RETHINKING FOREST REGULATIONS

An international training workshop
for forest agency officials and civil
society representatives

SYNOPSIS

Western Montana, USA | July 22-26, 2013

BACKGROUND

The Rethinking Forest Regulations workshop was created by the Rights and Resources Initiative and the Mega*Florestais* network which gathers the forest agency leaders of the world's largest forested countries since 2006[1]. It is an informal network dedicated to advancing international dialogue and exchange on forest governance and public forest agency reforms, and to share learning on technical issues in a frank and transparent manner. The group meets every year and, during their 2009 meeting, several forest agency leaders realized they were in the process of rethinking their forest regulations and expressed their needs for more information and training on that topic.

They imagined an international training workshop during which participants could become familiar with a successful example of regulation framework and share good practices. In 2010, the Rights and Resources Initiative (RRI), the US Forest Service and the Montana Department of Natural Resources and Conservation (DNRC) collaborated to design this workshop. The first "Rethinking Forest Regulations" meeting was held in October 2010 with participants from Mexico and Brazil in Western Montana in the USA where there is evolving, alternative regulatory models that merit attention. These models bring together Federal and State governments, the forest industry, communities and private forest owners to work together to achieve the sustainable management of Montana's forest resources. Participants were very receptive to and appreciative of this kind of forum, and the workshop was held again in July 2011 with a group of 6 countries (Brazil, China, Liberia, Indonesia, Mexico, and Peru), and in July 2012 with a group of 7 countries (Bolivia, Brazil, Cameroon, Laos, Liberia, Nepal, and Peru).

SUMMARY

It is within this context that RRI and the Montana DNRC brought together for the third time 17 key governmental officials and representatives of non-governmental organizations from Burkina Faso, Colombia, the Democratic Republic of the Congo, Guatemala, Mali, Myanmar, Nepal, and Senegal, as well as 5 experts and practitioners from around the world and representatives of the co-organizers, representatives of State and Federal forestry departments and Native Americans from the United States to share experiences and knowledge.

Held on July 22-26, 2013, the weeklong meeting was designed to better prepare and inform forest agency officials and civil society organizations to the challenges of forest regulations. Through presentations, group discussions and a field trip to a variety of different tenured lands, participants were exposed to successful and innovative regulatory models which include stakeholders and respect for individual and collective property rights. The workshop promotes information sharing among the group through frank and open dialogue in a small group setting where problems and solutions can be discussed openly.

Participants were especially positive about their experience. They declared the workshop exposed them to new ideas and analysis, contributed to their professional development, and they were confident the event would influence the way they approach their work and contribute to the rethinking regulations process in their countries. They enjoyed the meeting structure, giving time for field trips and informal discussions and the opportunity for prolonged interaction with peers from other countries.

[1] Currently, MegaFlorestais countries include Australia, Brazil, Cameroon, Canada, China, DRC, Indonesia, Mexico, Peru, Russia, South Sudan, and the United States.

INTRODUCTION - Why a workshop on Rethinking Forest Regulations?

The actions of a state should be of benefit to its citizens. However, the powers of the state too often fail to achieve the publicly beneficial policy objectives and outcomes which they seek to incentivize through means of regulation. A common problem with regulation is the tendency to assume that more detailed and prescriptive regulations lead to better outcomes than regulations that leave too much discretion in the hands of both the local regulators and those who are subject to regulation. Yet, long experience in forest regulation is increasingly showing that such over-regulation can lead to the opposite outcomes than those desired and, perversely, become a significant detriment to those who are most directly dependent upon and interested in the sustainable management of forests.

Generally speaking, forest regulations exist to try and ensure that forests and forest resources are managed in a sustainable manner. In the developing world, forest regulations are commonly driven by the perception that illegal logging and trade in forest products are widespread and primary and/or proximate causes of forest loss and degradation. In this view, industry as well as communities and private forest owners are all assumed to be contributors to the problem. Further, because of the wide range of ecosystem services provided by forests –services that are highly valued, at least rhetorically, by governments and societies –great attention is given to what are thought to be appropriate technical, environmental and silvicultural aspects of forest management. This, in turn, is translated into even more detailed sets of "one-size-fits-all" technical regulations and norms that must be adhered when utilization of timber or non-timber forest products is to take place, irrespective of the scale, objectives, identity of the user or user group and tenure status of the forest. The result is a forestry sector that is now and has been highly regulated for many decades, especially when compared to other land use sectors such as agriculture, often with negative implications.

In 2011, the International Tropical Timber Organization[2] (ITTO) warned that more than 90% of the global tropical forest estate is managed poorly or not at all. One also sees the failure of regulatory regimes in the continued deforestation (including clearing of natural forests) and forest degradation in countries throughout the developing world. Logging bans, particularly in Asia, are yet another symptom of the failure of regulation, demonstrating the frustration of governments and societies over the inability of "the authorities" to make meaningful progress in conserving and sustainably managing their nation's forests.

Regulatory failure is also bringing increased international focus on forest sector governance in tropical countries, partly reflecting the importance forestry plays regarding climate change mitigation and adaptation. Examples include the Lacey Act[3] (USA) and FLEGT (Forest Law Enforcement, Governance and Trade, European Union), which seek to ensure that timber imports derive from legal sources, and REDD+ that seeks to align global donor support to provide a new set of incentives for forest conservation and sustainable management. However, these international initiatives are imposing or will impose additional regulations on countries. Under a "business as usual" scenario, there is a high

[2] ITTO. 2011. Status of Tropical Forest Management 2011.

[3] The Lacey Act is a 1900 United States law that bans trafficking in illegal wildlife. In 2008, the Act was amended to include plants and plant products such as timber and paper. This landmark legislation is the world's first ban on trade in illegally sourced wood products.

probability that these new regulatory requirements will simply be overlaid on already overly complex and largely non-functional national regulatory frameworks. If this occurs, it will have very real and negative repercussions on the 550 million people[4] living in and around the forests who depend upon them for their livelihoods.

