



USAID
FROM THE AMERICAN PEOPLE



USAID LAND TENURE PROJECT

LAND GOVERNANCE ISSUES BRIEF

FOREST LAW (1992) TENURE OPPORTUNITIES ANALYSIS AND REFERENCE GUIDE

INTRODUCTION

The following document is intended to provide stakeholders in the land governance sector with an easily accessible reference guide for a broad interpretation of articles in Burma’s Forest Law of 1992 (“the Law”) that directly relate to land resource tenure opportunities for smallholders, communities and other vulnerable groups.¹ The guide embraces a flexible interpretation of the Law in order to highlight opportunities, or “potential pathways,” the Law offers to the Government of Burma in providing formal legal recognition of land resource tenure and property rights in support of inclusive economic development efforts. The document is not intended to provide an analysis of how the Law is currently being implemented in Burma or the current status of forest resources in the country. Nor does it provide an analysis of currently existing implementing rules and guidelines that have been developed by the executive branch of government. The document is limited to a strict “black letter law analysis” of the Law, as opposed to a sociological analysis.

Keeping in mind that laws are delegations of authority from the legislative branch to the executive branch of government, the likelihood of the legislative branch enacting amendments to the existing Law in the near term are uncertain. Taking this reality into consideration, the analysis should be helpful for stakeholders in the sector looking to use provisions in the Law to pilot legally defensible approaches for recognizing land resource tenure rights of smallholders, communities and other vulnerable groups.

The executive branch may then use lessons learned from such pilots, working closely with concerned stakeholders, to improve forest policies, rules, and guidelines used to implement the Law, without

¹ For the purpose of this analysis, the term “land resource tenure” includes opportunities to access, use and benefit from land and any resources growing on the land such as timber and non-timber forest products.

having to rely on or wait for changes being made to the primary legislation. It is easier to make changes to implementing rules and guidelines than primary legislation. Any changes should be consistent with provisions in the legislation they fall under, which is why it can be helpful to broadly interpret provisions in the primary law in order to reach important social or economic development goals.

The analytical matrix attached to this brief may be used as a stand-alone reference for easily identifying and understanding provisions in the Law directly relating to the formal recognition of land resource tenure opportunities. The matrix identifies the article within the Law being referenced; legal language from the article; and, an analysis of the relevance of legal language, including how the article may relate to other articles in the law within the matrix.

The analysis highlights four potential pathways for piloting recognition of land resource tenure rights that are legally defensible using existing provisions in the Law. The four potential pathways include the following:

1. Commercial opportunities in natural forest areas;
2. Commercial plantations;
3. Village firewood plantations; and,
4. Reclassification of Forest Land and registration of rights under the Farmland Law.

FOREST LAW CLASSIFICATION OF LAND

The Forest Law sets up a framework for the classification of lands directly related to the forest sector, which link to and overlap with land classifications found in other highly relevant laws, such as the Farmland and Vacant, Fallow and Virgin Lands Management Laws. The sub-classifications laid out in Articles 4 and 5 of the Law set up a mechanism for flexible zoning within the broader Reserved and Public Protected classifications. Emphasis is placed on terms and definitions found in primary legislation in the country, though terms frequently found in literature that are not specifically defined in primary legislation are also indicated to provide context and increase understanding.

