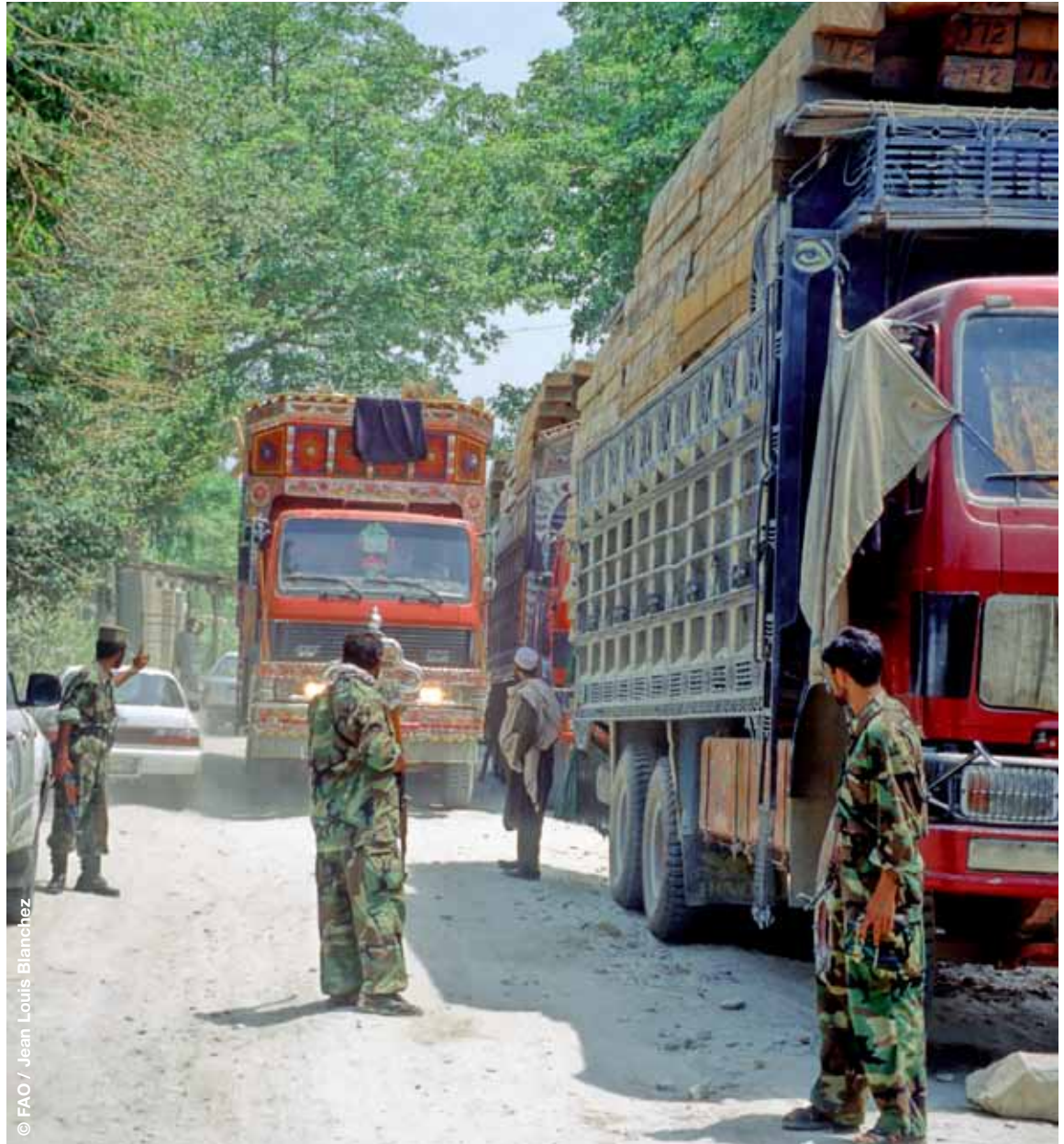


Where there is no title: Security of tenure is neither a sufficient nor a necessary condition for trust and confidence about future benefits. **3**

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Forests: a legal challenge

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This *arborvitae* is also available in French and Spanish on our website at www.iucn.org/forest/av

If you have a comment on something you have read in a recent issue of *arborvitae*, we'd love to hear from you. You can send a message to: jennifer.rietbergen@wanadoo.fr



Too much of a good thing: easing forest protection helps livelihoods and biodiversity

A new report by IUCN's Forest Conservation Programme presents the results of a project on the forests of

Miyun watershed, just north of Beijing. At the start of the project a strict logging quota system had been in place for many years, which banned almost all logging in natural forest. This was having severe consequences not only on local communities' livelihoods but also on the biodiversity and health of the forests. The outcomes of the project, carried out under IUCN's Livelihoods and Landscapes Strategy, have been very encouraging (as mentioned in the article on page 3). Participatory planning has resulted in a formal agreement to recognize different forest management and use regimes, while a set of 'close to nature' silvicultural treatments has resulted in the regeneration of natural forest and in improvements in forest structure, quality and function. A permit for harvesting timber has been secured – the first such quota issued in more than 20 years – and significant progress has been made in reducing local fuelwood demands.

Copies of the report can be requested from Daniel Shaw, daniel.shaw@iucn.org

Editorial

Forest law might seem like rather a dry – and cut-and-dry – issue to examine. In reality though, the design and implementation of forest legislation often provides more than enough drama and multiple layers of complications. It is certainly a field fraught with pitfalls that can allow good intentions – such as regulating forest industries, retaining forest cover or respecting the rights of forest-dependent communities – to turn into bad consequences. Legislators can look forward to seeing their work produce unforeseen loopholes, unintended impacts and a whole range of misinterpretations by different interest groups. For their part, forest communities often bear the brunt of badly designed or poorly implemented laws on forest use. They may well be unaware of their legal rights and obligations, and adhering to their customary laws may put them on the wrong side of their country's constitutional laws. To top it off, corruption and weak governance in bodies responsible for upholding forest law is a worldwide problem that can effectively sabotage the forest legislative system.

But it's not all bad news. In recent years there have been important improvements in how forest laws are applied. Reforms are spreading, albeit slowly, as numerous governments

hand over responsibility for forest management to local authorities and communities and give local people official tenure rights over their forest resources. These are still the exceptions to the norm of state control and ownership of forests, but successful reforms are providing valuable lessons for other countries to follow suit.

This issue of *arborvitae*, produced in conjunction with IUCN's Commission on Environmental Law and the IUCN Environmental Law Centre, looks at how forest law is impacting local forest management around the world and how reforms are progressing in several countries. We also include a set of three articles examining forest law in India from different perspectives. Many of the challenges of forest law enactment and enforcement are well illustrated by India's experience. Several more country case studies are included in an expanded electronic version of *arborvitae*, downloadable at www.iucn.org/forest/av.

Stewart Maginnis, Director of IUCN's Forest Conservation Programme

Sheila Abed, Chair of IUCN's Commission on Environmental Law
Alejandro Iza, Head of IUCN's Environmental Law Centre

news in brief

Just forestry films: A series of short films has been produced by the IIED-led Forest Governance Learning Group (FGLG) to show that social justice needs to be put centre stage in many countries, if sustainable forest use is to be achieved. The films present mini-case studies from Ghana, Malawi, Uganda and Vietnam and highlight some of the FGLG's core strategies: influencing government to promote understanding and debate of the key issues and bringing together the various stakeholders to share their perspectives. For more information, go to: <http://www.iied.org/natural-resources/key-issues/forestry/justice-forests-series-short-films>

Bees and rats needed: Beekeeping and cane rat breeding are needed to help tackle the unsustainable bushmeat trade in Africa, according to a joint CBD-CITES expert group which met in Nairobi in June. The statement issued at the end of the meeting said that replacing bushmeat with locally produced beef would require up to 80 per cent of the Democratic Republic of Congo to become pasture. "Therefore, there is no alternative to making the use of wildlife for food more sustainable." Measures proposed by the experts include the promotion of beekeeping to produce honey for trade and subsistence, the introduction of community wildlife management programs, and farming cane rats for food.
Source: www.reuters.com, 7 June, 2011.

