Policy reform in retrospect
Policy and legislative reforms within the realm of natural resource governance, especially on the access, use and management of native tree species have varying impacts on the interests of different stakeholders. In Mali, the public debate that started in the early 1990s led to the review, enactment and implementation of pluralistic policies and legislation: Population Policy of May 8, 1991, the National Forestry Law, Decentralization Policy, Guiding Plan for Rural Development Sector (MAEE), National Strategy for Domestic Energy and the National Environmental Action Plan just to name but a few. The reform agenda was aimed at recognizing the rights of citizens to land resources, devolving power to regional and local levels, creating an enabling policy context and providing a framework for engaging citizens and forging new-strategic partnerships for natural resource management. The Forestry Law; n° 95-004 pursued a balance of social, economic and ecological options through the pursuit of legal provisions on forest encroachment, on-farm protection of native trees, usage rights of adjacent communities, use of fire for managing forests and the management of agroforestry systems (parklands), instruments of enforcement and consequences associated with non-compliance. The Forestry Law, however, focuses on forests (article 1) excluding agroforestry systems from formal forestry governance. Despite the exclusion of parklands from formal forestry governance, their access, use and management of trees are still regulated by the Forest Service, contrary to the ‘spirit’ of the law. The continual application of stringent rules on the access, use and management of on-farm trees is guided by the need to “avoid running the risk of anarchy in the management of resources” (ECO Sahel, 2006 and Direction Nationale de la Conservation de la Nature). This provides a window of opportunity and a framework around which the reform of the Forestry Law can be organized.

In countries where regime structures have recognized and mainstreamed local conventions into land, tenure and forestry laws, local institutions and NRM partnerships have evolved. In Niger for example, access, use and management of native trees has been improved because the Forestry Law is fair with traditional practices of agroforestry (Ly et. al. 2006; Koffi and Kalinganire 2007). In this case natural tree regeneration, adoption of improved tree management practices and other silvicultural practices have been attributed to the recognition of the local communities and integration of local conventions in natural resource use. Given forward-looking provisions of the Malian Forestry Law and lessons from the Niger’s case, why have the Malian agroforests continued to degenerate rather than regenerate?

Seeing Native tree use through the lens of technocrats and users
In order to understand the effects of the different provisions of the Forestry Law and Policy on native tree use, socio-cultural and local economic conditions of local communities, the World Agroforestry Centre (ICRAF) and its partners carried out an action research study from May 16-26 in the Segou region. This study was part of an IFAD funded programme for Strengthening livelihood strategies in the West African Sahel through improved management and utilisation of parkland agroforests. The objectives of the study were to:

i) Identify impacts of (a) local natural resource policies, (b) land and tree tenure and (c) access to trees on the use, management, domestication and conservation of native trees and shrubs;

ii) Advance recommendations on:
a) Policies that need to be re-evaluated in order to promote sustainable use, management and conservation of native trees and shrub species;

b) Mechanisms by which the farming communities could be actively involved as partners in evaluating, developing and implementing local natural resource policies; and

c) Mechanisms by which the farming communities could be actively involved in generating effective conflict-resolution tools within their communities to deal with conflicts related to the policies and tree use.

Methodology

This study involved discussions with government officials from the Ministry of Agriculture and Forest Service, non-governmental organizations and staff of the International Fund for Agricultural Development (IFAD) country portfolio projects like Fonds du Développement en Zone Sahélienne (FODESA) as well as action research in three IFAD villages: Douna, Diakobougou and Mantana. In order to determine the degree to which different policies/provisions support or work against each other at the local level, the research team undertook compatibility analysis of the different legislative provisions in order to identify existing compatibilities as well as incompatibilities. Through this process, on-farm protection of native tree species, protecting usage rights of adjacent communities, compliance with the different provisions, and use of uniformed forest officers (the ‘military’) to enforce the law, state land and tree ownership were isolated as having potentially adverse effects on natural, local socio-cultural and economic conditions. These were further subjected to sustainability tests using sustainability appraisal matrices and associated sustainability record sheets. Sustainability appraisals were undertaken at the Segou regional level with foresters, planners, representatives of non-governmental organizations and other stakeholders. The foresters and other partners completed and returned the sustainability appraisal matrices which were analyzed based on a three point criteria: effects on natural resources, social and cultural conditions and the economy. At the community level, Participatory action research involved use of:

i) participatory resource mapping- jointly with villages/communities developed geospatial perceptions of landscapes by capturing geo-physical features, locating different land uses relative to their villages, delineating access rights and defining their relationship to particular natural resources and to native tree and shrub species, 

ii) understanding the links between the provisions of the forestry law, practice and impacts on natural resource utilisation and management, 

iii) defining roles of the different stakeholders through the understanding of their rights, responsibilities, benefits and their relationships. This was useful in re-thinking, negotiations and re-evaluation of the law, and iv) establishing the potential and/or existing impacts of the critical provisions identified through compatibility analyses.

