



## Forest Governance in Countries with Federal Systems of Government

Lessons and Implications for Decentralization

Arnoldo Contreras-Hermosilla  
Hans M. Gregersen  
Andy White



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There has been great interest in the global development community, over the last decade at least, in decentralization as an architecture of government. Indeed, according to the World Bank, more than 80 percent of developing countries are experimenting with some form of decentralization (Manor 1999). Proponents of decentralization generally contend that, given the right conditions, decentralized governance is superior to centralized governance in improving the quality of public management and responsiveness to variations in citizen wants and needs, thereby leading to enhanced and more equitable development.

Decentralization has also been a popular theme in the forest sector. A large amount of research, conferences and international dialogues have focused on decentralization (see, for example, Ribot, 2005; Banarjee, 1997; Ferroukhi, 2004). Much, if not most, of this work and these discussions have focused on countries that had centralized systems of government - and explored ways in which decentralization can help establish more effective forest administration and governance.

This literature, and these discussions, have not adequately been informed by the fact that seventy to eighty percent of the world's forests are in countries that have federal systems of government - systems that are, at least officially, decentralized. There has been little effort devoted to understanding the ways in which federal governments organize forest governance, the differences between countries and the implications of this experience for others considering the decentralization of forest public administration and governance. Federal systems of government deal with decentralized forest governance in different ways than do most other systems; and these differences can affect the *quality* of forest governance, which ultimately determines the contributions of forests to sustainable and equitable livelihoods of a nation's citizens.

The purpose of this paper is to examine the experience of federal countries and to assess

the ways in which the unique features of decentralized governance and the types of institutional infrastructure found in federal systems of government relate to the quality of forest governance. We do not attempt to assess whether decentralization as a governance strategy should or should not be adopted, because as mentioned above, decentralization is already a reality in a large number of countries. Our purpose is rather to examine how decentralization strategies can be made to work better in the forest sector. Following the analysis of what is happening in the case study countries, we derive lessons for policy makers considering future forest sector decentralization initiatives. The study examines the experience of the federal countries of Australia, Brazil, Canada, India, Malaysia, Nigeria, Russia, Switzerland and the U.S. Further, Bolivia, Indonesia, and Nepal have undertaken major decentralization programs and are also included for comparative purposes, even though they do not have federal systems of government. These twelve countries contain over 60 percent of the world's forests. The paper expands on and complements an earlier study presented at the Interlaken Workshop on Decentralization, Federal Systems of Forestry and National Forest Programmes held in April 2004 (Gregersen et al 2005).

The discussion is organized as follows: in section 2 we provide an overview of the forest governance systems in the case study countries. This information is aimed at assisting readers to understand and compare the particular examples on which the assessment is based. Section 3 examines the factors that have a determinant role in ensuring quality forest governance in federal countries and concentrates on those that are external to the forest sector. The next three sections look at factors influencing forest governance that are internal to the forest sector. The last section of the report summarizes findings and implications for policy actors interested in improving the quality of forest governance through systems of decentralized forest administration.

## Forest Governance in federal systems of Government: overview of the case study Countries

### 2.1. Decentralization in federal vs. other systems of government

What makes federal systems of government different? And how do federations deal with decentralized governance as compared with other systems of government?

The main differences are related to the way in which autonomy of power and governance responsibilities are distributed between national, central, government and the sub-national branches of government. Other systems of government normally disperse some power and responsibilities by creating sub-national levels of government - state, provincial, county, municipal government entities - but these levels are not constitutionally empowered to make decisions on key government services and functions. Rather, sub-national levels of government are subordinate units of the central government. Thus, in such countries the process of “decentralization” is characterized by the central government dispersing, at its discretion, and in different degrees, some power, responsibilities and authority to sub-national units of government. However, the key feature is that generally ultimate power and responsibility reside with the central government. If a lower level of government misuses its assigned powers, or it is being perceived doing so, the central government can, at will, take back authority and responsibilities. Thus, sub-national levels of government are accountable to the central government.

In contrast to simple devolution of specific powers and responsibilities from central to lower levels of government, some federations, including Australia, Canada, Malaysia, Switzerland and the U.S use the principle of “constitutional non-centralization” rather than decentralization (Olowu 2001). Thus, when a group of independent states or provinces creates a federation, it also creates a federal or central government and confers certain specific responsibilities and

authorities to it, with all other powers and responsibilities remaining with the states<sup>1</sup>. Powers and responsibilities are divided between government levels with each layer retaining a substantial amount of independence from the others. In most cases, states have their own legislative, judiciary and executive powers and institutions. Generally, the structure of the federation is organized through a constitution, which defines the division of powers and means for resolving conflicts. A significant point is that if powers are assigned to the various levels of government through a constitution, then the balance of powers cannot be altered will by any of the levels of government. Such changes would require a constitutional amendment. Because the centers of power in federations originally resided in member states, these tend to enjoy greater autonomy than other systems of government that simply transfer some powers from the center to subordinate sub-national levels of government. Further, in federations, sub-national governments are accountable to their own constituencies in addition to the central government.

Some federal governments, notably India and Russia, began as centralized governments, later adopted federal constitutions, and have been, or are, in the process of ‘decentralizing’ authorities and responsibilities.

In a federal system, the central government usually has overall responsibilities and powers to govern the use of resources, activities and events that affect more than one state and that involve the production and administration of national public goods, and in some cases, international public goods associated with the environmental services, including those produced by forests. Member states, in turn, regulate and guide the actions of lower levels of government, local community entities, private individual landowners and private companies operating within the states. Often, the federal

<sup>1</sup> Generally, federation members (states, provinces, cantons, etc.) also confer responsibilities and authority for various functions to local levels of government, or such may be done directly through a state constitution. Local counties, townships, etc. are created as autonomous units of government within the states.



government influences or controls state activities that require national concerted action through federal laws, incentives (such as federal grants) and checks and balances related to uses of resources that have cross-state or multi-state implications.

While federal countries are expected by definition to operate in non-centralized ways, variations between federal systems of government are considerable and thus federalism per se does not guarantee non-centralized governance. There may be just two or several tiers of constitutionally empowered sub-national governments. And there may be considerable differences in the relationship between “responsibility” and “authority” of these different levels of government. Further, various functions can be decentralized (Box 2.1) with different degrees of intensity. Thus, federal systems of government can be simultaneously decentralized in some respects and centralized in others. There is a multitude of possible combinations of “decentralized governance”<sup>2</sup>.

## 2.2. Overview of forest governance in the case study countries

This section provides an overview of the structure of forest administration in the study countries and describes major patterns of distribution of forest governance responsibilities and authority among the various levels of government in each country. Table 2.1 provides a schematic description of the main roles, responsibilities and authority of the different levels of government in countries analyzed.

It should be stressed that most, if not all, of the countries in this review are undergoing important transitions in their forest administrations: roles, functions and orientations of forest agencies and forest management are in a state of flux. In extreme cases, this is manifested by the frequent disagreements and in some cases nebulous knowledge as to the actual distribution of authority and responsibilities and by the recurrent discrepancy between the official and

### Box 2.1. Different Types of Decentralization

**Political** decentralization: Groups at different levels of government—central, meso and local—are empowered to make decisions related to what affects them. Top government executives and other officials may be elected by populations of the geographical units of government and are accountable to their constituencies.

**Administrative** decentralization: Different levels of government administer resources and matters that have been delegated to them, generally through a constitution. In terms of decentralization as a process of change, and according to the level of transfer of responsibilities, it is useful to distinguish between (i) *deconcentration*, which redistributes decision-making authority and financial and management responsibility among levels of the central government; there is no real transfer of authority between levels of government. It may involve only a shift of responsibilities from federal forest service officials of the capital city to those stationed in provinces, districts, etc (ii) *delegation* transfers responsibilities and authority to semi-autonomous entities that respond to the central government but are not totally controlled by it. Public forestry corporations and in some cases implementation units of some forestry projects—often donor supported—are examples of this form of decentralization; (iii) *devolution* transfers specific decision-making powers from one level of government to another (which could be from lower level to higher level of government, in the case of federations, or government transfers decision-making powers to entities of the civil society. Regional or provincial governments, for example, become semi autonomous and administer forest resources according to their own priorities and within clear geographical boundaries under their control. Most political decentralization is associated with devolution.

**Fiscal** decentralization. In this case, previously concentrated powers to tax and generate revenues are dispersed to other levels of government, e.g., local governments are given the power to raise and retain financial resources to fulfill their responsibilities.

Source: Based on World Bank 2000. Administrative decentralization. <http://www.worldbank.org/publicsector/decentralization/admindecen.htm>

2 See also Ellefson and Kilgore 2005 concerning the multitude of agencies within states that can have governance functions related to forests. The combinations are many.

the real distribution of power and responsibility between tiers of government. In democratic federal systems - which characterizes most of the countries in this review - citizens vote leaders into public office, and shifts in power occur over time between different political parties that have different views on the appropriate balance of authority and responsibilities between federal and sub-national levels of government. With the swings in the balance of political power, these differences get translated into laws, policies, actions and then actual change; and often these changes involve shifts, generally at the margin, in the balance of responsibilities and authority between levels of government. Because of the state of flux in most countries, the information presented in Table 2.1 should be treated as a snapshot in time of the state of decentralized forest governance in the countries included in this review.

Some of the main observations regarding decentralized forest governance in the federal case study countries are as follows:

- In all countries a large proportion, generally more than half, of forest lands is in public ownership. In Russia, almost 100% of the forest is publicly owned. Federal ownership is substantial in some of the countries while sub-national government ownership is common in others. Even in the United States, where the majority of ownership is in private, county and state hands, still some 35% of the forest estate is under federal control. However, in many other countries it is the state and provincial levels that own or control the majority of forest lands. In Canada, for example, some 98% of the forest is owned by the provinces and in Switzerland the communes own two-thirds of forest lands while federal government ownership is less than 1 percent. A large proportion of public ownership imposes a heavy administrative load on these governments as they must be directly engaged in managing forest resources.
- The recognition and respect of traditional ownership rights, as well as rights to use and trade forest resources, is mixed. India, for example does not officially accept legal rights related to traditional ownership of forest lands. A recent law gives forest dwelling peoples the right for conversion of leases or grants issued by any local authority

or any state government on forestlands to titles. The same law also acknowledges 12 specific heritable but not alienable non-transferable forest rights of tribals in forest villages (Government of India, 2006)<sup>3</sup>. Other countries recognize property rights, but not rights to manage or use the forests. These limits on communal and private rights and their role in setting forest policy have profound implications for the quality of forest sector governance. In most of the survey countries this situation is evolving, with stronger interaction with traditional groups and recognition of rights in some cases.

- The degree of responsibility and authority vested in the federal government and other tiers of government vary widely. In some countries governance of the forest sector is relatively centralized while in others main responsibility and authority reside either in the second level of government or even in the third tier. Thus, in Australia, Canada, India, Malaysia, and Switzerland, comparatively strong meso-level government forest agencies dominate, to some extent because there is little federal forest land and consequently the functions, powers and responsibilities of federal agencies are relatively less important. In Brazil, the US and other countries where there is comparatively more federal forest land, federal agencies are entrusted with more substantial power and responsibilities. In all cases, federal governments are responsible for those decisions that cut across the interests of meso level governments, such as the establishment of national environmental standards, administration of national and international trade and the administration of international relations in forestry.
- Federal forest agencies tend to have limited jurisdiction over the regulation of forest practices on private lands, although they do have national level fiscal programs that influence private forest activity. Member states or provinces regulate private forest activity in most cases. However, policies and the ways in which government structures interact with the private sector and the civil society vary widely from country to country. In the United States, federal as well as state governments have established programs to encourage and regulate private enterprises, although the main responsibilities lie with the state governments. India denies private

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3 For a commentary on the Act, see Asian indigenous and Tribal Peoples Network, 2006.

**Table 2.1. Roles of Forest Agencies in Federal Systems: Overview of Current Practice in Nine Major Forest Countries**

	Australia	Brazil	Canada	India	Malaysia	Nigeria	Russia <sup>4</sup>	Switzerland	USA
Public forest ownership	<ul style="list-style-type: none"> <li>• 25% private</li> <li>• 75% sub-national levels of government</li> </ul> <p>State governments (but not territorial governments) legislate forest practices and grant licenses for forest management on public land</p>	<ul style="list-style-type: none"> <li>• Federal, state, municipal and federal district governments own natural forests.</li> </ul>	<ul style="list-style-type: none"> <li>• 23% federal</li> <li>• 71% provincial</li> <li>• 6% private</li> <li>• Provincial governments legislate forest practices on provincially owned land and grant licenses for forest management;</li> <li>• The Federal and provincial governments manage and regulate federal and provincial parks respectively</li> </ul>	<ul style="list-style-type: none"> <li>• 98% is in public ownership</li> <li>• 85% of this is controlled by states</li> <li>• 10% communities and private</li> <li>• Forest administration is jointly managed by the federal and state governments but the states have the primary responsibility for implementation. States are expected to decentralize to third tier levels of government</li> </ul>	<ul style="list-style-type: none"> <li>• Forest ownership rests with the states. Only in a very few cases forests belong to customary communities</li> </ul>	<ul style="list-style-type: none"> <li>• All “forest reserves” (less than 10% of the country’s territory) are under the co-management of states and local governments, who award timber concessions</li> <li>• Constitutionally, the states have the greatest control over forest resources, but in reality the federal government exerts more power as it controls finances</li> <li>• Forested lands outside of Forest Reserves are not put under any form of systematic management</li> </ul>	<ul style="list-style-type: none"> <li>• 92% of forests are federally owned. Other forests may remain under ownership of the subjects of the federation or other public authorities</li> <li>• The federal government can share ownership with the subjects.</li> <li>• Private ownership of forests is allowed by law. The Forest Code links forest ownership to land tenure.</li> <li>• The Forest Code does not guarantee the constitutional rights of forest communities and indigenous peoples to conduct traditional livelihood activities in forest lands.</li> </ul>	<ul style="list-style-type: none"> <li>• Almost 75% is publicly owned.</li> <li>• About 2/3 of all forests are owned by communes/corporations, 4.5% by cantons while the central government owns less than 1%.</li> <li>• The rest is fragmented and owned by some 240,000 individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• 35% federal</li> <li>• 5% states</li> <li>• 60% private</li> <li>• The federal and state governments develop legislation for their lands respectively.</li> </ul>

Note regarding terminology for the various levels of government: Federal & National = Central; State, Province, Subject, & Territory = Sub-national; Municipal, Sub-state, Municipios, & Panchayats = Local

<sup>4</sup> Due to the drastic reform currently underway in Russia, some of the information in this table refers to potential outcomes of the near future and not the present situation.

	Australia	Brazil	Canada	India	Malaysia	Nigeria	Russia <sup>5</sup>	Switzerland	USA
<p>Federal Forest Agency and Federal Responsibilities</p>	<p>Department of Agriculture, Fisheries and Forestry.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Environmental protection;</li> <li>• Management of the federal forest estate;</li> <li>• Control of international trade in forest products;</li> <li>• Land use in the territories;</li> <li>• General directives for forest resources management for all states (overall sectoral strategies)</li> </ul>	<p>The Brazilian Forest Service, within the Environment Management Ministry, is the regulatory body for forest concessions. It acts exclusively in public forest administration.</p> <p>The National Forest Development raises and allocates funds for forest conservation and for the Forest Service.</p> <ul style="list-style-type: none"> <li>• The Brazilian Environment Institute (IBAMA) has responsibilities for monitoring and control.</li> </ul>	<p>Canadian Forest Service, Natural Resources Canada</p> <ul style="list-style-type: none"> <li>• Responsibilities:</li> <li>• International trade and relations;</li> <li>• Management of federal land;</li> <li>• National reporting;</li> <li>• Aboriginal affairs;</li> <li>• National consensus building</li> <li>• Responsibilities for environmental regulation as well as science &amp; technology are shared between the federal and provincial governments</li> </ul>	<p>The Central Ministry of Environment and Forests issues national policy directives and has responsibility for other functions that are national in scope, such as forestry research and monitoring of policy implementation</p>	<p>Ministry of Primary Industries The National Forestry Council (NFC) coordinates planning, management and development of forest resources.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Provision of technical assistance to the states, including the provision of training and research facilities;</li> <li>• Control of functions related to trade, industrial development, and the environment</li> <li>• National Forest Policy formulation</li> </ul>	<p>Federal Department of Forestry.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Formulation of national forest policy;</li> <li>• Land-use planning, forestry development, and environmental management;</li> <li>• Projects of national interest;</li> <li>• Research, training and education;</li> <li>• Trade and industrial development;</li> <li>• Institutional development</li> </ul>	<p>Russian Federal Forest Service, changing to the Federal Forest Administration.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Financing the protection, renewal and organization of forest use.</li> <li>• As part of its privatization process, Russia is moving towards a system of user contracts on productive areas of the Forest Fund (Forest Estate); the unproductive areas will be directly managed by the Federal Forest Administration</li> </ul>	<p>The two chambers of Parliament and the Federal Council have responsibility for</p> <ol style="list-style-type: none"> <li>1) Forest Policy and Program formulation.</li> <li>2) Annual decisions on public funding.</li> <li>3) Implementation of responsibility is under the Department for the Environment, Transport Energy and Communications</li> </ol>	<p>Various Federal agencies, including:</p> <ul style="list-style-type: none"> <li>• US Department of Agriculture's Forest Service.</li> <li>• US Department of the Interior US Bureau of Land Management;</li> <li>• National Park Service,</li> <li>• US Fish and Wildlife Service,</li> <li>• Bureau of Indian Affairs</li> <li>• US Department of Defense.</li> <li>• Each agency has regulatory and management responsibilities for different types of land they control.</li> </ul>

<sup>5</sup> Due to the drastic reform currently underway in Russia, some of the information in this table refers to potential outcomes of the near future and not the present situation.

