



A PLATFORM FOR STAKEHOLDERS IN AFRICAN FORESTRY

FOREST LAW ENFORCEMENT, GOVERNANCE AND TRADE IN THE SAHEL



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Forest Law Enforcement, Governance and Trade in the Sahel

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Acronyms and Abbreviations

AFF	African Forest Forum
AFLEG	Africa Forest Law Enforcement and Governance
AFLEGT	Africa Forest Law Enforcement, Governance and Trade
CILSS	Comité Permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel
ECOPAS	Ecosystèmes Protégés en Afrique Soudano-Sahélienne
ECOWAS	Economic Community of West African States
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FMNR	Farmer Managed Natural Regeneration
GAGRF	Groupe d'apprentissage sur la Gouvernance des ressources Forestières
ICRAF	World Agroforestry Center
IFAD	International Fund for Agricultural Development
LMS	Local Management Structure
LTC	Local Transport Committee
MDRI	Ministère du Développement Rural et de l'Intégration
MEF	Ministère de l'Economie et des Finances
MET	Ministère de l'Economie et du Tourisme
MHE	Ministère de l'Hydraulique et de l'Environnement
NGO	Non Governmental Organization
NRM	Natural Ressource Management
NTFP	Non Timber Forest Products
NWFP	Non Wood Forest Products
REDD	Reduced Emissions from Deforestation and forest Degradation
SFM	Sustainable Forest Management
UNFCC	United Nations Framework Convention on Climate Change
WAP	W – Arly – Pendjari (sub-regional complex of Parcs)

Foreword

In the Sahel, ecosystems such as open forests, plantations, parklands, savannah and steppe formations supply a wide range of goods and services for rural communities as well as to the development of local and national economies. In this region, forestry and agroforestry systems have frequently been disrupted by changes in land use, particularly over the last 20 to 30 years, together with a succession of drought years and considerable population growth. A common underlying cause of degradation in dry forests is lack of secure tenure rights to these resources by local communities, which creates little incentive for local people to manage the forests on a sustainable basis. Further, coping with good governance in natural resources management in the Sahelian countries has been challenging. Problems arise when laws are incoherent, unrealistic and unenforceable, and fail to address forest land tenure and use rights.

However, the political changes in most African countries have brought changes in policies, and especially in land tenure and natural resources management. In 2003, an African Forest Law Enforcement and Governance (AFLEG) Ministerial Conference was held in Yaoundé, Cameroon, that emphasized the importance of existing legal frameworks and compatibility of laws with neighbouring states, taking into consideration traditional and customary forest laws to work together at regional and sub-regional levels where possible through existing structures and institutions. The governments were convinced of the urgent need to develop and build the capacity of the forest administration and civil society institutions to address forest law enforcement and governance in effective partnerships.

In furtherance of its mission and commitment to managing the African forests in sustainable manner, as well as generating and sharing knowledge and information for sustainable forest management, the African Forest Forum commissioned a study to assess the status and performance of FLEGT in the Sahel.

This report summarises the findings of this exploratory study. It outlines the key elements of FLEGT as they appear in the different countries by looking at key elements of forest policy and legislation, challenges and opportunities for socioeconomic development and environmental protection in forestry. The report was compiled by Dr. Abasse Tougiani who prepared it on behalf of the African Forest Forum, and credit should go to him for this effort.



Prof. Godwin Kowero

Executive Secretary, African Forest Forum.

Executive Summary

The Sahel is a sub-region which has nine countries: Burkina Faso, Cape Verde, Chad, Gambia, Guinea-Bissau, Mali, Mauritania, Niger and Senegal. In this sub-region, each country has its own laws and regulations that guide the forestry sector. Forests and forest products bring together various actors like government, local communities, and private sectors. In order to assure that all actors play their respective roles and that the benefits derived from forests are fairly shared between the present and future generations, it is necessary to establish clear and viable law enforcement procedures to guide good and sustainable forest governance and trade in forest products.

In the Sahel, the forests are commonly referred to as closed and open forests, plantations, parklands, savannah and steppe formations; and they supply a wide range of goods and services to rural communities as well as to the development of local and national economies. Forest and agroforestry systems have frequently been modified by changes in land use, particularly over the last 20 to 30 years, together with a succession of drought years and considerable population growth. A common underlying cause of degradation in dry forests is lack of secure local tenure rights which results into very little incentive for local people to manage the forests on a sustainable basis.

Problems arise when laws are incoherent, unrealistic and unenforceable, and fail to address forest land tenure and use rights. Internal contradictions in national legal frameworks are common. In certain cases, contradictory laws even outlaw the traditional livelihood strategies of local stakeholders. Poor law enforcement capacity is often due to institutional weaknesses coupled with lack of transparency and accountability in the implementation of the forest policy and operating within the legal framework. Powerful vested interests that are directly or indirectly involved in illegal forest operations and lack of alternative economic opportunities for local people can result in passive acceptance of forest illegality.

In the Sahel, coping with good governance of natural resources therefore revolves around issues related to enforcement of policies, legislations and rules in the different countries when viewed against good governance criteria.

The political changes in most African countries have brought changes in policies, especially in land tenure and natural resources management. For example, in 2003, the representatives of African countries, participating in the AFLEG Ministerial Conference in Yaoundé emphasized the importance of existing legal frameworks and compatibility of laws with neighbouring states, taking into consideration traditional and customary forest laws to work together at regional and sub-regional levels where possible through existing structures and institutions. The governments were convinced of the urgent need to develop and build the capacity of the forest administration and civil society institutions to address forest law

enforcement and governance in effective partnerships. This commitment has led to changes in forest policies in different countries in the sub-region.

Forest policies vary significantly among countries in the Sahelian zone. Most policies now aim at reconciling an ever increasing number of interests and objectives, including resource conservation, forest product supply and devolution of managerial responsibilities to local people.

Sahelian forest codes have generally distinguished between a forest domain and the non-forest domain. Use rights in the forest domain vary slightly among countries, but have the same basic characteristics. Commercial tree harvesting is generally taxed, while this is usually not the case for the collection of fruit, honey, medicines and other non-wood items. Sahelian forest codes often failed to define the rights of individuals and communities to forest resources in the non-forest domain.

In practice, difficulties have arisen in the implementation of the legislative and regulatory measures affecting forest resources in general and forest genetic resources in particular. In the past, the application of laws, regulations and management plans suffered from several limiting factors, including, the lack of an appropriate legal framework for national and local conditions, the exclusion of customary law in the legal provisions, among others.

Decentralization, one of the main policy initiatives of the 1990s in the Sahel, offers new opportunities and challenges for decentralized natural resource management. Starting in the late 1980s, Sahelian countries have moved towards the inclusion of rural communities in the management and protection of forest resources. New political options in a number of countries have stimulated the reformulation of their legislation regarding forest resource management. This process of reformulation has been on forest laws, environmental codes, and laws and regulations relating to land regimes.

Major causes of illegal forest activity include corruption, unclear legislation, legislation discriminating against livelihood uses of the forest, and weak law enforcement. Laws and means for forest policy regulation in Sahelian countries are out-dated. They have been perceived as repressive and limit the legitimate needs of rural communities.

Current forest management practices are undoubtedly affected by local and national policies. Forest laws and ambiguity about land tenure and tree ownership have not favoured a culture to plant or conserve native trees and shrubs in rural communities and have inadvertently fostered some conflicts in several countries.

Formulation and enactment of decentralization policies and subsequent natural resources management (NRM) vary across the different countries. Lessons resulting from different initiatives in the different countries are rarely shared. The challenge therefore is how to

promote sharing of lessons and experiences in order to promote collective learning and action on natural resource management across the Sahelian countries.

Some Sahelian national governments have continued to ignore the potential role of local communities in natural resource management. Paternalistic approaches still abound and are undoubtedly re-enforced by statutory policies, legislation and regime structures.

Issues related to tree access and the related norms of “tree tenure” are particularly important when viewed in the context of poverty reduction. Solutions could be envisaged through social innovation which requires an open dialogue, among stakeholders in rural communities and local governmental authorities. Many local initiatives act to identify appropriate land arrangements which have potential to facilitate peaceful and sustainable collective natural resources management in the Sahel. These efforts are made by local groups that contribute actively in conflict resolution.

Inadequate forest policies and poorly harmonized legal frameworks are the main issues to be tackled when addressing forest law compliance. The underlying social, economic, cultural and political causes of non-compliance should be assessed and the policy and legal framework governing the forest sector should be modified accordingly.

Governments, with the participation of civil society and other stakeholder, should review their forest policies and laws. They should, where necessary, introduce new forest policies and laws, taking into account obligations under international conventions as well as the need to address critical issues such as the management of the domestic wood market. Coordination among law enforcement agencies within and between countries should be improved. The distribution of the benefits of forest use among key stakeholders should be more equitable so as to encourage law compliance and sustainable forest management. Participatory processes are a key to success.

CHAPTER 1 Introduction

The authoritarian and centralized system of natural resources governance and management in many African countries has gradually been replaced by a concerted and decentralized governance and management mechanism. The political democratization in most African countries has brought changes in policies; and specifically in land tenure and natural resources management (Malam, 2008). The international context has been marked by the adoption of many conventions that incorporated principles which bind subscribing States to change their policies and regulations related to ownership, management and use of natural resources. Related to this is the concept of good governance that coincides with democratic pluralism and also empowers the participation of several actors in the management of public business. Its aim is to restructure the original method of managing public affairs through the involvement of several actors (Government, local community, NGO, etc) by conferring decision powers at different levels. The implementation of this concept has been extended to "natural resources governance". This new concept describes the interaction between structures, mechanisms and tradition in determining how the authority and responsibility are fulfilled and the way decisions are taken by stakeholders to express their opinion in the management of natural resources including forest, biodiversity conservation.

