

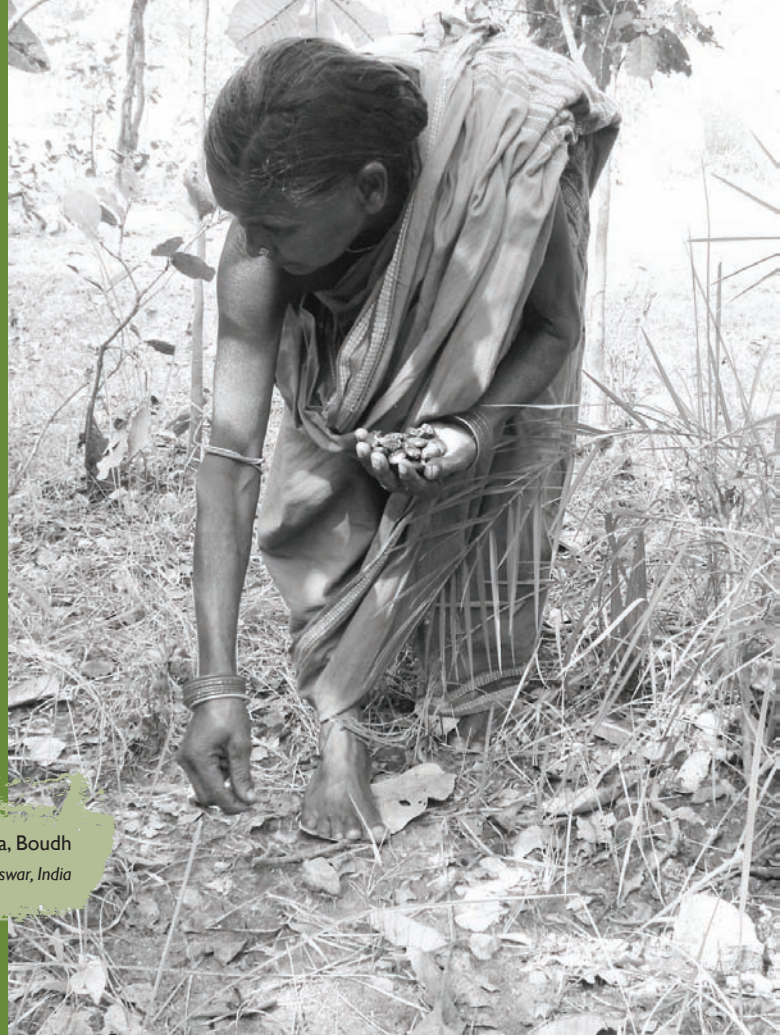


Wild Product Governance:

laws and policies for sustainable
and equitable non-timber forest
product use

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INDIA – Collection of Kalabhalia seed by the villagers of Kalasulia, Boudh
Photo: RCDC, Bhubaneswar, India



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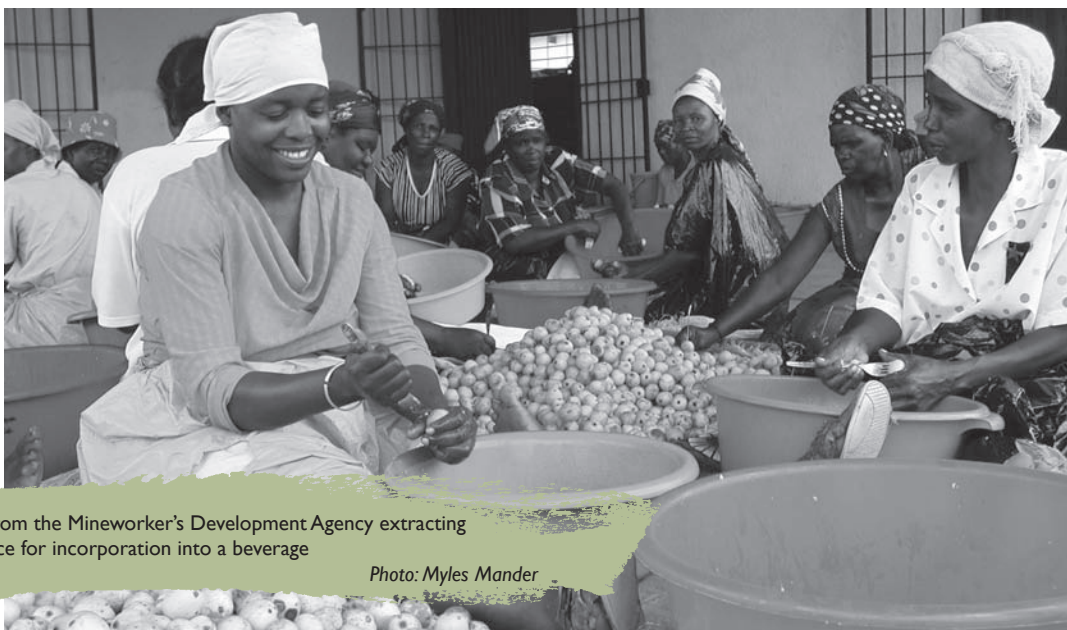
People have long developed and depended upon useful species from diverse ecosystems. Even today, botanical (or 'non-timber forest') products (NTFPs) provide critical subsistence and trade goods for forest and other communities. In many areas, NTFPs are the main source of cash to pay school fees, buy medicines, purchase equipment and supplies, and even buy food. However, NTFPs have been both overlooked and poorly regulated by governments. Laws tend to be inconsistent and confusing, with little resembling a policy 'framework' or strategy. Many are opportunistic or drafted in response to perceived threats, and rarely do regulations follow from consultations with stakeholders or careful analysis of the complex factors involved in the sustainability and equity of NTFP management, use and trade.

