



Improving forest justice

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A policy tool built from experience in Uganda: Cornelius Kazoora, John Carvalho of Sustainable Development Centre

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List of acronyms

AAC	:	Annual Allowance Cut
ACODE	:	Advocates Coalition for Development and Environment
ADR	:	Alternative Dispute Resolution
CBO	:	Community Based Organization
CADER	:	Centre for Alternative Dispute Resolution
CF	:	Community Forestry
CFR	:	Central Forest Reserves
CFS	:	Community Forests
DPP	:	Department for Public Prosecution
FAO	:	Food and Agriculture Organization
FD	:	Forest Department
FID	:	Forest Inspection Division
FORRI:		Forest Resource Institute
FPDF		Forest Product Declaration Form
FPMU	:	Forest Produce Monitoring Unit
IIED	:	International Institute for Environment and Development
JLOS	:	Justice Law and Order Sector
LFs	:	Local Forest Reserves
LGs	:	Local Governments
MFPED	:	Ministry of Financed Planning and Economic Development
MJCA :		Ministry of Justice and Constitutional Affairs
MWLE :		Ministry of Water Lands and Environment
NEMA :		National Environment Management Authority
NFA	:	National Forestry Authority
NFTPA	:	National Forestry and Tree Planting Act
NGO	:	Non –Governmental Organization
NWFPs	:	Non-Wood Forest Products
PEAP	:	Poverty Eradication Action Plan
PRSP :		Poverty Reduction Strategy Paper
RBs	:	Responsible Bodies
SDC	:	Sustainable Development Centre
UIA	:	Uganda Investment Authority
UNBS :		Uganda National Bureau of Standards
URA	:	Uganda Revenue Authority
UWA	:	Uganda Wildlife Authority
UWASNET	:	Uganda Water and Sanitation NGOs Network
UWFA :		Uganda Wood Farmers Association
VAT	:	Value Added Tax

Summary

This tool kit aims to help forest institutions support law enforcement agencies and others create systems to eliminate illegality and corruption and install justice for forest-linked livelihoods. It is based on experience in Uganda. It describes a series of steps:

1. Identify the key producers, traders and final consumers of timber and visualize the production-trade-consumption chain.
2. List the laws, regulations and procedures that the players in the chain are supposed to follow in accessing and using timber.
3. List the enforcement agencies and other mandated institutions the players are meant to relate to.
4. Sketch out how the formal processes are supposed to work.
5. Then sketch out how they actually work, or don't work.
6. Identify the strengths and weaknesses of the process, at all stages, for the poor and marginalized to access justice.
7. Define a strategic approach to improving matters, using a mix of tools which can improve justice in the following areas:
 - Institutions for justice, law and order
 - Timber production
 - Timber trade
 - Timber consumption
8. Record and analyze observations and impact of the tools used in empowering the poor, and promoting sustainable forest management.
9. Adapt and modify tools and work to install successes in policy and institutions.

It is hoped that the complementarity of the tools described will be effective in improving the administration of justice for forest livelihoods. In Uganda and a number of other countries, there are encouraging signs that the environment may be changing in a way which increases the likelihood of tools like these having impact: greater political will to manage forests for poverty reduction; growing confidence in the judiciary by the public; increasing spread of television and radio and a reasonably free press; and growth of an NGO movement advocating for the rights of the poor. The emergence of corporate social responsibility among private companies and environmentally responsible consumerism are also in their very early days but could prove vital.

1.0 Introduction

1.1 Background to the policy tool kit

Without reliable and robust systems for the administration of justice there is inequitable access to forest resources and the conditions are ripe for forest-linked corruption and illegality. Unless governments consistently improve and support administration of justice in the forestry sector, many will suffer from the resulting depletion of the resource base, especially the poor. Today in Uganda there are problems with the justice system - enforcement agencies are slow and expensive for the poor. These agencies are also ranked as highly corrupt in National Integrity Surveys (1998, 2000). In addition, the lead regulatory agency in the forest sector, the National Forestry Authority (NFA), is still young, having been formed in 2004 after the dissolution of the Forest Department. It has limited experience to draw on in contributing to forestry justice on a sustained basis.

There are at least four reasons why a focus on improving the administration of justice is vital for forest-linked livelihoods in Uganda. Firstly, different livelihoods draw on different forest resources and this is a source of conflict. Secondly, people have varying means and capacities to seek justice and their

needs ought to be accommodated by enforcement agencies. Thirdly, Transparency International ranks Uganda among the most corrupt nations, and beginning to address this situation from the forestry sector shows much potential. Finally, reconciling the different interests of people through a transparent and effective system of justice is a strong basis for sustainable forest management in the short and long run.

Forests offer a wide range of livelihood inputs like food, medicinal herbs, wild game, fuel-wood, poles and timber. They also perform important services like regulating water flows and microclimates, and providing habitats for biodiversity. Forest-based enterprises are a source of employment to millions of people. Government in Uganda is increasingly aware of facts like these (Box 1). It has recognized the prudent use of natural resources, including forests, in its Poverty Eradication Action Plan (PEAP)¹ (MFPED, 2000).

Box 1: Recent policy milestones in the management of forestry in Uganda

- The Uganda Forestry Policy 2001
- The National Forestry and Tree Planting Act, 2003
- The National Forest Plan, 2003
- The National Forestry Authority, 2004

The PEAP is important because it is the most comprehensive national planning framework, which government uses to guide sectoral and district plans, in addition to raising and allocating financial resources. Specifically, forests contribute to the PEAP “pillars” of increasing the incomes and livelihoods of the poor and the quality of life. The revised PEAP of 2004 has included two indicators on forestry namely: (i) to increase the forest cover from 24% now to 30% by 2013/14, and (ii) to reduce the average distance to collect firewood from 0.73km now to 0.5km by 2009/10 (MFPED, 2004). The existence of these indicators in the PEAP is an important (and internationally unusual) achievement of the forest sector, which should be built on.

According to the Forest Sector Review (MWLE, 2001), less than 10% and possibly less than 5% of wood removed from forest reserves is recorded and documented in the appropriate way. It goes on to assert that “the majority of removals are illegal and it becomes unwise to rely on data provided by the NFA” [referring to the Forestry Department since the NFA was yet to be formally founded]. In monetary terms, the Forest Sector Review stated that the NFA was collecting only about Ushs. 800 million (\$ 470,000) out of the expected revenue of Ushs. 20 billion (\$11.756 million). Annex 1 provides an overview on current status of forests and harvesting in Uganda.