Where there is no title: 'institutional tweaking'

Bob Fisher of the University of Sydney looks at how, in the absence of legal tenure, informal arrangements can help to build confidence about access to forests and foster local support for forest conservation and management.



Discussing aerial photos for land-use planning

It is often assumed that “secure” tenure (usually understood as the existence of legal title) is necessary to support sustainable local forest management for conservation and poverty reduction. This view is based on the assumption that people will invest time and effort in forest management if they can be assured of receiving the benefits.

An alternative argument is that security of tenure is neither a sufficient nor a necessary condition for trust and confidence about future benefits. In practice devolution of formal legal rights to communities is often, perhaps usually, politically impossible in the short to medium term. In cases where the recognition of full legal (formal) rights is not possible, informal institutional arrangements can be made that give people the confidence to invest time and effort. The process can be thought of as “institutional tweaking” and involves participatory processes and negotiations between stakeholders.

Doi Mae Salong, a reserved forest in Northern Thailand under the control of the Royal Thai Armed Forces (RTAF), is an example of effective institutional arrangements providing people with confidence about access to natural resources. Doi Mae Salong is located near the Myanmar border and has been under military control for security

Devolution of formal legal rights to communities is often, perhaps usually, politically impossible in the short to medium term.

reasons for many years. The area has been badly degraded over some decades. The population inside Doi Mae Salong farmed in the area, but without clear legal rights. In 2007 the RTAF commenced a reforestation program to restore forest. However the first planting was carried out on an area used for upland farming and the local people protested. Rather than insisting on reforestation by force, the RTAF invited IUCN, through its Livelihoods and Landscape Strategy, to help with an alternative approach. The result was the development of a multi-stakeholder process that involved participatory land-use planning and negotiations about land-use in different parts of Doi Mae Salong. Farmers agreed to allow sites susceptible to erosion and necessary for watershed management to be protected and reforested in exchange for access to farming land in valleys where erosion was less likely. This enabled better outcomes for both livelihoods and sustainable forest management. Although the local people did not gain formal legal rights, the trust and confidence about continued access to land and forest resources encouraged active participation in forest conservation and management.

In China, the Miyun Watershed is protected as the source of much of Beijing’s water supply. Although there has been a logging ban for thirty years, the plantations established are in poor condition and have little value for watershed conservation. Experimental changes were made involving a shift to sustainable use by local people and participatory management, with substantial improvements to watershed condition and livelihoods. Although it was not possible to remove the logging ban, pilot relaxation was possible.

Although comprehensive tenure reform was out of the question in both of these cases in the medium term, small negotiated changes were possible and these small steps built trust and confidence and had substantial outcomes in sustainable forest management and livelihoods. As ‘policy experiments’ cases such as these may provide evidence to support more substantive tenure reform in the future.

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Enforcement: we know what works, but...

Matthew Markopoulos of IUCN reflects on the gap between knowledge and practice in forest law enforcement.



A show of hands by forest rangers to indicate who has been shot at while on duty

Many countries still follow a narrow, compliance-based approach to enforcement, and, despite some recent gains, continue to struggle with forest crime as a result.

Much has been written about forest law enforcement, both during the FLEG policy push of the past 15 years, and earlier, when enforcing laws properly was no less a concern. We have known for some time that an effective law enforcement strategy will focus not just on the mechanisms of enforcement, but also on the content of the law and how it is made. Yet knowing something is not the same as doing it. Many countries still follow a narrow, compliance-based approach to enforcement, and, despite some recent gains, continue to struggle with forest crime as a result.

In the eyes of many, creating the right conditions for effective law enforcement means strengthening the mechanisms of enforcement – what is known in the jargon as PDS, or prevention, detection and suppression. This is true, but only to a degree. Reducing the scope for illegal acts,

reliably detecting such acts when they happen, and successfully prosecuting or penalising the offenders, are necessary and should be part of any strategy to curtail forest crime. But ultimately the size of the challenge posed by PDS is determined by the content of the law and how it has been drafted. Put simply, poor law makes tough demands on PDS; good law smoothes its way.

Almost ten years ago, the FAO's Development Law Service came up with six principles of good legislative design to improve forest law enforcement.¹ These bear repeating since they are sometimes forgotten:

1. Avoid legislative overreaching.
2. Avoid unnecessary, superfluous or cumbersome licensing and approval requirements.

3. Include provisions enhancing the transparency and accountability of decision-making.
4. Enhance the stake of local non-government actors in forest management.
5. Ensure that the drafting of law is a broadly participatory process.
6. Include elements aimed at increasing the effectiveness of direct law enforcement.

Although most countries probably aspire to these principles, there is still some way to go before they are universally applied. The current crop of negotiations for VPAs (Voluntary Partnership Agreements) provides good examples of both progress and shortcomings. The negotiations themselves, based as they are on wide consultation about the form and substance of a licensing regime for legal wood products, support the principles of transparency, accountability and participation. Yet one element of a VPA, the definition of legality, is exposing overreach and excessive regulation. As countries compile their forest-related laws in preparation for deciding which ones should go into a definition of legality, they are finding large bodies of applicable laws – several hundred in Indonesia's case – riddled with inconsistencies and contradictions. Luckily, the VPA can provide the means and opportunity to reduce this burden through legal reform, albeit for a still-small group of countries.

Ultimately, strong enforcement mechanisms help countries achieve the societal goals embodied in their laws, and well-designed laws reduce the obstacles to effective PDS. Together they provide a basis for fair and effective forest management.

¹ Lindsay, J., Mekouar, A. & Christy, L. (2002) Why law matters: design principles for strengthening the role of forestry legislation in reducing illegal activities and corrupt practices. Pp 163–174 in: Schmithüsen, F., Iselin, G. & Herbst, P. (eds), *Forest Law and Environmental Legislation: Contributions of the IUFRO Research Group 6.13: Proceedings VII*. Swiss Federal Institute of Technology, Zurich.

The author would like to thank Guido Broekhoven and Peter Neil for constructive comments on a draft of this article.

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Laws, courts and forests in Brazil

Justice Antonio Herman Benjamin reflects on the importance of the judiciary in operationalising forest laws.



The Amazon forest has suffered from failures in Brazil's legal system

Immediately after the ‘discovery’ of Brazil, the Kings of Portugal and Spain put in place rules to stimulate, and in many cases force, the territory’s deforestation. The colonists’ fears, superstitions and prejudices about forests – *terrae incognita* – were transplanted and incorporated into the country’s nascent legal system. Their perspective of forests as enemies of progress, in competition with agriculture development, national security, public health and other important social objectives, remained entrenched in Brazil, not only constitutionally and legally but also culturally, for several centuries. It isn’t surprising therefore that our first forestry laws, drawn up in the early 20th century, failed to adequately protect our country’s forests. Even today, five centuries after the arrival of the conquistadores, we still face enormous challenges in halting the rampant deforestation.

A good example of the failure of our early attempts to regulate forest use is the case of Brazil-wood (*Caesalpinia*

echinata) – the most valuable species of Brazil’s flora during the colonial period. This raw material was so important for the coffers of the Portuguese Crown that the country was named after it, and today it is Brazil’s national tree. In 1605, under King Philip II, a set of ‘Rules on the extraction of Brazil-wood’ was put in place in order to ensure its “sustainable” exploitation, so to speak. It is clear that this species was already being overexploited as the Rules make mention of “the many disorders in the hinterlands where Brazil-wood is found and in its conservation;” which caused “severe scarcity today and a long way to be travelled into the hinterlands to source it, so the damage will be ever greater if this is not curtailed and properly dealt with, which is something of paramount importance to my Royal Treasury”.

Today Brazil wood is rated as endangered under the IUCN Red List, and is also listed under Appendix II of CITES. Needless to say, the Royal Rules failed miserably, despite →

→ the comprehensive and strict control mechanisms that they provided. These included, for example, a mandatory licence for logging, and “the death penalty and confiscation of all his assets” for anyone who failed to produce such a licence; a requirement to log selectively by only removing a portion of trees, “so as to allow them to bloom again by leaving some of the sticks and trunks untouched”; the prohibition of “developing crops in areas covered with Brazil-wood”; the establishment of an entity akin to a forest authority to manage Brazil-wood, whose officials were to ensure that inventories of logging activities were conducted on an annual basis.