- Reserved Forest (Articles 2 & 4): The Law defines Reserved Forest as lands set aside primarily for commercial production purposes, though lands designated as Reserved Forest may also serve other important social or environmental services, such as local supply or watershed protection. Reserved Forest lands fall within the broader definition of Forest Land below.
- Protected Public Forest (Articles 2 & 5): The Law defines Public Protected Forest as lands set aside primarily for environmental conservation purposes, though Protected Public Forests may also be used for sustainable production of forest products. Protected Public Forest lands fall within the broader Forest Land definition and are considered as part of the Permanent Forest Estate.
- Forest Land (Article 2): Forest Land includes areas classified as Reserved Forest and Protected Public Forest. The Law makes no mention of forest areas incorporated into the Protected Area system in accordance with the Protection of Wildlife and Protected Areas Law (Wildlife Law), though the Wildlife Law also defines Forest Land as including areas of Protected Public Forest incorporated into the Protected Areas system. Some commentators refer to Forest Land, including areas of Protected Public Forest incorporated into the Protected Area system, as the Permanent Forest Estate, though this term is not defined anywhere in existing law. Forest Land *does not* include land at the disposal of the Union Government, otherwise commonly referred to as Virgin Land, Unclassified Forest or Public Forest. Of these terms, only Virgin Land is legally defined within the Vacant, Fallow and Virgin Lands Management Law.

- Land at the disposal of the (Union) Government (Article 2): Any land other than Forest Land, with the exception of land in which a Government department, organization or any person has acquired a right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, heritable right or transferable right under any existing law. Land at the disposal of the Union Government is also commonly referred to as Vacant, Fallow and Virgin Land, or Wasteland.

POTENTIAL PATHWAYS

The following is an analysis of potential pathways for the formal recognition of land resource tenure and property rights of smallholders, communities and other vulnerable groups. As mentioned previously, this analysis is based on a broad interpretation of the Law. It represents a hypothetical way forward with the Law as it currently exists. It does not necessarily reflect actual interpretation of the Law by the Union Government as reflected in existing implementing rules and guidelines. As explained in the introduction, this analysis may help to guide reform of such rules and guidelines in the absence of a new or amended Forest Law.

Commercial Opportunities in Natural Forest Areas

The Law recognizes the potential for areas of Reserved Forest to be zoned as “commercial reserved forest,” which would logically include areas of natural forest. In addition, the Law recognizes the potential for areas of Protected Public Forest to be zoned as “conservation for sustainable production.” A key legal issue that needs to be analyzed is whether local smallholder or community based commercial forestry can take place in areas zoned as “commercial reserve” in a Reserved Forest, or “conservation for sustainable production” in a Protected Public Forest.

It could be argued that Article 17 and 18(c) in Chapter VI of the Forest Law would permit commercial opportunities for smallholders or local communities in these areas of Forest Land. The former allows for commercial extraction with a permit, and the latter allows for extraction without using the competitive bidding system for “Minor Forest Produce.” It should be noted that, unlike other related terms, Minor Forest Produce is specifically not defined in the Law. Article 20 gives the Director General of the Forest Department a high level of leeway in how to define Minor Forest Produce and other matters in this regard. A highly flexible regime that defines Minor Forest Produce based on species, location, and annual production volumes could be utilized. Even with some tree species in specific locations, it could be argued that the low annual timber harvesting volumes likely under regulated sustainable smallholder or community commercial forestry should fall within such a definition. This broad interpretation of the Law, and development of implementing rules and guidelines in support of such an approach, would create site specific opportunities for inclusive economic growth at the grassroots level.

Commercial Plantations

Under Article 13 of the Forest Law, the Director General of the Forest Department is granted a high degree of flexibility in approving, with authority delegated from the Minister, any kind of plantation on Forest Land or forest covered lands at the disposal of the Union Government. For lands at the disposal of the Union Government, approvals from other concerned Government authorities, such as the General Administration Department within the Ministry of Home Affairs and the Ministry of Agriculture, Livestock and Fisheries, would also need to be secured regarding use of these land resources for plantation purposes.

Using a broad interpretation of Articles 13 and 14 in the Law, this provision would allow for smallholders, community associations, or local cooperatives to develop commercial timber plantations. For commercial timber plantations, the tree species allowed to be grown could depend on local growing conditions and what is defined in implementing rules and guidelines under Articles 8 and 9 as “Reserved Trees.” Similarly, a broad interpretation of these articles would allow for the establishment of

plantations not commonly associated with forest management. For example, smallholders, community associations, or local cooperatives could potentially establish fruit tree plantations, rubber plantations, oil palm plantations, mangrove plantations, REDD+ carbon plantations, or any kind of smallholder, community or cooperative managed plantation depending on agro-ecological and market access considerations.

