

**Legal Timber** investigates a topical issue in international forest policy: how to verify the legality of traded timber in ways that will satisfy both the commercial interests of producer states and the social and environmental concerns of civil society and consumers.

This seemingly straightforward and technical matter proves, on investigation, to be complex and political. It addresses a critical interface in international relations where the sovereign rights of producer states are set against the role of forests as important public goods. It relates to a topic — illegal logging — that has been at the forefront of a movement in which private actors are playing increasingly important roles in forest sector reform.

**Legal Timber** presents the findings of the VERIFOR project, an applied research collaboration involving partners in Europe, Africa, Latin America and Asia. Drawing on case studies from five continents, the book investigates the ways in which questions of forest management illuminate much wider processes of governance reform.

This book will be of interest to all those working on forest governance and the management of extractive resources, trade certification and labelling, environmental activism, and participatory development.



LEGAL  
TIMBER

# LEGAL TIMBER

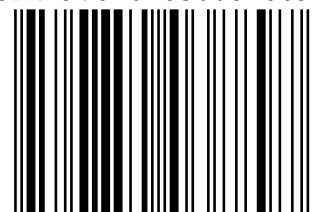
## Verification and Governance in the Forest Sector

David Brown, Kate Schreckenberg, Neil Bird, Paolo Cerutti,  
Filippo Del Gatto, Chimere Diaw, Tim Fomété, Cecilia Luttrell,  
Guillermo Navarro, Rob Oberndorf, Hans Thiel, Adrian Wells

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in the Forest Sector



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## Abbreviations and acronyms

<b>ACP</b>	African, Caribbean and Pacific
<b>ALFA</b>	Application of Forestry Legislation in the Amazon Region (Brazil)
<b>AusAID</b>	Australian Agency for International Development
<b>BC</b>	British Columbia
<b>BRIK</b>	Timber Industry Revitalisation Board (Indonesia)
<b>CAR</b>	Corrective Action Request
<b>CATIE</b>	Centro Agronómico Tropical de Investigación y Enseñanza (Tropical Agricultural Research and Higher Education Center)
<b>CBFM</b>	Community-based forest management
<b>CDM</b>	Clean Development Mechanism
<b>CEDENMA</b>	Ecuadorian Committee for Nature and Environment Protection
<b>CIA</b>	Professional College of Agricultural Engineers (Costa Rica)
<b>CIDA</b>	Canadian International Development Agency
<b>CIFOR</b>	Center for International Forestry Research
<b>CITES</b>	Convention on the International Trade in Endangered Species of Wild Fauna and Flora
<b>CONADEH</b>	Honduran National Commission for Human Rights
<b>CONAFLO</b>	Interinstitutional Commission to Coordinate the National Forest Program (Brazil)
<b>COP</b>	Conference of the Parties
<b>COVIRENAS</b>	Forestry and Natural Resources Surveillance Committees (Costa Rica)
<b>CPET</b>	Central Point of Expertise on Timber Procurement
<b>Danida</b>	Danish International Development Assistance
<b>DENR</b>	Department of Environment and Natural Resources (Philippines)
<b>DFID</b>	UK Department for International Development
<b>DFO</b>	District Forest Office (Malaysia)
<b>DRC</b>	Democratic Republic of Congo
<b>EC</b>	European Commission
<b>EIA</b>	Environmental Investigation Agency
<b>EIA</b>	Environmental Impact Assessment
<b>ENR-SECAL</b>	(World Bank-financed) Environment and Natural Resources Sector Adjustment Loan (Philippines)
<b>ERT</b>	Expert review team
<b>EU</b>	European Union
<b>EURATOM</b>	European Atomic Energy Community
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FC</b>	Forestry Commission (Ghana)
<b>FCMRP</b>	Forest Crimes Monitoring and Reporting Project (Cambodia)
<b>FLEG</b>	Forest law enforcement and governance
<b>FLEGT</b>	Forest law enforcement, governance and trade
<b>FMU</b>	Forest management unit
<b>FPB</b>	Forest Practices Board (British Columbia, Canada)
<b>FPIC</b>	Free, Prior and Informed Consent
<b>FRPA</b>	Forest and Range Practices Act (British Columbia, Canada)

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<b>FSC</b>	Forest Stewardship Council
<b>GFW</b>	Global Forest Watch
<b>GIS</b>	Geographic Information System
<b>GPS</b>	Geographic Positioning System
<b>GPTIRID</b>	Permanent Inter-Ministerial Working Group to Reduce Deforestation in the Brazilian Amazon
<b>GTZ</b>	German Enterprise for International Technical Cooperation
<b>GW</b>	Global Witness
<b>IAEA</b>	International Atomic Energy Authority
<b>IBAMA</b>	Brazilian Institute of Environment and Renewable Natural Resources
<b>ICF</b>	National Institute of Forest Conservation (Honduras)
<b>IDB</b>	Inter-American Development Bank
<b>IFF</b>	Intergovernmental Forum on Forests
<b>IFM</b>	Independent forest monitors/monitoring
<b>IM</b>	Independent monitor
<b>IMF</b>	International Monetary Fund
<b>INAFOR</b>	National Forestry Institute (Nicaragua)
<b>IO</b>	Independent observer
<b>IPF</b>	Intergovernmental Panel on Forests
<b>ISO</b>	International Organization for Standardization
<b>KPCS</b>	Kimberley Process Certification System
<b>LEI</b>	Indonesian Eco-label Institute
<b>LGUs</b>	Local Government Units (Philippines)
<b>LPIs</b>	Independent Assessment Bodies (Indonesia)
<b>MARENA</b>	Ministry of Environment and Natural Resources (Nicaragua)
<b>MINEFI</b>	Ministry of Finance (Cameroon)
<b>MINFOF</b>	Ministry of Forests and Wildlife (Cameroon)
<b>MFPCs</b>	Multi-Sectoral Forest Protection Committees (Philippines)
<b>MoU</b>	Memorandum of Understanding
<b>MSP</b>	Multi-stakeholder process
<b>MTCC</b>	Malaysian Timber Certification Council
<b>NFP</b>	National forest programme
<b>NGO</b>	Non-governmental organisation
<b>NTBT</b>	Nuclear Test Ban Treaty
<b>ODI</b>	Overseas Development Institute
<b>OHL</b>	Operation Sustainable Forests (Indonesia)
<b>PEFC</b>	Programme for the Endorsement of Forest Certification schemes
<b>PFE</b>	Permanent Forest Estate
<b>PUHH</b>	Timber administration system (Indonesia)
<b>RECOFTC</b>	Regional Community Forestry Training Center for Asia and the Pacific
<b>REM</b>	Resource Extraction Monitoring
<b>RGC</b>	Royal Government of Cambodia
<b>SAP</b>	Structural Adjustment Programme
<b>SFM</b>	Sustainable forest management
<b>SFMLAs</b>	Sustainable Forest Management License Agreements (Malaysia)