The above concerns were expressed again in a press release by the Minister of State for Environment on November 12th 2004, in a local newspaper, *The New Vision*. It reported thus:

*“Law enforcement, especially regarding verifying **chain of custody** for forest produce is problematic as the various responsible bodies have differing degrees of readiness to operate effectively. Of all responsible bodies, only the National Forestry Authority (NFA) and Uganda Wildlife Authority (UWA) have the needed capability to undertake law enforcement. District Local Governments are losing considerable revenue and private forest/tree owners are not getting the true market prices.... This environment has led to proliferation of impostors and conmen who are terrorising the unsuspecting public in the name of law enforcement.”*

In preparation for a concerted effort to improve the prospects for sustainable livelihoods based on forest resources by fighting illegality and corruption in forestry and improving climate for equitable justice, the Government, through the National Forestry Authority (NFA) commissioned the study on “*Forest Justice: Combating Illegality for Forest-Linked Livelihoods*” (Kazoora and Carvalho, 2004).

¹ The PEAP is Uganda’s version of the Poverty Reduction Strategy Papers (PRSPs) prevailing in other countries.

The study was carried out in collaboration with the Forest Governance Learning Group facilitated by International Institute for Environment and Development (IIED). The two objectives of the study were: to identify the impact of current legislation on forest exploitation and trade in forest products and to find practical ways to implement controls and improve forest governance. This policy tool kit aims to develop the findings of the study into practical guidance.

1.2 Objective, scope and potential users of the policy tool kit

The objective of the policy tool kit is to provide practical guidance to forest institutions in Uganda and elsewhere on how law enforcement agencies and others can put in place systems to eliminate illegality and corruption and install justice for forest-linked livelihoods.

The tool kit is mainly focused on timber. The use and trade of timber attracts more illegality and corruption compared to other forest products (Box 2). It is thought that, once a breakthrough is made in curbing illegal timber transactions, the lessons can be used to address illegality for other forest products.

Box 2: Some actions, which constitute illegality of timber transactions

From the perspective of the National Forestry and Tree Planting Act 2003, the following actions constitute illegality:

- Actions or omissions likely to have significant impact on forest. (20 (a).
- Using forest reserves in a way outside management plan. 13(a)
- Cutting, disturbing, damaging, burning, destroying any forest produce without a license.14 (1)
- Harvesting of forest produce from private land outside the provisions of management plan and regulations. 22 (2)
- Cutting, collecting, transporting, exporting, selling, purchasing, acquiring or disposal of any part of a protected tree. 31(4) (a) and (b)
- Export of timber and issuance of export license for timber, which is not graded. 44(1) (2)
- Causing or lighting a fire in a forest. 35 (1) and (2)

There are other laws and regulations, which make the list even longer. For example, the Forest Regulations (now under formulation) will also list other offences. Likewise, other offences relate to avoidance of taxation (under finance and tax laws), and environmental degradation of forest ecosystems (under the National Environment Act). Further, a management plan of a forest sets the boundary for actions, which are allowable, and their location in the forest. Thus from a practical point of ensuring justice, one has to be conversant with sector laws, forest management plans of respective forests, and other supportive laws. Partnerships with other agencies become important - to be informed of likely changes in the laws.

Guiding principles of good governance which have influenced our approach in writing this tool kit are:

- Transparent and equitable relationship between stakeholders
- Participatory decision making
- Separation of powers among institutions to enhance control, and to reduce collusion
- Public accountability
- Rule of law and
- Information disclosure

It is anticipated that the major users of the kit will be “enlightened” actors within government and the judicial system, groups marginalized by the current practice of administering justice, and the

Community Based Organisation (CBOs) and Non Governmental Organisations (NGOs) that work for the interests of the poor and marginalized.

In Uganda the immediate users of the kit will be those in the National Forestry Authority (NFA) working with the Forestry Inspection Division and the Forest Produce Monitoring Unit. The timeliness of this tool kit is apparent from another excerpt from the recent press release of the Minister, which clarifies government's monitoring function:

"...the Minister of Water, Lands and Environment has decided to restructure and strengthen the Forest Produce Monitoring Unit. This "one-stop shopping center" is based at and managed by the NFA. NFA will also assist the other responsible bodies to develop reciprocal systems for the purpose.... The Forest Produce Monitoring Unit will in addition to the responsible bodies coordinate and work with the Forestry Inspection Division (FID) of Ministry, relevant security agencies and Uganda Revenue Authority. This network will penetrate the field deeply to both deter and challenge illegal activities". (New Vision, 12 November 2004).

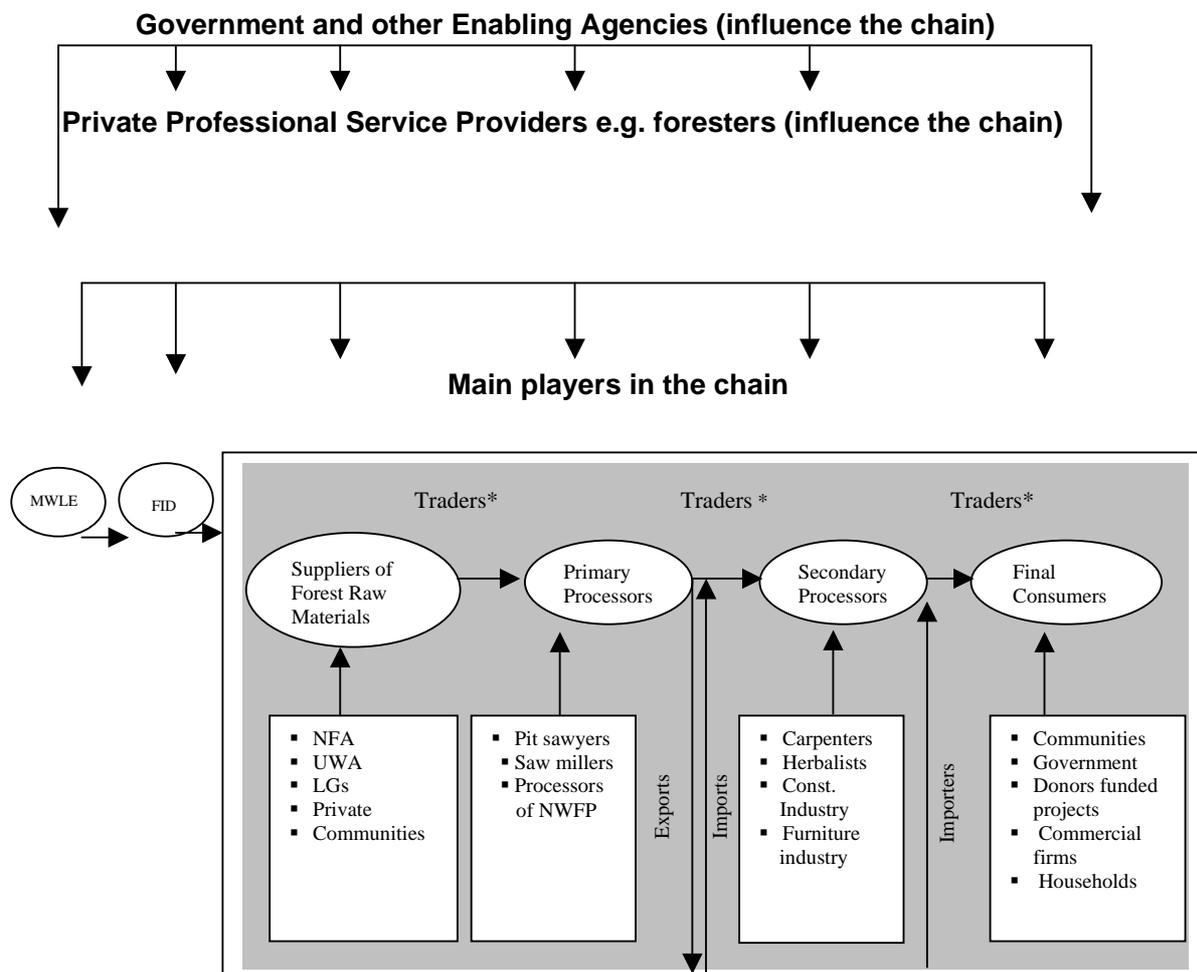
2.0 Understanding the timber chain and the system for administering justice