Despite wide variations in cultural, economic and political conditions, experiences with NTFP law and policy are remarkably similar around the world, and are characterized by common regulatory features. This finding applies to both developed and developing countries, and includes regions that still have strong traditional and subsistence use of NTFPs and those that may have reduced their dependence on NTFPs, but have recently 'rediscovered' natural products.

Case studies which contributed to this project include those from Bolivia, Brazil, Cameroon, Canada, China, Fiji, Finland, India, Mexico, the Philippines, southern Africa, the United Kingdom and the United States. Important lessons for policy makers, NGOs, community groups, and others working with NTFPs include the need for better information, simplification, clarity, and consistency in NTFP policy frameworks. This policy brief draws from the book *Wild Product Governance: finding policies that work for non-timber forest products* to be published by Earthscan in 2010 as part of the People and Plants series (www.peopleandplants.org; www.earthscan.co.uk). Below we discuss in greater detail some of the key findings and recommendations from this project.

The extent of commercialization and the heterogeneity of NTFPs, markets and stakeholders should be reflected in policies and laws.

- **The extent of commercialization has a strong bearing on the need for and nature of regulations.** Laws and management plans should recognize the different types of NTFP use, such as subsistence, local trade, commercial trade and recreation, as well as the scale of trade from local through to global markets. These diverse activities should be managed in different and appropriate ways, with subsistence use, for example, not being regulated, except in cases where there are clear risks of overharvesting. The greatest attention should be paid to internationally traded industrial-scale NTFPs. Understandings of the specifics of NTFP use and trade need to be incorporated into a wider, more coherent policy matrix for NTFPs.
- Potential, often unpredictable, **shifts in market demand** due to supply problems, consumer fads, safety and efficacy concerns, and other common aspects of the NTFP trade should be considered when drafting measures, which should be flexible and adaptive.
- Market access is as important as market prices for small-scale producers. Many groups seek both access and good prices for their products. Policies that support **certification** and other measures that set producers apart from competitors can ensure greater equity in the distribution of benefits from NTFP trade. However, care needs to be taken that the cost of participating in certification systems, as well as their administrative costs do not exceed their benefits.



Women from the Mineworker's Development Agency extracting marula juice for incorporation into a beverage

Photo: Myles Mander

- **Processors and traders** often control NTFP sectors, with small-scale producers having limited power over the commercial trade, including prices. Policymaking processes that are structured to encourage the participation of small-scale producers can help reduce monopolistic tendencies in NTFP markets.
- Internationally traded NTFPs cannot easily transform local economies or social and cultural institutions and practices in positive ways. Commercially traded NTFPs can generate real benefits for local groups, and may lead indirectly to species and forest conservation, but the greatest value for local groups is often found in **subsistence use and local trade of NTFPs**.
- Although **commercial uses of NTFPs are often based on traditional uses**, the relationship between the two grows weaker as commercial demand increases and products move outside the original cultural and geographical context of their use.

