Forests and People

Property, Governance, and Human Rights

First published in 2011 by Earthscan

Earthscan Ltd, Dunstan House, 14a St Cross Street, London EC1N 8XA, UK
Earthscan LLC,1616 P Street, NW, Washington, DC 20036, USA

Earthscan publishes in association with the International Institute for Environment and Development

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ISBN: 978-1-84971-280-4 hardback

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Affirmative Policy Implications for REDD

Jesse C. Ribot and Anne M. Larson

Reduced emissions from deforestation and degradation and enhanced carbon stocks (REDD+)[1] is a global program for disbursing funds, primarily to pay national governments in developing countries to reduce forest carbon emission (UN-REDD, 2009, p4). Its framers acknowledge that REDD risks "decoupling conservation from development", enabling "powerful REDD consortia to deprive communities of their legitimate land-development aspirations", undermining "hard-fought gains in forest management practices", and eroding "culturally rooted not-for-profit conservation values" (FAO et al, 2008, pp4–5).[2]

The framers view these risks as balanced by ecological sustainability, "the potential to achieve significant sustainable development benefits for millions of people worldwide", and to "help sustain or improve livelihoods and food security for local communities". In addition, they foresee that "a premium may be negotiable for emission reductions that generate additional benefits" for local people. They even acknowledge "that REDD benefits in some circumstances may have to be traded off against other social, economic or environmental benefits" and call for care in taking local place-based complexity into account when designing REDD interventions (FAO et al, 2008, pp4–5).

What will prevent the promised "premium" from being competed down to nothing, as is the tendency in any competitive market (Economics 101)? Who will do the trading-off of REDD benefits? Isn't the converse – local needs being traded off for REDD carbon benefits – more likely? These trade-offs involve

people's lives and histories at the edge of the legal world. How will REDD proponents ensure that trade-offs are just? How will REDD strategies take their needs and aspirations into account? How will rights be established and enforced?

Safeguards are, of course, being developed. The Center for International Forestry Research (CIFOR) and others have called for REDD+ to systematically address effectiveness, efficiency, equity, and co-benefits – what they call the three E's+ (3Es+) (Angelsen et al, 2009). The UN-REDD Program and others call for legal instruments and stipulations to protect local forest-based communities, such as a right to free, prior, informed consent (FPIC), in a global convention or national legislation to protect indigenous forest people (Colchester, 2010; UN-REDD, 2010). A Norwegian government report (Angelsen et al, 2009) proposes developing principles to promote participation: "Definition of rights to lands, territories, and resources, including ecosystem services; representation in REDD decision making, both internationally and nationally, including access to dispute resolution mechanisms; and integration of REDD into long-term development processes".

The proposed principles are all excellent. Nevertheless, their application has been tried many times, and the results have been less than stellar (Lemos and Agrawal, 2006; Tacconi et al, 2006; Lund et al, 2009; Larson et al, 2010; Ribot et al, 2010). The forestry and conservation institutions that are asked to apply them resist being subjected to such principles. The complexity of an illegible (*à la* Scott, 1998) context also makes implementation very difficult. Most programs and associated protections have not addressed the needs and aspirations, or established and protected the rights, of resource-dependent rural populations. Rural people remain seriously unrepresented as well as under-represented in forestry matters (Ribot et al, 2010).

Legal reforms of statutory rights are only one set of instruments and factors shaping access to forests and forest benefits. They are important; but their creation, application, effectiveness, and ultimate meanings are shaped by entrenched rural inequalities embedded in disabling social, political-economic, and legal hierarchies. Lack of empowered representation along with policy-backed marginalization are deepened even by so-called "neutral" or seemingly "fair" policies because of unequal access to capital, labor, and credit, rooted in class, identity, and social relations (Baviskar, 2001; Ribot and Peluso, 2003; Larson et al, 2006; Bandiaky, 2007). Together these factors slant the access playing field, pitting marginal people against the more powerful, reshaping the intention and effects of legal instruments.

Legal reforms are easily fettered, stymied, manipulated, and circumvented. Local people are often given strong rights to valueless resources, rights to forests rather than markets, rights to implement rather than decide, and rights to participate rather than control. In this context, will informed consent be selectively limited to questions involving the inadequate "rights" held by the rural poor? Will it, too, be extracted, coerced, cajoled, persuaded, or hoodwinked

out of communities? Will it remain selectively targeted to indigenous peoples, leaving out the many non-indigenous longstanding forest communities who deserve equal protection? Real enfranchisement and emancipation require the establishment of universal representation – via empowered and locally accountable authorities. This remains the central challenged to fair and just REDD+.

There must be feedback mechanisms so that societies can react to and adjust as laws are made, implemented, and repurposed, and as practices (regulated or not) shape their lives. Stratification is a constant process. Hence, we need constant counter-processes to hold decision-makers publicly accountable. Change takes place through iterative processes linking legal instruments with discursive/social/political-economic context. It will not be enough to tweak and enforce existing 'rights' – especially since the rights worth having are usually held only by the rich – a product of failed representation and long histories of extractive and market-oriented regimes. Rights to markets and lucrative resources cannot continue to be reserved for elites while the poor are relegated to labor opportunities and use rights. Positive change will require a radical rethinking – indeed, dismantling – of forestry regulation and management in addition to establishing and strengthening of substantive rights and representation for forest-based people.

This chapter takes an "access" approach to policy analysis, described below, by analyzing the political economy that shapes the distribution of benefits from forests under a particular policy regime. It focuses on the real-world problem that forest policies and/or policy implementation systematically exclude various groups from forest benefits. In doing so, forestry policies and practices, sometimes inadvertently, impoverish and maintain the poverty of these groups. Poverty is not just about being left out of economic growth. It is produced by the very policies that enable some to profit: today from timber, firewood and charcoal; tomorrow from carbon.

