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The 2006 Forest Code of the Russian Federation: An Evaluation of Environmental Legislation in Russia¹

This article provides an assessment of environmental policy-making in contemporary Russia, using the case of the 2006 Forest Code of the Russian Federation to evaluate the state's ability to design, implement and enforce effective environmental legislation. The Forest Code provides a particularly interesting and valuable insight into some of the key problems facing environmental policy-making and the policy-making process more generally in Russia today, including issues such as state capacity, interdepartmental conflict, the quality of law, and the difficulties associated with the implementation of law. Each stage of the policy-making process in relation to the Forest Code will be examined, from the initial development and drafting, passage through parliament and final implementation. The case of the Forest Code reveals the inability of the state to design and draft effective legislation, its lack of commitment to environmental issues and its weak capacity in terms of imposing its preferences on the legislative process. The state has also been unable to implement and enforce this law successfully. As a result, it is very difficult to detect any real improvements in the management and protection of forests as a result of the 2006 Code.

The Forest Code itself is an important piece of legislation, dealing with all aspects of the use, management and protection of the Russian Federation's vast forest resources. It is therefore of great environmental, economic and political significance. Russia contains 22% of the world's forests, and 26% of the world's last remaining forests untouched by logging.² Their role in climate stabilisation, the absorption of carbon dioxide from the earth's atmosphere and as a home to many rare and endangered species of plants and animals cannot be overestimated.³ At

¹ All the translations into English from the original Russian are my own unless otherwise specified. The United States Library of Congress system has been adopted for the transliteration of Russian, with the exception of those words that have a common spelling in English.

² J. Howard, 'Saving Russia's Forests: The Finnish-Russian Development Program on Sustainable Forest Management and Conservation of Biological Diversity in Northwest Russia', *Colorado Journal of International Environmental Law and Policy*, Issue 14, Number 2 (2003), 274.

³ Howard, 274.

the same time, the forestry sector is of great importance for the Russian economy in terms of its contribution to GDP, export earnings and employment. Russia remains one of the world's largest timber producers and exporters.⁴ In 2006, Russia exported 51.1 million cubic metres of timber, which represented 26.7% of the global roundwood trade. This is an amount greater than any other country in the world.⁵ Russia also exports large quantities of sawn wood, plywood, pulp and paper.⁶

This article addresses a clear gap in the existing literature. Thus far, very little research has been conducted into this specific area. Russian environmental politics and policy-making is not a topic that has gained much prominence in the academic study of Russian politics, and there is scope for work that seeks to address this, particularly given the renewed global interest in environmental concerns.

The 2006 Forest Code of the Russian Federation came into force on 1 January 2007, and is the basic law regulating forest management, control and protection in Russia.⁷ While there are other laws and regulations that affect various aspects of forestry, such as the Law on Specially Protected Territories or the Land Code, it is the Forest Code that is the most important. The Code consists of 16 chapters and 109 articles, and aims to establish the key principles governing forests in the Russian Federation.

The first article in Chapter One outlines eleven primary objectives which forestry legislation in Russia seeks to fulfil. These objectives include the sustainable management of forests and preservation of biological diversity, the preservation of their environmental functions such as water conservation and as a habitat for many species, the rational and non-depleting use, the participation of citizens and civil society in decision making, and the 'ensured conservation and protection of forests'.⁸ This article attaches a strong importance to forest protection and

⁴ IUCN (The World Conservation Union), 'The Future of Forest Conservation in Russia: The Challenges Facing Forest and Strategies for Addressing Them', *IUCN Program Report* (Montreal, IUCN, 1999), 59.

⁵ F. Lesniewska, A. Laletin, A. Lebedev, and K. Harris, *Transition in the Taiga: The Russian Forest Code 2006 and its Implementation Process*, Taiga Rescue Network and FERN, Jokkmokk, Sweden, 2008, 5. Available online at <http://www.taigarecue.org/index.php?sub=2&cat=65>.

⁶ Lesniewska et al, 5.

⁷ Forest Code of the Russian Federation (*Lesnoi kodeks Rossiiskoi Federatsii*). Available online at <http://www.rg.ru/2006/12/08/lesnoy-kodeks-dok.html>.

⁸ *Lesnoi kodeks Rossiiskoi Federatsii* (2006), Chapter 1, Article 1.

the recognition of the important function they have in environmental terms, and in fact eight of the ten key principles make some reference to environmental protection and the rational, sustainable use of forests. However, there is very little follow up in subsequent parts of the Code to these important principles.

It should also be emphasized that the Forest Code relates to the management and use of forest resources. This would seem to be something of a contradiction: the idea that one piece of legislation can deal with both the protection and the utility of forests as a resource, but it is a theme common to the environmental sphere in Russia. In fact, since 2000, when the Ministry of the Environment was abolished, all matters of environmental protection and conservation have been the responsibility of Ministry of Natural Resources.⁹

While reference is made to important environmental concepts in the first chapter of the Code, these remain in the law more as abstract concepts than as clear and enforceable measures to ensure the protection of Russia's forest resources. The end result is a law primarily focused on the commercial stimulation of the forestry sector, and on establishing new elements of ownership and control of resources, while the environmental protection extended to forests is very weak.

The basis for post-Soviet forest legislation was established in 1993, with Law №4613-I 'Foundations of the Forestry Legislation of the Russian Federation' ('Osnovy Lesnogo Zakonodatel'stva Rossiiskoi Federatsii'), which introduced a number of important concepts absent in Soviet law, such as forest classification schemes and various government spheres of competence. Building upon this legislative foundation, the first Forest Code of the Russian Federation was developed and signed into law in 1997. This Code was a great deal more comprehensive than the 1993 law and aimed to establish a legal basis for all aspects of the 'rational use, conservation, protection and reproduction of forests'.¹⁰ The overarching nature of this law is a particularly interesting feature of Russian legislation more generally, a theme which will be returned to at a later point.

