

DECENTRALIZATION AND THE GOVERNANCE OF NATURAL RESOURCES: The Necessity of *Checks & Balances*

Almost all countries have attempted to *decentralize*¹—*i.e.*, transfer at least some powers to a subnational level.² With respect to natural resources, more than 60 countries have decentralized aspects of management, including land-use decision-making, the power to collect and manage taxes, royalties, and fees.³ In this briefing, we ask: **what does successful decentralization look like, especially when lucrative natural resources are at stake?**

In theory, decentralization leads to more effective governance because, compared to the distant capital city, local politicians and civil servants should have more information about their local environment and the needs of local residents, leading to more efficient decision-making, and *vice versa*, affected communities can hold their local authorities more accountable.^{3,4} Decentralization can further build trust, and help reduce conflict, between people and their government when it increases local participation in decision-making, especially the distribution of costs and benefits.⁵ Not surprisingly, recent ceasefire negotiations have included demands for increased regional autonomy over natural resources (UNEP 2014; *e.g.*, Aceh in Indonesia, regional peace agreements in Sudan).

Despite these clear theoretical benefits of decentralization, **when the focus of decentralization has been on forests,⁶ the results have “been largely disappointing...** There is clearly no direct correlation...between decentralization and better forest management”; moreover, only rarely has decentralization “resulted in pro-poor outcomes or challenged underlying structures of inequity” (Larson & Soto 2008).⁷ “What is clear is that decentralization processes in the forest sector in various countries are afflicted by large gaps between the institutional demands and the capacity of institutions to satisfy them” (Contreras-Hermosilla *A et al.* 2008).

¹ Here we use decentralization in the context of *democratic decentralization*, referring to the transfer of powers to lower-level/regional governments in which “representative and downwardly accountable local actors who have autonomous, discretionary decision making spheres with the power and resources to make significant decisions pertaining to local people’s lives. Democratic decentralization contrasts with administrative decentralization, or deconcentration, which refers to the transfer of powers by central ministries to their branch offices located outside the capital.” Larson AM, Soto F. 2008. *Decentralization of Natural Resource Governance Regimes*. Annual Review of Environment and Resources. 33: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319919

² Faguet J-P. 2011. *Decentralization and Governance*. EOPP/2011/27.

³ Ribot J. 2002. *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation*. World Resources Institute, Washington, DC; Contreras-Hermosilla A *et al.* 2008. *Forest Governance in Countries with Federal Systems of Government; Lessons and Implications for Decentralization*. CIFOR

⁴ Accountability is “the exercise of counterpower to balance arbitrary action” and is “manifested in the ability to sanction” (Larsen & Soto 2008).

⁵ Schou, A. and M. Haug. 2005. *Decentralisation in conflict and post-conflict situations*. Norwegian Institute for Urban and Regional Research Working Paper 139.

⁶ “In many ways, forests serve as an effective proxy for natural resources in general in part because of their intimate relationship to other key resources, such as biodiversity and water sources” (Larson & Soto 2008).

⁷ If not management properly, the rapid decentralization of the management of revenues from natural resources can create difficulties for subnational governments in terms of the irregularity in cash-flows due to fluctuations in market price and, consequently, in rates of extraction (*i.e.*, production). This is heightened for governments that have had historically small budgets and that do not have the requisite capacity to start spending the large sums of money suddenly provided by natural resource income. Compounding the ‘windfall’ problem is that when commodity prices fall and/or production slows, local budgets will have difficulty accommodating the sudden drop in revenue.

When does *decentralization of forest management* lead to better governance?

Unfortunately, **all too often decentralization has only been about turning over limited responsibility to local levels of government, rather than allowing local communities to hold local authorities accountable.** “[D]ecentralization is rarely implemented in the way that theory suggests is required. Rather, central government personnel are reluctant to redistribute power and resources and frequently find ways to retain these.”⁸ The center makes a show of decentralization—whether to be seen to be addressing local demands, or simply to satisfy the demands of international actors for reform—but the central authority has no real intention of transferring meaningful power. When a transfer of real responsibility is made it is often merely a way for central governments to make budget cuts. It “devolves obligations...without adequate resources” to authorities that are then incapable of fulfilling their new functions. “Decentralization tends to stall at the first tier below the national level, if it gets that far” (Contreras-Hermosilla A *et al.* 2008).