2.1 Visualizing the production-trade-consumption chain for timber

In order to appreciate the role different institutions will have to play in curbing illegality and administration of justice, it is important to understand the organization of timber transactions on one hand, and the structure for the administration of justice on the other.

Figure 1 illustrates the production-trade-consumption chain in Uganda. One may also call it the value chain. The key chain levels and the players in timber transactions at each level are shown in the shaded part of the Figure. They are the suppliers of forest raw materials, primary processors, secondary processors and consumers. They all have primary responsibilities in curbing illegality. However, those players are also serviced by (i) private professional and other service providers e.g. foresters, lawyers, accountants, engineers, environmental practitioners, transporters, financiers etc. and (ii) government enabling agencies e.g. Uganda Investment Authority (UIA) for investment, Uganda Revenue Authority (URA) for taxation, Uganda National Bureau of Standards (UNBS) for standards, National Environment Management Authority (NEMA) for environment, Forest Resources Institute (FORRI) for research, Ministry of Finance, Planning and Economic Development (MFPED) for internal resource mobilization, and donor agencies for external finance.

Figure 1: Players in the production–trade–consumption chain of timber, in Uganda



*Key among the corporate traders met in the study are Amaply Ltd, Nileply sawmill (Nile Plywood Ltd), Techna Sawmills, Buchana Timber Products, Budongo Sawmillers, Furniture World, Uganda Forest Industries Ltd Mbarara and Elmaco Crafts. However, there are many other people trading as individuals, and informally. They are the majority and there is no central place from where one can obtain their true identities.

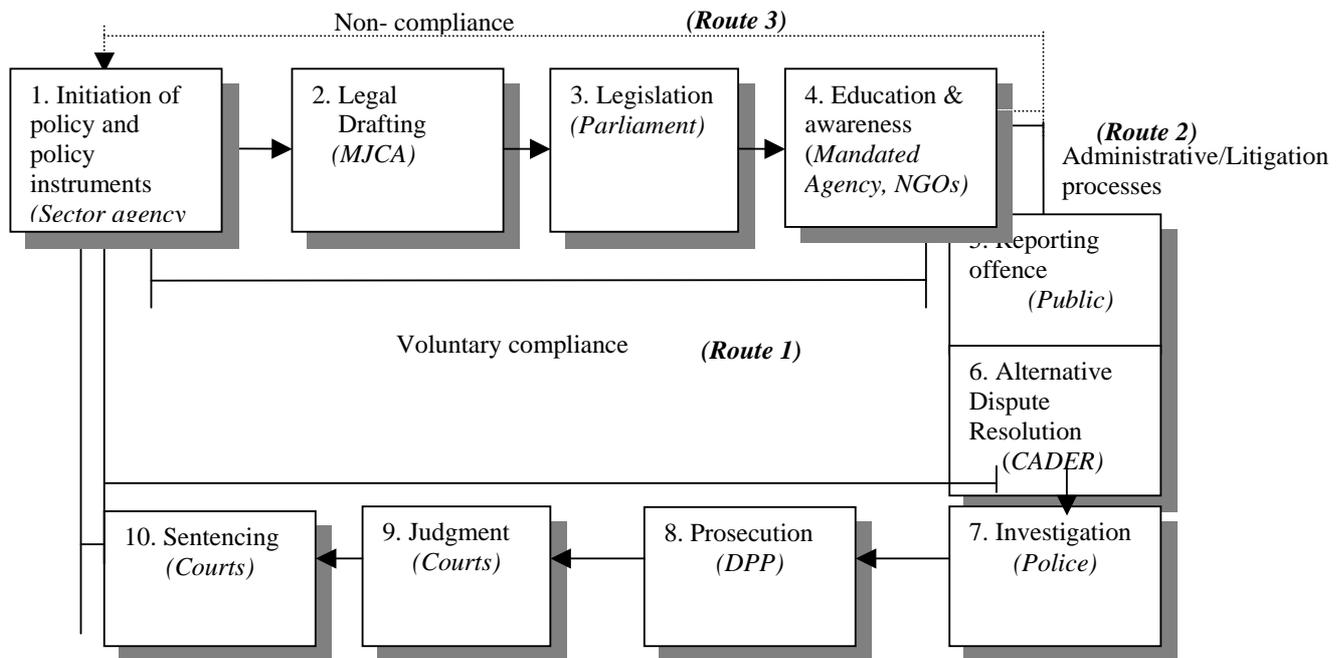
2.2 Understanding the formal steps in administration of justice

This section spells out the sequence of activities in the administration of justice using the traditional court system. Box 3 provides a list of institutions in the Justice Law and Order sector. Steps in the formal system (with the responsible institution for each step given in brackets) are shown in Figure 2.

Box 3: Main institutions in the JLOS

- Ministry of Justice and Constitutional Affairs
- Ministry of Internal Affairs
- The Uganda Police Force
- The Uganda Prisons Service
- The Judiciary
- The Directorate of Public Prosecution
- The Judicial Service Commission
- The Uganda Law Reform Commission
- Ministry of Local Government-LC Courts
- Ministry of Gender, Labour and Social Development
- Community Service Programme

Figure 2. “How it is supposed to be” – steps in the administration of justice



A good starting point in the administration of justice is the initiation of policy formulation by sectoral agencies. Policy that is based on a thorough situational analysis and a consultative approach is likely to bring out the issues needing to be addressed by legislation in a better manner than one which is based on executive whim. The interests and concerns of key players, including the marginalized, need to be equally captured. Uganda’s recently approved policy (2001) was made in a consultative manner. Regional workshops were held, and the draft bill was subjected to different reviews.

