



Strengthening Voices for Better Choices

Forest governance and law enforcement:
Findings from the field

Patricia Moore, Thomas Greiber, Saima Baig
October 2010



Copyright

© 2010 International Union for Conservation of Nature and Natural Resources.

The designation of geographical entities in this report, and the presentation of the material, do not imply the expression of any opinion whatsoever on the part of IUCN concerning the legal status of any country, territory, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

This publication has been produced in part with the assistance of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union or IUCN.

Reproduction of this publication for educational or other non-commercial purposes is authorized without prior written permission from the copyright holder provided the source is fully acknowledged. Reproduction of this publication for resale or other commercial purposes is prohibited without prior written permission of the copyright holder.

Layout and editing

IUCN Asia Regional Forest Programme

Cover photos

Front: The Knuckles mountain range, Sri Lanka.

Photo © Shantha Hennayake

Back: Participatory rural appraisal, Viet Nam.

Photo © IUCN Viet Nam

Strengthening Voices for Better Choices

Forest governance and law enforcement:
Findings from the field

Patricia Moore, Thomas Greiber, Saima Baig
October 2010

Table of Contents

1 INTRODUCTION	· 1
The national assessments and global synthesis	· 1
Structure and audience	· 2
Sources	· 2
2 DEFINING AND DESCRIBING GOVERNANCE	· 3
Quality of governance	· 3
A governance framework	· 4
3 FOREST GOVERNANCE IN SVBC COUNTRIES	· 7
Statutory and customary law	· 7
Institutions	· 10
Processes	· 10
Accountability	· 11
Transparency	· 12
Participation	· 13
Predictability	· 13
4 FOREST LAW ENFORCEMENT	· 15
Enforcing legal sanctions	· 16
Institutions	· 17
Processes	· 18
5 COMPARATIVE ASSESSMENT OF RECOMMENDATIONS	· 19
Laws and law enforcement	· 19
Institutions	· 22
Processes	· 23
Accountability	· 23
Transparency	· 23
Participation	· 24
Predictability	· 24
REFERENCES	· 25
ANNEX 1 DEFINITIONS OF GOVERNANCE	· 29
ANNEX 2 FOREST LAW IN SVBC COUNTRIES	· 31

1 Introduction

IN THE PAST DECADE, the international development community has increasingly focused its attention on illegal logging and other forest crimes, and on the underlying weaknesses in law enforcement that allow them to flourish. At the same time, it has come to acknowledge that illegality often stems from broader failures of governance, and that strengthening law enforcement alone will not work unless the laws themselves, and the processes and institutions that influence forest use, are also improved (World Bank 2006).

Illegal logging is a serious obstacle to the efforts of timber producing and consuming countries to alleviate poverty, to develop their forests sustainably, and to protect forest ecosystem services. The international response to this problem began with the G8 Action Programme on Forests, agreed by G8 foreign ministers in 1998 and featuring illegal logging as one focus of action. This led to a series of regional ministerial conferences and processes on Forest Law Enforcement and Governance (FLEG), coordinated by the World Bank.¹ The European Union also made a strong commitment to combating illegal logging and the associated trade in timber through its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, adopted in 2003.²

One contribution to this process has been the IUCN project *Strengthening Voices for Better Choices* (SVBC). Formulated in response to a call from the European Commission for proposals to support implementation of the FLEGT Action Plan, SVBC sought to promote more effective forest governance in six key tropical forest countries: Brazil, Democratic Republic of Congo (DRC), Ghana, Sri Lanka, Tanzania and Viet Nam.

Over the course of the project, from 2005 to 2009, IUCN consistently sought to engage government, civil society and the private sector in collaborative efforts to design and pilot new approaches to forest governance issues. This

tripartite approach – driven by the conviction that greater progress can be made in improving governance if the three main groups in society work together – lies at the heart of IUCN's forest governance work.³ In practice, of course, SVBC recognised and took account of the fact that each of these groups comprises myriad sub-groups and interests.

Through SVBC, IUCN worked across different scales – from local (landscapes), to intermediate (countries, regions), to global – to support the FLEGT Action Plan by strengthening awareness and capacity, facilitating dialogue and linking policy to practice. SVBC also contributed to the development and testing of new instruments introduced by the Action Plan, such as the Voluntary Partnership Agreements between timber-producing countries and the European Union.

The national assessments and global synthesis

SVBC recognised that a prerequisite for improving forest governance is an understanding of the policy, regulatory and institutional obstacles to using forests sustainably. To that end, the project design called for two independent participatory assessments in each country – one of the policy, legal and institutional framework for forests and the other of related economic policy and instruments. Later, the project team recognized that integrating the two studies would help to shed light on the links between law, institutions, and economic factors, and on their impact on forest governance.

In each country, SVBC's national coordinator worked with project advisors to select the issues to assess and draw up a research framework. A lawyer and an economist were supposed to work together to conduct the assessment. The hope was that the process of assessment itself, as much as the findings, would provide a source of learning and a stimulus for change.

In the event, finding qualified lawyers and economists, and getting them to work together, proved harder than expected. Another challenge was reconciling local interests with SVBC's global perspective. The project found it difficult to

¹ Three regional FLEG processes have been established to date: in Southeast Asia (ministerial conference held in Bali in 2001), in Africa (Cameroon, 2003), and in Europe and North Asia (Russian Federation, 2005). Another process is planned for Latin America and the Caribbean.

² The Action Plan focuses on seven broad areas: 1) support to timber-producing countries; 2) promoting trade in legal timber; 3) public procurement policies; 4) support for private sector initiatives; 5) safeguards for financing and investment; 6) the use of existing legislative instruments or adoption of new legislation; and 7) conflict timber.

³ See IUCN's online database of FLEG-related documents at: www.iucn.org/forest/fleg.

resolve the tension between making the assessments relevant to their national stakeholders and ensuring they addressed issues of global interest in a comparable manner (which would allow a planned synthesis of findings to be prepared).

As a result, the assessments followed different paths in different countries, though all went through some process of review and validation, and some played a direct role in driving reform. A sub-study on participation for the Brazil assessment, for example, made a series of recommendations for reorganising and improving forest sector institutions in the state of Acre. These led to the restructuring of the State Forest Council to strengthen civil society representation, the success of which has prompted Acre's government to reorganise two other State Councils along similar lines.

The final assessments, then, differ widely in scope and coverage. This variance has complicated the task of preparing the synthesis presented in this report. One issue has been the choice of analytical framework to organise the findings. In the end, the authors decided to use a simple framework of key governance elements drawn from the literature (see Chapter 2). This framework is not identical to the research framework of the SVBC assessments, though that encompassed most of the components and principles of governance.

What became clear as SVBC progressed was that its stakeholders lacked a common understanding of what "governance" means. The many volumes written about governance in the past few years alone have enriched thinking about the concept, but have also elaborated it to the point where it is difficult – especially for many practitioners – to "see the forest for the trees". So what is needed is a return to basics – a stripped-down description of governance that can be easily explained and communicated.

Structure and audience

This synthesis, then, provides a background to the concept of governance and how it has evolved in the fields of development and conservation. Drawing on a review of different definitions of governance, it identifies several key elements of governance and uses these to organise the synthesis of the findings of the SVBC national assessments. The report is structured as follows:

- ▶ Chapter 2 reviews the history of the concept of governance, its modern incarnation as a cornerstone of conservation and development, and its key constituent parts;
- ▶ Chapter 3 compares and contrasts the findings from the SVBC assessments within

a framework of seven components and principles of governance;

- ▶ Chapter 4 uses this framework to review a particular "sub-system" of forest governance – forest law enforcement – as it appears in the SVBC assessments; and
- ▶ Chapter 5 concludes the report with a comparative assessment of the recommendations from the assessments.

This synthesis is aimed at IUCN members, partners and staff working on forest and governance issues, as well as a wider audience of interested laymen and specialists alike. It is intended to stimulate further reflection and discussion within IUCN and among its partners on the meaning and constituent elements of governance in natural resource management.

Sources

Unless otherwise stated, the sources of information on Brazil, DRC, Ghana, Sri Lanka, Tanzania and Viet Nam for this report are the following national assessments prepared for SVBC:

- ▶ Millikan, B. H. (2009) *Forests, Public Policy and Governance in the Brazilian Amazon*. Unpublished. "The Brazil assessment".
- ▶ Kiyulu, J. & Mbunga, A. M. (2007) *Mechanisms for improving forest governance in the Democratic Republic of Congo: National Report on Legal and Socio-Economic Studies*. Unpublished. "The DRC assessment".
- ▶ Arthur, E. & Opoku, K. (2007) *Ghana Country Assessment Report*. Unpublished. "The Ghana assessment".
- ▶ Nanayakkara, A., Herath, H. M. D. & Wicremasinge, K. (2009) *Strengthening Voices for Better Choices: Sri Lanka Country Assessment*. Unpublished. "The Sri Lanka assessment".
- ▶ Mkwizu, Y., Majamba, H. & Lokina, R. (2007) *Innovative Approaches to Overcoming Economic, Legal and Institutional Obstacles to Improved Forest Governance: Tanzania Country Report*. Unpublished. "The Tanzania assessment".
- ▶ Nguyen Quang Tan, Nguyen Van Chinh & Vu Thu Hanh (2007) *Assessing Barriers Influencing Sustainable and Equitable Forest Management: The Case of Vietnam*. Unpublished. "The Viet Nam assessment".⁴

⁴ Published in summary form as: Nguyen Quang Tan, Nguyen Van Chinh & Vu Thu Hanh (2008) *Statutory and Customary Forest Rights and their Governance Implications: The Case of Viet Nam*. IUCN, Hanoi. Available online: cmsdata.iucn.org/downloads/vn_flegt_assessment_report_en.pdf.

2 Defining and Describing Governance

LITERALLY VOLUMES have been written about governance – what it is, or should be, and how to assess its quality. There are almost as many definitions of governance as there are organizations working on it. The number and variety of tools existing to describe or evaluate governance are also overwhelming, especially to practitioners who need to be able to explain or interpret the concept in clear, simple terms. The following discussion reviews past attempts to describe governance, identifying its essential characteristics and outlining a simple analytical framework used to structure the synthesis of findings from the SVBC assessments.

The foundations of the modern concept of governance were laid in the late 17th century by theorists in continental Europe and England, who sought to understand the dynamics of the relationship between a government and its citizens. The terms used to discuss the issues have changed over the centuries, but the core idea – that governance requires the interaction of both the public and private sectors of society – is as valid today as it was more than three hundred years ago. Yet the fact that the concept of governance as currently applied reflects Western values poses a challenge when trying to apply it universally (Bosselmann, Engel & Taylor 2008).

Despite its long history, it is only in the past two decades that governance has attracted sustained attention in development and conservation circles. Since the mid 1990s, various United Nations bodies, multilateral development banks, regional economic integration organizations, bilateral aid agencies and think tanks have formulated their own definitions of and approaches to governance.

Many of those who have tried to define governance have noted that it is a dynamic concept, evolving differently in different societies.⁵ Others have also tried to explain that governance does not mean government (Plumptre & Graham 1999, Bosselmann *et al.* 2008), though the difference remains elusive.⁶ Unfortunately,

popular reference works do not help to clarify this difference. Two recent dictionaries define both governance and government as “the act[ion] or manner of governing” (OUP 1996, 2009). The conflation of these two words – implying that governance is a top-down process rather than the interaction of a government with its citizens – is reflected in some of the international definitions of governance.

Thanks in part to the commitment made by the 2002 World Summit on Sustainable Development to improve governance in general, and forest law enforcement and governance in particular, governance has become a standard part of the development and conservation lexicon. The term is often used without specifying what the writer or speaker means by it – whether it is the exercise of power and authority by a government, decision making, rules or institutions, or management.

Quality of governance

As governance has gained acceptance as a focus of development and conservation, the institutions that have defined the concept and dedicated resources to its promotion have also tried to identify its necessary and desirable characteristics. As with definitions of governance, there are now almost as many descriptions of what governance should encompass as there are institutions working on the concept. More than 20 different characteristics have been ascribed to governance (see Annex 1), though only four consistently appear across different descriptions – accountability, transparency, participation and predictability (see below).

