
- Establishing village woodlots, often planted with exotic trees like eucalyptus;
- In consultation with forestry personnel, participating in patrols and overseeing collection of firewood and non timber forest products from forest reserves such as mushrooms, caterpillars in instances where there are co-management agreements in place;
- In collaboration with forestry personnel report or seize any illegal forest produce removed from forest reserves or VFAs; and
- Collaborating with the VDC where possible.

However, in most of the areas visited, the VNRMCs were encountering many challenges such as:

- Lack of constitutional framework to guide their affairs, except those few who were continuously being engaged by the IFMSLP or other Non Governmental Organizations (NGOs) projects;

⁴ Section 2 of the Forestry Act (1997);

⁵ Dated July 2003 (the Supplement);

- Lack of confidence to exercise statutory or governmental authority;
- Inadequate knowledge of their powers and responsibilities;
- Inadequate knowledge of the applicable law;
- Often conflicting mandates between VNRMC and village heads;
- Lack of clear vision and purpose for the committee;
- Dependence on outside support/involvement to function; and
- Lack of autonomy and permanence to the institutional framework.

The findings suggest that the formation of VNRMCs alone does not guarantee community participation in forest management. The relationship between the committee and the community is very crucial. It is important that the roles of the VNRMC are clearly defined. The committee should be democratically elected and not imposed by outsiders. The committee should be seen to be serving the interests of the community and not driven by outside influence.

Within the decentralization framework, the VNRMC is a subcommittee of the Village Development Committee (VDC) and should therefore be represented at the village assembly⁶. The consultations revealed that although there is this provision on paper, in reality most of them do not have a formal relationship with the VDCs. It was indicated that their interests are so wide apart. The VDC is only interested in infrastructure projects such as roads, bridges, school blocks, etc. They have little interest in local level natural resources conservation efforts. In most instances the relationship existed because some of the members of the VNRMC were also members of the VDC.

During the consultations there were cases where VNRMCs have been set up, developed by-laws and management plans. They were also fortunate to have these signed by the Minister and resource transfers took place. However as they have been generating money from forest produce sales, some of the VNRMCs have not been handling the funds appropriately. Instead of adhering to the agreed benefit sharing arrangements, the committees have almost been operating as private concerns. In most instances they have been sharing the money amongst themselves. This has led to animosity between the committee and both traditional leaders and the entire community. Overtime, either the traditional leaders have dissolved these committees or local community members have encroached and opened gardens in the VFAs as they have not been able to get any benefits from these areas.

Village Forest Areas

A Village Forest Area (VFA) is defined under section 2 of the Forestry Act, 1997 as an area of customary land established as such by an agreement under section 30⁷. It was noted during the consultations that while some villages have VFAs, others do not.

⁶ See section 3.4.5 of the Supplement to the National Forestry Policy of Malawi (2003);

⁷ According to section 30 a VFA is established by a demarcation of unallocated customary land by a village headman with the advice of the Director of Forestry. And for the proper management of a VFA, the Director of Forestry shall enter into forest management agreement with a management authority;

Those who have did not remember having any agreement with FD or having a management plan in place. It would appear that most of the VFAs are established informally. The village headman seems to be the management authority in collaboration with the VNRMCs. The latter however do not have much authority over VFAs and their roles and responsibilities, including their relationship with village headmen are unclear.

VNRMC Constitutions and Legal Personality

A number of active VNRMCs, especially where they are receiving regular extension support from FD or other service providers have developed basic operational guidelines, constitutions and by-laws. This was a common occurrence in almost all the districts under IFMSLP. All these were submitted to their local forestry personnel for further forwarding to the appropriate authorities for approval and signing⁸. The main observation during the consultations was that there are hardly any endorsed village by-laws or signed resource management agreements. Special cases were instances where a project had been implemented such as the Blantyre City Fuel-wood Project (BCFP), Mwanza East – Sustainable Management of Indigenous Forests, World Bank supported Co-management Project in Machinga and selected districts in the north where there was the Finnish DIDC Capacity Building Project. These are difficult to replicate. Potentially the development and approval of by-laws are seen by both communities and local forestry personnel to be one of the key steps in the VNRMCs becoming legal entities. Most of the forestry personnel interviewed were unclear about what to do next with the by-laws and constitutions which VNRMCs had developed and submitted to them. As such most of the VNRMCs have not been incorporated as legal bodies. This has tended to limit some of the activities which they can undertake. For instance they cannot enter into an agreement with FD⁹ and their actions regarding legislation enforcement are often challenged by offenders.

