



Malawi Government

Guide to the Registration of Local Forest Organisations



*Improving forest governance –
Improving rural livelihoods*

Department of Forestry

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List of Abbreviations

CBFM	Community based forest management
COMPASS	Community Partnerships for Sustainable Resource Management
DFO	District Forestry Office(r)
FA	Forest Assistant
DoF	Department of Forestry
FMA	Forest Management Agreement
GoM	Government of Malawi
GVH	Group Village Headman
LFO	Local forest organisation
PFM	Participatory Forest Management
PFMP	Participatory Forest Management Plan/Planning
PFRA	Participatory Forest Resource Assessment
VFA	Village Forest Area
VH	Village Head
VNRMC	Village Natural Resources Management Committee

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This document represents guidance material prepared to support the process of promoting empowerment of local forest resource users through participatory forestry in Malawi. Comments on the document are welcome and should be directed to the Department of Forestry: Tel +265 1771000 Fax +265 1771417, e-mail fes@malawi.net

Guide to the Registration of Local Forest Organisations

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FOREWORD

Decentralisation in the forest sector in Malawi concerns devolving power and authority to manage forest resources to people living in and around forest areas. The National Forest Policy (1996) and Forestry Act (1997) provide opportunities for rural communities to gain full rights to forests on customary land and limited sharing of costs and tangible benefits arising from State Forest Reserves.

The key strategy of the July 2003 Supplement to the National Forest Policy concerning community based forest management, is to remove the current situation of open access to customary forests by clearly assigning forest ownership or user rights to the landholders, and by giving them the legal power to protect and sustain them. Unfortunately, some ten years on from the shift in policy, very few communities have received that legal mandate reflected in a Forest Management Agreement with the Director of Forestry.

The Department with assistance from USAID COMPASS II, undertook a review of the regulatory framework for CBFM, based on consideration of land tenure and rights to forest resources. A fast-track Registration process has been developed to formally recognise local forest related organisations including village natural resource management committees, to provide powers and responsibilities to protect and regulate access to areas of forest that they are entitled to use.

Registration will also confer the rights to economic benefits from managing their tree and forest resources, through granting licensing powers to issue permits and charge fees and royalties to collect or harvest non-wood forest produce from within their area of authority. However, the commercial harvesting and processing of naturally growing indigenous timber or wood products will still require a separate licence or Forest Management Agreement with management plan.

The rights and licensing responsibilities of various stakeholders is clarified in a new Technical Order for Regulation of Forest Produce included in this Guide.

This Guide sets out the process and conditions for registration to allow local communities to possess this legal mandate and receive the benefits intended under the Policy and Legal framework. I therefore entrust the District Forestry staff to work with Traditional Leaders and our extension partners, to assist local forest resource users and rights-holders, to register local forest organisations including the village natural resource management committees. Registration should be encouraged to involve local stakeholders in forest law enforcement and as a mechanism to be rewarded for their law enforcement efforts.

Registration should be undertaken at District level following quality assessments by the District Forest Officer using the Standards & Guidelines for Participatory Forestry in Malawi, November 2005.

This Guide was developed through a process of information gathering, analysis, discussion and peer review meetings, with individual officers in the Department, participating projects and programmes and practitioners. The Department of Forestry welcomes comments and contributions to this Guide to ensure that forest dependent communities are empowered to benefit meaningfully from their forest management efforts.



KM Nyasulu

Director of Forestry

1. Registration of Local Forest Organisations

What does this guide cover?

This guide covers the registration of *local forest organisations*¹ as a procedure to devolve powers and responsibilities to local forest resource users to promote community involvement in the sustainable management, conservation and utilisation of trees, forests and forest resources in Malawi.

Registration is the means to both acknowledge and formalise the relationship between local forest resource users as managers, and the Director of Forestry, in line with policy and legal framework for forestry in Malawi. Registration will provide a mechanism for local communities to receive a share of the economic benefits from forest management, primarily through local licensing of non-wood forest produce.

Information contained within this guide should be used in conjunction with the Standards and Guidelines for Participatory Forestry in Malawi, November 2005.

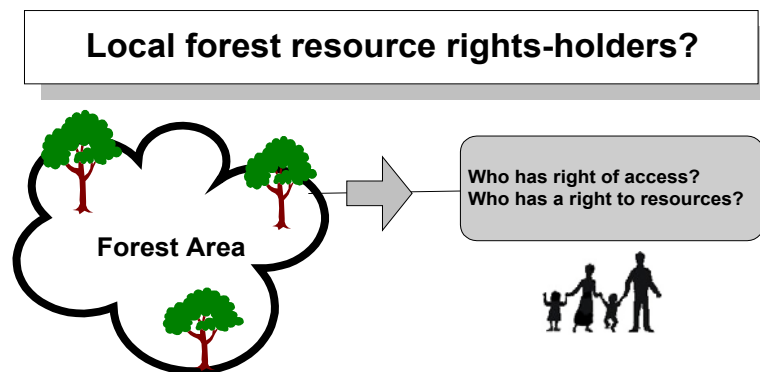
Who is this guide for?

This guide is for field extension agents to advise and assist forest user groups who wish to organise themselves with other *local forest resource rights-holders* to form local forest organisations and then register with the District Forest Office.

The guide is also for District Forest Officers to assist them with assessing whether a local forest organisation possess the mandate from the *local forest resource rights holders* within the area that the organisation wish to apply these new powers, authority and licence forest product harvesting.

What are local forest organisations?

Local forest organisations are groups of individuals, 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 activities². The function and terminology used for a local forest organisation is determined by the **land and tree tenure** arrangements and the **rights to forest resources** in their area of operation.



¹ Please refer to definition of terms used in this Guide, Annex A.

² Section 5, Forestry (Community Participation) Rules, 2001

In the case of common access resources such as found in village forest areas designated for the benefit of that entire village community, the organisation is normally termed a village natural resource management committee (VNRMC). In other areas where all the forest land is already allocated to individuals, families or clans, a different term should be used for the organisation as the rights to forest resources are already defined. In some places 'clubs' have been allocated land by the village head for tree planting and only they have the rights to resources on that land.

Whatever the term used to describe the local forest organisation, it should operate in an open manner and be answerable to the people it represents³.

Why should local forest organisations register with the Director of Forestry?

The Minister in exercise of his powers, has made rules⁴ to promote community participation and regulations⁵ concerning the management of village forest areas. These rules and regulations provide for certain powers and responsibilities for local communities to control activities within their forest areas and develop a licensing system for forest produce in collaboration with the Director of Forestry. VNRMCs may also receive a share of royalties from the utilisation and trafficking of indigenous wood from adjacent leasehold land.

For this to happen, the local forest organisation should register with their local District Forest Office in order to formalise the relationship⁶ with the Director of Forestry, to clearly establish their respective roles and responsibilities, as well as define their area of responsibility. This is set out in a Registration Agreement (see Annex B).

What is the difference between Registration and a Forest Management Agreement?

The Registration Agreement provides a fast-track process to formally recognise local forest organisations, providing a set of powers and responsibilities to protect, regulate access, issue permits and charge fees or royalties to collect or harvest non-wood forest produce within their forest areas.

Where communities wish to harvest, process and trade in naturally growing indigenous timber or wood products, then from a regulatory perspective, a more comprehensive resource assessment would be required, a forest management plan prepared and a Forest Management Agreement concluded with the Director of Forestry.

³ PFM Service Standard #6 – identify and form locally accountable organisations in relation to tenure

⁴ Forestry (Community Participation) Rules, 2001

⁵ Forest Rules, 2001, Part III

⁶ Forest Act, 1997, Section 5 (d), (e) & (k).

2. Devolved authority

What are the powers that are devolved?

A community shall have the responsibility of conserving and managing forest resources within its area of responsibility termed its *jurisdiction*⁷, in collaboration with the Director of Forestry. Already in support of this, the Minister has delegated statutory powers through the Forest Rules 2001, Part III to VNRMCs, in whose name a village forest area *has been registered*. These are described as follows:

Acts prohibited without Village Natural Resource Management Committee permission.	Forest Rules 2001 - Part III Village Forest Areas 6. No person shall, without permission in writing of the VNRMC in whose name a village forest area has been registered – (a) squat or reside or erect any building, hut or cattle enclosure; (b) graze or pasture livestock or permit livestock to trespass; (c) clear, cultivate or break up land for cultivation or otherwise; (d) alter or remove any beacon, boundary mark or fence; (e) fell, cut, take, work, burn, injure or remove any tree or forest produce; (f) set fire to any grass or undergrowth; or (g) keep bees or collect honey or beeswax, In the village forest area. 7. No person shall, for any purpose whatever, kindle any fire within a village forest area without taking all reasonable and proper precautions to prevent damage to any forest produce within such village forest area.
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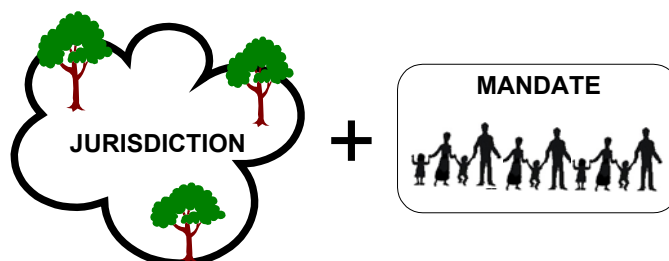
What are the responsibilities of the Local Forest Organisation?

A local forest organisation once registered, is responsible for the control and management of forest resources, the sharing of costs and benefits according to tree and land tenure, and enforcement of regulations within its area of jurisdiction.

The local forest organisation will be encouraged to develop a management plan which sets out the management objectives, strategies, activities and levels of utilisation according to the condition and area of the trees, forest and forest resources available. In the absence of an agreed management plan, the area should be managed on a sustainable use basis which maintains the productive capacity of the tree, forest resource area. This includes minimising destructive methods of harvesting such as in the case of roots and bark, and promoting and protecting re-growth and the regeneration of forest resources.

⁷ Section 4: Duties of a community, Forestry (Community Participation) Rules, 2001

The local forest organisation will be held accountable to its membership, the *local forest resource rights-holders* or the community it represents according to tree and land tenure, but also to the Director of Forestry for the proper management of forest resources within its *jurisdiction*.