<b>SGS</b>	Société Générale de Surveillance (Swiss-based inspection, verification, testing and certification company)
<b>SIGIF</b>	Computerised Forest Information Management System (Cameroon)
<b>SINAC</b>	National System of Conservation Areas (Costa Rica)
<b>SISCOM</b>	National Forest Information System (Brazil)
<b>SKSHH</b>	Transport permit (Indonesia)
<b>SNCF</b>	National Forest and Fauna Law Enforcement Strategy (Cameroon)
<b>SNTCF</b>	Outsourced National Forest Control System (Ecuador)
<b>STIDC</b>	Sarawak Timber Industry Development Council
<b>TFF</b>	Tropical Forest Foundation
<b>THP</b>	Timber harvesting permit
<b>TLAS</b>	Timber legality assurance system
<b>TNC</b>	The Nature Conservancy
<b>ToR</b>	Terms of reference
<b>TRAFFIC</b>	The wildlife trade monitoring network
<b>TTP</b>	Timber transport permit
<b>TVA</b>	Timber Validation Agency (Ghana)
<b>UNCED</b>	United Nations Conference on Environment and Development
<b>UNDP</b>	United Nations Development Programme
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UNFF</b>	United Nations Forum on Forests
<b>USAID</b>	United States Agency for International Development
<b>VERIFOR</b>	Forest verification research project, on which this book is based
<b>VLC</b>	Verification of legal compliance
<b>VLO</b>	Verification of legal origin
<b>VLTP</b>	Validation of Legal Timber Programme (Ghana)
<b>VPA</b>	Voluntary partnership agreement
<b>WALHI</b>	Indonesian Forum for Environment
<b>WRI</b>	World Resources Institute
<b>WTO</b>	World Trade Organization
<b>WWF</b>	World Wide Fund for Nature

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## Foreword

This book is about the links between forest management and good governance. The case studies it investigates explore themes that lie at the heart of the tension between forest conservation and economic development: the relationships between the communities that live around the forest, the timber industry that seeks to exploit its resources, and the interests of society manifested in the policies and norms that regulate this interface.

We in Latin America are only too aware of the capacity of forest resources to act as a force for bad as well as for good. Forests are a source of capital and there are many conflicts of interest among stakeholders for the control of land and forest resources. All too often, forest laws have been designed by the few to take advantage of the opportunities presented to them, leaving weak institutions that generate illegality, corruption and fast liquidation of precious national assets. Good governance in forestry therefore needs to fight this obsolete culture to the betterment of the whole society.

This publication is very timely. In a context marked by considerable vested interests, *Legal Timber: Verification and Governance in the Forest Sector* has much to offer, being an independent, non-partisan assessment of the emerging discipline of forest verification. It reflects the outcome of a four-year applied research project that aims to support the development of institutional options for verification in the forest sector, which are genuinely country-specific, nationally-owned, socially inclusive and oriented to efficiency and good governance. It has no agenda to promote beyond helping to put in place long-lasting systems that conform to all these imperatives.

*Legal Timber* highlights the different kinds of challenges that confront all those seeking to improve the quality of forest governance. It suggests that a ‘one-size-fits-all’ approach would be a sub-optimal solution, while also recognising the need to develop a common understanding of the forces that create the need for verification in diverse environments. The project’s analytical framework will be useful to those now engaged in the design of forest verification systems. The central sections of the book describe a range of approaches to verification, both in the forest sector and outside it, and these will also provide much food for thought, as well as many practical suggestions to help policy makers see through the processes of forest governance reform. The book concludes with an interesting discussion of principles of effective verification. These principles could well form the basis for future national discussions as the practice of verification develops on an international scale.

The project has been coordinated by the Overseas Development Institute in the UK, working with three regional research institutions: CATIE in Costa Rica, CIFOR in Cameroon and RECOFTC in Thailand. These partners have collectively provided differing regional perspectives on what is a global challenge. The result is a ‘whole’ that is greater than its ‘parts’. We all now live in an age of globalisation, where better understanding between different parts of the world has become critically important. My own institution, CATIE, has welcomed this opportunity to pool our research findings and share experiences with our partners on three continents.

I therefore invite you to read this book to explore how the forest sector is moving forward to become a central component of national strategies for sustainable development.

José Joaquín Campos  
Director General  
CATIE

## Preface

### Content of the book

This book investigates a topical issue in international forest policy development: how to verify the legality of timber sold on regional and international markets in ways that will satisfy both the interests of producer states and the demands of consumers. This seemingly straightforward and technical matter is in fact complex and political. It addresses a critical interface in inter-governmental relations, where producer states' rights of ownership are defended with considerable tenacity. It bridges a major geographical and social divide – the concerned consumers are primarily in the post-industrial north, while the producers are primarily in the industrialising south. It also relates to a topic – illegal logging – that has been at the forefront of an international movement in which private actors (both profit-seeking and not-for-profit) are playing increasingly important roles in public governance, and are beginning to set policy agendas for both the north and south. The technical specificity of the topic thus belies its wider relevance.

While at one level the subject matter of this book is forest sector-specific, it touches on much broader issues about the balance between sovereign state control and the international stewardship of global public goods, illegality as a dimension of poor governance, and mechanisms of national and international public accountability. It challenges the liberal 'Westphalian Consensus' (i.e. the principle of state sovereignty) that has governed international relations since the seventeenth century. It raises issues about the status of forests as resources under unequivocal national control, a legal interpretation which, despite dissenting views in environmental circles, has been recognised and reaffirmed in all post-war international conventions and treaties, including such key international meetings as the 'Earth Summits' held in Rio de Janeiro in 1992 and Johannesburg in 2002. And it highlights the wide divergence of interests between the many users and beneficiaries of timber and forest products, both nationally and internationally, and the importance of ensuring that any international policy initiative is conceived in a way that safeguards the needs of the most poor and vulnerable.

Verification, as defined in this book, is a response to an important level of doubt over the functioning of the normal system of forest control, and involves two key aspects of 'additionality' to address this doubt: first, developing and implementing a set of additional measures to test and validate claims about legal compliance in the forest sector, and second, bringing in an additional set of actors from outside the forest sector, to help strengthen the credibility of these new measures and the accountability of those charged with implementing them.

The book is the culmination of four years of research by a multinational and multidisciplinary team working together on the VERIFOR applied research project. This project set out to review existing verification systems in the forest sector and elsewhere, with a view to developing a set of principles for forest verification. The research work involved partners in four institutions – the Overseas Development Institute (ODI) in the UK, the Tropical Agricultural Research and Higher Education Center (CATIE) in Costa Rica (covering Latin America), the Central Africa office of the Center for International Forestry Research (CIFOR) in Cameroon (covering Africa) and the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC) in Thailand (covering Asia and the Pacific). As such, the project covered all the main tropical timber producer

regions and maintained a watching brief on related issues in temperate zones. More details on the VERIFOR study can be found at [www.verifor.org](http://www.verifor.org).

In reporting on the results of the VERIFOR research project, this book contributes to the emerging discipline of forest verification. It presents a set of twelve country case studies of national experiences of verification in the forest sector as well as eight reviews of extra-sectoral verification cases and seven studies of cross-sectoral issues in order to draw out some of the issues common to all types of verification systems which would need to be addressed by those designing forest sector verification systems. The aim is to provide a corpus of work that is analytical, sceptical and enquiring, while also providing useful guidance to those who are striving to understand the limitations of present forest management arrangements and to put in place forest governance reforms. It also addresses the concern to create new structures of public scrutiny which offer independence and ownership, and which satisfy the needs of important national and international constituencies. More broadly, the work aims to illuminate the growing debate about the proper governance of the sorts of hybrid national and global public goods that forest resources typify. It asks how, in a globalising world, local, national and international actors might best interact to safeguard the management of natural resources which are both critical to local welfare and much coveted internationally.

