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PEOPLE, RULES, AND ORGANIZATIONS SUPPORTING THE PROTECTION OF ECOSYSTEM RESOURCES (PROSPER)

DELIVERABLE 14B – HARMONIZATION OF THE IMPLEMENTING REGULATION WITH THE COMMUNITY RIGHTS LAW OF 2009 WITH RESPECT TO FOREST LANDS

MARCH 2017

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INTRODUCTION

Community forestry is the management of forest resources by communities for commercial and non-commercial purposes to further their own livelihoods and development. Under the Liberian *Community Rights Law of 2009 with Respect to Forest Lands* (CRL), communities are granted legal rights over the areas of forest resources they have traditionally used, once they have completed the procedure elaborated in the *Regulation to the Community Rights Law of 2009 with Respect to Forest Lands, as Amended* (CRL Regulation). This requires following a nine-step process ("the Nine Steps") to ensure that members of the community fully understand and support the application for Authorized Forest Community (AFC) status. It also requires the establishment of representative bodies with their own governing rules, to regulate the use of forest resources and ensure the effective administration of the AFC. Once the Nine Steps have been completed, a management plan to provide a framework for the use, access, and sustainable management of forest resources must also be drafted. These requirements are explained in the CRL Regulation.

The United States Agency for International Development (USAID) has been supporting the development of community forestry in Liberia since 2007 through two community forestry projects implemented by Tetra Tech and other partners: the Liberia Land Rights and Community Forestry Program (LRCFP); and the People, Rules and Organizations Supporting the Protection of Ecosystem Resources (PROSPER) Project. Through these programs, USAID strives to build the capacity of local partners and encourage better coordination between governmental, non-governmental, academic, and private sector organizations involved in forestry and community forestry.

SUMMARY

This report outlines the history and process of the "harmonization" of the 2011 Regulations to the Community Rights Law of 2009 with Respect to Forest Lands (CRL Regulations of 2011), with the Community Rights Law of 2009 with Respect to Forest Lands (CRL). It includes a general overview of the background to the harmonization process, together with a description of the various steps that were taken to amend the CRL Regulations of 2011 by the Liberian Forestry Development Authority (FDA), with the direct support of USAID-PROSPER. Submitted along with this report is a USB stick, which contains the relevant documentation indicating the support provided by USAID-PROSPER, in the following folders:

1. First Proposed Amended CRL Regulation and Invitation to Comment
2. Initial Written Comments
3. Final Harmonization Report and Timeline
4. Proposed Amended CRL Regulation (September 19th 2016)
5. Summary of Proposed Amendments for Publication and Broadcast
6. Notice of National Vetting Workshop and Attendance Sheet
7. National Vetting Workshop (November 2nd 2016)
8. Written Comments
9. Justification Document
10. FINAL REGULATION (February 17th 2016)

OVERVIEW

Following its promulgation in 2011, it soon became clear that some of the provisions within the CRL Regulations of 2011 were inconsistent with the CRL. The intent and purpose of the CRL appears to be to recognize the inherent rights of communities over their forest resources, so that they are able to make autonomous decisions about how forest resources are used, in accordance with management and technical standards established by the FDA. In this manner the collective rights of communities over their forest resources are both recognized and regulated – a delicate balancing act.

And the CRL Regulations of 2011, in many respects, reflect this. However, there are various provisions within the CRL Regulations of 2011 that disrupt the equilibrium by awarding the FDA more authority than is envisaged in the CRL. On other occasions, the CRL Regulations of 2011 establish requirements or prohibitions, which, on their face, contradict what is written in the CRL. These inconsistencies can partly be explained as an attempt to remedy faults in the CRL, belatedly identified. Despite the apparent well-intentioned rationale, some of these provisions contravene the law. The deficiencies of the CRL cannot, in the majority of cases, be addressed through the promulgation of regulations. Regulations must conform to both the letter and the spirit of the law from which they are developed.

To address this, the National Multi-Stakeholder Monitoring Committee (NMSMC) established the Regulations Harmonization Committee (RHC) – a temporary body made up of stakeholders within the forestry sector, chaired by the head of the NGO Coalition — to oversee the harmonization of the CRL Regulations with the CRL and other relevant statutes. With the support of USAID-PROSPER, the RHC employed the services of a consultant to review the CRL Regulations of 2011, and the CRL and other relevant laws, in order to identify inconsistencies in the CRL Regulations of 2011 and propose how they might be harmonized with the statutory framework. The harmonization report submitted by the consultant – funded by USAID-PROSPER – was reviewed and endorsed by all members of RHC and submitted to the NMSMC, which forwarded it for approval to the Liberia Implementation Committee (LIC).

The Technical Manager (TM) of the Community Forestry Department (CFD), working with the Legal Support Unit (LSU) at the FDA and USAID-PROSPER's FDA Advisor, proceeded to develop a proposed amended CRL Regulation, based upon the harmonization report. During this process, some other inconsistencies and issues were identified and also addressed, which were captured in the final harmonization report.