A study on good governance of land tenure and land administration, conducted by FAO in 2007, pointed out that a clear aspect of good governance is refusal to corruption (FAO, 2007). Nevertheless, good governance required also political stability and real law enforcement. The implementation of good governance includes transparency and equity.

In the Sahel of West Africa, good governance in natural resources can be evaluated by examining implementation of policies, legislations and rules of different States using good governance criteria. Therefore, sharing experiences on good governance of forest resources could contribute to the better understanding of the process as well as promoting it in countries where such governance is weak.

In the Sahel, forests are commonly referred to as closed and open forests, plantations, parklands, savannah and steppe formations; and they supply a wide range of goods and services for rural communities as well as to the development of local and national economies. Forest and agroforestry systems have been modified by changes in land use, particularly over the last 20 to 30 years, together with a succession of drought years and considerable population growth. In many places, the growth of agriculture, increased fuelwood harvesting, and intensification of grazing, have considerably increased pressure on forests. Generally, the dry forests in the tropics are particularly affected by degradation processes because they support human population densities that are higher than those in the humid forests, and exceeding the carrying capacity in those areas. A common underlying cause of degradation in dry forests is lack of secure local tenure rights; and this

provides very little incentive for local people to manage the forests on a sustainable basis. Since the actors and processes are different, it follows that in general, the strategies and programmes for addressing deforestation may differ from those aimed at reducing forest degradation. To deal effectively with the many types of forest degradation, degradation should be viewed not as the beginning of a deforestation process but as a form of poor forest management that needs to be improved.

Forests and forest products bring together various actors like government, local communities, and private sectors. These stakeholders in forestry are important and play different roles because of the various interests they have in the forests. For example, the local communities are increasingly taking on responsibilities for forest and woodland management through devolved rights and responsibilities. They use tree and timber products for diverse reasons, and are increasingly entering the market of tree and timber products. And they are organizing themselves to be better able to take on their growing rights and responsibilities into various forms of associations and village committees.

On the other hand, central governments through their forest administrations / authorities / services oversee law and policy and ensure that they are enforced. This will lead to the creation of an enabling environment for sustainable forest management, as well as to better handling of Forest Law Enforcement Governance and Trade (FLEGT). As a consequence, rural people and communities, and the private sector could invest and benefit from forests and trees (GAGRF, 2005).

The Sahel is a sub-region which has nine countries: Burkina Faso, Cape Verde, Chad, Gambia, Guinea-Bissau, Mali, Mauritania, Niger and Senegal (Figure 1). In this sub-region, each country has its own laws and regulations that guide the forestry sector. In order to assure that all actors play their respective roles and that the benefits derived from forests are equitably shared between the present and future generations, it is necessary to have clear and viable law enforcement procedures (to avoid illegality) that will secure good forest governance and fair trade in forest products.

Forest illegality occurs when wood and other forest products are harvested, transported, processed, bought or sold in violation of national laws. The illegal conversion of forest to other uses – deforestation – is also categorized as forest illegality. Forest governance can be described as the *modus operandi* by which officials and institutions acquire and exercise authority in the management of forest resources. Good forest governance is characterized by predictable, open and informed policymaking based on transparent processes, a bureaucracy imbued with professional ethos, an executive arm of government accountable for its actions, and a strong civil society participating in decisions related to the sector.

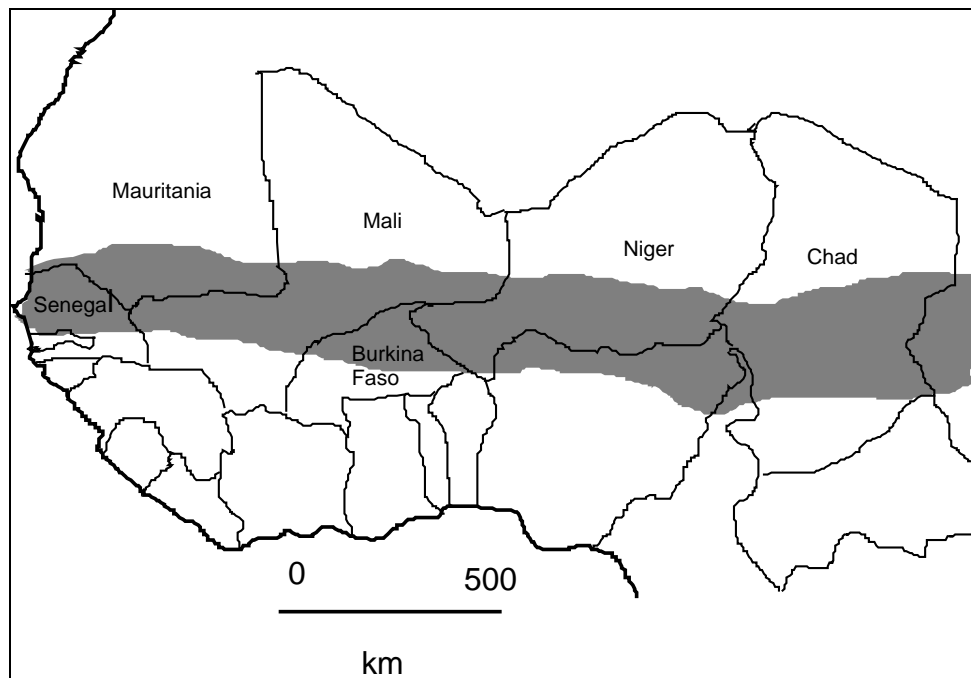


Figure 1: The Sahel.

CHAPTER 2: Status of Forestry in the Sahel

FOREST COVER IN THE SAHEL

The total forest cover of Africa is estimated to 650 million ha, which represents 21.8% of total land area and 16.8% of World forest cover (FAO, 2001). With high rate of deforestation, African forest cover was reduced by about 53 million ha from 1990 to 2000 (FAO, 2001). While African forest cover represents 16.8% of the total forest cover of the planet, Africa is responsible for 56% of the forest cover reduction recorded between 1990 and 2000 (Table 1). The main part of Africa is arid and the biomass productivity is extremely low. Quantities of biomass harvested are higher than the natural increment. To improve productivity, significant investments are necessary.

In each sub-region of West Africa significant differences in forest cover and types of vegetation were noted; for example, forest cover in Chad is 10% and is located in the Sahelian arid belt. With exception to humid coastal zone, West Africa is essentially an arid zone and dominated by a wide Sahelian zone extending from Niger to Senegal (see Figure 1). Mali and Niger which are almost entirely located in Sahelian zone represent 50% of land area of West Africa.

Table 1: Forest cover in Sahelian countries in 2000.

Country	Forest cover (10 ³ ha)	Forest cover (as % of total land area)	Other wooded land (10 ³ ha)
Burkina Faso	6,794	29.0	7, 427
Cape Verde	84		
Chad	11,921	9.5	9,152
Gambia	471,000	41.7	125
Guinea-Bissau	2,072	73.7	236
Mali	12,572	10.3	16,532
Mauritania	267	0.3	3,110
Niger	1,266	1.0	3,740
Senegal	8,673	45.0	5,001

Source: FAO (2005).

In Sahelian zone, tree biomass is almost four tonnes per ha against 200 tonnes per ha in tropical forest of Central Africa.

Protected areas are subjected to fairly systematic monitoring by forest administration. In particular, tourism in national parks generates significant revenue in some countries. Some reports suggest that tree genetic resources may be better conserved in protected areas and sacred forests than in classified forests.

The purpose of a forest inventory is to provide the forest manager with objective data on the resources in both quantitative and qualitative terms, but above all to provide a better understanding of the forest (i.e., soil, grass and tree cover and biodiversity) and to produce a balanced picture of forest in terms of the areas that are valuable and those which are not. This information is necessary in order to reconcile forest resources needs and sustainable management. National inventories have been carried out in several Sahelian countries, like Burkina Faso, Gambia and Senegal. Mali has carried out an inventory of the southern part of the country and this was completed in 1991. Niger has a national inventory dating back to 1986. This inventory was updated (Landsat TM (thematic mapper)) by the Energie II project (Energie II) during late 1990. Most of these countries have not carried their national forest inventories for the past 20 years leading to inconsistency in the existing data on the forest and tree resources. This situation does not promote good forest management planning at national and sub-regional levels and could negatively impact on the law enforcement, governance and trade of the forest resources.

KEY ELEMENTS OF FOREST POLICY AND LEGISLATION: COUNTRY SITUATION

Burkina Faso

In Burkina Faso the key principles of national forestry policy and the implementation provisions are given in law n° 006/97/ADP of 31st January 1997 that harmonised protection of natural resources and satisfaction of the human needs. Law n° 055/AN on local district legislation code outlines the principles and modality for sustainable development, peaceful and integrated pastoral, agropastoral and silvo pastoral activities in country.

Niger

Forest policies in Niger are contained in the document “Strategy of Domestic Energy”, and these have been in place since 1989 as provided for under ordinance 92-037, and as well as under decree 92-279 of August 21st 1992, and by order 09/MHE/DE of February 23rd

1993. Law n° 2004-040 of June 8 determines mode of management and use of forest resources and also, defines policy and institutions in charge of forest resources management. The national forestry policy is premised on the following principles:

- ▶ satisfaction of human needs and improving livelihoods;
- ▶ protection, conservation through use of forest products;
- ▶ forest regeneration through appropriate methods;
- ▶ biodiversity conservation linked to sustainable forest management;
- ▶ empowerment of rural communities and territorial collectivities in planning, implementing and evaluation of forest activities.

The legislation adopted in 1992 provides for rural producers who are organized into rural markets, to benefit as follows:

- ▶ owners of planted (private) forests and producers' groups are exempted from taxation which is only charged on the transport and marketing of wood in the towns; this is the main difference with the former system in which the wood was taxed upon production;
- ▶ parts of the revenues are returned to local owners;
- ▶ financing of regeneration work is paid for from the forestry tax and no longer from profits (as was the case before);
- ▶ wood from the managed zones is reserved for local owners (under Order N°92-037, with the self-management by the riverside communities); outside traders no longer have access to the resources;
- ▶ traders/transporters are restricted to the most favourable areas on the basis of differential taxation.

