CHALLENGES OF REGULATORY REFORMS

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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:
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:**
  o **Laws:** sometimes are passed & new regulations not developed
  o **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 And its Citizens**

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**To Use Their Forests**

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<td>State/Local government</td>
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*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*
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)
Emerging New Approaches

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
Emerging New Approaches

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
Emerging New Approaches

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
Emerging New Approaches

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
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