Details of how the organisation will represent and be accountable to *local forest resource rights-holders*, should be set out in a constitution for the organisation. This includes its structure, function, operation and mandate, the keeping of proper records, and the benefit sharing arrangements (access and sharing of forest resources and use of revenue collected).

Full details of the responsibilities of a registered organisation are set out in the Registration Agreement, Annex B, under 'Local Forest Organisation Obligations'. These should be fully understood prior to signing.

What areas do the devolved powers apply to?

The powers and associated responsibilities detailed above will apply to a defined area of authority, legally described as the *jurisdiction* of the Organisation. The jurisdiction should be defined on a sketch map using geographical or political boundaries and should indicate the geographic extent of the forest resources and the land tenure arrangements covered by the forest area.

For example, if the mandate of the local forest organisation just covers a village forest area (VFA), then the extent of the VFA should be described in the normal fashion on a sketch map. If the mandate of this organisation extends beyond the boundaries of the VFA then this should also be indicated. Some local forest organisations cover a number of villages and some are known to operate at the group village level. Other areas comprise land covered by trees allocated to an individual, family, clan or group. If so then this should be described and indicated on the sketch map.

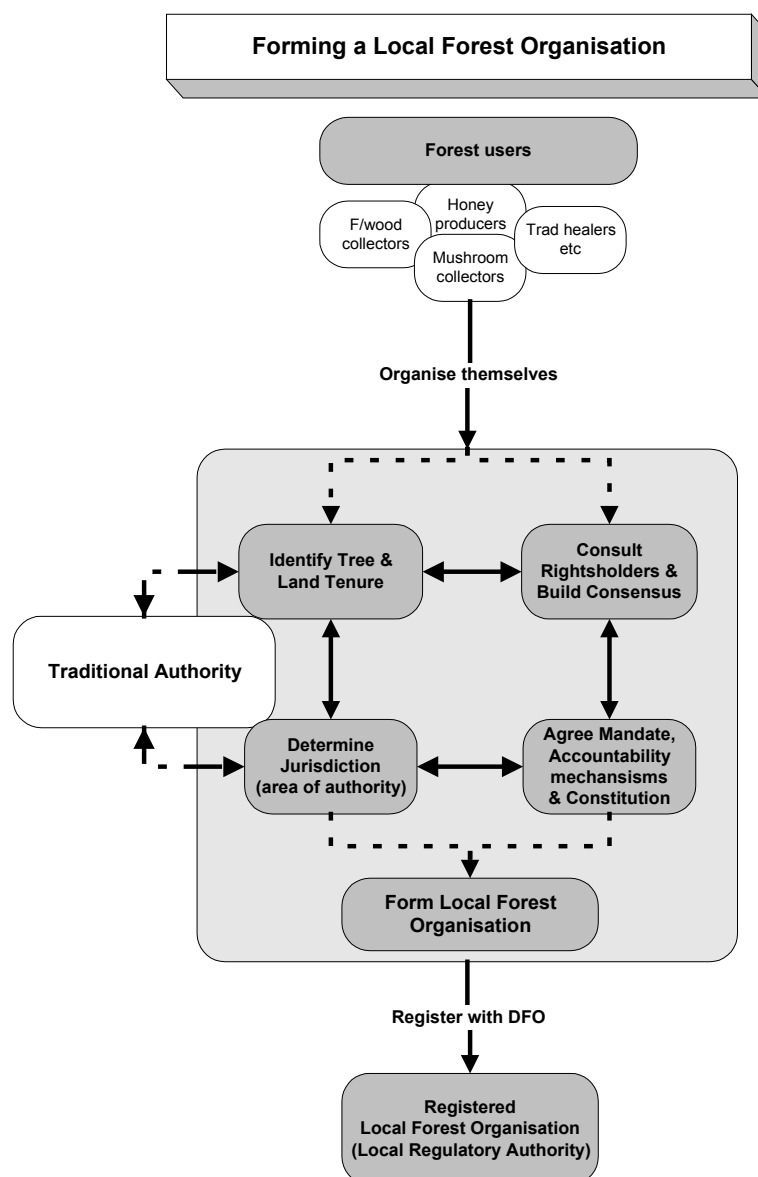
The sketch map should show the extent of existing forest resources (natural forest and planted forest), but also indicate the ownership or access rights to each area. This is important as it assists with identifying *local forest rights-holders* and forest users who should be involved in the formation of the organisation and providing the mandate for it to function and represent their interests.

As this reflects local customary tenure arrangements and land allocations, the various levels of Traditional Leadership should be involved. Their involvement is confirmed through the Traditional Authority or his/her representatives being one of the signatories to the Registration Agreement.

Who should the Local Forest Organisation represent?

Entering into an Agreement and the receipt of powers and rights to licence forest produce is a formal process. Therefore it is important that the organisation is representative of the local forest users and *forest resource rights-holders*, that it functions in an open, and accountable manner. A local forest organisation with devolved powers to protect, exclude and licence forest resources should be more than a 'club' of interested individuals or only represent one particular interest group of forest users in an area. Its composition should reflect the forest users and forest resource rights-holders of the area which they will control, manage and exercise their devolved powers over.

Forming appropriate and locally accountable institutions in relation to forest tenure is a complex process. This is covered in detail within the Standards & Guidelines for Participatory Forestry in Malawi, November 2005. Specifically within Stage 2: Institutional Building, Strengthening & Prioritising Actions of the PFM process.



3. Local Licensing of Forest Produce

What types of forest produce can the organisation control?

Subject to the conditions of sustainable use and maintenance of forest resource productivity, the local forest organisation once registered will have the authority to issue written permits and charge fees to regulate the harvesting of forest resources within their defined area of *jurisdiction* and in accordance with local rights, tree and land tenure. This will cover the following:

Non-wood forest produce, issuing permits for personal (domestic) use and trade in the following forest produce: grass, reeds, thatch, mushrooms, honey, wax, fruits, seeds, leaves, sap, roots and bark, and others as agreed, but excluding minerals.

Indigenous wood: issuing permits for personal (domestic) use only within the area of jurisdiction and by the community or membership as applicable, (*The legal requirements for the movement of indigenous wood outwith the area is covered in the next section*).

Planted tree species and timber products: Exotic species planted by an individual, group or community may be harvested and traded freely. In areas near to State plantations, the Director may request the local forest organisation to assist in the verification of ownership of exotic species to ensure the free movement of produce through roadblocks and other checkpoints.

Indigenous species planted by an individual, group or community may be harvested and traded freely. However, the Director may request the local forest organisation to assist in the verification of ownership to ensure the free movement of produce through roadblocks and other checkpoints under a conveyance certificate.

What licensing aspects are not covered under the Registration Agreement?

The following requires a separate and different type of agreement or licence issued by the Director of Forestry or his representative and therefore is not covered under the Registration Agreement:

Trade of indigenous wood: In the absence of a signed Forest Management Agreement, any person, group or community who wishes to engage in *commercial processing* of wood requires a permit⁸ from the Director of Forestry. This covers the processing for trade in: tobacco curing, brick and tile making, wood carving, lime making, bamboo basket making and chair making and sawmilling. Both the production and sale of charcoal from indigenous wood requires a special license ONLY issued by the Director of Forestry⁹.

Movement of indigenous wood: The movement of indigenous timber outwith the area of jurisdiction and particularly through checkpoints or roadblocks, requires a conveyance certificate issued by the District Forest Officer under the authority of the Director of

⁸ Section 82, Forestry Act 1997.

⁹ Section 81, Forestry Act 1997

Forestry¹⁰. To assist the District Forest Officer with the issuing of conveyance certificates, the local forest organisation may provide the necessary supporting documentation (ownership certificate) to verify source and ownership of wood products under its control. It may also assist local private individuals with wood products in their locality verify ownership for applying for a conveyance certificate from the District Forest Officer.

Where a local forest organisation wishes to engage in commercial exploitation of significant quantities of indigenous wood, then the organisation will be directed to prepare a management plan which assesses the resource base, details the management arrangements and the sustainable yield limits.

What conditions are attached to written permits issued by the Organisation?

As a local licensing authority, the local forest organisation will assist the Director with enforcing the Forestry Act 1997, and supplementary legislation. For example ensuring that:

- no cutting of indigenous protected species¹¹ takes place without the written permission of the Director of Forestry (a list of the protected species can be found in Annex E;
- no cutting of trees within 8 metres either side of a watercourse; 8 metres of a public road; or on protected hill slopes.

These are conditions attached to all licences¹² and should be applied and enforced by the local forest organisation as conditions on the written permits and licences that they issue.

The local forest organisation should ensure that damage due to destructive harvesting methods, such as in the case of roots and bark, are minimised and harvesting rules for such products are prescribed and enforced by them.

What fees & royalties can be collected?

Once registered, a local forest organisation may issue permits (permission in writing¹³) and charge fees, to collect and harvest forest produce from within their area of jurisdiction. These should reflect the rights to forest produce according to local tree and land tenure and be endorsed by its membership or community. For example different rights apply to allocated land and trees in gardens, than collective resources within common access areas including village forest areas and on unallocated land.

The fee for the issuing of a permit or the charge or royalty levied for the harvesting of forest produce should be determined and endorsed by its membership, *local forest resource rights-holders* or the community in the case of a VNRMC and displayed or communicated to forest users. The Ministry publishes fees and royalties for various types of forest produce and activities collected by the Department within its *jurisdiction*¹⁴. In terms of local licensing, these may be referred to for guidance, however, advice on aspects of local licensing can be obtained from the District Forest Officer.

¹⁰ Section 83 & 85 Forestry Act 1997.

¹¹ Protected tree species as published in the first schedule Forest Rules 2001 & Annex A.

¹² Forest Rules, 2001, Part IV Licences section 13, cutting of trees.

¹³ Forest Rules, 2001, Part III

¹⁴ Forest Rules, 2003, Schedule two and three, and as updated periodically.

What are the components of a local licensing system?

Regulating access is not just a matter of issuing permits and licences. The number of permits issued and the quantity of forest produce harvested must not exceed the productive capacity of the forest area. Otherwise over-harvesting will lead to degradation of the forest area which in turn will limit future harvests and the revenue that would be collected year on year.

An assessment must be made of the harvesting potential for various forest products and the productive limits over a given period or season. Information on how to conduct a participatory forest resource assessment can be found within the *Participatory Forest Management Planning: Field Manual, Social Forestry Project, January 2004*.