Mali

In 1995, Mali adopted policies aimed at ensuring satisfactory fuelwood supply to urban areas, sustainable forest resources management, and transfer of local forest management to bordering village communities (Couloubaly and Diakité, 2007). Under this agreement, the limits of each forest area as well as annual quota of exploitable fuelwood are fixed. This example has been extended to other Sahelian countries.

Gambia

A long consultation process of the Gambian community forest management policy and legislation has reaffirmed the need to return authority for forest management to local communities. Solange (2009) pointed out that the first forestry code was established in February 1965 and gave power to the forest extension service the exclusive control of forest resources management.

It is now generally recognized that a balance should be found not only regarding the respective functions of governmental institutions and society (through NGOs for example), but also with respect to how authority and action are articulated between national and local levels. The decentralization of structures and devolution of responsibilities to provincial or local authorities underway in most countries on the one hand, and the privatization of estates and services on the other hand, have immediate implications for systems of ownership, management, conservation and utilisation of forest resources.

CHALLENGES AND OPPORTUNITIES FOR SOCIOECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION IN FORESTRY

Challenges and opportunities for socioeconomic development related to policies and legislation

Decentralization is one of the main policy initiatives of the 1990s in the Sahel, and offers new opportunities and challenges for decentralized natural resource management. In the short term, local people in the Sahel are less concerned with the principles and potential benefits of democratic governance. Instead, they want to see their everyday problems of poor health and education facilities, inadequate water supplies, lack of employment, marketing and investment opportunities and impassable roads being addressed. If locally elected governments cannot deliver on these issues fairly quickly, their legitimacy and ability to bring about structural changes in the manner in which local affairs are managed will be severely compromised. Given the central role of natural resources in generating income and wealth, and by extension in developing and maintaining political patronage, it is no accident that the State and the forestry service in Niger and Mali have failed to relinquish power of decision making in this domain. However, by not doing so, it does threaten the economic viability of the communes as well as compromising the very legitimacy of the decentralization process according to local people. Meaningful local democracy needs to be accompanied by real power of decision making and the necessary resources to deliver on issues of local concern; otherwise, the whole process is prone to fail. Although, the decentralization laws do not devolve management responsibilities for natural resources to local government bodies, there are other legislative tools and precedence for their use in Niger which enable the communes to establish recognized rights of management over rural fire wood markets in those areas under their jurisdiction. There is relatively little of fiscal decentralization in Africa and those examples are based in urban rather than rural areas. For instance, the 14 years experience of the household energy strategy in Niger has a significant contribution to make to the institutional and legislative debate on how to manage the Sahel's natural forests. Compared with other Sahelian countries, such as Mali, the fiscal

provision taken by Niger through the enactment of the Ordinance 037/92 and its associated regulatory orders are very progressive.

Forest policies vary significantly among countries in the Sahelian zone. Most policies now aim at reconciling an ever increasing number of interests and objectives, including resource conservation, forest product supply and devolution of managerial responsibilities to local people.

A great deal in the forest codes of independent French-speaking Sahelian countries is derived from colonial land and tree legislation, which emphasized state control over land resources and took little account of traditional, individual and community rights to land, trees and forests. Colonial administrative provisions applied to the whole of French West Africa, which included present-day Benin, Guinea-Conakry, Burkina Faso, Côte d'Ivoire, Mauritania, Niger, Senegal and Mali. Among major provisions, the decree of 15 November 1935 declared as state property any 'vacant land without master', including all land unoccupied or unexploited for more than ten years. By offering the possibility of registering land through the establishment of land titles (*livrets administratifs*), the decree of 20 May 1955 officially acknowledged collective or individual customary rights. However, because land registration in the Sahel is generally a costly and lengthy process, registration of rural land has been limited. The state has thus maintained a monopoly on the majority of rural lands. As a result of the decree of 4 July 1935, the state was also given the authority to manage and regulate use of all forest resources in French West Africa. Concerned about apparent environmental degradation throughout the region, forest management policy emphasized regulation and enforcement, and consisted largely of lists of restrictions on forest use applied through a system of permits and fines (CILSS/LTC, 1993a, 1993b).

Sahelian forest codes have generally distinguished between a forest domain (including the classified and the protected forest domains) and the non-forest domain (including cultivated and short-fallow land, registered land and urban land). Classified forests belong exclusively to the state domain while protected forests do not. The purpose of classified forests is to set up permanent forests with designated uses (forest production, protection, botanical or wildlife sanctuaries). Their access is more restricted than in protected forests where customary use rights may be authorized (in a regulated manner) unless they are excessively destructive. Furthermore, whether it is explicit as in Senegal or implicit as in Mali, state jurisdiction extends beyond the forest domain and regulates the use and harvesting of trees on cultivated and fallow areas, which constitute the typical zone of agroforestry parklands.

Use rights in the forest domain vary slightly among countries, but have the same basic characteristics. Commercial tree harvesting is generally taxed, while this is usually not the case for the collection of fruit, honey, medicines and other non-wood items. Cutting wood for domestic purposes requires a permit (often free of charge) from the forest service. The

forest service can also issue woodcutting permits for areas traditionally controlled by local communities without consulting them, which reduces their ability to exclude outsiders from exploiting what they consider to be their traditional forest. Separate permits are required for the transportation and storage of forest products. All national forest laws also prohibit the unauthorized felling, lopping, pruning, mutilation or use of a list of economically significant species. In fact, most of these species are already protected under traditional management systems. De-branching for animal forage is allowed in restricted conditions; a permit is sometimes needed for clearing of land for agricultural production.

Sahelian codes give forest agents broad police powers to pursue suspected violators. They are allowed to bear arms and seek the help of public forces for enforcement. They may confiscate illegally gained forest products as well as vehicles and tools used for their collection and transportation. Further penalties are specified in detail in the legislative provisions.

However, starting in the late 1980s, Sahelian countries have moved towards the inclusion of rural communities in the management and protection of forest resources. Policy dialogue has been actively encouraged by the CILSS (Permanent Interstate Committee for Drought Control in the Sahel) and the Club du Sahel which were created soon after the intense droughts of the early 1970s. By sponsoring research studies, circulating information, and organizing regional, sub-regional and national workshops, among the most significant of which were the Nouakchott (1984), Ségou (1989) and Praia (1994) international conferences, the CILSS and Club du Sahel have increasingly emphasized the need for local control over natural resources. Forest services and donor agencies have designed new forestry laws which devolve various degrees of rights and responsibilities to local communities. New forest laws were decreed in 1997 in Burkina Faso, in 1995 in Mali and in 1993 (legislative section) and 1995 (regulatory section) in Senegal. In Niger, legislation relating to the Rural Code was revised in 1993. The implications of these legislative changes for local participation in parkland and forest management are analyzed in later sections.

The management of parklands and forested areas is constrained by the fact that, before the recent revisions, Sahelian forest codes often failed to define the rights of individuals and communities to forest resources in the non-forest domain. The Malian forest code, for example, did not specify clearly whether (commercial or non-commercial) use and transportation permits were required for trees outside the state forest domain; nor did it specify whether harvesting products from protected species for domestic purposes needed authorization (and at what cost), or whether restrictions on the cutting, pruning and use of protected species applied to the non-forest domain. The absence of provisions, such as the criteria for granting or refusing free permits, left many decisions to the discretion of the agents whose tendency was to restrict rather than increase access. The extent to which the

status of lands and trees in agroforestry parklands has been made clearer in recent forest legislation varies by country.

Farmland technically falls outside the forest domain, yet the fact that rural landholdings, being mostly unregistered, fall under the state's claim aggravates these ambiguities. While codes may have intended to apply different rules on farmland from those in the forest, foresters have tended to extend regulations for the protected forests to all unregistered land including forest resources on cultivated land.

The extent to which the status of lands and trees in agroforestry parklands has been made clearer in recent forest legislation varies by country. Burkina Faso's new code stipulates that 'areas covered with tree or shrub communities resulting from agricultural activities' are excluded in the definition of forest to which the forest code applies. This implies that the Burkinabe state claims no control over forest resources in agroforestry parklands. Furthermore, the provision stating that all forest land, except private and state classified forests, constitutes the forest domain of local collectives, excludes direct state control of agroforestry parkland zones.

In contrast, forests are rather loosely defined in Senegal, Mali and Niger as lands whose exclusive or main products include any timber and non-timber forest/tree products. More specifically, the 1995 Senegalese law includes 'cleared lands previously covered with trees where tree regeneration or planting will be allowed', and 'cultivated lands assigned by owners to forestry activities' in its definition of forest. This would apparently mean that parklands as tree communities in fields and fallows are subject to forest regulations. Similarly, lands with a forestry potential whether wooded or not are considered part of the national forest domain in Mali.

In practice, difficulties have arisen in the implementation of the legislative and regulatory measures affecting forest resources in general and forest genetic resources in particular. In the past, the application of laws, regulations and management plans suffered from several limiting factors, including:

- ▶ lack of an appropriate legal framework for national and local conditions;
- ▶ the exclusion of customary law in the legal provisions;
- ▶ inadequate integration of rural people's grazing and forestry activities;
- ▶ complex and unsatisfactory land ownership structure;
- ▶ lack of training among officers and rural people.

New political options in a number of countries have stimulated the reformulation of their legislation regarding forest resource management. This process of reformulation applies to forest laws, environmental codes, and laws and regulations relating to land regimes. In the new legislative and regulatory provisions on forests and nature protection, the technical

focus tends to be at ecosystem level. The level concerning forest genetic resources is generally not given special attention, nor even mentioned.