The good news is that in Latin America today, we no longer perceive forests as *terra incognita*. Unfortunately, this does not prevent the loss of thousands of square miles of tropical forests in our countries every year. Why is that so, when our countries now have modern forestry legislation in place? I believe that two of the most important issues to be addressed in any legislative effort to protect our forests are: (1) the ownership of forest land; and (2) the role of the judiciary in forest governance. These two issues are considered briefly below.

Brazil’s 1965 Forest Code creatively defined forests and other forms of native vegetation (even those in private properties) as “assets of common interest to all the inhabitants in the country”. This classification firmly rejected the idea of a universal and absolute right of landowners to deforest their land, because of the important ecological services provided by their forests.

A recent ruling on the Forest Code by Brazil’s Superior Court of Justice consolidated this notion: “[U]nder contemporary legal systems, properties – whether in rural or urban areas – serve multiple purposes (private and public purposes, including ecological purposes) and, as a result, their economic use is not restricted to a single use or the best use, and much less to the most profitable use. Brazil’s constitutional and legal framework does not guarantee that property owners and entrepreneurs will have maximum possible financial return on private assets and business activities”. And it further adds that “[E]cological sustainability requirements for the occupation and use of economic assets are no evidence of undue government appropriations or interventions in the private domain. Requiring individuals to meet certain environmental safeguards in the operation of their property is not a discriminatory act, nor does it breach the principle of equality, especially since nobody is deprived of what is rightfully theirs according to their land title or use rights.”

The reliability, durability and enforceability of any forest policy are conditioned by its embodiment in legislative text. The vitality and application of laws, in turn, depends on the courts – the final arbiters in legal matters. Courts rule on, for example, the legality of deforestation licenses, the granting of forest concessions, and the creation of protected areas. They have the ultimate say in the imposition of sanctions on illegal loggers. In the end it is up to the courts to decide if a

The good news is that in Latin America today, we no longer perceive forests as *terra incognita*. Unfortunately, this does not prevent the loss of thousands of square miles of tropical forests in our countries every year.

forest will succumb to axe, fire or tractor, or if it will be conserved for future generations.

The collapse of the first Brazilian Forest Code, established in 1934, well illustrates this point. In 1950, the then head of the national forestry body wrote a letter to Judge Osny Duarte Pereira (an expert in forestry law who would later draft the groundbreaking Forest Code of 1965), lamenting the judicial neglect of Brazil’s forests. He wrote: “The judiciary, to whom legislators have entrusted the prosecution of forest crimes, has been the first to repudiate the new legal code by consistently acquitting those who have contravened its regulations, thereby completely blocking its enforcement. The Federal Forestry Council has been distressed to see that the judiciary has been the greatest impediment to the implementation of the Forest Code.”

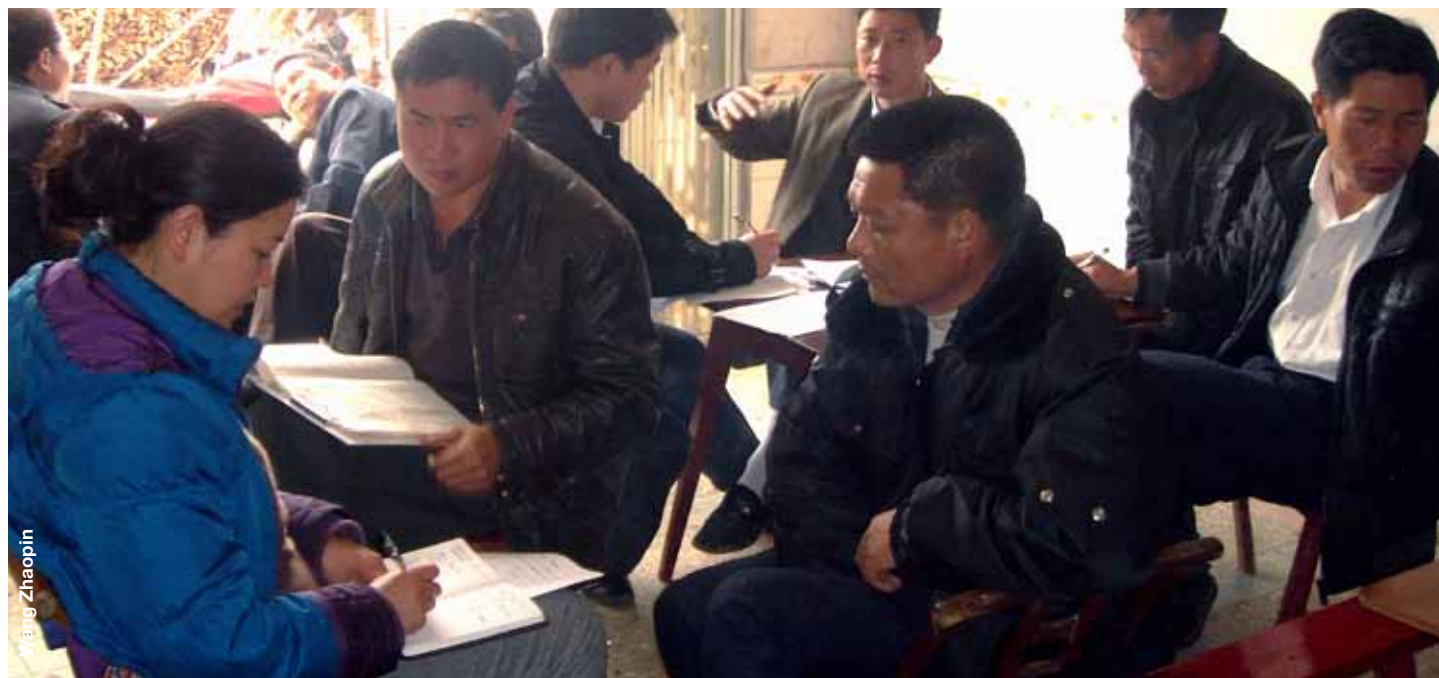
Of course, judges alone cannot save forests, even when adequate laws are in place as they are today. In 1799, a Forest Conservation Judge was appointed by the Portuguese Crown, with jurisdiction in the State of Bahia which was at the heart of the destruction of the Atlantic forest. This was the first – and last – judge to have special responsibility for forest protection and he faced such frequent attacks and strong resistance that he soon resigned. And Brazil’s Atlantic forest continued its slow and irreversible decline, to the point now where less than 10 per cent of its original cover remains.

Today there is no reason or excuse for the judiciary to neglect or impede the implementation of forestry legislation in Brazil or in any other country. There is now a strong body of scientific knowledge about the value of biodiversity and the costs of its destruction, and widely available technologies and methods for sustainable forest management. Hence, instead of dealing with the ‘exotic’ legal texts of earlier times, courts today are working to enforce a coherent, science-based legal system within an environmental governance framework.

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Reforming forest rights in China



The author conducting a survey with farmers on forest rights reform

Qun Du of Wuhan University highlights the main steps China has taken to reform forest property rights.

The Forest Law of the People's Republic of China, first introduced in 1984, was aimed at facilitating fast development of China's forest industry, based on plantations and logging. This law was revised in 1998 to reflect a sustainable development approach to forestry. This new law no longer focused purely on resource use and took a more conservative approach to forest development. For the first time, forest conservation became an independent objective. For this purpose, the 1998 Forest Law established a serious legal mechanism for forest conservation and management. For example, it recognized forest ecosystem functions and created the category of "public-interest forests" and "conserved and preserved forests", and arranged financial funds for these forests.

