

**PARTICIPATORY FORESTRY
IN CENTRAL ASIA AND
THE CAUCASUS:
CURRENT LEGAL TRENDS
AND FUTURE PERSPECTIVES**

**BY
ELISA MORGERA**

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The author is an associate legal officer with the Development Law Service of the Food and Agriculture Organization of the UN.

1 INTRODUCTION

The Food and Agriculture Organization of the United Nations defines participatory forestry as the "processes and mechanisms that enable those people who have a direct stake in forest resources to be part of decision-making in all aspects of forest management, from managing resources to formulating and implementing institutional frameworks."¹ Several inter-linked legal concepts, therefore, come into play when discussing participatory forestry: devolution, good governance, transparency, access to resources, and the protection of the interests of local and indigenous communities. These concepts are increasingly enshrined in recent forest legislation around the globe. A general shift has been noted in several countries from an overly centralized, purely governmental forest administration towards a multi-stakeholder decision-making system, based on the recognition that forest governance is enriched by local knowledge and is more effective if informed by the needs of local people.² Along the same lines, mechanisms for community-based forest management have become common features in forest laws. Such mechanisms aim to ensure more effective management, by contributing to local livelihoods, recognizing long-standing claims, or promoting local institutions.³

The objective of this paper is to identify the current legal trends in participatory forestry in the Caucasus (Armenia, Azerbaijan and Georgia) and in Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan).⁴ The region is unique and interesting because countries share a common Soviet past and currently present different degrees of departure from the centralized planning system and, in some cases, from the state's exclusive ownership of natural resources.⁵ Three aspects will be analyzed more specifically with respect to participatory forestry, against the background of international obligations and good practices: a) public participation in forest-related decision-making; b) public access to forest-related information; and c) the direct participation of local communities in forest management. Before turning to the comparative legal analysis, this study offers an overview of the region: the characteristics of the forest sector, the institutional and legal framework for forest management, as well as adherence to relevant international agreements. As some of the countries in the region are currently engaged in forest law reform, the study will conclude with some reflections on how to enhance participatory forestry.

¹ www.fao.org/forestry/site/participatory/en/.

² Christy L., Di Leva C., Lindsay J. and Talla Takoukam P. *Forest Law and Sustainable Development 2007*, World Bank, Washington DC, at page 83.

³ *Id.*, at pages 87–88.

⁴ Legislation reviewed for this study includes: Armenia Forestry Code (2005); Azerbaijan Forest Code (1997); Georgia Forest Code (1999); Kazakhstan Forest Code (2003); Kyrgyzstan Forest Code (1999); Tajikistan Forestry Code (1993); Turkmenistan Forestry Code (1993); and Uzbekistan Law on Forests (1999). Full texts (English and/or Russian) are available on the FAOLEX database (faolex.fao.org/faolex/index.htm).

⁵ For previous legal studies on forest legislation in the region, see: Cirelli M.T. "Central and Eastern Europe", in FAO. *Trends in Forestry Legislation in Europe and Africa 2003*, Legislative Study n. 72, FAO, Rome; and Kern E. and Young T. "Asia and the Pacific", in FAO. *Trends in Forestry Legislation in America and Asia 1998*, FAO, Rome, Legislative Study n. 66.

2 THE REGIONAL OUTLOOK

Compared to other parts of the world, forests and trees are scarce in Central Asia and the Caucasus (CAC): the forest cover is less than 11 percent of the land area, except for Georgia with about 40 percent forest cover. The limited forest cover under the region's particular topography and climate conditions has contributed, in most CAC countries, to emphasizing forest conservation due to the importance of the environmental services provided by forests, rather than their economic value.⁶

The dissolution of the Soviet Union and the consequent, sudden economic decline and disruption of the Soviet economic system posed serious challenges to the conservation and sustainable management of forests in the region. Several factors have thus significantly affected forest resources in the region: increased demand for domestic forest products; disappearance and degradation of forests as a result of unanticipated over-harvesting; overgrazing in forested areas; threats posed by fires, pests and diseases; and considerably increased demands for fuelwood due to limited access to affordable energy by large sections of the population. Poor statistics on forests and forestry hinder, however, an exact determination of the scale of the impacts of these changes in the region.⁷

2.1 Overview of the forest institutional and legal frameworks

As most forests in the region have been continuously owned and managed by the state, national governments remain key players in forest management and policy formulation in all the countries. This is reflected in forest legislation by the identification of the "state forest fund" as

those state-owned lands either covered by forests or intended to be forested. As a result, state forest *fund* and state forest *land* should be differentiated, as the former often include much non-forest land (land without forest cover).