The criteria for what constitutes “good” governance have been expanding as attention to governance in the context of development and natural resource use has increased. Reforms are now being made in multiple sectors with funding from multiple donors, each with their own definition of and approach to governance. As recently as a decade ago, in the authors’ experience, good governance was still taken to refer primarily to one dimension of governance, the absence of corruption. Today, only two of the descriptions of governance reviewed for this report identify the control of corruption as a requirement.

“Most problems of governance and forestry are governance problems that affect forestry rather than forest governance problems.”

– Mayers, Bila, Khaukha, Opoku & Simwela (2006)

⁵ The UN Economic and Social Commission for Asia and the Pacific, for example, notes that good governance is an ideal which is difficult to achieve, but towards which societies should strive (see: www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp). The European Commission notes that governance evolves into good governance (EC 2003).

⁶ For example, de Ferranti *et al.* (2009) call governments “the suppliers of governance”.

Community meeting in Bokongo village, Equator Province, DRC. Photo © Joël Kiyulu.



As the governance agenda has grown, it has become increasingly unclear how much progress a country must make on each item to be categorized as having achieved good, rather than bad, governance, or some point between these two poles. Other criticisms have also been levelled at the agenda. Many of the criteria put forward as requirements of good governance are in fact the result of development in industrialised countries (Grindle 2002). Yet, unsurprisingly perhaps, it appears that different countries can develop in different ways and yet still arrive at positive governance outcomes (Andrews 2010).

These criticisms do not invalidate attempts to promote better governance, but they do suggest that a more reasonable understanding is needed of what can be achieved and how. Responding to potential overreach by governance proponents, Grindle (2002) proposed the concept of “good enough” governance as a more realistic basis for understanding that any given country will have a range of responses on a continuum of governance performance. The focus of development interventions under this concept is on what is working and how to build on that, rather than on what is absent or not working (Bodegom *et al.* 2008). Elements of better practice in governance can be understood as a menu rather than as a fixed model for achieving “good” governance (Andrews 2010).

The emerging lesson is that though “good” governance is a useful concept, a prescriptive approach may overlook legitimate, effective choices made by countries in response to their particular needs and circumstances. Looking at these choices instead, and understanding their origins and impacts, may help to shed more

light on how countries make their own lasting improvements in governance.

A governance framework

A consolidated definition of governance emerges from a review of definitions offered over the past decade (see Annex 1): governance is the interaction of rules, institutions, processes and principles through which a society exercises powers and responsibilities to make and implement decisions. For the purposes of the framework used to organise this report, laws (or rules), institutions and processes are referred to as the components of governance. The principles of governance are discussed below and in Annex 1.

Laws create rights, provide the foundation for institutions and processes, and establish the basic principles for people’s interactions with each other and with forest resources. Statutory law is the written or codified law of a country, created by State authorities with law-making power, usually the legislative and executive branches at one or more levels of government. Customary law, as understood by the SVBC assessments and this report, is oral tradition that develops over time, acquiring legitimacy as a set of rules distinguishing acceptable from unacceptable behaviour in a given community.⁷ The relationship between statutory and customary forest law is discussed in the box opposite.

Although some economists hold that laws and norms (both formal and informal) are institutions, in the conservation and development fields laws and institutions are generally understood as

⁷ The Ghana assessment, pp. 37–39.

Laws and other rules – statute and custom

In most countries, statutory law governs the ownership and administration of forests. A recent review of the history of forest law-making confirmed, unsurprisingly, that statutory law often reflects the interests of government and the private sector, giving little or no consideration to forest-dependent groups such as indigenous peoples and rural communities (Colchester 2006). Economic theory provides one explanation for this approach – law makers assume that the private sector will operate efficiently, that government will have the capacity to enforce the law, and that sufficient social and other benefits will somehow flow to civil society.

The statutory legal system in some countries may integrate customary law entirely or recognize customary law as applicable in certain circumstances. A small number of countries allow indigenous peoples and local communities to enforce their customary laws within their own territories. Whatever the statutory or constitutional arrangements, however, the reach of customary law over forests is far wider than commonly assumed or accepted (Colchester 2006). Communities legally own or administer 11% of forests globally, constituting 22% of developing countries' forests (Molnar, Scherr & Khare 2004). In tropical forest countries, the proportion of forest owned by indigenous peoples is 12% (White & Martin 2002).

Information on the degree to which indigenous peoples and local communities apply their customary laws is scarce. Yet there is substantial evidence that even when statutory law technically applies, customary law will govern if the forests lie beyond the reach of statutory authority. As a result, support is growing for the recognition of forest rights originating in customary law (Ellsworth 2004).

being two different things. Formal and informal institutions may be created by formal or informal laws, and include customary and statutory institutions, as well as private sector and civil society bodies.

In the scope of this description of governance, processes include large-scale ones such as decentralisation and democratisation, as well as smaller-scale ones such as settling land and forest rights, and issuing permits.

Besides these three main components of governance, four key principles can also be identified from the literature. As noted above, these are:

- ❶ **Accountability:** The requirement to accept responsibility and answer for actions. Decision makers and implementers, whether statutory public servants or customary authorities, should be accountable for the way they use – or abuse – their powers.
- ❷ **Transparency:** Sharing information and acting in an open manner, based on the free flow of information. Transparency allows people to gather information that may be critical to revealing abuses and defending their interests. Transparent systems have clear procedures for public decision making and open channels of communication between citizens and officials, and make a wide range of information accessible.
- ❸ **Participation:** Playing an effective part in decision making, either directly or through legitimately appointed representatives.
- ❹ **Predictability:** Equal and consistent treatment – both protection and punishment – under the law. This includes the security of knowing how one can expect to be treated under the law, whether statutory or customary, and the understanding that law is not – nor should be – subject to arbitrary action by those who wield decision-making power.

These four fundamental principles of governance are interrelated. Transparency supports accountability, and vice versa. Transparent decision-making processes require participation, and predictability is essential for accountability, transparency and participation.

Although there are other attributes of governance, most are confined to the description offered by one or two institutions. For the purposes of this report, the three main components of governance – laws, institutions, processes – and four principles – accountability, transparency, participation, predictability – identified here provide a basic analytical framework for the findings of the SVBC national assessments.

Traditional chiefs in Bikoro territory, Equator Province, DRC. Photo © Dieuwke Klaver.



3 Forest Governance in SVBC Countries

LAWS, INSTITUTIONS and processes that govern forests and forest resources in SVBC countries are both customary and statutory. The relationships between the two systems range from parallel co-existence to contradiction and conflict. Where the statutory system recognizes the customary system, custom is often restricted by statute – on paper if not always in practice. Accountability is weak in both statutory and customary systems. Transparency is often – but not always – less of a problem in customary systems than in statutory systems or between customary and statutory systems because information is transmitted directly from person to person. Participation is a challenge within both systems and between them. In statutory systems, government officials often lack the skills and experience required to begin and maintain dialogue with civil society and the private sector to ensure that they are appropriately involved in making and implementing decisions. Customary systems do not always allow participation by all members of the community. In both systems, rules are not applied to all members of society the same way. Both systems have advantages and disadvantages for forest governance. The challenge – which SVBC countries, like most others, have yet to fully meet – is to find ways for the two systems to work in harmony.

Statutory and customary law

All six SVBC countries have plural legal systems – that is, multiple systems operating at once – usually the product of colonisation or religious and cultural accommodation. Some countries explicitly recognise customary law, either by constitution or by statute, or by both. Others do not, though customary law co-exists with statutory law. The degree to which statutory law is harmonized with customary law in the countries which recognise it varies greatly, though the relationship is far too often marked by contradiction and conflict. The experience in SVBC countries is that the interaction of statute and custom often consists of local elites exercising their customary powers for personal gain while implementing decisions on forest use made by statutory authorities.

State law recognizes customary law in the three African SVBC countries and Brazil, either by constitution (Brazil, DRC and Ghana), or by

statute (Tanzania), or by both (DRC). Customary law is not officially recognized in Viet Nam, though upland communities continue to adhere to it. A similar situation exists in Sri Lanka, where statutory law has been gradually extinguishing customary rights for more than a century.

In Viet Nam, Tanzania, Sri Lanka and DRC, the forest sector is governed by a single statutory law. Brazil has two forest laws and Ghana six. In every country, forest land is governed by one or more land laws. Protected area laws also influence how forests are administered, particularly in Brazil and, to a lesser degree, Sri Lanka.⁸

The economic impacts of the laws governing the forest sector, whether directly or indirectly, can be great. The fees, taxes, royalties, subsidies and other fiscal measures provided for by statute, and the way they are applied, can support the forest sector financially, but can also increase transaction costs and create opportunities for rent-seeking and corruption, leading to longer-term economic losses. In DRC, for example, timber transport fees depend on the route taken and distance travelled rather than the volume of timber transported, undermining efforts to control timber harvest levels. More positively, DRC's Forest Code of 2002 has abolished over 170 taxes created and applied since 1949, simplified the tax regime for the forest sector, and introduced the principle of non-exoneration from taxation.

Both customary and statutory law are the source of rights in forests and to forest resources.

Rights and tenure under statutory and customary law

Security of rights and tenure is generally seen as critical to sustainable and equitable forest management (Christy *et al.* 2007, Cotula & Mayers 2009). In economic terms, rights and tenure define how forest goods and services may be accessed and used, and by whom. Insecurity of control rights encourages rights holders to act opportunistically, taking advantage of their resources for as long as they hold the rights (see discussion below).

Traditional communities use customary law to allocate rights and powers to themselves and to their members. The State uses statutory law to

⁸ For more details on forest law in SVBC countries see Annex 2

allocate rights to itself and to its citizens. How the decision-making power that comes with these rights is used to determine access to forests, and the use and distribution of their benefits, lies at the heart not only of forest governance but also of socio-economic development in general and poverty alleviation in particular.

The SVBC countries exhibit a wide range of rights to control forest use. In DRC, which recognises customary law, families may have sole authority to control access to land and forest resources to which they hold the rights. Control by forest rights holders in Viet Nam is limited to making decisions in accordance with forest land uses defined by the State.

Though the way they are allocated varies from country to country, the security of rights and tenure is important in all SVBC countries. A country's system of rights and tenure must not only provide hope but also instil confidence in implementing and enforcing those rights. Secure tenure gives rights holders – whether they are individuals, communities or businesses – more leverage in their relations with other stakeholders, but insecure tenure makes people vulnerable to dispossession (Cotula & Mayers 2009).

Rights in forests are granted by both custom and statute, particularly in the African SVBC countries which recognise customary law. Generally speaking, however, central governments in SVBC countries reserve most of the power to make decisions concerning forest resources to themselves, either through exclusive control of forests or through selective granting of access and use rights. Statutory law in some of these countries recognizes community rights, but with limitations not imposed on statutory rights. In Tanzania, which recognises customary law by statute, the 1999 Land Act and Village Land Act provide that customary rights are at least equal to rights granted by other statutes, yet at the same time they limit tenure security by granting the President discretion to re-categorize lands and land use.

Customary rights are collective in most SVBC countries. In Ghana, Tanzania and Viet Nam, customary law recognizes both collective and private rights.

In both DRC and Viet Nam, internally reinforcing customary law systems that allocate rights also ensure those rights are respected. The erosion of customary law by statutory law in Viet Nam, however, has created incentives for illegality. The State agencies responsible for forest management, backed by statutory laws and law enforcement powers, have overridden the customary laws of indigenous communities. As a result, rural people now think that all forests belong to the State, and the State hires local people to protect forests that officials may take back at any moment. This insecurity leads

people to take advantage of any opportunity to use forest resources for their own benefit. For example, the right to exclude outsiders, a central pillar of customary law in Viet Nam, has been weakened by changes in statutory tenure. In coping with these changes, indigenous communities face the dilemma of ignoring their customary norms and exploiting forests for short-term benefit, or possibly losing everything to outsiders.