The analysis presented in this book raises a number of interesting questions that are critical not only to good governance of the forest sector, but also to good governance more broadly in some hitherto fractured and unstable states. These questions include:

- Are there different requirements for national and international public accountability?
- Does each level of accountability guarantee the other?
- Who should be accountable to whom?
- How much do the different agendas of foreign firms, local firms, donor and host governments, local and foreign NGOs actually coincide?
- How can an element of independence be brought into the management of forest resources in a manner that is culturally appropriate and does not (in Lipschultz and Fogel's graphic phrase) "peddle environmental morality" (2002, p135).

This book seeks to shed light on these questions. The underlying contention is that the forest sector is a particularly productive environment in which to understand the governance challenges that beset the modern world, because of the way in which it brings together and engages a broad range of interests and actors – global, international, national and local; state and non-state; public and private sector and civil society.

The overall conclusion that gradually emerges is that, to be effective in the situations that are typical of tropical producer states, the control of illegal logging cannot be addressed solely as a problem of criminality nor engineered entirely by external parties. It has, rather, to be positioned within a wider and well-embedded process of governance reform.

### **Structure of the book**

The book is divided into four parts. Part A, *Introduction to verification*, provides background on the evolution of policy on illegal logging and the emergence of verification in the forest sector. It also examines the more longstanding experience of verification in other sectors and identifies a set of general principles of effective verification, based on

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this extra-sectoral experience. Part B, *Country case studies of forest verification*, looks at the forest verification experiences in Brazil, Canada (British Columbia), Cambodia, Cameroon, Costa Rica, Ecuador, Ghana, Honduras, Indonesia, Malaysia, Nicaragua and the Philippines. Part C, *Reviews of cross-cutting issues*, examines seven general issues that emerge from these studies. It reflects on the diverse forces that can lead to public demand for verification of legality and condition responses to that demand, and the lessons that can be learnt from these experiences of potential benefit to other countries that are yet to enter the field of forest verification. Part D, *Designing effective and equitable forest verification systems*, revisits all this evidence to see how far the general principles identified above are manifest in the forest sector, and whether their presence or absence will prove critical to the goal of improving the quality of forest management. It offers some conclusions on the challenges that forest verification presents and the evidence available as to the effectiveness of the various policy initiatives on forest verification to date. Finally, the book ends with an Appendix that suggests a number of policy strategies for enhancing the ownership, independence, legality standards and developmental impacts of forest verification systems.





Part A

# **Introduction to verification**



# Chapter 1

## The evolution of policy on illegal logging

### 1.1 Global public goods and national forest policy

Forest policy has long been an area of international debate and contestation. This high level of global interest stems in part from the fact that forest resources are considered as both public and private goods.<sup>1</sup> The public goods dimensions, moreover, are ones that straddle national and international interests. The basic problem is that forests have important global public goods dimensions (which are increasingly prominent in the international media and environmental debates) but are managed, almost universally, as sovereign resources of producer states. The international interest is particularly strong on the issues of deforestation and forest degradation – problems very much associated with southern, mainly tropical, producers, and most acute in industrialising economies. In already industrialised (increasingly ‘post-industrial’) societies in the developed north, deforestation has now given way to reforestation, often on a substantial scale. Growing forest cover is a distinctive feature of post-industrialisation, to the point that an environmental ‘Kuznets curve’ has been suggested, whereby industrialisation is initially accompanied by increasing deforestation until a critical point is reached, after which the relationship is inverted and forest cover tends to increase steadily (Rudel, 1998; Persson, 2003).

Thus, deforestation is a problem now located mainly in the countries of the south, though it engages vocal constituencies that are mainly in the countries of the north. Accompanying these environmental changes is a clash of political agendas: industrialising and yet-to-industrialise societies are mindful of their development needs and argue that the same potential for the draw-down of natural resources in the process of capital formation should be available to them as it was to industrial countries in the 19th century. The post-industrial north argues that, whatever the profligacy of its own past and present consumption patterns, further deforestation is a luxury that, in an era of menacing climate change, Planet Earth can no longer afford.

The global environmental interest has been articulated most effectively by northern NGOs looking for a vehicle to reassert the global public goods values of old-growth forests. Many of the international environmental NGOs had been hoping to see a binding forest convention agreed at the 1992 United Nations Conference on Environment and Development (UNCED) in Rio, but this was blocked by the Group of 77 Developing Countries (‘G77’) and in the event, only a non-binding set of forest principles was agreed.

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**1** The global and national public goods character of forests derives from the broad ecosystem and climatological benefits they provide. Much of the debate about forests as public goods relates to the fact that there are inadequate incentives for private actors to finance their provision and/or conservation. Thus, the market supply is likely to be significantly less than the socially optimal level, and represents a market failure. This provides the justification for non-market intervention to supply or protect them. To the extent that the benefits are national, the responsibility lies with the relevant government. To the extent that the benefits are global, the responsibility lies with the international community.

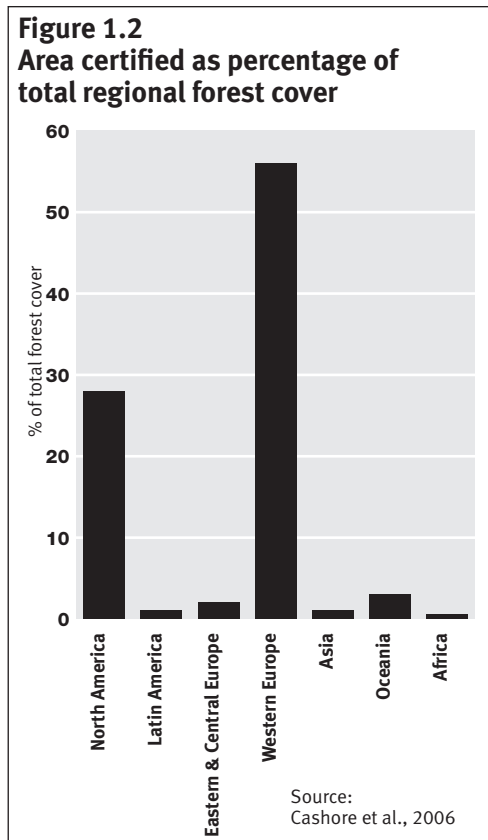
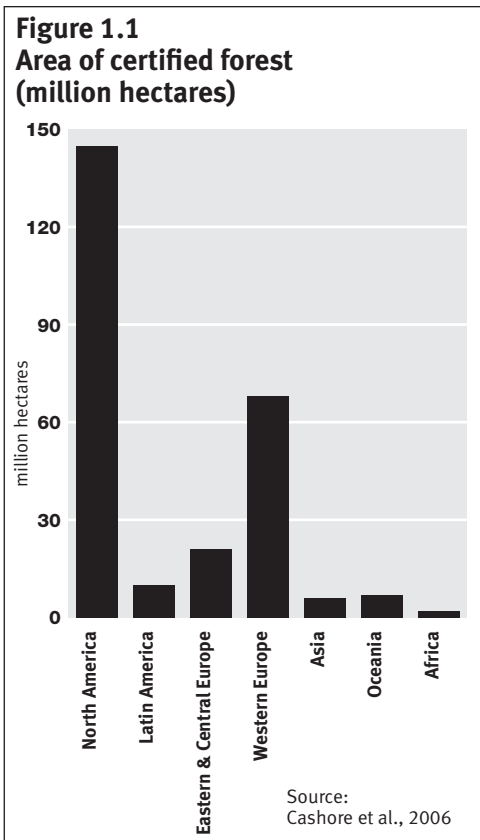
Initially, efforts to keep the accelerating pace of tropical deforestation on the international treaty agenda were made through the post-Rio inter-governmental process. The Intergovernmental Panel on Forests (IPF) was followed by the Intergovernmental Forum on Forests (IFF) and then (at a higher political level) the UN Forum on Forests (UNFF). The record of all of these has been poor. None has made any progress on the negotiation of a binding international forest treaty, and the UNFF is now proposing a non-binding agreement very similar to the one under consideration immediately after UNCED, some 15 years ago.