Why is this? Why these decades of increased regulation have not led to better outcomes? Could it be that forest regulations, which were intended remedy the problem, are actually having the opposite effect--helping to perpetuate unsustainable forest practices by "setting the bar too high", creating infrastructure and process that is too expensive or labor intensive to implement? Or, is it perhaps not the regulations *per se*, but the regulatory approaches being taken? Analysis of this question has shown that common flaws shared by many regulatory approaches include:

1. A failure to respect customary law, i.e., they impose a "foreign" solution for which there are no local institutions, traditions or experiences upon which their implementation can be based.
2. They do not take into account and are, therefore, inconsistent with property rights.
3. They are often socially regressive, rewarding large-scale and penalizing small-scale, i.e., large companies and wealthy individuals are able to benefit despite or because of regulations, whereas the regulations are insurmountable barriers to small companies, communities and individuals.
4. Often the real purpose of a regulation is to raise revenues for and/or maintain control of lands by the government.
5. Regulations are often complex and, as they evolve over time, become increasingly inconsistent and confusing; both for those charged with enforcing them as well as for those that have to abide by them.
6. Regulations are often unrealistic as regards their costs in terms of money, time and technical capacity. This is as true for the regulators as it is for the regulated.
7. Governments often lack the capacity to monitor and enforce their implementation.
8. Costs of compliance may make "legal" forest utilization non-competitive, incentivizing illegal utilization and/or forest clearing for purposes of pursuing economic activities with less onerous regulatory burdens.
9. Regulations tend to be developed by small groups of technocrats through top-down processes that fail to effectively engage with or allow for the real and informed participation of those who will suffer their implementation.

PRESENTATIONS, DISCUSSIONS & SITE VISITS

Augusta Molnar, Senior Director, Country & Regional Programs at the Rights and Resources Initiative, and Sally Collins, Co-Chair of MegaFlorestais welcomed the group and thanked them for coming all the way to the US.

Bob Harrington, State Forester, Montana Department of Natural Resources & Conservation welcomed the participants to Montana and Lubrecht Forest.

Participants introduced themselves and shared several of their personal expectations for the week:

- Exchange experiences with other countries.
- Learn about regulatory models: why reform is good and what the main challenges are.

[4] FPP. 2012. Forest Peoples: Numbers across the world.

- Identify best practices and models to improve forest management.
- Learn about land tenure practices and relationship between various actors in the forest sector.
- See how community, women and Indigenous Peoples' rights taken into account in other countries.

They also gave country presentations and identified the following as the biggest changes occurring in participating countries:

- Governance and institutional frameworks becoming more complex (i.e. decentralization processes).
- Law implementation/enforcement becoming more difficult due to limited budgets, staff and relatively new regulations.
- Citizens requesting more transparency and inclusion.
- Forest sector competing with other sectors and ministries (i.e. land, mining): need for intersectoral dialogues and harmonized policies and laws.

Snapshot: Non timber forest products (NTFPs) in Burkina Faso

NTFPs represent 10 to 15% of the country's GDP and about 20% of women's revenue. Despite a national strategy that was put in place in 2011 to promote NTFPs exploitation, the lack of tenure clarity is hindering the development of this market. Women groups also regret that new regulations do not address gender issues and they are advocating for more decision making power so they can increase their livelihood and sell their products. Currently, women are at the end of the NTFPs supply chain and handling the harvesting, which often is the less profitable and hardest job. To be less vulnerable to markets and middle men, a reinforcement of their technical and financial capacity is essential.

➢ The history of forest management and governance

Meidinger (2005) believes that developed countries have, generally speaking, followed a path regarding the development of forest governance and management (with implications for forest regulations):

1. 16-19th centuries – Forests belong to States and there is an increasing industrial control of forests. This period is symbolized by forest degradation, 'elite capture' and corruption but also a period of significant industrial development and economic growth.
2. 20th century, until the 1970s – Period of "command and control", prescriptive regulations and management plans. It is symbolized by gradual strengthening of civil society and rule of law.
3. 1980s until present. Main characteristics of this period are:
    - More inclusive governance and decision making
    - Clearer / simpler rules
    - Increased market-based approaches (e.g. certification)
    - Continued tension, revision and reform (reflecting differing perceptions of forests, changing values), increased use of courts for determining direction.

Talking point:

Is there any evidence that developing countries' forest sectors are evolving along a similar path? Is governance improving? Are civil society actors becoming stronger and affecting outcomes? Are command-and-control structures giving way to market based approaches? Are competing objectives of different stakeholders increasingly being given attention? Are forest sector stakeholders seeking resolution of conflicting objectives through extra-sectoral mechanisms (e.g., courts)?

➢ Key principles for rethinking forest regulations:

1. Recognize land tenure and design different systems for each type. As land tenure regimes are a complex mix of historical, cultural, political, constitutional and regulatory elements, this requires taking into consideration (and possibly re-examining) the national constitution, land / forest laws, laws regarding other land use (e.g. mining, agriculture, environment), Indigenous Peoples and other special groups, as well as other international commitments (e.g. ILO 169, UN Declaration on Indigenous Peoples [UNDRIP]).
2. Identify priority problems and then prioritize action. Not all objectives are equally important nor can individuals or institutions do many things at the same time and do them well[5]. There is a need to focus on what are the most important values and resources; the most important and critical locations for the management and conservation of those values and resources, and the stakeholders most relevant to managing and conserving those values and resources in those most important and critical locations. Oftentimes, the most relevant stakeholders will be those with the potential to cause the most damage.
3. Governments should only do what no other entity can do, including:
   a) Catalyze and facilitate processes to identify priority problems and develop new standards;
   b) Ensure transparent processes - encourage action by civil society and private sector;
   c) Ensure respect of property and civil rights;
   d) Limit, and judiciously use coercion (regulations);
   e) Facilitate processes to compensate for market failures (e.g. payments for ecosystem services);
   f) Ensure education of all key stakeholders (for example, on standards, costs and benefits);
   g) Create favorable conditions for key rights holders and stakeholders to promote best practice and compliance.
4. Government regulations should focus on desired outcomes. In many countries, regulations are overly prescriptive and focus on processes (inputs) rather than the desired outcomes. As a result, they become extremely complex; both for those that have to follow the regulations, as well as for those charged with enforcing them.