⁹ Ukaz Prezidenta Rossiiskoi Federatsii №867, 'O strukture federal'nykh organov ispolnitel'noi vlasti', *Rossiiskaia Gazeta*, 17 May 2000. Available online at <http://www.rg.ru/oficial/doc/ukazy/867.htm>.

¹⁰ T. Malmlöf, 'The Institutional Framework of the Russian Forest Sector: A Historical Background' in Lars Carlsson and Mats-Olov Olsson (eds.), *Initial Analyses of the Institutional Framework of the Russian Forest Sector: Interim Report*, (Laxenburg, Austria, International Institute for Applied Systems Analysis, 1998), 18.

A proliferation of amendments to the 1997 law necessitated the drafting of a new Code. It was felt that in many regards the early Code was outdated and needed to be brought into line with the many economic, political and social changes that had occurred since 1997. WWF Russia cited the need to ensure coordinated and effective management of forest resources by the state, while Milov comments that the 1997 Code contained many Soviet-era mechanisms for the control and management of forest resources which were no longer appropriate.¹¹ For the most part, the justifications for a new Code focused on issues of forest management and control, and the strong desire on the part of the government to stimulate the commercial forestry sector and attract investment. It is difficult to detect any interest in ensuring greater protective measures for forests, an idea barely raised in the debate.

It is revealing to look at which government departments were responsible for drafting the 2006 Code and whose draft was ultimately submitted to parliament, as this demonstrates that the executive was not united on the form that the Code was to take and that there was significant conflict between government departments during this process. Several draft codes were prepared by the Ministry of Economic Development and Trade (MEDT) and the Ministry of Natural Resources (MNR), but it was the MEDT draft that was ultimately submitted to parliament. The initial drafting stage was conducted by the MEDT, and while it also involved input from the MNR, one would have expected the drafting process to be led by the MNR, the ministry responsible for natural resources and their protection. At that point in time, the MNR also had responsibility for the federal forest service. MEDT's dominance is quite revealing, and gives an indication of government priorities in allowing this ministry to draft a Code and ultimately accepting its version for review by parliament. This indicates that the focus of the executive in developing the new Forest Code was directed more towards the development of forests as an economic resource and the stimulation of the forestry sector and timber industry, than towards their protection. Moreover the content of the final draft that emerged from parliament has been much criticised for its focus on forests as a resource to be developed rather than protected and preserved.

¹¹ WWF Russia, 'Lesnoi kodeks: Kommentarii k novomu Lesnomu kodeksu', *Zakonodatel'stvo i reforma lesnogo sektora v Rossii*, http://www.wwf.ru/about/what_we_do/forests/codecs/forestcode/ accessed 29 March 2009. V. S. Milov, *Novoe Rossiiskoe zakonodatel'stvo o prirodopol'zovanii* (Moscow, Status, 2005), 168.

Although it is difficult to find any direct official explanation as to why the MEDT drafted the law, the Duma records contain a justification by A. V. Sharonov, a deputy minister of the MEDT, who was asked to explain why the MEDT was responsible for the development of the Water Code, rather than the MNR, which appeared the obvious choice. Given the similarities in the Codes, it is interesting to see Sharonov's response, and it must be supposed that the reasons for this are similar. Sharonov notes that the law was designed in consultation with the MNR and other relevant bodies, and goes on to state:

Why us? Because this law, like the Land Code which we are going to adopt, contains a significant number of norms concerning civil law and civil law relations. In creating this Code, the idea was not to cram into it civil law relations, land law relations and environmental law relations, but to construct it in such a way that all these legal relations set out in other [legislative] acts would be applicable to it. We and the government believe that the Ministry of Economic Development and Trade is a specialist in this regard. Therefore, we participated in preparing this draft bill together with the Ministry of Natural Resources.¹²

It seems that, as this law encompassed so many different aspects and conflicting interests, the decision was taken to allow the MEDT to dominate the process. The problems associated with such broad types of legislation, or 'framework legislation', will be discussed below. It is difficult to understand how the decision to permit the MEDT to lead the process could produce a legal document more fully representing civil, land and ecological interests, than if other government departments were allowed a greater role in the drafting process.

The government accepted the MEDT draft, although it did make a few minor alterations before allowing it to enter parliament. Comparing the MEDT draft and the final version submitted to parliament, it appears that some of the clauses were watered down, in particular those concerning the number and scope of the tasks delegated to the Subjects¹³ by the Federal Government. The government also insisted on greater clarification of the responsibilities of each sphere of management.

¹² A. V. Sharonov in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 22 April 2005, 47. Available online at <http://dlib.eastview.com/sources/publication.jsp?id=691>.

¹³ The Russian Federation is divided into 83 administrative units known as Subjects, or members of the Federation. This includes republics, oblasts and krais, which differ in their degree of autonomy.