The purpose of the VNRMC constitution is to set down clearly its objectives and functions and the way in which it will conduct its affairs¹⁰. It is important that a VNRMC is incorporated as a legal entity. It will therefore have a legal personality and be in position to sue, be sued and enter into any transaction or contract with any organization in its name and not in the name of its members. Legal personality will also provide permanence to the VNRMC so that its existence does not depend on the lives of its current or future members. It can also be able to open and operate bank accounts in its own name. Neither the Forestry Act nor the Rules made there under gives legal personality to the VNRMC. Section 31 of the Forestry Act gives power to the Director of Forestry to enter into agreements with a management authority providing for formation of VNRMCs for purposes of managing and utilizing VFAs, hence where a management authority is a VNRMC, separate legal personality is necessary¹¹.

Local Forestry Organizations

During the consultations it was noted that a new institutional framework for community based forest management has been introduced. FD personnel are setting up Local Forestry Organizations. According to the “Guide to the Registration of Local Forest Organizations” a Local Forest Organization is defined as a group of individuals,

⁸ Section 33, Forestry Act (1997);

⁹ See section 31, Forestry Act (1997);

¹⁰ See section 3.5 of the Supplement to the National Forestry Policy of Malawi (2003);

¹¹ It is technically difficult to enter into an agreement or transaction with an unincorporated body in law;

households, families or communities who have come together with a common interest of managing trees, forests and forest resources. Such a collection of people, usually elect a committee of office bearers to represent and coordinate their interests and activities. FD staff indicated that the establishment of these Local Forest Organizations is based on provisions in section 5 of the Forestry (Community Participation) Rules¹², 2001.

The FD personnel are taking the registration of the Local Forestry Organizations under the Guide to the Registration of Local Forest Organizations as a fulfillment in establishing legal entities for community based forest management. FD has assumed that these local forest organizations qualify as community under the Forest Rules (2001). The main observation is that the relationship between these organizations and VNRMCs is not clear. While the VNRMC is recognized under the Forestry Act, the Local Forest Organizations are not. In any event the formation of committees under the Forest Rules (2001) does not confer on the committee status of legal entity to one and be sued in its own name or to enter into transactions in its own name. On the other hand it seems anomalous that a household or a family should have power to form a committee under the Forest Rules (2001) and it be called a committee. It seems the only committee allowed under the Forest Rules (2001) is one that represents a community and not individuals or families.

Forest Management Plans and Forest Management Agreements

A Forest Management Plan (FMP) is a formal requirement for the completion of a Forest Management Agreement (FMA). The FMP states the management objectives, management strategies and the action plans through which the strategies will be implemented.

According to the Supplement to the National Forest Policy of Malawi (2003), the formal transfer of forest tenure and management responsibility from the government to a community is effected through the conclusion of a FMA. The agreement among others will specify the responsibilities of the VNRMC in the management of the VFA. The conclusion of an FMA will confer on the community concerned the authority to license commercial forestry activities within its VFA. From the consultations, forestry staff indicated that the authority to conclude FMA rests with the Director of Forestry. In line with the adoption of the decentralization policy this was expected to change, so that the function could be played by District Assemblies¹³. In all the districts visited it was noted that no single assembly had formally assumed this responsibility.

Although both the FMP and FMA are ideally necessary, it appears most of the VFAs do not have any of these instruments in place. The process of formulating FMP is too complex for local communities to navigate¹⁴. To date only a handful of communities have been able to establish both an FMP and an FMA without external assistance from NGOs or FD. Even most of the Forest Reserves do not have up to date management plans. The capacity of FD to assist communities to develop these plans and agreements is inadequate. The necessity for communities to prepare both FMP and negotiate FMA presents an enormous challenge to both the communities and forestry personnel. This has paralyzed the process of concluding FMA, yet communities are in desperate need to commence utilization of these forestry resources which are on customary land. The

¹² A community may, for the proper management of its affairs, under these Rules, form such committees as the community may deem appropriate;

¹³ Also see Decentralization and By-laws section below, page 13;