Outcomes of the study

The study revealed the following:

i) There are incompatibilities between and among different provisions of the forestry and land laws. Overall, the interests of the state were highly promoted relative to livelihood-based interests of the local community despite government’s policy to balance social, economic and ecological options.

ii) Use of forest police (the ‘military’) to enforce the Forestry Law instilled fear in the local communities. Communities, however, recognize the important role that the foresters play in protecting native tree species seeing foresters as ‘necessary evils’ (villagers’ communication during fieldwork).

iii) There are varied impacts. The sustainability appraisal, the perceptions on the current utilisation of native trees and the extent to which the different provisions of the forestry law influence different basic aims and objectives under the three-point criteria (ecological, socio-cultural and economic conditions) varied considerably among the three IFAD villages.

iv) The Forestry Law focuses on classified and protected forests but is vague on the management of native trees on agricultural land. Restrictions on access, use and management of on-farm protected trees has inhibited natural regeneration because farmers clear natural regeneration of protected tree species (e.g. Vitellaria paradoxa {Karité}) before they are visible to foresters.
v) Degradation of classified and protected forests is rampant because of government’s lack of capacity and strategic partnerships with the private sector and local communities to enforce the law.

vi) Land is held in trust by the government and protected trees on-farm are strictly protected by the state. Stringent regulations on access, use and management of protected native trees have affected farmers’ investments on tree management as well as the pursuit of other silvicultural practices. On the contrary, local communities, as per customary law believe that the land is theirs. Such a ‘clash’ between statutory law on land tenure with customary law has adversely affected access, use and management of native trees.

vii) There are disconnects between the implementation of policy provisions and practice. Communities indicated to the research team that individuals from other villages want only cut trees in forests adjacent to the villages with no action taken by foresters even after reporting. This has had negative impacts on both forests and relations between adjacent communities and foresters. Actions of distant villages have catalysed adjacent communities to deforest supposedly protected or classified forests because of the foresters’ inaction.

viii) Villagers agreed that the permit system is critical in controlling access, use and management of protected native tree species, but contested the role of the forester in ‘military’ uniform. They agreed that if the requirements of a permit ceased, all the trees would be cleared. However, they fear the forester. The respondents suggested that the foresters and themselves be sensitized on the need to work together in the management of native trees.

ix) Local conventions/bylaws: Local communities have bylaws, which in their opinion are more effective than the statutory Forestry Law. These are however, not recognized in the statutory law. The Decentralization Policy provides an opportunity for their integration and the recognition and negotiation between the government and local communities in the management of agroforestry parklands. This could potentially lead to the recognition of local laws through the passing of decrees leading to improved involvement of local communities.

x) Compliance with the provisions of the forestry law at village level varies notably as per site specific factors, including communities’ perceptions as influenced by the effects of stringent enforcement of the forestry law, livelihood effects of the enforcement of the forest law, the typology of relationships between communities and foresters and the state of parklands and their ability to meet socio-cultural needs.

xi) There is no monitoring system that ensures adherence to the conditions of the permit and enforcement of the provisions of the law without favouritism and continuous cyclic review of performance.

xii) In the analysis of rights and responsibilities, it was clear that all the stakeholders who were identified had almost equal rights and therefore the need for the different stakeholders’ to work together in managing the parklands.

Opportunities for the reform of the Forestry Law

a) The government, the Director General of Fonds du Développement en Zone Sahélienne (FODESA) and the Direction Nationale de la Conservation de la Nature showed interest and willingness to work with ICRAF and other partners to re-evaluate the Forestry Law so as to balance the social, economic and ecological options. This provides an enabling environment to introduce subsidiary regulations into the Forestry Code. The Director General of FODESA for example, agreed to work closely with ICRAF and the government through provision of resources towards the pursuit and implementation of a strategy that ultimately leads to land and tree tenure reform.