Challenges and opportunities for environmental protection in forestry: exploitation vs protection

Many Sahelian countries have insufficient forest cover because of illegal pruning and harvesting of wood and vegetation, overgrazing, and non-adaptation of farming systems. There is therefore a scarcity of wood for service, fuelwood and forage. In arid regions, such as the Sahel, any development programme should include integrated forestry, agriculture and livestock production in order to optimize land use. Meeting fuelwood demand as well as other non wood forest products constitutes the challenge faced by many Sahelian countries since many of people in the region use fuelwood as energy.

The rural fuelwood markets have had direct and positive impacts on poverty levels within the communities affected by rural fuelwood markets. This has allowed direct cash injection in the rural economy as a result of the creation of the local management structure around the rural firewood markets. According to Kerkhof (2007), the rural fuelwood markets developed in West Africa since 1992 are important steps toward the era of central control by the Forest Service (Foley et al., 1997). The markets have allowed village institutions to take charge of forest management and increase local incomes. The model developed in Niger has been adopted in Mali since 1996 and more recently other countries have started using it. But research has demonstrated that if the market model does not evolve rapidly and adjust itself to the era of decentralization, it will not achieve the intended objectives (Kerkhof et al., 2001).

The basic objective of the rural fuelwood market is constrained by the fact that fuelwood production for urban markets competes with other forest uses and values. The organizational blueprint of the fuelwood markets is such that fuelwood cutters have a dominant voice in the local institutions while those who depend on the forest for game, food or fodder tend to be poorly represented. Yet economic values, other than commercial fuelwood, are more important in many Sahelian forests. Another constraint is that the Forest Service has monopolized the key management tools, including the annual fuelwood harvest quota. These tools are poorly adapted to local conditions and are hardly understood by the local users who are the ultimate forest managers. Continuing domination by forest agents has also left plenty of scope for abuse of power in Niger once the projects are terminated.

These firewood markets have environmental impacts on forest management, especially in the composition of the species. This is due partly to the knowledge of the woodcutters of the species to be cut. In all the Sahelian countries, it is noticeable that commercial networks for

the collection, transportation and distribution of wood are in operation. In this regard the key actions to be taken for sustainable transboundary natural resources management include:

- 1) developing programs and projects for capacity building of rural communities;
- 2) improving a coherent and adapted institutional framework for shared sustainable resources management at sub-regional level;
- 3) strengthening and harmonizing rules and legislation related to management of access routes for animals;
- 4) ensuring riverin communities' involvement in using parks and reserves;
- 5) improving knowledge on potential of and trends in shared forest resources.

With regards to fuelwood, various strategies were developed in the Sahelian countries. These strategies determine the way this sector could be managed at national and sub-regional levels. In implementing these strategies, revenues and taxes collected were given due consideration in order to equitably share benefits among stakeholders, such as local communities, local government and central government. However, the degree of sharing varies among countries.

The fiscal systems developed in the Sahel for managing forests resources are geared to involve the stakeholders as well as giving them responsibility on conducting the implementation of the strategy on fuelwood (Box 1).

The continually growing rural population has arguably exacerbated forest degradation. Throughout much of the Sahel, many rural people have been harvesting trees and shrubs and their products without managing natural regeneration of most species, and with little (if any) planting to replace the dead and dying plants. Tree planting programmes have largely been limited to establishing village woodlots using exotic species. Small groves of indigenous or exotic fruit trees on farms using genetically improved material exist. Food banks used both native and exotic species and the success of projects to manage natural regeneration has been mixed (ICRAF, 2005).

Box 1. Comparison of tax collection and revenue sharing between Niger and Mali

Mali	Niger
Local management structure (LMS) pays taxes before selling wood	LMS pays taxes after sale of wood. These taxes destined for community level NRM activities are retained and managed by LMS
Those taxes destined for community level NRM activities are not retained by LMS	Those taxes destined for use by local government are retained and managed by local government body
Those taxes destined for use by local government are not retained by local government body	
The proportion of taxes destined for use by local government body and the LMS is relatively low	The proportion of taxes destined for use by local government body and the LMS is relatively high
The forest agent is responsible for collecting taxes and checking that they are collected	The forest agent is responsible for receiving and passing on taxes. This is to change with new legislation where the forest agent will only check that taxes are collected

Adopted and modified from Kerkhof et al. (2002).

CHAPTER 3: FLEGT in the Sahel:

Background and Justification

FOREST POLICY AND LEGAL FRAMEWORK

Problems arise in the forestry sector when laws (both within the forestry sector and between related sectors) are incoherent, unrealistic and unenforceable, and fail to address important issues like forest land tenure and use rights. Excessive regulations can increase the transaction costs of legal operations, making them prohibitively high and therefore impractical for many forest users to adhere to the law. This is particularly the case for community-based and other small and medium-sized enterprises, which are often poorly equipped to comply with convoluted administrative procedures and may therefore be forced to operate outside the law.

Internal contradictions in national legal frameworks are common. These can lead, for example, to a situation in which the forest authority or a customary forest owner is powerless to prevent outsiders from entering forest lands and extracting timber, minerals and other products because their claims are based on laws external to the forest sector. In certain cases, contradictory laws even outlaw the traditional livelihood strategies of local stakeholders.

A lack of political will to address these issues in a holistic manner is often a significant reason for such inconsistencies. Policy and legal reform can be further hindered by institutional failure and a lack of agreement among policymakers (especially between sectors) on the reforms needed and how they should be implemented. Thus, there is often no single institution that is capable of making the necessary and adequate policy reforms to contain such situations.

Insufficient enforcement capacity

Poor forest law enforcement capacity is often due to institutional weaknesses coupled with a lack of transparency and accountability in the implementation of the forest policy and legal framework that guide forestry activities. Powerful vested interests that are directly or indirectly involved in illegal forest operations and a lack of alternative economic opportunities for local people can result in passive acceptance of forest illegality. Deficiencies in coordination within and between forest-law-enforcement and judicial bodies decreases the risk that wrongdoers will be caught and prosecuted. The enforcement of regulations on industrial capacity vis-a-vis supply is often weak, leading to a disproportionate demand for logs that often drives illegal forest harvesting, logging in

national game parks and other protected areas, and the over-harvesting of production forests.

Insufficient information

Often there is insufficient information about the condition of the forest resource and its change over time which makes it difficult to monitor what is happening in forests and along the supply chain. For proper enforcement, information is needed on production activities, silvicultural operations, the movement of timber and non-timber forest products (NTFPs) within a country, the volume of cross-border and in-country trade; yet statistical systems and market information are often inadequate. The dissemination of data is often limited and existing information is not used effectively by stakeholders. Due to a lack of political will to address these issues, the institutions that are mandated to undertake policy implementation and forest law enforcement are continuously faced with insufficient budgets to effectively discharge their mandates. As a result, often advanced technologies for monitoring and control are not employed and key stakeholders are excluded from monitoring activities. Knowledge gaps, insufficient training on forest law among others are additional stumbling blocks; even where some technological tools are available, they are often used and understood by only a few people.

Further, stakeholder constituencies are weakly organized and thus unable to effectively monitor forestry activities like timber harvesting and trade.

Illegality in forestry activities

Corruption in government institutions, the private sector and among local decision-makers is linked to a lack of transparency in policy implementation, marginalization of rural people, and lack of public scrutiny. Of particular concern is corruption related to the allocation of forest-use rights, including timber licences and forest concessions. In addition, poorly or irregularly paid law enforcement staff might be tempted to 'top-up' their salaries through illegal means. Excessive discretionary powers and lack of mechanisms for resolving disputes and conflicts can also lead to corruption.

Market distortions for wood products

Market distortions for wood products can occur in domestic and export markets where there are ready outlets for low-priced illegally harvested products. In some regions, the uncontrolled transboundary trafficking of timbers and NTFPs exacerbates this problem. International markets, and to a greater extent domestic ones, often provide inadequate incentives for producers to demonstrate the legality and sustainability of their operations; essentially making legal producers struggle to compete with illegal operators, and at times

to the detriment of the former. Also, the constantly changing requirements in international markets related to legality and sustainability make it difficult for tropical timber producers to take systematic corrective action, especially where this requires long-term investment and where the benefits of doing so are uncertain.

SHARED FOREST ECOSYSTEMS

One outstanding shared forest ecosystem in the Sahel is the W-Arly-Pendjari (WAP) park complex that includes park W, a national park that is shared by Benin, Niger, and Burkina Faso; the Pendjari national park in Benin; the Arly national park in Burkina Faso; and the surrounding game reserves. The complex covers over 5 million ha and its climate ranges from Sahelian (500 mm annual rainfall) in its northern section to Sudano-Guinean (1.200 mm annual rainfall) in its southern sections. With several semi-permanent to permanent ponds and many rivers (including the Niger, the Mékrou, the Tapoa, the Pendjari, the Kourtiagou, the Goroubi, the Bali-bali and the Arly), the complex is also a network of wetlands. These characteristics make the complex exceptionally rich in landscapes and biological diversity. Plants and animals from Sahelian, Sudanese and Guinean areas are found in the WAP area. More than 544 plant species, 70 mammal species, 300 bird species, 150 reptiles and amphibians, and more than 100 fish species have been recorded. Recent findings from Program of Ecosystem Management in Sahel Africa (ECOPAS), a European Union funded sub-regional conservation project, have even revealed the existence of previously unknown micro-fauna in the area.

From all available information, it appears that the complex represents the largest transborder savannah/dry forest ecosystem in West Africa. Recent studies have shown that it represents a unique chance for the sub-region to conserve the most complete spectrum of great mammals' characterization of this ecologic area.

Owing to the importance of the complex, several national and regional initiatives are under way to:

- 1) improve knowledge of the ecosystems;
- 2) implement a sub-regional coordination mechanism for natural resource management and use;
- 3) manage the complex in a sustainable manner and improve the utilisation of its resources with the involvement of relevant institutions and communities.

