

# Strengthening Green Federalism: Sharing International Practices

*A TERI- Forum of Federation Conference supported by the Ministry of Environment and Forests, Government of India; Inter State Council, Government of India; and the World Bank*

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## Summary of Proceedings

The Energy and Resources Institute (TERI), in collaboration with the Forum of Federations, Ottawa; Ministry of Environment and Forests, Government of India; Inter-State Council Secretariat, Government of India; and the World Bank, organized a two - day long International Conference on '*Strengthening Green Federalism: Sharing international practices*' on 29th and 30th October 2012 at India Habitat Centre, New Delhi.

The conference was attended by delegates from over 16 countries, including federal systems such as Argentina, Brazil, Canada, India, Nigeria, Russia, Switzerland and the United States of America. It brought together scholars and practitioners from federal systems to better understand and share best practices on green policy design and implementation. It focused on the following themes: Federalism and environmental policy: some experiences; role of provincial and local government in environmental management; capacity constraints: good practices and innovation; public participation, transparency and accountability; fiscal issues in green federalism; fragile ecosystems and protected areas in a federal context; and shared jurisdiction and trans-boundary issues. Following is a summary of the main issues discussed at the Conference.



## On being federal and ‘green’

Federalism, it was argued, is not just about the distribution of powers across government levels, but has to also be understood with reference to people. This is so as it is critical to create conditions of governance in which an individual and the community have freedom to manage their lives, resources and relationships with the environment.

There is, therefore, a need of an unbundling of federalism and going beyond units of government to include people, communities, and women.

Given that most federal constitutions are environmentally blind, federal and provincial legislation largely govern their approach towards the environment. However, the constitutional structure in each country determines how legislation is developed and how it is applied. In this context, there is a need to understand ‘green’ more broadly. The discourse on green federalism needs to coincide with sustainable development and be parallel to this but there is a need of a context specific vision. It was pointed out that green issues cannot escape from contestation.

There was questioning of whether the current federal structure is up to the task of engaging with this more comprehensive green and whether the discourse on environmental federalism should move in the direction of ecology or respecting federal principles as following ecology principles would imply integration, a centralizing tendency.

*“Paradigm of sustainable development and environmental soundness has come to occupy the centre stage in humanity’s conquest for socio-economic progress and prosperity in a world marked by finite and depleting natural resources.”*

Mr M. Hamid Ansari, Vice President of India



## On Green Federalism: Centre, State, or both?

There are four major challenges in ‘new’ federal democracies that need to be addressed simultaneously. These are: social transformation, national building, economic development and democratic politics and it is within this context that we need to understand how governments

handle environmental issues. A culture of centralization and movement from centralization to decentralization is central to the debate on environmental management. Multiple expectations

and aspirations especially at the local level need to be accounted . It was also suggested that the architecture of federalism needs to be reoriented, from a system based on hierarchical levels to concentric, oceanic circles to enable improved fit with ecosystems.

The merits of involvement of both national and state governments for environmental protection were elucidated as both have their own distinct advantages. Involvement of central government allows for economies of scale, avoids duplication of efforts and resources, and for national consistency, addresses interstate pollution problems. State government's involvement is important as it has better knowledge of the local conditions and communities, human and technical resources are greater within the states than in the federal government, states can pilot different policies and be a source of lessons to apply elsewhere.

The debate on Green Federalism was described as a tussle between subsidiarity and centralist principles. On the one hand there is push for subsidiarity, given the arguments that lower levels have greater density of information, are more answerable to the consequences of action and provide more creative solutions. On the other hand, since externalities trespass political boundaries and given the dependence on inter-governmental transfers, there is also need for a centralist approach. Aligning the priorities of all tiers of environment was seen as a key aspect of federalism. This necessitates adequate motivations for states to take actions.

*"Multilevel federalism within the Gandhian architecture of oceanic circles, being more participatory and democratic, can address these issues in environmental governance."*

Mr Amitabha Pande, former Secretary, Inter State Council, Government of India

Three key aspects of environmental policy are emerging in the context of multilevel fiscal system, viz., (i) setting standards and benchmarks, (ii) promotional, incentive and regulatory policies, and (iii) monitoring and enforcement regimes. The need for a proper assignment according to the comparative advantage of different units was raised.