¹⁴ See Ribbot, J (2004), Waiting for Democracy – The Politics of Choice in Natural Resource Decentralization;

result in most areas has been proliferation of illegal harvesting. It appears by regulating forestry activities on customary land, FD seems to have over extended its control over forestry resources. This demonstrates some traits of government dominance and control. Insistence on government oversight and control is constraining the process of empowerment as expected under community based forest management. This in the long term may dampen initiative, enthusiasm and participation. It might be appropriate to consider having only the FMA but it will have to be comprehensive, covering certain important aspects of the FMP such as the objectives as annexes to the agreement. It would appear in fact that the FMA is the formal legal document¹⁵ that lays down the cooperative framework between FD and local communities while the FMP merely sets out the joint planning and management actions and should therefore be an annex to the FMA. Hence an FMA must be negotiated, agreed to and signed after which the parties formulate an FMP, in accordance with the agreement.

Co-management Agreements

The Forestry Act (1997) provides for co-management¹⁶ of forest reserves. It allows the Director of Forestry to enter into agreement with local communities for implementation of the management plan that is mutually acceptable to both parties. According to the Supplement to National Forestry Policy of Malawi (2003) in the co-management of a Forest Reserve, the purpose of a Forest Co-management Agreement (FCA) is to formalize in a contract the agreements reached between the respective parties concerning the way in which the block will be managed, the rights and responsibilities of each, and the sharing of costs and benefits. In two of the districts visited, Kasungu and Machinga, communities signed FCA with FD around 2001. However, implementation of these agreements has been challenging. Some of challenges include financial constraints to raise awareness on the FCA amongst surrounding communities, capacity building and refresher courses for Forest Assistants, guards and patrol men.

Traditional Leaders

The office of a traditional leader derives its source and authority from customary law. During the consultations it was established that traditional leaders are performing important functions relating to land and forestry resources. In all the areas visited village heads were responsible for the allocation of customary land where they set up their VFAs and as such have an important function to play in community based forest management.

There are unclear lines of authority between VNRMCs and village heads. In some areas it was noted that there are potential conflicts between VNRMCs and traditional leaders, especially where the latter considers that the VNRMC members are unduly benefiting from the forest resources and their positions, through sales of forest produce or regularly attending training courses where they get allowances. The village head who considers himself to be the "owner" of the land feels undermined by this institution. In some areas it was noted that some traditional leaders are encouraging parallel institutions to be involved in community based forest management. This was the case where traditional leaders were not adequately involved in the activities of the VNRMCs. Where a transparent and inclusive VNRMC is in place these problems could be minimized.

¹⁵ See section 31, Forestry Act (1997);

¹⁶ Co-management is joint management by more than one party. The concept involves a variable degree of consultation by and with all parties, involvement in decision making by all parties and with obligations and responsibilities embodied in a management plan, possibly contractually binding (Supplement to National Forestry Policy of Malawi, 2003);

The local leadership, mainly comprising village heads is perhaps the more ideal institution to facilitate community based forest management. Some people argued that if the village head is empowered, he can use his authority to influence what his people are doing. He can also use his power to enforce any VNRMC formulated rules. This would particularly work where traditional leaders are still respected. However in areas where projects have used the village heads as the intermediaries between the project and the people, experience has shown that the village heads simply do not pass information to the villagers. It was noted that many village heads are participants in illegal activities such as encroachment, timber sawing and charcoal burning. Others argued that the traditional leadership institution is weak, corrupt and no longer respected. As such the village heads may not have the authority and respect because of what they do.

During the consultations it was also noted that the local authority of traditional leaders is being undermined by politicians. In one of the sites visited, the role of the traditional authority in community based forest management has been severely weakened by the local Member of Parliament. Although this may be an isolated case and perhaps extreme it basically demonstrates how much the voice of a politician can have particularly if it is deemed to be in favor of the community's expectations irrespective of the principles at stake. In this particular case a chief was advising communities, who had encroached a forest reserve to relocate. However, there was resistance, so the chief sought assistance from the DFO, who in turn brought in armed Parks and Wildlife staff. This was proving to be effective. When the Parks staff forced the communities out of the protected area, the encroachers mobilized themselves and came to break property at the chief's house. When the local parliamentarian came to conduct a meeting in the constituency, she told the community members to go back into the reserve and do what they want. Actually she indicated that if FD wants to convict them, it should instead take her to police because she was responsible for their illegal actions.