Since independence, the state forest administration belongs to the ministry in charge of the environment in Azerbaijan, Georgia, the Kyrgyz Republic, Tajikistan and Turkmenistan, and to the ministry in charge of agriculture in Armenia, Kazakhstan and Uzbekistan. Some CAC countries, like Uzbekistan and Kyrgyzstan, have conserved the institutional structure of the Soviet time, with *leskhoz*es (state forestry enterprises) at the local level. *Leskhoz*es or their successor organizations⁸ remain under the state government control and carry out forestry works according to the forest management plan approved at the central level.⁹ It should further be noted that *leskhoz*es are often involved not only in forestry, but also in agricultural work. The latter, in some cases, may actually constitute the main source of income for them.

Countries in the region started developing their own forest policy, management schemes and legal frameworks after independence in the early 1990s. Most laws were enacted throughout the 1990s, while the most recent are Kazakhstan's Forest Code of 2003 and Armenia's Forest Code of 2005. It should finally be noted that, at present, Uzbekistan, Georgia, and Tajikistan are in the process of reforming their forest legislation.¹⁰

2.2 Forest-related international instruments

Since independence, CAC countries have also ratified most forest-related

⁶ FAO. *People, Forests and Trees in West and Central Asia: Outlook for 2020* 2007, FAO, Rome.

⁷ Uemoto M. *Forests and Forestry in Central Asia and the Caucasus* (draft for discussion) 2006, FAO, Rome.

⁸ In Kyrgyzstan, these are called Forest Service Territorial Management Units (see Shimizu T. and Trudel M. *Methodology and Case Studies on Linkages between Poverty and Forestry: Afghanistan, Iran, Kyrgyzstan and Turkey* 2006, Livelihood Support Programme Working Paper n. 35, FAO, Rome.)

⁹ Uemoto, *supra* n. 7.

¹⁰ Uemoto, *supra* n. 7.

international treaties, in particular the Rio Conventions (biodiversity, climate change and desertification) and the World Heritage Convention, while ratification of other biodiversity-related treaties is less widespread (see table). Among the Rio Conventions, the Convention on Biological Diversity (CBD) concerns forests both as a component of biodiversity and as a habitat to terrestrial biodiversity, and commits parties to biodiversity conservation, the sustainable use of its components and fair and equitable sharing of the benefits arising from the use of genetic resources (art. 1). Key obligations relevant to forests in the CBD include: developing national strategies and plans for the conservation and sustainable use of biological resources (art. 6); establishing protected areas, restoring or rehabilitating degraded ecosystems, and preventing the introduction of invasive alien species (art. 8); introducing environmental impact assessment for projects likely to have adverse effects on biodiversity (art. 14); and involving local populations and the private sector in sustainable use (art. 10). The UN Convention to Combat Desertification (UNCCD) requires parties to draw up national plans and strategies to combat land degradation and desertification, which usually include forest-related measures. Thus, implementing UNCCD contributes to support an ecosystem approach to sustainable forest management as part of preventing drought and desertification. To this end, the Convention also calls upon parties to facilitate the participation of local populations (art. 5). The UN Framework Convention on Climate Change (UNFCCC) commits parties to the sustainable management of forests for their climate-related functions as carbon sinks (art. 4), and the Kyoto Protocol calls upon all parties to develop programmes related, *inter alia*, to forests containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change (art. 10).¹¹ The importance of forests for

the implementation of the international climate regime is expected to increase in the future, with current negotiations on a post 2012 international framework focusing on reducing emissions from deforestation and forest degradation in developing countries.¹²

The Ramsar Convention on Wetlands commits parties to the sustainable management of wetlands and its provisions apply to mangroves and trees included in the Wetlands of International Importance selected by each state party. The World Heritage Convention establishes a system of collective protection of cultural and natural heritage, therefore applying to forests of outstanding natural or cultural value included in World Heritage Sites selected by each state party. The Convention on International Trade in Endangered Species (CITES) offers international protection to endangered species by banning international trade thereof, and ensures that commercially exploited species do not become endangered because of trade. CITES, therefore, applies to trade in tree and woody species which are endangered or risk becoming threatened by trade. Finally, the Convention on Migratory Species (CMS) is connected to forests as these represent the habitat of many species protected by the Convention.¹³

For the purposes of this paper, it is particularly noteworthy that almost all CAC countries (the only exception being Uzbekistan) are parties to the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. The Aarhus Convention applies to every government body performing duties, activities or services related to the environment and possessing environment-related information, thus applying to forest authorities too. First of all, the Convention creates an obligation

¹¹ Rosenbaum, K. Schoene, D. & Mekouar, A. *Climate change and the forest sector: possible national and subnational legislation* 2004. FAO Forestry Paper 144, Rome. (available at: www.fao.org).