An overview of different models of Federations and their approach to environment management and environment assessment was presented. Canada and the USA are largely dualist federations, and Austria and Germany are integrated federations. India and Switzerland have strong features of both. Australia is largely dualist in its approach but also has many areas of concurrency, stemming largely from the weak fiscal position of its state governments. Neither of the two distinct types - Dualist model or integrated model - clearly defines where environment is placed.

Federations are facing a number of common environmental assessment challenges and emerging issues. Some of the common challenges are how these assessments can play a more strategic role in climate change, how the impact on diversity can be minimized, and also how to empower large indigenous groups in decision making.

In Brazil, the National Environmental Policy defines an articulated and decentralized institutional arrangement between all governmental entities constituting the National Environment System (SISNAMA). Brazil system is hierarchical. States can have stricter but not more lenient norms than that of the Centre. One of the issues with minimal environmental standards is that of accommodating diversity as Brazil is very diverse in terms of environmental aspects and standardisation may not take into account the specific needs of the local level governments and local populations.



The South African model of multi-level government involves a Strong Central and Local government with weak provinces in between. The country's Constitution is forcing the Western Cape provincial government, for example, to reconsider its role in land use planning as it stands to lose much of its direct control over land use and is forced to cede decision making authority to municipalities and to national government. On the other hand, the province is required to enforce national environmental legislation, powers which it may use to discourage inappropriate development. In South Africa, the national government, with a view to accelerate growth is becoming increasingly impatient with intergovernmental squabbles over who does what in spatial planning. "It wants red tape cut and is looking for ways to streamline and simplify approval procedures".

*"Given the diversity in standards of living in India, it may not be possible to set uniform standards across the country."*

Dr Vijay Kelkar,  
Chairman of the Board, Forum for Federations, Canada &  
former Chairman, Thirteenth Finance Commission, India

This is also the case in India as seen in discussions around setting up of the National Investment Board, which seeks to speed up investments stuck in a myriad of environmental and land clearances. However, in the States, the bureaucracy is worried about central intrusion and centrist approaches; they view a movement from no regulation to overregulation. States suggest the need of further reflection on what kinds of natural resources serve states interest and which

do not. However, communities see a ‘hypocrisy with regard to environmental dislocation’ and suggest that there are increased clashes between government (national and state) and local communities. The key emerging question is how do we define state or national interest when the environment is also involved, especially when ‘peripheries face cross border environmental injuries’?

## Mainstreaming people and communities in the debate on green federalism

The importance of bringing communities and people into the structure of federalism was underlined, in a scenario where the nexus of vested interests was seen as often dispossessing the poor and ignoring rights of local people. In certain countries, such as the USA, social justice and environment movements have converged over time leading to the concept of environmental justice. In India, protests against huge dams have largely been on account of displacement of people and their resettlement but environment and ecological concerns are still marginally debated. It needs to be recognized that even measures for mitigating environmental concerns such as compulsory afforestation can also affect people through displacement. Inclusion of ecological concerns into the idea of social justice was called for.

*“You are withdrawing before you reach....”*

Prof Mahendra Lama,  
Former VC, Sikkim University

Accessibility to services is an important issue in involving communities, especially in remote areas. First generation economic reforms have not reached many parts of India. The government blames this on lack of physical accessibility. However, it was argued, the corporate giants do not face such issues of accessibility in establishing their presence in remote parts of the country.

Hence, the issue is linked to the will and persistence of state agencies, and the tendency of government to withdraw before it reaches the people.

Examples of community conservation of forests and natural resources in Nagaland were discussed at length. Community conservation measures are many in a state like Nagaland, where less than ten per cent of forests is controlled by the government, and the rest is under community control in the form of village lands, clan lands, jhum lands, etc.

In the rest of the country, however, some legislation and plans, for example the forest management plans are more facilitative of vested commercial interests, instead of helping the communities, so they arrive at their own strategies for the same. Mechanisms need to be devised so that the local populations living close to a protected area network are motivated to protect this network in the same manner. Some concerns with the well-meant programmes of the government were also raised. For example, NREG was said to be playing havoc with the

ecology as more and more infrastructure projects are being built, sometimes in an unplanned way.

The need to (i) harmonise ecological and social concerns, and (ii) internalize gender concerns in policy was raised. In this context, Brazil's Green Grant, established in 2011, which attempts to tie up social inclusion policies with environmental policies was discussed as worth studying. In India, Nagaland has embarked on a programme on '*communitization*' to transfer basic services to communities.

