

Legal, policy and institutional framework

Background paper to the Kotka V Expert Consultation

1. Introduction

FAO has been conducting global forest resources assessments at 5 to 10 year intervals since 1946. Each assessment has had a slightly different focus reflecting the concerns of its time. In the 1940 and 50s, assessments were dominated by the concern of a future timber shortage. Environmental dimensions of forest resources and in particular the rate of deforestation became important in the 1980s, while FRA 2000 provided a wide range of information related to forest benefits and environmental functions.

FRA 2005 is the most comprehensive global assessment of forest resources to date. It covers more than 40 variables related to forests, their uses and values and uses the concept of sustainable forest management as the reporting framework, encompassing social, economic, and environmental dimensions of forest resources.

In accordance with the focus on forests and forest resources, the participants of the Kotka IV meeting held in July 2002 recommended that FRA 2005 addressed the first six of the commonly agreed seven thematic elements of sustainable forest management: 1) Extent of forest resources; (2) Biological diversity; (3) Forest health and vitality ;(4) Productive functions of forest resources; (5) Protective functions of forest resources; (6) Socio-economic functions.

The 7th theme is related to the legal, policy and institutional framework for SFM.

The participants to Kotka V are invited to discuss and advise about the pertinence to address the 7th thematic element in FRA 2010 and the selection of some variables that characterise this element.

2. Rationale for collecting information on the legal, policy and institutional framework

- The 7th thematic element refers to the legal, policy and institutional arrangements to implement SFM . These are needed to create an enabling environment for SFM and are closely related to the six other themes. The 7th thematic element includes participatory decision making, governance and law enforcement, and monitoring and assessment of progress. This theme is also addressing broader societal aspects, including fair and equitable use of forest resources, research and education, infrastructure arrangements to support the forest sector, transfer of technology and capacity building, and public information and communication (FRA 2005 Box1.1)
- There is a need to bring make more visibility to the progress and efforts made by the countries towards SFM. In the past decade, legal, policy and institutional changes have

have occurred in the forestry sector of many countries to promote sustainable forest management. Many countries have been involved in reform programmes to curb deforestation or improving the contribution of the forestry sector to the national economy. However, these efforts are not acknowledged in the information provided through the other thematic elements related to areas and products of the forests or their protective, productive and socio-economic functions.

- Changes in the legal, policy and institutional framework have significant impacts on SFM and this has to be recognised. The socio-economic status of many countries is going through dramatic changes and countries have to adapt to these changes through reforms. Many changes and reforms are translated into new policy objectives and regulations. They have strong impacts on the way the forests are managed but also they have significant influence on the behaviour of people and their governance of the forest resources. Privatization, decentralization, increased community participation in forestry sector decision making are some of the results of such changes.
- Evaluating the legal, policy and institutional situation and performance within a country can be very useful to improve ways and conditions to achieve SFM. Information related to legislation, policy and institutions is often scattered and difficult to obtain. Characterising the national legal, policy and institutional framework and collecting relevant information could contribute to identifying trends, existing gaps and constraints and to developing adequate enabling arrangements for SFM.

3. Content of the legal, policy and institutional framework

The legal, policy and institutional framework is formed of various interlinked components. A policy needs an enabling institutional environment for its formulation and implementation. The legislation provides the regulatory and fiscal instruments needed to achieve the policy objectives. The institutions provide the human and technical capacities needed to implement activities and programmes related to forest policy implementation.

Forest legislation, policies and institutions are related to other legislation and policies (agriculture, industry, equipment, etc) regulating the national socio-economic development and are subject to modifications in accordance with broader reforms.

Legal framework

Legislation: consists of the aggregation of laws enacted by the legislative authorities of a country over time, plus the common law and customary law which have been accumulated respectively through judicial or traditional practice. Legislation provides the legal instruments which are necessary to put into effect many of the objectives of a policy. Forest legislation can affect both governmental agencies and general public. The legislation will stipulate the responsibilities of action and the limits of authority of the governmental agencies. In accordance with forest policy changes, many countries have developed new forestry laws and codes.

There is a need to keep in mind that legislation regarding land use, zoning, agricultural and rural development, taxation, industry, etc. have close connections with and strong influences on forest laws and particularly on forest tenure and ownership.

Forest tenure is the relationship whether legally or customary defined, among people as individuals or groups, with respect to forest resources. Rules of tenure define how property rights to resources are to be allocated within societies. Forest tenure is an important component of the forest policy and legal arrangements for SFM. Forest tenure is mainly determined by conditions outside the forestry sector.