The interactions and inconsistencies in the quality of these various types of rights are reflected in the equity of systems created to share or retain the benefits from forests. Customary law does not necessarily ensure that resources are equitably distributed within a community: social and religious elites can capture a disproportionate share of the benefits, just as they do under statutory regimes.

Poor, forest-dependent people have often suffered as a result of forest conservation efforts, the benefits of which generally tend to accrue nationally and globally, and have been marginalized in local and national resource distribution schemes. Recognizing this, forest law making and law reform in the past decade have begun to emphasize the creation of benefit-sharing mechanisms and markets providing opportunities and incentives for legal forest activities. The state of Acre in Brazil, in its 2000 Chico Mendes Law, introduced a subsidy for locally produced native rubber designed to compensate local collectors for the forest ecosystem services they maintain. Viet Nam is piloting a system of payments for ecosystem services in selected provinces which will be scaled up and applied nationally.

Access and use rights

The statutory laws of all six SVBC countries define different categories of forest. Access and use rights depend on whether the forest is designated as state or public forest, village or community forest, or private forest. These categories are especially important to forest-dependent communities as they set limits on the range of legal livelihood strategies. Ownership of land does not necessarily include ownership, or even access to and use, of the overlying forest resources. This is the case in Ghana and Sri Lanka, where land and tree tenure are separable. In Sri Lanka, the State is the owner of certain tree species found in village forests, though the rest of these forests can be managed by the communities for whose benefit they have been declared.

Customary law in the African SVBC countries gives community members free and equal access and use rights to their community forests. Outsiders usually have to pay in cash or in kind for permission to access and use another community's forest resources. Under customary law in DRC, for example, the members of a community are free to use any forest resources

“Despite the existence of legal and constitutional provisions meant to secure rights, other laws (notably conservation, forestry and wildlife laws) contradictorily limit or deny these rights. In practice, because of the way laws tend to be selectively applied, those forest-dependent peoples who can be objectively considered ‘poor’ enjoy minimal legal security.”

— Colchester (2006)



Community resource mapping in Viet Nam. Photo © IUCN Viet Nam.

on community land; outsiders may take only non-timber forest products. Outsiders who want to harvest timber must make an in-kind payment, usually of sugar, salt or similar goods, and generally have to share part of their timber with the community. Village chiefs determine the conditions of use for outsiders.

Under statutory law, permits or concessions may be used to grant access and use rights. The requirements for issuing these usually relate to the category of forest for which they will be granted. One such category is forest reserves, declared in all six SVBC countries. Here, the access and use rights granted depend on the type of forest reserve, and how clearly the reserve's boundaries are marked plays a role in determining how effectively a statutory permit and concession system functions. Conflict over access and use rights is likely if the borders of a reserve are unknown or disputed. Customary forest boundaries tend to be known and understood by local people, if not by outsiders.

The statutory laws of all SVBC countries recognize some type of community forest tenure. DRC and Tanzania recognize the access and use rights of community members to their forest resources for an indefinite period. Sri Lanka, however, limits access and use rights for community members to particular forest resources – timber in general, specific tree species and non-timber forest products. In Ghana, the Forests Ordinance of 1927 preserves the use and access rights established before a forest reserve was declared, calling these “admitted rights”. Viet Nam’s 2004 Law on Forest Protection and Development allows use rights to be given to

communities, but as the legal status of communities under its Civil Code of 2006 is uncertain these rights cannot be considered secure.

Transfer rights

Both statutory and customary law in SVBC countries provide for limited transfer rights. In every country, customary rules generally allow rights to be transferred within the community, only prohibiting transfers to outsiders. Under statutory law, the scope of transfer rights usually depends on the type of forest (public, private, community), the type of transfer (sale, mortgage, inheritance), and the type of rights holder. In Viet Nam, households and individuals have the right to transfer, exchange, donate, lease and inherit their forests, but communities with similar rights and responsibilities do not. Land-owning communities in Ghana may transfer land, but not forests. In some communities in Tanzania, customary law prohibited women from inheriting land. Statutory law has removed this inequity, however.

Restrictions on rights – bans

Three of the six SVBC countries have introduced partial or complete logging bans: Viet Nam, Tanzania and Sri Lanka. All have created incentives for illegal practices with little or no demonstrable improvement in forest resource conservation.

Viet Nam introduced a statutory partial logging ban in 1993 to protect the country's forest resources, followed by a ban on logging in most natural forests in 1997. Together these bans sharply limited the domestic supply of timber, driving up prices and forcing many smaller forest enterprises out of business. They also led to a

rapid rise in imports and created strong economic incentives for illegal logging and trade, both domestically and abroad.

Tanzania banned the harvest and transport of timber country-wide in 2006, the latest in a series of such bans. The ban's negative effects, however, led to it being lifted after just nine months. One of the objectives of the ban was to force loggers into alternative activities such as farming and fishing. In the event, however, the ban caught unaware many people who had invested heavily in taxes, permits and licenses, pushing them into illegal harvesting.

Sri Lanka imposed an indefinite moratorium on commercial timber harvesting in all natural forests in 1990, which remains in effect today. The resulting shortfall in production from natural forests was largely offset by increased production from home gardens and other non-forest sources, as well plantations of tree crops such as rubber. Sri Lanka's State Timber Corporation, which had a monopoly on logging in State-owned natural forests, lost this concession and was forced to turn to State plantations and private sources. Public opinion has hailed the moratorium as a success, though it has not necessarily reduced levels of illegal logging.

Institutions

Institutions, as the implementers of laws and rules, play a key role in economic and social development. To a great extent, the way in which institutions put laws and rules into practice can determine whether they create incentives for sustainable forest management or for unsustainable and illegal practices. In economic terms, institutional failure results from poorly designed, inefficient or simply non-functioning institutions (Wells 1997). Institutional weaknesses lead to resources being inefficiently allocated and can create perverse incentives for deforestation. One such weakness is a chronic scarcity of skilled, well-informed public forest officials in developing countries (Laarman 1999).

In all SVBC countries, different ministries are responsible for administering land and forests. In Brazil, at least three national institutions share this responsibility: the National Institute for Colonization and Agrarian Reform (the federal land agency); the Brazilian Institute of Environment and Renewable Natural Resources (the national environment authority); and the recently created Brazilian Forest Service. A lack of coordination among these institutions, exacerbated by understaffing and a scarcity of funding, has weakened the country's forest governance capacity.

Coordination is also a challenge for the single central government authorities responsible for the forest sector in Ghana (the Ministry of Lands, Forests and Mines) and Viet Nam (the Ministry of

Agriculture and Rural Development). In Viet Nam, divisions at all levels between the two main forest departments in the Ministry, the Forestry Department and the Forest Protection Department, often created delays and raised costs because of poor coordination. A decree was issued in 2006 to remedy this problem at the provincial level, but it was not until 2009 that the forest service was restructured centrally to merge the Forestry Department and Forest Protection Department into a new Directorate of Forestry.⁹

Viet Nam's forest administration operates at national, provincial and district levels. Tanzania has decentralised much of the responsibility for administering forests to its regions, and below them to local government (district) authorities who oversee district forest officials. DRC's 2002 Forest Code and 2006 Constitution provide for the decentralisation of forest management and revenues to provinces and sectoral authorities in local governments, though progress on the ground has been slow. Both Ghana and Sri Lanka technically allow decisions to be taken by their regions and provinces, but in practice they are taken mainly by the centre.

Jurisdictional conflicts and weak coordination generate high transaction costs which can impact the economy as a whole. Weak institutions also burden the economy when inadequate implementation of laws leads to lost revenue. In Ghana, non-enforcement of timber utilisation contracts (see below) and certain fees and taxes is estimated to cost the Forestry Commission and rural communities US\$100 million a year. Insufficient investment in building strong institutions creates a vicious cycle: institutions unable to enforce revenue-raising laws have insufficient income to cover their operating costs, so remain incapable of enforcing these laws.

Processes

All SVBC countries have encountered process-related weaknesses, for example a lack of transparent, participatory and accountable processes to:

- ▶ build consensus, negotiate and mediate among different stakeholders;
- ▶ plan development activities with input from affected communities;
- ▶ distribute benefits from forest management; and
- ▶ enforce agreements between customary rights holders and commercial interests.

Many of these challenges are rooted in a lack of capacity in national and sub-national institutions to facilitate multi-stakeholder participatory

⁹ The relevant legislation is Decree 119/2006/ND-CP and Decree 75/2009/ND-CP.

processes, and to incorporate their results into making and implementing decisions.

Sri Lanka has no statutory requirements for participatory decision making related to forest resources. DRC requires consultations with local communities as part of the statutory process of classifying and reclassifying forests, but these are seldom conducted in practice. The end result is the same – stakeholders have few options for providing input or for verifying that their concerns have been heeded by decision makers.

Ghana offers examples to illustrate both the challenges and the successes of strong processes in the forest sector. Its Timber Resource Management Act of 1998 created the timber utilisation contract as the only legal instrument for commercial timber harvesting. Holders of forest concessions and leases were given six months after the law was enacted to convert their permits into contracts. Yet the Forestry Commission failed to establish a process for conversion, so most loggers continue to operate under invalid concession agreements.

By contrast, the chief and traditional council of Twifo Mampong in Ghana's Central Region, through a consultative process offering an interesting model for integrating custom with commercial forestry, agreed a change in customary law to remove the taboo against farming or entering forests on Thursdays, enabling the Twifo Oil Palm Plantation to operate all week. Twifo Mampong chiefs now want a larger role for custom and chiefs in forestry management, as well as greater transparency in timber companies and the Forestry Commission on timber income.

In 2004, Thua Thien Hue province in Viet Nam piloted a forest management project with five ethnic villages in the buffer zone of Phong Dien Nature Reserve. The project involved selected households in each village in the entire process of forest allocation, including surveying, planning, developing benefit-sharing arrangements, sharing knowledge and establishing a forest protection team. Local knowledge about forest management and customary norms and practices was discussed at community meetings, where villagers reached a common agreement on community-based forest management and benefit-sharing policies which was documented and submitted to district authorities for approval.

Although the project in Thua Thien Hue did not involve every household, local people generally viewed its process and results positively. The challenges they encountered stemmed mostly from external factors: the long delay between allocating the forest and opening it to exploitation by villagers, for example, meant that poorer households could not participate because they had no immediate income. Also, the benefit-sharing mechanism adopted was quite general because the relevant government policies still

lack clear, appropriate provisions for calculating and allocating benefits.

Accountability

Accountability is the requirement to accept responsibility and answer for one's actions. Both individuals and institutions, formal or informal, may be held to account. Formal institutions are usually understood to mean government agencies, but can also include businesses and formally constituted civil society bodies. Institutional accountability for a government agency means it is accountable for decisions made on its behalf by government officials (Turner & Hulme 1997, cited by Patlis 2004). Individual officials, and individual business and civil society actors, may be held accountable under their own obligations to exercise their responsibilities and obey the law. Informal or traditional systems may also hold local institutions accountable for their decisions, and usually have mechanisms to hold individuals to account.

A survey carried out during the SVBC assessment in DRC found that accountability is the weakest aspect of forest governance there. The country's customary hierarchy, for example, makes traditional leaders accountable to each other but not to the members of their communities.

Viet Nam has both statutory and customary mechanisms to promote accountability. Statutory law provides three mechanisms for holding public authorities to account under the 1998 Law on Complaints and Denunciations: through their administrative superiors; through the People's Councils at all levels; and directly to any individual or organization. Customary leaders are nominated by and accountable to village elders. Customary mechanisms tend to work well, but leaders are undermined by the fact that government does not recognise their authority, partly because of its concern that grassroots authority could challenge the power of the State.