NTFPs are part of land-use systems that include a range of activities, many with significant impacts. NTFP regulation should be considered as part of an entire pattern of land uses and their regulation.

- NTFP laws and policies must take into account the most pressing threats to species and the ecosystems within which they are found. It is often the case that forest degradation and destruction resulting from agriculture, logging, mining and other land uses cause far more damage to NTFP populations than overharvesting, particularly when NTFPs are used for subsistence purposes or sold in local trade. There are obvious exceptions to this, as CITES appendices and national endangered species listings make clear, but **NTFPs must be regulated as part of a pattern of uses within one landscape**.
- Governments should recognize the clear **distinctions between timber use and NTFP use** and the need to regulate and administer these two extremely different activities in different ways. Timber regulations should include the recognition and the amelioration of the negative impacts of logging on locally and commercially valuable NTFPs.
- **Climate change** is likely to bring about substantial shifts in the geographic distribution of most plant species, including many NTFPs. Climate change mitigation and adaptation strategies and policies thus need explicitly to include NTFP harvesting and trade among the activities for which supportive actions are required.



JIEDI – Matsutake buyers and sellers at the official village matsutake market waiting for the signal to begin trading

Photo: Nick Menzies

Power and other social relations must be factored into law and policy formation.

- There are many types of power and social relations manifested in the harvest and trade of NTFPs that help determine whether these activities will be sustainable and equitable, and whether they will support rather than undermine the livelihoods of groups dependent on these resources. **It is vital that the power dynamics and political and economic inequalities between stakeholders be understood prior to policy formulation and implementation,** otherwise measures will be ineffective and produce unintended consequences.
- **Relations between ‘insiders’ and ‘outsiders’** are classic points of conflict for NTFPs. The potential for these tensions to arise must be allowed for in policy measures and addressed in consultations, and policymakers should take great care not to exacerbate these conflicts with new measures. Where conflict exists, facilitators trained in conflict resolution are likely to be needed to help formulate equitable and viable policies.
- **Indigenous peoples increasingly have political power and legal rights** (at least on paper) to their land, resources, culture and knowledge, but challenges remain. There is a continuing need to assist indigenous peoples to become organized, navigate the overly bureaucratic NTFP permitting procedures, and assert their rights against more powerful players.
- In many countries, **entrenched corruption and abuse of power** on the part of governments and their circle of patronage means that new measures will stall. Small producers, who lack political or economic power, can easily lose out if measures are drafted in a way that primarily promotes the interests of the elite.

Information needs required for effective laws and policies should be carefully considered before regulations are developed.

- Policymakers require a **vast range of information about NTFPs** when drafting laws: the ecology and management of different species, the stakeholders involved, the economic and social benefits of use, the status of markets for each resource, and the different technologies and harvesting practices used. The difficulty of collecting much of this information, particularly in countries with severe resource and capacity constraints or where hundreds of NTFP species are used, suggests the need for an approach that allows management, trade and use to proceed, based on a limited set of information. A comprehensive approach integrating local and scientific knowledge should, however, be adopted for threatened species and those that are intensively traded.
- The relationship between **NTFPs and species conservation** should be better understood. While the greatest threats to NTFPs generally come from other land uses, the overharvesting of NTFPs can be a significant problem. Policymakers should, however, be cautious about concluding that overharvesting is the main threat to NTFPs or that concerns about sourcing necessarily mean there is a crisis at hand. A tendency on the part of conservation bodies to assume the worst and promote policy interventions has often resulted in conflicts with producer groups who feel that outsiders do not understand the species, trade or local livelihoods dependent upon these products.
- In the absence of a crisis, and in some cases even when there is a perceived crisis, it is often best for governments to **maintain the status quo** until they have had a chance to fully comprehend the products and activities they seek to regulate. They should first consult, undertake research and invest in the early stages of policy design and formulation in order to create texts that will work and actually be implemented.



SOUTH AFRICA – Rooibos harvesting in the Suid Bokkeveld, South Africa

Photo: Rachel Wynberg

Policy development must take place through comprehensive, ongoing and iterative stakeholder consultations.

- Laws and policies should grow from **extensive consultations with the full range of affected stakeholders**, including harvesters and producers, traders, companies and government departments. This facilitates the development of more informed and effective policies that reflect real needs and priorities, and also helps ensure policies are widely accepted and implemented. The participation of diverse groups is particularly important for species that are heavily traded and thus involve strong economic interests.
- **Intermediary organizations** such as producer and harvester organizations, trade associations and NGOs should be supported to help ensure that the voices of producers and harvesters are heard in policy development and implementation processes.