¹² See para. 1(b) (iii) of the Bali Action Plan, adopted by the UNFCCC Thirteenth Conference of the Parties in December 2007 (available at unfccc.int/).

¹³ For an overview of the international regime related to forests, see Tarasofsky G., *Assessing the International Forest Regime* 1999, IUCN Environmental Policy and Law Paper n. 37.

for public authorities to provide environmental information upon request from the public (art. 4), as well as an obligation to proactively collect and disseminate available environmental information (art. 5). Secondly, the Convention creates an obligation for public authorities to establish transparent and fair procedures allowing public participation in environmental decision-making (art. 6), including in the preparation of plans and programmes relating to the environment (art. 7) or in the drafting of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment (art. 8). Thirdly, the Convention creates an obligation for public authorities to establish procedures guaranteeing public access to justice (a review procedure before a court of law or another independent and impartial body established by law) in case of denial of access to information or public participation, or to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment (art. 9).

The fulfillment of the rights protected by the Aarhus Convention presents significant challenges for the CAC region. One is the difficulty of public authorities in shifting from a culture of providing "pre-packaged" information to providing information "upon request" to the public. Another is the challenge of coordinating the provision of environmental information scattered in different government agencies.¹⁴ These difficulties, which are generally first encountered by the ministries of the environment in charge of implementing the Convention, may also be considered relevant from the perspective of the forest sector in the region.

¹⁴ Zaharchenko T. and Goldenman G. "Accountability and Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia", *International Environmental Agreements: Politics, Law and Economics* 2004 (4), pages 229–251.

Table: Participation of Central Asian and Caucasus countries in forestry-related international treaties
(showing the date of entry into force of each agreement for each country of the region, unless otherwise specified)

	Armenia	Azerbaijan	Georgia	Kazakhstan	Kyrgyzstan	Tajikistan	Turkmenistan	Uzbekistan
CBD	1993	2000	1994	1994	1996	1998	1996	1995
UNFCCC	1994	1995	1994	1995	2000	1998	1995	1994
Kyoto Protocol	2005	2005	2005	signed in 1999	2005		2005	2005
UNCCD	1997	1998	1999	1997	1997	1997	1996	1996
World Heritage Convention	1991	1994	1991	1994	1995	1991	1991	1991
CITES		1999	1996	2000				1997
CMS			2000	2006		2001		1998
Ramsar Convention	1993	2001	1997		2003	2001		2002
Aarhus Convention	2001	2001	2001	2001	2001	2001	2001	

3 CURRENT LEGAL TRENDS

Against this general background, the proceeding sections will analyse the extent to which existing legislation in the Caucasus and Central Asia reflect a participatory forestry approach, by looking at legal provisions on public participation in forest-related decision-making, public access to forest-related information, and the direct participation of local communities in forest management. These provisions will be assessed in light of international standards and global best practice for increasing accountability and good governance in the forest sector¹⁵ and for enhancing participatory approaches.¹⁶

3.1 Public participation in decision-making

International standards on sustainable development, environmental protection and participatory forestry emphasize the need for public participation. To accommodate multiple interests, stakeholders need a mechanism to make their interests known at the national and local level. Besides reasons of equity and fairness, the assumption is that greater public participation can improve the quality of decisions, improve the public's respect for those decisions and improve public perception of government. Such provisions are often resisted out of fear to lose or share power, or initially considered burdensome by government officials who are worried that the process of plan adoption or regulatory reform will be slowed by an avalanche of comments. Such fears, however, are usually

¹⁵ Lindsay J., Mekouar A. and Christy L. *Why Law Matters: Design Principles for Strengthening the Role of Forestry Legislation in Reducing Illegal Activities and Corrupt Practices* 2002, FAO Legal Papers Online #27 (available online at www.fao.org/legal).

¹⁶ Lindsay J., Wingard J. and Manaljav Z., *Improving the Legal Framework for Participatory Forestry: Issues and Options for Mongolia* 2005, FAO, Rome, Legal Paper Online #46 (available at www.fao.org/legal). See also Lindsay J., *Legal Frameworks and Access to Common Pool Resources* 2004, FAO, Rome, Legal Papers Online #39 (available online at www.fao.org/legal).

exaggerated and the benefits largely outweigh the costs of participation. Public participation can also ensure that legal provisions are drafted in a practical and realistic form. This could help, for instance, in ensuring that decisions on sustainable production and the sharing of profits deriving from forest produce, recreation, tourism, wildlife, rural development and other management options, are taken in an integrated manner.¹⁷

For parties to the Aarhus Convention – among which are almost all countries in the CAC region – ensuring public participation in forest decision-making is also a matter of fulfilling an international obligation. Although not a party to this Convention, Uzbekistan has enshrined the principle of public participation in its national legal system, both through a constitutional provision on access to information (1992 Constitution, art. 29) and its legal guarantees for public access to environmental information (1992 Law on nature protection, art. 12) and public participation in relation to protected areas (2004 Law on protected areas, article 10).