Decentralization and District By-Laws

Decentralization under the Local Government Act (LGA) has profound consequences on community based forest management. Regulatory and representational relationships between local assemblies and communities are still developing. The Act incorporates principles of democracy, transparency and accountability in local governance.

Under the LGA, assemblies are mandated to make by-laws related to various resources and aspects of their operations and management, including forestry. None of the districts visited seems to have developed forest by-laws since the LGA came into force. The absence of Ward Councilors has even exacerbated the situation. The unavailability of councilors has been one of the key factors leading to paralysis in the process of formulating and approving by-laws by assemblies as they do not have a forum for debate and approval. These district by-laws are necessary as they would promote community based forest management. For instance they could allow that VNRMC by-laws be approved and registered at district level hence access to this facility would be increased, as comparatively assemblies may be taken to be more closer to the communities than the Director of Forestry, the minister responsible for forestry or the minister responsible for justice.

According to the Forestry Act (1997), any rules made by VNRMCs shall be approved by the Minister¹⁷. In the light of decentralization there is a need to amend section 33 of the

¹⁷ See section 33, Forestry Act (1997);

Forestry Act so that the powers of signing by-laws are given to an authority at district level¹⁸. The rules may be called by-laws or management rules; however, the traditional structure has been that all subsidiary legislation made by assemblies is called by-laws. The name would have little effect other than to identify that these rules are for management purposes.

The *Decentralization in Forestry – Moving Forward Together* (2006) outlines the functions to be devolved to District Assemblies. Hence the FD will be responsible for regulation, formulation and revision of:

- Policy and legislation;
- Policy guidance;
- Sector planning,
- Establishment of forestry standards and guidelines;
- Coordination of sector research, training and curriculum development;
- Extension and advisory services;
- Management of state forest reserves and industrial plantations; and
- Promotion of sector partnerships.

While the District Assemblies will be responsible for:

- Legal capacity - District by-laws and licensing;
- District forest management and conservation;
- Provision of forest extension services;
- Facilitate technology and information;
- Transfer and provide local training services;
- District forest protection and monitoring;
- District forest biodiversity conservation;
- Urban forestry;
- District forest information management; and
- Reporting.

It is clear from the foregoing that apart from the management of forest reserves and plantation forests the FD has remained largely with regulatory functions. The Director of Forestry by a memo in 2004 instructed all district forest officers to implement the devolved functions and report to district assemblies. This devolution nevertheless remains limited to in practice and the process is dragging.

The Police

Section 7, 8 and 9 of the Forestry Act (1997) give power of search, seizure and erection of barriers across public roads to forestry officers appointed under section 4. Police officers can also seize and detain forest produce. The police work closely with the forestry officers in mounting charcoal and firewood confiscation operations across the country. On the other hand, the VNRMC has powers to seize and detain forest produce and articles reasonably suspected to have been obtained or removed from a VFA in contravention of rules made by the VNRMC (section 9, sub-section 3). However although most VNRMCs visited have the aspirations to enforce forestry legislation and

¹⁸ This seems to be consistent with the proposal set out in the Supplement to the National Forestry Policy of Malawi (2003) regarding conclusion of Forest Management Agreements (section 3.11.3);

deal with offenders, they have not been able to effect an arrest of a forest offender without warrant. They indicated that they do not have the power on their own to arrest, seizure, detain or erect barriers as a forestry officer would do. Then too, they mentioned that they feel powerless if they are challenged in the course of their duty since they consider themselves second rate and subservient to forestry or police officers. In any case the Director of Forestry has not formally appointed these VNRMCs as enforcement officers. More importantly, the communities have not been clothed with any governmental power and therefore lack the confidence and clout to deal with those who challenge their authority. They have no identity or uniforms to give such authority. Some community by-laws like the ones of Mwanza East however give powers to the community to participate in the enforcement of the Forestry Act by setting up road blocks in various places together with the police.

2.3 Benefit Sharing

The main instrument for regulating the participation of communities in forest management is the conclusion of an FMA between the Director of Forestry and an individual representing the community, such as the Chairperson of a VNRMC. Among the many provisions stipulated in the agreement will be provision for access to forest produce and use of revenue derived from commercial forestry activities.

There are only isolated instances where FD and communities have agreed on a formal benefit sharing mechanism. Examples are Mwanza East by-laws¹⁹ and VNRMCs engaged in co-management at Chimaliro Forest Reserve in Kasungu.