Statutory law in Sri Lanka does not provide for an administrative review to hold public officials, including forestry officials, accountable for their decisions and actions. The ways in which citizens can hold public authorities responsible include lobbying a member of Parliament to put questions to the Minister in charge, and submitting a petition to draw the attention of Parliament as a whole to a particular issue. Another course of action is through the Human Rights Commission of Sri Lanka, which is empowered to investigate infringements of fundamental rights, and either to make recommendations to government or to refer cases to mediation, conciliation or adjudication. The utility of these provisions in improving forest governance is still unclear, however.

Villagers living in the buffer zone of the Knuckles Environment Protection Area, Sri Lanka. Photo © Shantha Hennayake.



A lack of accountability can manifest itself as economic losses locally and nationally. Ghana's Forestry Commission allocates 60% of forest revenues to itself – though without any statutory basis for doing so – through a restrictive interpretation of the Constitution. No statutory mechanism exists to make Ghana's District Assemblies accountable for how they disburse funds to the communities they represent. Also lacking are customary mechanisms to hold traditional authorities to account for the funds they receive on behalf of their communities.

Transparency

Transparency means sharing information, and is built on the free flow of information. Information on markets, tax and licensing regimes, and the collection, allocation and distribution of revenues, is necessary for informed decision making. Incomplete or unequally distributed information is one cause of market failure. Timeliness of sharing information is also important. Forest laws in Sri Lanka and Viet Nam only require information to be provided after decisions are made, meaning that stakeholders have no voice in decision-making processes.

Forest stakeholders in all SVBC countries face difficulties in compiling and analyzing information themselves, or in obtaining information held by others. In every country, isolated rural communities are at a particular disadvantage as they have few ways of accessing the information made available by government agencies. As a result, forest stakeholders are rarely able to make decisions with adequate information about each

others' needs, interests or intentions.

Statutory law currently enables information sharing and transparency in only one SVBC country, Brazil, where a constitutional guarantee and the 2003 Access to Information Law provide the legal basis. This law addresses transparency in applying and collecting fines for environmental crimes, and gives any individual, independently of proving specific interest, the right to obtain information on fines for illegal deforestation and logging, as well as on policies, plans and programmes with a potential environmental impact. Legislation also requires that information on approvals of timber management plans and deforestation activities, as well as institutional data on funding, infrastructure, programmes and projects, is made publicly available on the Internet. This advanced statutory regime is still at an early stage of implementation, however.

In rural communities, information is usually transferred by word of mouth. Smaller communities may be able to hold meetings of all their members to exchange information and form opinions, as they do in Ghana. Customary social networks in Viet Nam ensure that the available information reaches every member of the community, including the illiterate.

In the context of law enforcement challenges, the SVBC countries all confront challenges stemming from a basic lack of awareness and understanding of what is legal, particularly at the local level. In some countries, such as Viet Nam, this is attributable to a lack of clarity in statutory law, for example on whether timber extracted from allocated forests can be legally marketed. In Tanzania, few people outside of cities are familiar

with the colonial forest laws or know that they were repealed in 2002, partly because legislation is published only in English, a language most rural people cannot read.

Participation

The SVBC countries face few issues related to a lack of participation by the private sector in forest governance. Rather, their problems are rooted in the fact that government and the private sector – represented by large, established industry players – tend to dominate decision making at the expense of smaller businesses and civil society. In a survey of community members, chiefs and forestry officials conducted for the Ghana assessment, all of the community members ranked participation as the most important issue in forestry. No one in the other two groups did.

A lack of participation is not necessarily due to a lack of goodwill on the part of officials. Often it reflects a lack of capacity to facilitate participatory processes and the difficulty of consulting with isolated rural people, or of finding credible representatives for them. Transparency affects participation. A lack of transparency – of an effective and timely flow of information – undermines the ability of stakeholders to participate in making and carrying out decisions.

Policy and law in DRC and Tanzania are progressive in providing a basis for participatory decision making, but building on this in practice has been slow. Tanzania requires all stakeholders to be involved and consulted in decisions about ownership of land, including forest land. Yet the opportunities for participation are unequally distributed, favouring public authorities and disadvantaging forest-dependent communities. Ghana's forest policy provides for participation, but the policy has not been translated into enforceable law. Although the Ghana and Sri Lanka SVBC assessments point to customary processes as models for participatory decision making, in other countries custom limits participation by certain members of the community.

Participation – or the lack of it – has economic implications. Declaring a conservation forest without consulting with local people, for example, can have serious economic impacts if it limits income-generating activities, and may affect nutrition if forest products are an important

part of the local diet. A lack of participation in awarding concessions also has economic costs, mainly for local communities if the expected employment and other income benefits do not flow to them.

The degree of participation by women varies from country to country. In DRC and Tanzania, custom generally excludes or marginalizes women from decision making, though statute requires them to be included. In Viet Nam the situation is reversed: women participate in decision making under customary law, but statutory law restricts their options.

Participation is important for law enforcement as well. Statutory enforcement officers usually cannot patrol all of a country's forest areas, creating a potentially important role for local inhabitants in detection. Without timely detection and prosecution of violations, evidence is lost, convictions become less likely, and inaction creates an incentive for further illegal activity.

Many villagers in Tanzania would like to cooperate with the authorities in enforcing forest laws, but are prevented by the statutory system. Similarly, in Viet Nam, law enforcement is weaker than it need be because there are no statutory provisions for local people to participate in compliance monitoring and enforcement. In Sri Lanka, the statutes provide for command-and-control enforcement measures with little emphasis on participatory approaches. Customary law enforcement, on the other hand, is based on participation by all community members, who police themselves and each other.

Predictability

Laws are often applied arbitrarily or inconsistently in the SVBC countries. In DRC, for example, outsiders are sanctioned but not members of the same political or social family. At a higher level, nationals are penalized more often than foreigners. And the poor are punished while the wealthy and the political elite escape sanction. This description of the rule – or misrule – of law is reflected to a greater or lesser degree in the assessments of all other SVBC countries. Where corruption is perceived to be widespread, as it is in the forest sector in SVBC countries, the unequal application of the law may easily be interpreted as corruption.

A Batwa pygmy woman and child, Bikoro territory, Equator Province, DRC. Photo © Joël Kiyulu.



4 Forest Law Enforcement

ENFORCING STATUTORY LAW is at the heart of FLEG processes. In most SVBC countries, enforcing customary law also plays an important part in forest governance. Although encouraging examples of innovative and effective forest law enforcement can be found in the SVBC countries, there is still great scope for improvement.

Illegal logging and other forest crimes, like crime generally, happen when three factors converge: motive, means and opportunity. Law enforcement systems do not rely on detection alone, but on a chain of necessary actions – monitoring, detection, confiscation, arrest, prosecution and conviction – and on the effectiveness of the institutions responsible for those actions. This chain is only as strong as its weakest link. If there are several weak links, investing in one alone will not increase overall effectiveness. Investing in better monitoring and detection, for example, will not improve enforcement if illegally harvested timber is not confiscated, prosecution is inadequate or major violations go unpunished (Akella 2004).

In Sri Lanka, amendments to colonial forest and land laws have focused on increasing fines, yet no data are available to support the contention that higher fines reduce illegal activity. Similarly, in Tanzania the commonest approach to strengthening law enforcement is to raise fines and other penalties, yet this simplistic approach to a complex problem has done little to reduce illegal logging.

Most of the findings of the SVBC assessments focused on the detection, arrest and punishment links in the enforcement chain. The first two are the actions most likely to be observed in the field, whereas trial and prosecution usually take place in an urban administrative centre. The assessments of punishment looked mainly at the penalties available under statutory law, rather than those applied in practice.

Villagers interviewed for the Tanzania assessment pointed to weak enforcement as a particular problem. Informants in Rufiji district in southern Tanzania, for example, noted that fully loaded timber trucks could be seen passing through a checkpoint on a road leading out of their district, even though a logging ban was in force. Although they did not know what happened to this timber, their perception that some actors were violating the forest law with impunity

was undermining the authority behind all enforcement efforts. Villagers freely admitted to giving directions and advice to outsiders on where to find timber. For this they received a pittance – as little as 500 shillings (roughly US\$0.32 cents) per tree – yet believed that any benefit, however small, was better than none since others could take from the surrounding forests with seemingly no repercussions.

In Tanzania, as in every other SVBC country, multiple conditions combine to create an environment conducive to illegal activity and challenging for enforcement. These include ambiguous forest and land tenure, the breakdown of institutional controls at the central level, uneven decentralization and a lack of institutional capacity at decentralized levels, and limited or no proper demarcation of forest boundaries.

Another common challenge is that statutory definitions of illegal activities ignore the needs of rural communities, many of whom depend on forests to sustain their livelihoods. Where access to and use of forests is restricted or forbidden, these communities often continue their livelihood practices anyway, in many cases knowing they are committing offences but taking the risk to make ends meet.

With some exceptions, statutory enforcement is premised on punishment rather than reform. Customary enforcement, however, tends to focus on bringing an offender back into line with accepted behaviour in the community. Customary enforcement is also less demanding because community members police themselves, and because customary rules tend to be obeyed more willingly since they are better understood.

Brazil is one of the most advanced SVBC countries in terms of its capacity to monitor forests and its use of this monitoring capacity as a tool of forest law enforcement. The country has developed a satellite-based system known as DETER (System for Detection of Deforested Areas in Real Time). This provides data every 15 days, allowing for more timely enforcement of forest laws. A new system known as DETEX (Selective Logging Detection System) is also being developed. The national environmental authority, the Brazilian Institute of Environment and Renewable Natural Resources, is increasingly using remote sensing to support planning of enforcement and control operations, with positive

results. With that capacity comes the challenge of using it effectively to support enforcement, particularly against unauthorized clearing of forests on private land, opening of illegal logging roads and illegal clearing of public forest.

The challenges to forest law enforcement in the SVBC countries affect every component of governance.

Enforcing legal sanctions

Statutory law in all SVBC countries provides for a variety of administrative, civil and criminal sanctions for non-compliance. These include administrative warnings, fines, confiscation of equipment or illegal products, disqualification of convicted persons from holding further licenses and permits, and imprisonment. They may be specified in forest laws as well as in administrative, civil and criminal laws. The severity of a penalty – the size of a fine or the length of imprisonment, for example – usually depends on the nature and gravity of the offence, and may vary with the level of authority imposing the sanction.

In contrast to statutory law, customary law in the SVBC countries does not distinguish between civil and criminal offences, though it varies in the severity of penalties, applying stronger sanctions for more serious offences. The resolution of private disputes is based on the same principle of restoring and maintaining harmony and cohesion within the community, and of showing respect to gods or ancestors.

The non-recognition of customary law, coupled with limited enforcement of statutory law, can create perverse incentives for illegality. In Sri Lanka, for example, the laws negating customary rights are not fully enforced, so some rural communities continue to follow their customary laws. Where this happens, the combined effect of widespread State ownership of land and non-recognition of customary rights leads to frequent encroachment in State forests. Though the State does not recognize customary rights, its unofficial policy is to selectively legalize some encroachments, creating in turn a perverse incentive – people exercise their customary rights and encroach on State land in the hope that their encroachment will be legitimized. The failure to recognize customary activities also leads to the exclusion of villagers from surrounding forest areas. Prohibiting villagers from entering forests for customary subsistence use encourages them to turn a blind eye to what goes on in the forest, creating additional opportunities and incentives for illegal activities.

Fines and other penalties

Statutory law in SVBC countries provides a wide range of fines. Though fines may be substantial for the rural poor, they are unlikely to

deter potential offenders with greater resources because the short-term gains from illegal activity far outweigh the possible costs. In any case, financial and other penalties in every SVBC country are often evaded because of corruption or a lack of will or capacity to apply them.

Legal loopholes exploited in Brazil, particularly by powerful economic interests, mean that non-payment of fines is still a major problem (Brito, Barreto & Rothman 2005). With a 1995 amendment to the Forest Ordinance, Sri Lanka increased maximum fines for some forest violations by a factor of 50, but between 2004 and 2007 the recovery of fines was well below the estimated financial damage from forest clearing and illegal felling.