At present, in most CAC countries, the involvement of stakeholders in forest-related decision-making remains limited. Besides what may be provided for by environmental protection legislation, forest laws do not generally provide for the public to review draft forest management plans before their adoption, as this is generally considered a strictly governmental exercise. For example, both in Tajikistan (art. 48 of the 1993 Forest Code) and in Kazakhstan (art. 56 of the 2003 Forest Code) management planning is to be undertaken exclusively by state forestry bodies. One example in the region that goes in a more participatory direction is Georgia. There, public participation is legally provided for in the case of forest management planning as well as for other decisions related to the management of the state forest fund, with the obligation for public authorities to "consider the comments and suggestions received from citizens and representatives of public

¹⁷ Lindsay, Wingard and Manaljav, *supra*.

organizations" (1999 Forest Code, arts. 35 and 36). In Kazakhstan's secondary legislation, public organizations may be represented in commissions for the evaluation of tenders for long-term forest contracts.¹⁸ In Kyrgyzstan, some form of public participation in planning and decision making related to collaborative forest management was provided for in secondary legislation, but in practice *leshozes* remained largely the sole decision-maker.¹⁹

Ensuring public participation in the drafting of forest legislation is particularly significant, in order to ensure that the law reflects reality and is subsequently understood by those affected by it. Effective participatory legislative drafting involves the genuine involvement of all categories of stakeholders (government and non-governmental institutions, central and local institutions, communities and local forest-dependent people, private sector organizations, farmers) with a true commitment to listening and understanding the needs, objectives, insights and capacities of intended users of the law and finding ways to accommodate multiple interests at stake. In Uzbekistan some form of public participation is foreseen in law-making (thus including forest law-making), according to the 2000 Law on Legislative Acts.²⁰ Although it is beyond the scope of this paper to review the overall legal framework of the CAC countries, it is worth noting the importance of an assessment of the rights or guarantees that already exist in legislation of general application to ensure public involvement in the drawing

up of primary and secondary legislation on forests. If such opportunity does not exist or is not applicable to the forest sector, then forest laws should fill this gap.

Another interesting venue for public participation is available through environmental impact assessments. In many CAC countries, the law on "ecological expertise" should be analyzed in this regard. In the case of Uzbekistan, the law on ecological expertise provides, on the one hand, for a "state expertise" (commissioned by the environmental authority and carried out by technical experts as the basis for governmental approval of projects) where there is usually no procedural requirements for public comment. Under the same law, provision is also made for "public expertise": this kind of assessment is initiated by the public at its own expense, but it remains unclear how the government should take the results of such public expertise into account (2000 Law on Ecological Expertise).²¹ Thus, there is a lack of detailed rules to stipulate what adequate participation is, when public participation is necessary, what procedures should be followed, or what consequences there should be for not fulfilling the responsibility of involving the public in environmental impact assessments. These shortcomings seem to affect many similar laws in the region.²² In the case of Georgia, the 1996 Law on State Ecological Expertise requires an assessment before the issuance of an environmental permit for, *inter alia*, plans and projects for the protection and use of forests and other natural resources (arts. 1 and 5). This was based upon the principle that public participation and the consideration of public opinion should be ensured (art. 3). The situation has, however, changed, by the enactment of a regulation on environmental assessments in 2005, which was meant to provide a temporary discipline while a revision of the 1996 Law was undertaken.²³ This regulation

¹⁸ Kazakhstan's 2004 government's decision on rules on tenders for utilization of forest resources of the state forest fund, rule 10; see Cirelli M.T. *Forestry and Wildlife Legislation Report to the Government of Kazakhstan 2005*, FAO, Rome (technical report under the project TCP/KAZ/2902).

¹⁹ Fisher R.J., Schmidt K., Steenhof B. and Akenshaev N., *Poverty and Forestry: A Case Study of Kyrgyzstan with reference to Other Countries in West and Central Asia 2004*, Livelihood Support Programme Working Paper n. 13, FAO, Rome. The study makes reference to Decree n. 226 of 2001 on National Collaborative Forest Management Regulations (text unavailable in FAOLEX).

