

The Changing Role of Legislation Related to Forest Conservation and Forest Resources Development

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Forest legislation is one of the important institutional elements for the development and expansion of the forest sector. It provides the structural framework within which national forest policies are set and in turn reflects or should reflect their objectives and priorities. It is also an indispensable instrument for the implementation of those policies.

Forest laws in the sector specific sense have been modified and developed considerably during the last decades. They tend to incorporate more and more provisions on environmental protection and natural resources management and become de facto part of such legislation. Forest legislation as a whole can today only be interpreted meaningfully if it is considered within the framework of an expanding legal system for environmental conservation and social development.

Additional keywords: forest policy, forest laws

The linkage between forest policies, programs and legislation

The theme of this Plenary Session is "Search for innovative forest policies and programs". In the meaning of the social sciences innovation generally implies individual and collective change of behaviour and thinking. Innovation proceeds from a phase of adaptation of new ideas and concepts to a phase of diffusion within social systems. It is presumably in this sense that the term is meant to be used in the present context.

The political effort leading to the promulgation of new laws or to the amendment of existing ones, is an important step in the social adaptation process which innovative

policies and programs must experience. The implementation of the laws is one of the conditions for their diffusion within society.

Forest legislation has a catalytic function in translating policies and development targets into specific obligations and/or measures of social support and promotion. Appropriate and coordinated legislation facilitates the rational use of the forest resource, whereas deficient and contradictory laws impede and obstruct its preservation and management.

Legislation is therefore one of the concrete results of changing forest policies. But it is also increasingly a driving force for their further elaboration. Neither the formulation of new policies and the planning of more ambitious programs, nor for that matter the

preparation of new legislation, can be done separately and be left to self confined specialists.

Policies, programs and legislation are elaborated in order to be implemented. Or it appears that in forestry and in the whole field of environmental protection, implementation of already existing concepts and regulations is the biggest problem. It would be useful and possibly lead to some interesting conclusions, to analyse more consistently why forest policies and programs fail and why certain provisions of forest laws are not implemented or respected.

Policies and legislation related to forests and forestry are usually designed by foresters, lawyers, biologists. But they have to be adopted by politicians, political parties, parliaments. And they have to be implemented and respected by individuals. It could become a source for innovative thinking, to ask the question more frequently, why some objectives in forestry can be accomplished in our societies and why others are constantly neglected or counteracted, in spite of having been advocated for a long time in national development programs.

Legislation in its growing complexity, its effectiveness, but also in its inapplicability, is in a certain way a rather precise measure for the involvement of society and its readiness to protect and manage the forest resources. It is one of the mirrors from which foresters can perceive social attitudes and political conflicts. It is also a fascinating tool in order to understand better the interfaces that exist between forestry and other sectors.

Forest laws as part of legislation concerned with conservation and management of natural resources

During the last 20 years, the governments of many countries have made considerable efforts to develop a national legislation on the use, management and conservation of forests and forest land. Most of them have by now introduced a consolidated sector specific

legislation, that comprises a forest code and implementing regulations. There has also been a strong tendency in many of those countries that had already promulgated forest laws at an earlier stage, to revise, amend and expand their legislation.

Forest laws deal with an important segment of the environment and represent for that reason a substantive element of the natural resources legislation. Modern forest laws are gradually moving away from the narrow aspects of timber harvesting and felling controls. They become more oriented towards land-use planning and to the integrated management of forest land. In addition, they incorporate increasingly provisions that refer directly to environmental and nature conservation issues.

Forest legislation has traditionally been of a more repressive nature. But it gradually assumes a more positive approach in order to induce and promote social behaviour in conformity with the existing or desired forest policies. The promoting nature of forest legislation has for instance the following aspects:

- Legislation has to provide for rational land-use practices that do not exclude established and necessary uses, but offer incentives for maintaining and preserving the resource.
- It must bring tangible benefits to local communities from forest areas, e.g. by methods of sharing revenues from state forests granted under timber harvesting rights; by recognition of usage rights subject to the necessary supervision for ecological reasons; and by according legal rights and powers to local communities to enable them to own and manage local forests.
- Legislation should establish a firm basis for the provision of services and management by public forestry administrations to communal and private forest owners.
- Legislation on forest utilization, establishment of forest industries and forest concession management has to correspond to the economic reality of timber harvesting and processing. A particularly important role in this context has the assessment of the forest resource rent.