The remainder of this chapter is organized into three sections. The first frames our access approach. The second presents a case study of charcoal production in Senegal – little to do with REDD yet, but everything to do with the uneven fields on which REDD is already beginning to play out. The third is a synthesis and conclusion.[3]

From Disabling to Enabling Policies: Rights with Access

Governments have long mediated forest access (Thompson, 1977; Scott, 1998). Sunderlin et al (2005, p1390) describe how "forestry laws and regulations in many countries were written to [ensure] privileged access to timber wealth and to prevent counter-appropriation by the poor". In Africa, the colonial antecedents of many of today's forestry policies were unapologetic in favoring Europeans over Africans (Ribot, 1999a). Writing on Gabon, for example, the colonial historian R. L. Buell reported that:

> *… before 1924, natives held [forest] concessions and sold wood upon the same basis as Europeans. But the competition became so keen … that in a 1924 administrative order, the government declared that a native could not cut and sell wood except for his own use without making a deposit with the government of twenty-five hundred francs – a prohibitive sum.* (Buell, 1928, vol II, p256)

Over 80 per cent of the world's forests are on public lands, and the state is often the first gateway to forest access (FAO, 2006).[4] Forestry authorities are still using many exclusionary strategies directly descendent from these earlier techniques, keeping forest peoples poor.

The World Bank (2002) estimates that 1.6 billion people depend on forests for livelihoods (see also Kaimowitz, 2003). At least in some countries, there is an important correlation between forests and poverty (Blaikie, 1985; Peluso, 1992; Dasgupta, 1993; Taylor et al, 2006). Communities living in and near forests suffer from outsiders' commercial exploitation of forest resources (see Colchester et al, 2006a, for a list of studies and consequences; Ribot, 2004; Oyono et al, 2006), and it is clear from commodity chain and forest-village studies that vast profits are extracted through many commercial forest activities, yet little remains local (Blaikie, 1985; Peluso, 1992; Dasgupta, 1993; Ribot, 1998, 2006). Retaining forest benefits locally may offer options for improved well-being in these areas. Indeed, the great commercial and subsistence value of forests is drawing increased attention to their potential role in poverty alleviation (Kaimowitz and Ribot, 2002; Oksanen et al, 2003; Sunderlin et al, 2005), though there may also be trade-offs between forest conservation and poverty alleviation (Wunder, 2001; Tacconi et al, 2006; Lund et al, 2009).

Over the past two decades there has been a wave of reforms designed to increase local participation and benefits for forest-dwellers. Studies of community forestry in Mexican *ejidos* (Bray, 2005) and Guatemala's Petén (Gómez and Mendez, 2005; Taylor, 2006) have demonstrated substantial economic and other livelihood benefits, such as increased income, greater human and social capital, natural resource conservation, decreased vulnerability, greater equity, democratization of power, and empowerment. Community forestry in Cameroon and Nepal has also significantly increased income to forest villages (Agrawal, 2001, 2005; Oyono, 2004, 2006). But few such studies are available precisely because communities rarely have policy-supported access to forests, the resources that are valuable in them, or policy-supported access to the capital and markets that would make increased income possible (Ribot, 1998, 2004). These experiments in inclusion are important trail-blazers towards more progressive and pro-poor forestry; but they still represent only small enclaves of change in the vast wilderness of forestry practice.[5]

Important efforts to solve problems in the forest sector have focused on illegal logging, while including concerns about the rights of forest-based populations – such as the World Bank-supported Forest Law Enforcement and Governance

(FLEG) process (World Bank, 2006). This attention to illegal logging, however, is predicated on two questionable assumptions: first, that "illegal is unsustainable" and "legal is sustainable" (Colchester et al, 2006b), and, second, that the illegal is merely a matter of disrespecting laws that are otherwise appropriate. Legal forestry and forestry laws, however, are not always based on criteria of sustainability. If diligently followed, many regulations would not result in sustainable management (Ribot, 1999a, 2006). Furthermore, forestry laws define the boundaries of the legal – a domain of 'legal' that may not be realistic or just. Since forestry laws discriminate against small and collective forestland and resource users – often banning their access to necessary goods – these users are driven to illegal practices.

The FLEG process comes at these issues from a different perspective. The World Bank (2006) emphasizes stopping forest crime, identifying poverty as one of its drivers. Hence, reforming land tenure and biased regulations that produce poverty is necessary to "help address the poverty-related driver" (World Bank, 2006, pxi). Therefore, the World Bank emphasizes that explicitly addressing the ensemble of means by which these groups are excluded and by supporting inclusion may also help to reduce the illegal logging that it views as a cause of deforestation. As Colchester et al (2006b) argue, FLEG initiatives should address all the laws affecting forest-dependent peoples (not just forestry laws), adopt a rights-based approach, and be linked to governance reform processes that promote broad-based participation, accountability, and transparency in natural resource management. Reforming forestry laws is not enough – constitutions, organic codes, laws of decentralization, electoral codes, tax laws, fiscal codes, laws establishing rights of assembly, and co-operative laws are all also implicated in the powers, rights, and representation of forest villagers (Ribot, 2004).

Colchester et al (2006a) point out that many governments have signed numerous "soft laws" such as international agreements that, among other things, recognize indigenous land rights and customary resource management practices, but that these have rarely been incorporated within forestry legislation. In cases where land rights have been granted, this does not necessarily include rights over trees or forest management.[6] Where laws have passed granting communities greater access to land and/or forests, these have often been adopted through processes outside the realm of forest policy specifically, such as in Nicaragua's autonomous regions or Panama's indigenous *comarcas*, though there are exceptions, such as Bolivia (Larson et al, 2006). For their part, forest policy frameworks tend to be developed with the significant influence of timber interests, as well as state and multilateral financial institutions, but less often, despite the widespread discourse, with the effective participation of community or indigenous groups (Silva et al, 2002). It is no surprise that forest policy usually reflects multiple interests – at the expense of these under-represented forest-dependent actors.