The lack of attention to gender in most environmental and grassroot policies was lamented. Inclusion of women in the local governance is needed for any policy planning with respect to ecology and biodiversity. Women are not only more vulnerable but are also crucial in managing disasters. However, this role is not recognized in either the laws or institutions meant for disaster management.

## Overcoming capacity constraints in environmental federalism

In the federal system framing of laws has become largely the responsibility of the Centre while implementation of laws is a responsibility of sub national units. However, States are severely constrained by lack of resources and capacities, resulting in huge gaps between legislation and their implementation.

It was felt that there is a presumption that capacity leads to better performance but issues of environmental federalism are more a matter of process rather than capacity. Higher levels of governments assume that lower levels need capacity, whereas in reality, no level of government is a repository of all required capacity. Therefore, it was questioned whether jurisdiction should be based on capacity or can jurisdiction be denied on grounds of lack of technical capacity.



Referring to a CSE study on Indian state pollution control boards (SPCBs), it was shown how state agencies are severely constrained with respect to human resource capacity. The challenge that an institution faces with respect to deliver its mandate due to capacity constraints leads to

rent seeking activities. Ultimately, environmental clearances and monitoring mechanisms must devolve tasks to the district level.

There is a strong need for inter-disciplinary knowledge combining science, technology with sociology and politics. The role of the universities in enhancing capacity and foster out of the box thinking must be harnessed.

The capacity constraints, in terms of human resources, are a major issue for government departments. Some states, such as Himachal Pradesh, are trying to create awareness of the need for a green path and of the impact of climate change.

The session spoke to a broader understanding of capacity, as different ways to address the environmental challenge: capacity to grasp issues, to strategize, to lead, to function, to cope and to adapt. It was pointed out that sometimes a wrong capacity is transferred, as in the use of hard technologies instead of softer options, which result in more environmental harm. The advice was not to escalate problems, but to keep it simple. It was also suggested that the concept of inter-governmental transfers could be useful in reducing asymmetry in knowledge and capacity. Given that no particular level of government has a greater knowledge over other levels of government with regard to environmental concerns, what we need are knowledge networks or 'rope lines' at various levels to connect and facilitate knowledge transfers. The critical role that Universities have to play in highlighting sustainability issues and nurturing out of the box thinking was also discussed.

## Enhancing participation, transparency, and accountability



do we mean by participation'?

For example, in Switzerland, there are two aspects to participation: first, at a federal and canton level; second at the level of democracy. The general criteria to organize participation comprise acceptance, competence and

Ways to ensure participation, transparency and accountability in environmental decisions and their implementation in a federal system were discussed. It was felt that public participation, transparency and accountability needs to be discussed in a broader perspective, where the primary questions are 'Who is accountable to whom?', 'Who should be transparent?' and 'what

*"The main contention here is who is accountable to whom, who should be transparent and how do we define public and private purpose."*

Prof Bhalchandra Mungekar,  
Member of Parliament

efficiency. Involving all the citizens from all levels in the decision-making is impossible. Therefore, one has to find the optimal level of participation – maximum conceivable attainment of this ideal without ignoring other ideals of competence and effectiveness. Talking about incorporating public consent and opinion into decision making, the issue of informed consent was raised. How is dissent responded to? Reaching consensus is desired but difficult. Control and compliance are important but highly overrated. What is required is more of participation and unless there is a willingness to cooperate, no compliance and control mechanism would be able to achieve the desired goals. Therefore, the importance of collective action was underlined. It was also highlighted that, in a democracy, participation involves responsibility, not just voice. There is need to speak not just of rights, but also of *Dharma*. The former divides, the latter harmonizes.

It was noted that there is a reasonable level of accountability from industry to government, but the same kind of accountability is missing when it comes to people, who own the land and resources. Concerns were also raised that there is too much focus on accountability at the top and there is a need to examine why people on the ground are participating in corruption.

Right To Information (RTI), training people to use RTI, social audit and citizens' charter were discussed as some of the main tools to promote transparency and accountability in India. Social audit is included in NREGS, but needs to be included in other schemes as well. Integrity Pact is another tool to check corruption in procurement by public sector units (PSUs). However, PSUs are still not using this pact effectively. Development Pact is yet another tool asking people to prepare a development agenda before elections and ask candidates to put their signatures to endorse it. It was found that those who signed the agenda went on to win the elections. The problem of passing the buck between politicians and administrators in taking the responsibility for delivery services was also raised.