State Forest Agencies and State Responsibilities	Australia	Brazil	Canada	India	Malaysia	Nigeria	Russia <sup>6</sup>	Switzerland	USA
<p>Forestry is now just a small component of larger integrated departments or multi-resource agencies.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Land tenure;</li> <li>• Land use;</li> <li>• Public forest management;</li> <li>• Water supply;</li> <li>• Regulation of private forest land practices</li> <li>• State governments (but not territorial governments) legislate forest practices and grant licenses for forest management on public land</li> </ul>	<p>States are responsible for issuing regulations for the management of forests, and monitoring compliance control. State regulations must agree with national policies and priorities.</p> <p>State government can enter into partnerships with federal agencies to introduce state level regulations and monitoring and control of compliance with them.</p>	<p>Most provinces have a Ministry of Forests (or equivalent).</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Management of provincial land;</li> <li>• Allocation of timber licenses;</li> <li>• Forest policy legislation;</li> <li>• Data collection</li> </ul>	<p>State Forest Departments have main operational duties. States also adopt state policies that must be in agreement with policies issued by the Central Government</p>	<p>States have a Forestry Department.</p> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• Land tenure/ownership</li> <li>• Forest policy at state level</li> <li>• Implementation and monitoring of forest policies</li> </ul>	<p>Most states have a State Forestry Department.</p> <p>According to the constitution, states can develop their own forest policy within the framework of the National Forest Policy. Forest Management is decentralized to regional governments.</p>	<ul style="list-style-type: none"> <li>• The subjects share some authority delegated by the Federal Forest Administration through regional regulation-making bodies; but such regulations will be enforced by the Federal Forest Administration</li> <li>• Leskhozos are state enterprises (a type of regional forest service) that combine forest administration and forest management responsibilities.</li> <li>• Subjects can make decisions regarding allocation of forest plots for leasing and free use</li> </ul>	<ul style="list-style-type: none"> <li>• Cantonal parliament sets policy.</li> <li>• Forestry programs are implemented by various departments.</li> <li>• All cantons have a cantonal forest service.</li> </ul>	<p>State Forest Departments regulate forest practice on private land, private industry, and enforce state laws. There is a variety of policy, legislative and enforcement arrangements in different states.</p>	

<sup>6</sup> Due to the drastic reform currently underway in Russia, some of the information in this table refers to potential outcomes of the near future and not the present situation.

	<b>Australia</b>	<b>Brazil</b>	<b>Canada</b>	<b>India</b>	<b>Malaysia</b>	<b>Nigeria</b>	<b>Russia<sup>7</sup></b>	<b>Switzerland</b>	<b>USA</b>
<b>Coordination of multiple levels of government</b>	<ul style="list-style-type: none"> <li>National Forest Policy Statement.</li> <li>Regional Forest Agreements;</li> <li>The Australian Forestry Council has developed a set of national principles to be applied in the management of native forest resources used for wood production on both public and private lands;</li> <li>Natural Heritage Trust.</li> </ul>	<ul style="list-style-type: none"> <li>Monitoring and control by IBAMA is carried out in coordination with state environmental agencies integrating the National Environmental Management System, SISNAMA.</li> <li>The National Forest Development Fund is managed and coordinated by the Brazilian Forest Service.</li> <li>The National Forest Service has responsibility for articulating the coordination between Federal, State and Municipal governments. Each state and municipal government has some degree of discretion to adapt the national law to their own state peculiarities.</li> <li>Forest management units must obtain environmental use license from the relevant entity of the National Environmental Management System (SISNAMA).</li> </ul>	<ul style="list-style-type: none"> <li>The Canadian Council of Forest Ministers (CCFM) is focused on making more effective and efficient linkages between federal and sub-national entities;</li> <li>National Forest Strategy.</li> </ul>	<ul style="list-style-type: none"> <li>Third tier of government relationships are left mainly to States.</li> <li>Joint Forest Management has been employed in some areas, which involves partnerships between government and communities</li> <li>In Joint Forest Management agreements, sub-state governments are responsible for forest resources planning.</li> </ul>	<ul style="list-style-type: none"> <li>The National Forestry Council (NFC) is a forum for federal and state governments;</li> <li>Together the central and state governments have prepared national level criteria and indicators for sustainable forest management, have developed a domestic forest management certification system, and have a relatively robust forest regulatory and monitoring system including the National Forest Policy.</li> </ul>	<ul style="list-style-type: none"> <li>The National Forest Policy;</li> <li>Revenue sharing systems are in place between state and local governments;</li> <li>The national forest and wildlife policy is being reviewed to make its implementation more participatory;</li> <li>A national wildlife forest law is being developed with involvement of all stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Federal Government has the primary responsibility for coordination but in reality, the institutional uncertainty present in the Russian government prevents effective harmonization between levels of government.</li> </ul>	<ul style="list-style-type: none"> <li>Cantons send representatives to the Parliament</li> <li>Council of States provides the framework for vertical coordination</li> <li>Intensive consultations with the people</li> <li>Various entities ensure vertical and horizontal coordination between levels of government.</li> <li>Forest Law sets procedures for coordination between Cantons and the Federal Government</li> </ul>	<ul style="list-style-type: none"> <li>There is no formal mechanism to coordinate forest policy across levels of government - causing some tension between federal and state levels. Some states see federal government influence as excessive.</li> <li>There are several federal agencies that have jurisdiction over federal forest lands and their management approaches are often dissimilar.</li> </ul>

<sup>7</sup> Due to the drastic reform currently underway in Russia, some of the information in this table refers to potential outcomes of the near future and not the present situation.

	Australia	Brazil	Canada	India	Malaysia	Nigeria	Russia <sup>8</sup>	Switzerland	USA
Regulation of private forest practice and industry	<ul style="list-style-type: none"> <li>State governments apply the same codes of practices as on public forest land</li> </ul>	<ul style="list-style-type: none"> <li>Government entities at all levels may establish partnerships and contracts with third parties.</li> <li>Public forests occupied or used by communities are identified and set aside as extraction and sustainable development reserves as well as concessions for community projects. Up to 25 million hectares of public forests are expected to be destined for local communities.</li> <li>Only legal entities headquartered in Brazil are eligible for forest concessions. Each forest concession to be exploited for up to 40 years. Up to 13 million hectares may be dedicated to forest concessions.</li> </ul>	<ul style="list-style-type: none"> <li>Provincial governments legislate forest practices on private forest land</li> </ul>	<ul style="list-style-type: none"> <li>Industry cannot obtain leases for access to forest resources. Industry no longer obtain wood supplies from government forests.</li> <li>National Forest policy encourages partnerships with local communities for securing forest raw material supplies.</li> <li>The law recognizes rights of forest dependent peoples living in forests and national parks (as many as 40 million) to non-timber forest products (but it proscribes hunting).</li> <li>Some sectors of the paper industry remain protected by import tariffs.</li> </ul>	<ul style="list-style-type: none"> <li>State governments legislate forest practices within the broader context of the National Forest Policy</li> </ul>	<ul style="list-style-type: none"> <li>State governments can develop forest policies within the context of the National Forest Policy.</li> </ul>	<ul style="list-style-type: none"> <li>Four types of licenses can be granted to the private sector such that forest operations and the implementation of management plans will be undertaken by forest users (licensees) while the central government or the subjects focus on strategic, regulatory, and enforcement activities</li> </ul>	<ul style="list-style-type: none"> <li>There is no distinction between private and public forest owners. They all follow the same regulations.</li> <li>Cantons implement the forest law and decide on private forest management.</li> </ul>	<ul style="list-style-type: none"> <li>State governments legislate forest policy for private forest management.</li> <li>Federal environmental legislation affects forest practice on private lands, most importantly the Endangered Species Act and the Clean Water Act, with each state having the flexibility to design its regulatory framework to comply with national legislation</li> </ul>

<sup>8</sup> Due to the drastic reform currently underway in Russia, some of the information in this table refers to potential outcomes of the near future and not the present situation.

corporation access to public forests and instead induces corporations to secure their industrial wood needs by establishing partnerships with small landowners. In some countries the access of non-governmental institutions to the government decision making process is supported, while in others such participation is not encouraged.

- Because of their multilevel centers of power and responsibilities, federal structures of forest governance are complex, involving many institutions and strong cross sector linkages, e.g. with agriculture, water, transportation, sectors. Therefore, management and coordination of government activities becomes critical for quality forest governance (cf. Schmithüsen 2003; Broadhead 2003). In all cases the federal forest agency is only one of a number of federal agencies affecting the governance of forest lands. Strong roles of other agencies and planning, financial and operational linkages to other sectors appear to create the “checks and balances” that enable a measure of accountability to society and contribute to integrate concerns of stakeholders - particularly beyond those directly involved in the forestry sector. In some countries the number of government agencies involved may run into the hundreds. In the United States, for example, there are 31 other federal agencies that interact directly with the US Forest Service in planning and managing federal forest lands, and many others have a more indirect linkage (Ellefson and Mouton 2000). The same situation with the involvement of multiple agencies in forest governance also exists in most second tier governments in the case study countries.
- In most cases, the power of the forest administration agencies, both at the federal and state/provincial level, vis-à-vis other agencies of government is relatively minor. Forest public administrations at federal and state levels are often subsidiary bodies of ministries of environment or agriculture or incorporated in small, relatively less powerful ministries of forestry or similar bodies. As mentioned, in some cases the jurisdiction of forest agencies is shared with other powerful agencies, such as in the case of Brazil and the United States. And in most countries, the main resource allocation decisions are determined outside the sector, e.g., in legislatures and similar representative bodies that deal with overall governance. Thus, the health of forest governance depends greatly on the health of other agencies and public bodies. A proper management of inter-

sectoral and interagency linkages is difficult and not often achieved satisfactorily in many federal countries.

- In most, if not all countries studied, forest governance is undergoing substantial transitions - in all of the dimensions considered above. For example, the new Russian Forest Code transfers management authority of public lands to the regional level, and allows the privatization of its public domain (Taiga Rescue Network, 2007; Russian Federation, 2006). In the US, the Forest Service is increasing the role of local communities in administering portions of the federal forests. Brazil recently passed a forest law that sets a framework for allocating the public forest domain to different levels of government, creates a new federal forest administration, a federal forest development fund, and decentralizes regulatory authority to the states (Government of Brazil, 2006). As mentioned, India has recently approved a new tribal right bill that relates directly to forests.

This review of patterns of decentralization of the forest administration reveals that there is no one model for decentralization of authority and decision making and that decentralization processes in many of the countries are still in a transitional state. There is a wide diversity in the ways in which government planning, financing and management of administration of the sector are organized and implemented. Functions that are decentralized are variable as is the extent and intensity of decentralization. Interactions between agencies of government are generally complex at all levels of government as also are the interactions with private sector and the civil society. Some governments allow more local governance and the participation of other non public sector actors either in the form of consultation related to key local decisions or more active sharing of decision related to key governance decisions. Some decentralized governments are according a greater recognition to traditional rights of rural communities and thus creating a completely new sphere of government administration of forest lands, while others continue to subdue or deny these traditional rights thus imposing forest management decisions that often are intensely resisted by traditional communities and often not in their best interest.

In the Chapters that follow specific country examples of all the general observations made above will be presented as each general theme is touched upon in detail.



# 3

## Lessons from decentralized forest governance in countries with federal systems of government

As shown in the last section, federal governments have a wide variety of legal and administrative structures with different degrees of decentralization. However, while the architecture of administrative structures are important, the quality of forest governance in all cases also depends on how well government officers and agencies operate within their institutional structures and rules. Thus, for example, and independently from the degree and nature of decentralization, the quality of forest governance would be poor if the legislative framework guiding the direction of sector management is faulty, or agencies of government are ineffective, or the forest administration is plagued by corruption. The quality of overall governance of the countries examined is extremely varied, ranging from countries with efficient and effective governments to others that have been described as “failing states”.

### 3.1. What is good governance?

The World Bank Institute Governance Group defines governance as: “the traditions and institutions by which authority in a country is exercised.” (Kaufmann 2003; Kaufmann et al 2005). In this study “forest governance” is defined as *the set of rules and institutions that control and determine what happens to a nation’s forests and who gains and who gets hurt as a consequence*. To be more specific, forest governance is associated with the government agencies where official authority and power is located, including ministries of forestry, agriculture, environment and other regulatory agencies. It is associated with the laws, regulations and policies that govern the activities of those agencies. It also is affected by how these agencies engage with other institutions of the civil society, the private sector and private individuals. (World Resources Institute, 2003). “Good” forest governance is governance that best meets, in a transparent, equitable and sustainable way, the forest related needs and goals of the population of the country and its constituent parts. Forest governance is about who holds power, who is responsible and

how accountable decision makers are to citizens and to each other.

### 3.2. Why is decentralization expected to lead to better forest governance?

In principle, decentralized forest governance should lead to better economic, equity and environmental outcomes (Ribot, 2002). Local governments are closer to local forest management conditions than distant central governments and therefore they should be quicker, more efficient and more responsive to local circumstances and needs. With decentralization decision-making bottlenecks are avoided, particularly related to routine decisions, allowing the central government to concentrate on those functions that require a central approach such as policy formulation and implementation. Local government officials should be more knowledgeable of local situations and as a result information to plan efficient forest management programs should be readily available. Decentralization can also reduce costs if people feel that their tax money being spent in local programs, rather than being dispersed to the central government. Further, local people and enterprises are likely to contribute to the implementation of local forest management projects if they can participate in the decision making and conclude that such projects can contribute to improving their own situation. Such programs and projects also are more likely to be sustainable if local interests feel that they have participated in their design and that such design reflects priorities of local constituencies. Decentralization, particularly if there is political decentralization, brings government closer to the local people and therefore it enables local government agencies to better respond to local priorities. Further, more intense interaction with local people and interests offers the potential to increase the level of transparency and accountability in government decisions affecting forests. It is further argued that decentralization can provide greater access to democratic institutions and thus contribute to a

more participatory and democratic government decision-making. In some cases decentralization can also address local conflicts and satisfy demands for greater regional autonomy in the management of resources in general and forests in particular. In short, adequate decentralization has the potential to increase allocative efficiency, equity and environmental management.

While they are considerable potential advantages of forest management decentralization they do not happen spontaneously once the structure of government is modified. There are plenty of potential problems that can arise in decentralization reforms. For example, forest rich states or districts may become wealthier by exploiting their forest resources but in ways that may increase income disparities with other states or districts, thus negating some spatial equity effects sought with decentralized forest governance. In the absence of clear incentives state or local governments may have little interest in sustaining forest production over long periods of time, in this way creating some undesirable intergenerational equity impacts. The propensity of sub-national government to make accelerated and unsustainable use of their forest resources may increase if their authority over forests is not stable and secure. The capture of local governments by interest groups may be easier at state or local levels than at the central government level, particularly if already there are high disparities in power and income or where caste or feudal relationships are still prevalent. Uncoordinated decisions on forest management taken at sub-national levels of government may weaken national policy coherence. Excessive sub-national public unfunded expenditure can jeopardise fiscal autonomy, and so on. As we will see, our case studies show that forest decentralization can lead to the potential benefits outlined above but only if some of its dangers can be effectively avoided. In fact, the experience so far shows that countries attempting decentralization have met with mixed results. The following sections discuss the factors that are likely to determine the quality of forest governance in decentralized structures of government.

### 3.3. Factors influencing the quality of forest governance

This review suggests that the quality of decentralized forest governance is strongly dependent on the institutional and political conditions of the government in general. Based on the assessment of the country cases, and adapting from Kaufmann et al (2005), the

operational conclusion emerges that there are at least **five key factors external to the forest sector that are necessary for good forest governance**:

- *Existence of an effective citizen voice in choosing governments that have transparency and accountability, as well as in influencing decisions and monitoring their implementation;*
- *Existence of fair and clear, enforced property rights*
- *Existence of an appropriate regulatory framework*
- *Respect of the law by governments, the private sector and the civil society*
- *Effective linkages between institutions of government, the private sector and the civil society*

These are all key factors, external to the forest sector, for effective forest governance. Manor (1999) notes that there are various other factors that are helpful, for example, the existence of a lively civil society and influential civil society groups that enjoy substantial independence from government but that can help in exposing faulty government decisions and help with planning and implementing better ones in a transparent manner. Also, pre-existing cultural and local traditions may be important. Traditions that are based on strong and effective local decision making, especially in rural and forest areas, may facilitate effective decentralization. However, there is little evidence that different configurations of all these factors have any more or less influence on the quality of *decentralized* as opposed to centralized forest governance. Thus, without these conditions in place, both centralized and decentralized forest governance are likely to face serious problems.