On September 6th 2016, the Managing Director of the FDA, Hon. Harrison S. Karnwea Sr., directed the TM of the CFD to make the appropriate arrangements for the official public review and comment process. Following the considered advice of the TM of the CFD, the FDA's Legal Support Unit, and USAID-PROSPER's FDA Advisor, the MD determined that Section 25 of Regulation 101-07 on Public Participation – for amending regulations – would be used, rather than Section 23, which must be used for new regulations, or when regulations materially alter the rights and responsibilities of persons under Liberian law. It should be noted that the decision to use Section 25 for the harmonization process was explicitly mentioned at the Joint Implementation Committee (JIC) meeting in September 2016, and was not commented upon or objected to by any of the attendees.

Acknowledging the importance of the proposed amended CRL Regulation, the FDA decided – in addition to the requirements established under Section 25 of Regulation 101-07 – to hold a national vetting workshop in Monrovia to present the proposed amendments to the CRL Regulation of 2011 to stakeholders and interested members of the public, and solicit comments and feedback.

TIMELINE FOR PUBLIC REVIEW AND COMMENT

The timeline below describes in chronological order the steps that were followed for the promulgation of the proposed amended CRL Regulation, as established in Section 25 of Regulation 101-07 on Public Participation. A brief overview of each step is provided, together with an explanation of what was done and how long it took.

1. *Submitted draft proposed amended CRL Regulation and accompanying documentation to stakeholders on **August 18th 2016**, requesting submission of comments by **August 26th 2016**, and began planning for review and comment period and national vetting workshop*

Actions

i. Delivered letter, summary of proposed amendments and proposed amended CRL Regulation to key stakeholders (Multi-Stakeholder Working Group)
ii. Began planning for review and comment period and national vetting workshop in Monrovia

2. *Between **August 26th 2016** and **September 16th 2016**, revised proposed amended CRL Regulation in response to comments submitted by key stakeholders, and finalized planning for review and comment period and national vetting workshop*

Actions

i. Printed all required documents (proposed amended CRL Regulations, notices, etc.)
ii. Arranged for radio announcements
iii. Arranged for publication in newspapers
iv. Arranged for distribution of copies of proposed amended CRL Regulation to regional headquarters
v. Arranged for posting of proposed amended CRL Regulation on FDA website

3. *Printed 300 copies and distributed proposed amended CRL Regulation to regional FDA headquarters and uploaded proposed amended CRL Regulation to FDA website by **September 16th 2016***

Actions

i. Delivered printed copies of proposed amended CRL Regulation to regional FDA headquarters (50 per office) and national FDA headquarters (100)
ii. Uploaded summary of proposed amendments and proposed amended CRL Regulation to FDA website

4. ***September 19th 2016**, began posting notices inviting the public to review and comment on the proposed amended CRL Regulation*

Actions
i. Posted summary of proposed amendments in newspapers and broadcast summary of proposed amendments on national and community radio
ii. Tracked radio announcements and newspaper publications over the two-week period that the information was broadcast / published (announcements had to be broadcast – one national station, as well as community stations – and notices posted in newspapers at least twice a week, for two weeks)

5. ***October 18th 2016**, began posting notices inviting members of the public to attend the national vetting workshop, which was planned for **November 2nd 2016**, at the Corina Hotel in Monrovia*

Actions
i. Same standard was applied as for advertising of regional meetings under Section 25 of Regulation 101-07 (at least 2 times a week, for 2 weeks)
ii. Tracked radio broadcasts
iii. Informed stakeholders and officials of the national vetting workshop, and made arrangements to facilitate the attendance of three community members from each county where applications for Authorized Forest Community status had been submitted

6. *National meeting was held on **November 2nd 2016**, at the Corina Hotel in Monrovia*

Actions
i. The proposed amendments to the CRL Regulation were explained to attendees
ii. Invited and recorded comments from attendees
iii. Eighty-two persons attended the national vetting workshop

7. *The review and comment period officially ended on **November 18th 2016**, sixty days after it began*

Actions
i. Produced a final proposed amended CRL Regulation
ii. Produced a summary of comments, explaining why a change was or was not made to the proposed amended CRL Regulation in response to comments submitted

8. *Proposed amended CRL Regulation submitted to members of the Forestry Management Advisory Committee (FMAC) on **January 6th 2017,** inviting them to review and submit written comments*

Actions

i. Final proposed amended CRL Regulation and summary of comments, together with invitation to review and provide written comments, sent to all members of the FMAC

9. *The proposed amended CRL Regulation and summary of comments was submitted to the National Multi-Stakeholder Monitoring Committee (NMSMC), at the request of the Managing Director of the FDA, and a meeting held on **January 20th 2017***

Actions

i. Final proposed amended CRL Regulation and summary of comments submitted to NMSMC

10. *Proposed amended CRL Regulation and justification document submitted to members of the Board of Directors of the FDA at the Board meeting on **February 14th 2017**, for review, comment and approval*

Actions

i. The final proposed amended CRL Regulation and summary of comments was submitted to the Board

11. *Neither the FMAC nor the FDA Board of Directors submitted any comments. The Managing Director of the FDA signed the final CRL Regulation as Amended, on **February 17th 2017**.*

Actions

i. Produced final CRL Regulation, as Amended
ii. Produced accompanying document explaining how the final amended CRL Regulation was changed in response to public comments (S.25(h)(2)(A) of Regulation 101-07); or for each public comment that resulted in no change to the final amended CRL Regulation, explained why the authority reached this decision (S.25(h)(2)(B) of Regulation 101-07)

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