²⁰ See Morgera E., *Issues and Options for Forest Legislation in Uzbekistan in light of International Standards 2007*, FAO, Rome (technical report under the project TCP/UZB/3101).

²¹ *Id.*

²² Zaharchenko and Goldenman, *supra* n.10, at page 240 and endnote 68.

²³ The Georgian Government Regulation No. 154 approving Provisions on Procedure and Conditions

has in the meantime excluded most activities impacting on forests from mandatory impact assessments: activities in forests would be concerned only if involving building of cement facilities or roads. In addition, the obligation to organize public consultations regarding activities for which a permit is requested is placed on the applicant rather than on the administration (art. 3). The developer is thus required to undertake public consultations, publish relevant information and justify in writing the case in which some of the comments received have not been followed (arts. 31-32).²⁴ This change resulted in a weaker guarantee for meaningful public participation, in light of the likely conflict of interest for the applicant in faithfully reflecting public comments while at the same time avoiding undermining the chances of having his/her own project approved.

3.2 Public access to information

Meaningful involvement of the public is critical to promote transparency and accountability in forest-related decision-making, and is premised on the possibility for the public to access information relevant for the decisions to be taken. Ensuring access to information is also the first international obligation stemming from the Aarhus Convention (art. 4).

In several CAC countries, the forest law is silent on this matter. Some forest codes, however, although considering forest information the property of the state, foresee that the public may be allowed to access such information in subsidiary legislation. For example, both in Kyrgyzstan (Forest Code, art. 88) and in Kazakhstan (Forest Code, art. 56.2), "information on the forest fund" is in

principle considered state property, and physical and legal persons can access and use it only in accordance with procedures and conditions to be determined through bylaws. This provision is backed up in Kazakhstan by the general principle (spelt out in the Forest Code, art. 3.9) of accessibility of information on the status of the forest fund. It is further subject to the condition, laid out in secondary legislation, that where information on forests is not considered a state secret, it may be made available on request.²⁵

A more significant case in which primary legislation on forests guarantees with some level of detail a right of the public to have access to forest-related information is the Georgian Forest Code. There, not only is the public authorized to receive "full, reliable and timely" information on the current condition of the state forest fund (art. 35), but there is also a positive duty on the forestry authority to publish information on the management plan, category, protection regime and allocation of areas for forest use, before making a decision on forest use in a particular area of the state forest fund (art. 36). Regrettably, the actual implementation of these rules in Georgia has been far from effective. For instance, the recent Decree 105 of 2007 on the allocation of forests of local significance, instead of further specifying a consultative procedure, ignored the requirement of art. 35 and reserved land selection procedures to the Ministry and the State Commission on Land Use and Protection.²⁶

3.3 Direct participation of local communities in forest management

Another crucial aspect of participatory forestry is for countries to ensure that local communities (living in or near forest areas) have access to forest resources

of Granting Environmental Impact Permits of 1 September 2005.

²⁴ On recent changes in forest and forest-related legislation in Georgia, Cirelli M.T. *Report to the Government of Georgia: Recommendations to the National Drafters' Working Group on Forest Legislation Reform in Georgia 2007*, FAO, Rome (technical report prepared in the framework of the World Bank/FAO Cooperative Programme).

²⁵ Kazakhstan's Government decision on rules on the use of information on the forest fund (2004), Rule 5; see Cirelli M.T. *Forestry and Wildlife Legislation Report to the Government of Kazakhstan*, *supra* n. 18.

²⁶ Cirelli. *Report to the Government of Georgia*, *supra* n. 24.

and manage them thus engaging in forest activities that are important for their livelihoods. This would not only be a way of improving local livelihoods, but also of complementing the efforts of forest officials to ensure sustainable forest management. The importance of engaging local communities is emphasized in several international instruments, such as the Rio Forest Principles (Principle 1.2d), the Convention on Biological Diversity (art. 10) and the Convention to Combat Desertification (art. 5).

While the idea of "community forestry" has been used in other regions of the world for the management of common property, the term "community-based" forestry seems more appropriate for the CAC region, as it relates to a broader concept. It should be understood as applying not only or necessarily to forestry carried out by a community as a "group", but also by its members as individuals or families. The distinction is particularly significant in the context of the CAC region, where community-based forestry should be differentiated from forms of collectivism that were experienced during the Soviet times.