[5] It is exceedingly common to encounter that national forest agencies' legal mandates are over-dimensioned; a fact that often leads to varying degrees of institutional paralysis. This is especially common in the traditional top-down, command-and-control type forest sectors. Because all authority and responsibility lies with the forest agency, its mandate becomes so broad as to be unworkable. That is, any expectations of staffing levels and budget to effectively achieve their broad mandate would be totally unrealistic. Thus, rationally, there is an absolute necessity that forest agencies – in close cooperation and coordination with the other forest sector actors who will ultimately take on greater roles and responsibilities – learn to prioritize and focus on fewer, more strategic thematic and geographic areas. The failure to do is what lead to the paralysis. Resources are too few to cover all needs and their fragmentation across too many needs ensures that no one thing will be done well. This is also one of the most difficult institutional reforms and changes to affect as it requires moving to deconcentrated, decentralized and polycentric implementation models that run counter to the traditional command-and-control mindset.

Talking point:

Are there other key issues to consider for rethinking regulations? Consider these in context of countries in Africa, Asia and South America:

- Getting societal and political support
- Overcoming internal resistance and vested interests within forest agencies
- National economic development strategies
- Changing forest values (i.e. society's changing relationship towards forests)
- Growth in influence of civil society
- Capacity of communities – required level of technical / scientific knowledge, access to finance
- Coordination mechanisms to help different stakeholders, including the government, get access to information to strengthen understanding of roles and aims of regulations
- Complex institutional and legal framework for forest management
- Issues of governance, including transparency and institutional capacity, lack of staff, implementation
- International instruments of support in place
- The new regulations must be designed and dimensioned commensurate with the capacity to enforce them. If not, a credible threat of regulation will be lacking.
- Access to reliable information
- Ability to fight illegal activities

➢ The 'Montana model': the Best Management Practices for private and state lands

Well into the 1980s, in Montana, timber harvesting on private lands was carried out with little concern for sustainable logging practices[6]. Forest lands were degraded and the impacts on forested watersheds and water quality were severe. Because Montana is a state with significant water resources that are highly valued by its citizens – for hydroelectric power[7], drinking water, recreation and wildlife habitat and values, fishing and hunting, among others – the impacts of logging on water resources increasingly became an issue of public concern. As opposition to unsustainable logging practices and their impacts on watersheds grew, the federal government threatened to step in under the Clean Water Act and force the government of the state of Montana to put in place and enforce an appropriate regulatory framework to halt the abusive practices on private lands. The threat of regulation by the federal and state government catalyzed the forest industry, forest owners and conservationists, who – with the assistance of federal and state government – came together to seek an alternative way to improve forest practices and satisfy regulators in order to avoid the imposition of complex and costly regulations.

Subsequently, through a multi-year process that effectively involved and engaged all relevant forest sector stakeholders, an approach was developed that relies upon the application by the logging industry

[6] Private forest lands in Montana comprise some 1.5 million acres (0.61 million ha) of family owned forest lands (or "non-industrial private forests') and about 1 million acres (0.40 million ha) of industry owned forest lands. In Montana, 60% of the forests are privately owned, 30% are on federal lands, 6% on state lands, and 5% on tribal lands.

[7] Hydroelectric power accounts for nearly a third of the state's electricity generation. Six of the ten largest power plants in Montana run on hydroelectric power (U.S. Dept. of Energy 2009). http://www.eia.gov/beta/state/analysis.cfm?sid=MT

and forest land owners of Best Management Practices (BMPs) in forest harvesting and site management in 1989. The focus of the BMPs for state and private forests is on assurance of water quality; i.e., "sustainable harvesting", biodiversity conservation, etc.[8] This focus is what was agreed upon and supported by all stakeholders; their motivation being based on their community and industry values and interests. As a result of this process, the widespread and widely agreed view is that "*the use of voluntary BMPs has proven to be an effective tool in limiting non-point source pollution from forest harvesting activities*" - though adherence to the BMPs is obligatory for industrial forest owners and for all landowners in riparian zones[9]. From 1990 to 2010, the application of practices which met or exceeded the BMPs requirements went from 78% to 97%. During the 2010 field reviews, the BMP effectiveness was evaluated and results showed that, across all ownerships, BMPs were effective in protecting soil and water resources 98% of the time.

What are some of the elements that have made this approach successful?

- First, there was "trust" and "patience" on the part of the regulators. That is, the regulators were willing to enter into a systematic process with forest sector stakeholders and seek mutually acceptable solutions. They were also willing to view this as a process that would take time, i.e., the "correct" response to the abusive forest practices was not to simply put in place new rules to "immediately" halt bad practices but rather to seek a more sustainable, long term resolution by working through the issues with stakeholders and allowing for trial-and-error.
- Second, they avoided falling into the trap of "perfection being the enemy of the good". That is, rather than seeking an optimal (perfect) solution from a regulatory agency perspective, the approach was to start with a basic, minimum set of requirements; to monitor the outcomes and; add additional requirements as needed. For example, after two years of initiation of implementation of the "voluntary application of BMPs" approach, the monitoring showed that the voluntary approach was not working well for the protection of riparian areas. As a result, mandatory requirements were developed for "streamside management zones". Even so, these were not detailed technical prescriptions of what must be done, but shorter and clearer guidelines on what must not been done.

The Blackfoot River, 1899 and today

- Third, an innovative and effective monitoring program was established. Every two years, multi-disciplinary teams (comprising specialists in fisheries, hydrology, soils, silviculture, forest engineering and roads, conservation, forest land owners, loggers, and NGO representatives) visit sites that were selected to be audited. Selection is based on criteria relevant to the objectives of the BMPs, i.e., to protect water resources[10]. The teams are made

[8] On state and federal production forest lands, Sustainable Forest Management (SFM) objectives are required for timber harvesting. Also, a very high percentage of federal lands are gazetted as parks and conservation areas where biodiversity conservation objectives met.

[9] Areas next to rivers and streams (along the banks, adjacent wetlands, etc.)