*"Rights divide. Dharma harmonizes"*

Prof Ramaswamy R Iyer,  
Former Secretary, Water Resources, Government of India

Frameworks for monitoring, accountability and evaluating outcomes are needed for intergovernmental cooperation in environmental management.

## Fiscal issues in green federalism

The designing of fiscal arrangement was seen as key to ensuring that different levels of government proactively address green concerns. This was illustrated through an

*"The need for fiscal stake for every level of the government is paramount."*

Prof Indira Rajaraman,  
Member, Thirteenth Finance Commission of India

example of the recent controversies around coal block allotment to private players in India. It was pointed out that States do not have much interest in supporting auctioning as a means of allocating natural resources as they do not get any benefits, except a few taxes. The absence of fiscal stakes generates little interest in reforms. There is also need to look at the issue of adequacy and discretion that local governments have over their sources of revenue.

Federations face the issue of benchmarking of public service delivery at sub national units. Benchmarking is a method to design fiscal transfers, based on the principles of comparing and learning. The main models of federal benchmarking are (i) independent / external, (ii) top-down / coercive (as found in central federal systems), (iii) collegial / cooperative (where different political entities get together). Successful benchmarking needs clear rules, frames of reference and goals along with a participatory and collusion approach.



Experiences on how benchmarking/performance monitoring systems are employed in federal countries were presented with a focus on the Swiss experience in benchmarking sustainable development and the environment. The main impacts of the Swiss initiative called Cercle Indicateur (Indicator Circle) are regular sustainability reporting on sustainable use of data for government / legislative programme, use and availability

of data for analysis and government programmes, and a basis for adaptation of a sustainability strategy by Cantons.

Internalizing trans-boundary issues without being too intrusive was seen as one of the main challenges in fiscal federalism in the context of environment.

In Nigeria, oil is a major natural resource accounting for 90% of revenue generation and has huge environmental implications. Most revenue generated from oil is shared amongst 36 States and 774 local governments. However at times there are problems due to joint accounts from the oil revenues. Federal Government controls extraction of mineral resources through Federal Ministry of Solid minerals. Powers and responsibility for environmental sustainability are shared by all tiers. Decisions are however taken at the central level with little participation of local levels. Although there is an Ecological Fund accounting for 3% of Federation's Accounts, it is often utilized for activities not even remotely connected to the environment. There is a need to review the formula for distribution of the proceeds from the Ecological Fund.

In Russia, the total environmental taxes amount to 18.5% in the federal budget, over 90% of which comes from Mineral Extraction Tax on Hydrocarbon. Although there are equalization transfers in Russia, their allocation does not take into account environmental aspects. There are, however, emergency transfers to mitigate the consequences of natural disasters, which are allocated from the federal emergency fund on an ad-hoc basis.

South African municipalities are expected to operate in a framework that expects them to raise their own revenue from reticulating services and taxing property. Most municipalities are generally predisposed to encourage development so as to meet those demands and expand their tax base. Dedicated capacity around environmental matters is generally lacking in municipalities except in the large cities.

In the context of inter-governmental transfers in India, while on the one hand the 13<sup>th</sup> Finance Commission's role in dealing with environment and ecology was lauded, on the other hand it was opined that it is not for the Finance Commission to prioritize environmental activities and it should not be saddled with these responsibilities. However, the issue of inter-governmental transfers (IGT) more generally was discussed. How effectively do IGTs work, and how useful are they as levers of change? How prescriptive should IGT be in terms of prescribing particular models or responses? Two specific points were made:

- that compensation for foregone economic opportunities because of forest and biodiversity protection should be understood as part of fiscal disabilities and be part of the criteria in designing intergovernmental transfers. Need of a specialized body to study compensation for provision of ecosystem services was also highlighted.
- that specific grants to incentivize continued good practice or performance could be given , e.g, benefits from forests, based on some benchmarking.

## **Fragile ecosystems and transboundary resources in federal systems**

Certain ecosystems and ecologically fragile areas need greater protection than others and may require a governance mechanism different from other areas. This session discussed issues in the management of ecologically fragile areas and 'protected areas'. Many of the resource rich and ecologically fragile regions have special status or space for local actors and governments to play a more active role in conservation and preservation of the environment. It was held that ecosystems are artificially segmented by borders and all levels of government need to come together to address environmental challenges.

