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RECENT TRENDS OF FOREST LEGISLATION IN DEVELOPING COUNTRIES*

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This paper has been prepared in order to underline the importance of legislative instruments as part of the essential institutional framework for the forest sector's development and to demonstrate the dynamic evolution of forest legislation in many developing countries during the last two decades. It analyzes some important aspects of forest utilization that have been subject to a more elaborate legislative regulation and the increasing interdependence between specific forest laws and general natural resources legislation.

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1. DEVELOPMENTS IN PROMULGATING NEW FOREST LEGISLATION

The promotion of forestry as a tool for industrial and rural development as well as the urgent need to protect more effectively the renewable resources of forests, land and water have become of great concern to the governments of many developing countries. New national forest and natural resource conservation policies have been formulated or amended. Sectorial development objectives are determined with greater care in order to integrate more directly the sector's potential contribution and requirements into the overall socio-economic planning system at the national and regional level. The reason for this evolution results from the experience that a strong institutional framework is required in order to initiate a balanced and coherent use of forests and to maintain the long-term benefits that may be expected from this natural resource.

Forestry legislation and legislation on natural resources utilization are key elements of such an institutional framework. Forest and forestry related laws have in fact the catalytic function of translating national policies and development targets into specific norms and provisions that determine the use of forests and forest land. Appropriate legislation facilitates the rational use of the forest resource whereas deficient laws impede and obstruct its allocation, management and preservation.

The increasing efforts of many countries in the formulation of more appropriate forest development policies have been followed by improvements in the corresponding forest legislation. The number of countries that have introduced entirely new forest legislation or that have revised substantially their previous laws and regulations during the last two decades is considerable. Several other countries have prepared new draft laws or are considering initiating preparatory work for major revisions.

In the *Latin America Region* at least 18 countries have introduced new basic legislation or have substantively revised previous forest laws. Among the countries which have for the first time adopted specific forest laws by consolidating provisions on forest utilization as included in the former agricultural and land-tenure legislation, one can enumerate the following: *Dominican Republic* (1962); *El Salvador* (1973); *Costa Rica* (1969); *Nicaragua* (1967); *Panama* (1966); *Guatemala* (1965 and 1974); *Honduras* (1961 and 1972); *Bolivia* (1974); *Paraguay* (1973); *Brazil* (1965/1966) and *Uruguay* (1968). Countries, which have entirely revised previous forestry legislation by new consolidated texts or which

have made important amendments and expansions to their forest legislation are, for instance: *Mexico* (1960); *Peru* (1975); *Columbia* (1960); *Venezuela* (1965); *Ecuador* (1966-1971); *Chile* (1964 and 1974); *Argentina* (1964 and 1973); *Guyana* (1972). New draft laws have been prepared in *Surinam* (1974) and *Haiti* (1975).

In the *African Region* the access to independence and the subsequent formulation of national legislation has initiated the promulgation of the first national forestry code in a considerable number of countries. This process has not come to an end with the introduction of basic national forest laws. On the contrary, one can state, in particular in many West- and Central-African countries, a continuous and dynamic evolution of forestry legislation. New forest legislation as well as major amendments and expansions have, for instance, been introduced in: *Liberia* (1976-1977); *Ivory Coast* (1965-1966 and 1972-1973); *Ghana* (1959-1962 and 1970-1974); *Cameroon* (1969 and 1973-1974); *Gaboon* (1958-1961 and 1968-1969); *Congo* (1961 and 1974); and *Central African Republic* (1962 and 1969). In North Africa and the Sahelian zone the following countries have changed and amended their forest and forestry related laws: *Morocco* (1976); *Tunisia* (1966); *Algeria* (1971); *Senegal* (1974); *Mali* (1968); and *Niger* (1974). In the Eastern part of Africa important legislative changes and amendments have occurred, for example, in: *Malawi* (1972-1973); *Zambia* (1971-1973); *Madagascar* (1960-1962); and *Ethiopia* (1965 and 1976-1980). New draft forest laws have been prepared in *Upper Volta* (1974); *Ghana* (1969); and *Sudan* (1975).