Faced with this impasse at the inter-governmental level, international aid donors have taken the initiative and have sought to improve forest sector performance by applying direct pressure on producer governments. In the 1990s, the main instrument of choice was the imposition of conditionalities on international development assistance, either as part of a wider set of aid conditions or as measures specific to the forest sector. It is generally agreed that such conditionalities have not worked well in any context (Killick, 1998), and particularly so in the forest sector (Ross, 2001; Seymour and Dubash, 2000). At the general level, the main problem is that such conditionalities are applied by the World Bank and the International Monetary Fund – banking institutions whose fundamental rationale is to make loans, not withhold them. Their capacities to sanction underperforming governments have also tended to be severely time-limited, a fact that those governments have been quick to realise. As regards the forest sector, there is the additional problem that forest industries are often quite lucrative ones and well integrated into the circuits of national politics. Thus, the forest industry is often more influential in producer contexts than are official donors. On both grounds, conditionalities have failed to secure major benefits for forest governance in many of the high-risk contexts.

### **Private sector certification**

The decade of the '90s saw attention turning increasingly to the use of private sector instruments to attempt to arrest the problem of deforestation and secure sustainable forest management, most notably through forest certification schemes. The first of these, the Forest Stewardship Council (FSC), was established in 1993, just after the UNCED Summit in Rio. The launch of FSC was the culmination of a process that had been in gestation for several years, under the aegis of a group of timber traders and NGOs, with WWF in a prominent role (Nussbaum and Simula, 2005: 240-249).

Though private sector certification may have had beneficial effects, its impact has been uneven. It has been least successful in those regions and countries where the need for it is arguably the greatest: that is, the tropical regions where the majority of logging is still in forests of great antiquity (see Figures 1.1 and 1.2). These forests are of key importance not just because of their silvicultural and emblematic significance and their capacities to store atmospheric carbon. They also tend to be found in countries with major problems of public governance that affect both the forest sector and public administration at large. Such countries are conventionally regarded as 'high-risk' in relation to forest management and the overall quality of governance (Contreras-Hermosilla et al., 2007). A major problem in many of them is the weak or nonexistent tenurial rights to land and forest of indigenous peoples and other poor and marginalised groups. These shortcomings often date from colonial times and the failure to resolve them has



reflected both the complexity of the underlying issues and the lack of political will to take on what are likely to be socially very divisive and disruptive issues.

It is widely acknowledged that certification has offered very little incentive to such countries to get their houses in order. Price mark-ups for certified timber have generally been very small and probably insufficient to cover the costs of certification (Fischer et al., 2005). These costs can be very high, particularly in the more complex old-growth forests, and stem from both the high sunk costs incurred in implementing certification controls and the much-reduced profitability of sustainably managed forests. For an industry that has been historically under-managed, ‘sustainable production’ is almost certain to imply reduced offtake of profitable timber. In such situations, the main beneficiaries have been producers of already well-managed and unproblematic forests seeking to secure their buyers and protect their reputations in the marketplace. Those who really needed to improve their performance have been largely untouched.

## 1.2 The rise of illegal logging

In the late 1990s, concerns that aid conditionalities and certification were not doing enough to counter the high rates of deforestation or address the severe problems of forest governance led to increased interest in the problem of illegal logging. It was argued, *inter alia*, that restricting the initial focus to ‘illegality’ would help overcome



the conceptual difficulties of dealing with broader, more challenging and intangible concepts such as ‘sustainability’, particularly in the complex environments typical of old-growth forests. While the underlying interest was in sustainability, the approach through legality was felt to be a more realistic way to achieve this aim. At the same time, because this approach depends ultimately on consumer demand, not producer will, it was felt to have a greater chance of success in weak governance environments.

Illegal logging can be broadly defined as ‘logging in violation of relevant national and international laws’. This has long been recognised as rife in many forest areas, particularly (though not exclusively) in the tropics, but it had until recently been regarded as very much a national preoccupation and an issue that, in the absence of a global convention, national authorities alone were in a position to address. However, with the changes in international relations brought about by the end of the cold war, conventional political boundaries have been eroded over a broad front, including development assistance.<sup>2</sup> Starting in the late 1990s, donor attention turned to ‘forest law enforcement, governance and trade’ (FLEGT) as fields of potential interest, and ‘illegal logging’ first entered inter-governmental discussions at this time. In the early years, the pressures to address the problem of illegal logging came almost exclusively from the rich post-industrial north. Major international policy initiatives included the G8 Action Programme on Forests (1998) and the US President’s Initiative against Illegal Logging (2002). The cause has been strongly championed by the World Bank and the European Union, with the UK being particularly prominent.

International concern about illegal logging has centred on a number of issues. Illegality has figured partly as tangible evidence of the weak governance that besets the forest sector in many countries and is manifest, among other things, by the indiscipline of the industry and the unsustainability of its practices. Another issue, the high societal costs of illegality in terms of revenues forgone in the producer context, has also been raised and in some cases (e.g. Cameroon) has provided a basis for broadening the national interest in illegal logging beyond the sectoral ministries to include influential departments such as finance and national planning (see Auzel et al., 2003). In addition, evidence is accumulating to show the negative effects on the livelihoods of the forest-dependent poor that come from living in close proximity with unregulated industry, and the forest degradation and environmental damage that result (Samfu, 2002).

International trade competitiveness is also a factor, and the low prominence of the tropical forest industry in the international timber trade belies the political impact of its disordered state on the industry as a whole. In 2000, for example, Western Europe and North America accounted for 75% of global forest product exports, and the developing Asia-Pacific region for a further 10%, leaving a maximum of 15% for the remaining tropical regions which are the main problem areas in illegal logging terms. Africa contributed only 2% of global forestry sector value added and exports in 2000 (Lebedys, 2004) and the likelihood is that the proportion from such primary tropical producers will continue to decline.

However, such statistics ignore the impact that illegality may have on the conduct of the legal trade. For example, one study of the effects on the US industry estimates that:

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<sup>2</sup> Humphreys characterises this movement as indicative of a ‘leakage of rule-making authority out of the UN system’ towards a more restricted group of predominantly northern interests (2006: xviii).

- Up to 30% of international hardwoods (lumber and ply) are traded illegally;
- This depresses world prices by 7-16%; and
- The opportunity costs to exporters in the US, in terms of depressed prices and negative effects on external trade, are of the order of US\$460m per year (Seneca Creek Assoc., 2004).