Improved management of the complex includes such measures as a coordinated anti-poaching and anti cattle surveillance, the management of pastures through the use of early fires, the development of permanent water reservoirs and of salt licks. Although most of these initiatives are relatively new, some success is already being noted with regard to biodiversity conservation. However, the complex still faces a number of threats, including

the continuous expansion of crop land and illegal grazing from migratory cattle, mostly during the dry season.

Numerous migrants in search of fertile land continue to arrive and settle in the vicinity of the park, further reinforcing population growth in the area. Insufficient crop yields and population growth cause cultivated areas to increase each year, to the detriment of access of livestock to natural areas. The cotton production companies of the three countries are also actively promoting an increase in areas devoted to this crop around the park area. While food crops are low input undertakings, cotton production involves the use of pesticides and chemical fertilisers with possible consequences on the micro fauna of the park. At the same time, much of the territories bordering the parks have been turned into privately managed game reserves. The result is strong and increasing pressure on remaining communal land and resources.

Many of these areas are used as pasture land, but the high density of animals and the lack of an adapted pasture management system make them contribute little to domestic ruminant nutrition. For these reasons, non-resident cattle herders see no solution but to feed their animals in the parks. While most pastoralists are just trying to reach destinations in Southern Burkina Faso, or Northern Benin and Togo, others have deliberately chosen the park complex area as their dry season feeding ground. Most migratory livestock therefore feed in the park areas for varying lengths of time. Recent data from ECOPAS (2004) show that more than half of the pastoralists use the Benin portion of the park, while the rest are equally distributed between Niger and Burkina Faso. Domestic cattle compete with wild fauna for pastoral resources in the park and may contribute to disease transmission. Herders also keep carnivorous animals away by use of poisonous meat, and are also suspected to either poach or help poachers. In fact, many herders are armed and will shoot at foresters if they encounter surveillance teams.

Proposed solutions to the recurrent conflicts are:

- ▶ improvement of park surveillance;
- ▶ controlled access to park resources under specific conditions;
- ▶ improved dialogue among the countries visited by migratory herders to try and agree on how to handle the issue;
- ▶ rehabilitation of pastoral resources (wells, enriching natural pastures with perennial grasses and palatable shrubs and trees) both in the regions of origin of the livestock and around the protected areas;
- ▶ participatory management systems for the improved pastures;
- ▶ facilitate legal reforms promoting more equity between livestock and crop production as means to access land ownership;
- ▶ find ways to stop crop land expansion (intensification);
- ▶ negotiate, materialize and protect pass ways, rest areas and watering points;

- ▶ facilitate the negotiation of access periods and rights to defined pastoral resources among landowners and pastoralists in the dry season destination areas located outside the protected areas and into Southern Burkina Faso, Northern Benin and Togo;
- ▶ take into account sedentary as well as mobile peoples' domestic cattle needs during park development and management.

A recent meeting, that brought together relevant Ministers from Niger, Burkina Faso and Benin, adopted an agreement allowing the implementation of many of these solutions. Decisions included the definition of transhumance routes, rest areas, welcome areas, authorized cattle entry points at borders and areas where pastoral management is to be undertaken.

TRADE IN TIMBER AND OTHER FOREST PRODUCTS

In the Sahel, most of the forests are being degraded because of uncontrolled exploitation of forest products. In many cases, these products are harvested, transported, processed and traded in violation of national laws. Illegal logging and associated trade have far reaching environmental, social and economic consequences, including the loss of biodiversity and habitats, political instability, increased income disparities, and market distortions.

Although the extent of illegal forest activities is notoriously difficult to quantify, their economic cost is likely to be large. The World Bank estimates, for example, that illegal logging alone causes annual losses in global market value of more than US\$10 billion and in government revenue of as much as US\$5 billion.

The magnitude of the problem has prompted governments, with the help of international and nongovernmental organizations as well as the private sector, to step up their analysis of the socioeconomic causes and consequences of insufficient forest law compliance. Studies have shown that issues to be resolved include:

- 1) uncertainty surrounding land use and land-use change, as well as forest tenure and use rights;
- 2) flawed forest policy and legal frameworks;
- 3) weak forest law enforcement;
- 4) insufficient information on forest resources, coupled with increasing demand for forest products; and
- 5) corruption and a lack of transparency.

Recently, a new dimension to forest law compliance has received particular attention. It is based on an increasing recognition of the role of forests in both mitigating and adapting to climate change.

Deforestation and forest degradation in the tropics accounts for about 20% of global emissions of carbon dioxide. This makes forests the second most important contributor to global warming after fossil fuels and the largest source of greenhouse gas emissions in most tropical countries. On the other hand, well-managed forests, and a reduction in deforestation, can make a substantial contribution to climate-change mitigation by reducing forest-related greenhouse gas emissions and by sequestering carbon in growing forests.

Given the importance of forests in climate-change mitigation, proposals have been made within the United Nations Framework Convention on Climate Change (UNFCCC) and its Bali Action Plan to consider measures to encourage reduced emissions from deforestation and forest degradation (REDD) in the scope of a post-2012 climate-change regime. Such measures would also include considerable compensation to encourage REDD. For this, considerable investments and financial flows could flow to the forest sectors of countries on the assumption that such flows would increase the economic incentives for protecting forests and thereby help to reverse the main drivers of deforestation and forest degradation.

In many tropical countries, a historical driver of deforestation has been non-compliance with forest related laws and the poor governance of the forest resource; the substantial amount of illegal activities in the sector is a symptom of this failing. In the majority of countries with considerable potential for REDD (that is, countries with large forest areas and high levels of deforestation and degradation), illegal activities – both the conversion of forests for agricultural purposes, and forest degradation, particularly that which is caused by illegal logging – have been among the most significant drivers of deforestation.

Sahelian countries are more involved in fuel wood and NWFPs, than in production and trade in timber. Fuel wood exploitation appears to be an activity that improves livelihood and provides employment for rural communities. In Burkina Faso for instance fuel wood exploiters are organized under a forest management cooperative. The annual income generated by each fuel wood exploiter is estimated at US\$215 while the farmer's normal income is US\$130. This income generated from fuel wood exploitation is higher than the poverty level figure in Burkina Faso of US\$115 per year (MEF, 2000). Ouédraogo (2002) reported that in threatened ecosystems, local natural resources management is a participatory and accountable operation which enhances the fuel wood producer self-promotion capacity. The increasing income of fuel wood producers associated with the increase of local expertise will facilitate farming system intensification and create a self-interest in natural resources management (Ouédraogo, 2002; Clarisse et al., 2004; Moumouni, 2004).

In Sahelian countries medicinal plants are used for medicine and at the same time, generate revenues to the informal sector. These medicinal plants are used for various treatments of common ailments especially for low income people (Figure 2).

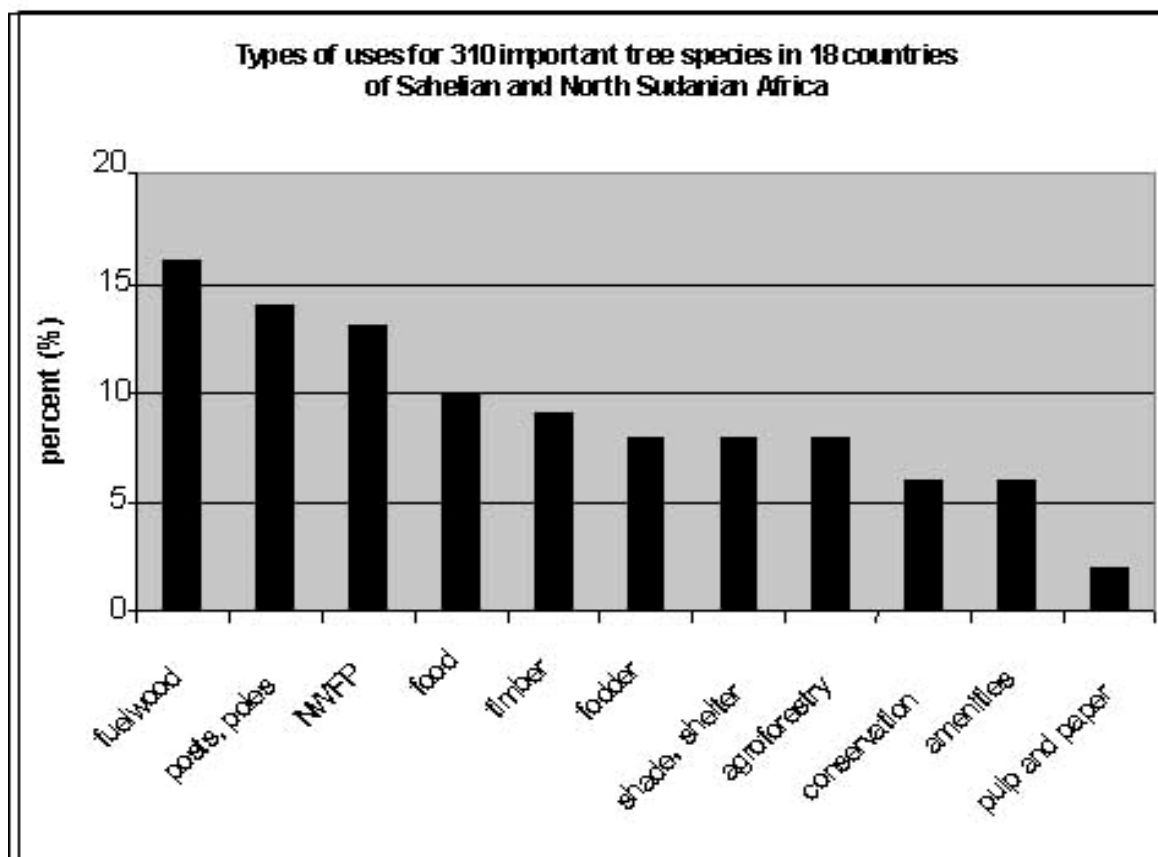


Figure 2: Distribution of types of use for dry zone tree species in some African countries.