Below is a template for a simple licensing plan, a modification of the forest product/management options matrix contained in the above manual. This is based on the analysis of: important species; demand; supply; associated problems of supply; management strategies; resource use rules. Three new lines are added covering: quantity available for harvest; who can collect such products and whether a charge is made for such collection. These should be assessed for both wood and non-wood forest products commonly harvested from the forest areas.

Simple forest management/ licensing table

Forest products	Wood Products		Non-wood Products	
<i>eg</i>	Nkuni	Mikangala	Uchi	Bowa
Important Species				
Demand				
–				
Supply				
–				
Problems/ Issues				
Management Strategies/options				
Resource use rules- utilisation				
Quantity available for harvest/period				
Who can collect (permits to whom)				
Fee per permit/ charge/ royalty per unit				

Please refer to the following Service Standards contained with the *Standards & Guidelines for Participatory Forestry in Malawi, November 2005*.

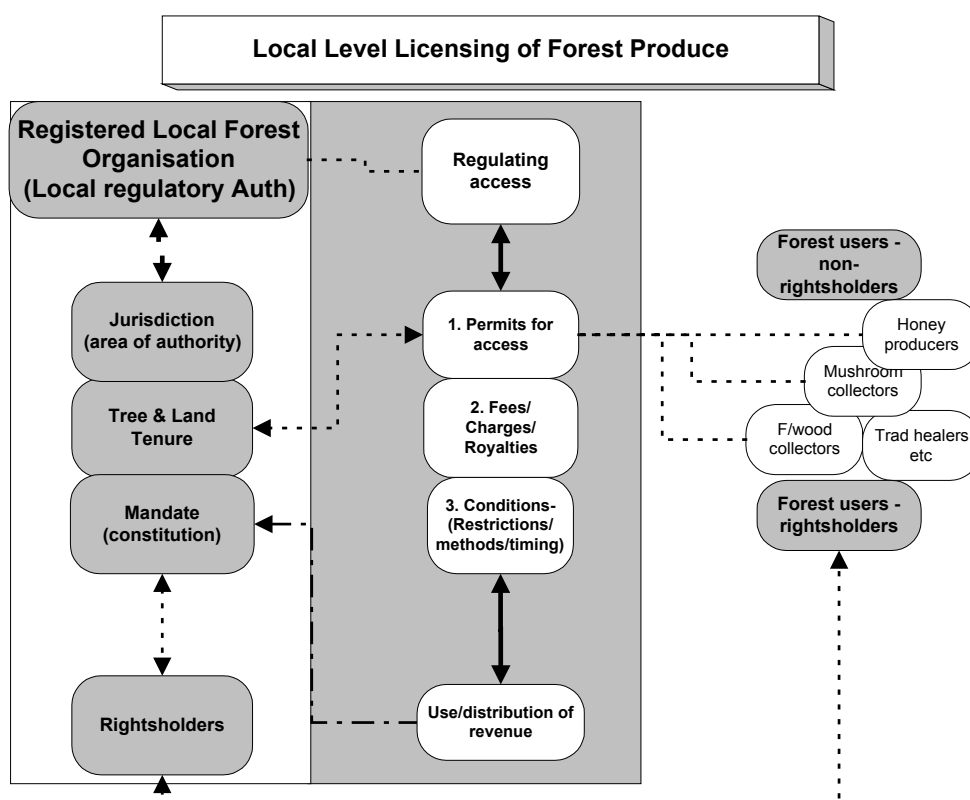
#7B: Forest management boundaries are agreed by the community as well as neighbouring communities & these are clearly demarcated on the ground.

#7C: Management strategies & plan have clear linkages to forest resource condition & availability as well as local priorities & demand.

#13B: Licenses to commercially harvest forest resources issued on the basis of an agreed plan or legal agreement & within sustainable yield limits

A permit or licence to collect forest resources may comprise the following:

1. A permit (permission) for access
2. A charge for the activity;
3. the conditions attached to the permit, such as restrictions, methods, and timing.
4. A unique serial number which can be checked against a permanent ledger



Revenue may be generated through the following manner:

- a. A fee charged for issuing a permit for access or to engage in an activity;
- b. A charge relating to a means of production, for example a charge per hive hung within the forest area; or
- c. A royalty paid per unit harvested ie per headload, cartload, bale, bundle etc.

Careful consideration of the amounts to be levied for each type of activity is required. Every Kwacha collected will have to be paid by someone, therefore careful analysis of who will pay and how it affects different disadvantaged groups who previously may have unrestricted access to important livelihoods resources. This includes careful attention to gender issues.

Willingness to pay is linked to affordability, the value of the resource, the expectation of exclusive rights and the later use or distribution of the revenue that is finally collected through the local licensing system.

If fees, charges and royalties are set too high, then there is a chance that forest users are not willing to pay and little revenue will be collected. Set too low then the intended benefits of regulating access and impact on the resource as well as generating revenue for other agreed uses will also be minimal.

Continued flow of revenue year on year is also important. Issuing too many permits will lead to over-harvesting reducing the productive capacity of the forest and the revenue that could be generated. These are all aspects that need to be carefully discussed and facilitated with the organisations and their constituent groups and forest rights-holders.

How should funds raised be managed and used?

Proper records should be kept of all transactions from the issuing of permits and the collection of fees, to the use of funds and supporting documentation. This should be considered as sound business management practice by the organisation. A permit issued should be considered as an official document as it records a right to harvest a particular type and quantity of forest produce and therefore proof of ownership of the produce. This is important when the permit issued by the local forest management committee is used as evidence to support a request for a conveyance certificate issued by the District Forest Officer.

Therefore the keeping of proper records and accounts of transactions¹⁵ is essential to the local licensing process and a requirement of the Registration Agreement. Permits should have identifying consecutive serial numbers that can be traced back to a permit ledger maintained by the local forest organisation in order to prevent their permit system being abused by permit holders with the resulting loss of revenue to the organisation.

Records of transactions (permits issued and fees collected) may be checked by the Director of Forestry or his representative as part of the monitoring of devolved powers and local licensing¹⁶.

Use of funds collected by the local forest organisation should be in accordance with an agreed constitution which clearly describes how funds are handled, recorded, who can authorise use of funds and for what type of expenditure within agreed limits. Management of finances must be transparent, accountable, and open to inspection by any member of the organisation, or community stakeholder, the Director of Forestry or his representative.

Please refer to PFM Service Standards below:

#5B: *Benefit sharing (forest resources & revenues) is equitable according to tenure & access rights, transparent & documented.*

#13B: *Licenses to commercially harvest forest resources issued on the basis of an agreed plan or legal agreement & within sustainable yield limits*

¹⁵ Technical Order on Regulating Wood Utilisation on Customary Land, (date unknown).

¹⁶ refer to PFM Standard #13b

4. Local Level Law Enforcement

How should infringements be dealt with?

As the majority of local forest resource-use offences are committed by offenders within the same community and tend to be minor offences in nature, local forest organisations are advised in the first instance to work with the **traditional leadership and enforce local customary laws and use customary sanction arrangements** where these exist. Where there are none or no relevant existing customary laws, the organisation should work with the traditional leadership to agree locally relevant and enforceable 'local rules' and sanctions. These should be based on the 7 powers provided through registration (see Section 2 [a-g]).

Cases should first be tried using the customary law sanction and enforcement mechanisms. Where this fails, such as where the offender does not recognise the customary sanction or the seriousness of situation dictates, should cases be referred to Local Magistrates for prosecution under the Statutory Laws of Malawi (Forestry Act and Forest Rules).

How are the Statutory powers and regulations enforced?

The powers devolved to a registered local forest organisation are part of the regulations made by the Minister. These were published in the Government Gazette¹⁷ and are legally binding and enforceable under statutory law in Malawi. The seven powers provided for (see Section 2 [a-g]) allow protection and management activities to take place at a local level, covering: construction, grazing, cultivation, removing markers, setting fires, beekeeping, and felling, cutting, working, injuring or removing trees and forest produce within their area of jurisdiction. If these activities take place without the written permission of the registered local forest organisation, then an offence is deemed to have taken place. This highlights the need for communication and dissemination of rules as they apply within the defined area of *jurisdiction*.

The success of cases brought to District Magistrates greatly depends on: awareness of rights, powers and due legal process particularly with preparing a case. It requires awareness and understanding by key legal stakeholders including the local forest officers, community policing forums, local police officers and the District Magistrate. The decision to apply the laws of Malawi should not be taken lightly. Organisations should seek advice from the Director of Forestry, his representatives or the local District Magistrate.

Can the local forest organisation make arrests of offenders?

Currently, a registered local forest organisation may not arrest offenders without the assistance from a local police officer or forest officer.

¹⁷ The Malawi Gazette Supplement dated 14th September 2001, containing regulations, rules, etc

Can the local forest organisation seize illegal forest produce?

A registered forest organisation has the right to seize or detain any forest produce which they reasonably suspect has been obtained or removed from the village forest area contrary to the Forest Rules 2001 and Forest Act, 1997¹⁸, or items used in committing and offence under the Rules or Act. Where possible, the organisation should provide a receipt for the items seized which should be signed by both parties.

The items should be kept in the custody of the organisation until a case has been tried or the decision not to prosecute has been made.

Can the local forest organisation dispose of the seized produce?

There are clear instructions on the disposal of seized produce unless the items are perishable. Where the person is acquitted or the decision is taken not to prosecute the case, the items will be returned to the owner. Where the person has been tried and found guilty by the Magistrate, or where the person fails to claim the items after acquittal, the items may be sold or disposed of by the local forest organisation in accordance with its constitution.

The organisation should seek advice from a forest officer if they have any doubt about the retention or disposal of seized articles.

What are the offences and penalties under the devolved powers?

Offences and penalties relating to village forest areas and the operation of a local forest organisation cover:

- Offences within VFAs is covered under the Forest Rules 2001 Part III (6 a-g, already described in Section 2);
- Offences relating to the setting of fires, not controlling a fire, and refusal to assist in the extinguishing of a fire in a village forest area;
- Offences relating to illegal hunting;
- Offences relating to possession or the trafficking of forest produce without a licence;

Sanctions covering fines and imprisonment under Statutory Law, relate to a successful conviction by a Magistrate. Fines are a maximum and Magistrates may impose lesser fines and terms of imprisonment on offenders. The level of fines and the terms of imprisonment imposed are fully described in the Forest Act 1997 and reviewed in supplementary legislation from time to time.