How do we explain the paradox of increasing recognition of *rights* on a broad scale alongside the failure to guarantee basic access in practice? The

rights-based approach to livelihoods emphasizes the importance of grounding development in human rights legislation, based on international norms and laws. It is attempting to re-politicize development and bring in normative, pragmatic, and ethical issues by empowering people to make claims against their governments and demand accountability (cf. Ferguson, 1996; Nyamu-Musembi and Cornwall, 2004). But how are such rights to be translated into practice? Why is it that legislating new rights rarely translates into greater benefits for average rural citizens?

In their "theory of access", Ribot (1998) and Ribot and Peluso (2003) contrast the common formulation of property as a "bundle of rights", with their conception of access as a "bundle of powers". To gain access to forest resources, guaranteed property rights – temporarily, such as short- or long-term contracts for concessions, or permanently, such as land titles or constitutional guarantees[7] – are a necessary first step; but the power to act on those rights depends on the negotiation of a number of complementary access mechanisms. The access approach highlights the role of power, emphasizing that many people gain and maintain access *through others* who control it. Thus, on state forest lands, it is usually the central forestry authority that determines who has (legal) access rights to the forest, and on these as well as private, including collective, forestlands, it is the central forestry authority that determines who will have access to permits for the (legal) use and/or sale of forest resources. In the cases we present below, regulations and the authorities who implement and enforce them systematically favor logging companies and create multilayered access barriers for communities and smallholders – even when those communities and smallholders hold secure rights to the forest resource itself.

The access approach complements the rights-based approach. Rights-based approaches, if practiced according to their original conception, aim to alter power dynamics in development (Nyamu-Musembi and Cornwall, 2004). In this framework, gaining rights, such as those established through the signing of international treaties and inscribed in national laws, is only a first step. Rights, however, only take effect when implemented in practice – also a political process that will likely challenge vested interests at every step. On the ground, then, a rights-based approach is successful when the power dynamics of access are altered and access to livelihood assets are improved for formerly excluded and marginalized groups.

The case below shows how current forestry policies in Senegal – even when called community based or participatory – and the ways in which they are selectively implemented continue to reproduce the double standards and conditions that disadvantage, create, and maintain the rural poor.

Charcoal in Senegal

There is a certain complicity of the Forest Service – it is not against us, it is for the interest of the patrons. (Elected rural council

president in discussion at Tamba Atelier, with four rural council presidents, 14 February 2006)

Until 1998 the system of forest management in Senegal was organized around a system of licenses, permits, and quotas allocated by the national forest service. A national quota for charcoal production was fixed by the Forest Service each year. Forest service officials and agents claimed this quota was based on estimates of the total national demand for charcoal and the potential for the forests to meet this demand. But these estimates were neither based on surveys of consumption nor forest inventories. Indeed, there was (and still is) a persistent gap between the quantity set for the quota and the much higher figures from consumption surveys. In practice, the quota is based on the previous year's quota, which is lowered or raised depending on various political considerations. Over the past decade, the quota was lowered almost every year – regardless of demand – thus increasing illegal production (since demand was always met) (Ribot, 2006).

Prior to the new decentralized forestry laws, the nationally set quota was divided among some 120 to 170 forestry *patrons*, or merchants, at the head of forestry enterprises – co-operatives, economic interest groups (GIEs), and corporations – who hold professional forest producer licenses delivered by the forest service. Allocation of quotas among these entities was based on their previous year's quota with adjustments based on whether or not the enterprise had fully exploited its quota and had engaged in positive forest management activities, such as reforestation. Some forestry patrons did plant trees by the side of the road to demonstrate such efforts – they called these plantations their '*chogo goro*', or bribes – since these helped them get larger quota allocations from the forest service. During this period, new professional licenses were also allocated most years (enabling new co-operatives to enter the market).

Each year after the allocation of quotas, the Forest Service and Ministry of Environment held a national meeting to "announce" the opening of the new season. They passed a decree listing the quotas for each enterprise and indicating in which of the two production regions, Tambacounda or Kolda, these quotas were to be exploited. Soon after, the Regional Forest Services then called a meeting in each regional capital to inform the recipients of the location they would be given to exploit their quotas. Sites were chosen by foresters based on "eyeballing" of standing wood. The forest agents organized the zone into very loose rotations and chose sites by eye, such that some areas that were considered exhausted would be closed, while others that had not been official production sites for a time would be reopened. There was no local say in the matter.

Progressive legal changes gave the rural populations new rights during the late 1990s. Senegal's 1996 decentralization law gave rural communities (the most local level of local government) jurisdiction over forests in their territorial boundaries. The rural council (the elected body governing the rural community) was given jurisdiction over "management of forests on the basis of a management plan approved by the competent state authority" (RdS, 1996a, Article 30),

and the 1998 Forestry Code (RdS, 1998) gave the council the right to determine who can produce in these forests (Article L8, R21). Furthermore, even the more general decentralization framing law gave the council jurisdiction over "the organization of exploitation of all gathered plant products and the cutting of wood" (RdS, 1996b, Article 195). Finally, the Forestry Code states that "Community Forests are those forests situated outside of the forested domain of the State and included within the administrative boundaries of the Rural Community who is the manager" (RdS, 1998, Article R9). The forested domain of the state consists of areas reserved for special uses and protection (RdS, 1998, R2), and most of Senegal's forests are not reserved. In short, under the new laws, most rural communities control large portions of the forests – if not all of the forests – within their territorial boundaries.

To protect the rights over these forests, the Forestry Code requires the Forest Service to obtain the signature of the rural council president, elected from among the rural councilors, before any commercial production can take place in their forests (Article L4). For their part, rural council presidents (PCRs) play an executive role and cannot take action prior to a meeting and deliberation of the council whose decisions are taken by a majority vote (RdS, 1996b, Articles 200, 212). In short, the new laws require a majority vote of the rural council approving production before anyone can produce in rural community forests.