But in the rare event **when decentralization does turn power over to locals, then, without safeguards, natural resources are especially prone to “elite capture”**, where those with “power” control access to the natural resources (and the revenue generated), using them for private patronage rather than for the public good. As Indonesia found after the fall of the Suharto New Order in the late-1990s (Box 1), forests appear to have been used by local authorities to enrich themselves and to maintain their power; for example, corruption in the logging sector has been helping fund election campaigns—in fact, satellite photos of forest cover show identifiable patterns of deforestation corresponding to the timing of local elections.⁹

Box 1: Indonesia’s experience with decentralization of forest management

“Indonesia represents one of the few cases in which substantial powers have been transferred to local governments. Indonesia’s forestry decentralization was implemented in response to a serious national crisis and questioning of central government; a few resource-rich provinces were threatening secession. The central government responded with a series of decentralization laws that were both confusing and contradictory, but for a short period of time, these laws transferred substantial powers over forests to local governments. The result was described by some as disastrous. The main problems were that decentralization occurred too quickly, those receiving powers were not accountable to the central government or to local populations, and there were few control mechanisms. The result was an increase in logging and the proliferation of opportunistic behaviors.”⁸

But **decentralization is not the major problem—weak governance is.** With or without decentralization, natural resources can undermine good governance. From the perspective of economic growth, **resource-rich countries suffer slower growth even as they become more democratic (in terms of having more elections), unless the country also strengthens its**

⁸ Larson AM, Soto F. 2008. *Decentralization of Natural Resource Governance Regimes*. Annual Review of Environment and Resources. 33: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319919

⁹ Burgess R *et al.* 2011. *The Political Economy of Deforestation in the Tropics*. NBER Working Paper No. 17417 <http://www.nber.org/papers/w17417>

governance.¹⁰ Then, these “checks and balances” (Box 2) can help overcome the ‘democratic deficit’ so that democracies grow more quickly than rival autocracies.

Box 2: Checks & balances

While voting is meant to hold leaders accountable, elections occur infrequently and are inherently reactive. Therefore, additional safeguards are necessary, known collectively as checks and balances (as they are a check on political power by helping sway the balance of power towards civil society in holding the elite accountable). They include mechanisms like:

- **Rights:** including, freedom of speech; freedom of association; and, a free press;
- **Protection:** including, whistleblower protection; citizen complaint boards; labor review boards; legal aid; ombudsman protection;
- **Accountability mechanisms:** including, anti-corruption commissions; debarment for corrupt actors; conflict-of-interest legislation; assets reporting & disclosure of gifts; restrictions on lobbying; term limits for elected politicians;
- **Public financing of elections;** restrictions on campaign contributions;
- Effective **procurement** procedures, including competitive bidding (auctions);
- Independent **audits** of government resources; public access to audits;
- A professional **law enforcement** (risk-based compliance checks);
- An **independent judiciary;** regular reporting of court cases; and,
- Government **reporting** publically available (through anonymous channels like the internet).

These checks & balances help maintain “good governance”, who’s principles include:

- **Transparency** that helps lead to accountability and enforcement;
- **Effective** legal and management regimes that foster economic **efficiency**, appropriate **incentives**, and **conflict management**;
- Quality **administration**, including anti-corruption and other integrity mechanisms;
- **Monitoring & evaluation**;
- **Participatory** management, including **equitable** benefits-sharing; and,
- The fundamental implementation of **rule of law**.