Local forest organisations may set minimum fines for cases tried in conjunction with the Traditional leadership. Should offenders not accept these then they have the option to be tried by the District Magistrate and risk the maximum fines set by the Forest Act 1997, and revised from time to time in subsidiary legislation. Offences may be compounded by the Director of Forestry or by an officer authorised by the Director. This applies where a person commits an offence and before being tried in a court, admits to the offence and agrees to pay a penalty.

Local forest organisations are encouraged to work with Traditional Leaders at the various levels and apply customary law in the first instance.

¹⁸ Section 9 (3) Forest Act 1997.

Can the local forest organisations seek legal advice?

Local forest organisations are advised to seek advice from the Director of Forestry, his representatives, local police officers or the District Magistrate to ensure that the correct procedures are followed in cases of infringements of the forestry legislation. They should also link with local community policing initiatives where these are in operation.

5. Responsibilities of Partners

What are the Responsibilities of the Director of Forestry?

Registration is formal acknowledgement of the local forest organisation by the Director of Forestry and the authority to license non-wood forest products as well as the associated financial benefits arising from these devolved powers.

In relation to the Registration Agreement, the Director will:

- Provide guidance to the local forest organisation and other partners including Traditional Authorities and District Assemblies, on Policy, regulation, and other statutory requirements as they affect the local regulation of forest produce;
- Provide legal advice to assist the local forest organisation with discharging the powers conferred by the Minister;
- Recognise and actively support the protection and law enforcement measures taken by the local forest organisation in accordance with the Forest Act 1997, Forest Rules 2001 and subsidiary legislation as these are approved.
- In cases where a person commits an offence and before being tried in a court of law admits to the offence and agrees to a penalty, the Director of Forestry or an officer authorised by the Director will consider compounding the offence¹⁹. In this case the penalty collected will be paid to the local forest organisation.

What are the Responsibilities of the District Forest Officer?

The District Forest Officer (DFO) and his/her staff who operate within the District Assembly structures, are the first line of contact for a local forest organisation. As such the DFO has important responsibilities in terms of supporting, advising, registering local forest organisations and monitoring the implementation of the Registration Agreement.

General responsibilities are set out within the Registration Agreement. However, detailed responsibilities relating to the 'quality' aspects of registration required prior to Registration and subsequently monitored, are covered in sections 6 & 8.

General responsibilities include:

- Providing technical expertise to the local forest organisation, the Traditional Authorities and other members of the community in collaboration with other partners, including assistance with inventories of forest resources and preparing management plans as appropriate;
- Advising and assisting local forest organisations with local accountability mechanisms including drafting of a constitution and elections of office bearers;
- Facilitating the formal registration of local forest organisations;
- Maintaining a database of registered local forest organisations within the District boundary and reporting new organisations registered and changes to existing registered local forest organisations to the Director of Forestry.

¹⁹ Section 74 and 74 (4) Forest Act 1997..

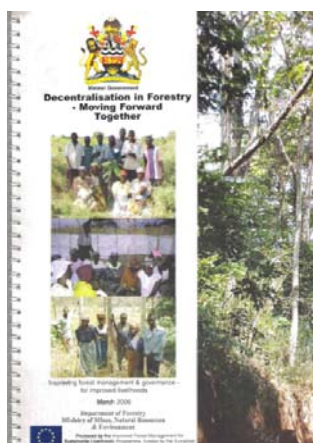
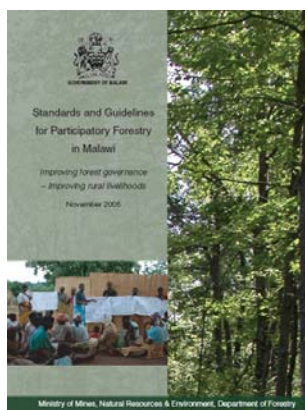
Monitoring the implementation of the Registration Agreement will include:

- checking records of permits issued, funds received and disposal of funds in accordance with the agreed constitution. Advising and monitoring of local accountability mechanisms, conduct of meetings, elections, re-elections, record keeping and reporting.

Protection and law enforcement responsibilities will include:

- Providing clear guidance on the due legal process including powers of seizure, confiscation and disposal of seized forest produce. This will include coordinating forest law enforcement activities and responsibilities between local forest organisations, its members, Traditional Leaders, local community policing forums, local police officers and the District Magistrate.

Further information and guidance on most of the above responsibilities can be found within the *Standards & Guidelines for Participatory Forestry in Malawi, November 2005*, the *Decentralisation in Forestry- Moving Forward Together, March 2006*, and in sections 6 & 8 of this Guide.



What are the Responsibilities of the Traditional Leaders?

The Traditional Authority and his/her representatives at group and village level have an important role to play in the custodianship of land and natural resources within the traditional land management areas. These include the allocation of land and resources to individuals, households, groups, families or clans, administering customary laws and resolving disputes.

In terms of supporting and advising local forest organisations, traditional leaders have specific responsibilities defined in the Registration Agreement. These include:

- advise and assist the Organisation and its elected officials in conducting their affairs and obligations under this Agreement;
- advise and assist the Organisation with control of illegal activities, law enforcement, hearing cases and ensuring sanction in accordance with accepted customary law.

- be responsible for the demarcation of village forest areas and allocation of land for forestry purposes whether for communal benefit or individual, household or clan/family use;
- oversee the conduct of elections of office bearers and monitor accountability of elected officials;
- assist the Organisation with calling meetings of community members to discuss reports, endorse decisions as appropriate;
- mediate in resource use disputes when requested by the Organisation, and liaise with the District Forest Officer, District Commissioner and Director of Forestry as appropriate.

What are the Responsibilities of the District Magistrates?

The District Magistrate will assist and advise the local forest organisation in the following areas:

- Provide legal advice to assist the local forest organisation with discharging the Statutory powers conferred by the Minister;
- Recognise and support the protection and law enforcement measures taken by the local forest organisation in accordance with the Forest Act 1997, Forest Rules 2001 and subsidiary legislation, or bylaws made by the District Assembly as these are approved.

6. Quality Assessment Prior to Registration

What quality assessment should be done before Registration?

As the delegated authority for registering local forest organisations, the role of the District Forest Officer is critical in ensuring that the powers and responsibilities are devolved to locally representative and accountable institutions, with the mandate to control and regulate forest resources, within a clearly defined area of *jurisdiction*.

This can be assessed in a straightforward manner using the relevant Service Standards contained within the document, Standards & Guidelines for Participatory Forestry in Malawi, November 2005.

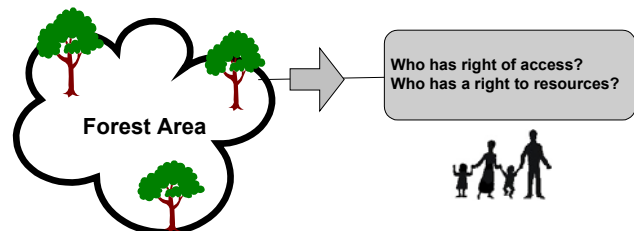
As highlighted above, the 2 critical aspects of registering a local forest organisation are **jurisdiction** and **mandate**.

Who should be involved in the local forest organisation therefore is determined by the ownership or right of access and rights to benefits from the area of land in question. Therefore the tenure arrangements have a direct bearing and can assist the identification of the appropriate stakeholders who should be involved, through active participation or the sanctioning of the organisation and its elected office bearers to represent their interest.



Proper investigation and discussion of tenure arrangements and usufruct rights and issues prior to formal registration, is essential to minimise resource use and land conflicts later following registration. Investigate through asking:

- ▶ Whose land?
- ▶ whose trees?
- ▶ who contributes labour?
- ▶ what resources?
- ▶ who can harvest those resources?
- ▶ who decides?



These are simple questions of inquiry which can assist verification of the mandate and jurisdiction of the organisation, to ensure that the appropriate individuals, groups and community institutions are involved and importantly, rights to forest resources are clear.