So what are the additional sector specific conditions that are necessary and sufficient for *good decentralized* forest governance? Addressing this question through the country case studies leads to the conclusion that, consistently across countries, there are three key factors internal to the sector that appear to be determinants of **good decentralized** forest governance. These are as follows:

- *Adequate resources and institutional effectiveness at each level of government.* Forest related agencies at all levels need to have sufficient financial, technical and social resources and capacity; i.e., authorities at all levels must know what to do, know how to do it, and have the resources to do it.

- *Effective and balanced distribution of forest related responsibilities and authority, among levels of government.* Certain forest management decisions are better made at the sub-national levels of government, while others may best be retained at a central level. Responsibilities at the central level include those that are needed to provide a coherent management of the resource and to handle management issues, such as pest and fire control, that may have effects that exceed the political and geographic boundaries of second and third tier governments. On the other hand, decisions affecting many other factors may best be left to local governments.
- *Sufficient involvement of civil society and the private sector at all levels of forest governance.* This condition parallels the necessary external condition mentioned above. However, here we are talking specifically about stakeholder participation in forest governance through forest related civil society organizations, through the private sector, and through legally established co-management schemes with the public sector, mainly at the sub-national level, but also at the national level. Critical to the effectiveness of such participation is the full

and fair recognition and enforcement of the rights of all forest stakeholders. Without such, there is little incentive for participation in formal processes of governance.

These three internal and five external factors, together with their linkages, are indicated in Figure 3.1. In the remainder of this paper we look at the external factors that are critical for successful forest governance. The next sections look in more detail at the internal factors.

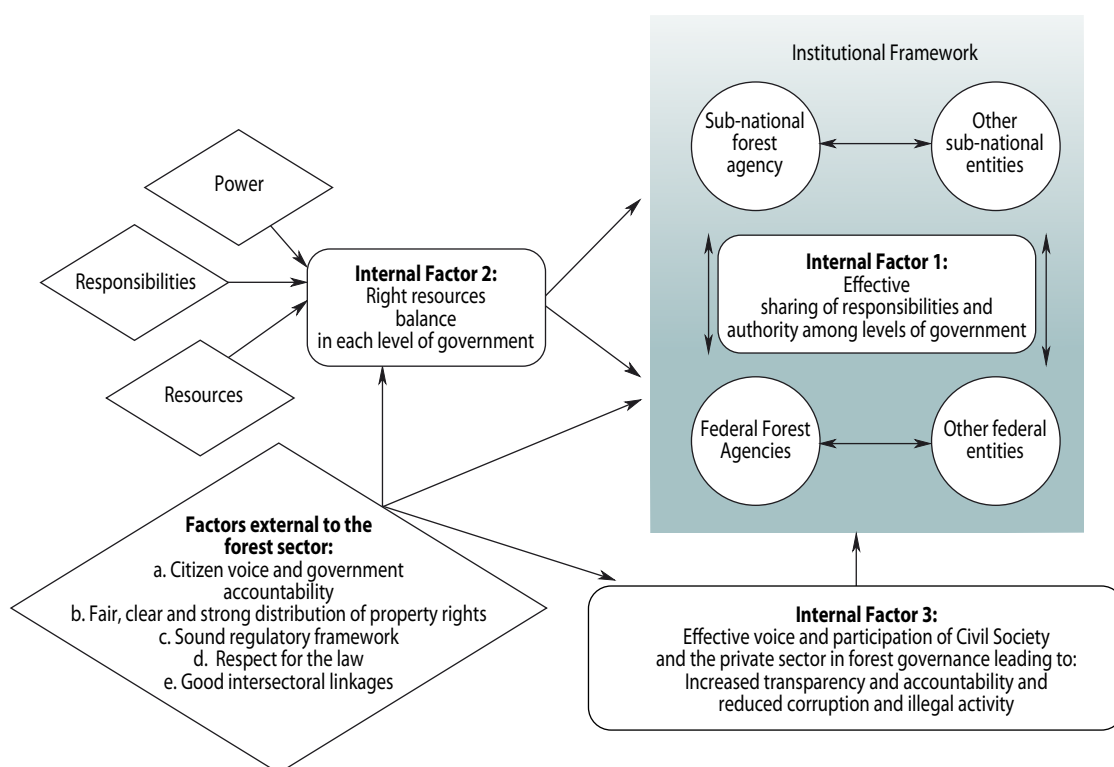
### 3.3.1. Key Governance Factors External to the Forest Sector

As indicated, there are five external factors that are particularly key in terms of creating the right context for forest governance or the governing of any sector, for that matter. We briefly look at each.

#### 3.3.1.1. Existence of an effective citizen voice in choosing governments that have transparency and accountability, as well as in influencing decisions and monitoring their implementation

Participation and voice of civil society and the private sector in public decision making are associated with better governance.

Figure 3.1. The elements of good decentralized forest governance in case study countries



“Participation and voice” refer to the extent to which the citizens of a state or a nation are able to participate in the selection and running of governments and in their activities, as well as the extent to which government agencies are accountable to and influenced by citizen involvement and pressures. Participation and voice include the specific mechanisms that are in place to ensure such involvement and accountability, including citizen fora, appeals processes, and educational programs that increase citizen knowledge of what governments are doing. These are also important at the sectoral level, as will be evident in the sections that follow.

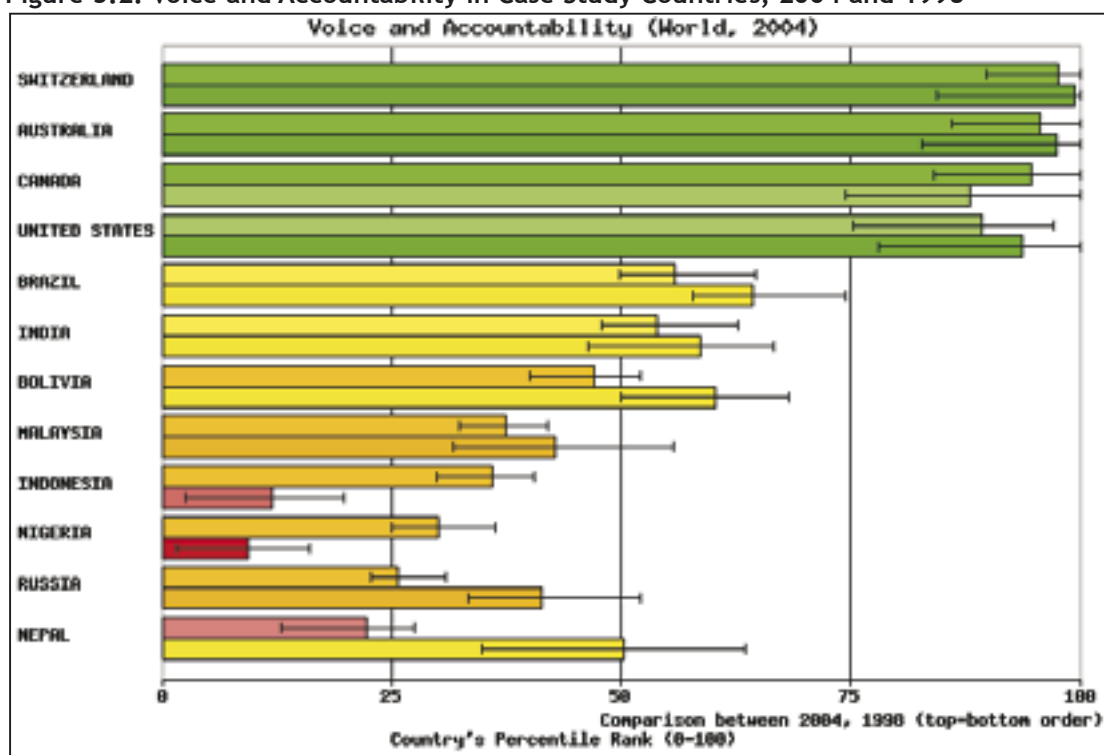
Government accountability to citizens includes various relationships between different groups. In the particular case of forestry in democratic societies such as the USA and Switzerland, citizens hold politicians accountable for their decisions while politicians hold government forest agencies accountable for the results from the management of the nation’s forest resources. With decentralized governance in federal systems of government, local constituencies, while having a role in electing federal decision

makers, also elect sub-national decision makers. Thus, decentralization in democratic societies introduces another accountability link, namely that between the local and the central government elected officials and the citizens who elect both.

Greater voice and accountability may also lead to more political stability. Minorities in decentralized federal states appear to be less likely to engage in violence, as compared with those in unitary countries. There is a strong correlation between the two. Minorities in decentralized states, such as indigenous groups, can engage in negotiation and influence local governments (Bermeo, 2005). We come back to this point in section 6 when discussing the specific case of citizen voice in forest governance.

Figure 3.2 indicates the rankings of the case study countries in terms of “voice and accountability”. While some of the factors that determine voice, participation and external accountability are undoubtedly sector specific, most are in fact related to the broad spectrum of government and not just the forest sector. In other words it is unlikely that there will be good conditions

Figure 3.2. Voice and Accountability in Case Study Countries, 2004 and 1998



Source: Kaufmann et al 2005 . Percentile rank shows the percentage of countries worldwide that rate below the selected country for the two years 2004 and 1998 (top and bottom respectively). The best quartile is in green. The second best quartile is in yellow. The third in orange and the fourth in red. The statistically likely range of governance indicator is shown as a thin black line.

related to the forest sector, if such conditions do not exist broadly across sectors and functions of government. The figure shows that there is a great variation among our study countries and that with a couple of exceptions, there is a trend to increase citizen voice and participation in government.

Experience in the case study countries shows that generating greater local voice and participation is not an easy process. Numerous tensions normally arise between citizen groups seeking greater voice and government entities. In fact in most of the countries reviewed, the pressures between civil society interest groups and government agencies are stronger than between the levels of government. While this is to be expected in a democracy with a wide range of viewpoints related to various matters, it also is an important lesson to keep in mind when looking specifically at the forestry sector. Quite often, governments spend way too much time and effort to get federal-state forestry relations organized and not enough time and effort to get government -civil society-private sector linkages working effectively. This is where the pressures tend to be today; this is where much of the innovation in management and co-management is taking place; and this is where many of the checks and balances on illegal forest activities and other manifestations of poor governance will need to be put in place.

### **3.3.1.2. Existence of fair and clear, enforceable property rights**

Although situations in countries vary, in most cases good governance is impossible if property rights are not well established and enforced by government. Recognized and enforced property rights may be less important in situations such as in some parts of Brazil, where land and forest resources abundance in relation to population may be high, but this invariably changes as the density of population and resources scarcity increases. In these circumstances conflict and resource dissipation are much more likely to happen.

When property rights are uncertain, some of the tools for decentralized governance such as collecting taxes or inducing private behaviour through incentives lose much of their force. Many stakeholder tend to operate in the “informal” sector of the economy and thus are relatively impermeable to controls by government. The other side of the coin is that the lack of established property rights tends to limit the participation and voice of stakeholder in government affairs, as evidence of property rights is sometimes a

condition for interactions with the government. For example, the same stakeholders must spend time, resources and great effort defending their property from others, as the option of calling government agencies for enforcement will not be available.

Besides a weak system of property rights, some governments have property policies that are perceived as unfair by some and are therefore intensely resisted. For example, in some of the countries renewed (Indonesia is one such example), the government does not recognize customary property rights belonging to communities despite the fact that these may have had control over resources for generations.

### **3.3.1.3. Existence of an appropriate regulatory framework**

As many of the governance actions directly associated with forests depend on regulations in related sectors and in the nation as a whole, the quality of forest governance will be a function of the attributes of these other areas of government regulation. For example, the effectiveness of law enforcement related to forests will depend largely on the regulations that govern police action, both locally and nationally. Certain key activities carried out by the private sector, such as export of forest products, depend on a country’s fiscal and trade laws and policies and so on.

The quality of the regulatory framework is a broad concept. Factors taken into account include regulatory burden in establishing businesses, access to markets, including capital markets, ease with which information on regulations can be obtained, the fairness of competition (as regulated by government), regulations related to trade, and tax effectiveness. Figure 3.3 shows a composite index of these factors that measures the general regulatory quality in each of the study countries at two periods in time.

The differences between countries are striking with the less developed countries in this study having the lowest regulatory quality. Canada, Australia, Switzerland and the U.S. have a long history of battling regulatory disorder and confusion and making progress in this area. They have spent much time and effort in fine tuning the regulatory burden for the private sector and between levels of government and thus obviously would come up high on the list. A second group of countries include ones such as Indonesia and Russia that have only recently become interested in resolving regulatory issues related to the private sector and lower levels

of government. One would not expect them in such a short period of time to resolve the issues. Finally, one has countries such as Nigeria, where long term instability gives rise to many other priorities besides dealing with regulatory disorder. Among other things, if enforcement of regulations is weak, then regulatory quality on paper is of little consequence.

The differences among our survey countries match a pattern observed worldwide. In fact, developing countries in general, particularly the poorest ones, have a propensity to suffer from a proliferation and poor quality of regulations and, as a result, a larger “informal sector” that operates outside the regulatory framework (World Bank, 2004). What is discouraging from a forest governance perspective is that there have been so few of our study countries showing general improvements in regulatory quality over the 1998-2004 period (See Figure 3.3)

While a poor regulatory framework creates problems in both federal and unitary countries, decentralized or not, forest decentralization initiatives risk an increase of regulatory problems and therefore a deterioration of the quality of governance. This is because regulations issued by the various tiers of government can easily result

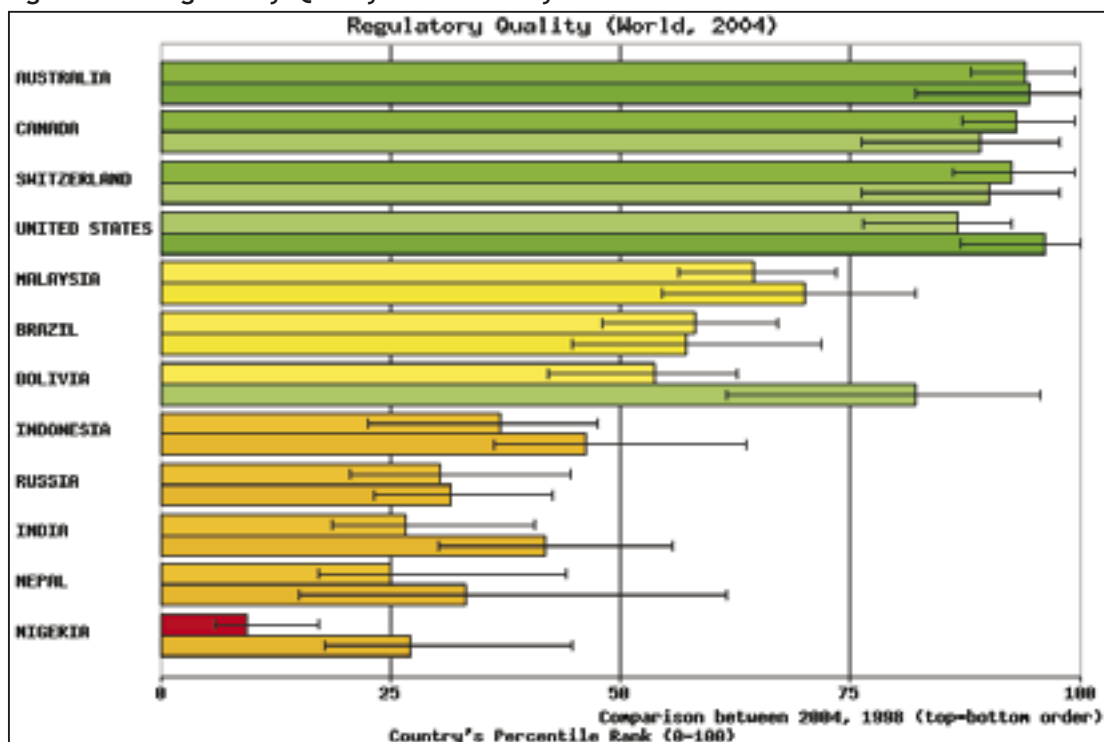
in regulatory proliferation. In turn regulatory proliferation increases the possibilities of legal inconsistencies and compromises the integrity of the forest legal system. Regulatory excess can also create significant problems of enforcement and foster corruption. With decentralization, the regulatory framework tends to become more complex, particularly when there are various agencies of various tiers of government, not only the public forest administration, dealing with forestry issues. This can result in confusion and conflicts among levels of government.