The radical new 1998 Forestry Code changed everything – at least on paper. The amount of production would be based on the biological potential of each rural community's forests rather than by decree in Dakar and the regional capital. The enterprises to work in a given forest would be chosen by the rural council rather than the National Forest Service in Dakar. If implemented, the new system would empower rural councilors to manage their forests for the benefit of the rural community. The law stated that the quota system was to be entirely eliminated in 2001 (RdS, 1998, Article R66). But despite all the new rural community rights, as of 2009, little had changed. The Forest Service continued to manage and allocate access to the forests via centrally allocated licenses, quotas, and permits.

In implementation, the rural council's new rights to decide over forest use are being attenuated by double standards concerning forest access and market access. The new laws give the rural council president rights over forests, but the Forest Service refuses to transfer the powers. Rural populations in Senegal lose out mainly due to two double standards: access to forests and access to commercial opportunities are both skewed against them. These are discussed below.

Double standards in forest access

The rural council president legally controls the rights to access forests, but foresters do not allow him to exercise his prerogative. Foresters argue that villagers and councilors are ignorant of forest management and that national priorities trump local ones. They treat the PCR's signature as a requirement rather than

as a transfer of powers or change in practice. They and the merchants coerce – threaten and pressure – the council presidents to sign away forest rights (Ribot, 2008).[8] Rural council presidents say no, but are ultimately pressured to sign.

The regional Forest Service deputy director was asked: "Given that the majority of rural council presidents do not want production in the forests of their rural communities, how do you choose their rural community as a production site?' He replied with a non-comprehending look on his face: "If the PCRs have acceptable reasons, if the local population would not like … ?" He then stated: "The resource is for the entire country. To not use it, there must be technical reasons. The populations are there to manage. There is a national imperative. There are preoccupations of the state. This can't work if the populations pose problems for development." Nevertheless, the deputy director knew the letter of the law that he was breaking every day. When asked to explain the function of the PCR's signature, he replied, 'The PCR signature must come before the quota is allocated, before the regional council determines which zones are open to exploitation' (interview, deputy director of the regional Forest Service, Tambacounda, 3 December 2005). In short, rural councils are asked for their signature, but are not allowed to say no – despite the fact that the population whom they represent opposes production.

In four rural communities, where donors have set up model forest management projects, the new forestry laws are being applied – albeit selectively. In project areas, rural people have the opportunity to participate in forest exploitation, but only if they engage in forest management activities required by the Forest Service. The ecological evidence indicates that few measures are necessary since natural regeneration in the zone is robust (Ribot, 1999b). Forest villagers know this and do not see the need for most management activities. Nevertheless, to be allowed to manage their own forests, rural communities must use management plans created by the forest service. That is, whereas urban-based merchants install migrant laborers in non-project areas without management plans, villagers wishing to engage in charcoal production must do so under strictly supervised and highly managed circumstances (ironically, even in these areas, most of the PCRs and councilors did not want production, but were forced to sign off under pressure from the Forest Service – similarly to PCRs in non-project areas).

By creating a spatially limited implementation zone for existing policies, the projects serve as an excuse not to implement the laws more generally. Foresters argue that the projects represent cutting-edge practices that are being tested before expanding to other sites; but this argument does not justify prohibiting forest villagers outside of the production areas from producing charcoal while allocating their forests to the migrant woodcutters of the urban-based merchants. In fact, the project areas serve as a decoy. When donors come to visit the forests, they are shown project areas where management – rather, the labor to implement management obligations imposed by the Forest Service – is decentralized. They do not see the rest of the forests where Forest Service

activities have barely changed since colonial times (including those areas where production is closed without the consultation of rural councils). The project, in this case, reduces the progressive 1998 forestry laws to a territorially limited experiment.

Double standards in market access

The Forest Service requires all those wishing to trade in the charcoal market (called charcoal patrons) to be members of a registered co-operative, economic interest group (GIE) or a private enterprise in order to request from the Forest Service a license (*Cart Professionnelle d'Exploitant Forestière*) in the name of their organization (see Bâ, 2006). Despite the elimination of the quota in 2001, production and marketing remain impossible without quotas, since at least until 2009 permits are still only allocated to those with quotas.[9]

Upon receipt of a professional card, the member's organization can be allocated a portion of the national quota in the annual process of quota allocation. In 2004, the national quota of 500,000 quintals was divided into 462,650 quintals of initial quotas and 37,350 quintals of encouragement quotas (7.5 per cent) (RdS, 2004, pp11–12). The initial quotas are allocated at the beginning of the season and the encouragement quotas are allocated at the discretion of the Forest Service and minister later in the season (Bâ, 2006).

Each year new co-operatives and GIEs (a kind of for-profit collective business) have been added to the market. In 2005 there were 164 organizations (RdS, 2005), up by 18 new organizations from 147 organizations in 2004 (RdS, 2004, p12). Unfortunately, all of the rural-based co-operatives that we have spoken with who have requested professional cards have been refused. The quota per patron, however, is shrinking, and many patrons believe that new licenses are being allocated to relatives of powerful merchants and political allies: "The registration of new entities is due to the officials: the president of the national union and the state. Most of the entities are family businesses – brothers and sisters." In particular, they are the brothers and sisters of other already registered patrons. According to older patrons, some of the new organizations do nothing but resell their quotas to others (patron 2, 25 Dec 2005). As one patron told us in disgust, "Most of the large quota people are new entrants into the market" (interview AMD, co-operative president, Patron Charbonnier, Tamba, 26 Dec 2005)

During recent years, the Forest Service, upon recommendation by the director of the national union, has been allocating licenses and quotas to women (interview, union leader, 22 February 2006). This is a new phenomenon. In an interview with one such woman, we learned that she was the wife of an established patron. Forming her own co-operative appears to be a strategy to increase her husband's quota (interview by Salieu Core Diallo, February 2006). Other patrons are not happy with this. One told us that the national union president "was given a supplementary quota" [officially called an encouragement quota]. They give quotas and supplementary quotas to women. These

women are behind the national union president" (interview, PCR, workshop, 14 February 2006).