Interestingly, the draft of the Code developed by the MEDT and submitted to parliament came to be seen as largely unsuccessful. A number of problems emerged during parliamentary discussions and many strong objections were raised in what became quite a controversial law. In one interview, Duma deputy Vladimir Kroupchak criticised the MEDT's version on a number of grounds, including not only its treatment of forests as a commodity rather than as a fragile ecosystem, but also for the fact that it did not solve any of the existing economic problems. The draft, according to Kroupchak, failed to address the issue of adequately attracting investment into the sector, there were no mechanisms to reward companies who passed voluntary forest certification, and most importantly the draft introduced the notion of the private ownership of forests without taking the interests of local communities into account.¹⁴ Kroupchak also claimed that the Ministry ignored many of the comments made in the meetings of the working group established by the Duma for the purpose of revising the draft law.¹⁵ Criticisms were also made about the lack of consultation with both the public and experts in the field. More than once, mention was made in the Duma hearings of the failure of those drafting the law to ensure its examination by environmental experts, a legal requirement, both during the initial drafting process and once the law had entered parliament.¹⁶ Environmental NGOs have also repeatedly claimed that neither they nor forestry experts were consulted during the drafting process.¹⁷

The first reading of the Code progressed in a relatively straightforward manner, and while most of the committees that examined the draft law raised objections in some form, it was thought that these would be addressed before the Code was passed in the second reading. However, these problems prompted a great deal of revision of the draft before it was accepted in its second reading. In fact, the second reading of the Code took approximately nineteen months, making it one of the most contested pieces of legislation in recent years. The

¹⁴ V. Kroupchak in 'Forest Code: Choose or Lose', *Russian Forestry Review*, Number 1, 2006, 50. Published by LesPromInform, St Petersburg. Available online at <http://www.russianforestryreview.com/>.

¹⁵ Kroupchak, 50.

¹⁶ See for example N. A. Pavlov in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 22 April 2005, 13; and A. N. Greshnevikov in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 21 April 2006, 26.

¹⁷ See for example WWF Russia, 'New Forest Code is a Threat to Russian Forests', *WWF Russia News*, 20 February 2004. Available online at http://www.panda.org/who_we_are/wwf_offices/russia/news/?uNewsID=11588.

Duma Committee for Natural Resources and Natural Resource Use asked for the period of review of the law to be extended on five separate occasions, in order to deal with the huge number of proposed amendments.¹⁸ Many strong objections were raised, particularly in relation to the controversial issue of the privatisation of forest lands. It should be noted that criticisms came from a variety of stakeholders, including parliamentary deputies, environmental groups and the President himself.¹⁹ Komarova, Head of the Committee for Natural Resources and Natural Resource Use, noted that on the basis of the draft Code, 1795 corrections were received, of which 216 were accepted by the Committee. The law 'On the Implementation of the Forest Code' received a total of 136 corrections, of which 52 were accepted.²⁰ A WWF Russia report, however, puts the figure much higher, claiming that in the course of a year and a half, the Duma received more than 6000 corrections to the draft code from citizens, state and societal organisations, and the President.²¹

The Code was finally accepted by the State Duma in its second reading on 1 November 2006. The Code was passed with 347 deputies (77.1%) in favour, 59 (13.1%) opposing it, and 44 deputies (9.8%) not present to vote.²² Compared with the voting for the first reading, there was a slight increase in support for the bill, from 323 to 347, and conversely a reduction in votes cast against the Code from 99 to 59 deputies.

The law then underwent its final review process and was accepted in its third reading on the 8 November 2006, with 358 (79.6%) Duma Deputies voting for the law, 74 against (16.4%), 1 abstention (0.2%) and 17 (3.8%) who were not present to vote.²³ This shows a marginal increase in the number of deputies voting to approve the law in comparison with the second reading, but also an increase in the number voting against it.

It was then sent to the Federation Council for approval on 24 November 2006. The Federation Council did not appear to raise any strong objections to the Code,

¹⁸ Gosudarstvennaia Duma, *Stenogramma zasedanii*, 26 May 2005, 30 June 2005, 20 September 2005, 1 November 2005, 10 January 2006.

¹⁹ As noted by A. N. Greshnevikov in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 7 September 2005, 23.

²⁰ N. Komarova in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 1 November 2006, 51.

²¹ WWF Russia, 'Lesnoi kodeks: Kommentarii k novomu Lesnomu kodeksu'.

²² Gosudarstvennaia Duma, *Stenogramma zasedanii*, 1 November 2006, 71.

²³ Gosudarstvennaia Duma, *Stenogramma zasedanii*, 8 November 2006, 16.

in contrast to the 1997 Forest Code which had been rejected by the Federation Council and the President twice, and returned for a substantial revision before it was finally approved. This gives an interesting insight into the changing nature of the Federation Council in the Russian political system. The Forest Code was then signed by the President on 4 December 2006 and published on 8 December 2006, thus becoming law.

Since the Code was passed, a number of serious criticisms of its many shortcomings have been made by a range of actors, including environmentalists, business leaders and government officials. In fact, there have been very few positive statements made concerning the Code at all. Budarina, writing in *Lesprom Forum*, a magazine targeted at the forest industry and commercial interests, has even gone so far as to describe the new Forest Code as the worst forestry law in the entire history of Russian state forestry management.²⁴ These actors have focused their criticisms on several different aspects of the Code which will be examined in turn.

The 2006 Code represents a significant break with the past in many ways. Perhaps the greatest concern has been with regard to the decentralisation of management and control, and the changes brought about in the spheres of responsibility of the Federal Government and the Subjects. As a result of these changes, the Federal Government has delegated a great number of its duties to the Subjects, however the new administrative structure is far from clear. It would seem that the centre maintains overall control, while passing management functions to the regions, although the extent of the regions' powers are not clearly defined and there is little scope for federal oversight in terms of practical and concrete measures.