Among the countries in *Asia* and the *Far-East*, the changes in forest legislation have perhaps been less frequent than in Latin-America and Africa. This is presumably due to the reason that several of the Asian countries possessed already prior to 1960 quite specific and suitable forestry legislation. But again there exists a considerable number of states that have revised, amended or expanded their forest laws during the last 20 years. As for example: *Iran* (1963); *Pakistan* (1962 and 1967); *India* (at central and state level); *Nepal* (1961 and 1970); *Thailand* (1964); *Peninsular Malaysia* (1972-1973); *Sarawak* (1972-1973); *Sabah* (1968); *Indonesia* (1967-1968 and 1970-1971); *Philippines* (1974); *Papua New Guinea* (1966 and 1971-1973); *Salomon Islands* (1969); *Western Samoa* (1967); *China* (1963); and *Korea* (1980). New draft forest laws have been prepared in *Malaysia* and *Papua New Guinea*.

In summarizing the findings of this regional review one can state:

- that a considerable number of countries have been able during the last 20 years to introduce a national sector specific legislation on the use, management and conservation of forests and forest land;
- that most of the developing countries have by now introduced a consolidated forest legislation that consists of a basic law and implementing regulations;
- that countries, which have not yet promulgated such legislation form today the exception rather than the rule; and
- that there has been a continuous need both in countries that already promulgated forest laws at an earlier stage as well as in countries with fairly recent forest laws to revise, amend and expand their legislation.

The rapid and substantive evolution of forest laws does, however, not imply that the large majority of the developing countries have already reorganized their legislative framework to an extent that it can support effectively a balanced sectorial development. Many forest laws need still improvement and consolidation; others that appear to be quite modern at present will require further amendments in view of rapidly changing conditions. One can thus predict that the efforts of many governments in preparing and adapting legislation will continue and possibly gain even more momentum in the near future.

2. IMPORTANT ASPECTS OF FOREST RESOURCES UTILIZATION COVERED BY PRESENT LEGISLATION

Obviously there exists a great variety of conditions that have to be regulated and a varying degree of progressiveness in the formulation of national forest policies and their subsequent legislative implementation. It is, therefore, not easy to make general statements on the substantive changes of forest laws as they appear relevant at present in the tropical and sub-tropical zone. The following four aspects of forest resources utilization that have become of great concern to legislative action can, however, be identified.

1. Timber allocation systems on public land

Considerable efforts have been undertaken during the last two decades in order to improve the formal procedures for resource allocation as well as the substantive content of timber harvesting arrangements on public forest land. The negative experience with previous timber leases and licenses as well as the rapidly increasing value of high quality industrial timber have made it necessary to introduce and implement more coherent timber allocation systems in those countries that still own large tropical forest resources. In particular several French-speaking West African countries such as *Ivory Coast, Cameroon, Gabon* and *Congo* as well as the main South-East-Asian producers of tropical hardwoods such as *Indonesia, Philippines, Malaysia* and, more recently, *Papua New Guinea* have amended and continuously improved the legislation with respect to the contractual framework for the granting of new and more balanced forest utilization contracts.

The principal objective of this new legislation is clearly the need to rationalize present timber harvesting standards, to derive greater social and economic benefits to the country itself and to ensure an increasing participation of the national public and private sector on wood processing and timber exports. Particular emphasis has thus been put on the elaboration of an appropriate regulation with regard to:

- the relation between the envisaged resources commitment both in time and size of granted area and the proposed size of investment and level of local processing;
- the preparation and subsequent implementation of forest utilization contracts in accordance with appropriate forest management plans that determine an annual allowable cutting volume, a minimum of post-harvesting silvicultural treatment and/or reforestation;
- the determination of a set of legal or contractual provisions that ensure specific contributions to the development of social and economic infrastructure in the forest areas and to the training of national staff;
- the encouragement of local timber processing, the official restriction of log exports, the increasing participation of the national sector in the expansion of the forest industry;

- the establishment of an adequate system of control of the performance of the companies to which forest utilization contracts have been granted;
- the introduction of appropriate and efficient forest revenue and tax assessment procedures that enable the granting governments to recover the full resource rent from the committed harvestable timber stock.