### 3.3.1.4. Respect of the law by governments, the private sector and the civil society

The quality of governance in the forest sector depends heavily on how laws and regulations are applied and respected by all. Ideally the law should be equal for all and government officials should be held responsible for acts made in their personal capacity that exceed their lawful authority.

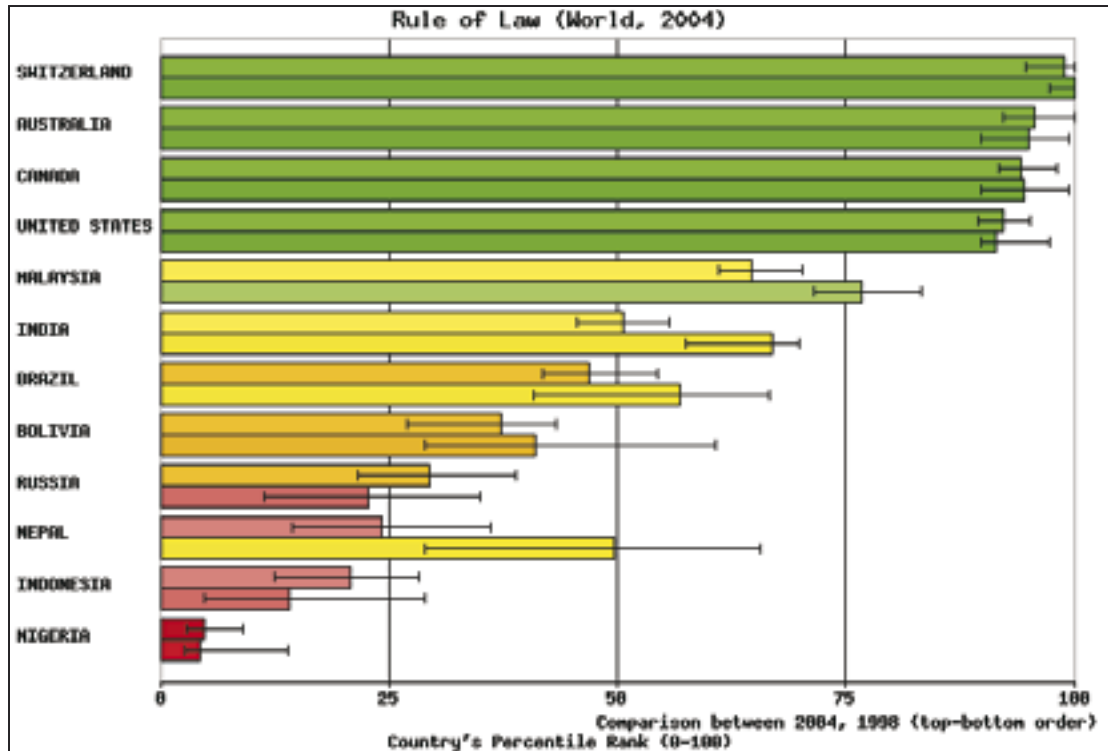
Governance assessments show great differences in the application of the rule of law between the countries in this analysis and substantial changes in some cases (see figure 3.4).

Figure 3.3. Regulatory Quality in Case Study Countries. 2004 and 1998



Source: Kaufmann et al 2005. Percentile rank shows the percentage of countries worldwide that rate below the selected country for the two years 2004 and 1998 (top and bottom respectively). The best quartile is in green. The second best quartile is in yellow. The third in orange and the fourth is in red. The statistically likely range of governance indicator is shown as a thin black line.

Figure 3.4 Rule of Law in Case Study Countries, 2004 and 1998



Source: Kaufmann et al 2005. Percentile rank shows the percentage of countries worldwide that rate below the selected country for the two years 2004 and 1998 (top and bottom respectively). The best quartile is in green. The second best quartile is in yellow. The third in orange and the fourth is in red. The statistically likely range of governance indicator is shown as a thin black line.

An important and related component of quality of governance is the effectiveness of government in controlling corruption, defined as the use and abuse of public office for personal gain. Corruption can take many forms, in all cases weakening the capacity of the public administration to enforce the law, thus leading to poor governance. Bribes and kickbacks are paid to government officials for a favorable decision on, for example, awarding a procurement contract or a subsidy. In other cases, bribes are paid to “facilitate” government authorizations. As a result of corrupt practices, major government decisions that indirectly or directly affect forests may not be guided by the public interest, but by the possibilities of personal gain. Figure 3.5 displays the results of assessments of the study countries. As can be appreciated, there are very important differences between the survey countries. In some, it would appear that the prevalence of corruption is an important obstacle to achieving higher levels of other dimensions of governance. What is troubling in some cases is the reduction in the capacity or willingness of governments to control of corruption over time.

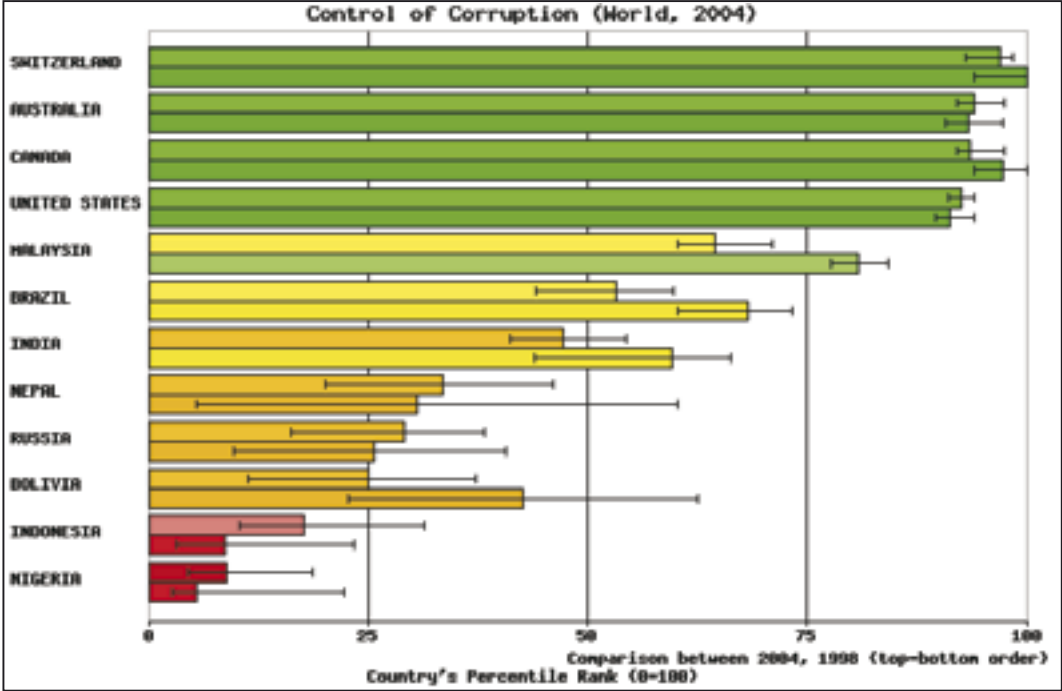
Again, an interesting observation is that the rule of law and control of corruption are particularly weak in developing countries and Russia. A

comparison of the evolution of these aspects of quality governance over time also shows that some of the countries at the bottom of the range are of experiencing further degradation in both respects.

Whether federalism and decentralized decision-making is associated with better control of corruption is a matter of debate as evidence is contradictory, as shown in Figure 3.5. However, Shaw (2006), based on recent research, suggests that:

*decentralized local governance is conducive to reduced corruption in the long run. This is because localization helps to break the monopoly of power at the national level by bringing decision making closer to people. Localization strengthens government accountability to citizens by involving citizens in monitoring government performance and demanding corrective actions. Localization as a means to making government responsive and accountable to people can help reduce corruption and improve service delivery. Efforts to improve service delivery usually force the authorities to address corruption and its causes. However, one must pay attention to the institutional environment*

Figure 3.5. Control of Corruption in Case Study Countries, 2004 and 1998



Source: Kaufmann et al 2005. Percentile rank shows the percentage of countries worldwide that rate below the selected country for the two years 2004 and 1998 (top and bottom respectively). The best quartile is in green. The second best quartile is in yellow. The third in orange and the fourth in red. The statistically likely range of governance indicator is shown as a thin black line.

*and the risk of local capture by elites. In the institutional environments typical of some developing countries, when in a geographical area, feudal or industrial interests dominate and institutions of participation and accountability are weak or ineffective and political interference in local affairs is rampant. Localization may increase opportunities for corruption. This suggests a pecking order of anti-corruption policies and programs where the rule of law and citizen empowerment should be the first priority in any reform efforts. Localization in the absence of rule of law may not prove to be a potent remedy for combating corruption.*

While decentralization may introduce more effective systems of checks and balances in government operations, it may also facilitate control of local government by entrenched elites. As with the other dimensions of decentralization, its effect on the quality of governance seems to be a function of how decentralizations is carried out, rather than the degree of decentralization per se. (Lanyi, 2004).

**3.3.1.5. Effective linkages between institutions of government, the private sector and the civil society**

Tiers of government and government agencies responsible for the management of forest resources do not operate in a vacuum, but in the context of a large government apparatus. The effectiveness of the entities involved directly in forest governance will therefore depend on the effectiveness and quality of the relationships with other sectors of government as well as with the private and civil society.

Decentralized structures of governance in principle will force more adequate management of inter sector and multi-level linkages. However, that is in principle only. The quality of forest governance will depend on the ability of the general government machinery to effectively and efficiently manage interactions between sectors. At the intergovernmental level, there is need for effective linkages also. Thus, in cases such as the United States, more than thirty government agencies affect the forest sector at the federal level alone. When one adds state and local government entities, then the numbers reach into the thousands. We will look at this factor of linkages from a sector perspective in



the section dealing with the specifics for the forest sector. However, quite aside from the linkages specific to that sector, there is need for good linkages in general, e.g., between executive branches of the federal government and the states, legislatures at all levels, law enforcement and taxation related agencies at different levels of government, and agencies that deal with trade, transportation and energy. Good forest sector governance depends on the general linkages within government working smoothly and effectively, i.e., the general institutional effectiveness, as is illustrated in all of the case study countries.

In the case of the forestry sector, such other sectors as energy, transportation, trade and industry, and, of course, agriculture and environmental protection are key partners and generally create conditions to which the forestry sector has to adjust. The latter sector tends to be a follower rather than a leader in most countries in terms of major change in governing structure; and the sector often is treated as a source of funding for other programs, thus increasing the importance of proper management of inter-sector linkages.

### 3.4. Conclusions and lessons learned

The differences in the quality of overall governance in the countries studied are profound. Some of the federal countries, including Switzerland, Canada, the United States and Australia score systematically high in all the dimensions of governance, while others,

particularly Nigeria suffers from extremely poor governance, according to the World Bank studies of governance. Five of the countries considered in our assessment have levels of governance quality that puts them under the fiftieth percentile.

External factors influencing good forest governance in the countries at the bottom of the list are mostly absent. In some countries, particularly those where there have been marked improvements in some governance factors between 1998 and 2004 decentralized governance has considerable promise for good forest management while in others it does not.

The reader may consider that we have spent too much time and space discussing these general factors associated with overall governance in the case study countries. We have done so since our assessment of forest governance in these countries encountered time and time again the fact that the specific forest sector problems identified are related, sometimes directly, to overall governance problems. Forest governance cannot be adequately assessed without a clear understanding of the overall context within which it exists and on which it so greatly depends.

We now turn in the next three sections to the three main factors internal to the forest sector that we found also must be in place to have *good* decentralized forest governance. In the process of thinking about these sector specific issues and requirements, it is good to keep in mind the above discussion on the overall external requirements for good forest governance.

# 4

## Distribution of responsibilities and authority among tiers of government: a dynamic and demanding process

Federal countries share forest related responsibilities and authority between levels of government and within levels of government in different manners and these variations raise several issues that relate to the quality of governance. A first one has to do with the *extent of decentralized governance* at lower levels, that is to say how much and what functions, responsibilities and authority should be taken on by sub-national governments; and what are the results in terms of the overall quality of forest governance? With a large number of functions undertaken at the lower levels of government, there is a greater possibility of forest governance being more responsive to local realities, but at the same time there is the risk of losing national policy coherence and creating conflicts among states competing for central resources. There also is the very real danger of local elites capturing the local governance institutions, in the same way that national elites can capture decision making for the sector when it is centrally dominated. The balance between levels is an important consideration, but one that may already have been set by a constitution and thus difficult to change.

Within this general issue of the sharing of authority, power and responsibilities between levels of government is the sub-issue of the implications of the sharing of power among different agencies at a given level of government. This issue is discussed in section 5.

The second major issue relates to the *stability of the distribution of power, resources and authority over time*. Frequent and/or drastic changes may cause problems, particularly in terms of local citizen trust in forest agencies and professionals and in terms of the delivery of services that require a long time and/or require experience and acquired skills to master. This relates to the issue of stability of government discussed in section 3.

### 4.1. Extent to which power and authority are shared

Table 2.1 summarizes the most important powers and responsibilities of the tiers of government in the *federal* countries included in this review. The reader should remember from section 2, that most, if not all, of these countries are undergoing important transitions in their forest administration. Thus, table 2.1 should be taken as merely a “snapshot” in time indicating what the situation was at the time of our assessment.

In most federal countries examined, decentralization processes have involved sovereign states assigning authority and responsibilities to a central government formed through a constitutional process. Exceptions include India, Nigeria and the Russian Federation, where decentralization efforts involved devolution from central to meso and local level governments. In the case of Nigeria, for example, it went from a federation of three regions in 1960, to one of four regions in 1963, and on to a federation of 12 states in 1966. The resulting decentralized forest governance pattern is full of confusion, inefficiencies and lack of cohesion.

The modalities of decentralization arising from dissimilar federalization processes appear to have had an impact on the balance of forest governance between federal and sub-national levels of government. Thus, in countries where states assigned responsibilities and authority to the federal government when they formed the federation (e.g., Canada and the US), the central government tends to have relatively less and the states more power and responsibility than in countries that started with a centralized government (e.g., Russia and Nigeria) or had periods of dictatorship or authoritarian rule (e.g., Brazil Indonesia and India).

In Brazil, until recently, most key decisions and implementation of programs were under the aegis of the Federal Environment Institute. In fact, the federal constitution of 1988 in general granted broad powers to the federal government. In Australia, Canada, India, Malaysia, Switzerland and the U.S., comparatively strong meso-level government forestry agencies have dominated and continue to dominate the picture. In Nigeria and Switzerland third tier governments either own or have been empowered with substantial responsibilities and authority to manage forest resources. However, that is where the similarity stops. While in Nigeria, all “forest reserves” are under the co-management of states and third tier governments, the latter have no real power to act and they sorely lack resources even if they could carry out effective forest governance. Thus, the federal government is the *de facto* governance agent.

Our cases also provide evidence that there is a general reluctance among decision makers and public sector administrators to devolve actual powers and resources to the local level of government. As a result, decentralization tends to stall at the first tier below the national level, if it gets that far.

In all the countries studied, it is common for federal entities to hold key forest governance responsibilities in areas that transcend the interests of individual states, provinces, etc., and in areas that require a national perspective. These include such areas as international and inter-state trade, international relations in forestry, and the establishment of uniform environmental standards for the nation and protection of endangered species in some instances. Federal governments in the case study countries often have major functions related to forest protection, mainly because such forest destroyers as fire, insects and disease can easily move across state borders. In Switzerland, for instance, as early as 1874, and after destructive natural disasters, the Federal Constitution included an article (number 24) that established the federal frame of competence in the protection and management of forests in mountainous areas. This was later extended to other areas of the country. Having the federal government take responsibility for these intra-state activities has worked well in all countries studied. Also some argue that assigning certain functions to lower levels of government can lead to greater corruption and greater cost than if such functions are carried out at higher levels. (cf. Lanyi 2004). The resulting argument is for more central management and control on forests.

At the same time, as pointed out in section 3, Shaw (2006) concludes that “decentralized local governance is conducive to reduced corruption in the long run,” if the general conditions discussed in section 2 are met.

It is important to re-emphasize that the roles assigned to different levels of government in the constitutions of many federal countries and the actual or *de facto* sharing of power and influence are often not the same. Thus, in countries such as Canada and the United States, federal governments use grants and other resource distribution mechanisms to influence state and provincial forest policy and management in areas that are state or provincial responsibilities according to the constitutions of those countries.

Since the governance context is extremely varied in the countries studied, as is the distribution of political power, no single formula emerges to help decide the best distribution of forest functions to the different layers of government. In theory the “*subsidiarity principle*” should be employed. It says that the lowest possible level of government that can discharge a needed function effectively and efficiently should carry it out. In practice this is difficult to determine. There are many functions that are most effectively implemented at the local level, but relying exclusively on local governments without a national scheme may lead to less than efficient overall allocation of scarce resources.