Since 1998, a cluster of national forest conservation programs has been implemented. These include: (i) a natural forests protection project; (ii) a cropland conversion to forest project; (iii) three key shelterbelt development projects in areas bordering the Yangtze River; (iv) a desertification control project on the outskirts of Beijing; and (v) a

For the first time, forest conservation became an independent objective.

wildlife conservation and nature reserve development project. In these programs, the government pays compensation to people contributing to forest conservation.

Alongside these conservation initiatives, a series of legal reforms has been undertaken to strengthen rural people's forest property rights. These reforms started in the 1980s and were given a boost in 2003 with the production of a series of policy statements including the Decision on Accelerating Forest Development 2003. The collective forest property rights reform has had to incorporate other ongoing reforms such as those relating to rural taxes and the rural social security system. Since 2008, the famous rural land household-contracting responsibility system is required to be implemented over all rural collective forest land. This system involves collective forest owners agreeing long-term contracts to individual households. These contracts give households the responsibility for managing

a plot of forest land; they pay taxes to the state and fees to the local government and are allowed to keep all the forest products for themselves. These forest tenure and management rights are being further clarified and recognized as part of the forest property rights reforms.

In 2009, the State Council convened the first nationwide governing conference on forestry, and decided to establish support systems to further advance the forest property rights reforms. Proposed actions include, for example, improving the forestry administration system; establishing and improving the transfer system of collective forest property rights; promoting scale management of forest land; and establishing and improving the social service system for forestry workers.

These reforms have been very popular with rural households in China and are proving effective in strengthening rural livelihoods and the sustainable management of the country's collective forests.

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Legislation for restoration in the US

Megan Roessing of the United States Forest Service reports on a new collaborative forest restoration initiative with strong legal backing.



Removing brush in a longleaf pine forest, Florida. One of the restoration projects is in similar landscape

The Collaborative Forest Landscape Restoration (CFLR) Program is a new initiative of the US government, established through a federal law passed in 2009.¹ The program, managed by the US Forest Service (an agency within the US Department of Agriculture), is funded by up to US\$40 million available annually. These funds were established by the same law, which also set out eligibility criteria for proposed projects and detailed requirements for project monitoring and reporting.

The program supports landscape-scale (greater than 20,000 ha) projects that focus on a variety of forest restoration work including prescribed burning, removing exotic species, enhancing habitat for wildlife and fish, and watershed improvement. The National Forests and members of the community who wish to participate in the CFLR program collaboratively develop a proposal that includes a landscape restoration strategy and 10 years of restoration work. An advisory committee, composed of private individuals with a variety of backgrounds and expertise, reviews the proposals and makes recommendations to the Department of Agriculture. In 2010, the first year of the program, ten projects were selected for funding.²

“Working together is how we do business,” said Forest Service Chief Tom Tidwell. “We will continue to encourage greater public involvement to maintain and restore healthy landscapes. We not only are taking care of the ecosystem, but also supporting healthy, thriving communities through collaborative forest restoration.”

Interest in the CFLR program continues to grow and this year the Forest Service received 26 new proposals.

¹ To view the text of the law, please visit <http://www.fs.fed.us/restoration/CFLR/documents/titleIV.pdf>

² To view short descriptions of the ten CFLR projects, please visit <http://www.fs.fed.us/restoration/CFLR/selections.shtml>

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Collaborative governance of tropical landscapes: a book review

‘Collaborative Governance of Tropical Landscapes’, edited by Carol Colfer and Jean-Laurent Pfund and published this year by Earthscan, focuses on the processes which ideally lead to the sustainable management of tropical multifunctional landscapes. The findings emerge from CIFOR’s interdisciplinary research programme on landscape mosaics in Cameroon, Indonesia, Laos, Madagascar and Tanzania.

The authors argue that better multilevel governance requires arrangements that start by integrating the aspirations of villagers and the multiple functions of land types into land-use planning and management strategies. The subsequent success of such arrangements depends on a willingness among all parties to negotiate agreements for a landscape from among the divergent visions and management institutions which existed before. Often, however, higher level actors are unwilling to work with villagers because they do not want to give up power, and do not want to re-examine their assumptions about rural people or revisit out-of-date policy. So, while it is not impossible to improve governance at the very local level, it may prove difficult for local people – or researchers – to influence higher level change.

The prospects for the future of multilevel collaborative governance are sobering. An extended presence on the ground is a prerequisite for its evolution; but the trigger for successful improvements is often unpredictable: the result of chance conditions or the right person being in the right place at the right time.

Although the landscape processes analysed here are challenging, and show how much will need to be done to build governance regimes which offer REDD and REDD+ processes a chance of succeeding, it is also very satisfying to see a 360° assessment of landscape realities. We have come a long way from the narrow and partial world views espoused previously in Protected Area and ICDP work programmes.

This review was written by **Gill Shepherd**, Thematic Advisor on poverty for IUCN’s Livelihoods and Landscapes Strategy.

Natural resource laws undermined in Uganda

Kenneth Kakuru of Greenwatch reports on the worrying loss of forest reserves in Uganda.



A gorilla family group in Bwindi Impenetrable National Park, Uganda

Up until the late 1990s, the management of Uganda's forests was largely a function of central government. Since 1995, numerous policies and laws have been developed which impact forest management. These laws include the Uganda Constitution 2005, the National Forestry and Tree Planting Act 2003, Uganda Wildlife Act, Local Governments Act, the Land Act and the Traditional Rulers Act. These laws established a number of institutions charged with policy implementation and coordination, such as the National Environment Management Authority, the National Forestry Authority and the Uganda Wildlife Authority.

These institutions are obliged to ensure sustainable utilization of Uganda's forest resources and have endeavoured to do so. Bwindi and Mgahinga Impenetrable National Parks in the southwest of the country are both good examples of how the Uganda Wildlife Authority has combined forest conservation with a concern for the needs of local communities.

However, in spite the existence of the laws mentioned above, the Ugandan government has been encouraging land-use change by degazetting some forest reserves and giving them away to corporations to spur industrial and agricultural development. While forests are meant to be held in trust by central or local government for the common good of all the people of Uganda, recent cases of forest degazetting are clear examples of the state's violation of its own constitutional and natural resource laws.

Naturally, the Ugandan government has to deal with conflicting interests, providing land for investors and for its growing population while also preserving and protecting natural resources. It is clear though that the government has favoured investment over natural resource conservation. This has been seen for example in the allocation of 3,500ha of Bugala Forest Reserve to a palm oil production company in 2003, the degazetting of Butamira Forest Reserve in 2001 for sugarcane growing, the allocation

of 1,000ha of Namanve Forest Reserve to develop an industrial park, and the resettlement of people in forest reserves along the slopes of Mt. Elgon and Bukaleba Central Forest Reserve in Eastern Uganda.