Fortunately, dictatorships are falling world-wide, especially in resource-rich countries, but unless governance in these countries is also addressed, then, for the reasons outlined above, **emerging democracies are likely to find the new electoral competition to be economically damaging.** This is **especially important during post-conflict peacebuilding, where elections are encouraged, yet governance is weak, and natural resources are often relied upon to play a primary role in rebuilding war-torn economies.** The perception is that the extraction and sale of natural resources can provide hard currency crucial for poverty reduction strategies and—perhaps more importantly—the sector can provide jobs, especially for ex-combatants, that if unemployed

¹⁰ Collier P, Hoeffler A. 2009. *Testing the neocon agenda: Democracy in resource-rich societies*. European Economic Review. 53(3):293-308; ‘forest governance’ can be defined as “the set of rules and institutions that control and determine what happens to a nation’s forests and who gains and who gets hurt as a consequence” (Contreras-Hermosilla et al. 2008.)

might revert to illicit activities and act as ‘spoilers’ of the peace.¹¹ As mentioned above, many successionist movements are demanding local control over the natural resources within their territory, and so these **grievances must be addressed in order to resolve the conflicts before they undermine peace and security.**

For the sake of economic growth and peacebuilding, as well as successful decentralization, governance is crucial (Siegle & O’Mahony 2006). And for the same reasons: **unless power is checked, local and national elites will use the benefits from natural resources to engage in patronage politics rather than to pursue the national interest.** For example, for the countries in Europe and Central Asia that transitioned from a soviet economy, **corruption was particularly problematic if economic growth was driven largely by natural resources** (World Bank 2007).

How do you foster good governance for successful decentralization?

As indicated by Box 2, governance is composed of many checks and balances, but “sequence matters.”¹² First, national governments must **develop a legislative framework (including policies, laws and regulations) for coordinating across all levels of governments.** Coordination is necessary in part because short-term economic growth is often framed as opposed to sustainable resource management. Even well intentioned local governments may look to natural resources to fund development and tension is created as governance reform and economic restructuring programmes are required at the same time that governments must secure “visible achievements in poverty alleviation efforts as dividends of peace and stability.”¹³

Even where the rights and responsibilities of each level of government are absolutely clear, it must also be clear that these **different levels of government will respect each other’s rights**—for example, if:

“a subnational government issues a license..., the investor must be certain that the national government will respect this claim and no another investor will be issued another license over the same area. Likewise, if indigenous communities have special usage rights and access to land, or have the right to withhold consent for any given license, the investor must be certain that the title has been approved and will be respected by those communities as well as subnational or national authorities... [Unfortunately] **there is evidence that smaller local jurisdictions are more susceptible than national counterparts to state capture if local economies are more homogenous and less competitive.** Also, smaller local jurisdictions are more susceptible than national counterparts **to clientelism if politicians can identify and monitor political supporters** more effectively, or there are ready-made clientelist networks based on familial, tribal, or other ties”¹⁴ (Venugopal & Strongman 2014; emphasis added).

¹¹ Blundell AG, Harwell E. 2016. *How do peace agreements treat natural resources.* Forest Trends. Washington, DC.

¹² Siegle J, O’Mahony P. 2006. *Assessing the Merits of Decentralization as a Conflict Mitigation Strategy.* USAID. Washington, DC.

¹³ UN DESA. 2007. *Governance Strategies for Post Conflict Reconstruction, Sustainable Peace and Development.* <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan028332.pdf>

¹⁴ Venugopal V. 2014. *Assessing Mineral Licensing in a Decentralized Context: The Case of Indonesia.* Natural Resource Governance Institute. http://www.resourcegovernance.org/sites/default/files/documents/pub_assessingminerallicensing_20141117.pdf

Often **central governments attempt to control local authorities through the use of conditional transfers of revenues, approvals of budgets and plans, and the auditing of local government** accounts. Yet these issues require a “balance between central direction and local choice in a decentralized system. It clearly makes little sense to decentralize if the centre then seeks to control in detail the use of resources locally...All too often, central controls create more problems than they solve, including delays, frustrations, additional costs and perverse behavior.”¹⁵

But even when the center operates in good faith, **upward accountability mechanisms are only effective if the center has the ability to verify what is actually happening** at the local level.¹⁵ Unfortunately, verification is rare, complicated by the costs and practical difficulties in obtaining information from remote localities.¹⁵ Even when they get the information, many central governments do not have the ability to interpret it correctly. Moreover, local officials may exaggerate the local situation; for example, they may exaggerate the levels of community consultation in order to increase grant allocations. But even with perfect information, there are political and practical disincentives to enforcement action in the event of breaches.