The balance between meeting local and broader needs is in constant dispute in most of the countries assessed. A sub-national government may dedicate great efforts to certain forest areas and functions that may have high priority from the local point of view, but only secondary importance in the context of the nation, or vice versa. This was the motivation for early policies in the United States that established the principle of reserving some unique forest lands as national parks or national forests for the benefit of all citizens of the country, not just the local population. The debate on the desirability of these types of areas remaining federal has been ongoing ever since they were established, with extreme views on both sides. Particularly in the area of forest preservation, there can be major national level issues arising if the federal government does not enter the picture. Thus, in countries such as the USA and Australia, and as mentioned above, Switzerland, there is a strong presence of the federal government in forest preservation and biodiversity conservation.

## 4.2. Changes over time - stability issues

In all the countries studied, the distribution of powers, resources and responsibilities in forest governance tends to change through time with more or less decentralization evolving as tensions between layers of government and between different political parties favouring different balances in power and responsibilities arise. This is particularly so in countries with sizable areas of public forest and freely elected, democratic governments. In a number of the countries studied, such as Australia, Canada and the USA, a main cause of shifts in responsibilities over time is changing governments following the regular election cycles.

In the USA, for example, when conservative republican governments get into power, there is a tendency to reduce federal authority and responsibilities in favor of stronger state and private control of forest governance. The opposite is true when liberal democrats enter office. But the changes always have tended to be at the margin, with only minor adjustment necessary. Thus, for example, the current, very much states rights focused, federal administration, on July 12, 2004, decided to devolve more decision-making over roadless areas on the national forests to the states and more decision making power over uses of forests to the local managers. This decision replaced the 2001 Clinton Roadless Area Conservation Rule, which had kept the decision making more centrally focused in Washington. "The rules give the nation's regional forest managers and the Forest Service increased autonomy to decide whether to allow logging roads or cellphone towers, mining activity or new ski areas." Others have said that the new rules water down protections "that are about fish and wildlife, that are about public participation, or about forcing the agency (Forest Service) to do anything other than what the agency wants to do." (Barringer 2004).

As one would expect in a country such as the United States, the proponents and opponents of the new policy have been actively touting their cases. This is a clear example of the dynamics of a federal system and shifts in powers and responsibilities back and forth between states and the federal government. However, as Taylor and Van Doren (2004) point out: "leaving those decisions (use of roadless areas) primarily to the nation's governors rather than the federal bureaucrats does not make intelligent decision-making any easier. All it does is transfer the venue of the fight over extraction versus conservation to about twelve western state

capitals. Accordingly, we can't help but suspect that the real policy objective behind this new rule is to transfer such fights to political playing fields where environmentalists are typically weaker and industry is politically stronger."

In the more autocratic federal countries, the changes are often more drastic, being forced on the country by autocratic, sometimes near dictatorial leaders. Such countries are more similar to unitary governments, where the power is concentrated in the central government and its leaders. Such was the case in the early Brazilian Federal Republic when it was first formed in 1889. The 1988 constitution of Brazil also grants broad powers to the federal government, although more responsibilities related to forests and land use now reside with the states.

While the distribution of power and responsibilities has changed over time in all the case study countries, so has the relationship between central and meso level governments. The Canadian province of British Columbia is a good example. The relationship between federal and provincial forest authorities has moved back and forth, from cooperation to conflicting interests and back to cooperation (See Box 4.1)

In Switzerland, where decentralized forest governance started 150 years ago, this process of adjustment also is constant, with government responsibilities and powers adapting to new political and economic realities. The government currently is debating a new forest law that would alter the balance of power and authority, with the federal government losing some in favour of the cantons. These types of shift also characterize the evolution of federal-state relations in Australia, and the USA, among others. Relationships between the central and sub-national governments are never constant in a country and changes are to be expected in a democratic country with a federal system of government.

The cases described illustrate instances of relatively gradual, healthy change in relationships between the federal government and sub-national tiers of government. But in some other instances the dynamics of variations of power and responsibilities is the result of a much more revolutionary, drastic and quick process (e.g. Bolivia, Indonesia and the former Soviet Union). This is mainly associated with drastic change in form of government, but in some cases it also was because of the relative weakness of lower levels of government that thus could not defend themselves against major changes forced on them by the central government.

#### **Box 4.1. Province-Federal Government Relations in British Columbia.**

During the Great Depression with massive unemployment, federal funds flooded into British Columbia for forest relief projects. "Industry pressure for federal support in harvest expansion and management planning to meet the demands of a roaring postwar economy revived federal-provincial cooperation in 1949. Then in 1967, after almost two decades of participation in provincial inventory, reforestation, road construction and protection programs, Ottawa again withdrew, citing constitutional arguments. Not until 1979 did the federal government again rekindle its interest in British Columbia forest renewal, this time in response to the prospect of timber shortages. Adoption of the National Forest Sector Strategy for Canada in the early 1980s signaled a period of real federal vigour, reflected in the Forest Resource Development Agreements that directed funds to reforestation and intensive forest management schemes. But in the mid-1990s Ottawa cut off the flow, contenting itself with support for scientific research, market development, and initiatives such as the Canadian Forest Service's Model Forest Program. The one consistent thread running through the uneven process is British Columbia's conviction that the economic benefits the federal government derived from the province's forests far outweighed its contribution to their protection, development and renewal" (Rajala, 2003, p.29-30).

The inherent tensions between tiers of government in such countries as Australia, Canada, Switzerland and the USA often have given rise to or reinforced administrative checks and balances, both between levels of government and within a given level. This in turn has contributed to a better definition and understanding of governance responsibilities and authority, greater efficiency in governance in the longer term, and increased transparency for citizens.

More fundamentally, the instabilities that can arise in the process of decentralizing forest governance raise the issue of the adequacy of forest administrations to adapt to sometimes swift changes in the distribution of authority, resources and responsibilities between layers of government. In those cases where decentralization processes were abrupt (such as in Indonesia), the forest administration suffered stresses derived from possible inconsistencies in authority and responsibilities, as well as from the

lack of enough flexibility to adequately redeploy human and financial resources between the tiers of government (Clausen et al 2004). If some sub-national governments are relatively weak in the forestry area (e.g., in Bolivia, India, Indonesia, Russia and Nigeria), administrative functions -such as monitoring and control of activities in forest reserves- tends to suffer. In some cases, rapid change and weak local governments, such as in Russia and Indonesia, has have resulted in local elite or private sector domination of decisions involving forest resources. Particularly when the level of uncertainty about rapid change in distribution of power was high, state or local governments in these countries have had strong incentives to rapidly deplete forest resources. These local sub-national government weaknesses also provide the logic for some states central governments either not assigning or taking away powers at those levels.

However, and taking a longer time perspective, it is unrealistic to expect that decentralization of government responsibilities and power will take place without short term disruptions. When sub-national governments are weak, time is needed for them to acquire the necessary capacities to effectively manage the forest sector. It is also unrealistic to expect that these capacities will ever materialize unless decentralization takes place, at least in countries with unitary systems of government. Consequently, the question is whether the costs derived from the initial disruptions created by decentralization processes, which are particularly large in case of revolutionary changes, are justified by the additional governance benefits that can be created in the future. In countries such as Russia, Indonesia, Bolivia, Nigeria and to some extent Brazil, the question has yet to be answered.

#### **4.3. Summing up and lessons learned from the case study countries**

*Strong central government guidance and overall leadership is desirable.* While there is no formula to decide what degree of decentralization is best to ensure good forest governance, there is widespread agreement that certain functions are best left at the central level and others can best be carried out locally. Decentralized forest management does not mean less need for a strong central government. For example, the central government is better placed to design the regulatory architecture for all those functions that transcend second tier government boundaries. In our survey cases, these commonly include governance matters related to interstate and international

trade in forest products, certain environmental responsibilities (where there are opportunities for externalities that flow across state or provincial boundaries), support in the area of fire, insect and disease management, and some functions related to incentives for private activity as well as international activities. In addition, in a number of countries, federal governments actually “own” and manage large areas of forest land, e.g., national reserves of various kinds dedicated to meeting national needs as opposed to local needs. The lesson here is that governments need to guard against creating too much decentralization in the forest sector and decentralizing too fast.

***Subsidiarity: appropriate responsibilities and power for each level of government.*** How should tiers of government divide powers and responsibilities? What criterion should be followed to decide the distribution of administrative authority and functions to ensure superior outcomes? The case countries with effective forest governance have implicitly or explicitly advanced in applying the subsidiarity principle, which states that forest governance functions should take place at the lowest administrative level of government. The application of this principle should however be made in a framework of standards and powers should be matched by sufficient technical support and financial as well as human resources at each tier of government. Experience shows that while there are several forest related functions that can best be carried out at the local level - counties, districts, municipalities, and communes - upper levels of government are usually reluctant to cede authority to local governments and continue to micromanage forest management decisions. However, in applying the principle, the dangers of elite groups gaining control of local government functions has to be kept in mind. The case study countries illustrate that this has happened. This is particularly so if these governments do not have a critical mass and, particularly, if they

lack appropriate mechanisms of accountability to both local constituents and to other levels of government. Decentralization at this level is likely to work when there is political will and an institutional context that allows a substantial share of the benefits going to disadvantaged groups and not to the elite. Responsibility shifts are easier when local powers have relatively little to lose and when they merely formalize rights already held by local governments or communities. Of course, there are similar dangers at all levels. Strong national and state interests can capture and divert legitimate forest governance at those levels. The lesson here is that to avoid de facto governance being different from intended governance at different levels of government, strong enforcement policies and actions are needed to accompany decentralization decisions.

***Clear rules and boundaries of responsibility between layers of government.*** This latter point relates to the fact that, independently from how much or how little authority and responsibility is given to the second or third tiers of governments, it is essential that it is a clear and transparent allocation of responsibilities and authority to each level. Ambiguous rules and overlapping responsibilities can only lead to confusion about who is responsible for what. Ambiguous allocation of responsibility also tends to create opportunities for corruption and illegal activity, if the room for discretionary decisions increases. When government does not operate as an entity with clear division of responsibilities and authority, power groups outside the government have a greater incentive and opportunity to fill the vacuum and establish claims, legitimate or not, over the most valuable forest resources. The lesson here is that responsibilities need to be clearly and transparently established, understood by all, and enforced by government agencies with unchallenged authority to do so.

# 5

## Resources, regulations and institutional effectiveness

The heart and soul of effective forest governance is institutional effectiveness and that depends centrally on the responsible authorities having adequate resources, both financial and technical, and operating in a rational framework of laws and regulations specifically related to forests (in addition, of course, to the more general regulatory and legal framework that must exist in the country, as discussed in section 3).

### 5.1. Balancing responsibilities and resources at each level of government

Beyond deciding on an overall vertical distribution of power and responsibilities between tiers of government, i.e. the intensity of decentralization, quality decentralized forest governance also requires an adequate balance of resources with the responsibilities taken on at each level of government. However, in our survey countries, sub-national governments often face an imbalance of authority, revenues and accountability functions. In Brazil, India, Nigeria, and Russia there are imbalances in the relations between fiscal, administrative and political decentralization involving not only the forest administration but also related sectors and functions. Even in Canada, Australia and the United States there are constant fiscal disputes and imbalances in resource entitlements of states linked to their management of federal lands and other federal functions in the states, and imbalances between authority, responsibilities and resources available for forest management.

In Nigeria, decentralization of authority was not accompanied by decentralization of ability to generate financial resources through the power to tax or through grants from the federal government. This seems to have created a degree of obscurity about money actually being made available to local governments and thus reduced local government accountability as well as effectiveness (Khemani, 2004).

At the other extreme, state governments in Brazil at some stage were granted sweeping

spending powers, including related to the forest sector. But little responsibility for spending was demanded from states and thus they were quick to abuse this power and overspent without paying much attention to the balance between state income and financial outflows (Tyler Dickovick, 2003). Naturally, state deficits expanded drastically. In absence of other mechanisms, the central government was forced to finance the states fiscal deficits. Massive transfers from the center flowed to the state governments until the financial indiscipline, that resulted in large national fiscal imbalances, came to an end with Congress passing a law on fiscal responsibility that better aligned sub-national government expenditures with their sources of revenues and responsibilities.

The problems associated with imbalances at the various levels of government between federal mandates to the states and the resources they are provided to carry out those mandates apply to environmental management in general. In some cases, local governments are burdened by unfunded mandates emanating from the federal government, but paid for locally. For example, according to one estimate, state costs of complying with federal environmental regulations in the USA rose from US\$53 billion in 1980 to over \$ 150 billion in 1996. (Anderson and Hill, 1996)

The centralization of fiscal matters limits the decentralization of other functions such as the power to enforce the law, since the institution controlling finances *de facto* can impose its authority on other levels of governments through its decisions on finance. In India, for example, decentralization to the third level of government has been stifled by the reluctance of some state governments to surrender financial powers. As a result local governments need to obtain financial approval of their forest-based as well as other projects from the state government. State governments, through their power over finances, effectively shape what local governments can or cannot do in the forest sector; and thus they are forced to operate as agents of the state government rather than

as self-governing bodies, which was the initial intention. The failure to achieve effective fiscal decentralization in balance with other functions is a main factor in explaining lack of interest of *gram panchayats* in participating in forest governance schemes in those states (World Bank, 2000c; World Bank, 2003c). The same situation can of course occur between federal and state governments, as noted above.

While in theory it makes eminent sense to demand from tiers of government fulfilment of certain functions only if these governments have the necessary resources and authority, in practice this balance is difficult to attain. The difficulty in turn creates various problems including the degradation of the levels of accountability as underperformance and inefficiency become easy to blame on the logic of poor management of other levels of government. Evidently, if responsibilities are not linked to reasonable levels of financial, human and institutional resources, public forest management is bound to be ineffective. Good forest governance becomes an impossibility under such circumstances.

## 5.2. A workable regulatory framework for the forestry sector

The countries surveyed in some cases show a forest-related “regulatory proliferation”. In general, it occurs in the same countries that ranked low in Regulatory Quality in the World Bank survey (see section 3). Not long ago, approximately 900 laws, regulations and decrees covered several legal requirements related to timber origin, production, transportation and trade in Indonesia. Also, every year and for every timber concession, a company was required to submit 1,599 documents and a large volume of data to sixteen agencies in Jakarta and eight in the regions (Casson et al, 2004). Decentralization added to the regulatory confusion by failing to clearly define responsibility and authority boundaries between levels of government. Further, some directives of the decentralization laws contradicted forest laws, thus adding to general confusion.

Similarly, recording land sales in Lagos, Nigeria takes 274 days and 21 bureaucratic procedures and absorbs official fees equal to 27 percent of the value of the transaction. In contrast, in Norway the same task takes less than one day and 2.5 percent. It is not surprising that many land transactions are not registered in Nigeria with the new owners being unable to legally prove their property rights and so, land is useless as a collateral and as a means of capitalization

(World Bank, 2004). Also, long term investment in land, such as in plantations, is discouraged. In Brazil, forest administration offices at the local government level cannot sanction forest management plans. Instead, they must be sent to the country’s capital for authorization. Several trips by the applicant to remote government offices to complete missing documentation may be necessary. Small operators cannot afford the time and cost to do this and may be unable to navigate through the different steps of obtaining approval from government offices in distant cities. Thus, many opt to operate outside the law (Kengen 2004).

Regulatory complexity in the forest sector is not restricted to the developing countries of our study. In the United States, the regulatory complexities related to forest use and management are also significant, involving many agencies and regulations (Ellefson et al, 2003). Ellefson et al. (2005) point out that “...cumbersome administrative process, and absence of a shared federal-state vision for nonfederal forests are important deterrents to effective federal-state working relationships”. The increasing diversity in missions and organization of federal and state agencies dealing with forests contribute to the increased regulatory complexities that exist in the USA. The same can be said to some extent for Australia and Canada, where similar broadening of the goals for public forests has led to increased complexity in the web of regulations, particularly environmental ones, that affect forest management and use.

However, comparing the advanced countries with the developing countries of our sample, it is apparent that the latter generally have simpler regulatory structures and rely on various mechanisms to ensure legal consistency and promote coordinated action between levels of government. The governments of Australia, Canada, Switzerland, the USA try to ensure that legal coherence in the management of forest resources exists (See Box 5.1.).

The country examples show that considerable efforts must be spent to ensure that the intricate horizontal and vertical links needed between agencies and levels of government in charge of designing and implementing the regulatory framework exist and work effectively. Without adequate close and effective intergovernmental linkages, regulatory overlaps and bureaucratic frictions are likely to surface. This is an important issue in some of the developing countries in our sample, where the institutional capacity to set up coordinated regulatory and executive government bodies are quite limited.



