
Governance, policy and legislation

Governments provide the legal and policy frameworks that are necessary for successful and sustainable natural resource and landscape management programmes. Community-based approaches can only be effective if the institutional setting in a given location has in place policies, laws, regulations and fire management agencies that provide a contextual framework for participatory approaches, rights and benefits. The successful implementation of any programme, including CBFiM, often requires changes to the supporting policy, rules and regulations at three distinct levels of administration: the national level, the local/district level and the intermediate/provincial level.

At the national level, policies and supporting legislation need to create an environment that enables CBFiM and makes it attractive to local communities. At the provincial level a model of decentralized natural resource management needs to be promoted that is most likely to work under the relevant political circumstances (Treue and Nathan, 2007). In Cambodia, for example, government policy, laws and regulations all influence villagers regarding their use of fire. According to the Cambodia Forest Sector Review (2004), government field staff, specifically cantonment (district) offices of the national Forestry Administration (FA) often enforce specific laws at the district and commune levels. As a result, the government and its policies are seen to be explicitly linked to traditional fire use and, in broader terms, to the socio-economic situation in many rural villages. Community involvement in natural resource management is also a priority in Mozambique's existing policy on forestry and wildlife resources. This focus is reflected in the government's efforts to manage natural resources in partnership with rural communities and the private sector. This approach represents a policy shift both in Mozambique's agricultural and natural resource sectors, which results in the potential for significant impact in economic development (Nhantumbo, Dent and Kowero, 2001).

The development and the eventual implementation of relevant policy and supporting legislation require, at a minimum, good governance. The term "governance" is used extensively and in many contexts, but is difficult to capture in a simple definition. In a natural resource context, governance is used to refer to the body of formal and informal policies, and the arrangements developed between relevant stakeholders, to manage and to make decisions about a particular resource. Governance provides the framework by which groups, such as communities, define their interests, rights, responsibilities and the ways in which they will interact with each other and with institutions of authority to manage

a particular resource (Government of India, 2002; and Blomley, 2009). Good governance typically has eight major characteristics (UNESCAP, 2007). It is:

1. participatory;
2. consensus oriented;
3. accountable;
4. transparent;
5. responsive;
6. effective and efficient;
7. equitable and inclusive; and
8. it follows the rule of law.

Inadequate governance, or the absence of clearly defined processes, roles and responsibilities for decision-making, is often at the root of many problems that impede effective CBFiM. Effective CBNRM initiatives are dependant on good governance, which may be measured, in part, by the extent and quality of enabling policy and legislation (Mayers, Bass and Macqueen, 2002).

Adequate policy and legislation are directly related to the successful implementation of CBFiM. Legislation may, for example, empower communities by promoting their involvement in fire management; it thus provides for the establishment or recognition of community committees and decision groups and allows community members to participate actively in a variety of fire management activities, including the development of local fire management plans. To encourage community involvement, legislation should also provide adequate incentives for members of those communities involved in fire management activities and should compensate those individuals both for their efforts and for any personal injury or damage to property that results from fire. Increased involvement in fire management by communities often results in those communities being better informed and more likely to use fire in a judicious manner and to adhere to local policy and legal regulations relating to fire management (FAO, 2009b). Legislation that supports participation will allow progress towards sensible fire management and may be appropriate, depending upon national circumstances.

Legislation may include provisions that permit the use of fire by communities for certain activities under specific requirements and regulations. This approach not only encourages the responsible use of fire, but also addresses the fact that prohibition on fire use is, in many instances, ineffective and may even be counterproductive. In many countries fire is a cheap and effective tool, readily available to rural communities for a variety of livelihood activities, which means that these communities are likely to use fire whether or not it is permitted. Establishing appropriate legal guidelines can be an effective way to allow traditional fire-use practices under certain circumstances and to promote the sharing of that knowledge with contemporary land and fire managers.

If tenure is poorly defined, there may be no incentive for those using fire to manage it safely and responsibly. Where there is no clear ownership of land, people are less likely to care if it burns or is managed poorly. Overlapping tenure rights, or other issues that make ownership rights unclear, can also lead to conflicts

between individuals or groups that simultaneously claim an area as their own. This situation is exacerbated when local people's uses and needs are not considered in the development of legal and regulatory systems that relate to industrial, sectoral or national interests (Murdiyarso and Adiningsih, 2006). The resulting social conflict has often been recognized as an indirect cause of fires. Similarly, lack of recognition of local people's property rights in management and planning can lead to conflicts in which stakeholders may resort to the use of fire as a weapon to claim lands (Tomich *et al.*, 1998).

If people have formal and legally recognized ownership of resources, and can see long-term benefits from the land that they are managing, they will tend to be concerned with the protection and sustainable management of those resources and the land that supports them. Clearly defined land tenure that provides legal ownership, clear boundaries and security, in the form of enforceable rights, is most likely to provide the necessary incentives for communities to manage fire judiciously both in the short term and the long term. Similar incentives and shared approaches are necessary in order to gain the involvement and support of communities in managing wildfires that have their origins outside of their traditional or legal boundaries.