In most CAC countries, the starting point for discussing the possibility of community-based forest management is the state's ownership of forests. Forests are the exclusive state property in Tajikistan (Forest Code, art. 2), Uzbekistan (Law on Forests, art. 4) and Turkmenistan (Forest Code, art. 1). In the latter country, the forest code foresees that part of the state forest fund can be allocated to collective farms (art. 3).²⁷ On the other hand, Armenia (2005 Forest Code, art. 4) and Georgia (1999 Forest Code, art. 9) recognize the possibility of forests being private property, but in Georgia this provision has not found application yet.²⁸ In Kazakhstan (Forest

Code, arts. 6-7) and Kyrgyzstan (Forest Code, art. 12), instead, the forest codes clarify that private property can only be obtained on privately planted trees. To this end, in Armenia there is the possibility of obtaining a free-of-charge allocation of state forest lands for afforestation purposes, which will eventually lead to acquiring private property over the planted trees (Forest Code, art. 33).²⁹

Against this background, different legal options are available to allow the use and management of forest land and/or forest resources directly by local communities, households, families or individuals residing in or near forest areas. While property remains vested in the state, leasehold systems or management agreements may grant rights to use forest areas to individuals or groups, without necessarily preventing the imposition of regulatory limitations that can quite substantially restrict the exercise of such right.

In all CAC countries, the possibility of leasing parts of the state forest fund is provided. However, because the state forest "fund" includes both forested and non-forested lands, assigning land from the fund does not necessarily mean that actually forested land is allocated to local people. In a significant number of cases, the land allocated may only serve agricultural purposes. The duration of such rights is also noteworthy: although some countries define them as "long-term", a case-by-case assessment should be made as to whether the actual duration can be considered long-term in forestry terms (taking in consideration the period of time necessary for trees to grow).

In Kyrgyzstan, the Forest Code accords priority in the allocation of leases to collaborative forest management,³⁰

²⁷ The lack of an official English translation of the Turkmenistan Forest Code does not allow for a more in-depth analysis of this provision.

²⁸ And it seems very unlikely that it will in the near future, as the plans for the reform of the forest sector and its legislation in Georgia continue to be based on the state property of forests (see Georgian Ministry of Environment Protection and Natural Resources, *Forest Policy of Georgia*, May 2007).

²⁹ As there is no specification in art. 33 as to the rights and responsibilities linked to such acquired private property, it seems that these will be the same as the general rights and responsibilities of private forest owners as spelt out in article 5 of the Armenian Forest Code.

³⁰ See also Government Decision n. 337 of 27 July 2001 on the Introduction of Collaborative Forest Management in the Kyrgyz Republic, as reported by Uemoto, *supra* n. 7, at page 63.

which is defined as the management planning and implementing of forestry activities by local communities (arts. 1 and 47). Secondary legislation³¹ has clarified that these leases have 5-year duration in the first instance, but could be extended for an additional 49 years. The tenant receives 100 percent of all income and products harvested during the lease. This is particularly significant, if compared with the more traditional practice of leases providing only for a specified share of the income to users/managers, while the *leshoz* would retain the rest.³² According to recent reports, however, these collaborative forest management leases are still limited in number and tend to be distributed through a non-transparent process with inequitable outcomes.³³

In Armenia, a management right over certain state forests can be transferred to community organizations through a contractual agreement ("accredited forest management contract") with a maximum duration of 10 years.³⁴ Upon approval of a forest management plan and the written consent of the local self-governing body, the activities that can be undertaken in the framework of the contract may include: afforestation and reforestation, ensuring forest protection, sustainable forest management, development of non-wood forest resources, and rehabilitation of degraded forest ecosystems. Eligible forests include forests previously belonging to rural collectives and soviet economies (*kolkhozes* and *sovkhoves*) as well as state forest lands within the administrative border of a community. In other CAC countries, this possibility of using contractual agreements on the use and management of state forests is foreseen, although not always realized.³⁵

In Kazakhstan, long-term forest use may be the object of a contract (Forest Code, art. 29), whereas only temporary use of forest resources can be the object of a lease in Tajikistan (Forest Code, art. 23) and in Uzbekistan (Law on Forest, art. 19).

Whatever the specific contractual arrangement may be, the legal basis of these contractual arrangements may fall short of creating the necessary security or guaranteeing adequate benefits for community forest users, of providing realistic hope of significant benefits, and instilling enough confidence for communities to invest in and feel responsible for sustainable forest management.³⁶ First of all, contracts need to have a sufficient duration as is realistically required for users to reap the benefits from sustainable forest management. The Kyrgyz Forest Code (art. 45) and the Kazak Forest Code (art. 29) refer to duration for forest leases of 10–50 years, but other CAC countries provide for significantly shorter periods, which most likely prevent users from fully benefiting from the contract. For example, in Armenia an accredited forest management contract cannot last for more than 10 years. Similarly, in Uzbekistan (Forest Law, art. 19) and Azerbaijan (Forest Code, art. 22), the duration of leases to private individuals cannot exceed ten years.