Under Article 14 of the Forest Law, any legal person or organization, with approval from appropriate authorities within the Union Government, may implement a forest plantation as indicated above. These may either be a joint venture with a Government authority, or not. A legal person or organization could include smallholders, and various forms of local community associations or local cooperatives.

Village Firewood Plantations

Articles 13 and 15 grant authority to the Director General of the Forest Department to establish village owned firewood plantations on Forest Land or land at the disposal of the Union Government. For land at the disposal of the Union Government, the Director General of the Forest Department would need to coordinate with other concerned authorities, such as the General Administration Department in the Ministry of Home Affairs.

Article 15(a) states that the Forest Department can transfer a village firewood plantation, established for a period of time, to the village as “village owned.” There is no limit in the Forest Law on the area of land that can be allocated, nor the amount of time that must pass before ownership of the land resources in question is transferred in the name of the village.

A number of forest product production options may be available in areas of land allocated in the name of a village, since Parliament did not define the term “village owned firewood plantation” in the Forest Law. The term is open to interpretation. If interpreted broadly, this article is a powerful tool for the formal recognition of forest land resource tenure in the name of a village with full delegation of resource management authority to the local level.

Village owned firewood plantations, which ultimately could be recognized as public land held in the name of a village, are distinguished from other plantations that create an immovable property interest in land resources. As an option to transferring rights and responsibilities over the land resources in question to the village, transfer could be made to the village tract authority in order to avoid potential constitutional issues.

Reclassification of Forest Land and Registration of Rights under the Farmland Law

The Minister, with approval from the President’s Cabinet, has broad authority to alter classifications of existing forest lands, including authority to de-gazette or convert forest lands to other uses, such as conversion to Farmland for allocation to smallholder farmers for local livelihood purposes in accordance with relevant provisions found in the Farmland Law (2012). There are no limitations in the law on the amount of land that can be de-gazetted or limitations on how the land is being utilized. As such, more than just lands under paddy cultivation could be de-gazetted and registered in this manner. In many areas of the country there are smallholder farmers involved in commercial agriculture production other than paddy, which are important for local livelihood and economic development purposes.

This approach would move land resources out of the jurisdiction of the Ministry of Natural Resources and Environmental Conservation and over to the Ministry of Agriculture, Livestock and Irrigation, and involve the issuance of Form 7 land use certificates. Community associations and cooperatives could also potentially be eligible for issuance of land use certificates after de-gazettement under Article 6(b) of the Farmland Law. Rights to sell Farmland could potentially be limited for community associations through the use of deed restrictions. One of the major benefits for smallholders, community associations, or cooperatives in de-gazetting of Forest Land and reclassification as Farmland is the

greater ability to access finance, since Farmland may be mortgaged. For example, this could be an attractive approach for smallholder rubber farmers in the country.

The following table provides an overview of the potential pathways analyzed immediately above, indicating the approach, lands that would be eligible under the Law, and the potential land resource tenure opportunities that could be realized.

