



CHALLENGES OF REGULATORY REFORMS

Sally Collins

Next Generation of Forest Agency
Leaders

Oaxaca, Mexico 2015



Outline

- 1) Regulations: Why, Problems, Causes & Consequences
- 2) Emerging New Approaches and “Principles”
- 3) The Montana Experience
- 4) Promising Emerging Tools

Primary sources:

- 1) *Hans Gregersen and Arnaldo Contreras, “Rethinking Forest Regulations”, RRI, 2010.*
- 2) *N.Gunningham and D. Sinclair, “Leaders and Laggards: Next-Generation Environmental Regulation”, 2002.*
- 3) *Jesse C. Ribot, “Waiting For Democracy — The Politics Of Choice In Natural Resource Decentralization. World Resources Institute, 2004*



Regulations: Why, Problems, Causes, Consequences

- **General definition:** *“Specific rules to enable implementation & enforcement of a law; have legal weight”*
- **Regulations differ from:**
 - Laws: *sometimes are passed & new regulations not developed*
 - Policies: *policies may be announced & treated as if laws or regulations – but they are not*
- **“Rethinking Regulations”:** *How to best use the powers of the state to achieve publicly beneficial outcomes (e.g. sustainable forestry, water quality, employment, economic growth, etc.)?*

Why do we regulate forests?

Relationship Between the State

Government:

- Central/Federal
- Provincial/State
- Local

And its Citizens

- Individuals
- Groups w/special rights (e.g., Indigenous & traditional communities,)
- Public

Over Rights

- Harvest
- Use
- Manage
- Timber
- NTFP
- Wildlife
- Recreation
- Water

To Use *Their* Forests

- Individual/House - holds
- Indigenous or community-owned forests
- State/Local government
- Central/Federal government

(Refers to different types of ownership)



Why “Rethink” Regulations?

International Tropical Timber Organization:

Less than 10% of tropical forests are managed sustainably... [after] years of efforts and hundreds of millions of dollars expended

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Why “Rethink” Regulations?

- 1) Forestry’s record disappointing in many places, undermining governance & development potential:
 - *Continuing deforestation & degradation*
 - *Widespread illegal logging & trade of illegal products*
 - *Corruption & conflict*

- 2) Regulatory frameworks structurally flawed & obsolete:
 - *Top-down, complex, command-and-control structures*
 - *Unrealistic relative to institutional capacity & budget*
 - *If do not respect customary or statutory land, civil or political rights, are perceived as unjust and lead to resistance.*

Why “Rethink” Regulations?

- 3) Forestry highly regulated (over-regulated?) sector:
 - *Management plans detailed, costly & difficult to develop, implement & monitor/enforce; harvest regulations very prescriptive*
 - *Other sectors less regulated (e.g., ag & mining)...easier to convert land rather than manage sustainably for forestry*
- 4) Perverse outcomes and unintended consequences:
 - *Diminished respect for law, judicial systems & forest sector institutions*
 - *Obstacles to local peoples pursuit of sustainable livelihoods*
 - *Favors entrenched economic & political interests*
 - *Impose burdens & costs beyond the capacity of governments to finance thru public budgets and/or collection of forest charges & fees*

Direct & Indirect Reasons for Failure

- 1) Where real purpose is not SFM, e.g., but to raise revenue, control land for government and/or vested interests
- 2) Where there are contradictions & inconsistencies between sectoral laws, policies & regs (e.g., between mining, agriculture, forestry & protected areas).
- 3) Where regulations unrealistic: too cumbersome, costly, or difficult to implement
- 4) When regulations inconsistent with property rights
- 5) When there is a lack of institutional capacity to monitor & enforce: **They fail when the focus is on *enforcement***