Over the past several years, rural councilors and other rural community members have requested licenses so that they can receive quotas.[10] In one case, a rural GIE president went to the director of the Forestry Service in Dakar to request the card. He explained:

> *We put together a GIE in 1998 with its own forest production unit. We filed our registration papers at Tamba [the regional capital] – it went all the way to Dakar. I saw the dossier at Hann [national Forestry Office]… We asked for co-operative member cards and for a quota. We were discouraged. We went to Hann and to Tamba. In Dakar, they wanted to give us quotas as individuals. I said "no" in solidarity with the rest of my colleagues with whom I was putting together the GIE.* (Interview, elected rural council member, Tambacounda Region, 22 December 2005)

A similar story was recounted by a GIE president in Missirah (interview, December 2005).

The Forestry Service explains its refusal to give professional cards to local GIEs by saying "they need to be trained" and explaining that "if we let them produce, they will learn the bad techniques of the *surga* [migrant woodcutters]" who work for the current patrons (interviews, two IREF and three ATEF officials in Tamba, December 2005). First, the community has to be organized into village committees and trained to manage and survey forest rotations and to use the Casamance kiln (these are all requirements within project areas, but not requirements under the law). Meanwhile, however, the forest service continues to admit new co-operatives that have no knowledge of production whatsoever and to hand out quotas to patrons who are producing without any training or management within managed and non-managed zones.

After the initial and encouragement quotas are allocated, illegal production and transport fill in the gap between legal supply and actual consumption. But these illegal activities can only be done by those who hold licenses and quotas – since license- and quota-holders can use their licenses to obtain supplementary permits and can hide extra charcoal with their legal loads. This is how the gap between the quota and consumption is filled. The market – legal and illegal – is tied up in the hands of a small privileged group of well-connected patrons (Ribot, 2006).

Despite the fact that Senegal's progressive forestry policies have given away little of the state's control, they are at this moment being reformed and replaced by less-progressive new forestry laws (Ribot, 2009). Senegal's current Forestry Bill takes back many of the rights hard won over the decades of decentralization. Senegal's Forest Service went from being a civilian service to a military service in 2008. No donors in forestry made any protests. This militarization

contrasts with the movement in most countries. At the time of writing, the 2011 Forestry Bill is likely to soon pass. It promises to consolidate control over commercial access to forests with the Forest Service, something the current laws had threatened but never achieved. If the bill passes, then the quota will be renamed "the contract" and will have the same function as before, but under a new name (Faye and Ribot, 2010).

Conclusions

In Senegal, the forestry laws are beautifully written. They place key decisions over forest exploitation in the hands of democratic local authorities and open the markets for communities to sell their products. But these laws are not respected in practice. Old forestry laws favoring the urban elite have been eliminated by new progressive laws; but in reality, little has changed. Through long-abrogated but still-practiced policies, Senegal's Forest Service allocates licenses and quotas in order to retain market access in elite hands – licenses continue to be allocated while quotas have merely been renamed "contracts". Despite the new laws, and community demands and protests, new decentralized forestry rights and opportunities have not reached rural communities. Senegal's forest access and management standards are singular and fair in law, but conflict in practice. Urban elites are systematically favored, while rural forest-dwelling populations are excluded, with total disregard for their rights, wishes, and needs.

Inequalities favoring outside commercial interests over those of local communities are maintained in Senegal and elsewhere by a large repertoire of access means (see Ribot and Oyono, 2005; Toni, 2006; Smith, 2006; Larson and Ribot, 2008; Nayak and Berkes, 2008; He, 2010; Neimark, 2010; Saito-Jensen et al, 2010). Although the specific dynamics vary from country to country, poor communities and smallholders remain at a disadvantage in comparison to more powerful outside interests. Laws may create uniform standards or access asymmetries; they may even transfer decision-making powers and lucrative opportunities to poor rural populations. But even when laws create fair access, they are not just when unevenly implemented or selectively enforced, and they are not sufficient to overcome existing inequities unless they are designed and implemented with an affirmative approach (Ribot, 2004; Bandiaky, 2007; Baviskar, 2007).

Despite a new language concerning decentralization and the recognition of indigenous or rural peoples' rights, forest services around the world still treat local people as subjects and continue to colonize forested territories. The policies applied today are almost all – even when given a participatory or decentralized patina – relics of colonial management based on earlier European practice (as in Africa), or of post-colonial entrenched bureaucracies (as in Latin America). REDD will build on this tradition of domination if it does not seek to transform the structure and cultures of forestry and forest services. Weak checks, balances, and protections are not enough. Targeting the poor is not enough. New progres-

sive policies will have to target the rich to shoot down some of their inordinate privilege. New policies that favor benefits for local people over outsiders are needed. New politics that regulate through minimum standards rather than maximum control may have transformative power. The poor must be represented in the making and implementation of these processes – proportionally to their inordinate numbers.

The outcomes of forest policy and implementation processes, worldwide, demonstrate the multiple and competing interests and goals of different stakeholders and the weaker power of those who lose out. The existence of apparently fair laws, however, also demonstrates that advocacy by and for forest-based populations has in some cases been successful and that further progress is possible. Senegal's forestry policies are much better for rural people today than 20 years ago. New policies should include deepening forestry decentralizations through effective representation and participation, seeking common ground across myriad local goals and interests, and identifying opportunities to challenge unjust privilege. Representation will mean that when local people say "no" to the exploitation of local forests, then there will be *no* exploitation. It may not mean that when they say "yes", exploitation should necessarily take place. Such a "yes" could have negative ecological externalities for higher scales of social, economic, and political organization. Environmental standards are needed (Ribot, 2004). The right to say no to exploitation, however, gives them the ability to negotiate – the cost of this negotiation, the costs of real "participation" and "representation", may have to be less privilege to outside interests.