The issue of forest ownership was one of the most controversial aspects of the Code, something quite understandable given that land privatisation in Russia more generally has been a highly contested issue throughout the post-Soviet period. The first draft of the Forest Code allowed for the privatisation of forest parcels, causing a great deal of protest from a diverse range of people, including both government members and environmental NGOs. As a result, it was removed from the final draft, leaving in place the federal ownership of forests, however many commentators have argued that the ambiguities of the Code still leave the possibility of privatisation in the future.²⁵ The umbrella environmental

²⁴ R. Budarina, 'Rabota nad oshibkami', *Lesprom Forum*, Number 19, 10–12 December 2008, 4.

²⁵ Zakon Rossiiskoi Federatsii, *Lesnoi kodeks Rossiiskoi Federatsii*, 8 November 2006, Chapter 1, Article 8.

NGO Taiga Rescue Network notes that there is no clarification regarding how the Forest Code and the Land Code relate to each other, and so areas outside the forest fund,²⁶ such as agricultural and urban forests and forest plantations, can potentially be privatised.²⁷ Given the decentralisation of control that has occurred, it is quite likely that individual Subjects of the Federation could allow for private ownership in some areas in the future.

A key failing of the Forest Code is its lack of provisions for ensuring the protection of forests, a focus of concern for Russian environmental groups in particular. This absence of protection has occurred in a number of ways, particularly through the expansion of permissible types of forest use, changes to the classification of forest types, and the transfer of formerly protected areas to new forest categories that allows for their exploitation. Aspects of the Code are focused on the direct stimulation of the forest industry and the attraction of investment into the sector, and as WWF Russia argues, this has less to do with sustainable harvesting of existing resources, than with the exploitation of new territory.²⁸

In comparison with both the 1997 and 1993 forestry laws, the 2006 Forest Code does shift the focus away from the protection of forests quite noticeably towards a more utilitarian approach. Taiga Rescue also points to the fact that environmental impact statements are no longer required from those who wish to use and develop forested land, that there has been a reduction in the restrictions placed on development and construction in forested areas, and that the limitations on logging in protected areas have also been abolished.²⁹ Another concern relates to the many inconsistencies and ambiguities inherent in the law itself, complicating the process of implementation and enforcement. It has been pointed out that the Code fails to include many important definitions of terms used, including what constitutes a 'forest', a basic requirement of a Forest Code.

Perhaps the clearest evidence of the low quality of this law can be seen in the numerous amendments and modifications that have been introduced since

²⁶ The 'forest fund' refers to all forested land on the territory of the Russian Federation not set aside for agricultural purposes, transportation links or forests located in urban and suburban areas.

²⁷ Taiga Rescue Network, 'Comments on the New Russian Forest Code', *Briefing Note*, Taiga Rescue Network, Jokkmokk, Sweden, January 2007, 1.

²⁸ WWF Russia, 'Lesnoi kodeks: Kommentarii k novomu Lesnomu kodeksu'.

²⁹ Taiga Rescue Network, 'Comments', 2–3.

the Code entered into force. An examination of Duma records reveals a very long list of proposals and attempts by deputies to amend this new law throughout the course of 2007 and 2008. Many of these are related to the relatively short implementation period and their desire to extend this, although many also seek to challenge the substantive content of the law. A telling example is the law passed in July 2008 ‘O vnesenii izmenenii v Lesnoi kodeks Rossiiskoi Federatsii i federal’nyi zakon “O vvedenii v deistvie Lesnogo kodeksa Rossiiskoi Federatsii”’, which clarifies aspects of the law on implementation of the Code, particularly concerning the rights of citizens to use the forest and the details surrounding the conduct of auctions. The irregularities within the law itself and its lack of clarity in many areas reflect poorly on the state’s ability to devise effective legislation and on Russia’s environmental policy-making process.

Further criticisms that have been made of the Forest Code are worth mentioning briefly. Firstly, there was no public participation in the design of the law or its implementation. WWF Russia has been particularly vocal about this issue, claiming on a number of occasions that Russian citizens should have the right at least to review documents relating to forest planning and use, many of which affect them directly, such as the right to harvest berries and other non-timber products from the forest.³⁰ Taiga Rescue too makes mention of the fact that while reference is made in an early part of the Code to the participation of civil society in forest management,³¹ this is not followed up anywhere else in the document, and in fact ‘a mechanism for public participation is totally absent’.³² Taiga Rescue also claims that while the formation of one federal and some provincial Public Forest Councils, which are forums for the various stakeholders including NGOs and the public to discuss their concerns regarding forest management and legislation, is a positive sign, ‘this has not occurred comprehensively throughout Russia’.³³

The Code also gives no adequate guarantee about the rights of indigenous people and local communities to use the forest and its resources.³⁴ The law is

³⁰ M. Karpachevskii quoted in Federal’noe Agentstvo Lesnogo Khoziaistva, ‘V Rosleskhozhe proshlo zasedanie Obshchestvennogo Ekologicheskogo Soveta’, *Novosti*, 11 June 2008. Available online at <http://www.rosleshoz.gov.ru/media/news/131>.

³¹ *Lesnoi kodeks Rossiiskoi Federatsii*. See Article 1, Point 7.

³² Taiga Rescue Network, ‘Comments’, 2.

³³ Lesniewska et al, 3, 18.

³⁴ Taiga Rescue Network, ‘Comments’, 1.

vague in relation to the rights of citizens to harvest non-forest products such as berries and mushrooms for subsistence freely.³⁵ It is also noted that there are no mechanisms in place to resolve conflicts of interest that may arise between the different forest users.³⁶

Some commentators have also questioned the longevity and sustainability of the Code, arguing that the many failings of the legislation indicate that it is little more than a 'makeshift' law which will last only a few years before having to be replaced again.³⁷ Iaroshenko argues that, because the Code requires an enormous number of additional laws and departmental regulations in order for it to be properly implemented, it is not sustainable.³⁸ Others have argued that the law reflects the transitional period in which the forestry industry finds itself, again emphasizing that an entirely new Code will need to be adopted within a short period of time.³⁹ The ability to design enduring legislation is an important component of a state's legislative functions, however, evidence so far would suggest that the 2006 Forest Code does not fall into the category of enduring legislation.