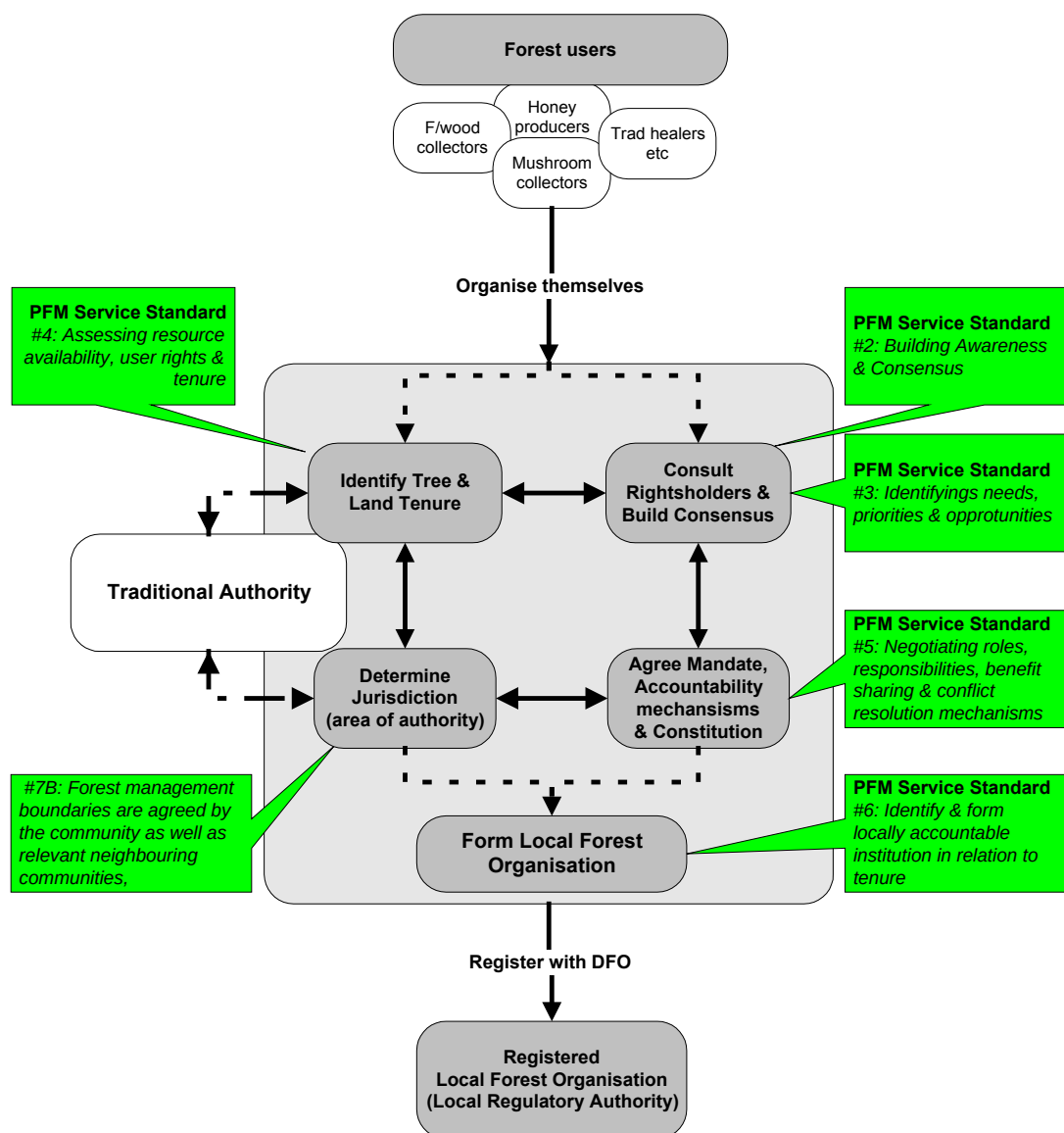
Jurisdiction & traditional leaders

The DFO should confirm that the appropriate levels of Traditional leaders (village/group/Traditional Authority) have been involved in the formation process and sanction the local forest organisation. Any differences should be properly investigated and resolved impartially to reduce potential future conflicts arising.

In terms of the effectiveness of the local forest organisation, the following should be considered and discussed with the organisation:

- ▶ Is the structure and function of organisation viable to the extent and composition of the forest resources to be managed? (a few people managing too large an area, or too many people expecting benefits from a very small area).
- ▶ Are there agreed organisational norms & procedures agreed by all either verbally or contained within a constitution?
- ▶ Are there accountability mechanisms, particularly for decision-making and sharing of benefits, including revenue? Are there elections and by-elections?
- ▶ Does it have sufficient local authority and mandate to be functional? Are these powers recognised and endorsed by the *local forest resource rights-holders*?

Different Service Standards apply to assessing the quality of the application of the local forest organisation to become Registered. These apply as follows:



The following Service Standards should be used and confirmed in assessing the application to register by a local forest organisation. Full details can be found within the document: Standards & Guidelines for Participatory Forestry in Malawi, November 2005.

PFM Service Standard	Assessed? Yes √ / No X
#2B: Forest user groups & other key stakeholders identified & their level of interest & participation determined in line to gender needs.	
#5A: Appropriate forestry intervention determined based on tenure & forest resource availability.	
#5B: Benefit sharing (forest resources & revenues) is equitable according to tenure and access rights, transparent & documented.	
#5C: Local conflict resolution mechanisms agreed & implemented.	
#6A: Identified forest user groups are mobilised to nominate representatives to form an equitable democratically elected committee as appropriate to tree & land tenure.	
#6B: Committee procedures & practice including decision-making clearly stated & understood by wider community, & reflected in a written constitution.	
#6C: Community forest institution is fully empowered to manage forest resources on behalf of wider community.	
#7B: Forest management boundaries are agreed by the community as well as neighbouring communities & these are clearly demarcated on the ground.	
#13B: Licenses to commercially harvest forest resources issued on the basis of an agreed plan or legal agreement & within sustainable yield limits	

The Standards should be assessed using the assessment form (template 4) following the directions in the *Standards & Guidelines for Participatory Forestry in Malawi, November 2005*. The standards should be evaluated using the assessment criteria and verifier described against each of the standards listed above, comments made along with an assessment of compliance, either **Full**, **Partial** or **Not Adequate**.

An example of a section of a completed assessment form appears as follows:

Service Standard	Applicable Yes √ / No X	Comments based on assessment criteria	Assessment of Compliance	Recommended remedial action
5	Negotiate roles, responsibilities, benefit sharing & conflict resolution mechanisms			
5a	√	Broad roles & responsibilities agreed and understood	Full	
5b	√	Benefit sharing not widely discussed & agreed nor documented	Partial	Constitution requires to be reviewed

Overall comments on what was observed or discussed should be made in the 'general comments' box on the last page. A copy of the form should be left with the relevant person/extension worker responsible for the site to provide guidance to assist follow-up actions.

The information collected through the assessment of the Standards should be used as the basis to decide to proceed with registration of the local forest organisation, or recommend a series of follow-up actions necessary to ensure that the quality aspects of **Jurisdiction** and **Mandate** are met.

Whatever the outcome of the quality assessment, the process should be considered and conducted as a process of learning, of sharing knowledge between the DFO, the responsible extension workers, the local forest organisation and the *local forest resource rights-holders*.

7. The Registration Process

How can a Local Forest Organisation become registered?

Having formed a local forest organisation, consulted *local forest resource rights-holders*, Traditional leaders and forest users, agreed a defined area of responsibility, assessed the tree and land tenure, the condition and availability of forest resources, agreed benefit sharing (access to resources and use of revenue generated) and accountability mechanisms in a draft constitution, the organisation should apply for registration at the District Forest Office.

The Registration Process is as follows:

Step 1. Submission of application to register local forest organisation at District Forest Office. This includes the following:

Requirement	Source of information/processes
a. Name & description of the organisation;	a. Agreement on appropriate management authority to tenure and local forest resource rights-holders;
b. Sketch map of area of Jurisdiction;	b. Local agreement & definition of area & resources to be managed;
c. Local licensing plan;	c. Completed simple licensing plan;
d. Draft Constitution;	d. Agreement on function, operation & accountability arrangements of the management authority & use or distribution of revenues generated;
e. Draft Registration Agreement signed by Chairperson;	e. Agreement on enforcement of Regulations (Statutory Law: Forest Rules 2001 Part III) & obligations as set out in the Registration Agreement;

Step 2. Quality assessment by District Forest Officer (see section 6);

Step 3. Provisional approval²⁰ or follow-up activities to improve application agreed with organisation;

Step 4. Signing ceremony with signatories to Registration Agreement;

Step 5. Recording in permanent ledger at District Forest office;

Step 6. Entering details of the local forest organisation in electronic database²¹;

Step 7. Communicating approval and database details to Director of Forestry (copied to Regional Forest Officer);

OUTPUT = REGISTRATION OF LOCAL FOREST ORGANISATION

Step 8. Periodic monitoring of compliance with the obligations of the Registration Agreement (see section 8).

²⁰ Approval by District Forest Officer on behalf of the Director of Forestry under authority of Forest Act 1997 (5:d, e & k) Forest Rules 2001 Part III, Forestry (Community Participation) Rules, 2001 Part II, (4:1b)

²¹ Database currently under development by IFMSLP.

Who should be aware of and understand the Registration Agreement?

It is essential that the powers, roles, responsibilities and obligations detailed in the Registration Agreement is translated and communicated for endorsement of the local stakeholders, including local forest resource rights-holders, traditional leaders at the appropriate levels (Village/Group/Traditional Authority) community members within the area of *jurisdiction* of the local forest organisation. This should occur prior to the official signing and be confirmed as part of the 'quality' assessment by the District Forest Officer.

The elected chairperson of the local forest organisation is required to make a declaration that the Registration Agreement and the obligations in particular, have been translated and communicated at a public meeting of community representatives within the *jurisdiction*.

Who should sign the Registration Agreement?

The Registration Agreement is between the District Forest Officer on behalf of the Director of Forestry and the Local Forest Organisation represented by the elected chairperson. The Agreement should also be signed by the Traditional Authority of the area to endorse the process and commit to assisting with local level law enforcement, and the District Commissioner as the responsible official for the District Assembly, within which the District Forest Officer operates.

Can the organisation be de-registered?

The Director of Forestry may revoke the devolved authority provided to a local forest organisation through the registration process in any of the following events:

- Failure to protect, manage and control the forest resources within its jurisdiction through enforcing the devolved powers of the Forest Rules 2001 Part III and the conditions Forest Rules 2001 section 13.
- Failure to comply with the provisions of its agreed constitution, including: failure to conduct periodic elections of office bearers, account for funds, failure to keep records of permits issued under the Forest Rules 2001.

All practicable steps should be taken to resolve any issues of concern and should where possible, involve all parties who are signatories to the Registration Agreement.

In the event of any dispute arising under the above relationship between the Director of Forestry and the local forest organisation the matter may be referred by either party to the Minister. This termination may involve transferring responsibilities or authority to another person, group or organisation.

Any party dissatisfied with the Minister's decision may apply to the High Court to review the Minister's decision.

8. Post Registration Quality Monitoring

What monitoring should be done after registration?

Registration of a local forest organisation is not the end of the process nor the end of the involvement of the District Forest Office. It is the responsibility of the District Forest officer to ensure that the periodic monitoring is conducted to ensure that the obligations of the local forest organisation under the Registration Agreement are being met.

The following PFM Service Standards should be assessed as described above as part of periodic monitoring:

PFM Service Standard	Assessed?
	Yes √ / No X
#13B: Licenses to commercially harvest forest resources issued on the basis of an agreed plan or legal agreement & within sustainable yield limits	
#14B: Periodic external 'audits' (follow-ups, supervision visits) are conducted to measure compliance by all parties to standards.	
#15A: Local learning & preferences are promoted through adaptive management, analysis & reflection by local forest users.	
#16A: Plans, constitutions, service agreements & legal Agreements (Forest Management, Co-management & Plantation Agreements) at all levels are periodically reviewed & revised as necessary.	
#17A: Field learning is analysed, synthesised & shared to improve practice, policy & legislation.	

As with the quality assessment undertaken prior to registration, the Standards should be assessed using the assessment form and following the direction in the *Standards & Guidelines for Participatory Forestry in Malawi, November 2005*.

The standards should be evaluated using the assessment criteria and verifier described against each of the standards listed above, comments made along with an assessment of compliance, either **Full**, **Partial** or **Not Adequate**, as described in section 6 of this guide.