[10] Selection is based on simple criteria. First, sites eligible for audit are identified based upon harvesting having taken place in the previous 2 years; the harvest unit contains or is within 200 ft (60 m) of a stream ; the harvest unit is larger than 5 acres (2 ha); and harvest volume was

up of volunteers from government, industry, consulting firms, academia, etc., that give 10 days of their time to participate in the audits. Interested civil society observers can go with the teams and observe how the audits are carried out. Participation in the BMP audits is voluntary for family private landowners, while it is compulsory for industrial private landowners and all landowners in riparian zones. Another innovation of the auditing program is that it does not seek to identify or "punish" individual forest owners or logging companies. Rather, the audit looks at overall compliance and quality of application of the BMPs so that there is a joint risk for all. If certain individuals are "bad actors" and they do not improve their practice, they increase the risk for everyone that additional and more intrusive regulation will be brought to bear. Thus there is a "social audit" function as well.

- Fourth, because the forest industry itself – both mills and loggers – is heavily reliant on obtaining raw material from private lands, it would have both suffered the most immediate impacts of regulation as well as having to absorb the majority of the costs imposed by that regulation. As a result, it was in their self-interest to support a voluntary compliance scheme and also to ensure its success. To do so, commercial loggers, through their associations, established programs to train and certify loggers in the actual 96 BMPs; the program provides for loggers becoming "Accredited Logging Professionals" and requires continuing education. In their turn, the mills will purchase timber from private forests only if an accredited logger has carried out the harvesting. Further information on the "Accredited Logging Professionals Program" can be obtained at the website of the Montana Logging Association (http://www.logging.org/).
- Fifth, government involvement is "smart". The federal government maintains pressure on the state to ensure compliance with federal regulations. The federal regulatory threat is credible, i.e., the state and the forest industry know that the federal government will act if they fail to regulate themselves. In its turn, to comply with federal regulations, the state government has put in place a legal and operational framework to support a system of voluntary compliance. In this framework, state has defined its role not as an implementer but as a facilitator and guarantor of performance. Specifically, the state's role is one of: (i) promoting and facilitating partnerships (with other relevant government agencies[11]) and providing for coordination and cooperation between federal, state and local actors; (ii) providing budget for support (technical assistance, education, organization, promotion, etc.) and appropriate mechanisms to transfer that support to the relevant private actors; (iii) providing for decentralized implementation such that state forestry staff are in the field and have continuous contact with the public, landowners and industry; and (iv) monitoring outcomes and working with stakeholders to correct and improve the system as required.

In summary, the approach is based upon a philosophy that self-regulation is possible because people – private forest owners and forest industry – with access to reliable and coherent information and good technical support will make good decisions. It also relies upon the basic principle that where there is an external, coercive force, the preferences of each individual in a group can be made to change such that cooperative action to produce "the good" can become the dominant behavior. Or, to put it more simply,

---

greater than 3,000 board feet (7 m^3) in the humid western portion of the state or 1,500 board feet (3.5 m^3) in the drier eastern portion of the state. Then, sites are prioritized for audit based on a point system that awards points for the harvesting unit having multiple stream crossings (5 points), each new stream crossing (4), new road construction (3), road reconstruction (2), harvesting in streamside management zone (2), and/or each existing stream crossing (1).

[11] To make the "voluntary, self-regulation" approach work, the Forest Service has a Memorandum of Understanding (MoU) with each following principal partners: the National Forest Service, the state Department of Natural Resources foresters; Montana State University Extension office; Local governments; non-profit organizations; and private operators (family and industrial).

the fear of being heavily regulated keeps the landowners and the industry on what is generally the right course. There is a cultural value involved as well: private landowners would rather regulate themselves than have an external, state agent do so.

Talking points:

1) What are the virtues and risks of self-regulation? Consider BMPs model in Montana requirements for successful application in Colombia, DRC, Guatemala, Mali, Myanmar, Nepal and Senegal.

***

2) The key issues for forest management in Montana are:

- Conversion of forestland into residential areas (e.g. actions of Plum Creek, and coordinated response of The Nature Conservancy, the Blackfoot Challenge, the State and the federal government)
- Wildfires, Pests
- Water quality
- Decline of timber processing industry in the State.

Other forest related issues must also be considered: biodiversity (protection of endangered species) and indigenous rights (Native Americans). The response to these issues is not always based on regulations (and the threat of punishment if they are not followed).

Again consider the threats in the context of countries like DRC or Colombia, not only with different threats, but also issues of governance which greatly determine the effectiveness of the responses.

***

3) Is Montana really a completely different world?

- Balancing the often conflicting interests and values
- Pressures on the forests
- Unclear tenure

Consider the vision underlining the State Forest Management Program: "Sustainably manage Montana's forest trust lands to maximize long-term revenue while promoting healthy and diverse forests." This is applicable in all countries.

***

4) Could BMPs be viable in developing countries?

- More complexity (e.g. management of tropical forests compared to Boreal forests)
- Societal needs
- Viability of voluntary system
- Capacity of actors to meet requirements (as well as capacity of actors to provide key information)
- System for Monitoring and Evaluation (M&E)
- Rule of law
- Very little private land

➢ The 'Montana Model' at work – several examples

Across ownership initiative: The Blackfoot Challenge Association

The purpose of the visit to the Blackfoot Challenge was to demonstrate that local communities can be the driving force in conserving and protecting forest lands: they are just as concerned as government authorities in conserving natural resources and the environmental services that they provide – if not even much more so because the lands and forests and how they are managed and developed directly impact their lives. By forming partnerships with local communities, it showed leadership and commitment to good stewardship of natural resources, federal and state authorities were able to meet their objectives and responsibilities in an effective manner that also reduced their cost and administrative burdens over the long term. In Montana, local partnerships were initiated in 1940 when local landowners formed soil conversation districts in response to Dust Bowl, the worst soil erosion event in U.S. history.[12]

The Blackfoot River watershed comprises the upper watershed of an extensive block of conservation forests, including the Bob Marshall Wilderness, a national protected area that covers over 1 million acres (over 400,000 ha). Land tenure in the Blackfoot Watershed is diverse, with landowners including individuals, tribes, federal and state governments, and large-scale private holdings, comprising industrial timberlands. In the early 1990s, the Blackfoot River became listed as one of the 10 most threatened rivers in the United States due to poor water quality, land use and forestry practices. This listing served as a catalyst to local communities and all stakeholders to come together and begin to discuss their concerns about their natural resources and sustaining their rural lifestyle and quality of life. Landowners were also worried that the area might be classified as a conservation/restoration area which would have limited their actions to the land.