There are evidently high costs to western industry from competition with illegal timber. In an era marked by free trade ideologies (yet also ever-firmer controls on production), in which many governments are increasingly preoccupied with guaranteeing future supplies of raw materials, this provides a powerful constituency to weed out traders who bypass rules and regulations and undercut the high costs of regulated trade.

### 1.3 International actors and forest governance

The decline of cold war politics has given impetus to an increasingly vocal environmental NGO movement coveting an influence over policy development at both national and international levels. In this respect, the forest sector has reflected the wider changes occurring in development discourse, many of them in line with the 'Washington Consensus'. This widely-held set of policy prescriptions emphasised the liberalisation of investment and trade, privatisation of public services and dismantling of protection measures. The ideas behind the Washington Consensus were reflected in a wider spirit of reform, promoting broader notions of liberalisation and deregulation, and leading to the breakdown of many of the conventional barriers between state and non-state provision, and national and international sovereignty.

This institutional liberalisation had been gaining strength for some time, as witnessed, for example, by such landmark events as the Cotonou Agreement, signed in 2000 (but under negotiation since 1998), between the EU and its African, Caribbean and Pacific (ACP) partners, which affirmed the value of a broad, participatory approach and stated, *inter alia*, that non-state actors including civil society should be involved in cooperation policies and strategies, and adequately funded to perform such roles (Article 4, ACP/EC, 2000). In the forest sector, this shift was seen in the growing voice of non-state actors in relation both to industrial practice (for example, the aims of forest certification) and the development of the forest policy of the World Bank (movements such as the World Bank/WWF Alliance). Towards the turn of the 21st century, two streams of environmental activism came to prominence in the attack on illegality. In some countries (Brazil, Ecuador, Indonesia and Canada are notable examples), local actors began to push for major forest reforms. In other countries (such as Cambodia and Cameroon), external actors occupied the centre-stage. In instances of the latter type, donor interest was ignited by the work of a number of environmental rights NGOs, mostly British or US-based, which had begun to conduct investigations of the forest sector and its links to the political order, and were making their presence felt with increasing force on the international scene. The work of Global Witness was especially significant, notably in Cambodia (beginning in 1996, though under official contract only from 1999 to 2003) and then in Cameroon (beginning in 2000). Other agencies were also active, particularly the Environmental Investigation Agency (EIA), which was prominent in Indonesia, and Greenpeace International, which has adopted a watchdog

brief on forests at a global level. What distinguished Global Witness was the fact that, in both Cambodia and Cameroon, it worked for critical periods under contract to the producer state, though funded as loan conditionalities by donors, chiefly the World Bank and the UK Department for International Development (DFID) with some additional contributions from other bilaterals. These contracts revealed the rampant extent of illegality in the forest sector in both countries and forced an acknowledgement of the scale of the problem by governments which had hitherto been ‘in denial’. This gave the donors powerful weapons to argue for urgent redressive action to be taken. The NGO contracts also revealed the low levels of performance and competence of the state control agencies which the NGO had been asked to assess and reinforce.

The course of these contracts was fairly chequered, as the case studies in this book will discuss, leading in one case (Cambodia) to eventual cancellation. However, they did succeed in putting illegality firmly on the table as a governance issue in countries where the national interest had not hitherto been strong, and they had a powerful impact on the course of the high-level forest law enforcement and governance (FLEG) meetings which were organised by the Bank and EU donors in South-East Asia (in 2001), in Africa (in 2002) and subsequently in Europe and North Asia (in 2006).

## 1.4 Developments at the international level

### The EU FLEGT Action Plan

At about the same time, and drawing strongly on these developments, the European Commission (EC) began to develop an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT), and this was approved by the EU Council in October 2003 (Commission of the European Communities, 2003).<sup>3</sup> The Action Plan laid out an innovative approach to counter illegal logging, linking good governance reform in producer countries to the leverage provided by the EU’s own influential internal market. The core components included support for governance reform and a licensing scheme to ensure that only legal timber could enter EU territory. The latter was to be achieved through bilateral and voluntary (but also binding) partnerships with selected wood-producing states.

An important feature of the Action Plan is its coherence in terms not just of environmental policy but also social development aims. It states:

***‘Efforts will be focused on promoting equitable and just solutions to the illegal logging problem which do not have an adverse impact on poor people; helping partner countries to build systems to verify timber has been harvested legally; promoting transparency of information; capacity building for partner country governments and civil society; and promoting policy reform.’***

(Commission of the European Communities, 2003: 3)

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<sup>3</sup> The regional FLEG processes were inter-governmental arenas created to secure policy commitments to strengthen forest governance and were strongly supported by the World Bank, whereas the FLEGT initiative arose from the EU’s desire to utilise the considerable market potential of EU member states to influence the behaviour of tropical timber producers. The key difference is that each FLEG agreement was a political statement of intent, with no implementing mechanism; FLEGT, by contrast, offers such a mechanism.

This led to the further agreement of an EU Council Regulation on ‘The establishment of a FLEGT licensing scheme for import of timber into the European Community’ in December 2005 (2173/2005). The Regulation was a significant step forward in that it shifted the forest governance actions very firmly to the demand side. Since this time, the EU Ad Hoc group (a forum for official forestry advisers from among the EU member states) has been meeting to develop the EU’s negotiation stance. The aim is to establish Voluntary Partnership Agreements (VPAs) with interested producer states. These will both provide an agreed method of guaranteeing the supply of legal timber onto the European market and open the way for the EU to help producer countries improve the quality of their forest governance. The EU has made clear that this is but an initial step. Other measures, including perhaps ‘additional options’ such as legislation to control imports of illegally harvested timber and products into the territory of the Union, may be considered in due course (Brack, 2006). Several member states are also revising their procurement rules, expressly to favour legal and certified timber.

As EU FLEGT Briefing Note No. 8 (EC, 2004) makes clear, the EU’s commitment to a series of bilateral arrangements (EU/producer state), rather than to a regional or global one, was in recognition of concerns that any attempt to negotiate a universal agreement between the EU and its tropical partners might fall foul of WTO rules on non-tariff barriers to trade. This position was perhaps over-cautious. It is true that WTO has ruled against some environmental measures, though the grounds for the rulings need careful interpretation and do not necessarily challenge the principle of applying environmental standards to bilateral agreements. In the famous Tuna-Dolphin case, for example, the contentious issue was arguably more a question of discrimination in commerce than the eligibility of environmental standards (Vogel, 1995: Chapter 4).<sup>4</sup>

An alternative approach would have been for the EU to press for a global agreement. However, the likelihood of an internationally binding arrangement being approved in the next decade is generally regarded as remote. Thus, in the short term, the EU interest is restricted to national-level negotiations. Initially, attention is focusing on those countries that are important in the market, considered as high-risk in forest terms (and thus meriting legality assurance), and yet likely also to be interested in agreeing a VPA. The fact that the negotiation is between each producer state and the EU as a body, rather than between producers and individual EU member states, reflects the competence of the Union on trade matters at the collective boundary.<sup>5</sup>

One outcome of the EU promotion of FLEGT has been to focus international interest on an aspect of the forest environment which was already implicit in international discourse, albeit impressionistically; this is the question of country-level *risk*. Forest-rich countries have long been recognised by international business as differentiated by level

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<sup>4</sup> In this case, the US had banned the importation of tuna fish from Mexico, Venezuela and Vanuatu, on the grounds that the fishing methods used there violated the US Marine Mammals Protection Act (1972), specifically regarding the deaths of dolphins as by-catch. Mexico brought this case before a GATT dispute settlement panel, as an example of US trade protectionism. The panel partially upheld Mexico’s complaint – though not in relation to conservation concerns, but rather on the narrower grounds that the US was seeking to restrict imports in ways that were inconsistent with GATT trade rules (Vogel, 1995).