Policy, once approved becomes the basis for legal drafting and eventual legislation by parliament. When the law comes into effect, the public is informed about it, not only by the mandated institutions, but also by Civil Society Organizations, Non Governmental Organizations and Community Based Organizations. In practice, individuals may react in three ways, described as “routes” in Figure 2. Under **Route 1**, a person voluntarily complies with the law because of information and knowledge

acquired, incentives and disincentives, and fear of sanctions. The lessons from practice feed into initiation of future policies.

Under **Route 2**, illegality or corruption is handled **reactively** through the administrative processes (by the mandated institutions e.g. NFA) or litigation process (by the Justice, Law and Order sector institutions). Both the plaintiff and defendant may choose to settle the difference between them through an alternative dispute resolution (ADR) mechanism under the Arbitration and Conciliation Act 2000 at the Center for Alternative Dispute Resolution (CADER). This law is relatively new, and not yet widely used by the public.

More commonly, people go through the whole chain of litigation, including being investigated by police, prosecuted by the Department for Public Prosecution (DPP), and sentenced by judges and magistrates in Courts. In that process, different enforcement agencies come into play - their roles defined by the Constitution of Uganda, 1995. They include the police (investigation), Directorate of Public Prosecution (prosecution) and Courts (judgment and sentencing). In **Route 3**, we have the situation of persistent illegality, with or without knowledge or information. This is why the lines are dotted - to show that there is no justice.

2.3 Assessing levels of trust in the judicial system

A major finding of Kazoora and Carvalho (2004) was that the Justice Law and Order system (JLOS) institutions tend to delay the administration of justice. In fact, there is as much as a 5-year backlog of cases in Ugandan courts of law. Furthermore, the Judiciary and the Police have been ranked as highly corrupt in National Integrity Surveys.

In Table 1, we outline the mandates of key institutions in the chain of administration of justice, and their strengths and weaknesses.

Table 1: Identification of major strengths and weaknesses in the chain of administering justice

Activity	Drafting	Legislation	Reporting	ADR	Investigation	Prosecution	Judgment	Sentencing
Institution	MJCA	Parliament	Any person	CADER	Police	Police, DPP	Courts	Courts
Mandate	<ul style="list-style-type: none"> • Advisor to government on policy and all legal matters • Act as clearing house for all policies and legislation 	<ul style="list-style-type: none"> • Debates and passes laws 		<ul style="list-style-type: none"> • To hasten settlement of disputes outside court 	<ul style="list-style-type: none"> • Protect life, property and environment • Preserve law and order • Prevent and detect crimes 	<ul style="list-style-type: none"> • Direct conduct of investigations • Institute criminal proceedings in any court other than a court martial 	<ul style="list-style-type: none"> • Adjudication of cases i.e. civil and criminal • Ensuring that justice is done to all 	<ul style="list-style-type: none"> • Award adequate compensation to victims of wrongs
Strengths	<ul style="list-style-type: none"> • Has capacity in general for legal drafting 	<ul style="list-style-type: none"> • Presence of a committee on Environment and Natural resources 	<ul style="list-style-type: none"> • Every individual is entitled equal opportunities 	<ul style="list-style-type: none"> • Faster in administering justice than other courts 	<ul style="list-style-type: none"> • Wide spread institution • Handles cases in an established procedural manner 	<ul style="list-style-type: none"> • Wide spread institution • Handles cases in an established procedural manner 	<ul style="list-style-type: none"> • Independent 	<ul style="list-style-type: none"> • Independent
Weaknesses	<ul style="list-style-type: none"> • Some legislation does not clearly state penalties against each offence 	<ul style="list-style-type: none"> • Parliamentarians generally lack experience or training in forestry 	<ul style="list-style-type: none"> • Limited knowledge of offences related to forestry • Lack resources to seek justice • People tend not to report relatives • Absence of private interest in forestry may create disincentives for reporting 	<ul style="list-style-type: none"> • As a new mechanism in administering justice, it is not yet fully taken advantage of 	<ul style="list-style-type: none"> • Limited knowledge about forestry offences • Police may be reluctant to investigate a government department • Lack of decided (precedent) cases to demonstrate practice 	<ul style="list-style-type: none"> • Limited knowledge of forestry law investigation • Prosecuting agencies may develop reluctance to prosecute government and its agencies 	<ul style="list-style-type: none"> • Limited appreciation of forestry issues 	<ul style="list-style-type: none"> • The forestry law does not clearly bring out restoration order as additional sentence to fines, community service and imprisonment

Another fundamental weakness identified is that the police, prosecutors and judges are not conversant with environmental laws, including those of forestry. Besides the lack of adequate knowledge, judges lack sufficient cases decided in courts of law to build up sufficient precedent for the sentences they administer.

One category of people whose role is critical in the administration of justice is that of the offended. Action depends on those suffering the illegality reporting it. The public too, has a duty to report illegality. However, there may be considerable costs involved. This is illustrated in Box 4. The case illustrated also shows the merits of a resource user organization in sharing the costs of obtaining justice.

Box 4: Pooling resources to obtain justice – if you can afford it

In 1996, Parliament gazetted 1,006 hectares of Namanve Forest Reserve, which contained among others, eucalyptus trees that had been planted by several farmers through a forest permit issued under the Forest Act 1964. Whereas the farmers wanted to be compensated for trees that would have a life-cycle of sixteen years, Government wanted to compensate them for only five years, the initial period of their permits. Negotiations between the farmers and the Uganda Investment Authority, that sought the gazetted land for investors, broke down. The farmers formed the Uganda Woodfarmers Association (UWFA) and elected leaders who represented them in Court in a case, *Kabbs Twizukye and others versus UIA, No.761 of 1998*. Justice Richard O.Okumu Wengi eventually ruled in favour of the farmers giving them compensation for trees that would have four rotations (sixteen years). This case shows that in order to obtain justice, the farmers had to form an association to enhance collective voice, and to pool resources together to hire the services of a lawyer (a Mr. Muhanguzi). They were able to do that because, first, they had private interest in the trees they had planted, and secondly, they were well-to-do farmers.

Source: Kazoora (2003)

The case in Box 5, on the other hand, demonstrates that losers from forest illegality may not receive justice unless there are other organizations to voice their grievances. This is especially true where government fails in its duty of administering justice under the public trust doctrine. The case also justifies investment in civil society organizations which protect the interests of the poor.

Box 5: Defending the Marginalized

According to the Constitution of Uganda, “the state shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda”. This is in line with the public trust doctrine. Under this doctrine, certain resources including forests command such importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. Thus, the doctrine places upon the government the duty to protect them for the enjoyment of the general public. However, in practice, some conflict can arise between marginalized communities and the state, as a result of the break by the state of the judiciary relationship created by the trust.