Customary penalties in some villages sometimes isolate an offender. Or, when someone cannot afford to pay a customary fine, they may be required to carry out community services that help to sustain forest land or resources. Such softer, “lose a little, win a little” customary approaches to penalising offenders simultaneously provide incentives for offenders to observe community norms.

Taxes, incentives, disincentives and alternatives

In both Brazil and Tanzania, tenure legislation that discriminates against forested, “undeveloped” land, together with subsidies for land-extensive agriculture, creates incentives for both legal and illegal deforestation.

Non-compliance with forest law on private land in Brazil stems from various causes, including a lack of sanctions for unauthorized deforestation of private land, fiscal disincentives for complying with forest laws, and perverse incentives favouring agriculture and ranching. A lack of control over existing deforestation on private land makes it relatively easy to secure permits for transporting logs, helping to launder timber extracted illegally from conservation units, indigenous lands and other areas.

A new simplified environmental licensing system, linked to satellite-based monitoring systems (see above), was introduced by the state of Mato Grosso in 1999 to maintain and restore Legal Reserves and Areas of Permanent Preservation. This has helped to improve both the accuracy and the effectiveness of monitoring and enforcement. Instead of paying a fine for clearing forest illegally, landowners have the option of signing an agreement with the public prosecutor's office to adopt a mitigation plan for restoring the degraded area within a fixed period of time. Annual monitoring ensures compliance with the mitigation plan and tracks any changes in land use. Education for landowners also supports enforcement operations. The new system was reviewed in 2005 and found to be effective, in



Participatory village mapping, Rufiji district, Coast Region, Tanzania. Photo © Yassin Mkwizu.

spite of bottlenecks in transparency, accountability and institutional cooperation, which are being addressed as part of performance improvements. The system is now also being adopted by other Brazilian states.

Tanzania's Forest Act of 2002 provides for financial rewards to informers who collaborate with enforcement authorities. These are given only on the conviction of an offender, however. Since there can be a long delay between offence and conviction – if ever there is one – the prospect of a reward offers little immediate incentive to cooperate with enforcement efforts.

Institutions

The forest sector institutions in all SVBC countries have chronic weaknesses – due to human, financial and technical resource constraints at all levels – which contribute to ineffective enforcement and the persistence of illegality. Most SVBC countries cite jurisdictional conflicts, and all lament a general lack of capacity, as the principal institutional barriers to forest law enforcement.

In most cases, the SVBC assessments focused on the more obvious detection aspect of enforcement. The DRC assessment also noted the impact of deficient prosecution, because the same government agency is responsible for both detection and prosecution.

In DRC, the Ministry of Environment's department of control and inspections has neither sufficient qualified personnel nor the financial and material resources to respond to the numerous challenges to forest law enforcement in the country. As a result, the legislative and institutional

arsenal created by the 2002 Forest Code has had virtually no impact on forest sector illegality (Global Witness 2007). Courts, even those in forested areas, rarely see cases of violations of forest law and, in any case, forest law is not even taught in Congolese law schools.

Corruption

Corruption can be defined as the abuse of public power for private purposes, manifesting itself in costs from the misallocation of resources (Whiteman 2008). Transparency International's 2009 Corruption Perceptions Index, which covers 180 countries, ranks the SVBC countries as follows: DRC 162; Tanzania 126; Viet Nam 120; Sri Lanka 97; Brazil 75; and Ghana 69.¹⁰ These are overall rankings, not ones specifically for the forest sector, but they do indicate the scale of the challenge.

The sources of corruption in DRC include a culture of impunity and the country's extreme inequality. Along with influence peddling, corruption is the principal vehicle for the illegal exploitation of all natural resources, not just forests. A study conducted in 2006 by the country's Commission for Ethics and the Fight against Corruption identified the most corrupt authorities in DRC, starting with the office of the President and including the police and judiciary. In speeches, politicians condemn corruption and those who engage in it. In practice, corruption is a well-established system for enriching those in government who

“The high spheres of political, economic and financial power appear to be a market of shadows where the corrupted and the corrupting evolve in a culture of impunity.”

– The DRC assessment

¹⁰ Transparency International, Corruption Perceptions Index 2009. See: www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table (accessed 16 December 2009).

are both the offenders and the judges in the effort to reduce corruption. It is not rare in DRC to encounter situations in which central authorities push decentralized authorities to commit illegal acts, and statutory authorities do the same to customary authorities.

Viet Nam enacted an anti-corruption law in 2005 requiring officials and civil servants to declare their incomes and assets, including any interests in land. Under the 2003 Land Law and 2004 Law on Forest Protection and Development, public officials who abuse their powers are subject to criminal penalties. The country's 1999 Penal Code also criminalizes money laundering. Despite the relatively strict legal penalties, abuses of power and corruption in Viet Nam's forestry sector have created serious disincentives to legal activities for all stakeholders.

Bribery has long been a common practice in the timber trade in Sri Lanka. Low official salaries, the high returns to be made from illegality, a lack of disciplinary action and low morale all create incentives for corruption. Obtaining permits to cut trees legally is a time-consuming and expensive process. In a local culture of widespread patronage, politicians use such permits as rewards for their supporters and a quick way

to offset election expenses. The permit system, designed to protect State-owned natural forests by limiting timber harvesting to private lands, has become a textbook example of policy failure leading to precisely the opposite effect. A large part of the timber marked as coming from private land originates from State-owned forests, but has been smuggled onto adjacent private land and officials bribed to issue a permit concealing its true origin. Although Sri Lanka established a Commission to Investigate Allegations of Bribery or Corruption (commonly known as the Bribery Commission) in 1994, it has yet to prosecute any forest-related cases.

Processes

Every link in the enforcement chain depends on institutions that can sustain the processes required. Some of the processes that affect enforcement are not necessarily related directly to the forest sector. In Tanzania, for example, where a need has been identified to arm the local scouts who enforce village bylaws, firearms cannot be acquired even if the funds are available because the central government's licence approval process has broken down.

5 Comparative assessment of recommendations

THE SVBC COUNTRY assessments made more than 50 recommendations in all for improving forest law enforcement and governance. None of the recommendations was common to all countries, though half were common to at least two countries. A consolidated list of the recommendations is given in Table 1 over the page; Tables 2–9 detail the recommendations under each of the elements of the analytical framework.

Before discussing the recommendations in greater detail, two caveats must be made. First, as noted in the Introduction, the SVBC assessments did not use the same analytical framework as this report. So the grouping of recommendations below does not follow the format in which recommendations were presented in the assessments. Moreover, the number of recommendations collected in any group is not necessarily an accurate reflection of the relative weakness or importance of that element in the governance of an SVBC country or the SVBC countries considered as a group.

The second caveat stems from the way in which the national assessments were developed and conducted. As already discussed, the assessments follow broadly similar analytical lines, but vary in scope and coverage as a result of differing perceptions of what was important or a priority for research. This means that their recommendations were neither formulated nor prioritised in the same way by all countries. These differences emerge in, amongst other things, the number of recommendations made by each country: Ghana, for example, made 19 recommendations, whereas Tanzania made eight. That Tanzania made no law-related recommendations, for example, does not indicate that legal reform is any less relevant there than it is in Ghana. It does suggest, however, that Ghana may have seen greater scope or opportunity for legal reform at the time of the assessment, and chose to influence this through its recommendations.

One observation from the Ghana assessment applies equally to all SVBC countries: there is limited value in isolated technical, financial or administrative interventions, or in interventions targeting one stakeholder group or even just one institution. Only a holistic, strategic approach that identifies and targets the relations forming and sustaining a country's governance system

is likely to succeed. Many efforts to improve governance have tended to focus on statutory laws and law enforcement. Yet it is important to see legal reform and strengthening of law enforcement not just as ends in themselves, but also as a means of addressing other aspects of governance. An understanding of the economic drivers that impact forest governance is crucial to this task.

Laws and law enforcement

More recommendations can be grouped under this component of governance than under any other (see Tables 2 and 3).

The need to manage the conflicts inherent in legal pluralism was one of only two recommendations common to five of the six SVBC countries. Ghana, DRC, Sri Lanka, Tanzania and Viet Nam all recommended reviving or reinforcing those aspects of customary law which support equity in general and forest conservation in particular, and ensuring that public policy and statute acknowledge and harmonize with customary practice.

This recommendation applies particularly to forest rights and tenure. Though there are many similarities in the customary law of SVBC countries, the existence of major differences related to tenure means that harmonisation must be tailored to each country's specific needs. Relevant observations from the SVBC assessments include the need to:

- ▶ Increase the scope of customary forest governance, but to do so on the basis of sufficient knowledge of local rights systems (Sayer *et al.* 2008).
- ▶ Support processes that lead to legal recognition of customary rights, communal land ownership and customary tenure in forest land and resources. To do this, customary law must be documented in some way and the ways in which it contributes to forest governance demonstrated. This may not be possible in all cases, as some communities may be unwilling to have their oral customary law written down.
- ▶ Compare the results of forest management under customary law and statutory law in the same jurisdiction, taking into account

Table 1 Recommendations from SVBC country assessments		BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
LAWS AND LAW ENFORCEMENT	1. Consolidate outdated, dispersed, inconsistent, incomplete or too-complex legislation to improve its clarity and applicability		⊙	⊙	⊙		⊙
	2. Clarify and strengthen communities' roles in forest governance through policy and legislative reforms that devolve management rights to local people			⊙	⊙		⊙
	3. Promote customary law that reflects conservation, community and democratic values			⊙	⊙		
	4. Provide viable alternatives to local people if statutory laws restrict use of local resources	⊙					
	5. Develop fiscal and regulatory regimes that encourage individual actors to align their goals with the public interest			⊙			
	6. Make a political choice between different social visions/legal interpretations to close legislative loopholes and inconsistencies						
	7. Regulate forest management planning in line with the principles of spatial planning, SEA, EIA and the ecosystem approach				⊙		
	8. Undertake legal reform that enables public access to information and public participation in decision making				⊙		
	9. Extend non-State forest land tenure to promote the involvement of different stakeholders in forest management and investment						⊙
	10. Ensure tenure security						⊙
	11. Ensure implementing forest regulations are in place		⊙				
	12. Ensure sufficient financial and human resources to support enforcement measures	⊙			⊙		
	13. Strengthen customary rules/collective rights to promote compliance and enforcement, and make enforcement less resource-intensive		⊙		⊙		
	14. Promote public participation in enforcement measures			⊙			
	15. Ensure sufficiently strict sanctions are applied to deter forest law violators						⊙
	16. Explore the adequate level of penalties with different stakeholders and advocate with policy makers						⊙
	17. Clarify legal basis/specific provisions for compensating for natural resource damage						⊙
	18. Clearly delineate boundaries of different forest categories					⊙	
	19. Legislate for the disclosure of information on monitoring of forest activities, infractions and legal proceedings	⊙					
INSTITUTIONS	1. Create or strengthen mechanisms for communication, coordination and cooperation between the forest sector and other sectors with impacts on forests	⊙				⊙	
	2. Promote the role of non-State actors in forest production, management and monitoring to support weak public institutions	⊙					⊙
	3. Break up current state-industry cartels/syndicates		⊙				⊙
	4. Create or strengthen mechanisms for communication, coordination and cooperation between central, sub-national, and local/village authorities						⊙
	5. Ensure that statutory forest institutions are established and functioning	⊙					
	6. Respect local structures of governance						⊙
PROCESSES	1. Create or strengthen feasible, clear and transparent systems for sharing costs and benefits		⊙			⊙	
	2. Create and support spaces for multi-stakeholder dialogue			⊙		⊙	
	3. Improve local people's access to credit information, provide support to loan applications and promote small-scale lending						⊙
	4. Put greater emphasis on the social impacts of forest management to address the needs of poor forest-dependent people						⊙
	5. Encourage the private sector to help poor people by involving them in forest-based commercial activities						⊙
	6. Establish and implement processes for granting, terminating and converting concessions and permits						⊙
	7. Formalize forest management planning processes					⊙	
	8. Provide empirical evidence to back up policy making by disseminating field lessons among decision makers						⊙
	9. Seek a commitment from all relevant constituencies to respect and support forest sector processes						⊙
	10. Encourage foreign and domestic investment to meet the demands of forest development						⊙
ACC.	1. Give communities greater powers to demand accountability and assert control over both public and traditional institutions					⊙	
TRANSPARENCY	1. Communicate the statutory rights and responsibilities of individuals, communities and government authorities in easily understandable language		⊙			⊙	
	2. Improve local people's access to legal information by developing or using effective dissemination media, including radio, television and newspapers		⊙			⊙	
	3. Make harvesting information accessible to all stakeholders to enable accurate calculations of the entitlements from logging	⊙					
TRANSPARTION	4. Avoid jurisdictional overlap in forest management		⊙				
	5. Develop and use a system for communicating information about all aspects of making and implementing decisions to all stakeholders						⊙
	6. Communicate to local communities the true value of forest products at various stages in the market chain						⊙
	7. Clearly delineate boundaries of different forest categories						⊙
	1. Ensure the participation or representation of all stakeholder groups in forest sector processes to allow just and legitimate political positions to form		⊙				
	2. Build capacities to consult with local people or identify and work with credible local representatives			⊙			
	3. Strengthen participation generally in natural resources governance and local governance rather than concentrating on specific sectoral processes						
PRED. PARTICIPATION	4. Ensure proper coordination among stakeholders to avoid overlaps and conflicts						⊙
	5. Help local people to develop and implement sustainable management plans for their allocated forests						⊙
	6. Use customary practices as models for designing communal and collective participation in forest decision making and management						⊙
	1. Provide clear rules and constraints on administrative discretion to promote legal certainty, provide investment guarantees and secure stable long-term investment						⊙
	2. Provide sufficient operational funds to support performance in line with legal and corporate standards						⊙
PRED. PARTICIPATION	3. Clarify the roles and (financial) shares of traditional leaders in concession allocation processes so their involvement does not depend on administrative discretion						⊙