Approach	Eligible Lands	Potential Opportunities
Commercial Forestry in Natural Forest Areas	<ul style="list-style-type: none"> • Commercial reserved forest in Reserved Forest areas. • Conservation for sustainable production in Protected Public Forest. 	Access and use of Forest Land resources permitted without competitive bidding. Potential for both timber and non-timber products as defined in implementing rules and guidelines as Minor Forest Produce based on species, location and annual production volumes.
Commercial Plantations	<ul style="list-style-type: none"> • Forest covered lands at disposal of Government • Reserved Forest • Protected Public Forest 	Access and beneficial use of land resources for development of commercial timber plantations or other plantations not commonly associated with forestry. Potential species allowed to be grown dependent on agro-ecological and market access considerations.
Village Firewood Plantation	<ul style="list-style-type: none"> • Forest covered lands at disposal of government • Reserved Forest • Protected Public Forest 	Access, use and management rights fully devolved to the village or village tract level, depending on constitutional considerations.
Reclassification of Forest Land and Registration of Rights under the Farmland Law	<ul style="list-style-type: none"> • Reserved Forest • Protected Public Forest 	Smallholder farmers, community associations or cooperative organizations granted greater rights of access and use of land resources for agriculture production purposes, including rights to sell, mortgage and lease. Rights to sell Farmland for community associations could be limited through deed restrictions.
Commercial Forestry in Natural Forest Areas	<ul style="list-style-type: none"> • Commercial reserved forest in Reserved Forest areas. • Conservation for sustainable production in Protected Public Forest. 	Access and use of Forest Land resources permitted without competitive bidding. Potential for both timber and non-timber products as defined in implementing rules and guidelines as Minor Forest Produce based on species, location and annual production volumes.
Commercial Plantations	<ul style="list-style-type: none"> • Forest covered lands at disposal of Government • Reserved Forest • Protected Public Forest 	Access and beneficial use of land resources for development of commercial timber plantations or other plantations not commonly associated with forestry. Potential species allowed to be grown dependent on agro-ecological and market access considerations.
Village Firewood Plantation	<ul style="list-style-type: none"> • Forest covered lands at disposal of government • Reserved Forest • Protected Public Forest 	Access, use and management rights fully devolved to the village or village tract level, depending on constitutional considerations.

Reclassification of Forest Land and Registration of Rights under the Farmland Law	<ul style="list-style-type: none"> • Reserved Forest • Protected Public Forest 	Smallholder farmers, community associations or cooperative organizations granted greater rights of access and use of land resources for agriculture production purposes, including rights to sell, mortgage and lease. Rights to sell Farmland for community associations could be limited through deed restrictions.
---	--	---

CONCLUSIONS AND WAYS FORWARD

It is unclear when a new Forest Law might be promulgated that would clarify or strengthen the land tenure and property rights of smallholders, communities and other vulnerable groups to forest land resources in Burma. In the meantime, there clearly appear to be opportunities, or pathways forward, for the formal legal recognition of such rights under the current Forest Law as written. In order for such opportunities to be operationalized, the implementing rules and guidelines subsidiary to the Forest Law would need to be amended. This process is potentially easier than enacting new legislation, and should be considered as an option in conjunction with developing a new Forest Policy that would help to guide the drafting of such implementing rules and guidelines. It is important that such a process consider the range of opportunities for smallholders, communities and other vulnerable groups to use and benefit from land resources that are covered by the Forest Law. Equally important is the consideration of incentives and processes that both allow land to be conserved or reforested, and allow land to be converted to agricultural or agro-forestry uses. Finally, restrictions on communities to commercialize timber and non-timber products will also negatively impact incentives for communities to engage in sustainable forest management practices.

The information contained in this analysis is provided for informational purposes only, and should not be construed as legal advice on any matter.

FOREST LAW (1992) TENURE OPPORTUNITY ARTICLES ANALYTICAL MATRIX

The analytical matrix below may be used as a stand-alone reference for easily identifying and understanding provisions in the law directly relating to the formal recognition of land resource tenure opportunities. The matrix identifies the article within the law being referenced; legal language from the article; and, an analysis of the relevance of legal language, including how the article may relate to other articles in the law within the matrix.