REDD is entering this slanted world with the primary objective of carbon emissions reduction – not justice or equity. If community rights are already limited, as in Senegal, will they be limited in the future under REDD in the name of carbon sequestration? What rules for resource use will be developed to meet carbon targets under REDD, who will create and enforce these rules, and how might they limit community access to forests for livelihoods? If communities carry new burdens – such as limitations on activities permitted in forests ("no" imposed from above) – will they be fairly compensated? Will the rights to forest benefits – this time to carbon funds – once again be captured by outsiders (Larson, in press)?

To improve access to benefits from forests for rural residents – whether for livelihoods, logging, or REDD funding – rights-based approaches to livelihoods must challenge power relations by transforming access. Of course, the rich and powerful have little interest in giving up their wealth and power. Rights are only real when they are enforced – rights are 'enforceable claims' (MacPherson, 1989) – so rules not enforced are not rights. The weak must have the means of enforcement, whether through representation, resistance, or withdrawal, to fight for good policies and fair implementation. The support of good analysis and of sympathetic allies (a role of scholars) can back progressive claims and help to exert pressure on those who resist change. But this is only one small contribution to reform.

Policies are damped out in the transition from discourse to law and transformed in implementation. Hildyard et al (2001) observe that participatory projects and policies "however carefully prepared, generally flounder the moment they leave the drawing board. By the time they are implemented, they are frequently unrecognizable even to their authors." Lele (2000, cited in Nayak and Berkes, 2008, p707) postulates "that (a) participatory management involves the devolution of power, (b) but the state is by nature interested in maintaining and accumulating power, and therefore (c) joint forest management must be a 'sleight of hand' carried out by state to co-opt activists and placate donors while retaining control and even expanding it in new ways".

These are fair observations; but policy is not something that is made and implemented once and for all. It is an iterative process that requires constant vigilance and struggle. Stratification is a constant process. Inequity always comes back. Governments perform (enact, portray, pretend) change while maintaining business as usual. Still, progressive policies are better than regressive ones. There are many politicians, foresters, donors, NGOs, and administrators fighting for greater justice in forestry. Their efforts can make things better even if they do not make things well. REDD will have to be hyper-progressive and affirmative if it is to benefit the rural poor.

Notes

1 The plus sign indicates inclusion of forest restoration, rehabilitation, sustainable management, and/or afforestation and reforestation.
2 For further discussion of the risks that REDD programs pose to local livelihoods, see Phelps et al (2010).
3 The case study and general framing in this chapter are based on Larson and Ribot (2008).
4 FAO (2006) reports that 84 percent of forests were publicly owned in 2000. Another study found that in developing countries, 71 percent were owned and administered by governments, and 8 percent were publicly owned but reserved for communities (White and Martin, 2002). Only in Central America are private forests (at 56 percent) more important than public (FAO, 2006).
5 Many forestry "projects" claim to increase local income. This chapter does not draw on the literature on projects –projects are not state law or policy.
6 In Colombia, Peru, and Venezuela, the state still apparently granted concessions to third parties on indigenous and community lands as of 2006 (Taylor et al, 2006).
7 Such as for indigenous communities and *quilombos* (colonies formed by runaway slaves) in Brazil (Taylor et al, 2006).
8 The story of this coercion is told in the films *Weex Dunx and the Quota and Semmiñ Ñaari Boor* (see http://doublebladedaxe.com).
9 Like the quota, the license too is illegal under Senegal's current laws (see RdS, 1995).
10 "The PCRs organized to demand their own quotas. Patron X was our point man. E and F said no, because decentralization is for protecting the forests, not to exploit them" (interview, UNCEFS president, 9 July 2004)

References

Agrawal, A. (2001) "The regulatory community: Decentralization and the environment in the *Van Panchayats* (Forest Councils) of Kumaon", *Mountain Research and Development*, vol 21, pp208–211

Agrawal, A. (2005) *Environmentality: Technologies of Government and the Making of Subjects*, Duke University Press, Durham, UK

Angelsen, A., S. Brown, C. Loisel, L. Peskett, C. Streck, and D. Zarin (2009) *Reducing Emissions from Deforestation and Forest Degradation (REDD): An Options Assessment Report*, Prepared for the Government of Norway by Meridian Institute, Norway

Bâ, E. D. (2006) "Le quota est mort, vive le quota! Ou les vicisitudes de la réglementation de l'exploitation du charbon de bois au Senegal", *Environmental Governance in Africa, Working Paper no 19*, World Resources Institute, Washington, DC

Bandiaky, S. (2007) "Engendering exclusion in Senegal's democratic decentralization: Subordinating women through participatory natural resource management", *Representation, Equity and Environment Working Paper Series*, World Resources Institute, Washington, DC

Baviskar, A. (2001) "Forest management as political practice: Indian experiences with the accommodation of multiple interests", *International Journal of Agricultural Resources, Governance and Ecology*, vol 1, nos 3–4, pp243–263

Baviskar, A. (2007) "Between micro-politics and administrative imperatives: Decentralisation and the Watershed Mission in Madhya Pradesh, India", in J. Ribot and A. Larson (eds) *Democratic Decentralisation through a Natural Resource Lens*, Routledge, London, pp26–40

Blaikie, P. (1985) *The Political Economy of Soil Erosion*, Longman, London

Bray, D. (2005) "Community forestry in Mexico: Twenty lessons learned and four future pathways", in D. Bray, L. Merino-Pérez, and D. Barry (eds) *The Community Forests of Mexico: Managing for Sustainable Landscapes*, University of Texas Press, Austin, TX

Buell, R. L. (1928) *The Native Problem in Africa*, vols I and II, MacMillan Company, New York, NY

Colchester, M. (2010) *Free, Prior and Informed Consent: Making FPIC Work for Forests and Peoples*, Scoping paper prepared for The Forest Dialogue's (TFD) FPIC Initiative, Research Paper no 11, July 2010, Yale, New Haven, CT

Colchester, M. et al (2006a) "Forest peoples, customary use and state forests: The case for reform", Paper presented at the 11th Biennial Congress of the International Association for the Study of Common Property, Bali, 19–22 June