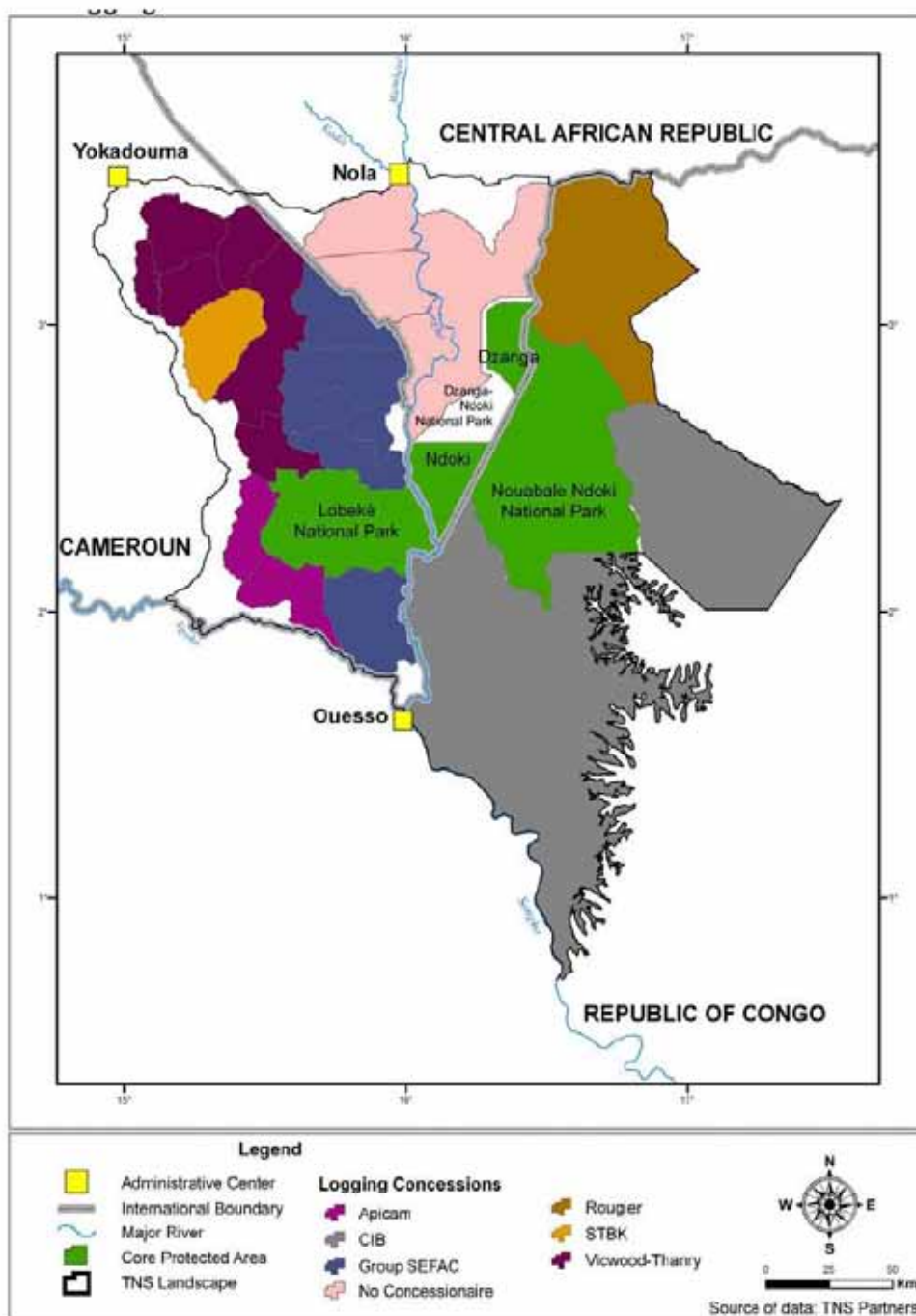
Such actions put the above-mentioned institutions in a very awkward position as they are mandated to apply the laws on natural resource conservation but are also required to implement government directives that run contrary to these laws. Thankfully civil society organizations and the general public have resisted these moves and have successfully sued the government and prevented the loss of several forest reserves including for example, the proposed degazetting of over 7,000ha of Mabira Central Forest Reserve for sugarcane production.

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Sangha Tri-National Landscape: trans-boundary challenges

Gill Shepherd and **Dominique Endamana** set out the institutional framework behind this transboundary conservation initiative and some of the challenges involved.



The Sangha Tri-National (TNS) Landscape covers 44,000 sq km set in a complex mosaic of protected areas and logging concessions. The biodiversity-rich landscape contains segments of three countries – Cameroon, Central African

Republic and the Democratic Republic of Congo.

TNS took its present form in 2000 under the auspices of the Forest Commission of Central Africa (COMIFAC), which covers

all ten Congo Basin countries. COMIFAC is a legal entity empowered by these ten governments to take decisions and formulate regional policies to promote sustainable management of the region's natural resources. Thus, although all lands in TNS are the exclusive property of their corresponding national governments, the landscape now has a single land-use plan and a three-year operational plan for transboundary activities such as anti-poaching measures. TNS is widely seen as a conceptual model for the development of other cross-border initiatives in the region.

The TNS Executive and Planning Committee meets twice a year and includes all heads of major public organizations and NGOs working in the area. Its role is the coordination, regulation, and monitoring of the implementation of the TNS operational plan. Experience in TNS is shared to inform national and tri-national policy analysis, and to propose legal and regulatory developments to COMIFAC. These processes help avoid conflict with national legislation, set goals towards which each TNS country can strive, and plan coherent future approaches such as co-management.

Divergences in national legislation (including for example conflicting legal definitions of poaching and safari tourism) certainly present some challenges to this transboundary initiative. However, the real difficulties lie elsewhere. Weak local capacity, poor governance, inadequate transport links across the whole area, limited sources of alternative income for poor communities and major funding constraints, all constitute much greater problems for each of the three participating countries than do the overarching but abstract tri-national arrangements in TNS.

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Laws and local forest management in Africa

Stéphane Doumbé-Billé of Lyon University and **John Costenbader** of the IUCN Environmental Law Centre review forest governance dynamics in Africa.

Default rules: land tenure and historical legacies

As in much of the world, forest governance in Africa encompasses a broad range of legal subject areas beyond the strict class of a country's forest legislation and implementing regulations. Generally, the most relevant legislation outside forest law proper is that of land tenure law. In addition, customary laws can have a significant influence on access to – and use of – land and forests in many countries.

In most African countries, it is the national legislator's responsibility to establish the forestry regime for public and private forests. Public forests are generally classified either as state forests or as under local authorities' jurisdiction. This distinction does not, however, cover forests owned by local communities. The status of such 'community forests' is not always clear, because it involves recognition by the state of a kind of social pluralism that could have existed prior to the state itself, and which goes beyond traditional territorial decentralization. Although African legislation has been reluctant to acknowledge this pluralism, which could threaten the state's unity, many countries now recognise the existence of community forests. For example, both the 1994 Cameroon Law on Forest, Fauna and Fisheries and the 2005 Kenya Forests Act recognize community forests.

In many countries of West and Central Africa, the pre-colonial period was characterized by traditional management around chiefdoms. Often, the colonial administration introduced a modern classification of forest areas while maintaining minimal user rights. With a few notable exceptions, on independence from colonial rule many African countries followed a similar pattern of centralization of state forest control and eviction of local forest users.

A growing number of countries have begun recognizing claims to lands held in common.

Weak land tenure has often proved challenging for local forest management efforts. Traditional tenure systems present a challenge to reconciling customary and statutory law systems where such rights are vested in entire communities rather than a single land owner. Further challenges may issue even in countries where tenure allocation is proceeding where (a) the household-based tenure system in use may not be suitable for allocating forest management responsibilities and benefits, and (b) forest owners may not have access to adequate enforcement of their land rights against encroachers and illegal loggers.

Two main types of reform for improving local forest governance are found across Africa as in most developing regions. A first group of reforms consists of recognizing various customary forest tenure claims to specific territories. A second type of reform in recent decades encompasses initiatives designed to decentralize authority and devolve forest management rights and benefits to local communities.

Difficulties in harmonizing customs and statutes

Although a range of national legal regimes exist in Africa, many countries' forest law systems are complicated by customary rules of forest management and use. Often existing without reference to written statutory laws, unwritten customary laws can nevertheless significantly influence the distribution and enforcement of land and forest rights. Independent operation of these two systems can result in conflicts between customary rights holders and

statutory rights holders possessing formal land title, potentially resulting in disputes with wide-reaching effects on agriculture, forests and livelihoods alike.

Numerous African countries' formal legal systems recognize customary forest rights claims, and customary titles can provide a solid foundation for local forest management in these countries (provided clear title and responsible authorities exist). For example, the Central African Republic 1990 Forest Law allows local populations to continue to exercise existing customary rights provided they respect state law and regulations as well as customary rules. Similarly, customary rights have gained recognition under the 1974 Tanzania Village Land Act, the 1994 Cameroon Forest Law and the 2000 Republic of Congo Forest Code.

Where customary land titles are recognized, sustainable forest management may still be complicated given that customary laws are generally unwritten and can differ widely according to time and place. What is more, in many countries, individual claims are usually recognized while claims of lands held in common by traditional groups are often ignored. As a result, statutory land rights often vest by default in the state. In fact, over 80 per cent of tropical forest land in developing countries is state-owned, and large areas of land in many countries are classified as 'unassigned' (many with competing or unofficial customary tenure systems).