### **Box 5.1. Coordinated Action by various levels of Government in Switzerland, the USA and Canada.**

The Swiss Council of States provides the institutional frame for the vertical communication and dialogue between levels of government. The Conference of Cantonal Forest Directors serves as the structure for debates and coordination horizontally. There are informal contacts to debate forest policy matters between the Federal Counselor responsible for the Department for Environment, Transport, Energy and Communications (DETEC) and the Conference of Cantonal Forest Directors. The Canton Forest Inspectors Conference facilitates contacts and debates on technical issues. Further, four Forest District Area Coordinators within the federal Swiss Forest Agency, which is part of DETEC, each one covering a group of cantons, serve as further links between the federation and the cantons. Finally, the managing directors of the Forest Agency regularly meet with the Conference of Cantonal Forest Directors to debate issues of common interest, facilitate coordination and ensure the implementation of federal legislation by cantons. With respect to the organization of coordination and communication between the cantons and the communes (third tier), these vary from canton to canton. But the most important linkage is through communal executives, which are simultaneously members of the cantonal and communal legislature. Also, cantonal foresters and the mainly communal range foresters link the two levels of government.

These efforts to coordinate actions are present in other countries with higher regulatory quality. For instance, in the United States there is a close association among the state foresters through the Association of State Foresters; and they associate with and benefit from the U.S. Forest Service through its office of State and Private Forestry. Similarly, the Canadian Council of Forest Ministers (CCFM) was established in 1985 to further cooperation between federal and provincial governments in forestry matters.

A significant problem of the regulatory framework for the forest sector in many of the case study countries has been the reluctance to legally recognize traditional indigenous and customary rights. This has created severe governance problems as local populations vigorously resist regulations they consider as eminently unfair and conflicting with their traditional practices. The lessons from ignoring traditional rights and the sometimes violent reaction of affected populations go back to colonial times but they do not seem to have been adequately understood by legislators until relatively recently. The colonial Indian Forest Law did not recognize traditional rights and records show that as early as the end of the nineteenth-century, villagers attacked government officers that attempted to reserve areas villagers considered as sacred groves. In Kumaon violent opposition led to villagers induced fires and enormous damage. Villagers simply refused to accept the rules (Agrawal, 2005). Similar, but less severe tensions exist in countries such as Brazil and Canada, for example, in province of British Columbia.

### **5.3. Institutional effectiveness in the forestry sector**

Our survey indicates that there are at least four major institutional effectiveness issues in decentralizing forest governance. First, institutional effectiveness is profoundly affected by the degree of harmonization between political,

fiscal and administrative decentralization, as discussed earlier. Second, it is affected by the adequacy of managerial and technical capacity of human resources involved in forest decision making and management. Third, the level, quality and effectiveness of coordination of large numbers of agencies and inter institutional linkages is an important variable. And fourth, given that issues with one or more of the above elements are almost impossible to avoid, there is the issue of how to handle the proper sequencing of decentralization functions.

In most cases where the federation was created by central authorities, e.g., Brazil, Russia and Nigeria, governments are still struggling to achieve a reasonable balance between the different facets involved in the decentralization of forest governance; and this profoundly affects forest sector institutional effectiveness and performance. For example, in various cases administrative decentralization has received far less attention than other dimensions of decentralization and it was found often to lag behind fiscal and political decentralization. As emphasized previously, in some cases local government forest employees continue to be on the central government payroll; and local governments have limited or no authority to hire their own staff. In some countries the imbalances and misalignments between responsibility and authority related to various dimensions of decentralization have led to structures of

incentives for local government institutions and staff as well as to systems of check and balances that are not in line with national priorities. For instance, because of unclear responsibilities, some sub-national governments have either ignored forests (e.g., Brazil) or used them in unsustainable ways rather than providing leadership and initiative in improving the sustainable management and protection of forest resources in their jurisdictions (e.g., Indonesia). As mentioned, fiscal decentralization frequently also is incomplete, with the center having a tendency to keep control of financial resources and the mechanisms needed to generate such resources. Effective and efficient decentralized service delivery by sub-national tiers of government is very difficult in these circumstances. This has led, in some cases - Indonesia is one example - to a return to a dominance of central government power of decision making over that of states or provinces in the forest sector, thus defeating one of the purposes sought with decentralization.

A scarcity of managerial and technical resources and human capacity, particularly at the state and local levels of government, characterizes decentralized forest sector management in many countries (Bolivia, Brazil, India, and Indonesia, Nigeria and Russia). Especially in poor countries, the strength of the public forest administration is completely out of line with the demands on it to manage vast forest areas and to interact effectively with large populations living near or in the forests. Of course the scarcity of local managerial and technical capacity may have been a reason for unbalanced decentralization of functions as explained above. Thus, in all these cases it is not clear whether incomplete administrative decentralization is due to the scarcity of trained staff or vice versa. What is clear is that decentralization processes in the forest sector in various countries are afflicted by large gaps between the institutional demands and the capacity of institutions to satisfy them.

On the other hand, in countries with well established state and local governments (e.g., Australia, Canada, Switzerland and the USA) it appears that meso level governments are fully capable of handling forest governance and management in an efficient manner. Scattered evidence suggests that state management of forests may be more efficient than federal management (see Box 5.2).

Aside from the capacities of forestry agencies at various levels of government, quality forest governance also depends on the capacities of related agencies and sectors and their

**Box 5.2. Relative efficiency of state and federal forest management: an example from the United States.**

Leal (1995) found that state forests in Montana earned \$2.16 for every dollar spent, while adjacent national forests earned only \$0.51 for every dollar spent. Leal suggests that a major reason is the higher costs of national forest timber sales. He found that the Gallatin National Forest required two and a half times as many labor hours as did the state to prepare a timber sale for the same amount of output. Of course, it has to be recognized that there are regulatory and administrative reasons for higher overall federal costs of managing forests.

ability to perform. Sectors such as judiciary, finance, agriculture, energy, transportation, and environment, help shape each country's approach to forest governance and management. Often, such as in Brazil and the United States, the jurisdiction of forest agencies is shared with other powerful agencies. This fact has more than just a passing interest to policy makers, because the effective service delivery of sub-national forest institutions (and of the national agency as well) depends critically on joint actions with these other entities. In many cases, the forestry agency is just one of a number of federal and sub-national government agencies that directly affect the administration of public forest lands, so the capacities of all of them are of concern (Box 5.3).

Ellefson and Kilgore (2005) have studied in some detail relationships among state agencies dealing with forest governance and management in the Northern USA. They conclude that State agencies responsible for the use, management and protection of forests have increased in number and have become increasingly more diverse in mission and organization. Such proliferation often is inconsistent with increasingly holistic approaches advocated for the management of large forest ecosystems. Consequences of fragmented state agency responsibility for forests are generally adverse, especially in terms of public confusion over agency roles and lack of integrated resource management. They also found that coordination among state agencies affecting forest conditions takes many forms, although its occurrence generally is modest (See Box 5.4).

Virtually in all of the cases studied, the power of the forest administrative agencies, both at the federal and state/provincial levels, vis-à-

### **Box 5.3 Forest Governance: Many agencies in addition to official forest agencies.**

In some countries, the number of other sectors and organizations involved can run into the hundreds. As mentioned, in the United States, for example, there are some 31 other federal entities alone that interact directly with the U.S. Forest Service in planning and managing federal forest lands, and many others that have a more indirect linkage (Ellefson and Moulton 2000). In addition to the federal level, many agencies at the state level also have influence on how forests are administered. An estimated 1,453 state agencies (cabinet level, sub-cabinet level, and governing advisory bodies) were responsible for programs influencing the use, management and protection of nonfederal forests in 2000 (Ellefson et al., 2002). In addition, some 190 federal programs represent the actual expression of the federal role in forestry in the USA, i.e., directly or indirectly influence the condition of non-federal (state, local, private, tribal) forests (Ellefson et al 2005). While other countries may not have quite the complexity found in the USA, there are some very complex webs of interaction found in such countries as Australia and Brazil.

### **Box 5.4. Proliferation of state agencies responsible for forest governance in northern states of the USA**

- State agencies affecting forest conditions are located in virtually all sectors (horizontally) and levels (vertically) of state government, with some states having an especially rich assortment of forestry affecting agencies.
- A state's lead forestry agency is often only a small piece in the puzzle of state agencies affecting forests, with lead agencies in some states sharing forestry responsibilities with several agencies that have substantial influence over forests.
- State agencies affecting forests engage primarily in forest resource use and management activities, yet some state agencies can substantially affect forest conditions by aggressively implementing their responsibility for fisheries and wildlife, water pollutant management, and parks and recreation.
- Consequences of dispersed state agency responsibility for forests are many and generally adverse, with public confusion over agency roles and lack of integrated resource management being of paramount concern.
- Coordination among state agencies affecting forest conditions is modest and takes many forms, with informal inter-agency gatherings and joint statements and declarations being most common and most useful. Joint budgetary commitments and centralized information management systems are viewed with disfavor as approaches to coordination.

Ellefson and Kilgore, 2005.

vis other agencies of government is relatively minor. Forest public administrations at federal and state levels are often subsidiary bodies of Ministries or Departments of Environment or Agriculture, and only in rare cases exist as less powerful Ministries or Departments of Forestry. Because of the numerous inter-sectoral linkages and the relatively low level of power and authority of public forest administrations, effective decentralized governance in the forest sector only takes place to any significant degree when functions of government in other sectors and dimensions of governance, such as taxation policy, law enforcement and political participation also are decentralized. Australia and Switzerland have relatively successfully coordinated and consolidated functions where

possible. But problems arise in cases where this harmonized operation of linked agencies has not happened to the same extent, as shown in the cases of Brazil, India, Indonesia, Nepal and Nigeria.

Ideally, administrative and fiscal decentralization related to forest governance should go hand in hand with building up local capacity, and in consonance with processes in other sectors and agencies of government. But given real limitations, the problem is how to sequence the decentralization process. Should sub-national government capacity be secured first? Or should governments, such as was the case in Indonesia, proceed with decentralization of administrative and fiscal functions related to forests, under

the assumption that strong demand for local capacity would force an appropriate response from sub-national governments to generate adequate capacity? There is no obvious answer, as sub-national governments may have very different abilities to respond to local demands and the ability to carry out in a timely manner their functions effectively and efficiently. The central government can contribute to increasing capacity by introducing incentives for training, for example, or by facilitating networks of contacts between sub-national tiers of governments. This is the case in many of the countries studied. As indicated earlier, in some of the advanced countries, strong networks have been built among the sub-national levels of government to facilitate pooling of institutional capacity among states or provinces.

The adequate management of this complex network of interactions, with multiple government agencies having power and responsibility over the management of forest resources, is administratively demanding and imposes severe stresses in countries where the overall institutional infrastructure is weak. In most cases the design of the forest administration has failed to ensure horizontal coordination with other agencies of government and this has contributed to a drastic reduction in the effectiveness and efficiency of government in managing forest ecosystems that spread over the narrow administrative boundaries of local government (e.g. India, and Nigeria). Multi-agency and multi-program linkages can help create the “checks and balances” that improve accountability of government operations and contribute to ensuring that the forest administration reflects concerns of the various stakeholders, particularly beyond those directly involved in the forest sector.

These institutional effectiveness issues appear to be more challenging in non-federal countries because they seldom have a relatively autonomous local government capacity and an institutional history, memory and culture of setting precedents for things such as managing revenues, delivering services effectively and efficiently and enforcing accountability principles. Local and meso-level governments in federal countries, except in newer federal countries such as Nigeria and Russia, have traditions and have developed over time good local capacity for managing forest governance responsibilities, long before decentralization issues became of more general interest in the forest sector.

## 5.4 Summing up and lessons learned

***Balance between authority and responsibilities.*** To function effectively and efficiently, each level of government and corresponding agencies should have powers or authority that are commensurate with the responsibilities that they must discharge. This is a fundamental principle of “institutional effectiveness”. Experience in a number of the case study countries shows emphatically the importance of avoiding assigning responsibility without the commensurate power and vice versa. For example the lack of strict correlation between the authority to incur debt and spend has produced strong inducements to fiscal irresponsibility in some states (e.g., the case of Brazil in recent times).

***Sharing resources.*** Power and responsibility are empty concepts unless each level of government and each agency can count on adequate financial and human resources to carry out its responsibilities and impose its authority. Transfers of financial resources for forest management from higher to lower levels of government are a common occurrence. Such transfers are a necessary reality in terms of providing incentives and ability to carry out forest management activities at different government levels. At the same time a close watch has to be kept on transfers to make sure that they are effectively and efficiently administered and used or they can result in waste and deviations from desired policy and action outcomes. The bottleneck often is not financial capacity, but rather the managerial and technical capacity to use financial resources wisely.

The overall lesson that emerges from the review of the various country situations is that balancing of responsibilities, authority and resources between levels of government is one of the most contentious and problematic areas as decentralization progresses, yet it also is absolutely necessary for the establishment of effective and efficient decentralized forest governance. Few countries moving down the path of increased decentralization get the balance right immediately. Generally, shifts in responsibilities precede abilities to carry them out and precede shifts in resources or the authority for sub-national levels of government to generate adequate resources locally. Federal systems formed by independent states have in general been more fortunate in terms of getting the balance right, mainly because they could do it when they decided what powers,

responsibilities and resources the newly formed central government should have. Thus, they had better opportunity to get the balance right from the beginning. Unitary governments are reluctant, for example, to decentralize the rights to and control over resources to sub-national governments.

Having in place a plan to create that balance between responsibilities, authority and resources, and following through with the plan, are essential steps in eventually making decentralized forest governance effective. In the final analysis, each country needs to answer in the positive the question of whether the costs associated with initial imbalances created by decentralization processes have been or will be justified by additional governance benefits that have been realized or may become visible in the more distant future. And, as indicated by the cases, each country has to develop and follow its own plan of action to establish the balance. The alternative is tokenism and decentralization that appears to exist on paper, but is not true decentralized forest *governance*.

***Raising revenues and revenue independence at lower levels of government.*** This assessment of country experiences strongly points towards the need for all levels of government to have a certain degree of independent authority to raise and retain financial resources. The reason is that there is no real autonomy, if other levels of government have exclusive control of financial resources. Autonomy in some functions is necessary for institutional effectiveness. In the countries that joined together to form federations, this is not a problem. They all retained such authority and mechanisms when they created the federal government. The lesson here is that the level of government that controls finances, controls decisions of other entities of government related to forests; and this may or may not coincide with national or local priorities. Local levels of government are sometimes prevented from imposing taxes or charging for the use of forest resources. Mechanisms are needed to ease the severe pressures and restrictions that are often present when they try to raise their own revenues. At the same time the cases studied also show that revenue independence should be exercised in an environment of transparency and checks and balances to avoid misuse of forest resources for short term local financial and political gain.

***Mechanisms to encourage communication and flexibility.*** Ensuring an adequate balance of

forest responsibilities, authority and resources in each of the tiers of government is a very complex undertaking because policy processes and institutional conditions are in constant flux, and because so many different actors are involved. Adequate functioning of the entire forest governance system requires mechanisms to constantly adapt to these changes and to variations between functions and powers at different levels. In some cases this mechanism is institutionalised, such as when organized debates and decisions are collegially made by, for instance, groups of state forest directors or officially appointed coordinators. In some cases informal contacts, such as periodic meetings, also help ensure a degree of organic coordination between levels of government. One of the benefits of a properly balanced decentralized system of governance, with mechanisms to adjust flexibly according to changing circumstances and demands, is that it tends to create the opportunity for moderate, healthy and controlled tensions to develop between the forest related agencies at different levels of government, as fluctuations in the balance between responsibilities, authority and/or resources take place at the margin. The cases illustrate that such tensions can contribute to more responsive agencies at all levels. Accountability improves and efficiency may increase.

***Adequate technical capacity.*** Finally, and most important in many situations, at all levels, forest agencies and agents must have the technical capacity to manage forests appropriately and on a sustainable basis. This may sound obvious and straightforward. However, in a number of cases studied, this lack of technical and managerial capacity at the local level has proven to be a major bottleneck in moving towards good, forest governance and sustainable forest management. Several things have happened with lack of such capacity. First, the forests have been more easily captured by well organized private interests, often from outside the state or province owning or responsible for the forest resources. Second, with lack of understanding of good forest management principles, local officials have managed the forest resource in a highly unsustainable fashion without perhaps intending to do so. Third, even in cases where adequate authority existed on paper, lack of managerial capacity has resulted in major corruption and illegal activity, because, for example, lack of trained and technically capable manpower to guard and supervise use of the forest estate.

# 6

## Participation of civil society and the private sector: transparency and external accountability; control of corruption and illegal activity

As in the case of healthy tensions between tiers of government, effective interaction between government and citizens and the private sector can result in a strengthening of mechanisms of checks and balances; and it can produce significant governance benefits by increasing transparency, accountability and integration of local concerns and values into the structure of forest governance.