Many seemingly unrelated issues and bodies of law can significantly affect NTFP management, use and trade, and should be considered part of developing NTFP policy and legal frameworks.

- **A range of laws impact directly and indirectly on forest products and their users**, including those regulating natural resources, agriculture, land tenure and resource rights, water, transportation, biodiversity, labour, intellectual property rights and product quality control. Steps need to be taken to identify the cumulative social, economic and environmental effects of such laws on NTFPs and producers, including the development of strategies to mitigate negative impacts.
- **Land tenure and resource rights** are vital parts of NTFP regulation. However, the many types of rights and ownership, the combinations thereof and the various layers of NTFP laws create enormously complex systems. It is vital that access rights to resources and land, and the ownership of these resources, be clarified when developing regulatory frameworks for NTFPs, particularly for resources with commercial value.

- Policymakers must understand the impacts of **labour relations** on the distribution of costs and benefits (social, economic and ecological) associated with NTFP harvesting. Wage labour conditions can have particularly debilitating economic effects on low-income populations, setting up inequitable trade relations and creating disincentives for ecologically sustainable harvesting practices.
- **Intellectual property laws** should be revised to provide an enabling environment for traditional knowledge protection and local NTFP industries. Intellectual property rights are powerful tools that can support or restrict NTFP trade and producer communities. Some approaches, such as geographical indications, are increasingly being prescribed by countries to protect local producers and industries. Their use, however, needs to be carefully designed to build on traditional systems, to prevent unintended negative impacts on producers and to minimize the duplication of existing laws and associated paperwork. Governments should review their intellectual property laws to ensure they do not conflict with traditional knowledge protection, and that they provide an enabling environment for the development of local industries that add value to NTFPs.
- Policymakers developing and implementing standards for **good manufacturing, quality control and food safety** need to ensure that they do not, by dint of the high levels of sophistication and reporting required, exclude many producers or products, in particular those from developing countries and poor communities. Efforts should be made to build the capacity of producers to enable their full engagement and compliance with necessary certification, health and safety standards, and to improve their ability to negotiate with standard-setting agencies.

The impact of regional and international policies on NTFPs must be examined and understood to ensure that equity and sustainability are promoted.

- **Regional and international trade agreements** can have significant impacts on the distribution of costs and benefits from NTFP harvesting and trade. Policymakers need to consider how such agreements interact with policies regulating access to NTFP harvesting sites and markets so as to minimize unintended consequences.
- **Regional policy development for shared species** will help ensure effective NTFP management and use. Countries that share commercially traded species should collaborate to develop regional policies for their management, use and trade. This will encourage

sustainable use and fair benefit sharing, assist with traceability requirements and give countries a strategic advantage in increasingly competitive markets.

- **International treaties such as CITES** are important tools to regulate trade in endangered species but need to be used with caution to ensure that trade restrictions are appropriate, targeted and effective, and that the negative effects of regulation on livelihoods are minimized.
- As a result of international policy trends, national and provincial policies and laws increasingly require the **fair sharing of benefits** from the use of NTFPs and traditional knowledge associated with these resources. However, these measures are typically not coordinated with laws relating to bulk resource trade and use, leading to confusing and ineffectual implementation.

Policy frameworks should be strategic, comprehensive and coordinated with other bodies of law and between government departments.

- **Policies should be developed strategically.** Most NTFP laws are built incrementally and lack an overall strategy or clear objectives. Many are reactive or opportunistic. Incremental approaches may work for some NTFP regulation, given the erratic nature of markets and often uncertain knowledge about resource availability, but they do not offer an effective way to regulate most of these products. Policies can be flexible and allow room for adjustment while also being strategic.
- Laws are most effective if they are **adaptive and reflect local realities** and conditions.
- **Greater coordination and integration** are needed between government departments and levels of government, as well as with the private sector and producers, to streamline procedures, minimize bureaucracy and improve policy coherence. Governments should aim to synchronize laws affecting NTFPs, avoid duplication and prevent the creation of a potentially confusing administrative system of overlapping mandates between government departments.
- Governments should examine existing NTFP laws and permitting requirements, with a view to eliminating requirements for permits and procedures that are **inappropriate for small-scale producers** and that bring no clear management or livelihood benefits.