Finally, as I have attempted to demonstrate, the Forest Code is a poorly framed piece of legislation. It concerns both the conservation and the use of forests in Russia, thus creating an inherent contradiction. This has resulted in an ineffective law, suggestive of a state incapable of effectively framing its policy priorities. The Forest Code is an example of a 'framework law' (*ramochnyi zakon*), a term referring to a law in which very broad, general principles are presented without a great deal of specific and targeted goals, which leaves many important choices to be made by those implementing the law.⁴⁰ The lack of detail is a key failing of the Forest Code, in which important environmental principles are referred to but without any concrete mechanisms to ensure that they are implemented. This

³⁵ WWF Russia, 'Lesnoi kodeks: Kommentarii k novomu Lesnomu kodeksu'.

³⁶ Taiga Rescue Network, 'Comments', 2.

³⁷ A. Iaroshenko, 'Analitika: Koordinator lesnoi kampanii Grinpis Rossii Aleksei Iaroshenko rezko kritikueta pravitel'stvo', *Drevesina.com Portal Lesopromyshlennika*, 31 October 2004. Available online at <http://www.drevesina.com/materials.htm/a5/b206>.

³⁸ Iaroshenko.

³⁹ Interview with Dmitry Dmitriyevich Chuiko, the Forestry and Woodworking Complexes Development Manager of the Ilim Pulp corporation, in 'On the Threshold of Great Changes', *Russian Forestry Review*, Number 1 (2006), 21.

⁴⁰ P. Solomon, 'Law in Public Administration: How Russia Differs', *Journal of Communist Studies and Transition Politics*, Volume 24, Number 1 (2008), 118–119.

is a problem common to a great deal of legislation in Russia more generally, and there are numerous other codes addressing large areas of the law, such as the Criminal Code and the Water Code, which have had to be followed up by numerous decrees and edicts. As a result, the bureaucracy plays a very important role in the implementation process, and is given a large degree of scope to apply and interpret the rules. According to Solomon, when legislation is vague, the interests of those implementing the law are often dominant. There is a risk that ‘sometimes, rules are not implemented much or at all; at other times they become objects of “creative compliance”, through which affected officials use legal means to avoid following the intent of a law without actually violating its content. In this situation, laws are not broken, but they are ineffective’.⁴¹

This type of law has broader implications. As Solomon notes:

How easily and whether policies are implemented depends *inter alia* upon the number of separate actors involved in the process. When decisions must be implemented by many different officials within more than one administrative unit or hierarchy, the task becomes difficult. When the implementation of policies involves a federal system of government, where different levels of government have their own mandates and systems of accountability, the implementation of programmes becomes more complex.⁴²

When this is applied to the Forest Code and the changes made to the structure of forest governance, the decentralisation of control could have very negative effects. Each of the Federation’s Subjects is given considerable scope to design its own structures of forestry management with little or no Federal oversight. These new layers of bureaucracy have the potential to allow each Subject to interpret the Code in a different way, and implement and enforce it according to standards they set for themselves. While the more centralised system that existed under the 1997 Code was far from satisfactory, for the Federal Government to lose a significant proportion of its control and oversight can only have a detrimental effect on the protection of Russia’s immense forest resources. A number of these issues reveal themselves in the implementation and enforcement stage, as will be discussed below.

⁴¹ Solomon, 118.

⁴² Solomon, 120.

The 2006 Forest Code entered into force on 1 January 2007, and Federal Law № 201-F3 ‘On the Implementation of the Forest Code of the Russian Federation’ (‘O vvedenii v deistvie Lesnogo kodeksa Rossiiskoi Federatsii’) outlined its implementation. The year 2007 was seen as the transition period, in which the changes brought about by the new Forest Code were to be put in place. From 1 January 2008 the Code was expected to be in full operation; however it was not until 1 January 2009 that the previous Forest Code from 1997 ceased to apply, as one article of the Code concerning logging permits⁴³ remained valid until the end of 2008.

The implementation of the Forest Code occurred in several stages and remains an ongoing process in many ways. This makes it difficult to assess its long-term consequences, and it would be expected that new evidence will emerge over time. However, at this stage, it is still possible to draw some important conclusions. Two key issues emerge: firstly, in order for the Forest Code to be properly implemented, it required a large number of additional supporting laws; secondly, the timeframe given was not adequate.

The new Forest Code required the development of a very large number of additional supporting laws and decrees at both the federal and the regional levels in order to complete its implementation. A total of 56 legal acts had to be adopted, as well as a large number of accompanying resolutions and orders.⁴⁴ As the Federal Forestry Agency (Rosleskhoz) report indicates, the Subjects of the Federation had to bear a particularly large burden. Apart from implementing the necessary legislative documents, they were required to create their own structures to manage forests, to form *lesnichestva* (forest districts responsible for administration and management), work out forestry plans and regulations, and commercial development projects.⁴⁵ The Code also required that many modifications to existing laws be carried out. This is clearly demonstrated by the law ‘On the Implementation of the Forest Code’ which deals with technical aspects of the implementation and lists the earlier laws replaced by the new Code, including the 1997 Forest Code.

⁴³ *Lesnoi kodeks Rossiiskoi Federatsii*. See Article 42, Parts 2 and 11.