Source: FAO (2002).

THE AFLEG PROCESS

In 2003, the representatives of African countries, participating in the AFLEG Ministerial Conference in Yaoundé emphasized the importance of existing legal frameworks and compatibility of laws with neighbouring states, taking into consideration traditional and customary forest laws to work together at regional and sub-regional levels where possible through existing structures and institutions (AFLEGT, 2003). The governments were convinced of the urgent need to develop and build the capacity of the forest administration and civil society institutions to address forest law enforcement and governance in effective partnerships. This commitment has led to changes in forest policies in different countries in the sub-region.

While each country will need its own strategies to address illegal forest activities, most will include the following elements:

- 1) ensuring that forest-related laws and policies are rational, equitable, transparent and streamlined;
- 2) improving forest monitoring and information-gathering;
- 3) strengthening national institutional capacities to enforce forest laws; and
- 4) formulating policies in the forest and other sectors that take into account the economic and social dynamics that encourage illegal activities.

Four steps are critical for a successful strategic approach and these are:

- 1) ensuring broad and inclusive stakeholder participation;
- 2) addressing the underlying causes of illegality;
- 3) prioritizing remedial actions; and
- 4) assessing the economic feasibility and social acceptability of proposed reforms.

CHAPTER 4: FLEGT in the Sahel: Legal and Policy Issues

CAUSES OF ILLEGAL FORESTRY RELATED ACTIVITIES

Illegal forest activities include all illegal acts related to forest ecosystems, forest industries, and timber and non-timber forest products. They include acts related to the establishment of rights to the land and corrupt activities used to acquire forest concessions. The World Bank estimates that loss of revenue caused by illegal forest activities throughout the world is worth US\$5 billion annually. Illegal forest activities occur in tropical, temperate and boreal forests. Major causes of illegal forest activity include corruption, unclear legislation, legislation discriminating against livelihood uses of the forest, and weak law enforcement. There is simply more profit to be made from illegal forest activity in many cases. This is often exacerbated by ineffective law enforcement. In such circumstances, a cycle of corruption is fostered that allows powerful and rich individuals to further their own power and position by continuing their illegal activities. Local people also engage in illegal activities; this may occur when legislation discriminates against traditional uses of forests, such as the collection of non-timber forest products, or leaves them with no choice but to derive an income by illegally harvesting timber. Some of the causes identified in most Sahelian countries are given in Table 2.

Laws and arrangements for forest policy regulation in several Sahelian countries are outdated. They have been perceived as repressive and they limit access to these resources for the legitimate needs of rural communities. Koffi (2009) noted the problems associated with definition of the forestry domain for rural community which include lack of clarity on rights and access to trees in parkland, in addition to the misunderstanding that arose on protective species and non-access legislative provisions for rural communities to these resources. These rural communities are often illiterate and contribute to illegal forest activities and forest degradation.

Table 2: Underlying causes of illegal forestry related activities in Sahelian countries.

Underlying cause	Problem description
Inadequate legislation	In Sahelian countries the legislation is not strong enough to protect the forests and local people against unlawful exploitation of wood. In some areas, legislation often allows too extensive cuttings, and the logging restrictions are often insufficient to protect endangered species and high conservation value forests.
Poor knowledge of legislation	Often the wood cutters are either not aware of the law that restricts the logging, or they simply disregard the laws because the inventories are not properly and officially made.
Poor monitoring	There are rarely enough resources or awareness for sufficient monitoring of the exploitation of wood and non wood forest products. Usually the illegal operation is observed too late, after the damage has already been done and the only way to influence it is trying to prevent it happening again, by making the case public.
Weak law enforcement	Usually fines against forest offences are not high enough in comparison to the profit of illegal operation, which makes it worth a risk.
Poverty	It is often a question of people's basic survival to take wood wherever they can for their basic needs. Often, permits for forest operations are too expensive to provide incentives for them to comply.

Current forest management practices are undoubtedly affected by local and national policies. Forest laws and ambiguity raised by land tenure and tree ownership have not favoured a culture to plant or conserve native trees and shrubs in rural communities. This situation has inadvertently fostered some of the conflicts mentioned above. In fact, policies in some countries actually discourage people from planting trees and shrubs or managing natural regeneration of many valuable parkland species. For example, many valuable parkland trees are classified as “protected species” in forestry codes, and people are not allowed to cut them. Clearly there is little incentive for farmers to plant trees if they are not allowed to thin young trees as a silviculture treatment or cut trees for firewood when they are old and unproductive.

Illegal forest activities in many Sahelian countries have reached alarming proportions and have been the subject of international concern and discussions. Illegal forest exploitation and corruption pose serious challenges to forestry development. The illegal practices

deplete resources and rob the countries of funds that could be used for sustainable forest management. Moreover, illegal practices have even more serious and long-term consequences in scaring potential investors in the sector. Their elimination could prove intractable as they are embedded in the overall official corruption.

Bachard (2001) noted that illegal practices increased the number of fuelwood sales sites and this contributed to a lowering of price of fuelwood. The high profit gained in illegal forest resources exploitation was therefore the main reason for the dysfunction of the legal rural wood market. Added to this was the fact that forest officers who normally take refund of 25% out of the total amount of each transaction (legal or not) as taxes could not implement this requirement because they were constrained by the law enforcement people from the community-based forest resources management. Also the law enforcement agents were constrained by lack of equipment like transport facilities for efficient implementation of their mandate. Added to this is the fact that the law enforcement agents receive a monthly salary of about 45 Euro while a woodcutter can make about 160 Euro per month, and could therefore easily bribe him. Illegal wood exploitation is also a result of the deforestation done during farm establishment.

According to Belem et al. (2007), the importance of non-wood forest products (NWFPs) for local people appear to have received little weight in the recent past. Now this demand has increased substantially to the extent that access to national parks for NWFPs harvesting is now subject to strict restrictions. Forest administrations are facing great difficulties to prevent the use of the protected zones resources, especially when the bordering villagers are highly dependent on these resources that can only be found in the protected areas.

Nowadays, the necessity to balance natural resource conservation with social needs is increasingly recognized (Lanly, 1992; Ribot, 1999; Kjaer and Nathan, 2000). In this respect, nearly all programs on natural forests and reserves management in Burkina Faso include NWFPs promotion and commercialization for the benefit of local people. Non-wood forest products commercialization is a component of the current Rural Development Strategy, the Forest Resources Management Framework and the current Strategic Poverty Reduction Framework.

EXPERIENCES IN LAW ENFORCEMENT, GOVERNANCE AND TRADE

ICRAF (2009) reported that in Sahelian countries native tree species are central in the livelihoods of rural populations. Reducing the pressure on native tree species is a challenge given limited livelihood alternatives and high levels of poverty. It is difficult to convince the rural poor not to cut trees for fuel wood, fodder, charcoal and timber because they have no alternative livelihood sources. Sahelian governments' policy and legislative responses

although intended at controlling access, use and management of native tree species have caused more harm than balancing socio-cultural, economic and ecological objectives, and have not yet fully recognized communities ownership rights of forest resources and land. The lack of clear land and tree tenure and their stringent enforcement has affected regeneration and propagation of native tree species. Forestry laws have, in many cases, not helped the situation. Government priority of statutory tenure over customary tenure has failed to promote alternative tenure enterprise models for communities.

Continued pressure on Sahelian parklands has not only degraded ecosystems but also their associated goods and services. Regulations introduced to govern new production systems were stringent, punitive, disempowering and sources of disincentives to rural communities. Native trees access, use and management were restricted. Consequently local communities' perceptions and attitudes on native tree species were negatively affected. When independence came in the 1960s, post independence governments perfected the colonial laws on governance of forests and other natural resources. Subsequently Sahelian governments have pursued different provisions under the forestry codes. Niger and Senegal have embraced and integrated by-laws in their forestry laws. Mali is evaluating how to ironing disconnects between the forestry code and communities' access, use and management of indigenous tree species. Some other Sahelian countries are in the middle of these two extremes.

Formulation and enactment of decentralization policies and subsequent NRM initiatives at collectivities varies across the different countries. Lessons resulting from different initiatives in the different countries are rarely shared. The challenge therefore is how to promote sharing of lessons and experiences in order to promote collective learning and action on natural resource management across Sahelian countries.

Some Sahelian governments have continued to ignore the potential role of local communities in natural resource management. Paternalistic approaches still abound and are undoubtedly reinforced by statutory policies, legislation and regime structures. The effects of non-involvement of the local communities and their practices in natural resource management have developed over time, as populations increased and government resources for NRM, including forestry and agroforestry, dwindled. Contract farming in the forest has been abolished because of enforcement problems. Forestry codes continue to advance segregative rather than integrative approaches for natural resource management.

Legislative provisions are prohibitive on people's livelihood strategies and are poorly enforced. They tend to favour particular persons or groups (e.g. private sector is favoured in timber exploitation) and are seen as exogenous by affected communities and often corrupt.

In Mali community land and tree tenure rights are marginally recognized and forest communities continue to be isolated in decision-making regarding land and forest tenure.

Devolved and decentralized structures have not enhanced participatory decision-making in the interest of perpetuating regime interests. This could be attributed to lack of knowledge on decentralization policies and laws. The Malian forestry law separates the management of forests from that of agricultural land- 'the parklands'. Land and tree tenure are vested in the state. In contrast, local communities contest this tenure arrangement arguing that by customary laws the land and on-farm trees belong to individual community members and not to the state. "Fuzziness" and contradictions in the forest law regarding community ownership rights of trees in agricultural land works against both private sector and individual farmers' investments in agroforestry. Regime structures at different levels conflict and duplicate each other and lack clarity on the links between decentralization processes and the transfer of power. In Mali there has been transfer of control (water, education, and health) but not the requisite finances. Poor understanding of actors, their interests and power relationships worsen the existing situation and a coalition of partners will potentially provide platforms for sharing lessons and opportunities.