Table 2 Recommendations concerning statutory and customary law

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Consolidate outdated, dispersed, inconsistent, incomplete or too-complex legislation to improve its clarity and applicability		⊙	⊙	⊙		⊙
2. Clarify and strengthen communities' roles in forest governance through policy and legislative reforms that devolve management rights to local people			⊙	⊙		⊙
3. Promote customary law that reflects conservation, community and democratic values			⊙	⊙		
4. Provide viable alternatives to local people if statutory laws restrict use of local resources		⊙				⊙
5. Develop fiscal and regulatory regimes that encourage individual actors to align their goals with the public interest	⊙		⊙			
6. Make a political choice between different social visions/legal interpretations to close legislative loopholes and inconsistencies			⊙			
7. Regulate for forest management planning in line with the principles of spatial planning, SEA, EIA and the ecosystem approach				⊙		
8. Legislate for public access to information and public participation in decision making				⊙		
9. Extend non-State forest land tenure to promote the involvement of different stakeholders in forest management and investment						⊙
10. Ensure tenure security						⊙
11. Ensure implementing forest regulations are in place		⊙				

the relative availability of resources for forest management.

- Use the results of the comparative analysis to make well-justified proposals for reviewing all components of forest governance and management, inform a transparent debate of the proposals, and support the implementation of any recommended reform initiatives.

Where communities permit their customary law to be documented, its coverage or “jurisdiction” should be mapped as well.

Four countries – DRC, Ghana, Sri Lanka and Viet Nam – recommended clarifying and consolidating outdated, inconsistent or overly complicated statutory law. Ghana specifically noted the need to close legal loopholes which create opportunities for institutional dysfunction and illegality.

Governance is more than State law, however, and governance reform is more than just reform of tenure and legislation. Simply transferring rights to local people will not be enough to transform forest governance – decision-making power must be devolved as well, and institutional

“Policies and programs aimed at legally recognizing customary community land and resource rights, although not free from risks, offer many advantages in terms of economic efficiency, poverty reduction and environmental impacts. Properly executed, these would also redress past dispossession by the state of an asset that is essential for [rural livelihoods] and would enhance economic incentives to investments by local people The recognition of customary rights is of such importance that it should be embodied in a broader strategy and policy for the reform of the forest estate. [It] requires the refinement of the legal framework so that such rights can in fact be awarded without running into legal challenges.”

– Contreras-Hermosilla & Fay (2005)

and procedural support put in place (Nguyen, Nguyen & Tran 2008). Reforming economic policies that impact forests, including those that provide incentives for deforestation, is an important part of transforming forest governance. Creating incentives for forest conservation and sustainable management – such as payments for forest ecosystem services – can also support better governance.

The majority of the recommendations on law enforcement are country-specific, highlighting the degree to which compliance and enforcement issues are tied to their location, notwithstanding any similarities.

Three project countries – Brazil, DRC and Sri Lanka – stressed the importance of allocating sufficient financial and human resources for statutory law enforcement. Complementing this recommendation, DRC and Sri Lanka also stressed the need to strengthen customary law and collective rights, and to promote public participation in compliance monitoring and enforcement to reduce costs and build local support.

Further, the Sri Lanka assessment noted that forest boundaries must be clearly delineated

Table 3 Recommendations concerning law enforcement

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Ensure sufficient financial and human resources to support enforcement measures	⊙	⊙		⊙		
2. Strengthen customary rules/collective rights to promote compliance and enforcement, and make enforcement less resource-intensive		⊙		⊙		
3. Promote public participation in enforcement measures		⊙		⊙		
4. Ensure sufficiently strict sanctions are applied to deter forest law violators						⊙
5. Explore the adequate level of penalties with different stakeholders and advocate with policy makers						⊙
6. Clarify legal basis/specific provisions for compensating for natural resource damage						⊙
7. Clearly delineate boundaries of different forest categories				⊙		
8. Legislate for the disclosure of information on monitoring of forest activities, infractions and legal proceedings	⊙					

for enforcement to be effective. The Brazil assessment called for disclosure of compliance monitoring activities and legal proceedings, while Viet Nam noted that sanctions must be sufficient to deter illegal behaviour, and that the legal basis of compensation for any damages must be clear.

In Tanzania and Viet Nam, ineffective and inequitable enforcement leads forest-dependent people to conclude they have no option but to exploit the forest themselves, or to help others do so, if they want to gain any benefits. Similarly, in Ghana, poor farmers find they have to condone or even take part in illegal chainsawing and farming if they want to benefit from forests, even

if only in the short term, before others “come for all the trees”. Implicit in every SVBC assessment was the belief that improving enforcement against those violations of statutory law which impact hardest on rural, forest-dependent communities will help to build local confidence in and support for law enforcement.

Corruption by its nature tends to undermine every aspect of enforcement. Efforts to combat it, then, must form part of any initiative to strengthen enforcement. As the Tanzania assessment noted, the penalties for corruption should target the private sector actors who offer bribes as well as the officials who take them.

Table 4 Recommendations concerning institutions

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Create or strengthen mechanisms for communication, coordination and cooperation between the forest sector and other sectors with impacts on forests	⊙				⊙	⊙
2. Promote the role of non-State actors in forest production, management and monitoring to support weak public institutions	⊙	⊙				⊙
3. Break up current state-industry cartels/syndicates		⊙			⊙	
4. Create or strengthen mechanisms for communication, coordination and cooperation between central, sub-national, and local/village authorities		⊙			⊙	
5. Ensure that statutory forest institutions are established and functioning	⊙	⊙				
6. Respect local structures of governance						⊙

Institutions

Recommendations related to institutions common to three countries – Brazil, Tanzania and Viet Nam – include the need to strengthen coordination between forest sector institutions and institutions in other sectors influencing forests, and to promote the role of non-State stakeholders, particularly in areas where statutory institutions require support. One such area is the facilitation of participatory processes, where specialised capacity is often needed.

The actions that can be taken to counter institutionalized corruption apply to all SVBC

countries. They include supporting NGOs and civil society watchdogs, introducing checks and balances, ensuring pay and bonus structures create appropriate incentives, revising staffing procedures and making public the enforcement information needed to evaluate performance. Such efforts should include the judiciary – a clean and effective judiciary which decides cases fairly and punishes corrupt officials will encourage enforcement agents and prosecutors, and support reforms within the enforcement system (Akella & Cannon 2004).

Table 5 Recommendations concerning processes

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Create or strengthen feasible, clear and transparent systems for sharing costs and benefits		⊙	⊙		⊙	⊙
2. Create and support spaces for multi-stakeholder dialogue			⊙		⊙	
3. Improve local people's access to credit information, provide support to loan applications and promote small-scale lending			⊙			⊙
4. Put greater emphasis on the social impacts of forest management to address the needs of poor forest-dependent people						⊙
5. Encourage the private sector to help poor people by involving them in forest-based commercial activities						⊙
6. Establish and implement processes for granting, terminating and converting concessions and permits			⊙			
7. Formalize forest management planning processes				⊙		
8. Provide empirical evidence to back up policy making by disseminating field lessons among decision makers						⊙
9. Seek a commitment from all relevant constituencies to respect and support forest sector processes			⊙			
10. Encourage foreign and domestic investment to meet the demands of forest development						⊙

Processes

Creating practical and transparent processes for sharing the benefits of forest resources was recommended by four countries – DRC, Ghana, Tanzania and Viet Nam. The majority of recommendations under this component are country-specific, underlining once again the importance of assessing governance issues at national, sub-national and local levels to understand how they interrelate and how to address them.

Though the process of building capacity was

not the subject of any recommendation, the Tanzania assessment highlighted a related issue at the village level which all countries could heed. This is the importance of targeting capacity building not only at community leaders, but also at those members of the community whom others have identified as most likely to share what they learn. This is a useful approach, given that it is almost always impossible for all members of a community to participate in a training exercise.

Table 6 Recommendations concerning accountability

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Give communities greater powers to demand accountability and assert control over both public and traditional institutions			⊙	⊙		

Accountability

Although accountability is often seen as the foremost principle of governance, and corruption the most pervasive problem in the SVBC countries, the assessments generated only one relevant recommendation from Ghana and Sri Lanka (see the discussion at the beginning of this chapter for why this is not necessarily a significant outcome).

Both assessments noted that there must be mechanisms for forest-dependent rural people to demand accountability from State and customary institutions. The Sri Lanka assessment noted

that it would be useful to incorporate customary rules and processes into statutory decentralization processes to enhance accountability.

In all countries, statutory law should provide clear rules and procedures for determining:

- ▶ who will be held responsible for making decisions, and by whom;
- ▶ who will be held responsible for implementing decisions, and by whom; and
- ▶ the means for holding decision makers and implementers accountable.

Table 7 Recommendations concerning transparency

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Communicate the statutory rights and responsibilities of individuals, communities and government authorities in easily understandable language		⊙	⊙	⊙	⊙	⊙
2. Improve local people's access to legal information by developing or using effective dissemination media, including radio, television and newspapers		⊙		⊙		⊙
3. Make harvesting information accessible to all stakeholders to enable accurate calculations of the entitlements from logging	⊙	⊙	⊙			
4. Avoid jurisdictional overlap in forest management		⊙		⊙		
5. Develop and use a system for communicating information about all aspects of making and implementing decisions to all stakeholders					⊙	
6. Communicate to local communities the true value of forest products at various stages in the market chain					⊙	
7. Clearly delineate boundaries of different forest categories				⊙		

Transparency

Every SVBC country except Brazil recommended that the statutory rights of communities and individuals, and the statutory responsibilities of government authorities, communities and individuals, should be communicated in a language understandable to rural, forest-dependent people, as well as to government authorities and the private sector.

Three countries – DRC, Sri Lanka and Viet Nam – noted that access to legal information should be offered through a variety of media,

including print, radio and visuals. Regarding the recommendation on benefit-sharing processes, three countries – Brazil, DRC and Ghana – specified that information on timber harvesting should be made public to allow accurate calculations to be made of the entitlements due from logging operations.