2. *Forestry for local community development*

Forestry for local community development has only recently gained some importance in national forest and rural development policies. So far, legislation does not yet reflect fully this new dimension, the objective of which is to make local communities benefit more strongly from their forest environment and to establish new resources in order to meet basic rural needs. On the contrary, one can state that many forest laws and regulations still include little on the promotion of rural forestry; several of their usual provisions even tend to exclude local communities from the use of trees and forests. There exists, however, an increasing number of countries in the tropical and subtropical region that have already made specific amendments and modifications to their legislation in order to support rural forestry. The new forest law of *Peru* (1975), for instance, is an outstanding piece of legislation which integrates right from the beginning the requirements of local communities with other aspects of forest resources utilization. *Senegal* (1975) has also introduced legislation that transfers important decisions on the use of trees and forest land to the newly constituted rural entities. In *Korea*, a very comprehensive law on forest cooperatives and village forestry has been adopted in 1980.

The need to adapt legislation more closely to the specific requirements of rural forestry will presumably grow in the near future. Some of the important legal aspects that will have to be regulated in more detail are:

- provisions that facilitate the access to the resource by establishing firm and reliable rights of the local population on certain portions of forests and forest land. This refers in particular to a more effective protection of usage rights as well as the legal possibilities for the demarkation of communal, village and private forest land;

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- provisions that facilitate the constitution of local communities or forestry cooperatives and that reinforce their decision making capacity with regard to the utilization and management of communal forest land;
- provisions that facilitate a more comprehensive approach of technical assistance, vocational training, financial support or other production incentives. The effectiveness of such an approach will depend on a closer coordination among the various governmental agencies engaged in rural development.

3. *Incentives for the establishment of industrial plantations*

Important amendments and modifications of forest laws and of the general fiscal legislation have been made in order to promote the establishment of plantations and/or the implementation of large scale reforestation schemes on private and, to a lesser degree, on communal land. Especially in the Latin American Region, a considerable number of countries such as *Guatemala, Costa Rica, Ecuador, Bolivia, Argentina, Brazil* and *Chile* have adopted some specific reforestation legislation or have amended their forest laws accordingly. Legislative and contractual arrangements, which support reforestation on communal land, have also been introduced in a few countries of *South-East Asia*. In the *African* countries, legislation on reforestation incentives has, so far, been of little importance; this is largely due to the predominance of state ownership on forest land that prevails in this region.

Legislation on reforestation incentives generally comprises a set of fiscal, tenurial and technical assistance measures as well as contractual arrangements, that allow for the association of different land owners and for various combinations of land and capital. Among the recently adopted reforestation incentives, the following should be mentioned in particular:

- fiscal measures, such as exemptions from land and property taxes, tax rebates or tax credits against income tax payments and exceptions from import duties on equipment and seeds not produced locally;
- long-term credit facilities at low interest rates usually made available through agricultural development banks or through the commercial banking system;

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- admittance of private technical consultants' costs as part of the initial planting costs or possibility of deduction of such costs from income generated from the plantation;
- technical assistance from governmental agencies and supply of planting stock and hand tools free of charge or at nominal rates;
- exemption of land planted under approved reforestation schemes from future measures under the agrarian reform and land colonization legislation;
- reforestation contracts and crop sharing arrangements comprising various categories of private and communal land.

4. Forest administration and organization

The earlier generation of forest laws contained little or nothing on the role of the public administration concerned with forest resources management. This situation has changed and many of the newly adopted or revised laws now include specific provisions on the organization and responsibilities of public forest administrations. Among the recent legislative texts that define in some detail administrative and organizational issues, one can refer to the recent forest law of the *Philippines* and to the specific forest administration laws adopted in *Honduras* and *Colombia*.