b) The transfer of the management of natural resources to communes under the decentralization policy, Law 96/050, will be effective starting January 1, 2008. The responsibility of managing the agroforestry parklands will rest on the communes, thereby providing opportunities for the formulation of bylaws on access, use and management of native tree species. The Forest Service will, however, continue to monitor and work closely with the communes in managing trees at the regional level. The Decentralization Policy provides for the formulation of a management plan, i.e. a framework, for managing forests within each commune in order to achieve ecological, social-cultural and economic goals. Adjacent communities will be required to access, use and manage native trees as per the management plan. The process for the formulation of the management plans is not yet clear at this point in time.
c) This regional study is viewed by the Forest Department as providing important input into the ongoing consultations to reform the Forestry Law. During a meeting held on May 23, 2007 ICRAF and partners were invited to work closely with the Department in reforming the Forestry Law.

d) Policy and/or legislative review and implementation in Niger and neighbouring countries provide useful lessons for the reform of the Malian Forestry Code. This, however, needs to take into consideration Malian contextual uniqueness.

e) Supported by the World Bank, exploitation of forest resources are supposed to be regulated and controlled through a management plan governing each of the gazetted and protected forests. Other policy instruments that are often used include licenses and permits. Consistent use of these policy instruments and guidelines of the management plan are limited by lack of enforcement. Given the level of degradation of native trees, the Agence malienne pour le développement de l’énergie rurale (AMADER) is currently finalizing on a national strategy for restoration of degraded forests. This restoration program is being supported by the World Bank. Other institutions which have been invited to participate include Programme d’appui aux secteurs agricoles et organisations paysannes (PASAOP), Fonds du développement en zone sahélienne (PODESA), ICRAF, and Sahel ECO.

Piecing the disconnects and practice together: policy options

The paradox of stringent native tree protection vis-à-vis native trees’ central role as people’s sources of basic needs in the face of adverse climatic conditions is complex, but not difficult to unearth. Piecing the disconnects and the practice together, however, will require a nuanced and strategic approach that will be inclusive and transparent. Central to such an approach is a dialoguing process that will seek to recognize and integrate the different stakeholders in the management of Malian parklands. Several policy options to address disconnects identified during the fieldwork are proposed below:

i) **Periodic dialogues and policy advising**: Core in a strategy for saving Malian parklands is awareness raising among farmers, foresters as well as policy makers. During the village meetings it was clear that there was mistrust between users (including women) of protected native trees, foresters and other stakeholders like non-governmental organizations. Periodic dialogues will be ideal in bridging the gap between foresters and farmers: reduce suspicion and fear, enhance monitoring of use of native trees at different scales, recognition of farmers’ potential role in improving parklands’ quality and realignment of roles and responsibilities. Periodic dialogues will also involve facilitating short and targeted awareness raising sessions with key policy makers.

ii) **Decentralization and Devolution of NRM**: Often decentralization and devolution are used interchangeably depending on the existing context, users’ interests and the scale of focus. Decentralization is the transfer of authority and management to lower levels of government and devolution is the transfer of responsibility and authority over natural resources from the state at different levels of governance to user groups. In countries like Niger where devolution of responsibility over NRM has been pursued, local governance and empowering the poor have improved. This, however, took cognizance of the complex political contexts and interests of the different stakeholders. In order to enhance flow of benefits to the poor, this study recommends joint forest management that must be driven by broader decentralization and local government reform policies as is the case in “gestion de terroir” land use planning approach in Sahel West Africa. Joint forest management is aimed at giving more authority over native trees to local communities and institutions, with government playing technical and joint oversight roles. This requires clarity on stakeholders’ roles, their responsibilities vis-à-vis those of the state, recognition of local communities’ rights and entitlements to native trees, and equitable sharing of benefits of devolved NRM governance. ICRAF and partners will facilitate a negotiation support system to enable the different stakeholders to agree on their roles, responsibilities and entitlements. The joint oversight role of the state should not be construed as a “policing” role by the state, but rather as a responsibility of the state and local communities to work together in a participatory manner.

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1 Persons especially those in official bodies who have authority to make decisions on which and how problems related to native trees access, use and management at different levels (national, regional and local levels) are going to be addressed.
Negotiations on roles, responsibilities and entitlements will be linked to decentralized and
devolved regimes structures at different scales. To this end, there is need for subsidiary
regulations on this to be provided in the forestry code as it is reviewed. Joint forest
management will enable communities that are adjacent to forests to access, use and manage
native trees in protected forests as well as invest in planting of protected native trees and
subsequently benefit from them as per prescribed management plans. In a joint forest
management arrangement, the foresters will play a facilitative role, including facilitating
farmers to develop management plans, negotiation support, monitoring compliance with
conditions of the agreements between communities and the Forest Service, undertake
inspections for monitoring purposes, receive charges payable to the services and settle any
disputes between adjacent communities. This also requires improving the efficacy of
decentralized regime and community structures through clarification of rights and obligations
of communities on native tree access, use and management and facilitating and strengthening
local level regime and community structures for NRM management. The realm of such
decentralized regime and community structures could be expanded to promote cross-country
learning and experience for a core set of interest groups or farmers.