The degazettement of Butamira Forest Reserve in 2001 was a good case in point. In that reserve, 148 community groups and 30 individuals held plots of land that they planted with trees as permitted by the allocation permits from the Forest Department (now NFA). In 2001, the government opted to degazette the reserve to lease it to Kakira Sugar Works to put it under the general purposes, mainly to clear forest estate and replace it with sugar cane plantations. The communities around Butamira Forest Reserve complained against the decimation of the forest reserve. To seek justice, several advocacy NGOs came forward to defend their case, one of them being Advocates Coalition for Development and Environment (ACODE). The government went ahead and degazetted the reserve, with some compensation to community members. This was regarded as an unsatisfactory result by the community, but it is unlikely that compensation would have been forthcoming without the intermediary NGOs.

Source: Tumushabe et al (2001)

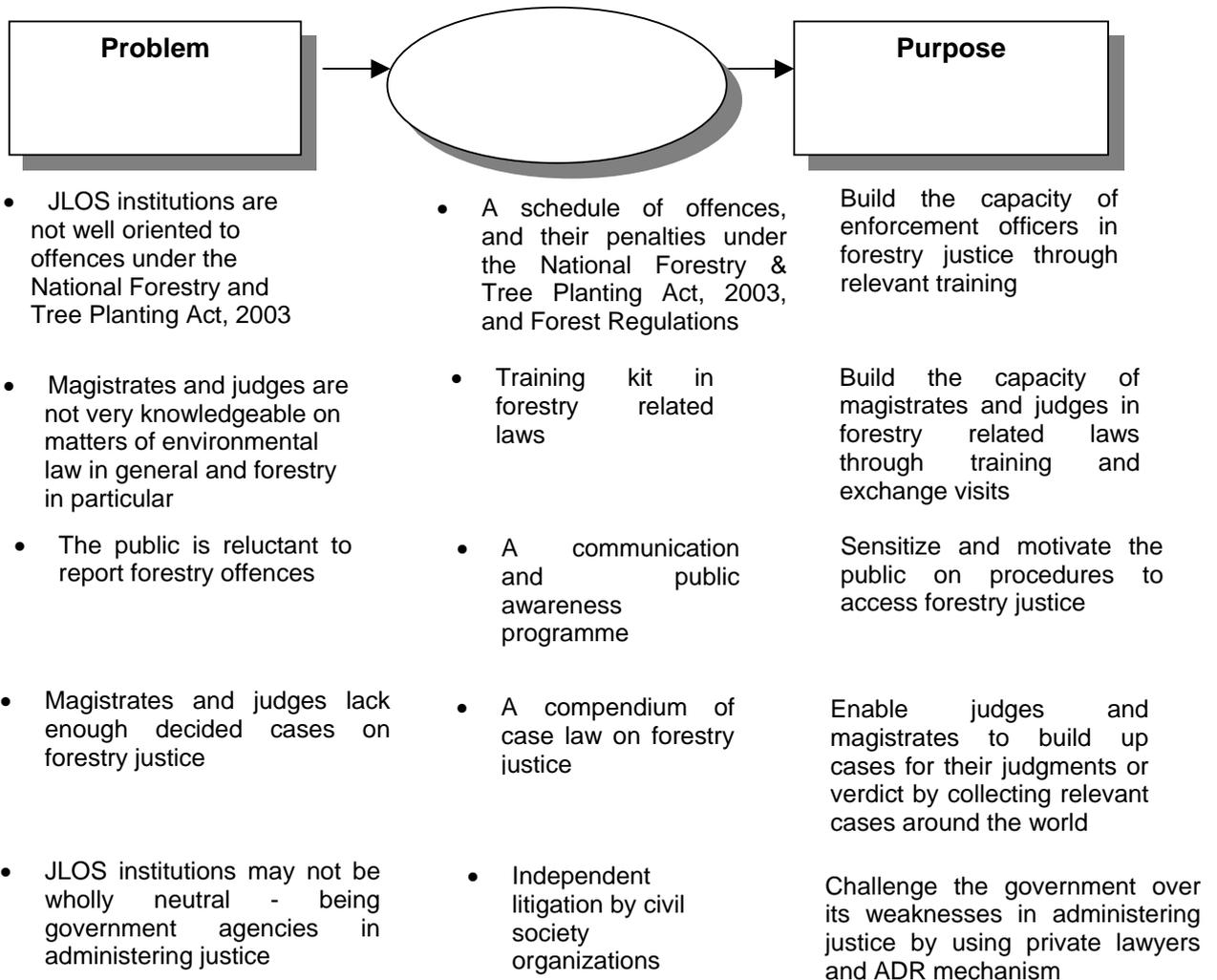
The frustrations, described in the previous paragraphs, with the JLOS institutions, strongly suggest that the lead agency in the forest sector, working in collaboration with other agencies including the JLOS institutions, should do more to champion forest justice. We now turn to this.

2.4 Defining a strategic approach

It is clear that justice for forest-linked livelihoods cannot be ensured by one institution. Firstly, the laws defining illegality are under custody of several institutions. Secondly, capacities to interpret these laws differs among institutions. Thirdly, technical expertise in understanding forestry operations and therefore using it as evidence in ensuring justice is not found in all institutions. Above all, offences and illegality are widespread geographically.

We therefore suggest a wide range of tools is needed, recognizing that different agencies can use those they have advantage to use. We also recognize the need to build on good practices, within and outside the sector, and to introduce innovation. Ultimately, it is the complementarity and synergy in using several tools that is likely to make a difference. In the following sections tools are recommended for JLOS institutions as well as for the NFA and the Forest Produce Monitoring Unit. We strongly recommend the use of tools at the production and consumption levels in the chain (Figure 1). These are needed to complement tools used (e.g. by the Forest Produce Monitoring Unit) on trade, which are currently insufficient.

3.0 Tools for improving justice among Justice, Law and Order Institutions

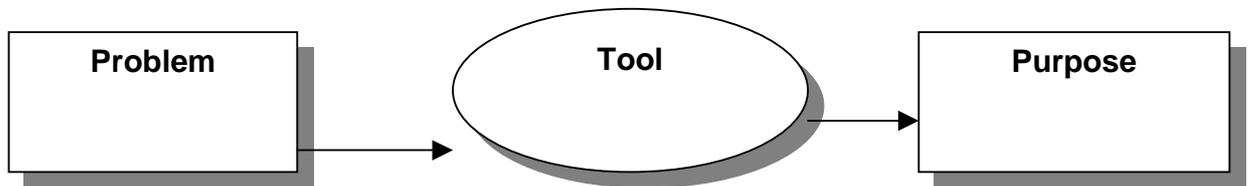


The tools highlighted above are not described further here. Several other tools in the IIED “Power Tools” series do a better job in these areas than we can do here, for example:

- *Legal literacy camps*. Interactive sessions to familiarise people with legal concepts and current legislation, based on experience with tribal people in India.
- *People’s law*. Advice on understanding and utilising law in land and natural resources campaigns, based on experience in Ghana.
- *Good, average, bad: law in action*. Framework for scrutinising and improving the practical outcomes of particular legislation, based on experience in Mozambique.