The process should be considered and conducted as a process of learning, of sharing knowledge between the DFO, the responsible extension workers, the local forest organisation as well as the *local forest resource rights-holders*.

The information collected through the assessment of the Standards should be used as the basis to discuss issues of performance, compliance with the obligations of the Registration Agreement and other learning that can be used to improve the long term productivity of their tree and forest resources, secure revenue flows as well as assure future supply of forest products and services.

9. Annexes

Annex A Definition of terms used in this Guide

Commercial	Means trade or transactions of a financial nature.
Common access land	Unallocated customary land, reserved for use by members of the local community.
Constitution	The internal rules and regulations which govern the function and operation of an organisation, endorsed by the membership of the organisation.
Customary law	Comprises rules grounded in prevailing customs that are applicable to a particular community, recognised as legitimate by the community and enforced in customary 'courts'. These are not normally recorded in writing.
Jurisdiction	The defined geographic area within which agreed rules, powers and authority of a particular institution shall apply.
Local Forest organisation	A group of individuals, 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.
Management Authority	Means the persons, group or organisation designated or elected with management responsibilities for a specific area.
Mandate	The formal delegated authority to act on behalf of a collection of people on the basis of an election and responsibilities set out in a constitution.
Non-wood forest produce	Grass, reeds, thatch, mushrooms, honey, wax, fruits, seeds, leaves, sap, roots and bark, and others as agreed, but excluding minerals
Permit or licence	Written document granting authorisation to engage in an activity, usually with conditions attached, sometimes with a payment required.
Resource rights-holders	Individuals, groups, households, families or clans, who possess a 'right' of access to collect resources from an area of land without necessarily having title or ownership.
Royalty	A charge per unit (harvested) payable to the owner or resource rights-holder.
Statutory law	A set of rules, made by the legislature, approved by parliament, authorised by statute and enforced in courts.
Timber or wood	Means standing, fallen, and felled trees, processed wood for industrial or construction purposes, planks, poles, logs and wood carvings.

Annex B Registration Agreement Template

REGISTRATION AGREEMENT

***(Forestry Act, 1997 Section 5(k) & 31, Forest Rules 2001 part III,
Forestry (Community Participation) Rules 2001)***

THIS AGREEMENT is made the day of.....(Month).....(Year)

BETWEEN

District Forest Officer on behalf of the Director of Forestry, Ministry of Energy, Mines, & Natural Resources, hereinafter referred to as the Director,

and

local residents of village(s)

of Traditional Authority.....and District

who have formed the Local Forest Organisation named.....
(in this AGREEMENT referred to as the 'Organisation').

and is represented by the elected **Chairperson of the Local Forest Organisation**.

WHEREAS through exercise of his duties conferred by section 5(k) of the Forestry Act 1997, and the Forestry (Community Participation) Rules 2001, the Director wishes to make an agreement with the Organisation to provide for the transfer of management authority of forest resources within their area of jurisdiction (specified below) in order to promote participatory forestry on customary land through protection, management, control and sustainable utilization of forest resources by local communities.

This Agreement will provide a mechanism for sharing costs and benefits between the Department of Forestry and registered local forest organisations in regard to the sale or disposal of forest produce from customary land and leasehold land where relevant, and share of penalties from successful convictions as specified in the Forestry Act 1997 and any subsidiary regulations thereof.

NOW IT IS HEREBY AGREED:

1. The Director delegates authority to protect, manage, control and utilize in a manner that maintains productivity, the forest resources within their jurisdiction and to issue permits and licences for forest produce for the benefit of the local community forest resource-rights holders of the aforementioned village(s).

2. The Local Forest Organisation accepts and undertakes to protect, manage, control and utilize in a manner that maintains productivity, the forest resources within their jurisdiction in accordance with terms and conditions stipulated in this Registration Agreement.

DEVOLVED AUTHORITY

3. The powers delegated to Local Forest Organisation are as follows:

No person shall, without permission in writing of the Organisation shall –

- (a) squat or reside or erect any building, hut or cattle enclosure;
- (b) graze or pasture livestock or permit livestock to trespass;
- (c) clear, cultivate or break up land for cultivation or otherwise;
- (d) alter or remove any beacon, boundary mark or fence;
- (e) fell, cut, take, work, burn, injure or remove any tree or forest produce;
- (f) set fire to any grass or undergrowth; or
- (g) keep bees or collect honey or beeswax,

in the designated forest areas within the jurisdiction covered by this Agreement.

In signing this Agreement, the Local Forest Organisation agree to apply and enforce the above devolved powers provided by the Minister.

DESIGNATED FOREST AREA / JURISDICTION

4. The aforementioned powers and associated responsibilities will apply to the defined jurisdiction of the Organisation. The jurisdiction will be defined using geographical or political boundaries and shall indicate the geographic extent of the forest resources and the land tenure arrangements covered by the forest area. The jurisdiction shall be described and form part of this Registration Agreement and agreed by the parties who are signatories to this Agreement.

LOCAL FOREST ORGANISATION OBLIGATIONS

5. In particular the Director gives authority to the Organisation subject to the following conditions:

Regulation

- a) In the absence of an agreed management plan, the area should be managed on a sustainable use basis which maintains the productive capacity of the forest resource area.
- b) The Organisation may issue permits (permission in writing) and charge fees, to collect and harvest forest produce from within their area of jurisdiction. These should reflect the rights

to forest produce according to local tree and land tenure. The fee for the issuing of a permit or the charge or royalty levied for the harvesting of forest produce should also be determined and endorsed by its membership or the community and displayed accordingly.

Subject to the conditions of sustainable use and maintenance of forest resource productivity, written permits may be issued for the following:

Non-wood forest produce, issuing permits for *personal (domestic) use and trade* in the following forest produce: grass, reeds, thatch, mushrooms, honey, wax, fruits, seeds, leaves, sap, roots and bark, and others as agreed, but excluding minerals.

Indigenous wood: issuing permits for personal (domestic) use only within the area of jurisdiction and by the community or membership as applicable.

Planted tree species and timber products

Exotic species planted by an individual, group or community may be harvested and traded freely. In certain areas, the Director may request the Organisation to assist in the verification of ownership of exotic species to ensure the free movement of produce through roadblocks and other checkpoints.

Indigenous species planted by an individual, group or community may be harvested and traded freely. However, the Director may request the Organisation to assist in the verification of ownership to ensure the free movement of produce through roadblocks and other checkpoints under a conveyance certificate.

Licensing aspects not covered under this Agreement

The following requires a separate Agreement or licence issued by the Director of Forestry or his representative and therefore are not covered by this Agreement:

Trade or commercial exploitation of indigenous wood. In the absence of a signed Forest Management Agreement, any person, group or community who wishes to engage in *commercial processing* of wood requires a permit from the Director of Forestry. This covers the processing for trade in: tobacco curing, brick and tile making, wood carving, lime making, bamboo basket making and chair making and sawmilling. Both the production and sale of charcoal from indigenous wood requires a special license ONLY issued by the Director of Forestry.

Movement of indigenous wood. The movement of indigenous timber and processed products (planks, poles, logs, wood carvings) outwith the area of jurisdiction and particularly through checkpoints or roadblocks requires a conveyance certificate issued by the District Forest Officer under the authority of the Director of Forestry.

A District Forest Officer may request the Organisation to assist with verification of the source and ownership of wood products within its jurisdiction.

- c) the Organisation shall attach conditions to permits and licences issued under their devolved authority covering:
 - i. no cutting of indigenous protected species without the written permission of the Director of Forestry or his representative;

- ii. no cutting of trees within 8 metres either side of a watercourse; 8 metres of a public road; or on protected hill slopes.
- d) The local forest organisation should ensure that damage due to destructive harvesting methods, such as in the case of roots and bark, are minimised and harvesting rules for such products are prescribed and enforced by them.

General

- e) The Organisation shall ensure that boundaries of forest areas within their jurisdiction are properly delineated and maintained.
- f) the forest area shall be protected from fires, pests, diseases, theft, poaching, vandalism and other such forms of hazards.

Administration

- g) The Organisation shall elect office bearers to represent and carry out specific duties on its behalf, to be accountable to the community/membership and operate in accordance with the agreed and annexed constitution.
- h) The Organisation shall conduct periodic by-elections of office bearers in accordance with the annexed constitution.
- i) The Organisation shall maintain proper records of transactions and permits issued under these devolved powers and these shall be made available for inspection upon request by the Director of Forestry or his representative. Permits should have identifying consecutive serial numbers that can be traced back to a permit ledger maintained by the Organisation.
- j) The Organisation shall account for all monies realised and utilised in accordance with the provisions of the constitution of the Organisation. The Organisation shall establish, administer and account for the operations of the forest development account.
- k) The Organisation shall prepare financial reports to be presented at regular meetings to the membership of the organisation/community in accordance with the constitution.
- l) The Organisation shall report any changes in procedures, office bearers or other actions which are significant to this Agreement to the District Forest Officer without delay.

Law enforcement

- m) The Organisation shall in collaboration with the Traditional Authority and his/her representatives, propose and enforce local rules governing access, use and protection of the designated forest areas in conformity with local customary laws. The Organisation shall coordinate with local community policing initiatives where these are operational.
- n) The Organisation may set minimum penalties for offences under Part III of the 2001 Rules (described in section 3) within their area of jurisdiction. Maximum penalties shall be those specified in the Forestry Act 1997 and any subsidiary regulations thereof.
- o) Where cases cannot be tried under (m) above, then the Organisation may invoke the statutory regulations provided for in the Forestry Act 1997, Forest Rules 2001 or subsidiary legislation as these are approved from time to time. The offence must relate to the rules described under section 3 of this Agreement.
- p) The Organisation has the right to seize or detain any forest produce which they reasonably suspect has been obtained or removed from their designated forest area contrary to the Forest Rules 2001 and Forest Act, 1997, or items used in committing an offence under the

Rules or Act. Where possible, the Organisation should provide a receipt for the items seized, signed by both parties.

- q) The items should be kept in the custody of the Organisation until a case has been tried or the decision not to prosecute has been made. Where the person is acquitted or the decision is taken not to prosecute the case, the items will be returned to the owner.
- r) Where the person has been tried and found guilty by the Magistrate, or where the person fails to claim the items after acquittal, the items may be sold or disposed of by the local forest organisation in accordance with its constitution.
- s) The Organisation should seek advice from a forest officer if they have any doubt about the retention or disposal of seized articles.

