USAID
FROM THE AMERICAN PEOPLE

POLICY BRIEF #1 JUNE 2015

THE ROLE OF THIRD PARTIES IN ESTABLISHING FOREST COMMUNITIES

PEOPLE, RULES, AND ORGANIZATIONS SUPPORTING THE PROTECTION OF ECOSYSTEM RESOURCES

POLICY ISSUE

PROSPER is currently assisting the Forestry Development Authority (FDA) to implement the "nine steps" required to set up Authorized Forest Communities in eight pilot sites. As is now clear, establishing an Authorized Forest Community will take significant resources, time, and technical expertise. The FDA must verify that a community has met all regulatory requirements, but it is also supposed to assist communities with developing management and administrative structures to govern forest resources. Chapter 5, "Duties And Powers Of The Forestry Development Authority," of the Community Rights Law (CRL), establishes that the FDA should support communities with "technical assistance and support for management of forest resources" directly, or by helping them identify other suitable partners. It specifically mentions the need to assist communities "document community forest resources," help establish "forest management structures," and provide "minimum standards for and assist in drafting model forest management plans, forest rules, forest agreements and other technical documents for use by [Community Forest Management Bodies] CFMBs."

Given that the FDA is already overburdened, it is sensible to consider how others may be able to assist communities in the "nine steps." Although the CRL is silent on the issue of whether third parties are permitted to assist communities in this process, the FDA arguably has the power to authorize additional modes of support. The implementing regulations of the CRL (the "Regulations) already provide limited opportunities for "other sources" (Chapter 4, Section 10), "institutions, donors, or individuals with skills in community forest management" (Chapter 8, Section 1), and "donors and third parties" (Chapter 10, Section 2), to assist communities. However, these relate to "preparing Forest Management Plans, enhancing the knowledge and skills of Community Forest Management Body members and implementing community forestry programs" (Chapter 4, Section 10 of the Regulations), all of which take place once the "nine steps" have essentially been completed. This policy brief seeks to determine whether third parties should actually be able to assist communities through the nine steps, and, if so, whether existing arrangements should be altered.

BACKGROUND

The Slow Pace of Progress: A Need For Assistance?

The "nine steps" involve various stages in which communities require technical support from the FDA. The application process requires the preparation and submission of documents stating the location of the forest land area, the manner in which the forest resources are used, together with a list of objectives related to sustainably using forest resources in such a way as to "conserve the environment and biological diversity" (Appendix, Step 1, Section 3(c)). Later stages include the socio-economic survey of the claimed area, its

U.S. Agency for International Development
Washington, DC 20523-1000

demarcation, and, prior to the signing of the Community Forest Management Agreement (CFMA), the development of a Community Forest Management Plan (CFMP).

All stakeholders – communities, commercial interests, civil society organizations, donors, and the FDA – are frustrated by the slow pace at which CFMAs are being signed. For example, it took the Blei community in northern Nimba approximately two years to sign a CFMA with the FDA, while the neighboring Zor community – more than two years into the process – has yet to meet all regulatory requirements. This is partly due to the relative newness of the community forest program – the FDA, with the assistance of USAID PROSPER, is still developing all of the necessary standards and procedures – but it is also a consequence of the limited resources available to the agency. Once the process has been properly established and refined, non-governmental groups – both commercial and non-commercial – could potentially play a role in assisting communities. There is already a large backlog of applicant communities, which will only increase as communities become more aware of their rights and the benefits associated with controlling their forest resources. The FDA is cognizant of this, and is currently developing a draft model budget for individual communities to complete the "nine steps," as well as a budget to inform the agency's nation-wide approach.

Although there is a legitimate concern about the slow pace of progress in establishing Authorized Forest Communities, the issue is not simply one of efficiency and expediency. The FDA, as the regulatory agency, has a significant degree of discretion to determine whether, and how, third party assistance may be provided, but it must keep in mind the intent and purpose of the CRL to officially recognize the customary claims of communities over their resources and provide them with the legal authority to make free and informed decisions, under reasonable regulations, based upon the principles of Chapter 2, Section 2.2 of the CRL.

BOX 1: THE "NINE STEPS" TO BECOMING A FOREST COMMUNITY

Step 1. A community submits to the FDA an application with a US$250 non-refundable application fee for an Authorized Forest Community status.

Step 2. FDA gives a 30-day notice to the community and adjacent communities that a socio-economic and reconnaissance survey is to take place.

Step 3. FDA conducts Socio-economic and reconnaissance survey within the applicant community.

Step 4. FDA posts notice for demarcation within the applicant community and adjacent community for a period of 30-days

Step 5. FDA conducts demarcation and mapping of the proposed community forest land, in collaboration with community and relevant government agencies

Step 6. FDA posts the preliminary survey and demarcation results within the proposed and adjacent communities for a period of 30 days.

Step 7. When there is a problem with the survey and the line cutting results, the FDA, members of the community, and other relevant government representatives, resolve the dispute.