According to the Malian forest legislation, forest management and agroforestry park management are different (Djire, 2006). Use of land right and right access to tree are under government control. Local communities disagreed with this arrangement and argue that land use and trees in agroforestry parks should belong to rural community. Obstacles contained in forest laws prevent farmers to implement agroforestry activities. It is therefore urgent to solve forest policy inadequacies to achieve a balance between socio economic and ecological objectives in Sahelian countries.

In order to regulate wood processing and trade in urban cities, the Government of Niger setup ordinance n°92-037 of 21st August 1992 which defines the legal framework for forest resources management, wood processing, commercialization and transportation of fuelwood; it includes creation of rural wood market and determines the mechanism for sharing revenue from fuelwood taxes. In this regard, the role of control under the "Strategy of Domestic Energy" is:

- 1) control of wood transporters;
- 2) respect of norm and quotas of wood cutting by rural wood market;
- 3) auditing, recovering and taxes deposit by local management structure; and
- 4) dissemination of new legislation.

By transferring part of control of forest resources management to local community, the Strategy of Domestic Energy introduced a new and sound institutional change. Such transfer constitutes a commitment to the process of political decentralization. In this context, role and responsibility of environment extension service is supposed to be diminishing. Since 1991, many initiatives were taken and a number of amendments weremade in order to facilitate more active participation and responsibility of community in the process of economic development.

The illegal extraction of forest resources, including timber, fuelwood, medicinal plants and wildlife, and the associated trade in these products is having a major ecological impact in Sahelian countries, and West Africa in general. As a consequence, West African forests are becoming more vulnerable to climate change and the degradation of soil and water resources; their continued degradation is contributing to an increase in rural poverty, reducing environmental quality and resulting in substantial losses in state revenues due to forgone taxes and fees.

Transboundary illegal timber logging and trafficking across borders is a complex phenomenon in the sub-region and its magnitude is difficult to assess. In some West African countries, post-conflict situations exacerbate this problem. Most countries have legislation to regulate the harvesting and trade of timber and NTFPs but the capacity for enforcement is weak and corruption is also a major obstacle to sustainable forest management.

Illegal forest resource extraction and related trade at the national and international levels are a consequence of cross-sectorial policy weaknesses; a lack of commitment among stakeholders to respect and adhere to and enforce forest policies and regulations; a deficient regulatory and legal framework; and limited institutional capacity for law enforcement, which can lead to corruption. Excessive restrictions on legal access to forest resources (including unclear and insecure tenure, and overly bureaucratic procedures) promote the illegal extraction of forest resources and the encroachment of forest land. Illegal logging and trade, both at a large scale, such as commercial forest concessions, and at a small scale, such as pit-sawing, distort timber markets, negatively affecting the profitability and competitiveness of the industry. The extent to which policies and laws are implemented, the level of understanding of the issues surrounding forest law compliance, the use of new technology, and the participation of local communities in monitoring forest law compliance varies among countries in the Sahel; the sharing of knowledge and experiences, therefore, is of paramount importance.

According to FAO (2004), a number of steps can be taken in order to streamline and rationalize forest policies and laws, including to:

- ▶ assess underlying social, economic, cultural and political causes of non-compliance and modify the policy and legal framework governing the forest sector accordingly;
- ▶ analyze the impact of the forest policy and legal framework on the livelihoods of the poor;
- ▶ increase clarity, transparency and consistency of forest and forest-related legislation, by drafting legislation that is simple, unambiguous, based on tested approaches and containing transparency obligations and minimal discretionary powers;
- ▶ ensure a participatory approach to forest law design in order to promote transparency, reduce the potential for corruption, enable people to scrutinize the effectiveness of

subsequent implementation, help ensure greater equity and minimize the influence of privileged groups;

- ▶ encourage consistency of the regulatory framework to ensure that laws do not contradict each other (within the forest legal framework and with laws in other sectors);
- ▶ minimize bureaucracy, streamline legal procedures and simplify regulations, for instance, through decentralization, avoiding regulatory proliferation and simplifying forest regulations on management planning;
- ▶ secure forest land ownership rights in order to ensure accountability and control of forestry operations at the local level;
- ▶ ensure that in-country industrial capacity does not exceed sustainable supplies, for instance, by conducting feasibility studies before new mills are built, closing down mills and facilitating timber imports;
- ▶ establish international or bilateral trade agreements with trading partners;
- ▶ ensure cross-sectorial linkages and collaboration to ensure a coherent and overarching approach to forest issues (through for instance national forest programmes);
- ▶ increase the competitiveness of legal operations by decreasing the profitability of illegal operations and increasing the profitability of legal operations;
- ▶ promote the independence of the judiciary and transparency of judicial processes.

In Niger, institutions and laws for natural resource management are progressive in ensuring, at least on paper, sound management and broadly equitable outcomes. The absence of major timber reserves and the government's political commitment to devolved natural resource management through decentralization are critical in this respect. The challenge is translating policy provisions into actions that respect the letter and spirit of the laws. The maladjusted forestry code was heavily criticized and between 1992 and 1995 forestry law was reviewed. Recent disposition empowered rural community through law no 96-050 which defines the principle of constitution and management of territorial collectivities (MDRI, 1999). Under article 11, the law stipules that territorial collectivities are responsible for management, conservation and maintenance of ecological balance; also under article 14 territorial collectivities could delegate their power to village authority as well as transfer community forest management to a rural management structure. The adoption and implementation of new fiscal law on wood market facilitate effective local community empowerment through collecting taxes and insure distribution of taxes between national treasure, local collectivities and rural communities.

POLICY AND REGULATORY FOREST INFORMATION

The many conflicts encountered in forest conservation and utilization in most sub-Saharan African countries stem from the weak or non-existent linkages between the adopted forest policies and legislations and traditional arrangements for natural resource management (Adeyoju, 1981). For example, forest legislation in most Anglophone countries were based

on English law that was founded on the general contexts of nuisance, trespass and public property (Adeyoku, 1981). The traditional strategy of policing against trespass in government forests has alienated local people from what they perceive to be their resources. The strategy has locked out populations from their livelihood safety nets and precipitated serious political tensions in many countries. In contrast, the strategies adopted for management of dry forests (parklands) in the West African Sahelian countries - like Mali, Burkina Faso, Chad - have generally been in consonance with traditional arrangements for natural resources management. Traditional tree tenure and control of use forms the basis of resource management (Boffa, 2000). In some villages in Mali, traditional arrangement for harvesting and management of forest resources were held by a social group whose role consisted of protecting, conserving and controlling illegal harvesting of forest products.

Local conventions are very old phenomena whose history can be divided into three periods: pre-colonial, colonial and post-colonial. In the pre-colonial period local conventions existed but without this appellation. In Sahelian countries, in general and particularly in Mali, many old localities were settled, according to oral history (legends), through conventions between the localities' promoter and genies or animals that live in these places. Then, those localities were extended due to migrant's settlements who concluded agreements with the earlier migrants. In general they determine customary land tenure rules.

At the beginning of the colonial period, the colonial power did not recognize custom rules and tried to impose its own rules of land and natural resources ownership and management. Against the resistance of local peoples, they were obliged to recognize, in a certain way, custom rights and local conventions which supported them. Thus, the colonial Decree from 23 October 1904 obliged the administration to give compensation to indigenous people, whose "custom lands" will be occupied. The decree of 24 July 1906 reinforced this disposition, recognizing "custom user rights" and the possibility to transform them in property title. Colonial administration inaugurated what will be then called "colonial conventions". Such conventions determined custom property of land, pastoral routes, pastures, fisheries rights. These documents are still used in conflict resolution.

In the post colonial period, conventions of the period of "monolithic regimes", carried the mark of their time: the weak involvement of local populations, the preponderance of the representatives of administration in management structures, the preponderance of paternalistic, technician with coercive approaches. State ownership was established on the land and natural resources and customary rights were formally suppressed. However, in the 1980s the resistance of local actors who ignored state legislation and proposals of participatory approaches elaborated by international organizations brought some changes in this situation. Customary rights on land were recognized in the land code of 1986 and other legislations on natural resources. The new socio-political context, of which democratization and decentralization constitute some major components, has stimulated initiatives concerning elaboration and formalization of local conventions. Experiences

piloted by the state structures in community forestry or pastoralism were initiated with the support of the NGOs or research institutions. By their ambition and their originality, these last mark a new stage in the development of local conventions. It is with them that the notion of local convention was really born with the aim to promote the negotiation of natural resource management rules between communities and the state local technical services. With them came the move from “participatory management” toward “negotiated management”. These experiences spread in a schematic way in two periods: from 1992 to 1999 and from 2000 to the present. Some of them were an extension of village territory management or forestry experiences which begun in the second half of the 1980s while others were new initiatives.

TRANSBOUNDARY PROBLEMS

In Sahelian countries, forests represent collective resources, rather than individual property. Forest resources decrease due to unclear forest delimitation among neighbouring villages. Often foreign wood cutters lopped wood without agreement of village communities. Also most of clearing is due to population increase and lower productivity of the soil. In Mali, law n° 95-004 of 18 January 1995 defines forest estate which comprise wood for service, construction, fire wood, fallow for 10 years and more, protected areas, consecrated wood; but agroforestry parklands were not included and illegal harvesting of forest products are penalized (Mamadou, 2009) and sometimes constitute a source of conflict. Also the artificial borders between countries do not favour the control in exploitation and uses of forest resources. This has in many cases contributed to open conflicts between forest administration on one hand and local communities on the other hand. The lack of concrete policies on transboundary resources has caused misunderstanding between states in the management of forest resources.