DIRECTOR OF FORESTRY OBLIGATIONS

- 6. The Director shall;
 - a) provide guidance to the Organisation, the Traditional Authorities and other members of the community/membership on Policy, regulation, legislation and other statutory requirements as they affect local regulation of forest produce;
 - b) provide in collaboration with other partners, legal, organisational and other forms of support to the Organisation as appropriate.
 - c) recognise and actively support the protection and law enforcement measures taken by the Organisation in accordance with the Forest Act, 1997, Forest Rules 2001, and subsidiary legislation as these are approved from time to time.

DISTRICT ASSEMBLY REPRESENTED BY THE DISTRICT FOREST OFFICER OBLIGATIONS

- 7. The District Forest Officer shall:
 - a) provide technical expertise to the Organisation, the Traditional Authorities and other members of the community in collaboration with other partners, including assistance with inventory of forest resources and preparation of management plans as appropriate, jointly with the Organisation.
 - b) advise and assist with monitoring local accountability mechanisms including, conduct of meetings, elections, by-elections, record keeping and reporting.
 - c) assist the coordination of forest law enforcement activities between the Organisation, Traditional Leaders, local community policing forums, local police officers and the District Magistrate.
 - d) take steps to monitor jointly with the Organisation to ensure that forest areas designated in Annex i, are managed in accordance with this Registration Agreement and in accordance with Standards & Guidelines for Participatory Forestry in Malawi.

TRADITIONAL AUTHORITY OBLIGATIONS

- 8. The Traditional Authority and his/her representatives shall:
 - a) advise and assist the Organisation and its elected officials in conducting their affairs and obligations under this Agreement;
 - b) advise and assist the Organisation with control of illegal activities, law enforcement, hearing cases and ensuring sanction in accordance with accepted customary law.

- c) be responsible for the demarcation of village forest areas and allocation of land for forestry purposes whether for communal benefit or individual, household or clan/family use;
- d) oversee the conduct of elections of office bearers and monitor accountability of elected officials;
- e) assist the Organisation with calling meetings of community members to discuss reports, endorse decisions as appropriate;
- f) mediate in resource use disputes when requested by the Organisation, and liaise with the District Forest Officer, District Commissioner and Director of Forestry as appropriate.

COMMENCEMENT, DURATION AND TERMINATION

9. This Agreement shall come into effect when signed by representatives of the parties, and shall be binding indefinitely subject to clauses 10 and 12 below.

10. The Director shall have the right to revoke this Agreement and the devolved authority contained within, in any of the following events;

- failure to protect, manage and control the illegal activities within its area of jurisdiction and fulfil the conditions and obligations listed in this Agreement (section 5).
- failure to comply with the provisions of its agreed constitution, including failure to conduct periodic elections of office bearers, account for funds, failure to keep records of permits issued.

11. The powers stipulated in clause 10 above, shall not be exercised unless the Director has tried all practicable efforts to resolve or correct the situation amicably.

12. The Organisation may terminate this Agreement at any time by giving notice in writing of not less than 8 weeks.

13. In the event of notice of termination, the Organisation shall be under obligation to ensure that the forest area is protected until responsibility is assumed by another person, group or organisation. New management arrangements shall take account of the tree and land tenure arrangements and associated rights in place at time of termination

DEMARCATON AND BOUNDARY

14. Division or delineation of forest areas and extent of jurisdiction shall be as displayed on the sketch map forming part of this Agreement.

DISPUTES

15. In the event of any dispute arising under the Registration Agreement, the matter shall be referred to the Minister of Energy, Mines, & Natural Resources. If any party is dissatisfied with the decision passed by the Minister he/she may apply for a judicial review to the High Court.

SIGNED:

16. The following signatories agree to the respective obligations contained within this Registration Agreement.

DISTRICT FOREST OFFICER
For DIRECTOR OF FORESTRY

The District Forest Officer confirms that the details of this Agreement are recorded at the office of the District Forest Office and communicated to the office of the Director of Forestry.

Dated.....

AND

CHAIRPERSON
LOCAL FOREST ORGANISATION

The Chairperson confirms that the content of this Agreement has been translated and communicated at a public meeting of community representatives within the jurisdiction.

Dated.....

TRADITIONAL AUTHORITY

DISTRICT COMMISSIONER

Dated.....

Dated.....

Annexes:

Sketch Map of Designated Forest Area/Jurisdiction

Constitution of the Local Forest Organisation

Annex C Technical Order on Regulating Forest Produce on Customary land



Government of Malawi

Department of Forestry

Technical Order for the Regulation of Forest Produce from Customary Land

What does this Technical Order cover?

This Technical Order is issued to clarify the regulatory requirement for licenses and permits for Forest Produce from Customary land and the right of different institutions to collect and retain revenue from such licensing. This is based on the recognition of rights to forest produce, the regulatory roles and licensing responsibilities of various institutions, including the Department of Forestry, the District Forest Offices within the various District Assemblies, and registered local forest organisations including village natural resource management committees.

The information contained within this Technical Order is of importance to forest owners, forest users, forest produce harvesters, processors and traders, holders of leasehold land, traditional leaders, District Forest Officials, and Central Government regulators.

The intention is to regulate the harvesting, processing, movement and trade in forest products in order to ensure the conservation of the limited natural resource base in Malawi, while providing an incentive to forest owners and local resource rights-holders to receive sufficient economic benefit to re-invest in forest resource protection and management.

What is the basis for regulation?

The Department of Forestry of the Ministry of Energy, Mines & Natural Resources, is the overall regulatory authority for forestry matters in Malawi, with primary responsibility for administering the National Forest Policy and

Forestry Act Cap 63:01. This includes various legislative instruments: Forest Rules 2001; Forest Rules Amendment 2003, and Forestry (Community participation) Rules, 2001.

Certain forestry functions and licensing responsibilities have been devolved to: District Assemblies represented by the District Forest Office in the sector devolution plan¹, and elaborated in the 'Decentralisation in Forestry – Moving Forward Together' March 2006; as well as to local communities in the Forest (Community Participation) Rules 2001.

What is the Policy on management of forest resources on Customary Land?

Customary forest means natural forest and woodlands occurring on customary land, that is, land that is governed by customary law as defined in the Malawi National Land Policy, 2002. In the context of community based forest management, the focus of interest is in forests of *communal or common access*. Mostly, these occur on land that has not been allocated to any individual, family or clan, but in some districts, forests of common access occur on allocated land. It is Government's intention that all such forest resources should be managed so as to conserve and maintain their productive capacity as well as their less obvious environmental services. The preferred option is that customary forests will be managed, owned, utilised and protected by the communities on whose land they occur. However, in the event that a community is unable or unwilling to manage its forest

¹ Circular 14/2/112 dated 21st March 2004

resources, the responsibility for regulating access for commercial purposes will be exercised by District Assemblies.

The policy for community management of customary forests has two principal objectives:

- It aims firstly to stem the prevailing widespread destruction of forest resources on customary land and the material products and essential environmental services they provide.
- The second and equally important objective is to encourage the development of customary forests and woodlands as important economic assets to the communities on whose land they occur.

The strategy to achieve these objectives is to remove the current situation of open access to customary forest resources by clearly assigning rights to local landholders to regulate access along with legal powers to protect and sustain their forest resources.

The 'Standards & Guidelines for Participatory Forestry in Malawi, November 2005' will be used to monitor Policy implementation.

Key Definitions in the Technical Order

Non-wood forest produce: covers grass, reeds, thatch, mushrooms, honey, wax, fruits, seeds, leaves, sap, roots and bark, but excluding minerals;

Timber or wood: means standing, fallen and felled trees, processed wood for industrial or construction purposes, planks, poles, logs and wood carvings;

Commercial: means trade or transactions of a financial nature;

Commercial wood processing industries include: tobacco curing, brick & tile making, wood carving, lime making, bamboo basket and chair making, saw-milling, charcoal production;

Protected species: means endangered indigenous tree species listed in the First Schedule of Forest Rules 2001;

Domestic use: means personal use or consumed within the household.

Jurisdiction: means defined area of delegated authority.

Conveyance certificate: means a permit issued for movement of wood under sect 83 & both wood and forest produce under sect 85 of the Forestry Act;

Royalty: means the charge payable to the owners or resource rights-holder.

What forest produce does not require a licence from Government?

Non-wood forest produce

Trade within Malawi of non-wood forest produce derived from private & allocated land (customary estate) does not require a licence from Government;

Trade in non-wood forest produce derived from *common access land* (land not allocated to any individual, household, family or clan, but reserved for community members²) requires a *permit* (written permission) from a local forest organisation/village natural resource management committee (VNRMC) which has registered with the District Forest Office. In areas where there are no registered local forest organisations, licences may be issued by the District Forest Office.

Indigenous timber & wood products for domestic use

A resident from a particular village may collect forest produce including timber from *common access land* for domestic use, but not for trade. The resident may be required to receive permission in advance from a registered local forest organisation whose authority covers the area of *common access land*. Non-residents will require a licence from a registered local forest organisation/ VNRMC or the District Forest Office (see next section) where no local forest organisation is registered.

Planted & managed indigenous timber & wood products

Indigenous species planted or protected by an individual, group or community on land which that person, group or community is entitled to use³ may be harvested and traded freely. However, the Director may request verification of ownership to ensure the free movement of produce through roadblocks and other checkpoints under a conveyance certificate, issued by the District Forest Office.

² Sect 4, Malawi National Land Policy, 2002

³ Sect 34 Forestry Act 1997 & Malawi National Land Policy 2002

Planted exotic tree species and associated timber products

Exotic species planted by an individual, private organisation, group or community may be harvested and traded freely. In areas near to State plantations, the Director may request verification of ownership of exotic timber products to ensure the free movement of produce through roadblocks and other checkpoints.

What forest products and associated activities require a license?

Harvesting Indigenous timber or wood for trade

Commercial exploitation of indigenous wood from *common access land*, requires a licence issued by the District Forest Office on behalf of the Director of Forestry⁴ unless forming part of a Forest Management Agreement entered into with a local forest organisation/ VNRMC. Applicants will be directed to prepare a management plan which assesses the resource base, details the management arrangements and the sustainable yield limits before a licence may be issued.