⁴⁴ E. A. Shchetinskii, *Lesnoe zakonodatel'stvo* (Izdatel'stvo Moskovskogo Gosudarstvennogo Universiteta Lesa, Moscow, 2007), 9.

⁴⁵ Federal'noe Agentstvo Lesnogo Khoziaistva, ‘Lesnoi kodeks RF: Problemy upravleniia lesami v Sub"ektakh RF’, *Novosti*, 29 November 2007. Available online at <http://www.rosleshoz.gov.ru/media/news/35>.

Importantly however, it also includes a very long list of modifications that needed to be made to existing laws (such as the Civil Code), as a result of the changes brought about by the new Forest Code.

Many commentators have also criticised the relatively short time period in which forest agencies at a Federal and regional level were expected to introduce the new Code. Given the significant changes introduced by the new Code and the very large number of modifications to existing laws that were required, it is perhaps surprising that the changes were expected to be executed so quickly. The parliamentary records contain several instances in which representatives from the government were questioned by Duma deputies regarding the speed of implementation and the difficulty of ensuring all the accompanying laws were in place before the Forest Code became law. Duma deputy A. G. Baskaev, for example, asked the Minister for Natural Resources, Yuri Trutnev, in November 2006, how it was possible for the Code to pass its second and third readings in the Duma, be accepted by both the Federation Council and the President, and, most importantly, for the Duma to pass more than 60 legal acts before the Code was supposed to enter into force on 1 January 2007.⁴⁶ This highlights the very rushed nature of the law from the outset.

The timing of the implementation has also been the target of some criticism. Many scholars have commented on the rather long gap between the replacement of the 1997 Forest Code and the introduction of the new Code. Batueva describes a six month gap between the two codes, claiming ‘anarchy will prevail’.⁴⁷

Taiga Rescue produced a very detailed report concerning the implementation of the Code and noted that the period of transition and implementation was particularly confusing to all involved. As a result, it argues, a great deal of the necessary legislation relating to the new Code was not in place on time at both a federal and regional level. It continues:

An apparent ‘disappearance’ of the organs of forest management in early 2007 was noted by many NGOs. In some cases early versions of new legislation conflicted with existing legislation, and had to be quickly amended, which resulted in a series of amendments to recently passed federal laws being introduced during 2007, further compounding confusion. Foresters,

⁴⁶ A. G. Baskaev in Gosudarstvennaia Duma, *Stenogramma zasedanii*, 1 November 2006, 29.

⁴⁷ E. Batueva, ‘Lesnoi kollaps’, *Tribuna*, Number 6, 16 February 2007. Available online via East View at <http://dlib.eastview.com/sources/article.jsp?id=11676730>.

regional authorities, forest users and local communities were not able to define what was legal during this period, resulting in chaos and a situation where abiding by the laws of forest governance was so complicated as to be near impossible.⁴⁸

In another example, Minister Trutnev noted in July 2007 that 65 of Russia's regions had not yet adopted a single normative legal act to ensure the implementation of the Forest Code. These were supposed to have been completed by the end of August.⁴⁹

There have also been reports of inadequate funding for the Subjects to implement the new Forest Code. A State Duma parliamentary hearing conducted in September 2007 noted that the Subjects had not been provided with the necessary financing to ensure all the measures required under the new law might be carried out.⁵⁰ Batueva also commented in 2007 that the federal budget did not allocate anywhere near the amount of money required for the implementation of the Code.⁵¹

The time frame in which the necessary reforms were expected to be completed was not adequate, nor were clear instructions provided to those responsible for carrying out these changes. This should be seen as an important element of weakness in the state's ability to design effective legislation. While the number of additional laws is not in itself necessarily a negative thing, especially given the many novel aspects of this Code in comparison with previous laws, in combination with the very short implementation period, the modifications required to existing laws and inadequate financing, the result was chaotic.

In terms of responsibility for enforcement, the 2006 Code has brought about significant changes in comparison with the previous Forest Code. While the Federal Government retains ownership of the forest fund, the new Code has decentralised management of Russia's forest resources. The Federal Forestry Agency, Rosleskhoz, is based in Moscow with regional representatives across Russia. This organisation remains the overarching Federal body which is responsible for

⁴⁸ Lesniewska et al, 6.

⁴⁹ Federal'noe Agentstvo Lesnogo Khoziaistva, 'V 65 regionakh Rossii ne priniat ni odin normativno-pravovoi akt v realizatsiiu Lesnogo kodeksa RF', *Novosti*, 11 July 2007. Available online at <http://www.rosleshoz.gov.ru/activity/cooperation/news/1>.

⁵⁰ Gosudarstvennaia Duma, *Parlamentskie slushaniia: 'Aktual'nye voprosy pravoprimeniia Rossiiskogo lesnogo zakonodatel'stva'*, conducted on the 13 September 2007.

⁵¹ Batueva.

‘inventory, evaluation and monitoring’.⁵² However, each Subject of the Federation is now required to create its own body responsible for the management, protection and commercial use of forests, and to bring their legislation in line with the standards established by the new law, which they are ultimately in charge of enforcing.

The enforcement of the Code has raised a number of issues which call into question the effectiveness of the Forest Code as a piece of legislation. The two key areas of concern relate to the decentralisation of control and the problem of illegal logging.

Relations between the Federal Government and the Subjects provide a very interesting insight into one of the most important issues to emerge from the enforcement of the Forest Code. As has previously been stated, the decentralisation of control meant that the Subjects found themselves with responsibility for the management of forests, while overall control was nominally retained by the centre. What happened in reality following the enactment of the Code was a period of confusion, in which a great deal of legislation had to be developed, and regional level institutions created, all in a very short time.