As a result of that local discussion "The Blackfoot Challenge" was born in 1993. It was named 'Challenge' due to the complex landscape of forest land tenure and involved institutions that was understood as posing a severe challenge to working out a functional conservation and management scheme for the Blackfoot Watershed. Because of this complexity, it was decided early on that an advocacy approach was not likely to work. What was needed was a partnership approach within which those areas of mutual interest could be identified so that the partners could work on issues upon which they agreed on: i.e. the importance and high priority of ensuring/maintaining high quality water, forest habitat, and weed-free grazing lands and; healthy wildlife populations.

As presented by the Executive Director of the Blackfoot Challenge (Mr. Gary Burnett), '*the mission of the Blackfoot Challenge is to coordinate efforts that will enhance, conserve and protect the natural resources and rural lifestyles of the Blackfoot River Valley for present and future generations.*' Set up as a non-profit, the Blackfoot Challenge is a landowner-based group that coordinates management of the Blackfoot River, its tributaries, and adjacent lands. Their Board is made up of private landowners,

[12] In 1937 U.S. President Franklin Roosevelt advised state governors to enact legislation allowing local landowners to form soil conservation districts in response to the massive soil erosion that had caused the "dust bowl," the worst drought and dust storm in US history. In 1939 the Montana legislature passed the Conservation District Law (Section 76-15-101, MCA) with the first districts established in 1940. Today there are 58 conservation districts across the state (Montana Department of Natural Resources & Conservation http://dnrc.mt.gov/cardd/ConservationDistricts/training/CDHistory.pdf).

business owners, conservation groups, a major timber company, a major wood processing mill, and representatives of State and Federal government. Their overarching objective and strategy is simple: "Keep the landscape intact". It is a unique initiative that enables multiple stakeholders to work together and manage the land across land use, landscapes and ownerships. They are working on several programs and activities (promotion of conservation easements, fire management and fuel reduction, forest restoration, outreach, emergency drought response, weeds management, etc.)

Their principal success has been the "Blackfoot Community Project" which was initiated when the Plum Creek Timber Company[13] announced that it would be selling 89,000 acres (36,017 ha) of timberlands in the Blackfoot watershed. A major concern of local communities was that this land would be fragmented into smaller holdings and developed for residential and vacation homes. This would result in the loss of local peoples' access for hunting, fishing and recreation as well as the clearing of forest for development purposes. The Blackfoot Challenge, working with a non-profit conservation organization (The Nature Conservancy) to put together a partnership strategy to purchase and conserve this forest land. A deal was developed in which a conservation easement[14] would be placed on the entire area and the land would be purchased (and held individually) by a mix of federal, state, private (large and small) purchasers as well as the Blackfoot Challenge itself, which raised funds to purchase lands itself. A total of some $500 million was raised through the various partners for the purchase. For example, the state of Montana's Department of Natural Resource and Conservation purchased 32,000 acres (12,950 ha) to manage for sustainable timber harvesting.[15] The purchased lands constitute the "Blackfoot Community Conservation Area", within which a "conservation core area" was designated, comprising the lands purchased by the Blackfoot Challenge itself. This core area is the first designated community forest in Montana.

The experience and lessons learned from the Blackfoot Challenge's success as a 'community-based conservation initiative' included the following:

1. Efforts should be driven by community values, in this fashion the buy-in and commitment of the local community is ensured, as is the long term sustainability of the activity.
2. All stakeholders, public and private, must be invited to participate.
3. Work on what is common ground and what everyone can agree upon, leave disagreements at the door.
4. Includes a coordinating framework
5. Is supported by good science, combined with local knowledge

All those reasons explain why Ken Salazar, the U.S. Secretary of Interior, said the Blackfoot Challenge was the model for conservation in the 21st century in 2011.

Talking point:

Are similar partnerships happening in your countries? If yes, how does it work? If no, could it happen?

[13] Plum Creek, a Real Estate Investment Trust (REIT), owns approximately 6.6 million acres (2.7 million ha) in major timber producing regions of the United States.

[14] In the USA, a conservation easement is an encumbrance which creates a legally enforceable land preservation agreement between a landowner and a government agency or a conservation organization (e.g., "land trust"). It restricts real estate development, commercial and industrial uses, and other mutually agreed activities. The property remains the property of the landowner. The decision to place the easement is strictly voluntary. The restrictions, once in place, are permanent and binding on all future owners of the property.

[15] See below paragraph on State Trust Lands.

Natural resources management on tribal lands – Visit to the Confederated Salish and Kootenai Tribes (CSKT), Flathead Reservation.

The purpose of the visit was to see how indigenous peoples from three tribes (the Bitterroot Salish, the Pend d'Oreille and the Kootenai tribes) have successfully joined forces to sustainably manage their traditional lands and seek to develop economically based upon their own vision, values and customs. The Flathead Reservation – comprising 1.32 million acres (over 530,000 ha) – is located in northwestern Montana. Their traditional territory exceeded 20 million acres (over 8 million ha) in 1855, the year in which the Hellgate treaty was signed between the US and the tribes which was supposed to recognize their traditional claim to certain, specific lands as well as their access to all their other traditional lands for purposes of hunting and fishing. Their territory is now only 1.3 million acres (over 500,000 ha). Even with the treaty and various national laws in place, the confederated tribes have had (and continue to be) proactive in claiming and exercising their rights to govern their own natural resources in the way they desire, free from interference by outsiders, and they are slowly buying their land back[16]. They have now gotten back 60% of the land that they had lost. The security of their governance over their lands and resources *in perpetuity* is the most important objective of the tribes.

As presented by a representative of the Kootenai Cultural Committee and the Communications Director of the Confederated Salish and Kootenai Tribes (Mr. Robert McDonald), the USA has had a long and often painful history regarding the treatment of Native Americans. This history is reflected in current government policies that are aimed at trying to partially compensate indigenous communities for historical injustices, as well as at ensuring and strengthening the rights of Native American people so that past injustices are neither perpetuated nor repeated.