Colchester, M. et al (2006b) *Justice in the Forest: Rural Livelihoods and Forest Law Enforcement*, CIFOR, Bogor

Dasgupta, P. (1993) *An Inquiry into Well-Being and Destitution*, Oxford University Press, Oxford, UK

Dubois, O. (2003) "Forest-based poverty reduction: A brief review of facts, figures, challenges and possible ways forward", in T. Oksanen, B. Pajari, and T. Tuomasjukka (eds) *Forests in Poverty Reduction Strategies: Capturing the Potential*, European Forest Institute Proceedings no 47, European Forest Institute, Finland

FAO (Food and Agriculture Organization of the United Nations) (2006) *Global Forest Resources Assessment 2005*, FAO, Rome

FAO, UNDP and UNEP (2008) *UN Collaborative Program on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD)*, FAO, UNDP, UNEP Framework Document, Rome

Faye, P. and J. C.Ribot (2010) *Semmiñ Ñaari Boor* [*Double-Bladed Axe*], www.doublebladedaxe.com

Ferguson, J. (1996) "Transnational topographies of power: beyond 'the state' and 'civil society' in the study of African politics", Mimeo

Gómez, I. and V. E. Mendez (2005) *Asociación de Comunidades Forestales de Petén, Guatemala: Contexto, logros y desafíos*, PRISMA, San Salvador

He, J. (2010) "Globalised forest-products: commodification of the matsutake mushroom in Tibetan villages, Yunnan, southwest China", *International Forestry Review*, vol 12, no 1, pp27–37

Hildyard, N., H. Pandurang, P. Wolvekamp, and R. Somesekhare (2001) "Pluralism, participation, and power: Joint forest management in India", in B. Cooke and U. Kothari (eds) *Participation: The New Tyranny*, Zed Books, London, pp56–71

Kaimowitz, D. (2003) "Not by bread alone … forests and rural livelihoods in sub-Saharan Africa", in T. Oksanen, B. Pajari, and T. Tuomasjukka (eds) *Forests in Poverty Reduction Strategies: Capturing the Potential*, European Forest Institute Proceedings no 47, European Forest Institute, Finland

Kaimowitz, D. and J. C. Ribot (2002) "Services and infrastructure versus natural resource management: Building a base for democratic decentralization", Paper presented to the International Conference on Decentralization and the Environment, Bellagio, 18–22 February

Larson, A. (in press) "Forest tenure reform in the age of climate change: Lessons for REDD+", *Global Environmental Change*, doi:10.1016/j.gloenvcha.2010.11.008

Lemos, M. and A. Agrawal (2006) "A greener revolution in the making? Environmental governance in the 21st century", Environment, vol 49, pp36–45

Larson, A. and J. Ribot (2008) *Democratic Decentralisation through a Natural Resource Lens*, Routledge, London

Larson, A., P. Pacheco, F. Toni, and M. Vallejo (2006) *Exclusión e inclusión en la forestería latinoamericana: hacia donde va la descentralización?*, CIFOR/IDRC, La Paz, Bolivia

Larson, A., D. Barry, G. R. Dahal, and C. J. P. Colfer (2010) *Forests for People: Community Rights and Forest Tenure Reform*, Earthscan, London

Lund, J. F., K. Balooni, and T. Casse (2009) "Change we can believe in? Reviewing studies on conservation impact of popular participation in forest management", *Conservation and Society*, vol 7, no 2, pp71–83

MacPherson, C. B. (1989) "The meaning of property", in C. B. MacPherson (ed) *Property: Mainstream and Critical Positions*, University of Toronto Press, Toronto, Canada

Nayak, P. and F. Berkes (2008) "Politics of co-optation: Community forest management versus joint forest management in Orissa, India", *Environmental Management*, vol 41, no 5, pp707–718

Ndoye, O. and J. C. Tieguhong (2004) "Forest resources and rural livelihoods: The conflict between timber and non-timber forest products in the Congo Basin", *Scandinavian Journal of Forest Research*, vol 19, pp36–44

Neimark, B. (2010) "Subverting regulatory protection of 'natural commodities': The *Prunus africana* in Madagascar", *Development and Change*, vol 41, no 5, pp929–954

Nyamu-Musembi, C. and A. Cornwall (2004) *What Is the "Rights-Based Approach" About? Perspectives from International Development Agencies*, IDS Working Paper 234, IDS, Sussex, UK

Oksanen, T., B. Pajari and T. Tuomasjukka (eds) (2003) *Forests in Poverty Reduction Strategies: Capturing the Potential*, European Forest Institute Proceedings no 47, European Forest Institute, Finland

Oyono, P. R. (2004) "Institutional deficit, representation, and decentralized forest management in Cameroon", *Environmental Governance in Africa Working Paper*, no 15, World Resources Institute, Washington, DC

Oyono, P. R. (2006) "Acteurs locaux, representation et 'politics' des éco-pouvoirs dans le Cameroun rural post-1994", *Canadian Journal of Development Studies*, vol 27, pp163–185

Oyono, P. R., J. Ribot, and A. Larson (2006) "Green and black gold in rural Cameroon: Natural resources for local governance, justice and sustainability", *Environmental Governance in Africa*, Working Paper no 22, World Resources Institute, Washington, DC

Peluso, N. L. (1992) *Rich Forests, Poor People: Resource Control and Resistance in Java*, University of California Press, Berkeley, CA

Phelps, J., E. L. Webb, and A. Agrawal (2010) "Does REDD+ threaten to recentralize forest governance?", *Science*, vol 328, 16 April, pp312–313

RdS (République du Sénégal) (1995) *Décret 95 – 132 du 1 février 1995 portant libéralisation de l'accès à certaines professions*, République du Sénégal, Ministère de l'Environnement et de la Protection de la Nature, Sénégal

RdS (1996a) *Loi portant transfert de compétences aux régions aux communes et aux communautés rurales*, République du Sénégal, Dakar, 22 March

RdS (1996b) *Loi Portant Code des Collectivités Locales*, République du Sénégal, Dakar, 22 March