However, a growing number of countries have begun recognizing claims to lands held in common in recent decades, such as in Mozambique where the 1997 Land Law recognizes the rights of local communities to hold land and obtain titles in common. Other African countries with similar progressive land law reforms in recent years include Uganda, Tanzania, Niger, South Africa, Cameroun, Benin and Gabon. →



© FAO / Marguerite France-Lanord

Wood cutters talking with a forest officer in Niger

→ Despite some preliminary signs of increasing legal recognition of substantive claims to commonly-held land ownership and customary land tenure claims, further local forest governance reform is necessary still. Indigenous and local communities (ILCs) living in remote areas are often unaware of land tenure settlement processes and lack the capacity and resources to pursue recognition of their legal rights.

Participatory forest management

The practice of participatory forest management (PFM) began in Asia in the

mid-1980s and soon spread to Africa. In many countries, PFM presents strong promise as a decentralized local forest management strategy to include small landholders in decision-making and benefit-sharing. Despite some challenges in fully devolving ownership, decision-making and benefits to community forestry operations, there are numerous examples of legal processes to include local populations in forest management activities in Africa. In East Africa, Tanzania has been a pioneer of PFM law and policy reforms, and countries in Central and West Africa have recently followed suit, including Cameroon,

many countries' forest law systems are complicated by customary rules of forest management and use. Often existing without reference to written statutory laws, unwritten customary laws can nevertheless significantly influence the distribution and enforcement of land and forest rights.

Benin, Gabon, Congo and the Democratic Republic of Congo.

These trends towards providing legal support for local forest management in Africa reflect the overall aim of legislation as defined by the Roman poet, Ovid: "*Laws were made that the stronger might not in all things have his own way*".

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India's impressive forest governance framework

Bharat H. Desai of Jawaharlal Nehru University outlines India's legislative and institutional framework for forest governance.



A notice controlling forest clearance in Nagaland, India where shifting cultivation is commonly practiced

In order to arrest its alarming rate of forest biodiversity loss, India has put in place a raft of policies, legislations and action plans as well as an institutional framework to address the challenge of governance. *The National Forest Policy (NFP) 1988 and the National Environment Policy 2006* seem to provide the basic cornerstone for forest governance in the country. The NFP has set a national target of expanding forest and tree cover to 33 per cent of the total area by 2010 mainly through massive afforestation and social forestry programmes. It has sought to promote forests of high indigenous genetic diversity as *entities with incomparable value* and recommended implementation of a 'code of best management practices' for dense natural forests. A significant achievement of both these policies has been adoption of the Joint Forest Management (JFM) programme that has emerged as a powerful tool to achieve sustainable forest management. A decentralised, two-tier institutional structure facilitates greater participation of local communities in planning and implementation, to conserve forests and secure livelihoods. *Van Panchayats* (village forest protection

committees) and their variants are another set of measures undertaken to ensure participatory governance in forest management.

The Ministry of Environment and Forests is the nodal agency for implementation of national environmental policies and legislations. In this context India's major legislative initiatives include: (i) *Indian Forests Act 1927*; (ii) *Forests (Conservation) Act 1980*; and (iii) *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*. The corpus of these and other related legislations provides the basic regulatory framework for the forestry sector including fixing priorities for maintaining existing forests, setting aside lands as protected areas, ensuring environmental protection and conservation, and meeting the needs of rural and tribal people in pursuance of their traditional rights.

Some important recent initiatives include the *National Action Plan on Climate Change 2008* and the innovative *Compensatory Afforestation Fund* which finances forest regeneration and protection

with some US\$2.4 billion collected as compensation for the conversion of forest land into other land-uses. This is a remarkable judicial feat carved out by the Supreme Court of India in the landmark case of *T.N. Godavarman Thirumulpad v. Union of India and others* (2005) in which it was held that 'net present value' (NPV) shall be used to estimate the loss of environmental services that are provided by the forest area which is being converted. Apart from this, a new the national *Forest Advisory Committee* plays a crucial role in regulating the conversion of forest land, by reviewing all proposals for forest clearance.

Thus, if taken seriously, the forest governance architecture in India provides reasonable hope for attaining the goal of greening India while catering to the developmental needs of the rapidly growing economy.

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Tigers or tribals: the true targets of India's Forest Rights Act

Sanjay Upadhyay highlights some of the problems surrounding India's legislation on forest rights.

India's Forest Rights Act, enacted in 2008, has attracted a great deal of controversy with many learned people in two opposing camps. Proponents of the law believe that it serves to rectify the unfair way in which forest dwelling tribals and other communities were treated during the creation of India's forest reserves and protected areas. Opponents for their part include tiger advocates who are under the impression that the law will lead to the last portions of forest lands being handed over to these communities, who cannot coexist with wildlife especially tigers. The truth probably lies somewhere between these two positions and it is the sincerity and preparedness of the government and the communities that will determine whether an "historic injustice" (as cited in the Act) has been removed or another historic blunder committed.

So what does this Act say? Its preamble is categorical in its intent: to record and recognize the forest rights of those who have been residing in forests for generations. Thus the Act provides a framework and process for recording the rights of tribal communities and other vulnerable forest dwelling communities, rights which include individual and family occupation of forest land and community entitlements such as pasture and nomadic rights, including the ownership of minor forest produce. The Act also confers the right to protect, manage and regenerate community forest resources. As such, this legislation upholds the well-established principle that security of tenure is a key requirement to ensuring effective conservation and matches similar legislation in other countries (e.g. Philippines and Australia) aimed at protecting indigenous people's rights.

The Act also has some controversial provisions that have led to polarized arguments about its real intentions. One such provision is the specified cut-off date of 13 December, 2005. In my view, such a date has no relevance to this legislation. Historical injustice has to be proved by historical records, yet this is clearly not an



Some conservationists claim the law will lead to destruction of important tiger habitat

historical date. Also, a cut-off date hints at regularization of encroachment and is certainly a reason for acrimony among the tiger lobby.

The advocates of tigers meanwhile claim that the Act will transfer several thousand hectares to tribals and grant them land ownership. The fact is that the Act doesn't mention ownership (except for minor forest produce) or forest land transfer, as it is intended to secure only tenure and usufruct rights.

The rules set down in the law certainly fall short of expectations and make its implementation difficult. Problems include lack of any administrative support to the village assembly (Gram Sabha) for facilitating decisions on rights recognition, a lack of clarity on methods and strategies for protection and regeneration of forest resources, the lack of linkage between the Act and existing participatory forest management strategies, the inadequate process of defining community forest resources, and the lack of representation of civil society in the recognition process.

The most dangerous trend emerging is that this divide between urban conservationists and the tribal advocates has reached the court rooms. At least six similarly-worded petitions have been filed by retired foresters, bureaucrats, and erstwhile hunters-turned-conservationists across the country in Tamil Nadu, Andhra Pradesh and Maharashtra as well as Delhi. The legal armory of the central government needs to make adequate preparations for putting up a sound legal fight, or there is a strong possibility that a few vocal opponents will sabotage an historic piece of legislation.

Do conservationists hate tribals or do tribal activists have no concern for our environment? Neither is true. Clearly, it's time to resolve our petty differences and act now before we lose both the tiger and the tribal – India's national heritage and pride.

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Is India's state forestry:

a) unjust;
b) illegal;
or c) both?

Oliver Springate-Baginski of the University of East Anglia takes a critical look at the application of India's forest laws.



Villagers in Gunduri Badi

Policing the forest police

I recently had the pleasure of visiting a charming, remote and predominantly tribal village, *Gunduri Badi*, in central Odisha state (hitherto Orissa) in Eastern India. It's typical of the area – the local people rely on hill forests to support their livelihoods, culture and food security; they get a range of products and services from these forests, perhaps most importantly a dry season water supply for irrigation.

Because of the forests' importance the villagers have invested a great deal of effort to protect them. In conjunction with 27 surrounding villages they joined the Maa Maninag Forest Protection Federation, and courageously challenge, apprehend and punish

any interlopers foolish enough to try and cut the valuable bamboo and trees. Opportunists and timber mafias haven't come back, and the forests have continued flourishing, although the villagers say mafias are eyeing the ever more valuable timbers so they must remain vigilant.