Forest policy

National forest policy can be defined as the set of orientations and principles of actions adopted by public authorities in harmony with national socio-economic and environmental policies in a given country to guide and determine future decisions in relation to the sustainable use and conservation of forest and tree resources for the benefit of the society. Forest policies have to be harmonized with international initiatives and conventions. Over the past decade, many countries have developed a national forestry programme (nfp) and forest policies have often been reformed towards more sustainable and decentralized forest management.

Forest institutions

Forest institutions are referring to all public and civil society organizations contributing to the implementation of the forest policy objectives and responsible for managing, conserving, using public goods and services provided by the forest resources.

Many countries have undergone structural reforms of their forestry administrations. The forestry department has often shifted from agriculture ministries to newly created environment ministries to acknowledge the environmental functions of forests. Decentralization of management authority and devolution of rights to local people are other significant on-going institutional reforms. Forest educational institutions are often fighting with old and new issues such as intermittent funding, the drop of graduate students and inadequate curricula.

Private sector organizations - although they contribute importantly to the policy achievement - are not considered here as they do not take any direct responsibility for managing **public** forest goods and services.

4. Nature of information requested for FRA 2010

Information to be collected for FRA 2010 should be as far as possible:

- Quantifiable: in the form of figures. The information collected should be easily integrated as tables for easy reference, compilation and comparison.

However, information related to the legal, policy and institutional framework is essentially of a qualitative nature and presented in form of texts, statements, performance analysis, etc. It is clear that qualitative information cannot be easily captured in simple numbers. Only some specific characteristics of the policy, legal and institutional framework will be considered in FRA 2010. The qualitative aspects will be treated in

depth in other FAO forestry information programmes such as in the Country Forestry Profiles and the National Forestry Programmes.

- *Time series*: although the information provided should help to understand the current status of the forest sector, there is an interest to collect information for various periods of time giving a sense of evolution or trends. Information is requested, as far as possible, for the years 1990, 2000 and 2010.
- *Accurate and reliable*: the information provided should be the latest available and from certified sources or surveys.

5. Relevant variables from the C&I processes

For obvious reasons, FRA 2010 cannot provide information and measurements for all the variables characterising the forest policy, legal and institutional framework. Only the most significant, quantifiable variables describing the current status and trends should be selected.

To facilitate the selection of the relevant variables, the nine (eco-)regional criteria and indicator processes (plus CIFOR) which focus on forests have been reviewed and the outputs related to the policy, legal and institutional framework have been compared between processes.

The comparison indicates a degree of preference or significance for some indicators. The results of the review are given in the table attached in Annex 1.

In summary, the 9 C&I processes (plus CIFOR) are according a common importance to the following criteria and indicators related to the 7th thematic element:

Legal framework

Existence of laws and regulations

Define/encourage codes that regulate forest management and best practices

Forest tenure rights and security

Participation and duties of stakeholders in forest management

Policy framework

Existence of policies

National forest policy objectives

Periodic monitoring and evaluation mechanism

Forest tenure

Existence of forest estate – public, private, indigenous, communities. This issues is dealt with in a separate background paper.

Institutional framework

Structure and staffing of institutions responsible for SFM

Number of professional and technical personnel

Capacity development – training and education

Research – existence of appropriate technology and research to practice SFM

Extension – existence of communication strategies to increase awareness about SFM

Financing resources

Funding for forest management, administration, research and human resource development

Investment in forest research

Existence of mechanisms/instruments for sustained funding

6. Proposed variables and reporting tables for FRA 2010

Considering the nature of the variables and the type of information requested, the following reporting tables are proposed as a starting point for discussions:

Legal and policy framework

International level:

Information on ratification of forest-related conventions. This information could be obtained from convention secretariats.

National level:

Categories and definitions

Category or variable	Definition/Explanatory notes
Forest Legislation	The forest legislation is an instrument facilitating, regulating and supporting forest policy implementation.
Enactment	Approved by parliament/the government
Provisions	Provision is referring to the articles of the forest Law or Act when it exists. Forest legislation can make or not provision to regulate some activities for forestry sector development. Providing rules and incentives for some specific activities are strongly promoting the implementation of such activities. .
Forest Policy	A national forest policy statement providing forestry sector development objectives.
Endorsement	A national forest policy statement has been officially endorsed by the Minister (or highest Government authority) in charge of forests.
Objectives	The policy provides general objectives or priorities that will orientate the development and activities of all components of the forestry sector
Process	The process indicates the level of participation of the forestry sector stakeholders in defining the forest policy objectives and strategies. The process is an important component of the policy formulation. It has a strong impact on the level of interest of the stake holders in policy achievement. The process can be limited to the forest administration arena or can involve several forest sector stake holders at various stages of the formulation.