### 6.1. Citizen participation and participation of the private sector in forest governance

Despite the high probability of increasing frictions, progressive governments in the case study countries have tried to foster greater local citizen group participation in forest governance. They have given citizens the possibility of taking part in informing government decisions and being involved in appeals processes when they are dissatisfied with government decisions. Thus, local citizen group participation in e.g., Australia, Bolivia, Canada, India, Nepal, Switzerland and the U.S. has contributed to ensuring that measures imposed by higher level government do not ignore local conditions and traditions (such as imposing strict forest preservation measures in forest areas traditionally used by local communities). In the United States, the continuing tension between advocates of state forest ownership and governance and those who advocate more federal governance or private ownership is a healthy interaction that results in higher levels of accountability and efficiency and increases public focus on the U.S. forest estate and what happens to it.

Ultimately, stronger citizen participation and stronger pressures for government accountability can lead to a reduction in corruption and illegal forest activity, a highly desirable and needed change in much of the world. Cote and Bouthillier (2002) have done some interesting research in this area, looking at public participation in forestry in Quebec. "The research project determined

that the public involvement processes tested in the Haute-Mauricie region, Quebec (Canada): (1) fostered better information sharing among parties interested in forest management; (2) brought about changes in forestry planning; (3) decreased mistrust between local stakeholders; and (4) reduced potential negative conflicts in this region. However, the experiment also showed that further institutional support should complement a public involvement initiative in order to increase its impact on forest management planning and on the relationships among parties interested in forest management."

Our study suggests that political incentives to include greater participation in forest governance increase if advocacy NGO groups can help to organize disadvantaged groups, increase public awareness of the costs of maintaining the status quo, and provide some of the technical services (such as monitoring and dissemination of information) that local governments may be ill prepared to provide. National and international NGOs have entered into productive partnership with local entities to support measures to improve local governance and protection of forests in, e.g., Bolivia, Brazil, Indonesia, Malaysia, Nepal, and U.S. An interesting point is that in some of the countries studied, international NGOs appear to have had, and be having a greater influence than the local ones, probably because they have greater resources at their disposal. The question that remains for each country is whether these international entities are advocating an international agenda that conflicts with the consensus national and meso level agenda within the country.

Effective civil society watchdog organizations exist in various forms in most states or provinces in some of the reviewed countries. (cf. Box 6.1). As would be expected, they definitely are weaker in some countries than in others. Given their nature, it is evident from the cases that if the government, particularly the federal government, does not recognize the legitimacy of such groups, then they tend to be ineffective.

### **Box 6.1. The Forest Practices Board of British Columbia, Canada.**

The Forest Practices Board conducts audits and investigations and issues public reports on how well industry and government are meeting the intent of British Columbia's forest practices legislation. While it does not lay penalties, its recommendations have led directly to improved forest practices such as stronger government decision-making processes and better communication among forestry professionals to manage risks to the environment.

Although other jurisdictions have forest watchdog bodies, British Columbia may be the only one with an arms-length relationship from government, and a mandate to hold both government and the forest industry publicly accountable for forestry practices. It chooses which operation to audit, and its reports and findings are published without government revisions or comments.

By law, the board must audit government and industry forestry practices, and it must deal with complaints from the public regarding forest practices and government enforcement. In addition, it may appeal enforcement decisions and penalties imposed by government, seek review of government decisions to approve plans for forestry operations, and carry out special investigations.

The appointed board members represent a broad range of expertise and experience in forestry and the environment from across the province. Its staff of professional foresters, biologists, accountants and lawyers conduct the audits and investigations and report to the board, which makes recommendations to the forest industry or government.

<http://www.fpb.gov.bc.ca/FPB.htm>

In nearly all countries studied, the governments at local, meso and federal levels have attempted to facilitate more effective interaction with indigenous and tribal groups, who have customary claims on land and forest resources and thus form part of the overall forest governance picture. As in other cases, such interactions at times turn contentious, such as in Indonesia, where the government has not adequately responded to their concerns, and in cases where governments are reluctant to recognize traditional rights (even in cases when these rights are established in the constitution and/or related legislation). Bolivia, Brazil, Canada and Nepal provide examples where governments have recognized some indigenous community forest rights, vesting these stakeholders with strong incentives to protect and improve their forest resources as well as to have a say in how government operations are run at the local level. These are far from being isolated cases. In fact there is a global trend towards traditional rights recognition on the part of various governments around the world; and this is changing the ways in which governments deal with the administration of affected forest resources (White and Martin, 2002). A comprehensive view of the situation in Canada was given by Forest Watch Canada in the year 2000 (see Box 6.2). In the Province of Manitoba, Canada, another approach has been taken. There, through the Manitoba government's co-management initiative, three resource co-management memoranda of understanding have been signed so far with aboriginal groups. These include three models (single band, multiple

band, and province-wide) for the province to use in any future co-management agreements. The Manitoba government has also set up an Aboriginal Relations Branch, an Aboriginal Resource Council to provide advice on co-management issues and an Aboriginal Employment Strategy to train and employ community members in resource management. Some companies within the forestry sector have been active in working together with local communities to develop employment and management partnerships. (Manitoba Conservation, 2002).

Some countries have made serious attempts to bridge the often conflicting interests and views of government and the private sector by forming various types of alliances, mainly focused on communications and functions needed by all levels, such as forest inventories. Some alliances have resulted in significant land use changes. For example, in 1997, the Province of British Columbia announced that 1.2 million hectares of the Muskwa-Kechika area in the northern Rocky Mountains would be legally protected. The British Columbia government's decision to protect the Muskwa-Kechika followed from consensus recommendations that were submitted to government by a local, multistakeholder round table that included members of the public, interest groups, and government, which met over several years to develop a land use plan.

Another example of a more formal, successful alliance is the Great Lakes Forest Alliance, started in the United States and now including

### Box 6.2. First Nation and Metis and the forests of Canada.

80 percent of Canada's First Nations and Métis live within forested regions in Canada. First Nations and Métis have extensive rights to forest lands. "Aboriginal and treaty rights" were recognized and affirmed by Canada's Constitution in 1982. Given their historic presence in Canada, First Nations and Métis have certain rights that are still being deliberated and outlined in the legislative and court process. The government of Canada has signed a number of treaties with First Nations. These treaties cover most of Canada's forested regions. Aboriginal rights and treaty and land claim processes have long-term implications for forests and forest management in Canada, which could lead to widespread shifts in ownership and management of forest resources. For example, a number of First Nations in northern Canada have signed land claim agreements that provide them private lands as well as a role in natural resource management in the entire claim area.

Many First Nations in British Columbia and throughout northern Canada never signed treaties with the federal government and are now actively negotiating comprehensive or specific land claims. The federal government has a comprehensive claims policy in place. Thus, in British Columbia, where treaties were never signed, the provincial, federal, and First Nations Summit established the British Columbia Treaty process in 1992. Sixty percent of First Nations are involved in the treaty process, which is designed to address issues related to aboriginal rights and title. Approximately 300 First Nations are now involved in 80 negotiations involving some aspect of self-government. These settlements or modern treaties usually include ownership of a specific land base, wildlife harvesting rights, participation in management decisions, financial compensation, and resource revenue sharing. First Nations won jurisdiction over 41,000 square kilometers of forest through the first modern treaty in British Columbia, the Nisga'a Final Agreement, which was signed in 1999. Still, there are nearly 100 outstanding claims in British Columbia alone. Although some First Nations will likely settle for monetary compensation, many of the First Nations that reside in forests will claim forested land. First Nations are growing increasingly frustrated with the pace of land claim settlements. Several First Nations are now logging Crown lands without government authorization in British Columbia.

Many provinces, including British Columbia, Alberta and Saskatchewan, are now negotiating with First Nations about timber cutting rights. A recent British Columbia study recommended that First Nations with ecologically sound logging plans "should be given priority for any new allocation of industrial forestry tenures." Recent court rulings and political developments, however, have not yet been thoroughly addressed and First Nations involvement in forestry has not yet been assessed in terms of current official wood supply estimates." A number of government and industry initiatives have recognized the right of First Nations to be more involved in the forest sector. These programs have included business loans, training, federal programs (First Nations Forestry Program), and joint venture agreements with industry. A 1994 survey of 15 companies found that most companies believe that shared management and greater participation of First Nations and Métis in forest management decision making is likely to increase.

Global Forest Watch Canada. 2000

the Province of Ontario in Canada (See Box 6.3) All these partnerships between governments and local groups that increase voice and participation appear to have worked better in cases where there were effective communication mechanisms and channels not only between levels of government but also between them and other stakeholders as well. An interesting study of accountability in Uganda (Deininger and Mpuga 2005) found that increased communication and household knowledge on how to report inappropriate behaviour by bureaucrats and unsatisfactory quality of services does help to not only reduce the incidence of corruption, but is also associated with significant improvement in service quality from local officials. Countries such as Switzerland, Canada, Australia and the USA have

a relatively satisfactory relationship between central and local authority and responsibility as well as between local governments and their communities. In other countries such relationships are less satisfactory. For instance, in Brazil, the division of responsibilities and authority to decide on forest management and fiscal allocations after decentralization was at first mismatched. This created an unclear path to transparent accountability between levels of government and accountability to citizens.

In the United States, the government some time ago put in place an elaborate appeals process that applies to all national forest plans produced by the U.S. Forest Service. It is one of the accountability tools available to USA civil



### Box 6.3. The Great Lakes Forest Alliance (USA)

The Great Lakes Forest Alliance, created by charter in 1987 at the direction of the governors of Michigan, Minnesota, and Wisconsin, is a mutual aid, public/private partnership that integrates global, national and local interests by bridging the gap at a regional level. It expanded in 1997 to include Ontario. Trustees include key leaders of government and industry and citizens from a broad range of forest interests. It was designed to be as learning environment to address the resurgence of forest growth and the increasing demand for conservation, wood products and recreation. The need for the Alliance resulted in part from a perceived under representation of regional forest related issues in the national arena. The Alliance attempts to consider leading-edge strategies over the long-term in a pro-active manner, and trustees recognize the need to build respect, trust, information exchange, cooperation, coordination and collaboration among diverse interests. Among the projects that demonstrate the bridge role played by the Alliance: a regional forest resources assessment, public and private funding that supports research toward a more frequent forest inventory process, training for communities to use the collaborative learning process to address economic prosperity and environmental protection strategies and the development of sustainable forest management criteria and indicators for the region. A continual challenge is relationships among diverse forest interests across jurisdictional and institutional boundaries in a manner that promotes exchanges that build collective wisdom. (Sanders 2001)

society if it feels that the government is making the wrong decisions regarding federally held and managed forests. In addition, national forest planning includes a set of guidelines to ensure extensive local public input into planning and management, recognizing one set of management guidelines cannot apply to all forests from those in Alaska to arid forests of Arizona and New Mexico. Both these policies have been an important element in forest governance and accountability in the United States, given the fact that there are more than 190 million acres of national forest land in 155 national forests. These lands account for more than 25 percent of the nations forests. There are many in the USA who argue that the appeals process and the mandatory extensive public participation processes, plus the central agency domination in individual forest activities was becoming too much of a burden on local management.

Canada illustrates the point that accountability will be greater when citizens are well informed and either directly participate in debates or exert power through the political system. Incentives to good decentralized forest governance increase if voters and the public are knowledgeable about the consequences of choices. One of the potential advantages of federal systems and decentralization is precisely that local political markets are likely to function better because of the proximity of decision makers and government agencies to a public that is also likely to be more educated on forestry issues and more focused on a narrower range of responsibilities and issues. However, local channels of information may be quite imperfect in many countries and this may dissipate some of the most important benefits of decentralization. For example, local newspapers

covering issues related to the forest sector may be of poor quality and impair informed participation in monitoring government action and in policy design and implementation.

In nearly all countries studied, participation and accountability appear to be stronger when government makes efforts to formalize in a transparent manner the contribution of the private sector in informing public forest decisions (cf. Box 6.1. above). As it happens with other dimensions of decentralization, the variation from country to country is significant. In the United States, the size of the private sector is considerable and, accordingly, federal and particularly state governments have established regulations and programs to encourage effective participation of private enterprises. Ellefson et al (2004) carried out a wide-ranging assessment of state-governed regulatory programs in the USA that are focused on private forests. The review led to a number of findings, some of which are highlighted in Box 6.4. The intensity of debate over regulation of forestry practices applied on private forests is unlikely to subside in the future. Whether it rises or falls as an important political issue will depend on the set of values ascribed to the benefits that forests are capable of producing and on the political strength of the persons and entities that represent and subsequently advocate those values. There are, however, some discernable trends that are important to the environment of forest practices regulation, including increasingly better balance of public versus private responsibility for the application of forestry practices, greater empathy for private-sector operating environments, more regulatory focus on prevention of misdeeds rather than on the misdeeds themselves, improvement in

#### Box 6.4. State Regulatory Programs for Private Forestry: the Case of the USA

- **State Regulatory Authority over Private Forestry Practices Is Extensive.** Authority can emanate from environmental law generally and from state law focused directly on forestry practices. Regulatory authority can originate from a single law (often known as a forest practices act), a number of separate and specially-focused laws (for example, wetland protection acts and endangered species acts), or laws authorizing conditional regulation which is to be applied in certain circumstances (for example, contingent or bad actor laws).
- **State Regulatory Programs Are Focused on a Wide Range of Forestry Practices Applied to Private Forests.** Administrators in nine of 10 states consider such practices to be *often* or *sometimes* correctly applied to private forests. In two-thirds of these states, forest practices were subject to some form of regulation, especially practices involving roads and trails (44 states) and chemical applications (40 states). Least regulated were cultural practices (30 states) and reforestation activities (27 states).
- **State Agencies Regulating Forestry Practices on Private Land Is Extensive.** An average of six state agencies per state (276 state agencies nationwide) are so involved. Over two-thirds coordinate (extensive or moderate) their regulatory initiatives with a state's lead forestry agency, although one-third have minimal or no involvement with such an agency.
- **State Agencies Are Responsible for Substantial Investment in Forest Practice Regulatory Programs.** About 1,040 full-time staff equivalents are so engaged (by 276 agencies), nearly one-third of which are part of an agency whose primary purpose is the management of forest resources. Lightly more than one-quarter of these staff equivalents are affiliated with air and water pollution control agencies. Assuming \$55,000 per full-time equivalent, staff assigned to state regulatory programs implies an annual nationwide investment of about \$57 million.

Ellefson et al 2004

administration and effectiveness of regulatory programs, additional and more professionally diverse regulatory staffs, demand for accurate and reliable information and its management, and growing interest in certification programs and the reality of effluent load limits assigned to certain waters in forested areas.

A final observation is that the cases strongly suggest that another factor that appears to influence the quality of participation and the strength of accountability between sub-national governments and their local constituencies is the structure of the government bureaucracy and of the internal incentives. In some situations local forest officials are appointed by, and draw their salaries from higher levels of government, state or even central. When this happens, such as in India, local staff continue to respond to the incentives of higher tiers of government and not to local ones. Our cases show that local populations will be less inclined to participate in debates and decisions if they perceive that actual power resides in higher tiers of government. For instance, and as mentioned, some of the limitations of the Panchajati Raj institutions in India have been attributed to this perception. The same type of situation exists in Nigeria.

As can be seen from these experiences, public participation in decision making is more complex and dynamic than might appear at first sight. While on paper public accountability may be guaranteed, the political realities of major policy shifts oftentimes obscure direct accountability to citizens. Understandably there is wide variation between countries.

The arguments supporting the concept that decentralization is conducive to greater participation with all its associated potential advantages are powerful. However, the evidence is less than definitive. For example low participation in elections has been observed in the USA and Switzerland. In fact, a study covering the period 1945-1995 showed that political participation in these two federal countries was the lowest in the OECD group with 48 and 49 percent respectively. And, further, electoral turnout in these two countries was lower than in unitary OECD countries during this 50 year period (Linz and Stepan, 2000). Thus, federalism and decentralization do not necessarily result in increased political participation. In wealthy countries, citizens often become complacent and don't bother to vote, particularly if there does not appear to be many differences in the platforms of the candidates being elected.

## 6.2. Control of corruption and illegal activity in the forest sector

In the developing countries and Russia the rule of law in the forest sector is generally weak. For instance, unauthorized logging amply exceeds the legal variety in various countries of our survey. Much of the trade in forest products also takes place in an illegal manner and involves products of dubious legal origin. One recent study, based on various sources, estimates that the share of illegally harvested wood is 20% in the case of Brazil, 50% in the case of Cameroon, and 70% in the case of Indonesia, 70% in Gabon and 60% in Ghana, and 27% in the North-West of Russia and as high as 50% in Siberia (INDUFOR et al 2004). Various studies suggest that illegal harvesting in Malaysia is not significant, but that Malaysian companies are active in importing illegally sourced wood from other countries, mainly Indonesia, either for Malaysian consumption or re-export to world markets. In Russia, the government believes that illegal logging is less than one percent of the total harvest; but other estimates indicate that this proportion is probably closer to 20-25% (Seneca Creek Associates, 2004); and, as mentioned above some estimate that as much as 50% of the timber harvested in Siberia is illegal. In Nigeria, illegal harvest of non-timber outputs may be as high as 90 percent of the total and some 40 percent in the case of timber (Federal Department of Forestry 2001). This relates to the point made in section 3 regarding the high level of regulatory burden found in Nigeria and its effect on forest activities.