The legal provisions related to the public forest administration generally cover the following aspects:

- the organizational status of the administration as a full governmental service under the supervision of a ministry, a semi-autonomous agency under the authority of a governing board or its organization as an autonomous governmental commission or corporation;
- the range of responsibilities, the internal organizational structures, the interlinkage with other governmental and non-governmental agencies and the power of recruiting agency personnel and managing budgetary funds;
- the financial arrangements for the functioning of the agency, such as the transference of regular governmental budgetary funds, the collection of ear-marked forest revenues for management and reforestation purposes, the establishment of special forest develop-

ment funds and the power to raise capital from extra-governmental sources.

3. FOREST LAWS AS PART OF THE NATURAL RESOURCES LEGISLATION

Forest legislation deals with an important segment of natural resources and represents for that reason a substantive element of the natural resources legislation in the more general sense. Many of the recent forest laws have moved away from the narrow aspects of timber production and felling controls and become more orientated towards a broad concept of integrated planning and management of forest land. In addition, they tend to incorporate numerous provisions that refer directly to environmental and nature conservation issues.

The current legislative practice in many countries implies the existence of a fairly comprehensive forest law and of other specialized agricultural and natural resources legislation. Ideally the stipulation of the various laws are complementary and allow for a coordinated approach towards the use of all natural renewable resources. This structure implies, however, also a certain amount of overlap and, in several cases, some contradiction and competition between the various legal texts. Among the laws that are of particular relevancy to forest resources development the following should be mentioned:

- Legislation on land-use planning may affect heavily the scope and effectiveness of forest legislation. The reservation, demarkation and management of permanent production and protection forests, as well as the removal of harvestable timber from land to be turned over to agricultural development, which are generally regulated by modern forest laws, require a close integration with national and regional land-use planning practices;
- Land tenure legislation may be of importance in particular in connection with the envisaged constitution of communal and village forests;
- The agricultural development and agrarian reform legislation has an important bearing on the applicability of forest laws. This is particularly true in most *Latin-American* countries where compre-

hensive agrarian reform laws exist that transfer considerable power to the competent agency of changing land-use in designated colonization areas. The *Peruvian* forest and agrarian reform legislation offers an excellent example of close concertation that is so essential for a balanced development of the rural space;

- Soil conservation and land rehabilitation laws are also much complementary to forest legislation. The protection of critical watersheds and the rehabilitation of degraded land depends frequently on the protection of the remaining forest cover and on reforestation for protection purposes.

Forest laws have thus to be seen as part of a broad legislative system on land-use, agricultural promotion and rural development which is today in most developing countries in a constant and dynamic expansion. The emphasis on the various elements of the system may vary considerably in accordance with the particular ecological and social conditions of each country but the use and management of forests is without doubt always one of its important segments. Three important conclusions emerge from this situation:

- The effectiveness of the elementary provisions of forest laws that concern the status and tenure of forest land depends greatly on their integration into the general legislative framework on land-use, and agricultural and rural development. The constitution of the permanent forest domain, its subdivision into protection and production forests as well as the eventual transfer of part of the forest land to other land-uses must clearly be determined by a concerted legislative machinery.
- The obvious basis for a coherent approach in formulating legal norms for decisions on the future use of renewable natural resources are land capability studies. The classification of forest and other non-agricultural land according to its potential use is, for instance, a standard element of many *Latin-American* forest laws. The evaluation of potential uses will, however, remain ineffective if the provisions of the agricultural and rural development legislation are not concerned with the results.
- The necessary concentration on the fundamental regulation on the use of land does not necessarily imply a formal integration of

forestry, agricultural and rural development legislation. There is much to say in favour of maintaining the identity of specialized legislation that corresponds to the principal interests, policies and organizational structures, as they result from the various possibilities of using natural renewable resources. The need of concentration does, however, call for a thorough evaluation of the various legislative texts that provide for land-use decisions as well as for coordinating legal mechanisms that permit rational arbitration procedures in the case of conflicting interests.