Reporting table template

Forest Legislation	Unit	
- Enactment	Dates	Dates when the latest and the previous forest legislation were enacted by the Parliament
- Provision	Indication	Management: indicate if the forest legislation provides rules for forest management
	Indication	Rights: indicate if the forest legislation provides rules for involving stakeholders in forest management

Forest Policy		
- Endorsement	Date	Dates of the two latest officially endorsed national forest policies
- Objectives	Priority	Provide the 3-5 main priorities of the current forest policy
- Process	Indication	Administrative Participative Other
	Time - months	Estimated time to develop the latest forest policy
	Number of meetings	Number of national meetings organised to discuss the national forest policy draft.

Institutions

Categories and definitions

Category or variable	Definition/Explanatory notes
Forest Administration	
- Hosting Government Structure	In many countries, the forestry administration was traditionally either independent or hosted by the Ministry of Agriculture. Recently the forestry administration often shifted from the Min. of Agric to the Ministry of Environment or other ministries indicating new orientations for forestry sector development. The position level of the forest administration in the official hierarchic system could provide an indication of the relative administrative importance given to forestry development.
Staffing of public institutions responsible for SFM	The number and the quality of permanent professional staff working in the various forestry public organizations indicate the technical capacity of the forestry sector
- Forest Administration	The forest administration is the public institution responsible for any official matter related to forestry and particularly to forest policy formulation and forest regulations enforcement. The forest administration in many countries is also responsible for the management of public forests and wood products commercialization and trade.
- Autonomous Agencies	Public organizations or agencies responsible for the management of the public forests or commercialization of forest products. These agencies have a status of a public organization but they function as private enterprise with obligation of return on invested capital.
Staffing of Forest high level Education and Research	The number of University (or High School) professors and researchers in forestry would measure the country capacity to fulfil its development potential.
Extension and communication strategies	Forestry development is increasingly relying on the participation and the involvement of the stakeholders in forestry activities. Therefore extension or communication programmes are important tools to promote SFM. These programmes and strategies are often shared with other institutions (Agriculture, rural development). The analysis of the broadcasting activities focusing on SFM or forestry sector activities could provide a performance indicator for the forestry extension services. Other indicators could be considered.
- Broadcasting activities	Number of annual radio and television emissions related to SFM

Reporting table template

Forest administration	Name			
- Hosting structure	Name of Ministry			
- Position level	a)Ministry, b)Directorate, c) Department, d) Section, e) Unit, d) Other			
Staffing of Forest Institutions	Units	1990	2000	2005
- Forest administration Graduates Technical Permanent workers	Number			
- Autonomous agencies Graduates Technical Permanent workers	Number			
Staffing - University level – forest education and research personnel Professors PhDs	Number			
Extension and communication strategies TV Radio	Hours of broadcasting emission			

Funding SFM***Categories and definitions***

Category or variable	Definition/Explanatory notes
- Total annual expenditures	Total annual expenditures include expenses for personnel salaries and investment

Reporting table template

FRA 2010	Unit	1990	2000	2005
Forest Administration				
- Total expenditures for all public forest administration bodies	1000 US\$			
Autonomous public forest agencies				
- Total expenditures for all agencies	1000 US\$			
Investment in forestry research				
- Total expenditures	1000US\$ or % of national research expenditures			

Annex 1 Criteria and indicators related to the 7th element: Policy, Legal and Institutional Framework for SFM

Summary table

Meaning of indication

Yes: indicator clearly expressed; **++ +:** express intensity of concern for the indicator; **Blank:** importance not specifically expressed

Indicators	ITTO ¹	TARA	ATO	CCAD	MCPFE	Montréal	Dry zone Africa	Near East	Dry Forests Asia	CIFOR
<i>Extent to which the policy and legal framework supports the conservation and SFM</i>										
Existence of policies, laws and regulations	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
<i>Policy framework</i>										
National policy objectives for forest: for each policy area provide objective, institution responsible, policy instrument (Leg, fin, info)	yes		+		yes		yes	yes		
- Forest policy integrated (or harmonised) with other sectors		yes		yes			yes			++
- Absence of distorting (non forestry) policies impacting SFM										yes
- International Conventions are ratified			yes				yes			
- Periodic monitoring and evaluation mechanism – planning framework	yes					yes		yes	yes	
<i>Legal framework</i>										
Establishment of Permanent Forest Estate (PFE) – ecological and economical zoning	yes	yes	yes							yes

