

# Gap Analysis on Benefit Sharing in Zambia's Forest Management System

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## 1. BACKGROUND

The Zambian government has been implementing the Community Forest Management (CFM) system in order to (1) enhance community participation in sustainable forestry management, (2) reduce community poverty by facilitating community income from sustainable forestry management, and (3) forge and strengthen partnerships in forest conservation and sustainable resource utilization.

Given its mandate in promoting transparency and accountability in forestry management, TI-Z has, since 2018, been working closely with Community Forest Management Groups (CFMGs) and Private Partners in empowering communities to demand for transparency and accountability in benefit sharing mechanisms in Rufunsa, Petauke and Kasenengwa districts. To ensure effective implementation of community forest interventions, an assessment of the legal, policy and institutional frameworks that governs forestry management in Zambia was conducted. This assessment sought to identify gaps or inconsistencies that limit effective community participation and the implementation of effective and inclusive benefit sharing mechanisms. This paper therefore highlights the key gaps, inconsistencies and opportunities within the forestry legal framework in Zambia in respect to effective Community Forest Management as well as promoting transparency and good governance among Community Forest Management groups.

## 2. LEGAL FRAMEWORK

Legislation	Specific Provision(s)
<b>Constitution of Zambia [Amendment] Act No.2 of 2016</b>	Article 255 of the Constitution of Zambia [Amendment] Act No.2 of 2016 provides for the principles and directives on the management of forests in Zambia. The objective of the Forests Act No.4 of 2015 is thus derived and meant to fulfill the principles embedded in the constitution.
<b>Forests Act No. 4 of 2015</b>	The Forests Act No. 4 of 2015 provides for the establishment of National Forests, Local Forests, joint forest management areas, botanical reserves, private forests and community forests. The Act further provides for the participation of local communities, local authorities, traditional institutions, non-governmental organizations and other stakeholders in Sustainable Forest Management (SFM). In so doing, the Act provides for the conservation and use of forests and trees for the sustainable management of forest ecosystems and biological diversity, among other things.
<b>Community Forest Management Regulations of 2018. Sections 29 to 32 of the Forestry Act No.4, 2015</b>	The Regulation establishes CFMGs as the legally recognized authorities at community level and provide for the full detailed rules and procedures for recognition and registration of CFMGs. Regulations 1-5 stipulate the requirements for establishment of CFM while regulation 6 provides for the CFMG to enter into a community forest agreement with the Forestry Department. The 3 <sup>rd</sup> regulation also provides for safeguarding interests of local communities and their CFMGs.
<b>Carbon Stock Management Regulations of 2021</b>	The Regulation reinforces a concessional type of agreement where a CFMG is required to transfer its forest user rights to a proponent. This is evident in the BCP project Agreement.



#### 4. ISSUES AND GAPS IN THE LEGAL FRAMEWORK

- 1) **Inadequate Composition of CFMGs:** The CFMGs are solely comprised of community members and do not have any technocrat. This composition is inadequate because community members may not possess the technical competences and capacity to manage the agreements with partners and participate effectively in technical activities such as the assessments and determination of Carbon stocks. Consequently, the CFMGs are usually not privy to all the internal processes relating to carbon sales while they are beneficiaries to the proceeds.
- 2) **Concessional Nature of partnership agreements.** The type of partnership agreements, which the forests legal framework enforces, is concessional in nature. Essentially, these kinds of agreements promote a one-sided demand for transparency and accountability, as the communities do not possess the same authority of holding the partners accountable on the Carbon proceeds and their actions bordering on Community Forest Management.
- 3) **Benefits-sharing Model:** The current model is mostly social and lacks the foundation of legal principles of equity and fairness. This makes the BSM unfit for its purpose because it fails to rectify the unequal power relations and biases between the parties.

#### 5. CONCLUSION

The community through their elected CFMGs, are mere authorized resource users and resource claimants whose duties, obligations and rights are all tied to assisting the Director of Forestry in implementing the provisions of the law. However, there exists a gap in the formation of CFMGs in terms of the technical capacity and expertise when it comes to entering into agreements with third parties particularly for purposes managing Carbon products from the forests. Even though the forestry Act provides for technical support by the forestry department, based on the experiences shared and challenges encountered by CFMGs in the mentioned districts, this is not practical. Finally, although a CFMG has a right to enter into partnerships or to enter into contracts with any other person and has the right to transfer any or all of its rights under a community forest agreement, the types of agreements entered into do not facilitate mutual exchange of rights and responsibilities between communities and partners since they are concessional.

#### 6. RECOMMENDATIONS

<b>Stakeholder</b>	<b>Recommendation</b>
CSOs	There is a need to build stronger capacity for CFMGs in order to improve the abilities of communities to engage and negotiate with other stakeholders
Government/Forestry Department	To facilitate increased capacity and participation, it is hereby recommended that the composition of the CFMGs include experts to support the CFMG's understanding of technical processes. The Forestry Act needs to include the aspect of forestry professionals' participation and representation in the community groups.
Government/Ministry	The Act should be amended to make the participation of CFMGs technical persons mandatory in the Carbon assessments and determination as a way of ensuring transparency and accountability in the Benefit Sharing Mechanisms.
Government/Ministry	The Forestry Act should be amended to include a section that promotes joint venture partnership agreements entered into between private partners and community entities, where; (1) all parties agree to transfer all or part of their rights to each other, and (2) each party's rights become the basis of negotiating an agreement, which includes BSM and GRM.