The challenge is to help livelihoods by building the capacity of enforcement agencies and NGOs to administer justice by re-orienting their approaches to listen to the marginalized, and install a culture of collaboration in the administration of justice among enforcement agencies, forest authorities and NGOs.

4.0 Tools for improving justice in timber production



<ul style="list-style-type: none"> • Timber production in government forest reserves is sometimes wasteful and uncontrolled because NFA systems are not yet adequate and are not open to public scrutiny 	<ul style="list-style-type: none"> • Streamlined and better used forest management plans • Restructured licences as real incentives for good practice • Better timber marking and documentation • Institutionalized audit of NFA forest operations and resources • Standards and guidelines for forest operations 	Instill a culture of accountability and control
<ul style="list-style-type: none"> • The timber valuation method used has tended to understate its real value - the difference between the market price and price set tempted contracting parties into collusion 	<ul style="list-style-type: none"> • Commission valuation studies on whose basis NFA can set reserve prices for timber • Competitive bidding 	Enhance earnings from timber and reduce corruption through collusion and under-valuation
<ul style="list-style-type: none"> • It is expensive for NFA to deal with many dispersed individuals wanting access to forest products 	<ul style="list-style-type: none"> • Forest –user associations • Collaborative forest management agreements 	Streamline and grant access rights to formal associations willing to follow the forest law

4.1 Streamlined and better used forest management plans

Central Forest Reserves (CFR) in Uganda are supposed to be managed under forest management plans specific to each reserve. Such plans provide the first yardstick for the evaluation of the sawmillers' activities at the forest reserve level. NFA thus needs to get moving with the processes of formulating these plans. Without them, the NFA has no basis to allocate harvesting permits, and to do so would be tantamount to committing an offence. Private forest owners, including communities, are also expected to make management plans, but they may not necessarily have the capacity to do so. Indeed, management plans generally do not get prepared because the rules and guidance on them overloads them with more than they need. It is proposed that the NFA develops simple prototype management plans – not based on complex management prescriptions but on robust but basic rules and common principles - which the private forest owners can adopt and adapt with ease. Unless this is done, the requirement for a management plan may be a barrier to sustainable forest management among many communities on their private land.

4.2 Restructured licences as real incentives for good practice

The present licensing system makes saw millers insecure, which has hindered many from investing in better technology or upgrading their production systems. Those investing in the right machinery should be preferred for long-term tenure licenses. The transfer of sawmills between concessions should be stopped in order to avoid creaming of the best quality compartments and wastage of marginal ones, as currently occurs. All in all, NFA should look at the licence as an instrument to promote rather than police private sector investment in the sector.

4.3. Better timber marking and documentation

Timber hammering is difficult to forge and, combined with proper documentation, it can curb malpractices (Box 6).

Box 6: New guidelines on timber monitoring in Uganda

“The main instruments of the monitoring system are documentation accompanied by corresponding stamp marks on the produce. The documents and stamps shall enable the forest produce monitoring unit to objectively certify the chain of custody and legality of the source. The instruments shall be managed through a short chain procedure that has systemic drivers aiming to minimize the transaction costs. One key feature of the system is that all harvesting of forest produce shall be done under license to be issued by a respective responsible body and volume, weight and length shall be the standard parameters of unit measure.

Three types of hammer stamps will be used namely, the log hammer (numbered 0-9), the timber hammer (0-9 but smaller) and the district “seal”(with district code number). The basic principle is that no forest produce should be moved from any area to any destination without having been marked with an appropriate stamp and issued with corresponding documents by an “authorized person”. The following will be required in case of logs and timber.

- 1. All logs must be stamped with the same number appearing on the stump before leaving the stump and individual logs from one tree should in addition bear serial numbers which should all be recorded on the LOG VOLUME MEASUREMENT SHEET before being removed. This will not apply to Central Forest Reserve plantations except if logs are being transported.*
- 2. All timber shall be stamped with the relevant code of area of origin before being transported. The stamp marks must face outward when loading for fast/easy checking. Any piece seen unmarked will be confiscated. Upon marking, a Forest Produce Declaration Form (FPDF) shall be issued.*
- 3. All timber leaving a district shall have the district “seal” stamped on before leaving that district. A “Forest Produce Movement Permit” shall be issued after stamping with seal.*
- 4. Operators in Central Forest Reserve do not need a Forest Produce Movement Permit except they will pay a Uganda Shilling 10,000 “administration fee” for each load of produce to the Chief Finance officer of the respective District.*
- 5. Each pitsawyer in Local Forest Reserve, former Public land and private forests shall pay annual license fee of Uganda Shillings 350,000 to the Chief Finance Officer of the District of operations. A 15% “equalization” levy of the value of the finished produce shall also be paid in addition, unless the operator is a registered VAT collector.*
- 6. Before timber is marked by the field staff, all the relevant documents must be made available in their entirety.*
- 7. Chain-sawn timber is contraband and will be confiscated at site, together with the power saw, and any vehicles used for transportation. This is in addition to heavy fines and prosecution.*
- 8. District Forest Officers at the nearest point of entry will clear all imported timber provided all the normal payments and documentary evidence relating thereto from the country of origin, Uganda Revenue Authority and import licenses are presented and copies deposited with the District Forest Office. A Forest Produce Movement Permit will be purchased for the timber.*
- 9. All unmarked and or undocumented forest produce shall be confiscated and forfeited by the “owner”. It is a primary responsibility of the “owner” to ensure that the produce is marked appropriately before it is moved. Copies of the relevant documents should always accompany any timber transiting through Uganda.*

Source: The New Vision, 12th November 2004

4.4 Institutionalised audit of NFA operations

The NFA needs to build the confidence of the public by institutionalising a periodic audit of its forest operations. Environmental audits are prescribed under the National Environment Act yet rarely have governments subjected themselves to audits. It should be more widely acknowledged that governments, like others, can carry out activities detrimental to the environment - they too are not above the law. Terms of reference should be developed, and competent firms invited to bid for the assignment. The audit should preferably be commissioned by the Forestry Inspection Division which has a monitoring and inspection role for forest operations. The results from the audits should be shared widely so as to use them to improve forestry management. (See also the following tool in the *Power Tools* series: *Accessing 'public' information*. Set of approaches and tactics to obtain and use information from public agencies, based on experience in India).

4.5 Competitive bidding

Use of competitive bidding against criteria prior to issuance of licenses and permits can help the NFA overcome corrupt tendencies inherent in the administrative allocation of permits. The NFA has already begun using this tool and has been able to raise more revenue than was the case previously. However, competitive bidding must be monitored with a view to detecting build-up of cartels, which can undermine the sound objectives of the system. At the same time, NFA must commission values to value timber and other environmental aspects and on whose basis can objectively set the minimum reserve price.