¹ **ITTO:** International Tropical Timber Organization – revised ITTO criteria and indicators 2005 – series n0 15; **TARA:** Tarapoto Process – Amazon forests – Lima - 1995; **ATO:** African Timber Organization – C & I Doc. - 1999; **CCAD:** Comisión Centroamericana de Ambiente y Desarrollo (Central American Commission for Environment and Development) or Lepaterique process 1997; **MCPFE:** Ministerial Conference on the Protection of Forests in Europe – expert meeting October 2002; **Montréal Process** – Revised indicators 2006; **Dry Africa** – CILSS/SADCD – 1999; **The Near East Process**, Cairo 1999; Regional Initiative for Dry Asia – Bhopal – 1999; **CIFOR** – Center for International Forestry Research - C & I generic template – tool box series n0 2, 1999.

- Define/encourage best practices codes (laws, ordinance, guidelines, norms) that regulates forest management and practices – including certification	yes			yes		yes				yes
- Laws should include provision for forest values conservation (parks)						yes				
Rights for forest tenure and security are clearly defined in legislation	yes		yes	yes		yes	+++			yes
- Protection of customary and traditional rights				yes		yes				yes
- Equitable access to resources (including recreation areas)					yes		+++			yes
- Existence of conflict management mechanisms						++	+++		yes	yes
Participation (public involvement), rights and duties of stake holders in forest management (decision making, data collection, monitoring and assessment)	yes	yes	yes	+++	yes	yes	yes	yes	yes	yes
Statutory mechanism to provide access to information on forests (communication among stakeholders)						yes				yes
<i>Extent to which forest tenure and ownership contribute to SFM</i>										
Existence of permanent forest estate (PFE): public; private; Indigenous communities	yes				yes					yes
Non-PFE: Public Private; Indigenous ; communities	yes				yes					
- Inter-sectoral co-ordination on land-use and land management exist					yes					yes

	ITTO	TARA	ATO	CCAD	MCPFE	Montréal	Dry Africa	Near East	Dry Asia	CIFOR
<i>Extent to which the institutional framework (technical and human resources) support SFM</i>										
Structure and staffing of institutions responsible for SFM (Name, nature of responsibilities, number of staff, gender; contact) - coordination	yes	yes	yes	yes	yes	yes	++			
Development and maintenance of physical infrastructure						yes				
Number of professional and technical personnel at all levels to perform and support SFM (category of personnel, number (gov, non-gov)	yes		yes	yes	yes	yes				
Control of illegal activities - number of forest offences – enforcement	yes					yes			yes	
Health and safety of forest workers	yes				yes					yes
Capacity development: Develop and enhance human resource across relevant disciplines - number of institutions, students		+++	yes	+++		yes			yes	
- Valorisation of local expertise, knowledge and technologies (including forest management capacities)		yes				++	yes	yes		+++
- Updating curricula of forestry training institutions				yes						
- Capacity and mechanisms for planning SFM and for periodic monitoring, valuation and feedback on progress	yes	+++				yes				
- Capacity to implement international instruments		yes						yes		
Research: Existence of, and ability to apply, appropriate technology and research to practice SFM and the efficient utilization and	yes	yes		yes		yes	yes	yes	yes	

marketing of the products										
- Transfer of technology		yes	++							
- National accounting system						yes				
Extension: Existence of communication strategies and feedback mechanisms to increase awareness of SFM	yes	yes	yes		yes	yes		yes	yes	yes
- Programmes of education for rural population			yes							
- Effectiveness of R & D application (extension)		++	+			yes		++		

	ITTO	TARA	ATO	CCAD	MCPFE	Montréal	Dry Africa	Near East	Dry Asia	CIFOR
<i>Extent to which financing resources contribute to SFM</i>										
Funding for forest management, administration, research and human resource development- latest available year	yes	yes	+	yes		yes	yes		++	yes
- Govt sources	yes			++		yes				yes
- International development partners	yes									
- Private sources	yes			++						
- Investment for forest research	yes		yes	+	+	yes	yes	+	yes	yes
Existence of mechanisms/instruments for sustained funding	yes	++	yes		+++	+	+	+	+	
- Fiscal and monitoring incentives for SFM	+		+++				yes	yes	yes	
- Taxation policies and incentives promoting long term investment						yes				
- Trade policies (quotas, tariff, export subsidies, etc)						yes				
- Benefit sharing mechanism (economic)									yes	yes
Providing means to stakeholders and local government for SFM				yes						