Article	Text	Relevance
<p>Article 2 <i>Definitions</i></p>	<p>(a) Reserved Forest means land constituted as a Reserved Forest under this Law;</p> <p>(b) Protected Public Forest means land declared to be Protected Public Forest under this Law;</p> <p>(c) Forest Land means land including Reserved Forest and Protected Public Forest;</p> <p>(d) Land at the disposal of the Government means other land with the exception of land in which a Government department, organization or any person has acquired right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, heritable right or transferable right under any existing law;</p> <p>(e) Forest Produce means trees, leaves, flowers and fruits grown on or found in Forest Land or land at the disposal of the Government and their byproducts. This expression also includes wild animals and insects, their parts and their byproducts;</p> <p>(f) Minor Forest Produce means forest produce declared as a Minor Forest Produce under this Law;</p> <p>(g) Tree includes roots, stump, stem, branch, bush, creeper, bamboo, cane, orchid and seedling;</p> <p>(h) Reserved Tree means a teak tree and any tree declared as a Reserved Tree under this Law; ...</p> <p>(m) Permit means an order permitting extraction of forest produce or an order permitting right of operation relating to forest produce. This expression also includes an agreement executed to permit extraction of forest produce; ...</p>	<p>Most important definitions in the Forest Law (the Law) that link directly to Forest Land resource tenure.</p> <p>Reserved Forest land is primarily used for production purposes, while Protected Public Forest lands are primarily established for conservation purposes.</p> <p>“Forest Land” is often referred to as the Permanent Forest Estate, though this term is not defined in law and means different things when described by various commentators. The term therefore lacks specificity in its application.</p> <p>“Land at the disposal of (<i>Union</i>) Government” is often associated with unallocated Vacant, Fallow and Virgin lands.</p> <p>It should be noted that Minor Forest Produce, as opposed to related terms, is not defined in the Law. The Director General of the Forest Department is delegated authority to define this term in implementing rules and guidelines under Article 20.</p> <p>The Law specifies that the classification of Reserved Trees is determined based on location and species in accordance with Articles 8 and 9. As such, a broad interpretation of these provisions would allow for teak trees to be grown and harvested for beneficial use by smallholders and communities in some locations.</p> <p>Permit for the access and beneficial use of Forest Land resources is conceptually similar to a lease or concession in many instances, and is often described in this manner by various commentators.</p>
<p>Article 4 <i>Reserve Forest</i></p>	<p>... the Minister may, with the approval of the Government, constitute the following categories of Reserved Forest by demarcation on land at the disposal of the Government:</p> <p>(a) commercial Reserved Forest;</p> <p>(b) local supply Reserved Forest;</p>	<p>Lays out the broad purposes that the Minister of the Ministry of Environmental Conservation and Forestry (MONREC), with approval of the President’s Cabinet, may establish Reserved Forest areas.</p> <p>A commercial Reserved Forest or other categories of Reserved Forest could arguably include commercial community forestry, if read</p>