A similar view was presented with respect to rivers, whereby a reductionist view is leading to segmentation of an integrated system that ignores the role played by rivers in socio-cultural and economic life of society and its people. The need to harmonize riparianism with environment and ecological concerns that transcends political boundaries was stressed upon.

Fragmentation of habitats of animals and plants was highlighted. In earlier times, the community used to be guardians of nature. Even now, there are several examples of sacred groves and sacred trees. However, things in past few years are changing fast, resulting in enormous pressures of development on natural resources. In this context, the effort of state to put aside natural areas as Protected Areas in most of the



countries all over the world needs appreciation. The modern national parks and wildlife sanctuaries are very important to save remaining biological diversity on this planet. However, there seems to be a conflict between the idea of protected areas and the way it excludes people. Also, to denotify any protected area (PA), states have to go through a cumbersome procedure. Therefore, states have no incentive to declare any area as PA. Perverse incentives are created as states which have smaller area under forests are better off, since they do not have to struggle with diversion.

Development needs of one region vs. local/community needs of another region, where resource is being developed was seen as an important issue for environmental federalism. The planners need to take into consideration the contradictions between energy (and revenue) needs and biodiversity needs, especially in the context of ecologically fragile regions and biodiversity hotspots.

The treatment of marine spaces in environmental federalism as against the land spaces was seen as reflective of double standards of most governments. While land is clearly owned and managed, sea is largely open access and free for all to use as well as pollute. This has an adverse impact on marine life and species.

The need for a more comprehensive fisheries policy that works on sustaining fisheries without compromising on conservation goals was underlined. This calls for a different sea ethic that views the ocean as more than merely a factor of production and acknowledges the strong dependence of humanity on the ocean.

With respect to the management of transboundary resources, the case of Chesapeake Bay from USA was presented. The watershed covers more than 64,000 square miles in six states and the District of Columbia. The programme provides valuable lessons on how trans-boundary conflict can be controlled with inclusion of all type of stakeholders (local government, central/federal government, environmental organisation, private industries, universities and research organisation and concerned citizens) in the process. The four key elements to the success of the Chesapeake Bay Program have been, (i) top level political involvement; (ii) aggressive science based goal setting; (iii) measurable commitments and deadlines; and (iv) strong citizen involvement and support.



## Strengthening Institutions for green federalism

The environment and its domains have always been subject to conflict and contestation. The ongoing debate suggests a strong divide between actors, who at one end are being perceived as 'aggressors' or the developers and on the other end, there are those who seek to protect the environment. From a federalism perspective, it was seen that states in India are being perceived as 'aggressors', which is against the interests of both the communities as well as the public good. There is no incentive for states to declare protected areas. In India, there are no specialized institutions to deal with inter-state, centre-state conflicts. There is an institutional vacuum. The appropriate institution to deal with such issues is the Inter state Council (ISC), but it cannot be both player and referee. In the absence of independence for Inter State Council in India, a coordinating mechanism to balance national level, state level and local level public goods is required.

There are multiple challenges in environment management in Nigeria. There is need to restructure the pattern of intergovernmental relations over environmental issues. There is need to develop new ways of enhancing capacities of sub-national governments and institutions. There should be intergovernmental agencies to monitor and evaluate utilization of funds.

In the context of specific vulnerability to climate change and crippling capability shortages at municipal level in South Africa, the weak province relative to national and municipal levels presents the country with a profound challenge. This challenge needs to be met through working towards a division of roles that is as clear as reasonably possible, intergovernmental

relations that are effective and capacity building efforts that aimed at appreciating the environmental dimensions to land use planning.

Although centralization of environmental management is not perceived to be the best solution, it was acknowledged that the present decentralized system was not working either. Therefore, a complete overhaul of environmental governance and the institutional structure is required. Participants suggested the need to motivate states to improve environmental management, but without micro managing and becoming too intrusive.

While there is a strong requirement to reorient institutions to deal with environmental issues, it is equally critical to address the side-lining of traditional institutions, both formal and informal. There is a sharp erosion in institutional memory, value and capacity. It was suggested that several traditional institutions of management and governance at the grass root level need to be recognized and recovered in the account for green federalism. Based on the rich social capital, green federalism should not focus merely on devolution of powers between Centre and States, it must include communities and recognize their linkage with the environment.



*For further details, please visit*

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