4.6 Forest user associations and collaborative forest management agreements

Working with and through formally established associations makes it very cost-effective for NFA to provide training, information and extension services to forest users. A range of such associations exist in Uganda – with differing objectives and strategies. Encouraging and supporting their further formation and development – particularly amongst those currently marginalized by forest access and use decisions – should be a major focus for the NFA and civil society groups. (See also the following tool in the *Power Tools* series: *Organising pitsawyers to engage*. Framework for developing organisations and business partnerships for small-scale producers, based on experience in Uganda).

Uganda also needs to build on the practice of collaborative forest management. Such agreements between government and communities already operate in some areas (e.g. Mbale, Tororo and Kabale). Popularisation of prototype agreements would be useful - with basic guidelines on the dos and don'ts so that they are not seen as bureaucratic and “out of reach” of poor forest users. In addition, a cadre of NGOs which can train associations to use and follow these agreements needs to be built from a pool of service providers to NFA.

Worldwide, outsourcing is becoming a strategy in service delivery using professionals other than those in government institutions. The NFA is planning to adopt such a strategy. While NFA will be outsourcing professional skills, it will solely remain responsible for the delivery of those professionals (see Box 7).

Box 7: Government advertises for forestry service providers in Uganda

INVITATION FOR SERVICE PROVIDERS

Government recently established the National Forest Authority (NFA), with a mission to manage Central Forest Reserves in Uganda on a sustainable basis. NFA also supplies high quality forestry related products and services in accordance with sound financial and commercial practices. Under NFA is the Technical Services Division (TSD), which is the consulting arm of the organization that proactively sells services and responds to customers' demands. The operating principle of the TSD is to contract services of external/associate consultants, whenever they are required for their expertise, to compliment our staff. In view of the anticipated demand for services in a variety of disciplines, the TSD would like to develop linkages with associate consultants for the delivery of service in the following areas:

Mapping and Inventory

- Training in remote sensing/GIS application
- Establishing GIS units for companies/institutions
- Exploratory and forest inventories
- Mapping
- Biomass assessment
- Yield modeling
- Boundary re-opening/surveys
- Demarcation of property boundaries

Private Forestry Promotion Services

- Environmental Impact Assessment
- Forestry management plans
- Consultancy in forestry
- Plantation development
- Advisory services (to communities, NGOs, private sector, District Forestry Services, CBOs and NAADS) – specify fields
- Improved wood fuel production and utilisation practices
- Agro-forestry and farm forestry
- Social and economic assessments
- Marketing strategies and development
- Advisory services on new and renewable energy

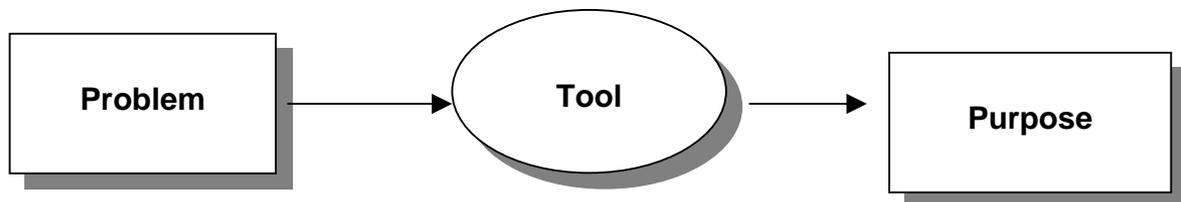
Tree Seed Procurement and Sale

- Procurement and sales of tree and fruit seed
- Development and conservation of genetic resources for tree and fruit seed
- Delivery of improved planting materials
- Training and consultancies in tree nursery management practices
- Tree development and research

The TSD invites well-qualified and experienced service providers/consultants-either firms or individuals-with expertise in the above-mentioned areas to submit their expressions of interest by December 4,2004. This should include the company profile and CVs of the directors/staff, indicating their qualifications and recent experience in offering similar service(s) [address given]

Source: *The New Vision* Friday, 19th November 2004,

5.0 Tools for improving justice in the timber trade



<ul style="list-style-type: none"> Government has put much emphasis on its own forest estate and little on supporting a responsible private sector. 	<ul style="list-style-type: none"> Financial and fiscal instruments 	Promote responsible private sector investment in forestry to reduce pressure on government forest estate
<ul style="list-style-type: none"> The fragmented nature of pitsawing and sawmilling sectors means that individual enterprises operate separately and often unsustainably promotes their personal ends rather than national 	<ul style="list-style-type: none"> Formation, and codes of practice, of association(s) of pit sawyers and saw millers 	Inculcate a common code of ethics and integrity among pit sawyers and saw millers
<ul style="list-style-type: none"> The decline in professional ethics and standards among foresters 	Regulations governing the Uganda Foresters Association	Restore professional ethics and standards among foresters who provide services to the public
<ul style="list-style-type: none"> Many cases of illegal timber being sold on open market 	Auction of illegal timber	Curb illegal trade and remove market distortions

5.1 Financial and fiscal instruments

Financial and fiscal instruments are increasingly used worldwide to promote forestry investment, especially by the private sector. They can also help in the administration of justice. For example, under the “polluter pays principle”, a person causing harm to a forest would be obliged to pay fines. On the other hand, a person planting a forest on a degraded watershed could justifiably claim a subsidy because some of the benefits of such a forest would accrue to wider society.

To introduce financial and fiscal instruments, the NFA would need to make specific studies and defend them on a case-by-case basis before the Ministry of Finance, Planning and Economic Development.

5.2 Formation, and code of practice, of association(s) of pit sawyers and sawmillers

Industry associations are not only beneficial to their members for harnessing collective voice in policy advocacy but they can serve as a medium for instilling good business ethics among members. In Box 4 we showed how individuals had to form an association to improve their negotiation capacity and to pool resources for seeking justice. Uganda has several associations of sawmillers and pitsawyers, with some members belonging to more than one. Umbrella

associations for sawmillers and pitsawyers could be highly effective – and could be provided with development support by the NFA. Precedent is instructive in some other sectors. In the water sector, for example, the formation of the Uganda Water and Sanitation NGOs’Network (UWASNET) with over 70 NGOs was facilitated by the Directorate of Water Development. It now plays an active role in water service delivery.

Of course it is one thing to form an umbrella association, and a different matter to ensure that members act professionally, ethically and justly. A strong and publicised code of ethics and practice would go a long way to ensure that members adhere to the law and act responsibly and sustainably. A consultative process would need to be carried out within the membership and with outside parties during such a code’s development.

5.3 Regulations governing the Uganda Foresters Association

A decline in forestry professionalism partly explains the level of degradation and illegality in the forestry sector. Other professions (e.g. accountants, lawyers, architects, doctors and environmental practitioners) have gone a step further to bind themselves under common codes and regulations. The present Uganda Foresters Association should work with the NFA in mobilising current and potential members in a process for developing regulations for their governance.