Recently, forest department field staff paid them a visit: the officers said it was government forest, that they didn't have to respect the village's authority and they were going to harvest the abundant bamboos. So the locals imprisoned them! After a night in a makeshift village prison the staff left with their tails between their legs and didn't come back.

The villagers had to police the forest police! This may not seem to be according to the

law, but it is undoubtedly just: Odisha is the poorest state in India, these villagers' food security is at stake and having protected the forest for years they shouldn't have to let anyone destroy it. However, since India's Forest Rights Act (FRA) was passed in 2006 such action is also legal, and even an obligation of the villagers; it was the forest department staff that were probably breaking the law.

Justice, the law and democracy

Until very recently forestry in India has been based on unjust laws created by colonialists to monopolise and exploit forest resources. The 1878 Indian Forest Act, with minor modifications in 1927, facilitated the colonial state's appropriation →

→ of an estimated 23 per cent of the country's land and the deprivation of customary rights therein. Challenges to this injustice have frequently boiled over into uprisings. Indeed a major impetus to the national government passing the FRA 2006 has been the prevalent civil unrest across the central forest belt.

We all know that the law and justice are not equivalent. Society involves competing interests, and the powerful draft laws in their interests, which frequently subject weaker, less influential groups to injustice, and such laws can persist long after the conditions that gave rise to them have passed. Law enforcement and access to justice also favours the powerful – who are more easily able to transgress laws with impunity and secure better and more sympathetic attention of the judicial processes using their resources and influence. The poor are often pushed by circumstance to break laws but are punished heavily for it, yet when they are wronged judicial mechanisms are inaccessible.

Democracies are supposed to protect us against extremes of injustice through constitutional checks and balances. According to the French enlightenment philosopher Montesquieu, separation of powers is crucial: in the legislature citizens' representatives pass laws, the executive (bureaucracy) observes and executes the laws, and the judiciary arbitrates over disputes and prosecutes offenders. For the system to work each needs to fulfil their roles separately but be interdependent. Of course, during the colonial era it was primarily the colonists who legislated, executed mandates and judged, all in the cause of self-enrichment.

Changing law but unchanging foresters

The general problem with institutional reform is that the incumbents can put a spanner in the works. At independence the forest bureaucracy recast the 'imperial interest' as the 'national interest' and the colonial era forest regime persisted, even expanding its scope further by taking over the elite zamindars' private forests rather than returning them to local people.

Eminent researchers tell us that globally we are now enjoying a 'tenure transition' in which large areas of the colonial era nationalised 'forest' estates are gradually being handed over to local people.¹ India's FRA 2006, part of this global transition, is indeed a dramatic reversal. It acknowledges that '*forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice*' and directs state governments to recognise tribal and other forest people's rights.

However we are finding that legal reform is just the beginning: even with the law on the side of forest peoples, the battle for forest justice will take much longer, and needs wider support. We know that there is a persistent and

The general problem with institutional reform is that the incumbents can put a spanner in the works.

extensive nexus between timber mafias, political parties and forest department staff (just how does illegally felled timber get through forest department checkpoints?).

Colleagues and I have conducted studies of the FRA implementation process in eastern India (see www.ippg.org.uk/publications.html) and found forest departments to have been obstructing implementation at every stage so they can hang onto control of the forests. They are even seeking to usurp the community rights provisions by trying to get them allocated to ad hoc 'JFM' groups under their control in a manner which explicitly contravenes the national FRA law.² The use of conservation-oriented clauses in the act has been a particular problem, as forest departments have liberally extended 'Critical Tiger Habitats' (where rights may be modified or acquired post-recognition) often without following the due process, leading to further evictions of local people.

The future?

The correct answer to the question in the title of this article is c). India's state forestry remains unjust because social norms of justice including security of property rights and freedom from harassment for conducting traditional livelihoods have been offended by the Indian Forest Acts and their application. Secondly, much is now illegal because the national FRA 2006 legislation has been transgressed, or at least obstructed, in most states by the forest departments, so tenure claims made by the forest bureaucracies are in contradiction with the national legislature. This goes against Montesquieu's basic principles of democracy, and so the only recourse is the courts: several Public Interest Litigations against state forest departments are currently in process.

However, in Gunduri Badi village I felt I was seeing a promising future for India's forest conservation. If state bodies are supine or dysfunctional, in India as elsewhere, and if we really want to conserve forest biodiversity (as well as local cultural integrity, food security and justice), we need to help shift the balance of power towards communities like this.

¹ White, A. and Martin, A. (2002). Who Owns the World's Forests? Forest Tenure and Public Forests in Transition. Forest Trends, Washington, D.C.; (2) Sunderlin, W., Hatcher, J., and M. Liddle. (2008). From Exclusion to Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform. Rights and Resources Initiative, Washington DC.

² Reddy, M.G., Kumar, K.A., Rao, P.T., and Springate-Baginski, O. (2011). Issues Related to Implementation of the Forest Rights Act in Andhra Pradesh in *Economic and Political Weekly* Vol. XLVI No18 April 30 (EPW: Mumbai)

Customary law and forest governance

Patti Moore of IUCN outlines the status of customary forest law around the world.

The constitutions of over half the world's countries recognize customary law, at least to some degree. In fact, customary law governing forests is far more widely applied than is generally assumed.¹ Globally, 11 per cent of forests are legally owned or administered by communities, and these forests make up 22 per cent of developing countries' forests.² In countries with tropical forests, the percentage of forest ownership by indigenous peoples is 12 per cent.³ There are no data to substantiate the degree to which local communities and indigenous peoples apply their customary law. There is, however, substantial evidence that in many countries, customary law governs local use of forest resources even when statutory law technically applies. The relationship between customary law and statutory law, though, is far too often marked by contradiction and conflict.

The constitutions of three countries – Mexico, Nicaragua and Turkey – explicitly recognize customary rights in forests. In several more countries – including Australia, Brazil, Cambodia, Indonesia, Lao PDR, Malawi, Namibia and Papua New Guinea – national and/or sub-national laws

explicitly recognize customary forest laws and rights. Brazil's, Colombia's and the Philippines' constitutions recognize customary rights to natural resources generally, while Thailand's constitution recognizes customary rights to participate in the management, conservation and exploitation of natural resources.

IUCN recently examined the role of customary law in forest governance in six countries: Brazil, Democratic Republic of Congo (DRC), Ghana, Sri Lanka, Tanzania, and Viet Nam. The government recognizes customary law in the three African countries and Brazil – by constitution (Brazil, DRC and Ghana), by statute (Tanzania), or both (DRC). Customary law is not officially recognized in Viet Nam and Sri Lanka, though some rural communities in both countries continue to adhere to it. Statutory law in some of these countries recognizes community rights, but with limitations not imposed on statutory rights. Generally speaking, however, central governments in these six countries reserve most of the power to make decisions concerning forest resources for themselves, either through

exclusive control of forests or through selective granting of access and use rights.

As with statutory forest law, customary forest law may not always result in sustainable use of forest resources. Nonetheless, forest governance will profit from a better understanding of what customary forest law is and how it operates.

This article is based on: Moore, P., Greiber, T. and S. Baig. 2010. Forest Governance and Law Enforcement: Findings from the Field. IUCN. Available on-line: http://www.iucn.org/about/union/secretariat/offices/asia/regional_activities/elg/elp/; and Cuskelly, Katrina. 2011. Customs and Constitutions. IUCN Regional Environmental Law Programme, Asia. In prep.

¹ Colchester, M. et al. 2006. Justice in the forest: Rural livelihoods and forest law enforcement. Bogor, Indonesia: Center for International Forestry Research (CIFOR). p. 13. Available on-line: http://www.cifor.cgiar.org/publications/pdf_files/Books/BColchester0601.pdf.