	<p>(c) & (d) watershed protection, environment and biodiversity Reserve Forest; and,</p> <p>(e) other categories of Reserved Forest.</p>	<p>in conjunction with a broad interpretation of provisions found in Articles 17, 18(c) and 20. Subsection (e) provides a tremendous amount of flexibility for establishing a number of different categories of Reserved Forest.</p> <p>The Forest Law does not provide the Minister with clear authority from Parliament to delegate his authority to lower levels of Government, such as to State or Regional Government authorities, though there is no statement in the Law clearly indicating the Minister may not delegate authority to lower levels of Government. As such, it could be argued the Law implies the Minister's right of delegation of authority to lower levels of Government. For example, Articles 12 and 13 of the Forest Law appear to give the Minister the right to delegate authority to the Director General of the Forest Department (see below).</p>
<p>Article 5 <i>Public Protected Forest</i></p>	<p>The Minister may, with the approval of the Government, declare as Protected Public Forest, specifying limits on land at the disposal of the Government, outside reserved forests for the following purposes:</p> <p>(a) – (d): protection of water and soil, and conservation of dry-zone forests, mangrove forests, environment and biodiversity;</p> <p>(e) conservation for sustainable production.</p>	<p>Lays out the broad purposes that the Minister, with approval of the President's Cabinet, may establish Protected Public Forest areas. Article (e) allows for sustainable production within these areas.</p>
<p>Article 6 <i>Procedure for Constituting or Declaring Forest Land</i></p>	<p>The Minister shall: ...</p> <p>(b) in respect of constituting a Reserved Forest appoint a Forest Settlement Officer to <i>inquire into and determine in the manner prescribed the affected rights of the public in the relevant land</i> and to carry out demarcation of the Reserved Forest;</p> <p>(c) in respect of specifying a protected public forest, delegate the Director-General to <i>inquire into and determine in the manner prescribed the affected rights of the public which may arise under the prohibitions contained in the declaration</i>;</p> <p>(d) <i>publish a notification</i> constituting a reserved forest after consideration of the report submitted through the Director-General by the Forest Settlement Officer after carrying out in accordance with sub-section (b);</p> <p>(e) <i>publish a notification</i> determining a protected public forest after consideration of the report submitted by the Director-General after carrying out in accordance with sub-section (c).</p>	<p>Article lays out the steps relating to the conduct of impact assessments and public notifications that the Minister is required to complete. The Ministry has already promulgated rules relating to environmental impact assessments. Clear administrative rules applying to all Government agencies relating to notice, comment and appeal have yet to be fully developed, though the current environmental impact assessment procedures do include provisions on notification, public consultation and appeal in direct relation to the environmental impact assessment process.</p>
<p>Article 7</p>	<p>The Minister may, with the approval of the Government:</p>	<p>The Minister, with approval from the President's Cabinet, has broad authority to alter classifications of existing forest lands, including</p>

<i>Changing Land Classification</i>	<p>(b) alter the category of the whole or a portion of the reserved forest; cancel the category of being a reserved forest; convert into a protected public forest;</p> <p>(c) Cause the whole or a portion of the protected public forest, which no longer requires conservation to cease to be a Protected Public Forest;</p>	<p>authority to de-gazette or convert forest lands to other uses, such as conversion to Farmland for allocation to smallholder farmers or communities for local livelihood purposes in accordance with relevant provisions found in the Farmland Law (2012).</p>
Article 8 <i>Reserved Trees</i>	<p>(a) A standing teak tree wherever situated in the State is owned by the State;</p> <p>(b) The Minister may declare, alter or cancel according to the locality the species of Reserved Trees which are to be conserved by the Forest Department.</p>	<p>While standing teak trees are defined as owned by the State, this does not preclude the State from granting rights to access, use and benefit from this resource. This is similar to the State owning all land in the country, but having authority to grant rights to access, use and benefit from land resources.</p> <p>The Minister may, based on a proposal submitted by the Forest Department, alter or cancel the classification of Reserved Trees based on both location and species. A broad interpretation of the law would lead to the possibility of teak trees to no be considered as Reserved Trees depending on location where they are grown in the country.</p>
Article 9 <i>Functions and Responsibilities of the Forest Department</i>	<p>The functions and responsibilities of the Forest Department are as follows: ...</p> <p>(d) submitting proposals to the Minister for the determination, alteration or cancellation of Reserved Forest, Protected Public Forest and species of Reserved Trees; ...</p>	<p>The Law delegates to the Forest Department the ability to propose changes to Forest Land classifications and designation of Reserved Trees. For Reserved Trees, a broad interpretation of the Law would logically allow classifications to be based both on species and location. For example, a teak tree in one location may be classified as a reserved tree, while in another location it is not. Smallholders or communities could grow teak trees in specific areas of the country where they are not classified as Reserved Trees.</p>
Article 12 <i>Approval from Ministry</i>	<p>Whoever, within a Forest Land and forest-covered land at the disposal Government:</p> <p>(a) is desirous of carrying out any development work or economic scheme shall obtain the prior approval of the Forestry Ministry (MONREC);</p>	<p>Those wishing to engage in commercial or other development activities on Forest Lands or forest-covered lands at the disposal of the Union Government must first secure approval from MONREC. This provision does not state that such approval must come from the Minister of MONREC, so it may be broadly interpreted to be an individual within the Ministry that has been delegated such authority through properly endorsed rules and procedures. The language found in Article 13 bolsters this interpretation.</p>
Article 13 <i>Establishment of Plantations</i>	<p>The Director-General may, with the approval of the Minister, establish the following plantations on Forest Land or land at the disposal of the Government:</p> <p>(a) commercial plantation;</p> <p>(b) industrial plantation;</p>	<p>The Director General of the Forest Department is granted a high degree of flexibility in approving, with authority delegated from the Minister, any kind of plantation on Forest Land or forest covered lands at the disposal of the Union Government.</p>