The move from regulatory legislation to promotive measures has important implications for the economic and administrative efficiency as well as the social acceptance.

Effective forest laws are those which can be understood and which are acceptable and beneficial to the majority of the people on whom they operate.

Forest legislation within the framework of an expanding legal system for environmental protection and rural development

The appearance of the new forest damages has clearly demonstrated that the conservation of forests has acquired a new perspective. The impairment on the stability of forest ecosystems calls for legal measures which are far beyond the traditional provisions against land clearing of the forest law. Environmental legislation has thus become of an immediate and much important concern to forest protection. It also has already or will have in the future direct consequences for forest management.

Similar tendencies exist for instance in the field of rural forestry, in particular in developing countries.

A considerable number of other laws, that deal with the conservation and utilization of natural resources, have an increasing impact on forests and forestry. The growing complexity requires a thorough analysis of the compatibility of the various regulations and calls for a new approach in forest law and policy.

Questions such as the following have to be asked and answered:

- What are the implications of the expanding system of environmental and nature protection legislation on the further evolution of forest legislation?
- To what extent are the respective provisions mutually supportive, contradictory or may even neutralize and obstruct each other?
- To what extent is it necessary to insert or reenforce in environmental protection laws specific provisions related to forest conservation and management?
- In what respect may forestry benefit from an evolution and improvement of the natural resources and rural development legislation?
- In what respect have forest laws to be modified in order to be compatible and to support such legislation?

The multitude of laws that appear of importance in this context can be grouped under the following broad headings:

- Legislation which refers to the general and specific aspects of environmental protection: this includes the national environmental protection codes, legislation related to air pollution control, and to soil and water conservation.
- Legislation that is principally concerned with a rational and long-term use of the renewable natural resources: this comprises the sector specific legislation related to agriculture, grazing, fishery, their various interfaces with forestry and combined production systems. It also refers to agrarian reform and land colonization laws, as well as to erosion control and land rehabilitation regulations.
- Legislation that deals with social and economic measures for the development of the rural space as a whole: this includes land-tenure legislation, land-use planning legislation, but also regional and national development and investment laws as well as tax legislation.
- Legislation which concerns nature protection: this includes principally laws protecting flora, fauna and undisturbed landscapes, and to a considerable extent the hunting, wildlife and national parks legislation.

On the whole one may conclude, that it is today not sufficient any more, to limit policy and legal analysis to the forest law itself. Necessary is to think of a complex and steadily changing body of legislation related to conservation and resources development. Forest legislation must be interpreted within this broader legal context, in which the forest law *stricto sensu* has an important but by no means exclusive position.

The effectiveness of forest legislation depends therefore to a large extent on its compatibility and consistency with the evolving legal system as a whole. This requires a regular review of national legislation developments and programs, and the systematic interpretation of their relevancy to the forest sector. It also requires the readiness, to adjust the sector specific legislation whenever necessary and feasible.

Activity of the IUFRO working party S4.06-04

The working party S4.06-04 "Forest Legislation" was set up at the XVIth World Congress in Oslo, 1976.

At present the working party has 35 members. It is particularly satisfactory that several colleagues from the African and Asian region have confirmed their interest in the work of the group. It would be, however, still desirable to increase the number of members from developing countries in order to confirm the broad international collaboration which is one of the aims of IUFRO.

During the last years a considerable number of analysis on the development of forest legislation have been prepared and published in 1984 and 1986. The member

contributions cover a wide range of problems and reflect in fact the great variety of geographic, social and economic factors that determine forest protection and development in particular regions and countries.

The working party intends to continue this effort and to encourage further analytical and comparative studies on legislative and institutional aspects that are of particular relevancy to the protection and wise use of forests and forest lands.

The work of the group that has been undertaken so far, demonstrates the many and complex relations between policy, legislation and administration as well as the important links between environmental conservation, natural resources management, rural development and forestry.