A striking example of the confusion surrounding the changes in responsibility between the different levels of government can be found in the conflict over forest plans in 2008, which provides a clear indication of the tensions that exist in the relationship between the Federal Government and Rosleskhoz and the Subjects of the Federation over both the enforcement and implementation of the Code. This conflict suggests that the provisions made for this process in the Forest Code were inadequate and unclear, and that there are no effective penalties or incentives to ensure compliance with federal law.

According to the Forest Code, each Subject of the Federation is required to submit a ‘forest plan’ which details the state of their forests and how forests will be used, developed and protected in any given territory.⁵³ Two issues have arisen in relation to these plans: firstly, the regions have been very slow to submit them to the Federal Forestry Agency; and secondly, the Agency has rejected a large number of them for various reasons, often relatively minor, such as inaccurate budgetary figures or forecasts about the price of timber, and the absence of suf-

⁵² Lesniewska et al, 5–6.

⁵³ Federal’noe Agentstvo Lesnogo Khoziaistva, ‘Lesnoi kodeks RF: Problemy pravleniia lesami v Sub”ektakh RF’.

ficient fire-prevention measures.⁵⁴ Had this involved only a few regions, then perhaps it would not have been such a significant issue; however, when nearly all the regions delayed sending their forest plans, and a significant proportion of them required corrections to be made, then the matter becomes more important. This situation is quite revealing as regards both the unclear implementation process and the enforcement of the Code.

A report from Rosleskhoz stated that in February 2008, over a year since the implementation process had begun, the situation was quite alarming as only a third of subjects had even started to develop their forest plans. Rosleskhoz claimed that by the end of 2007, all the tasks required at the Federal level in terms of the implementation of the Code had been completed, and the outstanding aspects were the responsibility of the regions. However, the regions did not manage to complete all these requirements on time.⁵⁵ This case suggests that the responsibilities of both the centre and the regions remain quite ambiguous, given the confusion over the submission of forest plans and the implementation process more generally. Importantly, it also indicates that the Federal Government has only a very limited degree of control over the Subjects. Despite the fact that very few regions had returned these documents, no penalties were imposed, and it appeared that Rosleskhoz could do nothing but wait and issue statements and press releases on the matter. This suggests that it is very hard for the Federal Forestry Agency to enforce the law, given that so many violations have occurred and almost no action has been taken. It would also indicate that there are no effective penalties in place to ensure compliance with this new legislation. While the press releases and reports of Rosleskhoz state that there are measures in place to check the progress of the Subjects in implementing the reforms required of them by the new Code, it seems that in reality there is little that has been done and little that can be done to enforce the law and ensure these reforms are in fact carried out in accordance with the Code.⁵⁶ This suggests that the Federal Government is

⁵⁴ Federal'noe Agentstvo Lesnogo Khoziaistva, 'Lesnye plany Sub"ektov RF trebuiut ser'eznykh dorabotok', *Novosti*, 17 September 2008. Available online at <http://www.rosleshoz.gov.ru/media/news/164>.

⁵⁵ Federal'noe Agentstvo Lesnogo Khoziaistva, 'Seichas nel'zia stoiat' v storone ot protsesssa', *Novosti*, 14 February 2008. Available online at <http://www.rosleshoz.gov.ru/media/news/75>.

⁵⁶ Federal'noe Agentstvo Lesnogo Khoziaistva, 'Informatsiia o sisteme monitoringa ispolneniia organami gosudarstvennoi vlasti Sub"ektov Rossiiskoi Federatsii peredannykh polnomochii v oblasti lesnykh otnoshenii i o rezul'tatakh v 2007 godu', *Novosti*, 14 February 2008. Available online at <http://www.rosleshoz.gov.ru/media/news/77>.

now unable to impose its preferences on the Subjects of the Federation as a result of the new law.

A key problem associated with the implementation of the Code is that the regions have little incentive to comply in the first place, given the almost complete lack of consequences for failing to do so. However it must also be emphasized that the law itself is very vague in regard to the duties and responsibilities of the Subjects of the Federation, and so it is not simply a matter of the absence of penalties and incentives. The problems with the Code's content make compliance even more difficult and less likely. The decentralisation of control has meant that enforcement of the Forest Code varies by region, however, on the whole, the evidence would indicate that compliance with federal law is not occurring in many instances, as was demonstrated by the case of the forest plans. This is a strong indication that the state lacks the ability to effectively implement and enforce legislation.

One of the most valuable ways of evaluating the Code's success is to examine the issue of illegal logging in Russia. As the Code relates to the control and management of forest resources, one would think that the presence of illegal logging indicates a lack of both control and effective management. It suggests the absence of state capacity in the forestry sector and the inability of the state to control what occurs within its own borders, which is in itself a fundamental element of a state's power and authority. In this case, it also often indicates the presence of corrupt officials, and a lack of effective penalties and forest monitoring.

Illegal logging refers to a variety of activities that relate to the 'cutting, buying, and selling of timber' in ways prohibited by law, and can involve harvesting timber without a license or in a protected area.⁵⁷ Illegal logging is a very serious concern in Russia, and preventing it is seen as one of the primary goals of forestry legislation. This is the case on both an environmental and economic level. Environmentally, the harmful effects of illegal logging are obvious; however, it is also important to remember that it has serious consequences for the Russian economy. From observations made in 2003, Essick put the cost to Russia of illegal logging at approximately \$1.5 billion per year.⁵⁸ In 2008 it was estimated

⁵⁷ C. Essick, 'Crisis in the Forest: The Environmental Impact of Illegal Logging under the New Russian Economy', *Colorado Journal of International Environmental Law and Policy*, Volume 15, Issue 2 (2004), 246.