	<p>(c) environmental conservation plantation; (d) local supply plantation; (e) village firewood plantation; (f) other plantation.</p>	<p>For forest-covered lands at the disposal of the Union Government, the approval is in relation to the fate of forest resources on the land resources in question. Other concerned Government authorities, such as the General Administration Department within the Ministry of Home Affairs and the Ministry of Agriculture, Livestock and Fisheries, would also have a say in any decision making regarding use of these land resources for plantation purposes.</p> <p>Using a broad interpretation of Article 13, this provision would include plantations not commonly associated with traditional timber plantations (i.e. smallholder sugar cane plantation, smallholder rubber plantation, smallholder oil palm plantation, REDD carbon plantation, or any kind of smallholder, community association or local cooperative managed plantation). That is not to say the Forest Law does not also provide opportunities for establishment of more traditional timber plantations.</p>
<p>Article 14 <i>Plantation Implemented by Person or Organization</i></p>	<p>If permission is obtained from the Government: (a) the Government and any person or any organization have the right to carry out in joint venture; (b) any person or any organization has the right to carry out in accordance with the stipulation, cultivation and maintenance of forest plantations with the exception of village owned firewood plantations cultivated by the villagers for their use.</p>	<p>Any legal person or organization, with approval from appropriate authorities within the Union Government, may implement a forest plantation. These may either be a joint venture with a Government authority, or not.</p> <p>A legal person or organization could include smallholders, and various forms of local community associations or cooperatives.</p> <p>For plantations that are not implemented through a joint venture arrangement with Government, legal persons or organizations may implement in accordance with stipulations contained in a permit issued by the Government. These types of plantations create a clear interest in property.</p> <p>The permit, and the terms and conditions contained therein, essentially acts as a contract between the authorized Government authority and the legal person or organization implementing the plantation scheme.</p> <p>Village owned firewood plantations, which ultimately could be recognized as public land held in the name of a village, are distinguished in this article from other plantations that create an immovable property interest in land resources.</p>
<p>Article 15 <i>Village-Owned Firewood Plantation</i></p>	<p>The Director-General may grant permission to establish with stipulation the following village-owned firewood plantations in a Reserved Forest or Protected Public Forest or on land at the disposal of the Government in the vicinity of the village:</p>	<p>This article grants authority to the Director General of the Forest Department to establish village owned firewood plantations on Forest Land or land at the disposal of the Union Government.</p>