Step 8. Once all disputes have been resolved, the FDA confirms that the community may organize itself into an Authorized Forest Community, which requires the creation of an administrative and governance structure, and the development of a Community Forest Management Plan.

Step 9. FDA and community sign a Community Forest Management Agreement

Third Parties and Undue Influence

All stakeholders linked to community forestry have concerns about particular interest groups gaining undue influence over communities, under the pretense of providing assistance. For instance, the FDA and civil society organizations (CSOs) are concerned that logging companies, if permitted to assist during the "nine steps," may secure access to forest resources on extremely favorable terms, to the detriment of the majority of community members. Yet commercial activities cannot, and should not, be excluded. Many communities may very well be interested in opening up their forest lands to commercial exploitation, in order to secure economic and other benefits. This is in fact one of the objectives of the community forestry program.

Similarly, the timber industry has raised concerns about the possibility of the FDA allowing some groups to assist communities, but prohibiting logging companies from doing the same. They assert that there would be a double standard if conservation basedNGO'sare permitted to assist communities, while groups with commercial interests are not. This, they argue, would be contrary to the principles under which community forests are supposed to be managed – for community, conservation, and commercial purposes (the "three C's").

U.S. Agency for International Development
Washington, DC 20523-1000

In interviews conducted for this policy brief, Forest Community members expressed concern about including third parties in the process before the community is made fully aware of the value of their forest resources and the benefits they provide. Without such an understanding, interviewees argued, community members cannot adequately evaluate whether or not an offer from a timber company or conservation group is actually in their best interest. This goes to the issue of communities being able to engage in autonomous decision-making, one of the implicit objectives of the CRL.

POLICY OPTIONS

OPTION1: A Ban on Third Parties

The first option is to prohibit all third parties from providing assistance to communities before a CFMA is signed. Nowhere in the "nine steps" would any organization, other than the FDA, be able to support a community's application. The benefits of this approach are clear: no third parties would be able to exert pressure on communities during the application process, at least not under the guise of providing assistance. It is almost impossible to prevent vested interests from approaching communities with offers outside of the "nine steps," but at least the actions of commercial and conservation groups would not be tacitly sanctioned by the FDA. By ensuring there is no opportunity for groups with vested interests to exert undue influence, communities will be in a better position to make autonomous decisions about how they want to manage their forest resources.

The drawback of this option is that it does not recognize the technical and financial restraints that the FDA faces. It currently takes years for a CFMA to be developed and signed: the agency has to process applications, verify and validate claimed community forest lands, and assist in area demarcation and the development of a CFMP. It is already struggling to satisfy the demands of communities interested in establishing control over forest resources. For instance, 112 applications have been submitted by communities since 2011, Eighty-six (86) of those were reapplications, following an extensive regional information campaign by FDA in collaboration with the Community Forestry Working Group (CFWG), with support from USAID PROSPER. So far, 76 of 112 applications have been screened, 66 have been acknowledged to have met the criteria set by the regulations, eight (8) communities were required to modify their applications, while two (2) were disqualified. Only nine have been given provisional authorization to proceed as pilot programs, Eight of these are USAID|PROSPER supported. And, as pointed out above, the scale of the problem will only grow. The rise in the number of applications will not, however, be matched with a concomitant increase in financial resources and technical capacity at the FDA. It is therefore important that the agency and communities be able to leverage other resources.

OPTION 2: Assistance at the Earliest Stages

The second option is to allow third parties to assist communities to establish control over their community forest land at the earliest stage of the "nine steps." Third parties would be able to directly support communities by helping them draft applications, itself a technical undertaking. The FDA has already rejected numerous community applications for failure to provide all required information. Inadequate applications waste the agency's time and resources, as well as the communities', who are required to pay a "$250 non-refundable application fee" (Chapter 2, Section 5 of the Regulations). Third parties could also assist communities in the initial identification of community forest land and, once verified and validated by the FDA, the subsequent demarcation. This requires the cutting of a physical line, is labor intensive, and usually requires payment to specific community members to carry out the task – over a large area it can be an expensive endeavor. Finally, third parties could provide technical and financial assistance in the development of the CFMP, which sets out a community's plan to manage its forest resources over a five-year period. Permitting third parties to provide assistance throughout the entire nine-step process would therefore reduce the technical and financial burden on the FDA, allowing the agency to focus on its primary regulatory role – verification and validation – rather than assisting communities to understand and meet regulatory requirements. It would also likely increase the speed at which CFMAs are completed as long as third parties have the requisite skills and funds, and are able to make them immediately available.