RdS (1998) *Code Forestier, Loi no 98/03 du 08 janvier 1998 et Décret no 98/164 du 20 février 1998*, République du Sénégal, Ministère de l'Environnement et de la Protection de la Nature, Direction des Eaux, Forets, Chasse et de la Conservation des Sols, Sénégal

RdS (2004) *Arrêté fixant les modalités d'organisation de la compagne d'exploitation forestière 2004*, Convocation no 000550/MEA/DEFCCS, Ministère de l'Environnement et de l'Assainissement, République du Sénégal, Sénégal, 8 February 2004

RdS (2005) *Arrêté fixant les modalités d'organisation de la campagne d'exploitation forestière 2005*, République du Sénégal, Ministère de l'Environnement et de la Protection de la Nature, Sénégal

Ribot, J. C. (1998) "Theorizing access: Forest profits along Senegal's charcoal commodity chain", *Development and Change*, vol 29, pp307–341

Ribot, J. C. (1999a) "Decentralization, participation and accountability in Sahelian forestry: Legal instruments of political-administrative control", *Africa*, vol 69, no 1, pp23–65

Ribot, J. C. (1999b) "A history of fear: Imagining deforestation in the West African dryland forests", *Global Ecology and Biogeography*, vol 8, no ¾, pp291–300

Ribot, J. C. (2004) *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization*, World Resources Institute, Washington, DC

Ribot, J. C. (2006) *Analyse de la filière charbon de bois au Sénégal: Recommandations*,

Policy brief based on the Senegal Dutch research program: Pour une gestion décentralisée et démocratique des ressources forestières au Sénégal, 1 September
Ribot, J. C. (2009) *Analysis of Senegal's Draft Forestry Code: With Special Attention to Its Support for Decentralization Laws*, Report to US Agency for International Development, Senegal, 22 October, p59
Ribot, J. C. and R. Oyono (2005) "The politics of decentralization", in B. Wisner, C. Toulmin, and R. Chitiga (eds) *Toward a New Map of Africa*, Earthscan, London
Ribot, J. C. and N. L. Peluso (2003) "A theory of access", *Rural Sociology*, vol 68, pp153–181
Ribot, J. C., A. Agrawal, and A. M. Larson (2006) "The decentralization of natural resource management: Theory meets political reality", *World Development*, vol 34, pp1864–1886
Ribot, J. C., T. Treue, and J. F. Lund (2010) "Democratic decentralization in sub-Saharan Africa: Its contribution to forest management, livelihoods, and enfranchisement", *Environmental Conservation*, vol 37, no 1, pp35–44
Saito-Jensen, M., I. Nathan, and T. Treue (2010) "Beyond elite capture? Community based natural resource management in Mahmad Nagar village, Andhra Pradesh, India", *Environmental Conservation*, vol 37, no 03, pp327–335
Scott, J. (1998) *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Yale University Press, New Haven, CT
Sen, A. (1981) *Poverty and Famines: An Essay on Entitlement and Deprivation*, Oxford University Press, Oxford, UK
Silva, E., D. Kaimowitz, A., Bojanic, F., Ekoko, T., Manurung, and I. Pavez, (2002) "Making the law of the jungle: The reform of forest legislation in Bolivia, Cameroon, Costa Rica, and Indonesia", *Global Environmental Politics*, vol 2, pp63–97
Smith, W. (2006) "Regulating timber commodity chains: Timber commodity chains linking Cameroon and Europe", Paper presented at the 11th Biennial Congress of the International Association for the Study of Common Property, Bali, 19–22 June
Sunderlin, W., A. Angelsen, B., Belcher, P., Burgers, R., Nasi, L., Santoso, and S. Wunder (2005) "Livelihoods, forests, and conservation in developing countries: an overview", *World Development*, vol 33, pp1381–1402
Tacconi, L., Y. Siagian, and R. Syam (2006) "On the theory of decentralization, forests and livelihoods", *Environmental Management and Development Occasional Papers*, No 09, Asia Pacific School of Economics and Governments, Australian National University, Canberra
Taylor, P. (2006) *Conservation, Community and Culture? New Directions for Community Forest Concessions in the Maya Biosphere Reserve of Guatemala*, Draft report for the Association of Forest Communities of Petén, Guatemala
Taylor, P., A. Larson, and S. Stone (2006) *Forest Tenure and Poverty in Latin America: A Preliminary Scoping Exercise*, Report prepared for the Center for International Forestry Research, Bogor
Thompson, E. P. (1977) *Whigs and Hunters: The Origin of the Black Act*, Penguin, Harmondsworth, UK
Toni, F. (2006) *Gestao florestal na Amazonia Brasileira*, CIFOR/IDRC, La Paz, Bolivia
UN-REDD (2009) *Rules of Procedure and Operational Guidance*, United Nations REDD Program, New York, NY
UN-REDD (2010) *UN-REDD Programme Newsletter*, no 3, October 2010,

http://webcache.googleusercontent.com/search?q=cache:35tEThq81ckJ:www.un-redd.org/Newsletter13/Panama_FPIC_Workshop/tabid/6407/Default.aspx+Free+Prior+Informed+Consent+(FPIC)+REDD&cd=2&hl=en&ct=clnk, accessed December 2010

White, A. and A. Martin (2002) *Who Owns the World's Forests?*, Forest Trends, Washington, DC

World Bank (2002) *A Revised Forest Strategy for the World Bank Group*, World Bank, Washington, DC

World Bank (2006) *Strengthening Forest Law Enforcement and Governance: Assessing a Systemic Constraint to Sustainable Development*, Report no 36638GLB, World Bank, Washington, DC

Wunder, S. (2001) "Poverty alleviation and tropical forests – what scope for synergies?", *World Development*, vol 29, pp1817–1833

Wurster, K. (2010) *Does Management Matter? Assessing the Effects of Charcoal Production and Management on Woodland Regeneration in Senegal*, PhD thesis, University of Maryland, Maryland