<sup>5</sup> However, individual member states have competence over trade matters within their boundaries. Thus, were a timber seller to knowingly transact illegal timber within a member state of the EU, this would be a matter for the national police and environmental authorities, not the Commission. This has led some environmental NGOs to press for parallel national-level actions, to reinforce the inevitably rather slower-to-deliver, multi-national EU negotiations.

of risk, though the meaning of this is only now being subjected to any serious scrutiny. Estimates of the levels of illegality in forest production are in circulation, though these are of variable quality and comparability, and are not always viewed as reliable. Such assessments need careful interpretation; they tend to rely on widely circulated but not necessarily very well-founded figures, and present a rather static interpretation of what is a dynamic phenomenon (see Cerutti and Tacconi, 2006). However, they do establish that illegality is perceived as a major problem, particularly though not exclusively in countries showing weak governance, and they tend to reinforce other, broader governance assessments such as the Transparency International corruption perception index (Transparency International) and the World Bank's governance assessments (Kaufmann et al., 2003). One widely-acknowledged set of current estimates is provided in Table 1.1.

**Table 1.1**  
**Estimates of the percentage of selected countries' timber exports generally recognised as illegal (2006)**

Country	Major Concessions				Other permits and elsewhere	Others
	Allocation/re-allocation	Forest management plans	Illegal logging	Economic crime		
Brazil (Amazonia)	40%	40%	20%	30%	30%	-
Burma	?	?	?	?	90%	-
Cameroon	20%	30%	10%	10%	30%	-
China	10%	?	20%	?	10%	20%
Congo (Brazzaville)	30%	60%	40%	30%	0%	-
Côte d'Ivoire	?	?	?	?	?	70%
Equatorial Guinea	80%	80%	80%	90%	0%	-
Gabon	10%	60%	10%	50%	10%	-
Ghana	30%	?	20%	30%	30%	-
Indonesia – timber	30%	20%	20%	30%	50%	-
Indonesia – pulp	?	0%	30%	30%	50%	70%
Malaysia	10%	15%	15%	10%	?	5%
Papua New Guinea	90%	90%	20%	20%	0%	-
Russia (East)	?	?	10%	20%	40%	-
Russia (West)	5%	?	10%	15%	5%	-
Solomon Islands	50%	?	50%	70%	10%	

**Source:** [www.globaltimber.org.uk/IllegalTimberPercentages.doc](http://www.globaltimber.org.uk/IllegalTimberPercentages.doc)

## Regional differences

The FLEGT movement has not been welcomed equally in all regions. Caution has been particularly evident in Latin America, which has relatively low levels of timber trade with Europe. Brazil in particular has been hostile to FLEGT, and has countered with its own regional initiative, ALFA (*Aplicação da Legislação Florestal na Amazônia*). Authorities in Brazil have argued that the primary threat to the forest in the country is not necessarily illegal logging but rather land conversion, and that other measures are needed to address this form of deforestation. However, in Africa and Asia, the response has been more positive. At the time of writing, four countries (Cameroon, Ghana, Indonesia and Malaysia) have entered into formal negotiations with the EU to agree VPAs and others (for example, Central African Republic, Republic of Congo and Liberia) seem likely to commence sign-up before too long. In each case, one EU member state has taken on a ‘mentor’ role (thus, Germany for Cameroon, the UK for Ghana, the European Commission for Indonesia and the Netherlands for Malaysia). Yet others may follow if – as is the hope and expectation on the consumer side – the strong signal given by the front runners leads to declining demand for non-verified legal timber on the lucrative European markets, and perhaps also, a price premium for ‘verified legal timber’. This is the context in which the verification of legality is emerging as a critical dimension of processes of forest governance reform.

## 1.5 Summing up

This chapter has placed the growing preoccupation with illegal timber in the context of three overlapping sets of relationships, all with conflicting facets: (i) the relationship between global and national public goods in a juridical context marked by national sovereignty; (ii) the governance of the forest sector and the relationship between forest exploitation and wider patterns of good governance; and (iii) forms of public accountability and the relationships between state and non-state actors and national and international players. It sets the scene for the case studies and analyses later in the book which document how illegality has been addressed in a variety of producer contexts, and the lessons that can be drawn of wider validity.





## Chapter 2

# Forest verification: an emerging discipline

### 2.1 Introduction

This book explores one dimension of the emerging policy area of forest law enforcement, governance and trade: the verification of legality. Verification is but a single step (or series of steps) in the process of marketing legal timber, though it is a crucial one and one that encapsulates many of the tensions inherent in the scrutiny that bridges national contexts and brings together diverse actors across international boundaries.

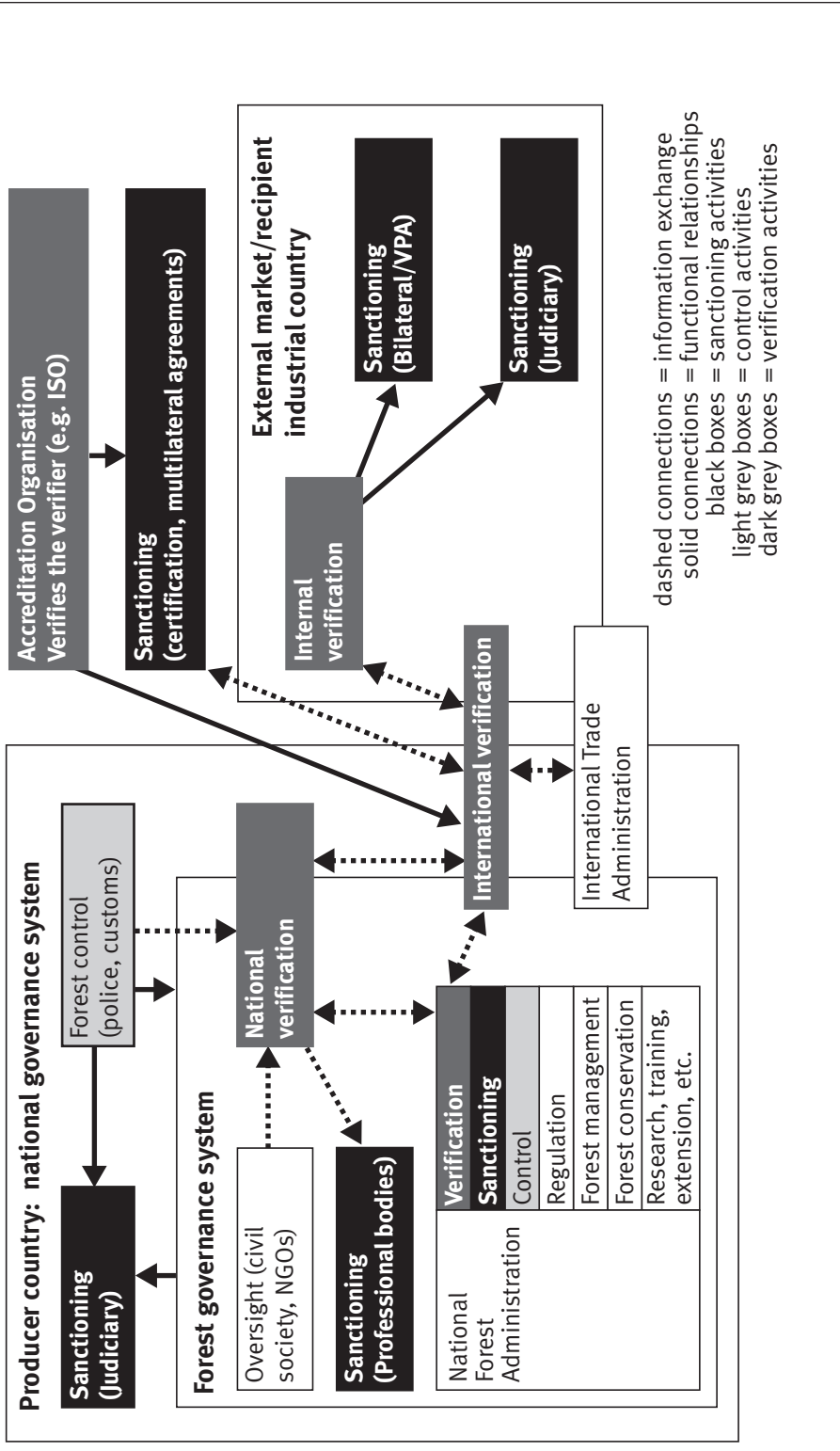
In order to understand the importance of this concept, we need first to address some issues of terminology. Terminology is proving quite a challenging area in the field of forest verification which, as a new discipline, is developing its terminology as it goes along, and is thus prone to misunderstanding. It may be useful to lay down some markers to guide the reader through the rest of this book.