	<p>(a) firewood plantation established by the Forest Department for a certain period and then transferred to be maintained and used as village-owned;</p> <p>(b) village-owned firewood plantation established, maintained and used by the villages by collective labor.</p>	<p>For land at the disposal of the Union Government, the Director General of the Forest Department would need to coordinate with other concerned authorities, such as the General Administration Department in the Ministry of Home Affairs.</p> <p>There is no limit on the area of land that can be allocated, nor the amount of time that must pass before ownership of the land resources in question is transferred in the name of the village. A number of forest product production options may be available in areas of land allocated in the name of a village, since Parliament did not define the term “village owned firewood plantation” in the Forest Law.</p> <p>If interpreted broadly, this article is a powerful tool for the formal recognition of forestland resource tenure in the name of a village with full delegation of resource management authority to the local level.</p> <p>As an option to transferring rights and responsibilities over the land resources in question to the village, transfer could be made to the village tract authority.</p>
<p>Article 16 <i>Cost and Compliance</i></p>	<p>A person having obtained the right to extract forest produce on a commercial scale who has the responsibility of establishing forest plantations or carrying out natural regeneration under a permit for the State shall carry out the same at his own expense and in accordance with stipulation.</p>	<p>Anyone who has been granted the right to engage in commercial forestry, whether through plantation forestry or natural regeneration, will have to do so at their own expense and according to any contractual obligations contained in the permit. This would apply equally to legal persons and organizations, including communities.</p> <p>Nothing in this provision prohibits assistance being provided by the Government in order to promote inclusive economic development at the local level.</p>
<p>Article 17 <i>Permit for Extraction</i></p>	<p>Forest produce may only be extracted after obtaining a permit. However, if it is for domestic or agricultural or piscatorial use not on a commercial scale, forest produce may be extracted in an amount not exceeding the stipulated quantity, without obtaining a permit.</p>	<p>A permit is required for extraction of forest products at a commercial scale.</p> <p>A permit is not required to extract forest products at a non-commercial scale for domestic, agricultural or fisheries purposes at the local level in accordance with applicable rules and guidelines.</p> <p>Commercial community forestry established in areas of “commercial reserve forest” (Article 4) may require a permit in accordance with applicable rules and guidelines. If the volume of extraction is at a level to be classified as domestic use, then a permit would not be required. This Article must be read in conjunction with Article 20(c).</p>

<p>Article 18 <i>Competitive Bidding</i></p>	<p>In permitting the extraction of forest produce the Forest Department shall use the competitive bidding system if the extraction is on a commercial scale. However, extraction for the following purposes may be permitted without using the competitive bidding system:-</p> <ul style="list-style-type: none"> (a) where extraction of forest produce and sales in and outside the country are carried out as a State-owned enterprise; (b) where the Minister is empowered by the Government in respect of the extraction of forest produce; (c) where Minor Forest Produce is permitted to be extracted on a commercial scale; (d) where forest produce to be used in the following works not on a commercial scale is permitted to be extracted:- <ul style="list-style-type: none"> (i) research and educational work; (ii) work beneficial to the public or religious work. 	<p>While competitive bidding is generally required for extraction of forest produce at a commercial scale, this article lays out exceptions to the rule. Commercial extraction of “minor forest produce” does not have to go through a competitive bidding process.</p> <p>Reading Article 18(c) in conjunction with a broad interpretation of Articles 4, 17 and 20, commercial community forestry, including for extraction of timber products, would not require a competitive bidding process.</p>
<p>Article 20 <i>Defining Minor Forest Produce</i></p>	<p>The Director-General may, with the approval of the Minister, determine the following in respect of the permission for extraction of forest produce:</p> <ul style="list-style-type: none"> (a) variety of Minor Forest Produce; (b) rate of royalty and other fees; (c) the quantity of each forest produce, the extraction of which is allowed by the Forest Officers, without a permit for domestic or agricultural or piscatorial use not on a commercial scale; (d) penalty to be imposed for breach of condition contained in the permit; (e) terms and conditions. 	<p>Article 20 delegates to the Director General of the Forest Department a tremendous amount of flexibility in defining a number of elements relating to the extraction of forest produce in implementing rules and guidelines.</p> <p>Article 20(a) grants the Director General flexibility in how to define “minor forest produce” in implementing rules and guidelines, thus creating an opportunity for the relatively low volumes of timber extraction associated with sustainable commercial community forestry to fall under this definition. Minor forest produce definitions could be tied to location or specific species. This would then trigger the competitive bidding exemption clause found in Article 18(c).</p>

CONTACT

CONTRACTING OFFICER’S REPRESENTATIVE

Stephen Brooks
Email sbrooks@usaid.gov