The Tribes express a commitment to environmental stewardship, based upon their beliefs, traditions and history with the land and way of life. They are one of the best organized and well managed tribes in the US and operate their own natural resources management since the 1970s. In 2003, the Trust Resource Management of the CSKT received the American Tribal Governance Awards, an annual event recognizing outstanding work in Native American government. They spend over $10 million a year of their own funds on natural resources and land management programs to protect and enhance the Reservation's resources. They have in place and implement strict environmental standards for air and water quality. They were the first tribe in the US to designate their own wilderness area – the Mission Mountains Wilderness Area – that comprises 89,500 acres (36,220 ha) and which is managed by the tribes not for timber production but for spiritual use. Under a cooperative management agreement between the Tribes and the State of Montana, thousands of acres on the Flathead Reservation are open to non-Tribal members for fishing and hunting.

[16] More than 245 thousand acres (99 thousand hectares) of Reservation land have been repurchased since 1944.

To manage their resources, the tribes established their own Natural Resources Department, which includes:

- An Environmental Protection Division to protect human health and the environment for all Reservation residents. The Division operates air and water quality, and shoreline and aquatic lands protection programs as well as a solid and hazardous waste program that also handles pesticides issues in agriculture.
- A Fish, Wildlife, Recreation, and Conservation Division charged with the stewardship of the tribe's natural resources. The participants had the opportunity to see some of the activities of this program: how the tribe is tracking bears and wolves, and building wildlife crossings near a major highway to secure the road.
- A Water Division to preserve, perpetuate, protect and enhance the Reservation's water resources and aquatic ecosystems.
- A Tribal Lands Department that has four main programs: Permitting and Leasing, Land Planning, Land Services (Acquisition, Exchanges, Easements), and the first Tribally-managed land Titles and Records office in the nation.

As with the Blackfoot Challenge, this provided another example of how local people and communities, by pursuing their own interests and destinies, can be "self-regulating" forces that provide benefits to the larger society by conserving and protecting forest lands, watersheds and biodiversity. One of the lessons learned from this experience (and still being learned) by government is that much of government's previous interventions have been misguided and costly in monetary terms (i.e., wasted public resources) and in terms of land degradation and failure to achieve conservation goals because they ignored that local peoples have an interest and incentive to manage and protect their natural resources – and can demonstrate the capacity to achieve real and concrete results on a large-scale when they are given that chance. While still an evolving experience, the Tribes have established and operate their own programs for the management and conservation of their natural resources that are providing real results on the ground. They demonstrate that sustainable management at a landscape-scale of forest and wildlife resources can be accomplished by communities through their own initiative.

Talking point:

1) The visit to the tribes was a great example of collective management of natural resources. What is the situation in your countries? What made an impression on you during that visit to the CSKT?

2) Who is responsible for wildlife management in your country?

Forested Trust Lands on State lands – Using forest management to finance public schools

The origin of trust lands comes from the Western expansion of the USA. The newly established nation wanted to ensure settlers in Western lands were educated to limit their opposition to democratic values. In 1785, the General Land Ordinance established a rectangular survey pattern across the land: section 16 of each township was reserved for maintenance and funding for public schools. In 1889, the Federal Government granted the management of sections 16 and 36 to the state of Montana. The

objective was to manage those lands to maximize long-term revenue while promoting healthy and diverse forests and generate income for support of the common schools and other public institutions.

Nowadays, State Trust Lands represent 300,000 ha of forests: they generate $12Mn in revenue annually through timber harvesting and sales, provide consistent contributions to regional forest economy, and created 500+ jobs. They are managed by the Forest Management Program, Trust Land Management Division of the Montana Department of Natural Resources & Conservation – using the following guiding policies: Calculation of the Annual Sustainable Yield (135,920 m^3 in 2011), State Forest Land Management Plan & Habitat Conservation Plan, Administrative Rules for Forest Management, Montana Environmental Policy Act.

Stewardship contracts on federal lands:

The existing planning for forests is very cumbersome in the USA: due to the lack of funding, projects were stopped and District Rangers were having trouble managing their lands. They decided to go around the regulations by creating stewardship contracts which allow them to enter into long-term contracts (up to 10 years) with communities, private organizations or businesses to meet land-management objectives. Those contracts are based on an exchange of services. For example, a District Ranger will sign a contract with a logging company to reduce wildland fire risk and improve forest and rangeland health on a specific lot. The logging company will do restoration work and take out some timber which it will sell. It is a win-win situation for both the district and the company.
This is another example of the benefits of outcome-based regulations and how different stakeholders can collaborate to achieve sustainable forest management. Those contracts contribute to community development and empowerment, and they show that it is important for a government to promote innovations.

Nobody had defined what a professional logger is, so we were defined by the worst performers…

One of the greatest challenges to forestry regulatory agencies is that of ensuring that forest harvesting is carried out in a sustainable fashion, with the minimum of impacts possible on watersheds and the forests themselves. This is also one of the areas where a great deal of criticism is leveled at forest agencies for their failure to adequately monitor and regulate logging practices and protect forests. In Montana, the loggers themselves have joined together to improve their image through improving their logging practices and to defend their profession as one that is honest and that contributes to the sustainable management of forests.