The Forestry Act²⁰ gives power to the Minister to make rules to facilitate establishment and management of forests by VNRMCs and prescribe mechanisms for costs and benefit sharing between the VNRMC and FD *in regard to forest produce confiscated from customary land forests*. Unfortunately no such costs and benefit sharing rules have been promulgated though there are traces of general provisions such as under the Forest (Community Participation) Rules 2001.

There are other informal systems in which communities are allowed to collect resources like wild mushrooms, caterpillars and other resources from forest reserves. This is being done without any formal agreements between the communities and FD.

2.4 Legal Options for Incorporation of Community Level Institutions

At national level just few VNRMCs are legally registered. These have been registered under the Trustees Incorporation Act. This demonstrates that the process although an ideal way, it is complex and can only be attained with outside support. For instance, two institutions which were registered in Neno (formerly Mwanza East) took a period of 6 to 12 months to get their registration certificates from the ministry responsible for justice. It must be noted that this required the services of a legal practitioner, facilitated by a non governmental organization. Most of the VNRMCs cannot afford this on their own. Although incorporating VNRMCs under the Trustees Incorporation Act as a charitable and public interest organization is the ideal way, the same can be achieved by

¹⁹ The Mwanza East Community By-laws provide for the disposal and distribution of funds realized from the sale of confiscated charcoal. The FD gets 25%; the Road Block Committee gets 50% while the VDC gets 25%. There is however no indication regarding how, if at all, the fees from other forest produce such as timber or non timber forest produce will be dealt with. In the case of Chimaliro Forest Reserve the VNRMC gets 30% of the proceeds from confiscated produce. In addition, the communities are also allowed to graze their animals in the reserve;

²⁰ See section 32;

incorporating it under the Companies Act as a company limited by guarantee. Provided the necessary details are available the process should take one to two days. However, there is still a need for a legal practitioner to assist the communities.

The issues which arose given the large numbers of VNRMCs across the country is whether it is necessary to register all the VNRMCs separately or not. The advantage of registering all the VNRMCs is that each will be autonomous and be legally constituted to undertake various activities. On the other hand, should these committees fail to perform their functions and become defunct the transaction costs and efforts to register them will have been wasted. To deal with this the VNRMCs could be clustered under the umbrella of an Area Natural Resources Management Committee (ANRMC) as one trust²¹. The ANRMC could be at group village headman level. The advantage of one trust is that all the committees can be represented on this committee and will report to this trust which can ensure that there is both local upward and downward accountability. This trust can open separate accounts for the VNRMCs and ensure that they are operational and accountable to the people at village level and the trust.

2.5 Community Participation in Enforcement of Legislation

It was noted during the consultations that VNRMCs including most of the local forestry personnel are not conversant with the forest policy and legislation. As such it is difficult for them to facilitate implementation or enforcement. Forestry extension personnel and VNRMCs are the main players in community based forest management on the ground; hence there is need to disseminate basic principles of the legislative framework to them.

3.0 Potential Constraints against Community Based Forest Management

There are other dynamics in place which may hinder effective implementation of community based forest management. These include:

Financial Management at Local Level

- There have been indications of rising number of cases of unaccountability of local level institutions dealing with finances from proceeds of forestry resources. Typical cases were noted at Zalewa in Neno district and VNRMCs in areas where BCFP was implemented, particularly in Blantyre Rural. The misappropriation of funds by these committees has led to frustration amongst both traditional leaders and local community members. Most of these committees are not transparent with the way in which they use the funds; and
- There are complaints regarding corruption amongst VNRMCs. VNRMCs often collude with vendors to illegally harvest resources from their VFAs.

Role of Traditional Leaders

- Some traditional leaders such as Traditional Authorities and Village heads are involved in illegal activities. As such they are unable to discipline their subjects; and

²¹ See section 3.4.2 of the Supplement to the National Forestry Policy (2003). However, it must be noted that ANRMC do not have any legal mandates as neither the Forestry Act (1997) nor any other written law provides for their supervisory functions over VNRMCs;

- In other instances the traditional leaders have been noted to be encouraging encroachment of either VFAs or Forest Reserves.