² Molnar, Augusta, S. J. Scherr, and A. Khare. 2004. Who Conserves the World's Forests? Community-Driven Strategies to Protect Forests & Respect Rights. Forest Trends, Washington, D.C. p. ii. Available on-line: http://www.forest-trends.org/documents/publications/Who%20Conserves_final_rev.pdf

³ White, Andy and A. Martin. 2002. Who Owns the World's Forests? Forest Trends, Washington, DC. p. 7. Available on-line: http://www.rightsandresources.org/documents/files/doc_98.pdf

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Children in a forest village, Ghana, a country where the constitution recognises customary law

National laws and forest rights

Elisa Morgera of the University of Edinburgh outlines how national legislation can support rights to forest-based livelihoods.

National legislation is an indispensable tool to support local forest management and ensure its contribution to forest-based livelihoods with the clarity and certainty needed to build long-term trust and ensure sustainable use.

Legal options to support community-based forest management abound: they range from the allocation of rights of management and sustainable use of state-owned forest land to specific groups, to the co-management of state-owned forest land by communities in partnership with local authorities, the long-term leasing of state-owned forest land to communities, and the legal recognition of communities' ownership of forest lands. Other (minimalist) options include the allocation of limited rights of access and use of state-owned forests to communities or the setting-up of benefit-sharing systems for communities when forests are under the control of state entities or the private sector.¹ The latter two are clearly options that do not allow communities to take direct and full responsibility for the sustainable management of forests, but may be useful in situations in which the forest area is particularly fragile or the communities lack the means to carry out necessary management operations. The choice is certainly a matter that should be discussed in detail with indigenous and local communities that have traditional ties with the forest area at stake, with a view to obtaining their free, prior informed consent, including on any limitation to pre-existing community practices.

Accordingly, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, addressed an alleged eviction of Ogiek indigenous peoples for reasons of nature conservation from the Mau Forest Complex in Kenya. He observed that indigenous peoples were not adequately consulted prior to the initial decision to resettle them, and were not provided with a meaningful opportunity to participate in decision-making concerning the long-term and ongoing management of the area and their potential role in environmental conservation and eco-tourism.²

A variety of tools can be mandated through legislation to ensure that prior informed consent and benefit-sharing are appropriately tackled in the context of community-based forest management. These include, for example, environmental and socio-cultural impact assessments, legal recognition of, and active support to, community-based management arrangements, mechanisms to share economic

A variety of tools can be mandated through legislation to ensure that prior informed consent and benefit-sharing are appropriately tackled in the context of community-based forest management.

and non-economic benefits, the provision of livelihood-based mitigation and compensatory measures, and the re-investment of benefits in the protection of traditional knowledge and traditional sustainable practices.³

Overall, security of rights is the paramount objective of national legislation in supporting local forest management and forest-based livelihoods.

¹ Christy, Di Leva, Lindsay and Takoukam (2007). "Forest Law and Sustainable Development. Addressing Contemporary Challenges through Legal Reform." Law, Justice and Development Series. The World Bank, Washington DC, pp. 87-90.

² Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples: Cases examined by the Special Rapporteur (June 2009 – July 2010), UN Doc A/CHR/15/37/Add.1, 15 September 2010.

³ Morgera and Tsioumani, "The Evolution of Benefit-sharing: Linking Biodiversity and Community Livelihoods" (2010) 15 Review of European Community and International Environmental Law 150-173.

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It's your forest but my carbon

Annalisa Savaresi of the University of Copenhagen examines the tension between forest rights and carbon rights in REDD.

REDD will require that rights to forests be clarified and secured in the hands of stewards, with both the legitimacy and capacity to affect what happens to the forest. Forest ownership is normally associated with land ownership. Nevertheless, land ownership does not necessarily coincide with the right to alter forest vegetation and carbon stocks. In this regard, REDD may be based on incentives for avoiding carbon emissions or enhancing carbon sequestration (i.e. forest maintenance and protection) or, alternatively, on rewards for those owning the land in which the carbon is found.

Domestic regulatory schemes should clearly determine who owns the right to the carbon sequestered in forests. Carbon ownership may either be a separate proprietary interest, or be linked to forest or land ownership. In this connection, one major consideration relates to whether the property law system in question treats land and natural resources, including ecosystem services, as fundamentally belonging to the state (i.e. public domain) or as wholly belonging to private land owners. A related regulatory issue is whether concessions are granted for ecosystem services such as carbon.

Theoretically, existing contractual and statutory arrangements may be sufficient to solve questions associated with carbon and forest ownership. However, lack of clear rules may engender uncertainty on how these rights can be securely established, maintained and transferred. These uncertainties are likely to lead to increased transaction costs to figure out the legal status of disputed forests and carbon rights. It is therefore advisable that regulations be adopted to solve the specific questions raised by carbon ownership and associated liabilities. The answers will vary from one jurisdiction to another, and greatly depend on domestic laws on property, taxation, and natural resource utilization.

The implementation of REDD activities is likely to push up the cost of land and attract outside investors, and well-defined forest and land tenure arrangements are commonly regarded as a crucial indicator of 'readiness for REDD'. REDD may therefore provide a powerful impetus to define forest land tenure. However, processes aimed at clarifying forest and land tenure could go in either direction for non-titled land owners: they could be granted legal rights to their customary lands, or they may be evicted as more powerful stakeholders reap the benefits of REDD. In this



Carbon ownership needs to be clarified for REDD

Land ownership does not necessarily coincide with the right to alter forest vegetation and carbon stocks.

connection, while there may be trade-offs between environmental and social goals in the short term, in the long run REDD will need to benefit poor people and forest communities to be sustainable.¹ Determining the rights and responsibilities of land owners, communities, and loggers is therefore key to effective forest management for carbon sequestration.

¹ Eliasch, J. *Climate Change, Financing Global Forests. The Eliasch Review*. (2008) British Office of Climate Change, London, UK, p. 53. This article is based on Savaresi, A. and Morgera, E. (2009), 'Ownership of Land, Forest and Carbon', in Costenbader, J. (ed) *Legal Frameworks for REDD*.

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arborvitae

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Sheila Abed, founder and Executive President of the Paraguayan Environmental Law and Economics Institute (IDEA) and Chair of IUCN's Commission on Environmental Law, talks to **arborvitae** about her work on transboundary forest law.

Could you tell us how your work on transboundary forest issues started?

This work began with the discovery of a network of wood trafficking from Paraguay to Brazil. Once we began to look into the network, we found that the wood trafficking was also going on from Bolivia to Brazil. When we investigated the underlying causes, we discovered that it was due to a leakage issue. Brazil had begun to apply heavy fines and clamp down more strongly on timber trafficking (particularly on timber supplied to the steel industry), so the problem was simply transported to neighbouring countries, where environmental law enforcement and compliance is much weaker.

Since IDEA is supporting the work of environmental prosecutors in the region, we decided that it was a good opportunity to involve the judiciary as well as the administrative offices of the three countries involved. We wanted to create a transboundary case that analyzes the problem from start to finish. We then took action and contacted the relevant institutions, organized meetings in all three countries and agreed on a workplan with specific activities for each sector.

What are the main challenges in working on, and applying, transboundary forest law?

One of the main challenges involves matching all the different legal regimes, since each of the countries involved has its own set of rules that are very different from the others. Another challenge is that this sort of offence cannot be dealt with

merely from an environmental law standpoint; we need to also look at customs law, tax law and the norms of the countries' different levels of government. In addition, we need to address the institutional weakness and corruption that exist in these countries.

How does such work on forest law relate to the work of other environmental lawyers, in your experience?

Working with forest-related legal matters is a challenge to environmental lawyers because for forestry cases you have to take into account the production side. This can present a conflict when it comes to finding all the answers for forest issues, since environmental lawyers are very focused on conservation and tend to want to ignore the production side.

How has forest-related legal work changed since you started your career?

Working on forest legislation issues has changed a great deal. As a more educated, informed, and aware market develops, the work must take into account all the related opportunities, such as forest certification, REDD, etc. Lawyers working in this field today need to keep themselves informed and up-to-date so that they can continually explore new opportunities and incentives, as well as new challenges.

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