Similar recommendations call for improving access to information on decision-making processes, and on the true values of forest products at various stages in the market chain.

Table 8 Recommendations concerning participation

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Ensure the participation or representation of all stakeholder groups in forest sector processes to allow just and legitimate political positions to form		⊙	⊙			
2. Build capacities to consult with local people or identify and work with credible local representatives			⊙			
3. Strengthen participation generally in natural resources governance and local governance rather than concentrating on specific sectoral processes			⊙			
4. Ensure proper coordination among stakeholders to avoid overlaps and conflicts						⊙
5. Help local people to develop and implement sustainable management plans for their allocated forests						⊙
6. Use customary practices as models for designing communal and collective participation in forest decision making and management				⊙		

Participation

All but one of the recommendations grouped under participation are country-specific.

The one recommendation endorsed by two countries, DRC and Ghana, was a general one, calling for the participation of all stakeholder groups in decision making on forests, with each group represented at a level where

all perspectives could be taken into account before taking a decision. The Ghana assessment emphasized the need to build institutional capacity to facilitate participatory processes, while the Sri Lanka assessment recommended using customary practices as models for participatory decision making.

Table 9 Recommendations concerning predictability

	BRAZIL	DRC	GHANA	SRI LANKA	TANZANIA	VIET NAM
1. Provide clear rules and constraints on administrative discretion to promote legal certainty, provide investment guarantees and secure stable long-term investment			⊙			
2. Provide sufficient operational funds to support performance in line with legal and corporate standards			⊙			
3. Clarify the roles and (financial) shares of traditional leaders in concession allocation processes so their involvement does not depend on administrative discretion			⊙			

Predictability

Only the Ghana assessment made specific recommendations related to predictability, targeting the need for legal certainty to support stable long-term investment by the private sector. Ghana also noted that the roles and financial

shares of traditional chiefs in the concession allocation process need to be clarified so that the extent of their involvement is known to all and does not depend on the discretion of government authorities.

References

- ACP-EC (2000) *Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, signed in Cotonou, Benin on 23 June 2000*. Online: [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22000A1215\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22000A1215(01):EN:NOT) (accessed 14 October 2010).
- ADB (1995) *Governance: Sound Development Management*. Asian Development Bank, Manila.
- AfDB (n.d.) *What is Governance?* African Development Bank. Online: www.afdb.org/en/topics-sectors/sectors/economic-financial-governance/frequently-asked-questions/ (accessed 24 October 2009).
- Akella, A. S. (2004) Enforcement Economics and Environmental Compliance: Lessons for the Development of ECE Output Indicators. In: INECE & OECD, *Measuring What Matters: Proceedings from the INECE-OECD Workshop on Environmental Compliance and Enforcement Indicators, 3–4 November 2003, OECD Headquarters, Paris, France*. Organisation for Economic Cooperation and Development, Paris.
- Akella, A. S. & Cannon, J. B. (2004) *Strengthening the Weakest Links: Strategies for Improving the Enforcement of Environmental Laws Globally*. Center for Conservation and Government, Conservation International, Washington, D.C.
- Akinola, S. R. (2006) *Land Use Decree, Forest Administration and Governance Crises in Nigeria*. Prepared for "Promoting Land Administration and Good Governance", 5th FIG Regional Conference, 8–11 March 2006, Accra, Ghana.
- Andrews, M. (2010) Good Government Means Different Things in Different Countries. *Governance* 23 (1): 7–35.
- Bodegom, A. J. v., Klaver, D., Schoubroeck, F. v. & Valk, O. v. d. (2008) *FLEGT beyond T: Exploring the meaning of 'Governance' concepts for the FLEGT process*. Wageningen University & Research Centre, Wageningen.
- Borrini-Feyerabend, G. (2008) *Implementing the CBD Programme of Work on Protected Areas: Governance as key for effective and equitable protected area systems*. Commission on Environmental, Economic and Social Policy, International Union for Conservation of Nature, Gland.
- Bosselmann, K., Engel, R. & Taylor, P. (2008) *Governance for Sustainability – Issues, Challenges, Successes*. International Union for Conservation of Nature, Gland.
- Brito, B., Barreto, P. & Rothman, J. (2005) New Brazilian Environmental Crimes Law: An analysis of its effectiveness to protect the forests of Amazonia. In: INECE, *Proceedings of Seventh International Conference on Environmental Compliance and Enforcement, 9–15 April 2005, Marrakech, Volume 1*. International Network for Environmental Compliance and Enforcement, Washington, D.C.
- Christy, L. C., Di Leva, C. E., Lindsay, J. M. & Takoukam, P. T. eds (2007) *Forest Law and Sustainable Development: Assessing Contemporary Challenges Through Legal Reform*. Law, Justice, and Development Series, The World Bank, Washington, D.C.
- CIDA (n.d.) *Governance*. Canadian International Development Agency. Online: www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/JUD-111883426-HX4 (accessed 23 October 2009).
- Colchester, M. (2006) *Justice in the forest: Rural livelihoods and forest law enforcement*. Forest Perspectives No. 3, Centre for International Forestry Research, Bogor.
- Contreras-Hermosilla, A. & Fay, C. (2005) *Strengthening Forest Management in Indonesia through Land Tenure Reform: Issues and Framework for Action*. Forest Trends, Washington, D.C.
- Cotula, L. & Mayers, J. (2009) *Tenure in REDD – Start-point or afterthought?* Natural Resource Issues No. 15, International Institute for Environment and Development, London.
- de Ferranti, D., Jacinto, J., Ody, A. J. & Ramshaw, G. (2009) *How To Improve Governance: A*

- New Framework for Analysis and Action. Brookings Institution Press, Washington, D.C.
- De Silva, L. (2002) *Review of Laws and Policies Governing Participatory Social Forestry in Sri Lanka*. Regional Study on Forest Policy and Institutional Reforms, Asian Development Bank Regional Technical Assistance (RETA) 5900.
- DFID (2007) *Governance, Development and Democratic Politics: DFID's work in building more effective states*. Department for International Development, London.
- EC (2001) *European Governance: A White Paper*. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2001) 428, Brussels
- EC (2003) *Governance and Development*. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2003) 615, Brussels.
- Ellsworth, L. (2004) *A Place in the World: A Review of the Global Debate on Tenure Security*. Ford Foundation, New York.
- Fisher, R. J. (2005) Common Property and Development: Forests and Pasture. In: Fingleton, J. ed., *Privatising Land in the Pacific: A defence of customary tenures*. Discussion Paper 80, The Australia Institute, Canberra.
- Global Witness (2007) *DRC's forests: "towards satisfactory management and governance standards"?* Mission findings and policy recommendations from a feasibility study for Independent Forest Monitoring in the Democratic Republic of Congo. Global Witness, London.
- Grindle, M. S. (2002) *Good Enough Governance: Poverty Reduction and Reform in Developing Countries*. Kennedy School of Government, Harvard University, Cambridge.
- IIED (n.d.) *About Governance*. International Institute for Environment and Development. Online: www.iied.org/governance/home/about-governance-group (accessed 23 October 2009).
- IIED (2004) *Forest governance learning group: Update December 2004*. International Institute for Environment and Development, London.
- Kaufmann, D., Kraay, A. & Mastruzzi, M. (2008) *Governance matters VIII: Aggregate and individual governance indicators 1996–2007*. The World Bank, Washington, D.C.
- Laarman, J. G. (1999) Government policies affecting forests. In: Keipi, K. ed., *Forest Resource Policy in Latin America*. Inter-American Development Bank and John Hopkins University Press, Baltimore.
- Mayers, J., Bila, A., Khaukha, S., Opoku, K. & Simwela, W. (2006) Forest Governance and Social Justice: Practical Tactics from a Learning Group Approach in Africa. *International Forestry Review* 8 (1): 101–109.
- Molnar, A., Scherr, S. J. & Khare, A. (2004) *Who Conserves the World's Forests?* Forest Trends, Washington, D.C.
- Nguyen Quang Tan, Nguyen Ba Ngai & Tran Ngoc Thanh (2008) *Whose Forest Tenure Reform Is It? Lesson from Case Studies in Vietnam*. RECOFTC Policy Brief No. 1, Regional Community Forestry Training Centre for Asia and the Pacific, Bangkok.
- OECD (2006) *Applying Strategic Environmental Assessment: Good Practice Guidance for Development Co-operation*. DAC Guidelines and Reference Series, Organisation for Economic Cooperation and Development, Paris.
- OUP (1996) *The Oxford English Reference Dictionary*. Second Edition. Oxford University Press, Oxford.
- OUP (2009) *The Oxford Pocket Dictionary of Current English*. Oxford University Press, Oxford.
- Patlis, J. (2004) *A Rough Guide to Developing Laws for Regional Forest Management*. Centre for International Forestry Research, Bogor.
- Plumptre, T. (n.d.) *What is Governance?* Institute on Governance. Online: www.iog.ca/page.asp?pageID=3&htmlarea=home (accessed 23 October 2009).
- Plumptre, T. & Graham, J. (1999) *Governance and Good Governance: International and Aboriginal Perspectives*. Institute on Governance, Ottawa.
- Romano, F. (2007) Forest tenure changes in Africa: making locally based forest management work. *Unasylva* 228 (58): 11–17.
- RECOFTC (2004) *Multiplying the Impact of Community Forestry: RECOFTC Strategic Plan 2004–2009*. Regional Community Forestry Training Centre for Asia and the Pacific, Bangkok.
- Sayer, J., McNeely, J., Maginnis, S., Boedhihartono, I., Shepherd, G. & Fisher, R. (2008) *Local Rights and Tenure for Forests: Opportunity or*

Threat for Conservation? Rights and Resources Initiative, Washington, D.C.

UNDP (1997) *Governance for Sustainable Development: A UNDP Policy Document*. United Nations Development Programme, New York.

UNESCAP (2008) *What is Good Governance?* United Nations Economic and Social Commission for Asia and the Pacific. Online: www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp (accessed 22 October 2009).

USAID (2002) *Foreign Aid in the National Interest: Promoting Freedom, Security, and Opportunity*. United States Agency for International Development, Washington, D.C.

Wells, M. P. (1997) The Institutional Framework for Biodiversity Incentives. In: OECD, *Investing in Biodiversity: The Cairns Conference*. Organisation for Economic Cooperation and Development, Paris.

White, A. & Martin, A. (2002) *Who Owns the World's Forests?* Forest Trends, Washington, D.C.

Whiteman, A. (2008) *Economics of Forest Law Enforcement*. Presentation at Workshop on Legality of Traded Timber: The Development Challenges, 24–26 November 2008, Rome.

Wily, L. (2004) *Can We Really Own the Forest? A Critical Examination of Tenure Development in Community Forestry in Africa*. Prepared for "The Commons in an Age of Global Transition: Challenges, Risks and Opportunities": Tenth Biennial Conference of the International Association for the Study of Common Property, 9–13 August 2004, Oaxaca, Mexico.

World Bank (2006) *Strengthening Forest Law Enforcement and Governance: Addressing a Systemic Constraint to Sustainable Development*. The World Bank, Washington, D.C.

Young, O. R. (1997) Rights, Rules and Resources in World Affairs. In: Young, O. R. ed., *Global Governance: Drawing Insights from the Environmental Experience*. MIT Press, Cambridge.

Flooded forest in the state of Acre, Brazil.
Photo © IUCN.



Annex 1

Definitions of Governance

SOME OF THE definitions of governance adopted by national and international organizations over the past decade or so focus on the exercise of power and authority; others emphasize processes and decision making. Still others highlight rules or laws and institutions.

One of these definitions addresses governance only in the context of its quality – “good” – and others equate “governance” with “management”.¹ Other sources, instead of defining governance, simply describe what it is – or should be (see Table A1).