Unclear Access and Benefit Sharing Arrangements

- Most of the local forestry conservation efforts have collapsed because everybody wants to get a share of the finances realized from either sale of proceeds from confiscated products or harvests from VFAs. In such cases the poor and vulnerable are further marginalized and excluded. This is a result of having unclear benefit sharing mechanisms.

Few hastily formed and generally ineffective VNRMCs limit progress

- Although it was noted that some progress has been made in the formation of VNRMCs, few of them are active;
- Some of the main reasons for VNRMCs ineffectiveness are associated with poor approaches including formation (sometimes taking only a few hours) of VNRMCs – especially when implementers have to fulfill some requirements at the last minute. There is also the policy driven focus on formation of new VNRMCs and more recently Local Forest Organizations while there are existing community based organizations that might be appropriate; and
- The top-down approaches create inadequacies and dependency that makes the VNRMCs less effective.

Lack of personnel and financial capacity

- Lack of personnel and financial capacity in the forestry sector limits coverage. This means that it is not possible for the few forestry personnel to effectively support communities in the implementation of community based forest management.

Department of Forestry Staff

- Most of the FD staff that is directly interacting with communities at village level such as Forest Assistants, Patrol Men and Forest Guards were not trained in forestry extension; and
- Their activities are constrained by limited resources and inadequate knowledge regarding the policy and legal framework for community based forest management.

Inappropriate resource transfer arrangements exacerbate existing capacity constraints

- There is a delicate balance between transferring resource management responsibilities to communities and the existing capacity within the communities to take up the new responsibilities. In most instances the communities will not

have developed adequate capacity by the time resource transfer arrangements are being finalized.

4.0 Recommendations

- 4.1 The Forestry Act (1997) provides for the formation of VNRMCs as the local level institution responsible for participatory forestry management. The designation or formation of LFO ostensibly under the Forestry (Community Participation) Rules (2001) is a new phenomenon. It however adds nothing to the original concept of a VNRMC. We recommend that the VNRMC regulatory framework be revised through amendment to the Forestry Act (1997) and through subsidiary legislation;
- 4.2 Participation in management of forests should be freely chosen by the community including the manner in which they want to participate in the exercise. The Forestry Act provides flexibility specifically to ensure that the local community can see the benefit of sustainable forests management and choose to participate. Hence a facilitated process whereby the community reaches an understanding and agreement that they wish to participate in the process is essential. This is what the Policy Supplement for Community Based Forest Management encourages. The community will thus agree that they would do this through a VNRMC to be established or through an existing committee of comparable functions or the institution of the village headman will be utilized for the purpose. Many villages have VNRMCs but their relationship to VFAs is not clear. It is essential that this be clarified between DF, village heads and VNRMCs;
- 4.3 There are a number of VNRMCs which are not accountable to their local communities and operate as if they are private concerns. There is therefore need to put in place mechanisms for downward and upward accountability to ensure that these committees are responsive and accountable to the villagers they represent. A good beginning would be constitutions or operational guidelines providing operational frameworks, mandates and powers and responsibilities of VNRMCs;
- 4.4 The institutional framework of most of the VNRMCs needs simple guidelines such as election and replacement of committee members, conduct of meetings, objectives of committees, relationship with government departments, traditional or non governmental organizations, and raising and accounting for funds. Hence some kind of constitutional framework, even if it is merely in form of operational guidelines, is required. This can instill institutional discipline and promote confidence among villagers. It is therefore important that these be developed by the committees. Local forestry extension personnel can facilitate these processes;
- 4.5 The lack of legal personality for the committees may not promote autonomy in activities of the VNRMCs. They cannot act as a unit in law and there is no permanence to their existence. While it is possible to register each VNRMC, the transaction costs may not be justified in the short term. It is preferable to register in phases so that ANMRCs representing a number of VNRMCs are registered first. Individual committees may be registered later as the need arises;
- 4.6 As an alternative, VNRMCs could be registered under the Companies Act as a company limited by guarantee. The registration is handled by the Registrar of Companies. The VNRMCs will need to provide details such as articles of

association, directors and secretary and name of the institution. Once this is done they will get a certificate of incorporation. This form of registration is fairly quick and still caters for public interest function which these VNRMCs are required to serve;

- 4.7 There is need to establish a generic system of costs and benefit sharing. Such a system could be provided for in a binding forest management agreement that is then specifically made part of a forest management agreement between FD and the community;

Changes to forestry Legislation and Rules.