Even recognizing that figures are imprecise and therefore subject to challenge, it is abundantly clear that in many of the federal countries examined in this review a substantial proportion of forest activities take place outside the law.

There are of course many reasons why illegal activities in the forest sector take place and not all of them are related to corrupt practices. The linkage between corrupt practices and the frequency and intensity of illegal acts is not an easy one to establish, because of the surreptitious nature of these acts and the resulting lack of hard evidence. Some of the countries in this review are both at the very top and bottom of the global classification of degree of corruption, as indicated in section 3. There is no reason to assume that corruption in the forestry sector will deviate significantly from the picture for the country as a whole depicted in that section. The case studies suggest that increased participation can also contribute to combating

corruption because of its potential for increasing transparency and for influencing government decisions. Legal access to information about government decisions and improved public knowledge is credited with reducing the incidence of corruption in Bolivia. Better participation and more effective channels of communication between citizens and government agencies also facilitate the work of whistle blowers and civil society watchdogs focusing attention of the public on activities of dubious legality.

However, it is not possible to determine unequivocally to what extent federalism or decentralization processes affect the rule of law and the incidence of corruption in the forest sector. Circumstances vary too widely (Box 6.5.). Decentralization increases the number of government entities issuing and enforcing regulations. However, one cannot say whether or not this would contribute to better enforcement of the rule of law and reducing corruption. More groups participating in the administration of the sector could increase checks and balances and force greater transparency. On the other hand, it also could weaken government control and help local elites gain dominance over local resources, particularly if responsibilities and regulations are not clear at all levels. A large number of

### Box 6.5. Federalism, decentralization, and the rule of law

“Does federalism enhance the rule of law? Federalism certainly increases the number of institutions charged with making and enforcing laws. But whether federalism, in itself, enhances the rule of law is questionable. One could easily argue that it has the opposite effect. If laws made by regional governments violate those made by the central government, (especially those enshrined in a country’s constitution) stand-offs occur. One set of laws oppose another, enabling people on both sides of an issue to rationalize obstructionist and even violent actions in the language of a higher, legal authority. The struggle to desegregate the southern U.S. was delayed by southerners who used the “states rights” arguments intrinsic to federalism to defend the “rule” of racist regional law. The unquestioned legitimacy of the US Supreme Court, coupled with the unchallenged authority of the US National Guard eventually righted a profoundly inequitable situation but not all federations have either a truly supreme judicial body or a monopoly of coercive force to ensure that laws are enforced.”

Source: Bermeo, 2005

regulations can also lead to legal confusion and to greater discretionary power in the hands of corrupt forestry officials (Lanyi, 2004. Also see box).

### 6.3. Summing up and lessons learned from the case studies

**Forest governance, the civil society and the private sector: extending the subsidiarity principle.** While the subsidiarity principle generally is thought to apply mainly to levels of government and large organized businesses, it also has relevance in terms of the distribution of responsibilities among government and civil society, and participation of the private sector and non-governmental sector in forest governance. In countries where the private sector is a significant part of forest activity, there are governance roles that more effectively and efficiently can be carried out by the private sector, as is dramatically illustrated in the case of New Zealand. Of course, appropriate checks and balances must be in place, just as in the case of the public sector forest governance mechanisms. Regulations cannot be thrown out with increased responsibility going to the private sector. Rather, if it works properly, government costs to assure compliance can be drastically reduced.

There are various advantages to consider here in terms of increased civil society and private sector participation. An increase in functions taken on by the private and the NGO sectors means more time and effort available for government to focus on fewer, more critical functions. Comparative advantages of various groups in managing resources can be exploited much more effectively. A second benefit is the increase in government accountability that can occur when civil society and the private sector have greater involvement in governance. Watchdog organizations can be very effective in monitoring forest resources and their modalities of use and can pressure governments into action. Essentially, the argument is parallel to that made in section 4 regarding the positive benefits that can derive from the healthy intensification of checks and balances and tensions created between levels of government and between government, the civil society and the private sector institutions. A third potential governance benefit is derived from the greater possibility that government action will not unfairly disregard traditional and other rights that, although sometimes not formally established by law, some groups perceive as inherently theirs.

**Cooperation and co-management.** Successful decentralized forest governance makes good use of opportunities to increase participation and

take advantage of the comparative strengths of civil society and private sector institutions. For instance, legal recognition of traditional community and indigenous rights to forest resources and lands can lead to improved management of local forests, while at the same time liberating government resources and contributing to reducing social conflict. Privatisation of productive functions (such as industrial processing and some elements of forest management on public lands, e.g., through outsourcing to private firms) can increase economic efficiency. Some countries have been able to increase the quality of forest governance by entrusting private entities with some key functions such as monitoring compliance with forest management regulations. Private, voluntary forest certification schemes are proliferating in most of the countries studied in this survey and are contributing to better forest management without substantial action from the government (Tysiachniouk and Meidinger, 2004, for an example from Russia).

**Participation and the control of corruption.** Enhanced participation and its potential for greater knowledge of government actions and for increasing transparency of government operations can effectively contribute to combating corruption. However this is not an automatic result of greater participation in government decisions about forests. The context in countries is very different and generalizations are hard to support. In some cases greater participation has not led to reduced corruption but rather to a transfer of corrupt activities to different actors. Local government officials can act in connivance with local groups under the guise of increased participation and manipulate government actions to benefit partners rather than the general public. Thus participation is not enough, but it can contribute to a multi dimensional attack on corrupt acts that also must include, *inter alia*, initiatives to achieve a greater harmony and soundness of the regulatory framework, mandates to secure transparency and procedures leading to a reduction of the discretionary power of government officials.

**Governance mechanisms to increase voice and participation.** Various processes can be put in place to ensure greater civil society and private sector participation in forest governance. Effective participation requires good communication channels between institutions of government and between them and stakeholders of the civil society and the private sector. Participation mechanisms work better when government purposely promotes interaction with other sectors of society, which

in turn requires a political inclination to do so. Participation mechanisms are also likely to work better when government institutions and the bureaucracy are exposed to incentives that reward effective public participation and this often means accountability to local institutions and populations rather than exclusively to higher levels of government. Mechanisms include joint projects (e.g., co-management schemes), voice through planning advisory

groups, monitored self-regulation of forest-related activities (particularly relevant for the private commercial sector), citizen appeals processes for government decisions, forest fora involving government and civil society, mandatory disclosure of forest administration records, etc. As mentioned private certification schemes have been used in various countries as a means to ensure compliance with sustainable forest management regulations.

# 7

## Federalism and decentralized forest governance: summary of concepts and findings

Our assessment reveals that decentralized forest governance in federal countries can exist in many different forms and with varying degrees of decentralization, depending mainly on how the central and sub-national governments are structured and organized, and on how strong they are. In all cases processes are extremely complex, involving various levels of government, many agencies with different functions and multiple stakeholders. Governance systems are in constant flux in most of the countries studied, as different political power groups gain control of governments through legitimate elections or otherwise.

A key point to note is that in many of the countries studied, the federation and thus the federal government were created by constitution when a group of states, provinces or other smaller, independent states decided to come together to form a federation. In all such countries studied, decentralized forest governance tends to be strong, with active and strong meso level governments and governing processes and balance between responsibilities, authority and resources to carry out the responsibilities. We hypothesize that this is because the states retained in a balanced way key responsibilities and authority and powers when they formed the central government that would manage the interactions within the federation. In contrast, in unitary systems all powers reside with the central government and it doles out responsibilities and authority, often with the result that there is not a balance between the two, nor between responsibilities and the resources needed to effectively carry them out. Furthermore, the central government generally retains the right to withdraw responsibilities and powers from the lower levels.

In case study countries the process of decentralization has redefined political interactions among main power groups, reconfigured power structures and institutions and changed the way people think about government and about the institutions of the civil society and the private sector. Dispersal

of adequate power and authority to manage delegated responsibilities is an essential feature of decentralization; and outcomes will depend on who controls that power and on how that power is used or abused. In the case study countries, where decentralization was taking place from the central government out to the sub national units, it was often the case that sub-national levels of government did not end up with sufficient authority and resources to carry out their assigned responsibilities.

Given the complexity involved and the importance of the context faced in each country, it is not surprising that the linkages between federalism and decentralized forest governance are in many cases difficult to identify and verify. Decentralized governance offers many opportunities to improve the management of forest resources but also faces various obstacles and potential pitfalls. Thus decentralization does not necessarily lead to better forest governance outcomes. Even the most fervent proponents of decentralization will not argue that decentralization is always the best option.

But the relevant question is not so much whether decentralization is good for forest management outcomes, but rather in what contexts decentralization is likely to work best; and in what contexts is *good* forest governance likely to exist? Those are the main questions asked in our assessment of the case study countries.

Our survey identified broad conditions that, if satisfied, are likely to create a favourable environment for quality decentralized forest governance, although success will always depend on the individuals involved in the key governance roles. We identified two sets of factors or conditions. The first set includes the necessary conditions for good forest governance, whether centralized or decentralized. This set involves factors or dimensions that are largely external to the forest sector, the basic point being that good forest governance can only take place in a national environment where there is good overall governance. The second set of factors is mainly

internal to the sector and, given the necessary external conditions for good governance, this set provides the “sufficient” conditions for *good decentralized* forest governance to take place. These two sets of factors are related, so the differentiation is rather a matter of degree and emphasis only.

The five external necessary conditions include:

- The existence of a certain degree of **political stability**. This is one of the most important conditions for good general governance. Political stability seems to be associated with federal structures of government that adequately integrate other dimensions of governance, such as active political participation, effective institutions and so on. Without a degree of political stability, government are likely to be ineffective in adequately planning and implementing government decisions in the forest sector.
- The existence of an **adequate decision-making and regulatory framework**. As many of the governance actions directly associated with forests depend not only on laws, policies, regulations and formal procedures of the forest sector but also on regulations in related sectors and in the nation as a whole, the quality of forest governance will be a function of the attributes of these other areas of government regulation. For example, the effectiveness of law enforcement related to forests will depend largely on the regulations that govern police action, both locally and nationally. Certain key activities carried out by the private sector, such as profitable export of forest products, depends on a country’s fiscal and trade laws and policies and so on.

The quality of the regulatory framework is a broad concept. Factors taken into account include regulatory burden in establishing businesses, access to markets, including capital markets, ease with which information on regulations can be obtained, the fairness of competition (as regulated by government), regulations related to trade, tax effectiveness. Figure 3.2 shows a composite index of these factors that measures the general regulatory quality in each of the study countries at two periods in time.

- **Existence of a civil society and government that have respect for the law**. The quality of governance depends not only on actions by government alone but also on those of individuals, communities and enterprises

that act independently of, in place of, or in association with, the government. The quality of governance in the forest sector depends heavily on how laws and regulations are applied and respected by all. Ideally the law should be equal for all and government officials should be held responsible for acts made in their personal capacity that exceed their lawful authority. For example, quality forest governance will be difficult to achieve unless there is full respect for legal and traditional property rights.

An important and related component of quality governance is the effectiveness of government in controlling corruption. Here corruption is understood as the use and abuse of public office for personal gain. Corruption can take many forms, in all cases weakening the capacity of the public administration to enforce the law, thus leading to poor governance. As can be appreciated, there are very important differences between the survey countries. In some, it would appear that the prevalence of corruption is an important obstacle to achieving higher levels of other dimensions of governance. What is disturbing in some cases is the reduction in control of corruption over time in some countries.

- **Citizens must have an effective voice in choosing governments that have transparency and accountability, influencing decisions and monitoring their implementation**. The existence of appropriate mechanisms for ensuring participation in government affairs has a strong influence in other aspects of governance. For instance, participation may effectively contribute to avoiding government regulations that are unfair or unfeasible. Participation may also establish additional linkages ensuring accountability of local governments to their local constituents. Better forest governance outcomes can be achieved in an environment of transparent government operations. Transparency can be mandated by law and can be strengthened by active citizens’ participation in multiple systems of check and balances. The involvement of independent monitors and watchdogs in forest government actions has proven in many cases to be an effective way to ensure greater transparency. While democratization of decision making is often a stated goal of decentralization exercises we found that in many countries there is a considerable distance between these stated objectives and reality. Political decentralization is

hard to achieve particularly at local level governments. Thus participation is more effective when governments have the political will to involve these independent groups and the public in general in monitoring activities and in dispersing knowledge about the management of forest resources and its implications. Accountability to local constituencies is also enhanced when the system of internal incentives is intentionally linked to local scrutiny and supervision. Thus, for instance, accountability of local government officers is less likely to respond to local concerns if the system of salaries and promotions depend exclusively on decisions of higher levels of government. As a related dimension, increased transparency and public knowledge of government actions is an effective way to unmask corrupt acts but other related measures also help. These include efforts to establish clear regulations and to limit when possible discretionary powers of government officials to make arbitrary and obscure decisions. Quality forest governance is more likely to materialize when there are mechanisms aimed specifically at controlling corrupt practices.

- **Effective inter sectoral and inter governmental linkages.** Tiers of government and government agencies responsible for the management of forest resources do not operate in a vacuum, but in the context of a large government apparatus. The effectiveness of the entities involved directly in forest governance will therefore depend on the effectiveness and quality of the relationships with other sectors of government as well as with the private and civil society. Because of these numerous inter sector linkages, decentralization of the administration of the forest sector alone is likely to face problems if decentralization of other related sectors does not proceed in an harmonic way.

The three identified conditions internal to the sector that create the sufficient conditions for good *decentralized* forest governance in federal systems, given the five necessary conditions mentioned above, include the following:

- **Effective and balanced distribution of responsibilities and authority among levels of government.** Certain forest management decisions are better made at the sub-national, or even local level, while others may be best retained at a central

level. Responsibilities at the central level include those that are needed to provide a coherent management of the resource and to handle management issues, such as pest and fire control, that may have effects that exceed the boundaries of second tier governments. On the other hand decisions affecting the management of a small forest may be best left to local governments. In general, decisions should be made at the lowest possible level consistent with securing effectiveness and efficiency, i.e. in accordance with the subsidiarity principle. Appropriate mixed responsibility distributed between levels of government appears to be key to quality forest governance. Further, a reasonable balance of responsibilities and authority among levels of government forest agencies must also exist; there can be too much or too little responsibility and authority at both the federal and sub-national levels of government, which can lead to ineffective and lopsided checks and balances on government activity. Responsibilities and true authority must be established and distributed among levels of government in such a way that central government cannot easily and unilaterally change them. Good governance is dynamic not static; and the relationship between federal and sub-national responsibilities, authority, etc., will shift over time, as political winds shift. The key is a reasonable stability and balance of systems and relationships between levels of government over time.

- **Adequate resources and institutional effectiveness at each level of government.** Forest related agencies at all levels must have sufficient financial, technical and social resources and capacity; i.e., authorities at all levels must know what to do, know how to do it, and have the resources to do it. In the context of the dynamics of decentralization, they also must have the capacity, flexibility and wisdom to learn and adapt to changing social and biophysical conditions and to understand the linkages across sub-national units in relation to the nation. Institutional capacity and effectiveness at all levels is essential. We found that a key is for sub-national levels of government to have sufficient financial resources, and have ability to generate sufficient resources independent of the central government, to effectively use and control their given authority and carry out their responsibilities. This relates centrally to the institutional effectiveness of the entities responsible for forest governance



- **Sufficient participation of civil society and the private sector at all levels of forest governance.** This condition parallels the general one related to external conditions. But here we are talking specifically about stakeholder participation in *forest* governance through forest related civil society organizations, and through the private sector, mainly at the sub-national level, but also at the national level. It is only through participation that the effective and efficient mechanisms for transparency, accountability and knowledge of local needs emerge. Participation contributes to more transparent decisions, to a better integration of public inputs and public oversight. Active participation of citizens is key in combating corruption and illegal forest activities, which drag down the sector in a number of countries and lead to poor forest governance by any standards. Such participation also

provides a means for increasing government efficiency and responsiveness. Evidence also shows that the existence of vocal coalitions that understand government decisions and have the technical knowledge as well as the political clout to influence such decisions is an important condition for quality decentralized forest governance.

The paper discusses how the case study assessments led to identification of these eight necessary and sufficient conditions for good decentralized forest governance. While the evidence is based primarily on the experiences of countries with federal systems of government, we strongly believe that the general principles and conditions identified can apply across the board to countries on the road to more effective decentralization of forest governance, whether the countries have federal or unitary systems of government.

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CIFOR's Forests and Governance Programme examines how decisions about forests and forest-dependent people are made and implemented in order to promote the participation and empowerment of disadvantaged groups; the accountability and transparency of decision-makers and more powerful groups; and democratic, inclusive processes that support fair representation and decision making among all groups.