To a significant degree, conceptualisation in the field of forest verification is being structured by managerial considerations, and terminology is emerging in response to the pressures that are shaping the movement, rather than to *a priori* rules. Actions to counter illegality have taken different forms in different situations. In some countries (such as Ecuador and the Philippines), the main drivers have been internal, and the responses have reflected the need for internal legitimacy, bringing together large numbers of local stakeholders in a collective management arrangement (see Chapters 10 and 14). Similarly, in Malaysia the internal drivers are strong, although conditioned ultimately by the need of state governments to control the industry and present a strong positive image internationally. A number of different systems have been developed here (see Chapter 16). By contrast, in countries such as Cameroon and Ghana the drivers have been largely external. In such situations, the national response has been heavily conditioned by external interests, particularly the proposal of the EU for the centre-piece of the VPA to be a ‘timber legality assurance system’ (TLAS) (see Chapters 11 and 12).

What all these arrangements have in common, regardless of the immediate triggers, is a shared element of doubt about the functioning of the ‘normal system’ of forest control, and a clear recognition by some parties – their number and diversity depending on the context – that exceptional measures are needed to convince sceptics that timber is sourced legally. Situations of these types are the subject matter of this book, and notions of *doubt* and *additionality* are central principles.

To develop this point further, we need to unpick the typical structures of forest administration and their relationships to systems of governance. These are conceptualised in Figure 2.1.

**Figure 2.1**  
**Stylised framework of typical national and international forest verification and governance systems**



## 2.2 The terminology of forest sector authority

We can distinguish several, sometimes overlapping, levels at which authority is exercised in the forest sector.

The first level is the *forest governance system*, that is, the policy and legal framework that defines the nature and scope of rights held by different stakeholders, together with the institutions that govern roles and responsibilities for the management of forest resources. The forest governance system operates within a *system of national governance* which may be influenced to a greater or lesser degree by the functioning of the forest governance system. Equally the latter may well also be influenced by other forces within the national governance system, outside the forest sector.

The second level is the *national forest administration*. This is the national institution that is the legally mandated authority to manage, regulate, oversee and control forest use and conservation (including the collection of revenues generated by forest resources management). The functions of a forest administration may be exercised by one or more institutions, which may go by different names such as forest department, forest authority or forest service. The latter two may be under the direct authority of the relevant Minister or managed by some kind of Board.

Third is the *national forest control system*. This level comprises those elements of the national administration which are intended to ensure that forest operators conform to their contractual obligations. In the forest law enforcement context, control is a function delegated by law to a statutory authority with the right to investigate, report and, within its competence, ensure compliance (that is, to seize evidence and sanction). A forest control system therefore is at least partially nested within the forest administration and consists of the national arrangements for the control of forest resources management, protection, harvesting and use that is mandated by law. Every administrative process that involves ‘restriction/rationing’ of a resource will need some form of control. Although a forest administration has a broad range of functions such as research, training and extension, ensuring the existence of an effective control system is likely to be an important and sensitive element of its responsibilities. Other actors may be involved in control, most typically the police and customs authorities.

The *forest verification system* is not a ‘level’ of operations in these terms, but rather an activity or set of activities that may occur at any one level or in any combination of them. A verification system exists to deliver legitimacy or lend credibility to the systems for forest management, where there is scepticism about their functioning. It consists of the arrangements for testing and validating claims about legal compliance (and conformity to agreed standards more generally), using information provided by monitoring, audits, external observation and other means, as well as procedures for evaluating this information and coming to a conclusion about the level of actual compliance – in short, proposing a ‘verification decision’. The drive to verify legality usually (though not always) involves a much broader range of actors than is concerned with forest control. As Figure 2.1 illustrates, the locations in which verification activities are undertaken are variable, and straddle national and forest governance systems, and both producer and consumer states. The exact mix of activities that comprises the ‘verification system’ in any one context, and their institutional locations, will be situation-specific, and depend

on the interests and powers of the various actors involved. These are discussed further in the chapters which follow, particularly Chapter 4.

The propensity of the forest sector to accusations of mismanagement, even illegality, is due to a number of features that are typical of forest exploitation and are especially (though by no means uniquely) prevalent in tropical environments (see Box 2.1).

### **Box 2.1**

#### **Why is the forest sector prone to illegality?**

Typical explanations include:

- Timber exploitation usually takes place in isolated situations, away from the public gaze, where transgressions are easily missed.
- Timber resources are often of unusually high value in local economic terms, such that the benefits gained from transgressing the law may well be superior to any penalties incurred.
- Logging is a capital-intensive enterprise, and often takes place in high-risk environments; this increases the discount rates which entrepreneurs will tend to apply, and encourages them to keep their assets working despite rules to the contrary.
- Timber exploitation often takes place on public lands and this encourages alliances to be sought with politicians.
- Even where the exploitation is on private lands, these tend to be theoretically subject to a high degree of regulation (this is in the nature of trees, as a long-term resource), and thus, there may still be benefits from such political alliances to subvert public controls.
- Timber exploitation is likely to be one of the more lucrative forms of enterprise in forest-rich societies, and in a form that can be readily liquidated as the occasion demands; this also encourages alliances with the political order (for example, in support of party funding, leading to allegations of ‘capture’ by the industry).
- Costs of respecting legality may be high.
- Forest-dwelling populations are often among the poorest and most marginalised groups in society (paradoxically, given the high value of the resource), and may lack the power – even the authority – to challenge abuses themselves.
- Poor people may lack choice; illegal logging may provide one of only few options for finding employment and earning an income.
- Particularly where forests and trees are subject to overlapping jurisdictions (for example, where controlled by different tiers of government), it may be difficult to know how to ‘act legally’.
- Forestry laws may be inconsistent with land management practices (for example, when trees are part of the fallow cycle, or where agricultural and forest policies are in the hands of independent ministries), and thus may not be respected in particular areas; this may encourage a general disregard of the law regarding timber use.
- Illegal logging may have some positive consequences, at least in the short term, such as increased output and lower timber prices (which increase the competitiveness of national industries and benefit consumers) (Tacconi, 2007).