The Montana Logging Association (MLA) was founded in 1976 as an association of family-owned businesses that harvest and transport timber. The original impetus for the formation of the organization was logging safety (it is the second highest fatality rate among jobs in the US). Today there are over 600 members and the MLA's mission has expanded to "*enhance the professional status of Montana timber harvesters, support their endeavors, and ensure that our state's renewable forests provide opportunity for generations to come.*"

To achieve its mission, the MLA provides group health insurance and workers' compensation plans; programs to promote professional standards through an Accredited Logging Professional program and a Professional Log Hauler program and; a Safety Services program that educates workers on safety and visits business up to four times per year to help them identify ways to reduce accidents and improve worker safety. Through an education program, workers earn credits towards becoming accredited professionals and, afterwards, for maintaining their accreditation. Working with Montana's state forestry agencies, the MLA offers courses in "Forest Stewardship"; Safety, First Aid and cardiopulmonary resuscitation; and training on the 96 BMPs applied in Montana forests. To remain accredited, a logger must take annual courses in safety and first aid/CPR and every three years must take courses in BMPs and required practices in Streamside Management Zones (riparian areas). The MLA is now one of the essential pillars that supports and enables Montana's system for self-regulation of private forests

Visit of a family-owned sawmill "Pyramid Mountain Lumber":

During the workshop, the group visited Pyramid Mountain Lumber, a sawmill committed to the long term sustainability of the land. It is an excellent example of how the forest industry can support initiatives promoting a better forest management and benefit from it. The mill only uses foresters who are certified members of the Society of American Foresters, and only contract with accredited logging professionals who are trained in Forestry Best Management Practices. In 2011, the mill received the Sustainable Forestry Initiative Program Certification, and it was also awarded US$202,727 by the U.S. Forest Service to develop a biomass project: add a 5-megawatt co-generation plant using lumber byproducts like sawdust, chips and branches.

Additional talking points:

1) How can forest regulations address gender issues?
2) Is the transfer of control/enforcement to other agencies successful? How to guarantee information sharing between various agencies?
3) To what extend and how civil society and Indigenous peoples should be included in the conception of new regulations? How to build a method for consensus and implement it? How to shift to a more participatory model? How can the Free Prior and Informed Consent principle be integrated?
4) How to manage the landscape as a whole?
5) How to factor market demands (current, future, domestic, etc.) in reform processes? What mechanism can be used to integrate systematic learning?

➢ Introduction to the 'Wisconsin Model' by Paul DeLong

In 2013, Paul DeLong, State Forester of the Wisconsin Department of Natural Resources, joined the workshop to present a second model of voluntary regulations from a different US State. As he pointed out, each state in the US chooses to regulate (or not) the private and state owned lands in that state, and the requirements consequently vary from state to state. In Wisconsin, 68% of forest lands are privately owned. Like Montana, the State of Wisconsin chose to apply voluntary standards that private landowners can participate in by choice. Landowners are given incentives, in particular tax reductions, if they comply with voluntary requirements. Wisconsin has set several Best Management Practices standards—for water quality, invasive species, and biomass harvest. Wisconsin, unlike Montana, has encouraged and has a high percentage of landowners participating in a voluntary forest certification system, one that encourages sustainable forest management. He concluded his presentation with a group discussion on the advantages and disadvantages of a "voluntary" compliance system. He believes compliance is high with a voluntary system where people are incentivized to participate, where they have more ownership in the outcome, and feel less "regulated" to do the "right thing." It requires much education and outreach on the part of the forest administration, as opposed to oversight and control, although a robust monitoring system is critical to assuring that BMPs are met.

The state has longstanding relationship with local tribes and meet with them annually to discuss any issue or mutual interest.

SNAPSHOT
The New US Department of Agriculture (USDA) Planning Rule

By Tony Tooke, Director of the Ecosystems Management Coordination at the US Forest Service

The USDA manages 193 million acres (78 million hectares) of national forests and grasslands and provides assistance to state and private lands. According to the National Forest Management Act of 1976, all National forests and grasslands must have land management plans that need to be revised every 10-15 years. The current planning rule was very difficult to implement, creating delays and making it hard to address emerging issues in a timely manner (i.e. fires, climate change). In 2012, a new planning rule was created with a focus on collaboration, science, and sustainability. Its main objective is to be more flexible and help responsible officials to respond to changing conditions and new information while continuing to maintain the ecological, social, and economic sustainability of the forest resources. The Rule was put together after extensive consultation with the public, including tribes, and research institutes.

The new planning framework has been designed to be more efficient and reduce cost and time. It provides a structure within which land managers and partners (including tribal, state and local governments, as well as other federal agencies) work together to understand what is happening to the land, develop, revise, or amend plans to respond to existing and predicted conditions and needs, and monitor changing conditions and the effectiveness of management actions to provide a continuous feedback loop for adaptive management. Two levels of monitoring are now required both at the area and landscape scale: Plan area and broader (landscape) scale.
Currently, 11 of the 155 National forests are in the early stages of implementing the Rule.

What is being done in other countries?
The Example of Guatemala

In 1989, Guatemala revised its legal framework and decided to involve civil society much more by asking them to provide input in the design and participate in decision-making processes. The new regulations were very successful in creating new tools and forest management was clearly improved.

With the new framework, monitoring has been much improved and new instruments have been put together (such as a new system of protected areas, community forestry concessions, sustainable forest management standards). The number of interest groups grew exponentially from 5 to 700, including indigenous groups. To facilitate interaction with the public, local forest offices were open in 56% of the cities.

The experience has been extremely positive: in community forest concessions, deforestation has stopped and forest cover has actually increased showing better results than in national protected areas. In buffer zones, however, more deforestation and change of land use was seen.

CONCLUSION

There is a critical need in many forested countries to rethink how forests are regulated and what the appropriate role for government authorities is/should be in a world where forests continue to disappear and be degraded at an alarming rate despite decades and decades of investment in top-down, complex, command-and-control institutional and regulatory structures. These approaches have not worked well for many reasons and for those same reasons are unlikely to work in the future. As noted by the 20th Century physicist, Albert Einstein: "*The definition of 'insanity' is doing the same thing over and over again and expecting different results.*"

Among the perverse outcomes that are seen commonly around the world from the current, traditional approach to forest regulation are included:

1. They constitute significant barriers to those communities and people living in and around the forest, denying them the opportunity to use the forests in a sustainable manner to alleviate poverty, improve quality of life and pursue a sustainable livelihood.
2. They encourage rent seeking behavior by those who should be upholding the law and favor the entrenched economic and political interests that have historically benefitted from a status quo in which forests continue to disappear and degrade.
3. They impose burdens and costs on the agencies that have to administer them that are beyond the capacity of governments to actually finance through public budgets and/or through the collection of forest charges and fees[17]. If governments could reduce the burden imposed by the "command-and-control" regulatory structures of the agencies, the limited budgetary and staff resources could be used in more productive capacities.