The development of appropriate policy and legislation, combined with education and training, can result in a situation in which communities are engaged and have a strong sense of ownership, and in which fires, both beneficial and detrimental, are likely to be more effectively managed. This, in turn, can lead to an increase in the opportunity for collaboration between communities, commercial interests and governments and, in many instances, to the sustainable management of resources.⁶

Under a participatory approach, different stakeholders should each have an opportunity to be informed of the legal issues related to forest fires and to contribute to identifying the most appropriate legal solutions, on the basis of their knowledge, interests and concerns. Legislation should provide a clear basis for this kind of approach. For example, the law could:

- require responsible authorities to inform the public adequately regarding monitoring activities and other aspects of forest fire management;
- envisage the creation of local committees or groups that could undertake certain forest-management responsibilities on the basis of specific agreements, following the provision of adequate information and training;
- envisage agreements with concerned land and forest owners that set out their respective rights and obligations regarding measures to prevent fires or other forest-management aspects;
- require consultation with local communities and concerned land and forest owners in the process of the adoption or revision of plans for forest fire management and of forest fire legislation;
- require the public to inform the authorities of relevant facts;

6 The FAO publication *Forest fires and the law: a guide for national drafters based on the Fire Management Voluntary Guidelines* (FAO, 2009b, also available at www.fao.org/docrep/011/i0488e/i0488e00.htm) provides additional information on the linkages between sound legislation and fire management.

- foresee rewards or other incentives for persons or teams who have successfully completed certain activities, e.g. fire suppression; and
- clarify the conditions and procedures for the authorized use of fire, such as prior notification, inspections, permits to burn, supervision, agreements, the submission of plans, or a combination of any of these tools to allow managed fire (FAO, 2009b).

Also important for CBFiM is the legislation regarding the use of fire. Although legislation traditionally tended to foresee blanket prohibitions on the use of fire, various laws have now begun to allow certain planned uses of fire, as there is general awareness that fire may be a useful land- and forest-management tool (FAO, 2009b).

In 2003, a workshop was held to examine the current state of fire-related laws and collectively to identify best practice for fire-related legislation and regulation (Simorangkir *et al.*, 2003). The workshop report works through and outlines the legal aspects and agency requirements for fire management, which are key aspects of “governance”. The review is not restricted to CBFiM, though that is a focus. In point form the elements were set out below under the major headings that follow.

- Framework law:
 - The ideal approach for legally regulating fire management would be to consolidate all existing laws and regulations into one national level “umbrella” framework law.
 - In addition, the framework law should establish responsibilities for carrying out other activities related to fire management, including information management, public awareness, training, and education.
 - Within the framework provided by the law, there should be flexibility for provincial, district, and village level authorities and communities to implement the basic obligations of the law, taking ecological and social needs and local circumstances into account. Operational details for implementing the law should be set out in one comprehensive regulation.
- Harmonization of existing laws and regulations should be reviewed to find out if:
 - they contain all of the elements needed; and
 - they contain provisions that conflict with each other or with other laws and regulations related to fire management.
- Core principles to be followed are broadly applicable to most laws and include such considerations as:
 - sovereignty;
 - precaution;
 - cooperation;
 - sustainable development; and
 - all fire is managed.

- Operational elements include:
 - general elements, such as:
 - comprehensive coverage;
 - powers and responsibilities;
 - coordination mechanisms; and
 - cooperation.
 - fire-related technical elements, such as:
 - research and analysis;
 - risk reduction (fire prevention);
 - readiness (preparedness to fight fires);
 - response (fire suppression); and
 - recovery (restoration of built and natural assets).
 - additional operational elements, such as:
 - public awareness;
 - resourcing;
 - incentives and disincentives; and
 - enforcement.

If the legal and regulatory situation in a country systematically addressed all or most of the segments identified above, then the requirements of both sustainable landscapes and of community roles and responsibilities in fire management, that is, CBFiM, would be likely to have been well addressed by law.

The FAO Fire Management Voluntary Guidelines (FAO, 2006) provide a framework of legally non-binding principles and internationally accepted strategic actions. The intent of the guidelines is to address comprehensively the cultural, social, environmental and economic aspects of fire management and to encompass the full range of fire management activities. These activities range from prevention and the appropriate use of fire in maintaining ecological processes and ecosystems to the use of fire to reduce the accumulation of fuel and residues below hazardous levels. One of the primary objectives of the guidelines is to publicize and encourage the contribution of effective CBFiM. Significant emphasis is given to social and community values and to the importance of engaging communities in fire management planning and implementation. As such, the Voluntary Guidelines can be a useful tool in assessing the viability of new and existing CBFiM efforts.