For its part, IUCN has yet to develop an institution-wide definition of governance. Since the adoption by the 2003 World Parks Congress of a Recommendation on “Good Governance and Protected Areas”, IUCN’s World Commission on Protected Areas and Commission on Environmental Economics and Social Policy have used a variation of a definition put forward by the Institute on Governance in 1999:

¹ Those who have addressed the issue note that “governance” is strategic whereas “management” is operational. See for example RECOFTC (2004) and Borri-Feyerabend (2008).

“Governance involves the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other stakeholders have their say. Fundamentally, it is about power, relationships and accountability: who has influence, who decides, and how decision makers are held accountable.” (Plumptre & Graham 1999)

Increasingly, references to governance are resource-specific or ecosystem-specific: “forest governance”, “biodiversity governance”, “wetland governance”, “high seas governance”, and “protected area governance”, for example. Governance in contexts other than natural resource conservation – “corporate governance” or “administrative governance”, for example – involves similar concepts.

Definitions of forest governance are relatively few. As with the general definitions of governance, the focus of the definitions varies. Interpretations of “forest governance” tend to emphasize the quality of decision-making processes rather

Table A1 Definitions of governance

Governance is the exercise of political, economic and administrative authority in the management of a country’s affairs at all levels.	United Nations Development Programme (UNDP 1997)
Governance means the process of decision-making and the process by which decisions are implemented (or not implemented).	United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP 2008)
Governance is the exercise of political, economic and administrative authority necessary to manage a nation’s affairs.	Organisation for Economic Cooperation and Development (OECD 2006)
Good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development.	European Union (ACP-EC 2000)
Governance means rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.	European Commission (EC 2001)
Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the State for the institutions that govern economic and social interactions among them.	The World Bank (Kaufmann, Kraay & Mastruzzi 2008)
A process referring to the manner in which power is exercised in the management of the affairs of a nation, and its relations with other nations.	African Development Bank (AfDB n.d.)
Governance is about the institutional environment in which citizens interact among themselves and with government agencies/officials.	Asian Development Bank (ADB 1995)
Governance encompasses the values, rules, institutions, and processes through which people and organizations attempt to work towards common objectives, make decisions, generate authority and legitimacy, and exercise power.	Canadian International Development Agency (CIDA n.d.)
Governance is about the use of power and authority and how a country manages its affairs.	Department for International Development (DFID 2007)
Governance is the process whereby societies or organizations make important decisions, determine whom they involve and how they render account.	Institute on Governance (Plumptre n.d.)
Governance is the process or method by which society is governed.	International Institute for Environment and Development (IIED n.d.)
Governance describes the overall manner in which public officials and institutions acquire and exercise their authority to shape public policy and provide public goods and services.	The Brookings Institution (de Ferranti <i>et al.</i> 2009)

than government structures. The International Institute for Environment and Development's Forest Governance Learning Group project, which is working in 11 countries in Africa and Asia, has developed a working definition of "forest governance" that highlights decision-making and implementation:

"The decisions and actions that remove the barriers and install the policy and institutional systems which spread local forestry success." (IIED 2004)

Another definition equates forest governance with forest management:

"Forest governance can be defined as the management of forest resources within a particular institutional and technical environment bearing in mind the welfare of citizens whose livelihood hinges closely on forest resources and the need to maintain ecological balance." (Akinola 2006)

The term "governance" itself is value-neutral, which encourages the use of adjectives to describe it. As a result, besides resource-specific and ecosystem-specific governance, many references to governance are linked to its quality – "good governance", "good forest governance" and "democratic governance", for example.

Just as governance itself is dynamic and evolving, the use of adjectives to describe it is evolving as well. The United Nations Development Programme now describes "democratic

governance" in the same terms in which it originally described "good governance" in 1997. The United States Agency for International Development uses the term "democratic governance" while noting that democracy "is not strictly necessary for good governance", that bad governance is possible under a democracy, and that democracy and good governance are mutually reinforcing, rather than democracy being simply a way to describe governance (USAID 2002).

At the most general level, governance has been described as involving the formation of rules and decision-making procedures and the operation of social institutions guided by these rules (Young 1997). At least one element of this description – rules, decision-making processes, institutions – is reflected in most of the definitions in Table A1. More than half of these definitions refer to the exercise of power and authority.

The characteristics of governance emerging from this review, then, are: the exercise of power and responsibility; decision-making; implementation of decisions; laws or rules; institutions; and processes. In other words, governance is the interaction of rules, institutions, processes and principles through which a society exercises powers and responsibilities to make and implement decisions.

Table A2 below tracks 21 principles identified by nine institutions that have described governance. Four key principles appear in the majority of these descriptions: accountability, transparency, participation and predictability/"rule of law".

Table A2 Principles of governance

	IUCN	UNDP	UNESCAP	EC	AfDB	ADB	USAID	World Bank	DFID
Accountability	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Transparency	⊙	⊙	⊙	⊙ ^a	⊙	⊙	⊙	⊙	
Participation	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	
Predictability/"rule of law"	⊙	⊙	⊙			⊙	⊙	⊙	
Promoting an enabling legal and judicial framework					⊙				
Effectiveness		⊙ ^b	⊙ ^b	⊙				⊙	
Responsive		⊙	⊙						⊙
Coherence	⊙			⊙					
Consensus-oriented		⊙	⊙						
Capacity of the state							⊙		⊙
Tackling corruption					⊙			⊙	
Access to information and justice	⊙								
Subsidiarity	⊙								
Respect for human rights	⊙								
Equity		⊙							
Strategic vision		⊙							
Equitable and inclusive			⊙						
Commitment to public good							⊙		
Stock of social capital							⊙		
Political stability and absence of violence								⊙	
Regulatory quality								⊙	

^a Referred to as "openness" ^b Includes "efficiency"

Annex 2

Forest Law in SVBC Countries

Brazil

Brazil adopted its Forest Code in 1965. The 2006 “Public Forest Management Law” (*Lei de Gestão de Florestas Públicas*, Law No. 11.284) provides that public forested lands should remain within the public domain, in contrast to a historical tendency towards privatizing public lands and converting forests for agriculture and ranching.

DRC

The 1973 land law of DRC establishes the State as owner of all land in the country, creates seven categories of use to which land may be put, and recognizes community rights to use land. The 2002 Forest Code (Law No. 011/200 of 29 August 2002) affirms the State as owner of all forest land and creates three categories of forests, each of which with specific types of restrictions. Customary control is also recognized in both the land law and the Forest Code as collective use rights and rights of customary possession, respectively. The forest categories created by the Forest Code are classified forests, protected forests, and permanent production forests. All are State forest property, which includes public forests which cannot be allocated and private forests which can. The rights to access and use forest resources for individual or community subsistence needs are free – they require neither any kind of authorization nor any form of payment. The Forest Code prohibits commercial use of these forest products, however. Forest access for any commercial purpose requires a permit. Most allocations of rights to exploit forests in DRC have not respected existing legal and institutional requirements.

Ghana

The Constitution of Ghana recognizes three distinct types of forests: public forests, which are acquired by the State for specific public services and therefore vested in the President; private forests; and community forests, which are held by “stools” and “skins” representing extended families that compose a traditional community, traditional communities themselves, or confederations of such communities. Where the State reserves a particular forest, the communal owners lose their use rights with the specific exception of “admitted rights”. This is significant because most of Ghana’s remaining forest lies

mostly within these reserves. In protected areas, the State has the power to manage the forest resources in much the same way as it manages them in reserves. Six legal documents adopted between 1927 and 2000 govern the forest sector. The main effect of the 1927 Forest Ordinance was to exclude or at least severely restrict community access to forest reserves, starting a process of alienation that has matured into a crisis today. Even though certain community rights are admitted, all activities of any economic significance require permits, making community livelihood a matter of discretion for Forestry Commission officials. The 1962 Administration of Lands Act took forestry revenue administration away from customary chiefs and gave it to the Lands Department, further eroding the position of chiefs in national economic life.

Sri Lanka

Sri Lanka’s basic forest law is the 1907 Forest Ordinance (Law No. 16). This century-old law defines “forest” as all land at the disposal of the State. Three land ordinances define “State land” to mean all land to which the State is lawfully entitled or which may be disposed of by the State. So conceptually all State land is legally considered as forest (De Silva 2002). The State owns 80% of all land in the country and almost all natural forests are under its jurisdiction. Beginning in the first quarter of the 19th century, a series of colonial laws gradually negated customary tenure. The 1995 amendment to the Forest Ordinance has almost entirely extinguished any customary rights within reserved forests. The 1980 National Environmental Act mandates the Central Environmental Authority to recommend a system of rational exploitation of forest resources, together with a system to encourage citizen participation in conservation to keep the country’s forest resources at maximum productivity, but that has not been done to date. The National Environmental Act also requires environmental impact assessments for the extraction of timber from any area greater than five hectares, and for conversion to non-forest use of forest covering an area exceeding one hectare.

Tanzania

In Tanzania, all land is vested in the President who holds it in trust on behalf of the citizens, but

does not own it. The Land Act and the Village Land Act, both adopted in 1999, govern how forest land is allocated and used. The Forest Act of 2002 implements the 1998 Forest Policy with respect to forest management. Statutory law recognized customary law more than 40 years ago, and has to some extent absorbed it. The Local Customary Law (Declaration) Order of 1963, and judicial decisions since then, affirm that customary law is part of the law of the land. Villages' customary rights to land were recognized by the Village Land Act, under which village councils own land as trustees for their villages. In keeping with customary law, land rights granted under the Land Act may be held in perpetuity, as opposed to land rights limited to 99 years that are granted under other laws (Wiley 2004). Beginning in 2002, a series of environmental and natural resource management laws – including the Forest Act, Land Act, Village Land Act, Environmental Management Act and Wildlife Conservation Act among others – also recognized the need to take customary law into account. Tanzania's process of returning forest rights to villages under the Village Land Act made it possible in one area to re-establish traditional forest enclosures (*ngitili*) that were both individual and communal under customary law. The *ngitili* regenerated hundreds of thousands of hectares of forest and provided income not only for households but also for community development (Fisher 2005).

The principal forest law in Tanzania establishes four categories of forests: national forests, local authorities' forests, village forests and private forests. National and local authorities' forests are declared by the Minister and are mainly used for sustainable production of timber and forest products, the protection of watersheds, and the conservation of soil and biodiversity. Many villages in rural Tanzania are almost entirely dependent on forest resources because the forest provides timber, herbs, firewood,

charcoal, meat and other foods, and protects the water supply. It also provides employment in timber production as well as some cash income from village taxes on timber production. Village forests, declared by the Village Council after approval by the Minister, comprise Village Land Forest Reserves as well as Community Forest Reserves. In Village Forests, the central government grants indefinite ownership of forest resources to local communities, which facilitates the formalization of community-level rights over forests (Romano 2007).

Viet Nam

Viet Nam has one principal statutory forest law – the 2004 Law on Forest Protection and Development – and more than 100 rules and regulations, many of which implement earlier versions of the law. The 2004 law specifies that use rights in forests are to be allocated according to the 2003 Land Law, which categorizes forest land as agricultural land. The Law classes forest rights holders into seven groups. Domestic households and individuals are one of these groups, communities are not. The 2006 Civil Code does not recognize communities as legal entities, but provides that in the event there is no specific legislation or agreement, custom may apply as long as it does not contradict the principles of the Civil Code. On the basis of custom, then, communities may be granted access and use rights in forests but, unlike individuals, households and other recognized legal entities, they may not transfer those rights. Such nebulous rights for communities create incentives for illegality because the insecurity encourages communities and individuals to maximize their personal gain for as long as they retain the rights. A 2006 ministerial decision¹ grants forest use rights to selected communities as a pilot under a community forestry model programme.

¹ Decision 106/2006/QĐ-BNNPTNT of 27 November 2006.



**INTERNATIONAL UNION
FOR CONSERVATION OF NATURE**

FOREST CONSERVATION PROGRAMME
Rue Mauverney 28
CH-1196 Gland
Switzerland
forest.governance@iucn.org
Tel +41 (22) 999-0261/3
Fax +41 (22) 364-9720
www.iucn.org/forest/fleg