- Governments and others should be aware that **unintended consequences** often result both from policies regulating NTFPs and from policies found outside the sector. These unintended consequences might grow from poorly defined or non-existent 'problems' in search of solutions, or from a poor understanding of products and trade. Whatever the origins, due to the complexity and heterogeneity of these products and associated activities, even in cases when governments have the 'best-laid plans', crafted with the best of intentions, NTFP law and policy often have a way of not working out as planned. Care should be taken to consider the wide range of converging issues.

NTFP policies work best when based on incentives ('carrots') rather than penalties ('sticks').

- Typically, 'sticks' are employed to regulate NTFPs, particularly in a perceived overharvesting crisis, but **'carrots' in the form of incentives and supportive legal frameworks** may work best for this category of products. NTFP laws should be crafted in such a way that they emphasize the benefits of compliance in the form of, for example, government support for producer, trade and processing groups; market access and premium prices via certification; tax breaks; and support for effective implementation, instead of utilizing the 'sticks' of permits, quotas, taxes and restrictions on trade or use. In some cases, however, particularly when there is sudden and high commercial demand, both approaches are necessary.
- **Revenue generated by the state through the sale of NTFPs**, or through royalties from permitting use, should be channelled to conservation and protection of the harvested resource, or to building government and producer capacity, rather than used for purposes not directly related to this sector.



CAMEROON – Eru (*Gnetum* spp.) loaded onto taxi in transition from Cameroon to Nigeria

Photo: Abdon Awono

Capacity should be built in government, trader and producer communities to enable the development and implementation of effective policies and laws for NTFPs.

- **Government capacity to implement NTFP laws and policies and ensure compliance is notoriously underfunded, undercapacitated and inconsistent**, due in part to the lack of importance given to these 'minor' forest products, confusing regulations and conflicting or overlapping mandates between departments. Capacity and technical skills need to be developed, not only in government departments, but also among traders, producers and support organizations. Creative approaches should be explored to involve producer communities and traders in monitoring resource use and assisting with policy implementation.

Less is often more: NTFP regulation should be approached with a light hand.

- One lesson that is emerging around the world is that **'less is often more'** when it comes to government regulation of NTFPs. Governments should be encouraged to approach NTFP regulation with a light hand, and in ways that reflect the financial, ecological and social costs and benefits of such actions, as well as implementation capacity and the likelihood of compliance. Regulating lightly will, in turn, reduce bureaucratic procedures and levels of red tape, lessen confusion among harvester communities, and eliminate opportunities for bribery and corruption.
- In many cases, governments should **'leave well enough alone'**. The first question governments, NGOs and others need to ask is: do we need to regulate? A bias in the fields of conservation and development towards intervention and action often drives the establishment of new laws or government obligations without a clear understanding of the problems and issues they are meant to address or the objectives they claim to serve. Policies based on theoretical frameworks and assumptions originating outside a region often lead to unanticipated outcomes when they interact with local political, cultural, economic and ecological conditions.

Existing customary and local laws are often better suited to this diverse set of products and activities.

- Regulators should acknowledge, by adopting a 'less is more' approach, that where land tenure and resource rights are secure, customary laws are still strong, and local capacity exists to manage the resource base and deal with commercial pressures, **customary laws often provide a more nuanced approach** to regulation, integrating unique local cultural, ecological and economic conditions in ways that better suit this category of products.
- In cases where customary law has broken down to a significant degree, or outside commercial pressure has intensified well beyond the carrying capacity of traditional measures, **governments can offer important and necessary complementary levels of regulation**, something often requested by local groups. But this must be done in a targeted and informed fashion. Interventions should be crafted to include local-level institutions and management systems, where these are effective, and to minimize the costs and paperwork of compliance.
- The sustainability and equity of NTFP use, management and trade depend upon a myriad of locally specific factors, and are often best addressed by a **patchwork of local measures**, supported by a streamlined and coherent government framework that sets the floor and intervenes minimally.
- Trends towards **decentralized and participatory NTFP governance** reflect an advance in NTFP regulation throughout the world and should be supported in their ability to provide a more effective approach for this complex set of products. However, this needs to be balanced against the need for national and regional coherence in policies, especially for commercially traded species.
- Governments should explore NTFP policy frameworks that **integrate and coordinate customary and statutory** law and governance systems. This requires commitments of time, money and research, and extensive stakeholder consultation.





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