⁵⁸ Essick, 245.

that 2.5 billion roubles were lost due to illegal logging, an increase of more than one and a half times the rate for the previous year.⁵⁹ A report produced in 2008 notes that figures for illegal logging and trade in Siberia and the Far East range from 15% to 70% of forestry operations.⁶⁰ One article suggests that as much as half of the hardwood harvesting in Primorskii Krai is done in violation of the law, 'either by large companies working with corrupt provincial officials or by gangs of men in remote villages'.⁶¹

While it is important to emphasize that the illegal harvesting of timber was a serious problem under existing forestry laws, many commentators have argued that the new law has made the situation worse. A report by Karpachevskii argues that the new Forest Code will lead to an increase in illegal logging, as nearly all the provisions to prevent this in previous legislation have now been removed. Karpachevskii suggests that the large number of problems with the Forest Code and the low quality of the documents accompanying the law and their many internal contradictions, due mainly to the rush in which they were prepared in order to have them ready for the implementation of the Code, will have a very negative effect and lead to an increase in illegal activities. Karpachevskii also claims that this means that forest users will nearly always be able to prove the legality of their actions in court, due to the weaknesses and loopholes in forestry legislation.⁶² A Taiga Rescue report also expresses concerns about the new Forest Code, claiming that the reforms will 'create new categories of illegality, some of which will be to the detriment of people who are forest dependent'.⁶³ On a more positive note, there is mention of recent proposals by the Federal Forestry Agency to establish new systems to track timber and satellite monitoring of forests as a way of detecting any illegal logging that may be occurring.⁶⁴

⁵⁹ M. Gritsuk, 'Les ruyat – den'gi letyat: nezakonnye rubki lesa uvelichilis' v poltora raza', *Rossii-skaia Gazeta*, 30 November 2007.

⁶⁰ Lesniewska et al., 33.

⁶¹ Raffi Khatchadourian, 'The Stolen Forests: Inside the covert war on illegal logging', *New Yorker*, 6 October, 2008. Available online at http://www.newyorker.com/reporting/2008/10/06/081006fa_fact_khatchadourian?currentPage=all.

⁶² M. Karpachevskii, 'Ozhidaemoe vliianie novogo Lesnogo kodeksa i soputstvuiushchikh reform na situatsiiu s nezakonnymi rubkami v Rossii', *Ustoichivoe Lesopol'zovanie*, Number 4, Volume 16 (2007), 6.

⁶³ Lesniewska et al, 33.

⁶⁴ Lesniewska et al., 33.

On the whole however, a decentralisation of control is perceived by many commentators to lead to an increase in illegal logging, and in fact there is strong evidence to support this view. Despite the introduction of the new Forest Code, Deputy Director of Rosleskhoz Mikhail Giryaev argued in 2007 that the administrative reforms conducted by the Subjects of the Federation so far have led to a worsening of the quality of forest protection, and in fact the instances of illegal logging have increased by 38% in 2007 since the Forest Code was enacted.⁶⁵

Most commentators agree that, following the collapse of the Soviet Union, there was a dramatic increase in illegal logging in Russia, particularly in the more remote regions of Siberia and the Far East.⁶⁶ This should be seen as a consequence of the inability of a weakened state to control what occurred within its borders, particularly in terms of oversight of the logging industry. While the state was weak in the 1990s, as is consistently argued in the literature, the contemporary Russian state is a great deal stronger, and, it might be argued, authoritarian. However as this article has sought to demonstrate, this is not the case in every sphere of the state's competence. The presence of illegal logging should be seen as evidence of the inability of the state to protect the environment and the inability to effectively enforce legislation, while the persistence of the problem indicates that the 2006 Forest Code is not an effective tool for dealing with this serious issue. Failure to enforce the law, poor forest management structures and ineffective legislation act in combination to ensure that the illegal harvesting of timber remains an issue.

The case of the 2006 Forest Code provides an interesting insight into environmental policy-making in Russia today. A study of the drafting of the Code demonstrates the highly conflictual nature of the process, in which the state appears unable to impose its preferences on the process in any clear way. This legislation is badly designed, lacks clarity and in many ways is also poorly framed. The implementation period was chaotic and revealed the many inadequacies and inconsistencies in the law itself, and also revealed the limited extent to which the Federal Government was able to impose its preferences on the regions. The presence of illegal logging and evidence of its increase since the Code's inception provides a very strong indication of the failure of this law.

⁶⁵ Federal'noe Agentstvo Lesnogo Khoziaistva, 'Lesnoi kodeks RF: Problemy upravleniia lesami v Sub'ektakh RF'.

⁶⁶ For example, see Essick, 246.

One of the primary aims of the Code was to stimulate economic growth in the forestry sector, however the poor design and rushed implementation has not allowed this to occur. A secondary aim of the Code should have been to provide environmental protection for Russia's forest resources, however despite claims relating to the importance of conservation and sustainable use in the first article of the first chapter of the law, there was almost no follow up to these principles. The very idea that economic development and environmental protection can be effectively addressed in one piece of legislation is questionable in any case.

The Forest Code indicates that the primary cause of weak and ineffective environmental policy and legislation in Russia is the content of the law itself and the institutions responsible at each stage of the policy-making process. It is these factors which determine the quality of law and the level of protection afforded to the environment. The state lacks the ability to protect the environment as it is unable to design, implement and enforce effective environmental legislation. The current situation concerning environmental policy-making in Russia has serious implications for the future of environmental protection, and unless significant changes are made to the state institutions responsible for natural resource use and conservation and unless there are significant improvements in the law-making process, then the prospects for environmental protection in the Russian Federation remain very limited.