Secondly, most CAC countries provide for some legal guarantees for forest user's rights to be exclusive and secure, such as a general prohibition of external interference with their activities and the right to obtain compensation for damages or loss.³⁷ The formulation, however, is usually so general that it cannot prevent, for example, the government from imposing other users against the forest user's will (allowing mining operations in the same forest land plot, for example). Furthermore, only few CAC countries empower forest users explicitly to control the access of outsiders to the resource and to call upon government to help

³¹ Decree n. 226 of 2001 on National Collaborative Forest Management Regulations (see note 16).

³² Fisher et al., *supra* n. 19.

³³ Baumann P. *Forestry-Poverty Linkages in West and Central Asia: The Outlook from a Sustainable Livelihoods Perspective* 2006, Livelihood Support Programme Working Paper n. 34, FAO, Rome.

³⁴ Decision of the Government of Armenia n. 583 of 4 May 2006, Regulation on Handing over State Forests to Community Organizations for Accredited Management without Competition.

³⁵ For a discussion of early experiences in this regard, see Uemoto, *supra* n. 7, at pages 62–64.

³⁶ Lindsay, Wingard and Manaljav, *supra* 13.

³⁷ Azerbaijan's Forest Code, art. 17; Kyrgyzstan's Forest Code, art. 40 and 100; and Uzbekistan's Law on Forests, art. 23.

enforce this right. One instance is Georgia, where the user is empowered to demand compliance with the conditions of his/her lease contract (Forest Code, art. 62). Another is Tajikistan, where the user is empowered to prevent, denounce and suppress certain forest-related violations (Forest Code, art. 43).

A third aspect concerns the fair and transparent termination of forest use rights, which may result in wide powers on the part of government to terminate the arrangement which may significantly weaken the community-based management arrangement. If the grounds for termination are poorly defined or vaguely spelt, a significant amount of discretionary power may lead to the unilateral or unfair termination or changes in midstream that would severely undermine the sense of security of forest users.³⁸ One option is to set by law an exhaustive list of reasons for termination: this is the case of the Georgia Forestry Code, which clearly distinguishes between reasons of restriction or suspension of a contract (art. 63), and reasons for termination (art. 66). A more user-favourable system provides that termination will only be triggered by the user's repeated violation of forest laws or of the lease conditions, for example after "two or more violations" as in Kazakhstan (Forest Code, art. 38.1.9). None of the CAC countries include in the list of causes for termination the breach by the forest authority of its obligations towards the user. In a few CAC countries,³⁹ the law also indicates that termination would lead to compensation to the forest user. The law should also provide for a transparent process for termination and for the possibility for the forest user to complain about the termination. This is the case of Georgia (Forest Code, art. 67), where the forest user should be notified in writing about the decision of terminating the lease and has the right to defend his/her interests.

It is still unclear whether in Georgia a different legal arrangement is being put in place for community forestry. The Georgian Forest Code (art. 13) foresees the establishment of "local forest" funds to be governed by local self-governing bodies. A May 2007 resolution on "forests of local significance" specified the procedure for the identification and allocation of such forests to local self-governing bodies, further asserting that these forests should be managed for the benefit of local communities.⁴⁰ Relevant forests include those on territories of former *kolkhoz* forests or Soviet farming administrations, or on lands located next to these territories and falling under the area of a relevant self-governing unit. The decree, however, has not clarified whether self-governing bodies will be transferred the property or just a management right to local forests from the central government. In addition, it remains unclear whether these bodies will manage the resources directly or rather will have to oversee forestry activities undertaken by communities.⁴¹ In either case, it is advisable that the new forest code currently under discussion provide a more detailed legal basis for local forests, spelling out the powers and responsibilities of local self-governing bodies and the rights and duties of local communities.

³⁸ Lindsay, Wingard and Manaljav, *supra* 16.

³⁹ Georgia's Forest Code, art. 63; Kazakhstan's Forest Code, art. 25; Kyrgyzstan's Forest Code, art. 100.

⁴⁰ Decree of the Government of Georgia n. 105 of 23 May 2007 "Regulation on the order for the determination of the forests of local significance."

⁴¹ Cirelli M.T. *Report to the Government of Georgia: Recommendations to the National Drafters' Working Group on Forest Legislation Reform in Georgia*, *supra* n. 24.