The likely efficiency gains and reduction in costs to the FDA are strong incentives for allowing third parties to assist communities throughout the "nine steps," but doing so may undermine the very purpose of community forestry – to give communities the power to make autonomous decisions over their forest resources. The CRL allows communities to engage in commercial activities, and to contract with others to carry out these activities on their behalf. Chapter 6, Section 6.1 establishes that small-scale commercial use contracts "shall not be allocated on a competitive basis," while Section 6.2 provides that communities "may

enter Medium-Scale Commercial use contracts […] on non-competitive [sic] basis." This means there are no mandatory safeguards requiring companies to compete in a standardized and transparent process, before they are permitted to enter into commercial agreements with Forest Communities. The Regulations attempt to remedy this (see Chapter 9, Sections 1 and 2 of the Regulations), however, they clearly contravene the wording of the CRL and are, consequently, very likely unenforceable. This means that companies are able to approach communities directly and, if the terms are acceptable to both, contract with them to engage in commercial activities on community forest lands. Although this seems to represent autonomous decision-making – it ensures freedom of contract – it does not account for the disparity in knowledge and bargaining power between the two parties. As the recent PUP scandal demonstrated, unscrupulous logging companies are able to leverage their advantage, and in some cases bribe influential members of the community in order to secure agreements on extremely favorable terms, since communities are often unaware of the true value and benefit of the forest resources they own. By allowing third parties to support communities at the earliest stages of the application process, the FDA would therefore be providing an opportunity for particular interest groups – both commercial and conservation – to exert influence before communities officially decide upon how they want to manage their forest resources. By adopting such an approach, there is a real danger that communities' ability to make a free and informed decision will be compromised.

OPTION 3: Allowing "Other Sources" to Support the Development of the CFMP

The final option is to allow third party assistance, but only once communities have officially decided on how they want to manage their forest resources and have established a comprehensive governance structure. In practice, this would mean allowing third parties to support communities during the development of their CFMPs. Chapter 4, Section 10 of the Regulations already establishes that CFMBs "may request financial and technical assistance from […] other sources to assist it in preparing" CFMPs. Although it is not entirely clear how such assistance is to be provided or overseen, it seems that it should be in keeping with the intentions of the community. These are laid out in the initial application, which requires the community to state how it uses the forest, and how it will "sustainably use forest resources to maintain the forest ecosystem," "encourage diverse community traditions in the protection, utilization and management of forest resources," and "conserve the environment and biological diversity" (see Chapter 2, Section 4 of the Regulations).

The FDA could further develop the Regulations, or establish more detailed procedures, so as to explicitly require that any assistance provided be in conformity with the stated intentions of the community. With this in mind, the community should also be required to identify areas, which it might want to use for commercial or conservation purposes. Prior to the submission of any such final statement, the FDA would need to fully apprise the community of their options and relative benefits, as compared to existing forest resource use practices. Only once this is done, and communities have essentially made an autonomous and informed decision, would third parties be able to provide financial and technical assistance.

Third parties interested in working with Authorized Forest Communities should be required to register with the FDA, having demonstrated that they have the technical capacity and requisite resources to actually be of service in a CFMPs development. These parties' contact details could then be provided to communities who wish to seek assistance in the development of CFMPs involving conservation and/or commercial activities. The final CFMP would have to be reviewed by the FDA anyway, to make sure that it conforms to the principles set out in Chapter 2, Section 2.2 of the CRL, but the agency could also closely scrutinize whether the CFMP accords with the stated intentions of the community and its provisional zoning. If the CFMP does not adequately represent what was proposed in the statement of intention, the FDA would have the authority to require the community to amend its proposed CFMP, or to resubmit its application, with a new set of objectives and rationale for the proposed action.

This option does not fully address the need for technical and financial assistance, as communities would be unable to seek support from any organization, other than the FDA, prior to the provisionally authorized draft CFMA. This means that resource and capacity constraints would persist at all earlier stages, including during the application, area demarcation, and development of governance structures. Nor would it entirely prevent third parties from engaging with, and seeking to influence, community decision-making with regard to forest resources. However, it does allow for financial and technical assistance at the most resource and technically intensive stage of the "nine steps" – the CFMP – and it provides for FDA oversight. It gives communities a real opportunity to engage in autonomous and informed decision-making, and goes some way towards addressing resource constraints, thus reducing the burden on the FDA.

Recommendation

Existing arrangements, as established in Chapter 4, Section 10 of the Regulations (CFMBs "may request financial and technical assistance from […] other sources to assist it in preparing" CFMPs), do not remove the possibility of third parties exerting influence over communities, nor do they ensure that adequate resources will be provided to facilitate a speedy and efficient Forest Community application process. However, based upon the resource constraints faced by the FDA, and the dangers of allowing third parties to assist communities at the earliest stages of the "nine steps," they provide the best foundation for moving forward. More detailed procedures and standards will need to be developed to regulate exactly how third parties ("other sources") are able to provide assistance, which must make clear that the officially stated intentions of the community have to be reflected in any CFMP. No matter the option selected, the FDA must continue to help communities better understand the true value of the forest resources they own, and the benefits derived from them. It is only through such an understanding that communities will be able to make free and informed decisions.

Author: Peter Aldinger, Environmental Law and Policy Specialist

People, Rules, and Organizations Supporting the Protection of Ecosystem Resources (PROSPER) Contacts: Paul Meadows, Chief of Party paul.meadows@tetratech.com; Eugene Cole, Deputy Chief of Party eugene.cole@tetratech.com