The following changes to the Forestry Legislation and Rules would assist in empowering local communities for the smooth implementation of community based forest management:

- 4.8 An FMA is the basis of cooperation between the FD and local communities. It should precede and provide the process of developing a FMP that is mutually acceptable to both parties. Hence an FMA should provide the cooperative framework; the FMP may be an annex to the FMA one developed in accordance with the FMA;
- 4.9 The Forestry Act needs to be amended, specifically section 33 so that the powers of signing by-laws be given to an authority at district level, in this case the district assembly seems to be appropriate;
- 4.10 The Forestry Act restricts the activities of VNRMCs to VFAs. Unfortunately most VFAs are not in the name of VNRMCs. Further, there are forest areas outside VFAs in respect of which community institutions such as VNRMCs can assist in management. The Act should therefore be amended to make VNRMCs responsible for customary forests within their jurisdiction;
- 4.11 In order to encourage local communities in the enforcement of forestry regulations, part of fines paid in forestry offences should go to the local community in which the offence was committed. This should especially be the case where the community assisted in providing intelligence and or arrest. The funds would then be utilized for the benefit of the community concerned. Current legal framework does not provide for this though some of the community by-laws authorize imposing fines and the fines to be used locally. These however do not include fines imposed by DF. The funds should be audited and then spending monitored by the Director of Forestry or such designated officer. This is intended to guard against misappropriation. Such monitoring or auditing must be provided in the Forestry (Community Participation) Rules, 2001;
- 4.12 The role of traditional leaders is not clear under the Forestry Act, especially with regard to their relationship to VNRMCs. VNRMCs should be anchored within the traditional leadership structure and that traditional leaders be active members of the VNRMCs; and
- 4.13 The Forestry Act (1997) should not limit the powers of enforcement of VNRMCs to VFAs since as times it may not be possible for VNRMCs to distinguish forest produce from VNRMCs or that from elsewhere. They should have power to seize forest produce that is reasonably suspected to have been obtained illegally.

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2. **Policy and Legislation:**

- Forestry Act (No. 11 of 1997);
- The National Forestry Policy, 1996;
- Community Based Forest Management: A Supplement to the National Policy of Malawi (July 2003).

3. **Subsidiary Legislation:**

Forestry (Community Participation) Rules, 2001;

Mwanza East Community By-laws for the Sustainable Management of Indigenous Forests, 1999.

Annex I: List of Stakeholders Consulted

1. Mr Ted Kamoto, Assistant Director, Forestry Headquarters (Lilongwe);
2. Mrs Kachala, Assistant Regional Forestry Officer – Plantation and Reserves (Centre), Lilongwe;
3. Mr Maliko, District Forestry Officer (Mwanza & Neno);
4. Mr Mitawa, District Forestry Officer (Zomba);
5. Mr Khozi, District Forestry Officer (Machinga);
6. Mr Kulemeka, District Forestry Officer (Salima);
7. Mr Yesaya Mwenda, Assistant District Forestry Officer (Kasungu);
8. Mr Ungwe, Forest Assistant, Dedza - Salima Escarpment (Salima);
9. Mr Mikudzu, Forest Assistant, Dedza – Salima Escarpment (Salima);
10. Mr Byson Tambala, Forest Guard, Senga Bay Hill Forest Reserve (Salima);
11. Mrs Kamayani, Vice Chairperson, Mchenga wa moto VNRMC, Senga Bay Hill Forest Reserve (Salima);
12. Mr Sumaina Malaichi, Chairperson, Forestry Law Enforcement Committee, Chimaliro Forest Reserve (Kasungu);
13. Mr Piam Nyirenda, Chairperson, VNRMC, Chimaliro Forest Reserve (Kasungu);
14. Mr Augustine Nyirenda, Chairperson, Block Committee, Chimaliro Forest Reserve (Kasungu);
15. Mr Humphrey Zimba, Committee Member, VNRMC, Chimaliro Forest Reserve, (Kasungu);
16. Traditional Authority Malemia, Zomba District;
17. Karen Edwards, Forest Governance Planner (Technical Advisor), Programme Coordination Unit, Regional Forestry Office (South);
18. Mr Chidima, Forest Guard, Milare Forestry Office (Blantyre);
19. Mr....., Senior Forest Guard, Zalewa Road Block (Neno); and
20. Mr....., Patrol Man, Zalewa Road Block (Neno).