Harvesting indigenous endangered tree species

Cutting of indigenous protected tree species requires advance written permission of the Director of Forestry. The protected tree species of Malawi are listed in the First Schedule of the Forest Rules 2001.

Movement of Indigenous timber or wood products

Movement of indigenous timber or wood products outwith the area of ownership and particularly through checkpoints or roadblocks, requires a conveyance certificate issued by the District Forest Office on behalf of the Director of Forestry⁵. This applies to owners of the timber or wood products and purchasers of timber and wood products. The issuing of a conveyance certificate requires proof of ownership or verification of the source of the timber or wood products. Proof of ownership can be in the form of a verification certificate issued by a local forest organisation/ VNRMC which has registered with the District Forest Office, or valid receipt as proof of purchase.

A royalty may be payable to the DFO or registered local forest organisation depending on the source of the timber or wood product.

Trade or processing of indigenous wood

In the absence of a signed Forest Management Agreement, any person, group or community who wishes to engage in *commercial processing of wood* requires a permit⁶ from the Director of Forestry. This covers the processing for trade in: tobacco curing, brick and tile making, wood carving, lime making, bamboo basket making and chair making and sawmilling. Both the production and sale of charcoal from indigenous wood requires a special license ONLY issued by the Director of Forestry⁷.

Forest produce from Leasehold land

In addition to the requirement for a conveyance certificate, holders of leasehold land who wish to move, trade or otherwise dispose of forest produce outside the demarcated area, require a permit from the District Forest Office on behalf of the Director of Forestry and to pay prescribed royalties for such produce to the local registered village natural resource management committee⁸.

Export of forest produce

Any person, wishing to export forest produce requires a permit⁹ from the Director of Forestry. This is in addition to providing evidence of the source and sustainable harvest of the produce, verification of ownership and payment, or proof of payment of relevant royalties or other charges for the items for export.

What conditions are attached to licences or written permits?

All licences or permits issued by any licensing authority including the Office of the Director, the District Forest Office on behalf of the District Assembly or a local licensing authority such as a registered local forest organisation/VNRMC, will include the following conditions¹⁰:

⁶ Sect 82, Forestry Act 1997.

⁷ Sect 81, Forestry Act 1997

⁸ Sect 85, Forestry Act 1997.

⁹ Sect 47, Forestry Act 1997.

¹⁰ Forest Rules, 2001, Part IV Licences sect 13, cutting of trees.

⁴ Sect 46 Forestry Act 1997

⁵ Sect 83 & 85 Forestry Act 1997.

- no cutting of indigenous protected species¹¹ without the written permission of the Director of Forestry (or his representative);
- no cutting of trees within 8 metres either side of a watercourse; 8 metres of a public road; or on protected hill slopes.

The relevant licensing authority shall enforce such conditions and ensure that damage due to destructive harvesting methods, such as in the case of roots and bark, are minimised and harvesting rules for such products are prescribed and enforced by them.

Licences for timber or wood products must be based on a management plan/ Forest Management Agreement and respect sustainable yield limits.

What fees & royalties can be collected?

Government publishes fees and royalties for various types of forest produce and activities collected by the Department within its jurisdiction¹². These are listed in the Second and Third Schedule of the Forest Rules 2003 and as revised from time to time. These are available for inspection at the District Forest Office, the 3 Regional Forest Offices or the Department of Forestry Headquarters in Lilongwe.

Once registered, a local forest organisation/ VNRMC may issue permits (permission in writing¹³) and charge fees, to collect and harvest forest produce from within their defined area of responsibility or *jurisdiction*. The fee for the issuing of a permit or the charge or royalty levied for the harvesting of forest produce should be determined according to local tree and land tenure and endorsed by its membership, local forest resource rights-holders or the community in the case of a VNRMC and displayed or communicated to local forest users. Advice on aspects of local licensing can be obtained from the District Forest Officer.

¹¹ Protected tree species as published in the first schedule Forest Rules 2001 & Annex A.

¹² Forest Rules, 2003, Schedule two and three, and as updated periodically.

¹³ Forest Rules, 2001, Part III

What are the responsibilities of the licensing authority?

All licensing authorities have the responsibility for ensuring that any permits or licences issued under their authority respect the sustainable yield limits for the particular produce and do not reduce the productive capacity of the forest area in question. Permits and licences should be issued on the basis of a current management plan.

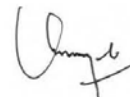
All permits and licences must as a minimum contain the following information:

1. A description of the activity, the name of the licensing authority and the details of the permit holder;
2. Details of the fees charges and royalties applicable as charged under the permit;
3. The conditions attached to the permit such as quantity of produce to be harvested, any restrictions, methods, and the time limit/period of validity of the permit.
4. A unique serial number or identifier which can be checked against a permanent ledger of permits and licences maintained by the licensing authority.

Further Information

Information relating to community based forest management can be found in the Standards & Guidelines for Participatory Forestry in Malawi, November 2005. This provides guidance on suitable approaches and various practical actions to regulate the use and management of trees and forests as individual, group, common pool or State resources, as well as the appropriate institutional arrangements to govern use and access to these areas.

Further information can be obtained from the Director of Forestry, Department of Forestry, Nkhhalango House, PO Box 30048, Capital City, Lilongwe-3, Malawi, Tel: 01771 000.



Kim Nyasulu

Director of Forestry

Annex D Forestry (Community Participation) Rules 2001

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14th September, 2001

7. NON-SCIENTIFIC AND COMMERCIAL PERMIT							<i>per annum</i>
							K t
Export fee	..	..	..	..	..	..	2,000 00
Import fee	..	..	..	..	..	..	500 00

Made this 11th day of March, 2001.

H. I. THOMSON
Minister of Natural Resources
and Environmental Affairs

(FILE NO. 47/II/VOL. III/130)

GOVERNMENT NOTICE No. 29

FORESTRY ACT, 1997

(No. 11 of 1997)

FORESTRY (COMMUNITY PARTICIPATION) RULES, 2001

IN EXERCISE of the powers conferred by section 32 of the Forestry Act, I, HARRY IAN THOMSON, Minister of Natural Resources and Environmental Affairs, make the following Rules—

PART I—PRELIMINARY

- Short title 1. These Rules may be cited as the Forestry (Community Participation) Rules, 2001.
- Interpretation 2. In these Rules, unless the context otherwise requires—
“community” includes village natural resources management committees, local authorities, by whatever name called, non-governmental organizations and the private sector.

PART II—COMMUNITY PARTICIPATION

- Objectives of community participation 3. The objectives of community participation shall be—
(a) to promote co-management of forest resources;
(b) to sustainably manage forests on customary land;
(c) to empower the community in the management of forest resources in forest reserves and forests on customary land;
(d) to promote community tree-planting and management;
(e) to promote the role of men, women and the youth in the management of forest resources;
(f) to enhance sustainable management, conservation and utilization of forest resources; and
(g) to share costs and benefits between the Department of Forestry and the community in regard to forest produce from customary land forests and forest reserves.
- Duties of a community 4.—(1) A community shall have the responsibility of conserving and managing the forest resources within its area of jurisdiction in collaboration with the Director of Forestry.

(2) Without derogating from the generality of the provisions of sub-rule (1), a community shall have power to—

(a) develop a ^{licensing} ~~recording~~ system in collaboration with the Director of Forestry;

(b) enforce any forestry regulations as mandated by the Director of Forestry;

(c) seize any forest produce reasonably believed to have been obtained in contravention of the Act; and

(d) to convey to the Board and the Director its recommendations on the conservation and management of forest resources.

5. A community may, for the proper management of its affairs, under these Rules, form such committees as the community may deem appropriate. Committees of a community

6. A community shall adopt a constitution by which the operations of that community shall be governed. Constitution of a community

7. A community shall, with the assistance of the Director of Forestry, prepare a management plan for purposes of ensuring sustainable forest management, conservation and utilization. Management plan

8. The Director of Forestry shall have access to all records kept by a community pursuant to these Rules. Access to records

9. Except where it is unnecessary or impracticable to do so, regulations and any other subsidiary legislation related to the sustainable conservation, management and utilization of forestry resources shall not be made or amended unless the Director of Forestry has carried out consultations with the community. Consultations on forestry plans, regulations, etc.

10. A community may request meetings with the Director of Forestry to discuss management plans, regulations or any other subsidiary legislation or amendment thereto. Meetings with the Director

Made this 11th day of March, 2001.

H. I. THOMSON

*Minister of Natural Resources
and Environmental Affairs*

(FILE NO. 47/1/1/VOL. 16/130)

Annex E Protected Tree Species, Forest Rules, 2001

FIRST SCHEDULE

PROTECTED TREES

Botanical Name	Vernacular Name
<i>Adina microcephala</i>	Mwenya, Chonya, Mgwenya, Mung'ona Mwina, Mungwina, Mwona, Mugwina, Mgon
<i>Afzelia quanzensis</i>	Mkongomwa, Msokosa, Mnangaliondo, Ipapa, Mpapa, Mpapadende
<i>Borassus aethiopum</i>	Mvumo, Mdikwa, Makoma, Mulala, Mukama
<i>Bridelia micrantha</i>	Msopa, Chisopa, Mpasa, Mlewezi Msongamino, Mwisya
<i>Burkea africana</i>	Mkalati, Kalinguti, Kawidzi, Kawudzu, Nakapanga
<i>Colospospermum mopane</i>	Tsanya, Sanya, Ntsano, Mopani, Mpani, Ntsono
<i>Cordyla africana</i>	Mtondo
<i>Hypaene crinita</i>	Mgwalangwa, Mkonkoma, Makoma, Mulala Ngwalangwa
<i>Khaya anthotheca</i>	Mbawa, Muwawa, Bulamwiko
<i>Pterocarpus angolensis</i>	Mlombwa, Mtumbati, Mbira, Nawazi
<i>Terminalia sericea</i>	Naphini, Nyapini, Mpini, Nalinsi, Mkondoni Mpululu, Njoyi
<i>Widdringtonia cupressoides</i>	Mkunguza
<i>Dalbergia melanoxylon</i>	Phingo, Nanyula, Kasarusaru
<i>Pericopsis angolensis</i>	Muwanga, Mubanga, Mbanga, Mwanga