National & International Responses to Failure

- Logging bans (e.g. Asia)
 - Concessioning arrangements (e.g., Latin America)
 - Lacey Act (USA), VPA (EU)
 - FLEGT – using trade to improve forest governance
 - REDD – global effort to stop deforestation
- Of course, regulations (or their lack) in other sectors negatively affect forests (e.g. agriculture, mining, investment)***

Six Principles For Governments' Re-Thinking Regulations

1) Recognize **land rights**

- *They are the foundation & basic building blocks for a functional, effective & efficient system*

2) Identify & address **priority public problems**

- *Focus on most important public values/resources, habitats, ecosystem functions & services*
- *Prioritize actions against the most damaging threats*
- *Define & agree with key stakeholders on vision & principal outcomes to be achieved*

Six Principles For Governments' Re-Thinking Regulations

- 3) Design **regulatory systems for each property type**
 - *Focus on desired outcomes/results*
 - *Favor least-cost alternatives to regulatory reforms, including voluntary/adaptive arrangements*
 - *Consider a minimum standards approach to achieve desired outcomes/results by property type*
 - *Avoid prescriptive approach & explicit “how to” guidelines... under standards approach anything not specified is permitted*
- 4) Support measures to improve/enhance **governance**
 - *Consider Participatory Governance*

Six Principles For Governments' Re-Thinking Regulations

- 5) Government to **create favorable conditions** for key rights holders & **do only what no other can do**
- *Catalyze & facilitate process to identify priority problems & new standards*
 - *Take a “systems” approach. Design systems that reflect & take advantage of stakeholder rights, interests & incentives.*
 - *Find the adequate mix between regulations & voluntary guidelines.*
 - *Develop inclusive & transparent processes, avoid elite capture, enforce/protect land & forest rights & claims*
 - *Ensure monitoring of outcomes & learning by all stakeholders to allow timely adaptation and updating of regulations*

Six Principles For Governments' Re-Thinking Regulations

6) Regulatory reform, done well, is a process that **evolves & adapts in a pluralistic way**

- *Allow & expect regs to evolve, based on experience & need*
- *Consider “graduated sanctions” that allow for mistakes & exceptional circumstances & that maintain opportunities for less coercive & costly enforcement measures*
- *Acknowledge existing institutions & rights, mobilize & empower stakeholders, adjust to different stakeholders views & provide options; avoid “one-size-fits-all” solutions*



The Montana Experience



Innovative experience that embodies the 6 Principles:

- *Land rights & boundaries clearly defined*
- *Focus on agreed outcomes, with “bad actor” law & credible threat of greater coercion if not effective*
- *Different regulatory system for each ownership type (federal, state, private, tribal)*
- *Focus on transparency, joint monitoring*
- *Federal and state governments create favorable conditions and incentives – and pro-actively collaborate with NGOs and communities*
- *Started with basic, minimum set of requirements, monitored outcomes, added additional regs as experience/learning indicated, responded to rights, interests & incentives of each major stakeholder*

Montana's voluntary approach to regulate private forests

- *Set of voluntary “Best Management Practices” to minimize impacts to water, soil and other forest resources*
- *All major actors involved – with different roles, per their interest*
- *Focus on landowner and logger education programs – raise their professional interest*
- *Monitoring of the state through biannual field audits: a 97% compliance rate!*
- ***(One) reason for success: credible threat of imposition of high-cost, enforced regulations***



Promising Emerging Tools

1. *Certification*
2. *Voluntary “best management practices” (BMPs for timber harvesting and management)*
3. *Independent, non-government monitoring and verification*
4. *Transparency – of forest use, monitoring, impacts*
5. *Education and dissemination of standards, positions, issues, impacts*
6. *Fostering stakeholder understanding, consensus, ownership – e.g. via consultations, conferences, committees, boards*
7. *Corporate codes of conduct – self-policing*
8. *Joint management and partnerships between government and non-governmental organizations*
9. *Concessions to local communities, entities: e.g. Stewardship Contracting*



Next: Some reflections from Adolfo on the recent workshop in Montana