4 FUTURE PERSPECTIVES

Overall, few countries in the region have already started to fulfil their international obligation under the Aarhus Convention in the forest sector. In view of the ongoing forest legislation reform in some countries in the region, and the need for most CAC countries to further adapt their legal frameworks to the Aarhus Convention, this concluding section will identify some avenues for reform.⁴²

a) In CAC countries, public participation is not yet fully guaranteed in the forest sector at all levels, namely in forestry law and policy-making, in the drawing and modifying of management plans, in forest-related environmental impact assessments and in other forestry-decision making (forest land classification, tenders and allocation of forest use/management rights). After having ascertained what is provided for by environmental protection legislation in each country, options for the reform of forest laws could include: regular presence of the public in forestry-related government meetings (the law can simply allow the public to participate in government meetings called for forest-related decision-making); legally mandated consultations (the law can establish a duty for forest authorities to use a public notice and comment period, prior to the adoption of a forest-related decision); or the creation of a multi-sectoral, government/civil society forest forum (the law can establish a permanent public oversight body to allow ongoing public participation in forest decision-making as well as monitoring decisions implementation) both at the central and regional/provincial levels. To strengthen these provisions, forest laws may also establish that decisions taken in the absence or in violation of a participatory process can be rendered invalid.

b) With regards to public access to forest-related information, only few countries in Central Asia and the Caucasus have put in place some

minimum legal mechanism by which concerned citizens can obtain upon request forest-related information in an easy, adequate and timely fashion. In most cases, however, the law does not clarify the extent of and guarantees to this right, thus leaving wide discretion to the government as to implementing the provision in subsidiary legislation. To make the right enforceable, the law needs to spell out some minimum requirements: specifying how the information should be requested (from which public authority information can be obtained or where the information is deposited); allowing only minimal fees or exemptions to fees to obtain the information; specifying the grounds for refusing information and maximum timelines for providing the information requested; setting penalties for improperly withholding information, and/or creating judicial mechanisms for challenging denial of requests. In addition, the law may create some more proactive duties for forest authorities, thus requiring as a matter of routine the publication of certain types of information, whether or not requested by the public. In this case, the law needs to specify what kind of information should be made public, in what forms and in what timeframes information should be made public, and which public authority is responsible for informing the public.

c) With regards to community-based forest management, only few CAC countries have explicitly supported local communities' direct use and management of forest resources in their forest law. Nonetheless, all these countries (whether or not they are considering the recognition of private property over forest resources) are at least theoretically able to use leases or other contractual arrangements over state-owned forest areas. Due attention should, however, be paid as to whether the allocation of rights over the state forest fund actually concerns forested areas or not. In order to ensure that these contractual arrangements represent an attractive and fair opportunity for local communities, legislative changes may be required to ensure that such agreements represent an attractive option for local communities and individuals. First of all, the process of

⁴² Inspired by Lindsay, Wingard and Manaljav, *supra* n.16.

allocating forest use and management rights should be open and responsive: the government should receive, consider and decide upon requests of local communities' groups, households, families and/or individuals for areas to be assigned to them by giving specified periods of time for submitting expression of interests, providing reasons for rejections in writing, and creating an overall process of public consultations on the matter. The process should be preceded by a prior definition of the pool of eligible potential participants by reference to some geographical limitations and requirement for actual residency for users in areas with or adjacent to forests. These requirements should be balanced by provisions to avoid excluding other legitimate users. Furthermore, an increase in the duration of contractual arrangements related to forests should be ensured in those CAC countries in which this is too limited to ensure that communities benefit from their sustainable forest management. To facilitate such transition from a more restrictive approach, the law may rely on a trial period during which users would have to demonstrate commitment and good practice, before accruing a longer-term right. Furthermore, few forest laws in the region ensure a fair and transparent process for terminating such rights: in order to support an underlying idea of collaborative partnership between community users and forest authorities, for example, the law should allow termination of the contract only in case of repeated non-compliance rather than at its first occurrence and by providing a right of appeal to an independent court.

For all these elements, members of the public should have access to administrative and/or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of forest legislation. The law could, therefore, contain specific provisions on access to justice, referring to administrative appeals as mechanisms for the review of conduct of government officials at a higher level of the same government authority that allocated or denied certain rights. In such a case, it will be necessary for the law to indicate the responsible authority and provide some minimum

principles. In addition, the law can make reference to access to independent administrative courts, or to alternative dispute settlement mechanisms (out of the court system). For example, forest user groups could create an internal dispute resolution system. In the latter case, the law should detail exactly what is required in order to form a dispute resolution body and provide for a right to appeal such decisions to a court of first instance.

Needless to say, all these concepts should be tightly linked in forest legislation. Access to information, public participation and access to justice are crucial in setting up community-based forest management systems, in ensuring equitable and informed contribution of local communities to sustainable forest management and in guaranteeing an appropriate consideration of the needs and capacities of interested stakeholders.