Building the foundation for improved investments in agroforest systems: This needs to
be treated as a short-term strategy because it provides the framework for all the other
initiatives. Stringent enforcement of the Forestry Law, government’s lack of capacity to
enforce the law and the centrality of native trees in the lives of farmers combine together to
determine the level of investment that farmers make to sustain protected trees on-farm. Over
the years, farmers have uprooted seedlings (regeneration) or destroyed ‘young’ trees before
they are visible to foresters because of the ambiguity in law on farmers’ role in planting of
trees and their subsequent use. The foresters’ argument is that the Forestry Law provides for
the farmers’ investment in native trees planting and their subsequent use. Despite the
foresters’ views, the farmers are required to seek approval from the local Forester through
application for a permit or license depending on the type of use. Farmers’ investment in tree
planting and management is, however, limited by lack of a baseline on the location and state
of existing on-farm protected native trees. A robust strategy that can enable foresters to
monitor the state of protected on-farm native tree species vis-à-vis what the farmers have
planted will potentially lend credibility to shifting from punitive measures to recognizing
farmers’ contribution. Providing clarity on status, location of on-farm native protected tree
species vis-à-vis those planted by farmers is fundamental in pursuit of a trustworthy,
transparent and accountable farmers’ investment strategy. Pursuit of this will be two-pronged:
establishing a baseline system as well as using bylaws. A baseline system will not only ensure
that farmers start investing in tree planting, but also entitlement to their use and monitoring
of access, use and management of protected native tree species. This study therefore
proposes the establishment of an inventory of existing on-farm trees against which the farmer
will be facilitated to invest in tree planting or any other on-farm investment. An electronic
gereferenced database is recommended for on-farm native trees which are protected. Local
bylaws will also contribute to the regulation of access, use and management of on-farm
protected native tree species. Other opportunities that will be explored and pursued as a way
of promoting multiple income streams for the farmers include trees for carbon as practiced in
Bushenyi District, Western Uganda. In such a framework, foresters will be more like field
technicians and extensionists, but they will also play a facilitative role to assist the
communities in conducting the inventory and monitoring parkland regeneration. We would
recommend that current practice of the state to issue licenses should be replaced by a new
mechanism that is jointly determined by the communities and the forestry department. Such
mechanism will involve use of local bylaws to ensure enforcement.

Building strategic partnerships with the private sector and other stakeholders: Private
sector not only has the requisite resources for investing in forestry, but also innovative ideas
on forest management. Corporate social responsibility and the notion of good corporate
citizenship are essential in such a strategy and, if they exist, provide a good entry point for
private-public partnership in NRM. It requires negotiations and change of attitude and
approach in the use of resources earmarked by the private sector for community work.
Investment in high value trees like *Faidherbia albida* (gum arabic) or *Vitellaria paradoxa* (karité)
are expected to arouse interest from the private sector. In most cases, agreements will have to be entered between the private sector, local communities and the government: these must be transparent and clearly indicate the roles, sharing of potential benefits and exit strategy of each partner. Legislating strategic partnerships as part of the subsidiary regulations in the Forestry Law will be important as a reform agenda.

v) **Enhancing contribution of native trees to the economy and livelihoods of the Malian population:** The Malian government has expressed interest in balancing the achievement of social, economic and ecological outcomes for forest resources. In order to ensure that native trees contribute to the peoples’ livelihoods and the economy, native trees access, use and management should be legalized at different levels, but with clear rules and regulations on extraction, payment of tariffs and rehabilitation in the form of subsidiary regulations. This demands a paradigm shift that will enable stakeholders to perceive native tree use as a ‘business’ that will require a solid resource base. Strategies for ensuring such a solid resource base include appropriate institutions at different levels to ensure that the three options (social, economic and ecological) are achieved through regulation of extraction, improving market access, strengthening access to credit and promoting NRM-based entrepreneurial activities.

vi) **Clarity of tenure rights and policy harmonization:** Land and tree tenure or ownership are not clear and therefore there is need to review and harmonize the different provisions in law that affect the ownership of land as well as on-farm protected native tree species. Policy harmonization and clarification of tenure should not only improve investments by local communities in the parklands, but should also enhance contributions of trees to the economy and peoples’ livelihoods.