Ideally **citizens also exert accountability**. While transparency may not be sufficient, it is surely necessary in order for this accountability.³ **Information on central transfers and local budgets should be publicly available**. “Although relatively few people may take a direct interest in the information, or even be able to understand it, the fact that information is available in the public domain provides the opportunity for civil society groups to interpret it for others and to start to demand accountability from local government.”¹⁵ This should be accompanied by **strengthening the free press**.¹⁰

In addition to transparency, public accountability and representation is fostered by **consultation and other participatory actions**.¹⁵ This should include **oversight by civil society**, particularly in “the reallocation of resources between regions precipitating demands in resource-rich regions for separation.”¹² This is especially a concern in ethnically diverse societies as decentralization “encourages ethnic identification, accentuates inter-group differences, and fosters discrimination against local minorities—all increasing the likelihood of ethnic strife.”¹⁶

“Closely linked to the emphasis on democratic accountability is the finding that **societies with stronger controls on corruption were less prone to civil conflict**. Perceptions of injustice, relative deprivation, and the self-enrichment of public officials at citizen expense are potential radicalizing stimulants. Addressing the legacy of corruption and patronage norms inherited from years of closed governance is a major challenge for contemporary democratizers that threatens to foment disillusionment and undermine popular support for the democratic process. This is true at the local as well as national level. **Conflict-mitigating decentralization efforts, accordingly, should include an assertive anti-corruption strategy if the decentralization process is to achieve its intended objectives of creating a more efficient, responsive, and stable public sector**” (Siegle & Mahoney 2006; emphasis added)”

¹⁵ Devas N. 2014. *The Challenges of Decentralization*. <http://www.cgu.gov.br/sobre/institucional/eventos/anos-antiores/2005/iv-forum-global-de-combate-a-corrupcao-1/arquivos/nickdevas-2.pdf>

¹⁶ In a study of 28 ethno-federal states, federalism reduced “the threat of secession (the extreme outcome of self-determination) and violent partition *with the notable exception of federal states that contain a “core ethnic region”, defined as a region with an outright majority of the population or a population that exceeds the second largest group by 20% or more. Seven of 14 such cases ultimately collapsed[]...Important qualifications emerge, however. Ethno-federal states lacking a core ethnic region proved very resistant to secessionism and collapse...not a single one collapsed...Imposed federalist systems also have a poor track record*” (Siegle & Mahoney 2006).

While countries have signed regional and international anti-corruption conventions (including the *UN Convention Against Corruption*), “**one of the main problems they face with is deciding how to proceed... Institutional and human capacity building then becomes a critical issue...** Greater attention needs to be paid to” judicial reform; reform of the police (and other enforcement authorities); procurement reform; regulation of conflicts-of-interests; and, external financial audit and control.

Overall, in terms of framework, Ribot (2002; emphasis added) recommends that successful decentralization incorporates, as a first priority:

1. **Work with democratic, local institutions;**
2. **Transfer sufficient and appropriate powers;** and that these powers are transferred as **secure rights;**
3. **Support equity and justice;** support **local civic education;**
4. Establish **minimum environmental standards;**
5. Establish **fair and accessible adjudication;** and,
6. Conduct research to **monitor and evaluate** decentralization and its outcomes.