5.4 Auction of confiscated timber

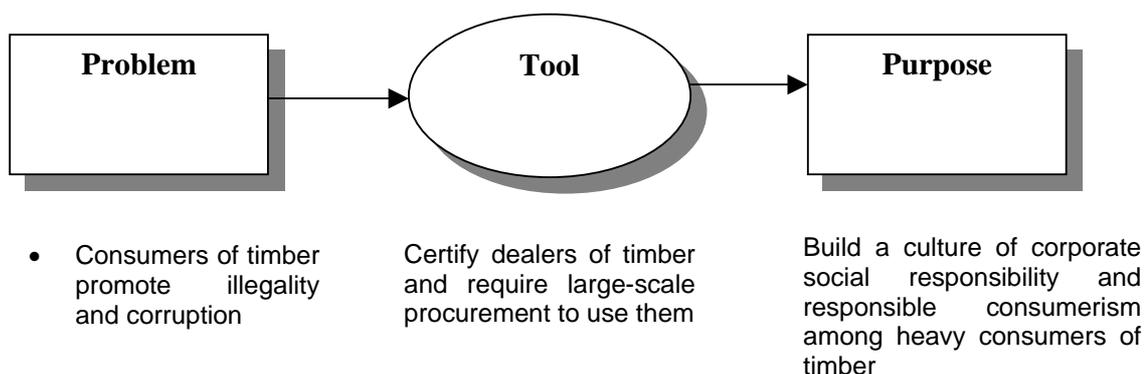
Trade in illegal timber is a source of injustice, particularly to others who duly meet their tax obligations and transaction dues.

Illegal trade in timber is still on going with or without the collusion of producers. Auctions of confiscated timber would help. Presently, some are being carried out and substantial revenue is being recovered.

However, more needs to be done whilst vigorously intensifying the timber marking, documentation and monitoring procedures. To conduct the auctions, the NFA needs to set the reserve prices, and should preferably hire the services of a professional auctioneer.

Stakeholders including traders/ dealers, users, furniture makers, construction firms and the general public, should be invited to participate in auctions. This should be done through the media to promote transparency. They should be allowed to view the timber two days before the auction date. The auctioneer should go through the terms and conditions of the exercise and emphasize the minimum amount the successful bidder is required to pay at the fall of a hammer. Only corporate cheques or cash should be accepted, not individual cheques.

6.0 Tools for improving justice in timber consumption



To promote corporate social responsibility in timber utilization NFA should strongly encourage government departments and donor-supported timber procurement practices to be based on demonstrably legally-sourced timber. For this to work NFA should consider developing a credible system of certifying some traders on a voluntary basis who can prove they are dealing solely in timber legally obtained. Where government departments and donors – dealing in substantial purchases – lead the way, others will be encouraged to follow. In the longer run, this and the other tools described could pave the way for a fully credible forest production and chain of custody certification process.

7.0 Documenting lessons from using the policy toolkit

It is expected that the lessons from use of this tool kit should feed into learning processes. This would have three main objectives, namely:

- To continuously sharpen the tactics for curbing illegality
- To provide advocacy tools for increasing the legitimate profile of forestry activities in the poverty reduction strategies of the country.
- To enable the forestry governance learning group, and other processes geared to continuous improvement of forest governance, to highlight success and failure and further respond in a dynamic environment.

In order to support such learning, the following activities are recommended to the convener of the forestry governance-learning group in Uganda, and to similar processes elsewhere:

- Statistics should be kept to monitor change in indicators related to timber transactions
- Periodic perceptions and opinions should be obtained from stakeholders and key players in the sector to gauge behavioral change.
- A repository of information from a wide range of sources on governance and justice issues should be created to support the above.
- Publication and dissemination of findings and trends should be supported – in ways suited to key audiences (e.g. much press and media work as well as the occasional detailed report).

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Annex 1: Current Status of Forests and Harvesting in Uganda

Table A1 presents the type, size, and ownership of forests in Uganda. The National Forestry and Tree Planting Act (NFTPA) 8/2003 established a number of forest ownership types under a generic umbrella concept of “responsible bodies” (RBs). The ownership types and the corresponding bodies include:

- Central Forest Reserves (CFR) –National Forestry Authority (NFA) as the responsible body;
- Local Forest Reserves (LFR)- District Forestry Office as the responsible body;
- Community Forests (CFs) – specified registered group of local communities as responsible body and
- Private Forests- registered owner of the land/forest as the responsible body

The Uganda Wildlife Authority is the responsible body of forests in areas under its jurisdiction. These include National Parks, Wildlife Reserves and Community Wildlife Areas.

Table A1: Area (hectares) of forest and woodland under different categories of ownership and management

Land cover	Government land		Private land	Total
	Forest Reserves (NFA&LGs)	National Parks and Reserves (UWA)	Private	
Tropical high forest	306,000	267,000	351,000	924,000
Woodlands	411,000	462,000	3,102,000	3,975,000
Plantations	20,000	2,000	11,000	33,000
Total forest	737,000	731,000	3,464,000	4,932,000
Percentage	15%	15%	70%	100%

Source: Forestry Department (1999) National Biomass Study Technical Report

According to the National Forestry and Tree Planting Act 2003, a person may register with the District Land Board, a natural forest situated on his/her land in accordance with the Land Act 1998. The owner may harvest it in accordance with the management plan and regulations made under the Act. On the other hand it is for NFA and UWA to authorize the harvesting of timber under their estates by issuing concessions. Communities too, can harvest permissible forest produce from these two estates under collaborative management. When forestry ownership is shared among several institutions and individuals, the challenges of coordination and collaboration are formidable.

In a study on plantations harvesting and saw milling (Rory McCaughan and John Carvahlo, June 2003), it was established that the 2001 Harvesting Plan had been ignored and saw milling permits had been issued regardless of the Annual Allowable Cut (AAC). The result was severe and unsustainable over felling. The installed production capacity of existing sawmills amounting to 300,000M³ exceeds the available AAC of about 100,000M³

The government initiated a policy and institutional reform in the forestry sector that culminated in new policy statements for governing the forest sector (Box A1).

The Forestry Policy was guided by nine principles, one on livelihood states: *“the improvement of livelihoods should be a major goal in all the strategies and actions for the development of the forest sector so as to contribute to poverty eradication”*

Another one on governance states: *“new institutional relationships should enhance efficiency, transparency, accountability and professionalism and build confidence in all forest stakeholders.”*

Box A1: Uganda Forestry Policy Statements

- Forestry on government land
- Forestry on private land
- Forestry on commercial forest plantations
- Forest products processing industries
- Collaborative forest management
- Farm forestry
- Conservation of forest biodiversity
- Watershed management and soil conservation
- Urban forestry
- Education, training and research
- Supply of tree seed and planting stock