When revising regulations, governments and agencies should hold the following four, basic principles in mind:

1. Recognize land rights and design different systems for each type.
2. Identifying priority problems and prioritize actions.
3. Governments should create favorable conditions for key rights holders and only do what others cannot.
4. Government regulations should focus on desired outcomes rather than process (i.e. being outcome-based rather than prescriptive).

And, in holding these in mind, some of the lessons learned in rethinking regulations include:

- Regulations should be based on a firm foundation of societal mores.
- Design regulations that can be credibly enforced.
- Allow flexibility so that local visions and objectives can drive implementation.
- Be aware of the political nature and understand who wins and who loses when regulations are changed.
- Clean up existing regulations, do not simply add on top of existing.
- By creating favorable conditions so that other, non-government actors are empowered and engaged, government also further empowers itself: it enhances its power to convene and

[17] One global lesson learned is that productive use of forests alone cannot generate the income needed by a modern forest agency whose mandate covers the management and conservation of the multiple values generated by forests, i.e., not just commercial utilization but also management for maintenance, conservation and enhancement of biodiversity and other ecosystems services, social and cultural values, recreation, etc. As a result, management of the non-timber values suffers as forest agencies focus on obtaining rents from commercial utilization.

convince; it opens new opportunities for government to both focus its efforts and expand its coverage.

- In recognizing land rights, recognize also that there are important cultural values and social mores around both the land rights and their key stakeholders.
- Recognize that communities have both values and built in incentives to sustainably use and conserve their valuable forest resources. Community values, if understood, provide a vision of what a community desires for itself and its future. Those define the realm of what is likely to be more feasible to accomplish in the short-to-medium terms. Also, communities thrive on long-term, stable economic development, not on boom-and-bust cycles. This is well understood by communities themselves and can provide a sharp incentive for sustainable, local management.
- Regulation is not just about government, it is about all stakeholders and all stakeholders must be well considered in developing and reforming regulations.
- Regulations should be systems that support learning and allow for adaptation and evolution. The example of Montana's BMPs is one such system where all participating actors are working and learning together to improve the outcomes desired from the implementation of appropriate technical interventions.
- In developing regulations, the actors are not just those with land and resource access rights but all those with a legitimate interest in what happens on the land. In the Montana example, one sees how the forest products processing industry has played a key role by implementing a policy of only sourcing timber from loggers that are accredited and participating in the development and monitoring of the BMPs.
- Take advantage of local opportunities, allow local people to refocus priorities. It is not the process that should drive the system, it is the desired outcome. If a local people's wish to take a different path that gets you substantially to the same outcome, support them on that path.

Finally, what are some of the things that we can do to advance the idea of rethinking regulations? From the experiences in Montana, a few things that present themselves as being important to achieving change include:

- Ask the right questions. When other large and important initiatives are in progress, look for ways to interject concerns for "Rethinking Regulations" by asking questions that get people thinking about the principals and concepts that underlie the Montana experience.

- Communication and dissemination. The Montana experience is not a model to be replicated or overlain on other countries and situations. Rather it is the lessons learned and the principles that it demonstrates that are important. Montana is not the only place in the world where one can learn from experiences and distill from them the basic principles. Take advantage of existing "backstopping" opportunities at the global level (e.g., the Rights and Resources Initiative - RRI, and RECOFTC - The Center for People and Forests) to identify relevant concepts, principals and questions that can be communicated and disseminated through in-country networks.

- Foster learning, especially through interchanges at the local level.

- Think about and analyze the existing regulations in your own country. Doing so in a systematic fashion could provide a basis for local action and a platform for learning across countries and international action. Some questions to consider in the analysis would be:
    - What is the intent of the existing regulations and is that intent still valid?
    - Are the regulations achieving the intent?
    - Who is benefitting from the current regulations?
    - Who is losing under the current regulations?

- What are some alternative ways to accomplish the regulations intent?

CHALLENGES

In such a workshop, the biggest challenges are:

- To create lively debates by overcoming language barriers,
- To create regional and national discussions by getting civil society representatives involves,
- To provide example of how this can be relevant to centralized state.

RECOMMENDED RESOURCES

The following PowerPoint presentations are available on the MegaFlorestais website[18]**:**

- Augusta Molnar - Rethinking Forest Regulations: Overview and Introduction (also available in Spanish and French)
- Dale Bosworth - The Role of Federal Forest Land in the United States (also available in Spanish and French)
- Tony Tooke - USDA Forest Service: New 2012 Planning Rule
- Bob Harrington - History of Forest Tenure and Regulations in Montana
- Gary Burnett - The Blackfoot Challenge: Local Community Forest Governance and Regulation
- Paul DeLong - Rethinking Forest Regulations in Wisconsin
- Angela Mallon - Promoting Stewardship on Family Forest Lands in Montana
- Gary Frank - Forested State Trust Lands: An Overview of the Forest Management Program
- Roger Ziesak - Montana's Forestry: Best Management Practices
- Ogden Antonio Rodas - Evolución política, legal e institucional del Sector Forestal en Guatemala

Fay, C., & Michon, G. (2005). Redressing Forestry Hegemony: When a Forestry Regulatory Framework is Best Replaced by an Agrarian One. Forests, Trees and Livelihoods 15: 193–209 (download).

Gilmour, D., O'Brien, N., & Nurse, M. (2005) Overview of regulatory frameworks for community forestry in Asia. In N. O'Brien, S. Matthews and M. Nurse (eds.) First regional community forestry forum: Regulatory frameworks for community forestry in Asia. Proceedings of a Regional Forum held in Bangkok, Thailand, August 24-25, 2005. RECOFTC, Bangkok. 3-33 pp. (download)

Gregersen, H. & Contreras, A. (2010). Rethinking Forest Regulations: from simple rules to systems to promote best practices and compliance. Rights and Resources Initiative: Washington, DC. (download)

Rights and Resources Initiative. 2014. What Future for Reform? Progress and slowdown in forest tenure reform since 2002. Washington DC: Rights and Resources Initiative. (download)

[18] http://megaflorestais.drupalgardens.com/content/rethinking-forest-regulations-2013