Forest Tenure and Governance Reforms: Impacts and Implications for Forest Agencies

Global Issues in Governance
MegaFlorestais
Grey Towers
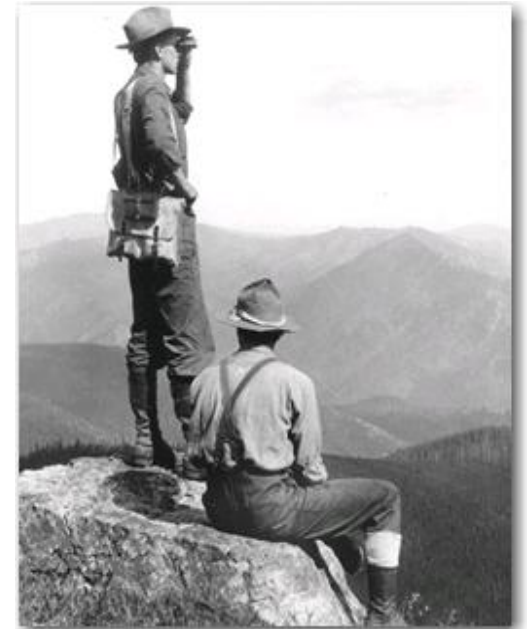
Introduction to this Session

1. **Definitions**

    1. What is "tenure and governance reform"?

    2. What is "customary and statutory tenure"?

2. Some observations on role of state and communities

3. State of play in MegaFlorestais countries

What are "Tenure" and "Governance"?

"Tenure"

- Institution defining relationship between people and an asset; embodies some definition of "rights" and "duties"; includes notions of "ownership" to "access"
- Definition overlaps with "property rights"; but "tenure" is broader
- "tenure systems": who can use what resource, under what conditions and for how long
- Both "customary" and "statutory" systems – often in conflict

"Tenure Reform"

- Government sponsored/sanctioned process restructuring tenure

"Governance"

- Bundle of institutions that define how people relate to each other and to assets/resources and how they govern use and each other
- Usually includes issues of representation, decision-making authorities, etc
- "good governance" includes transparence, equitable authority, recourse mechanisms and accountability

What is Customary and Statutory Tenure?

- **Customary tenure:** (determined in most cases by local people); informal, part of broader, cultural, social and political systems

- **Statutory tenure:** (determined by the state); formal, legal recognition, part of "modern" "rule of law" and broader system of transparence and accountability

- **Forest tenure transition:** historic shift from "state" ownership towards more ownership by indigenous peoples, forest communities, households, individuals

  - Originally "customary" prevailed, then under feudalism, colonialism, and imperialism - lands were claimed by centralized power - the "state"

  - The "state" maintained its claims through statutory legal systems - "statutory" prevailing, and assumed optimal

  - With "development", revolution, growing respect for human and collective rights, growing appreciation for "legal pluralism," and statutory recognition and respect for customary systems – a blending

Why is Tenure Important?

1. Moral reasons: our acknowledgement of "rights holders"

- Dignity
- Human rights
- Cultural perpetuation

2. Legal reasons: our obligations as "duty bearers"

- International law & policy
- National law & policy

3. Instrumental reasons:

- Secure tenure important for:
  - Conservation
  - Investment
  - Poverty reduction
  - Reducing conflict

Observations on "Tenure Reform"

1. A political issue

2. Every country has different legal, social histories

3. Some generalities, common approaches, themes and issues

4. Some international legal guidance, precedence

5. Forest agencies don't usually have authority over tenure, sometimes governance, sometimes reform

1. **Establish/maintain legal and regulatory framework that:**
    *   Recognizes rights (human, civil, property)
    *   Clarifies responsibilities (of state, of citizens/communities)
    *   Ensures justice/fairness, mediation of interests and action
    *   Empowers/enables individual/community action in pursuit of opportunities and interests – civil, entrepreneurial, political

2. **Provide (or ensure provision of) priority public goods:**
    *   E.g. education, research, extension, firefighting, pest control, inventory (this requires investment)

3. **Ensure rules for international trade and investment:**
    *   protect interests and ensure level playing field for domestic producers

In many countries a 4th role assumed: to own and manage lands (e.g. national parks). This is not a requirement or responsibility – rather a relic of feudal or colonial history. (Old myth that land must be public to generate public goods - no inherent logic to state ownership of land.)

1. Pursue and secure their rights and interests

2. Respect their responsibilities

3. Actively participate in governance of community and nation
   – Engaging the state to carry out it's responsibilities:
     1. Forming, reforming legal/regulatory framework
     2. Providing public goods
     3. Establishing international norms

* In most places a 4th role is assumed: they **often** supply public goods (e.g. research, conservation etc.)

- These latter two roles are the basis of "partnership" of communities with the state. (Of course: they cannot do any of the above unless the state allows them to.)

Interpretation of Conceptual Approach

- What states get (in terms of public good) is a reflection of what rights they provide – a dynamic relationship

- Thus, the more respect for rights/communities, the more they contribute, the more possibilities for "partnership"

- Sound and just legal and regulatory framework THE most important of all roles - by far. Get this right and you get development, justice, etc.

- Get this wrong and state spends and wastes lots of money trying to provide public goods – as well as abuses her citizens

- Public land ownership a major distraction as well as often a violation of priority # 1 - property rights a part of "human rights"

- All above often seen as "radical" - long history of state assuming and keeping power; dominant notions of communities as naïve, incompetent, and dangerous; and power a zero sum game.

1. <u>China</u> – collective forest reform priority of SFA last 3 years, slowly addressing state forest reform; much more work on regulations;

2. <u>Brazil</u> – dramatic steps last 20 years, incrementally rationalizing public domain, new laws, regulations and agency, key reason for success against deforestation;

3. <u>Indonesia</u> – almost 100% state owned; just beginning to devolve some land to households; just beginning to consider discussions with IP;

4. <u>Russia</u> – new code, no change in ownership, or recognition of indigenous people's rights in far east,

5. <u>Canada</u> – treaty/court process to recognize IP rights; pragmatic IP, industry and agencies taking incremental steps;

6. <u>USA</u> – tenure mostly settled; key innovation is "Stewardship Contracting"; tenure/management of state lands;

7. <u>DRC</u> – still 100% state owned with LOTS of communities; just beginning to consider how to recognize rights