The strong emphasis on recreational and nature conservation issues has initiated the formulation and adoption of numerous legislative provisions related more specifically to the environmental function of forests and forest land. This evolution has had two significant consequences for the forest legislation itself. Some forest laws have incorporated part of the environmental regulation as applicable to forest and wilderness. This type of forest legislation offers a broad framework for the utilization and management of forest resources that is based on a multiple use concept. A second, and presumably more frequent tendency has been to remove certain environmental issues that had previously been dealt with in the forest law and regulations. This refers in particular to national park management, wildlife protection and hunting control in forested areas. These very important aspects of natural resources management are subsequently treated under their own specialized legislation or become an integrated part of the nature conservation and environmental protection legislation. Again there exists a growing interlinkage between forest laws, that determine principally timber production and forest resources development, and the specific legislation on wildlife protection and management of national parks.

The general environmental legislation that is gradually emerging has obviously important points in common with modern forest laws. This refers in particular to nature protection and conservation that play an important role in this type of legislation. There is in fact a recent development to look at forestry laws themselves as part of the general environmental legislative framework. The most advanced move in this direction has been undertaken in the recently adopted Environmental Code of *Colombia* (1974) that incorporates the entire forest legislation of the country. Similar draft laws had, for instance, been prepared in *Costa Rica* and *Nicaragua*. The Colombian Code offers, however, an



example for questioning the rationale of merging completely environmental and forestry legislation. Apart from being a very long text, one becomes well aware by examining its various sections, that there are many aspects of forestry production, timber allocation and resources development that appear to be somewhat marginal to the principal objectives of this law.

In conclusion, one can say that use of forests and forest land as well as the management of timber stands has become subject to a network of legal provisions which are not any more exclusively regulated by specific forest legislation. This evolution leads to an increasing interdependence between forest laws on the one hand and natural resources and environmental legislation on the other hand. The growing complexity of natural resource legislation will require in the future a thorough analysis of the effectiveness and applicability of the various possible formal legislative structures that could be adopted.

4. CONCLUSIONS

1) The evolution of forest legislation during the last two decades has been extraordinarily dynamic. There are rather clear indications that this tendency will continue in the future and that the present content of national forest legislation will be subject to further and important modifications. This situation confirms the growing concern of policy makers about the forest sector's performance and their determination to regulate the use of forests in a more appropriate manner.

2) Most of the newly adopted forest laws or their recent amendments, contain provisions that are better adjusted to the particular situation of each country. This new legislation replaces the set of standard provisions and clauses that had been chosen as a model from already existing legislation in neighboring countries or that had originated from the preceding colonial forest regulations.

3) Traditional forest laws had a certain tendency to exclude rural people from the use of the forest environment and were geared principally towards forest conservation. There is a clear tendency to move away from merely forest police orientated laws and regulations that place great emphasis on their deterrent and punitive role.

4) The development orientated approach of recent laws corresponds to important changes in economic and social policies and implies positive legal action that facilitates the implementation of a technically sound management and allocation of forest resources. Legislation thus becomes a framework for an active promotion of the forest sector that comprises a combination of basic technical prescriptions and rules, financial incentives and other promotory measures.

5) There is a somewhat striking difference between the rapidly evolving legal practice and the rather limited analytical and scientific work that has been undertaken during the last years in the field of forest legislation. There appears to be a definite need to cover more intensively forest legislation both in research and academic teaching. Among the possible issues that may merit a more systematic investigation, the following aspects could be considered:

- comparative studies on the evolution of forest legislation under the conditions of comparable ecological conditions and comparable legal systems;
- adequacy of legislative norms in relation to the actual situation of forestry;
- interdependence and interference of forest laws and other natural resources legislation.

6) There is also a considerable need to facilitate the transfer of experience and an increased scientific collaboration among the various countries as well as to encourage the exchange of ideas and concepts among lawyers, foresters and other specialists of the natural resources sector. It is such a cross-fertilization that could have a practical and rapid pay off in tuning together the various legislative texts related to forestry and natural resources development.

7) One final point that is somehow beyond the topic of this paper but that should never be overlooked in discussing legislative instruments is to be mentioned. Laws and regulations are meant to be implemented. It is quite frequently not the deficiency of forest legislation itself but the much limited institutional capacity of the forest administration that prevents many countries from making full use of their laws and regulations. Or, in order to say it in a positive manner, the improvement of

forest law must be backed up by improvements of national forest administrations and by adequate training of their technical personnel.