Overall, Ribot recommends that **authorities give decentralization time; it is unlikely to work perfectly from the start.**

Further, USAID’s¹⁷ *Nature, Wealth & Power 2.0* recommends:

- Decentralize powers and responsibilities to representative and accountable authorities:
 - **Transfer discretionary decisions before or along with obligations;**
 - **Shift the role of central state authorities from command and control toward technical support and legal oversight;** and,
 - **Encourage experiments** with transfer of power and responsibility; and make these rights secure.
- **Strengthen** public and private **institutions** for delivery of technical and intermediary services (build capacity and strengthen institutions at all levels);
- **Promote checks and balances,** as well as equitable institutional relationships;
- **Strengthen inclusive** rural land and natural resource **tenure systems,** and procedural rights;
- Improve broadly based representation and continuous **rural input on resource decisions;** and,
- **Integrate and empower women and marginalized groups** to participate in management, decisions, and benefits.

Perhaps the only controversial recommendation in *Nature, Wealth & Power 2.0* is “**Transfer powers even before capacity is demonstrated.**”¹⁷ As it turns out, a lack of capacity is often the case; decentralization is achieved through legislation “at the stroke of a pen”, whereas capacity may take years to achieve. USAID¹⁷ recognizes that:

¹⁷ USAID. 2013. *Nature, Wealth, & Power 2.0: Leveraging Natural and Social Capital for Resilient Development*. <https://rportal.net/library/content/nwp-2.0>

“Central governments are often reluctant to devolve powers before technical and managerial capacities have been demonstrated. However, local authorities need powers to gain the experience necessary for building capacity. In addition, many local natural resource decisions do not require special capacities. Capacity building that accompanies power transfer may be a sufficient option when training is in fact a constraint. **Avoid making capacity or other requirements artificial prerequisites for empowerment**” (emphasis added).

The problem is that if those with the responsibility to manage do not have the capacity to do so, then the door is open to corruption and other forms of elite capture, not to mention simple fraud.¹⁸ A solution may be to **outsource management responsibilities while allowing the local government the time for training and capacity building**. Once able to operate successfully, the local government agency can take back the authority. Rather than outright privatization, the private sector would build and operate the institutions necessary to manage, transferring this capacity once local government is ready to take on the role.¹⁹

Finally, leadership **“is essential in shaping and pushing reform. Every country that has achieved some success on the anticorruption front has had leaders who have tenaciously pushed the reform agenda...** the role of [a]country’s leadership remains of great significance in all transition countries.”²⁰ Where leadership is weak, civil society needs to work with the private sector and the international community to develop a “constituency for change” that can build the “political will” among elites that might otherwise resist change.

Conclusion

While decentralization holds much promise, and has been tried by virtually every country, its record so far has been mixed at best, failing to address local inequity and improve the sustainable management of natural resources. Rather than empowering communities to hold local representatives accountable, central authorities have often pursued decentralization half-heartedly, under external pressure, and/or merely to save their budgets by transferring responsibility without authority to regional governments.

Where decentralization has been successful, major events and/or crises have driven popular opinion to support strong leadership in pursuing reform. Along with responsibilities, **local authorities have been empowered with adequately trained staff and sufficient resources, and communities have been able to hold these authorities accountable through checks and balances**, like strong anti-corruption safeguards that reduce the likelihood that elites will capture natural resources and the revenue they generate for private patronage rather than the public good.

¹⁸ For example, when tax returns/reporting are based on self-assessments by companies, they may misrepresent production/revenue/profit levels, and if the government does not audit, then the companies need not even bribe anyone in order to evade these taxes/royalties.

¹⁹ The Government of Liberia did this post-conflict in 2007 when the contracted SGS Group to build and operate a chain-of-custody tracking system (LiberFor) to manage legal supply chain and the export of forest products, including assurance of all revenue payments prior to shipment. The contract called for LiberFor to be government-run once capacity was in place. (<http://www.profor.info/node/1910>)

²⁰ World Bank. 2006. *Anticorruption in Transition 3: Who is Succeeding... And Why?* <https://openknowledge.worldbank.org/bitstream/handle/10986/7089/370890Anticorr101OFFICIAL0USE0ONLY1.pdf?sequence=1>