POTENTIAL BEST PRACTICES IN ADDRESSING FLEGT PROVISIONS

It is worthy to note that forest resource management in Sahelian countries is based mainly on extensive exploitation of natural resources which are becoming scarce because of recurrent droughts, population increase and rapid extension of agricultural lands. This has contributed to environmental degradation leading to difficult access to natural resources. This competition between various users of these resources and the land that supports them have created complex conflicts. Most of the laws in Sahelian countries have prescriptions on how to settle conflicts by either fine or corresponding punishment. Sometimes, negotiations, fining, amicable settlement or corresponding punishment are ways of conflict settlement in the Sahel. In addition, conservatory measures are usually taken. Local conflict settlement is an interesting experience tested by Mali. To prevent conflicts, territorial

authorities and other concerned actors in natural resources management favour inter-communal dialogue and exchange meetings (GAGRF, 2005). Some provisions in the Sahelian countries give importance to alternative mode of conflict settlement like reaching consensus on the issues.

Issues related to tree access and the related norms of “tree tenure” are particularly important when viewed in the context of poverty reduction. They require careful attention by stakeholders in order to ensure equitable development within and among rural communities and avoid conflicts (perhaps most importantly between sedentary farmers and nomadic pastoralists). Solutions could be envisaged through social innovation which requires an open dialogue (facilitated by mediators in conflict resolution), among stakeholders in rural communities (farmers and pastoralists) and local governmental authorities. Many local initiatives identify appropriate land arrangement practices that facilitate peaceful and sustainable collective natural resources management in the Sahel. These practices are part of efforts made by local groups that contribute actively in conflict resolution. In conflict resolution the strategy for land use should be flexible and take into consideration changes. It should also be equitable regarding right for multiple users; and with the resources managed at local level for sustainable management.

In Niger improved natural forest and tree management practices are attributed to the recognition of customary laws and wise application of the forestry law (Ly et al., 2006). For example the Desert Community Initiative, located in the Aguié Department of Niger, has actively addressed social issues through new organizational approaches to agroforestry development. In this regard farmers have taken a central role in managing project activities and in planning, organizing and evaluating their own actions (Abasse et al., 2009). Field work was piloted in three villages in 2001 and focused on three key activities:

- 1) forming new organizational structures, task groups and associations;
- 2) capacity building of communities, groups and individuals to initiate and lead research and development activities, and to value and promote traditional knowledge, skills and the sharing of ideas, and
- 3) promoting an enabling environment for open dialogue and exchange to facilitate the adoption of new ideas.

Various committees, inclusive of all stakeholders, were formed to deal with specific tasks, such as:

- ▶ village committees plan new activities and supervise the work of four sub-committees;
- ▶ agricultural sub-committees monitor crop experiments and seed production activities;
- ▶ environment sub-committees supervise implementation, monitoring and Farmer Managed Natural Regeneration (FMNR);
- ▶ social sub-committees manage cultural activities; and
- ▶ income generation sub-committees facilitate small enterprise activities.

These new organizational structures have approval from government and traditional authorities. A number of stakeholders are working together for the first time: farmers, herders, men and women, researchers and Agrie Departmental and Government services and International Fund for Agricultural Development (IFAD) project staff. Communities are fully involved in programming, implementing, monitoring and participatory evaluation of their own natural resource management activities. The success of the Agrie village committees has resulted in national extension services staff promoting this concept across Niger.

CHAPTER 5 Way Forward with FLEGT in the Sahel

Inadequate forest policies and poorly harmonized legal frameworks are the main issues to be tackled when addressing forest law compliance in the Sahel. The underlying social, economic, cultural and political causes of non-compliance should be assessed and the policy and legal framework governing the forest sector should be modified accordingly. A particular recommendation in this regard is to strive for consistency in the regulatory framework to ensure that laws are not contradictory. In the sub-region, participatory and inclusive approaches were seen as a necessary element of success. Ensuring participatory approaches should help to promote transparency, improve the effectiveness of subsequent implementation and ensure greater equity among all stakeholders, including local communities. Accurate and up-to-date information is essential in the Sahel in order to prevent, detect, monitor and report illegal activities. In most countries, improved data are needed on deforestation and forest degradation in order to identify priorities for remedial action and to enforce the rule of law. The need for a regional approach, particularly to address illegal trade across borders, is identified in the sub-region. More specific issues that need to be addressed are listed below.

Facilitate a negotiation support system

Create a platform involving users of natural resources, policy makers, foresters, rural development planners and development partners to address problems of natural resources, laws on access, use and management of indigenous tree species.

Operationalize decentralization and transfer initiatives for management of agroforests

Start joint management of agroforestry systems by actively involving rural communities in managing agroforests within their territories.

Recognize and facilitate formulation and use of local bylaws to manage agroforests

Allow users of natural resources to use local bylaws in regulating access and use of natural resources.

Regulate access and use of indigenous tree species by using permits and licenses

Permits and licenses currently used to regulate access, use and management of indigenous tree species in agroforestry parklands should only be used in classified forests. Recognize

local bylaws and use them to regulate natural resource access, use and management in agroforestry parklands.

Provide extension services to natural resource users

Review forestry education curricula in order to integrate the provision of extension services, and shift the focus of training from policing to technical support and partnership.

Promote agroforestry as a business

Indigenous trees on-farm provide various goods and services to natural resource users. Promoting businesses will require building strategic partnerships with the private sector (both external investors and the local small scale enterprises), creating incentive measures (e.g., digging boreholes and wells for water), and enhancing access to credit in order to promote smallholder production and commercialization of a range of products from native tree species.

Review and clarify land and tree tenure laws

Facilitate a process whereby natural resource users gain user rights over indigenous tree species. Since user rights are closely linked to land tenure, governments need to open and maintain a dialogue with natural resources users to identify and implement equitable land ownership policies.

Enhance collaborative work among Sahelian governments, development partners and research institutions

Sharing lessons, experiences and approaches for natural resource management will build synergy and promote cross-country learning.

Link forest law compliance to the wider governance agenda

An over-emphasis on measures to promote law compliance could hamper efforts to improve governance. Law compliance and law enforcement are critical components of an effective system of forest governance. It has become clear, however, that, in many cases, reducing or eliminating the incentives that cause people to harvest timber or NTFPs illegally or unsustainably, and addressing the institutional weaknesses that create such incentives, require new kinds of processes and thinking that might go beyond the forest sector.

Correcting unfair or contradictory legal frameworks

Efforts to address inadequacies in the policy and legal framework can only be successful if they are truly participatory, if they eliminate ambiguities between commercial and traditional resource use, and if they secure customary and indigenous rights to access and use forest resources.

Correcting local disparities

Some stakeholders are pushed into illegality by political and other circumstances. A lack of land tenure, and a lack of access to finance, training and markets, often inhibits local communities from appropriately developing the forests in which they make their living. Some communities are forced to operate outside the law in order to exploit forest resources; this diminishes both the value of the products produced and, because it often involves unsustainable forest practices, and reduces the quality of the resource

Promote participatory approaches

While there are calls for greater public participation in the development of forest laws and policies, how this might be achieved requires careful consideration. Setting up inclusive mechanisms and processes that give voice to local communities and allow poor and marginalized groups to participate is a complex challenge but generally requires effective political decentralization. Participatory approaches should help promote transparency, improve the effectiveness of subsequent implementation, and ensure greater equity.

Promote the even-handed enforcement of laws

The uneven enforcement of existing forest laws is mostly manifested in the harsher treatment of small-scale operators compared to those operating at a larger commercial scale. The even-handed enforcement of laws is a prerequisite for achieving sustainable forest management, and it requires participatory approaches and independent monitoring.

Promote decentralized management and control through local government and community-based mechanisms

Ensuring maximum transparency in resource allocation and gathering the data needed for effective resource assessment and monitoring, are both best done locally. This requires awareness-raising about laws and regulations at the local government and community levels, as well as improved planning, implementation and resource monitoring. Recent shifts towards decentralized management and control have had beneficial effects for forest law compliance in some countries.

Promote regional/transboundary cooperation

In some countries there are signs that illegal forest activities, including illegal forest conversion and illegal logging, are an integral part of the political economy. Laws in such countries can be twisted by the vested interests that dominate politics. To some extent, at least, such problems could be addressed by increased cooperation through regional intergovernmental organizations such as the Inter –states Committee to combat Drought in the Sahel (CILSS) and the Economic Community of West African States (ECOWAS).

Increased bilateral collaboration between neighbouring countries to reduce the transboundary laundering of illegal timber could also play a role.

In conclusion, it can be stated that governments, with the participation of civil society and other stakeholders, should review their forest policies and laws. They should, where necessary, introduce new forest policies and laws, taking into account obligations under international conventions as well as the need to address critical issues such as the management of the domestic wood market. Coordination among law enforcement agencies within and between countries should be improved. The distribution of the benefits of forest use among key stakeholders should be more equitable so as to encourage law compliance and sustainable forest management. Participatory processes are a key to success.

Fighting illegal logging and illegal timber trade requires significant investments by governments, international organizations and the private sector. Equally important is the creation of an enabling environment for the financing of forestry activities. This should extend to exploring alternative sources of funding such as carbon credits and endowment funds, and increasing the value-added of forest products. A crucial element is the establishment of mechanisms to empower local communities in the management of local forest resources and to provide them with the information they need to manage their forests.

In all Sahelian countries, there is a need to increase capacity to collect forest-related data and to strengthen the management of information systems through collaboration between institutions, including NGOs and the private sector. Regional and transboundary (bilateral) collaboration is also essential, including through the creation of a regional policy and implementation platform for forest law compliance and governance, and the development of regional standards and markets for forest products from legal sources.

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