As the case studies in this book illustrate, the forms taken by a forest administration can be quite variable, as indeed can the forms and effectiveness of control and verification functions. Quite often the normal forest control system enjoys little public confidence and is not treated seriously by the political establishment. Authorities at the more senior levels may have little interest in exposing the forest industry to public scrutiny, and more junior bureaucrats may be unwilling to threaten their own careers by challenging the higher authorities.

The doubts of external publics about ‘normal functioning’ may relate to specific points in the sequence of forest administration, or may be general and concern the overall performance of the sector. There are four major areas of concern:

- First, the high value that can be obtained from industrial logging means that the *concession allocation process* is often vulnerable. This is particularly the case where the boundaries between business entrepreneurship and party politics are unclear.
- A second area of concern is *logging outside concession boundaries*. This tends to link up with the preceding concern, being much more likely where political patronage allows loggers to act with impunity. The fact that operations on the logging site occur in isolated situations increases the temptation for loggers to cut high-value trees outside of permitted areas, or to compromise on contractual standards and norms.
- The sequence of operations which involves taking logs from the logging camps to the timber yards and mills, transforming them there and then transporting them to the ports provides a third set of vulnerable points, the supervision of which is covered under the term ‘*control of chain of custody*’. Vulnerability is greatest where logs of different origin are mixed in a single mill, particularly where that mill has complex transformation facilities.
- Finally, the *relationship between the forest sector and the wider society* is often problematic, particularly where there are major differences in power between users (strong industry versus weak communities, for example) and/or important considerations around indigenous peoples’ rights or specific environmental concerns (water catchment and river pollution, flooding, siltation, land degradation, loss of charismatic flora, etc.). All of these are likely to figure in public concerns, and to bring the performance of the forest administration into the public eye. The forest administration is often alleged to have a pro-industry bias and to treat the control system accordingly.

Box 2.2 summarises the forms that illegality typically takes in the forest sector, and the levels at which it occurs.

Lack of funds is sometimes cited as an explanation for the poor performance of government control authorities, though in forest-rich countries this is arguably more often an excuse rather than a real motivation, as logging can be very lucrative and taxation should be able to generate significant revenues for the state. The suspicion is that forest control bodies are often starved of funds in order to render them inoperable. Whatever the underlying issues, the control of forest operations is frequently a weak link in the chain of forest authority, and contributes significantly to the low confidence

## **Box 2.2**

### **How is illegality in the forest sector manifest?**

Typical manifestations of illegal practice in the forest sector include some or all of the following:

- Illegality in the award of forest concessions (for example, bribery to obtain a concession);
- Misrepresentation of the capacity and attributes of the applying enterprise;
- Failure to respect contract terms as regards associated infrastructure development (e.g. sawmill construction);
- Failure to respect the rights of indigenous communities (e.g. to reside, to hunt or harvest non-timber forest products, or to engage in shifting cultivation) within concession areas;
- Logging outside of the boundaries of the areas specified in contract documents;
- Misidentification of species (usually high-value species recorded as low-value ones);
- Failure to respect the requirements of forest management plans and '*cahiers des charges*' (for example, as regards numbers and girths of specimens removed) and also requirements for public consultation and the respect of local needs;
- Failure to pay the correct fees and taxes owed;
- Subverting the intentions of the law and regulatory framework through practices such as abuse of salvage permits and transfer pricing;
- Failure to conform to norms relating to social and infrastructural issues (for example, as regards the quality of roads, bridges or clinics constructed);
- Failure to respect environmental standards or regulations (e.g. regarding pollution);
- Failure to respect national or industry labour standards;
- Bribery of officials or others to turn a blind eye to any of the above; and
- The use of illegal logs in processing activities.

of external observers (both within and outside the producer society) and to a sense that this is a sector which is not sufficiently under the public's control.

In some situations, other means outside of forestry line management exist to exercise vigilance over the performance of the industrial operators who have been granted privileged access to public resources. For example, the media tend to be very active in countries such as the Philippines, and denunciations of dishonest officials and mayors are frequently made in the press. However, in several forest-rich societies, civil society is not well developed in its 'modern forms' (for example, in terms of a free press, broadcast media, vocal urban-based NGOs), and democratic freedoms are not widely enjoyed. Forest-rich societies are often ones with small and disempowered forest-dwelling populations, and for this and other reasons, may lack civil society capacity to engage with national actors and agencies.

It is in environments such as these that additional 'belts and braces' measures have been introduced to supervise the forest industry. It is these measures that are the main subject matter of this book. Routine 'forest control systems' are, of course, intended to serve verification purposes (as indeed are other elements of forest administration), even if they do not always fulfil them. The current interest in the verification of legality derives

from the frequency of such failure. It implies a level of formalisation of verification that is separate from routine control as a functional domain in forest management, and it can usually be regarded as additional to it, in institutional terms. As to what such additional measures might actually imply, much will depend on the specific context. They may imply activities by supervisory bodies acting on behalf of the state, or more systematic attempts to build legitimacy and trust in the workings of the forest administration involving diverse institutions, both within the forest sector and beyond, or some hybrid of the two. They may imply routine monitoring missions by specific classes of staff, periodic audits to check that systems are functioning, or one-off interventions to assess the effectiveness of routine controls by external observers, teams of specialists, or peer review groups. In each case the critical feature is that there is an important element of doubt about the functioning of the normal structures and systems, and recognition by significant actors that additional and exceptional measures need to be taken to address this doubt.

### 2.3 The terminology of verification

The corrective measures to be taken depend significantly on the context and the interests of leading actors. These factors are drawn out in later chapters (see Chapters 4 and 25). Characterising the functions adequately and unambiguously presents some terminological difficulties. One problem is that there is as yet no instance in the forest sector in which legal compliance is required to be confirmed through the making of a ‘verification decision’ and the issuance of a ‘verification certificate’. However, a workable verification system arguably already exists (or did at some time exist) in a number of situations, though without that degree of formalisation which, strictly speaking, such a verification ‘decision’ would require.

The claim that verification systems may function independently of the requirement for a verification decision rests on the view that what verification ultimately delivers is legitimacy. ‘Legitimacy’ in the sense of a reassurance that the control and other functions that are being scrutinised are in fact operating satisfactorily – or at least satisfactorily enough to reassure their detractors. There are several cases, discussed in Part B of this book, which underline this claim. Costa Rica, Ecuador and the Philippines, possibly also Cameroon and Malaysia, are cases in point. As will be evident from the review in Chapter 3 of some extra-sectoral verification systems, most of them linked to international treaties and conventions, this uncertainty of terminology and function is peculiar to the forest sector and stems from the lack of a binding broad agreement at international or global scale. It is an uncertainty that is likely to be resolved progressively, as verification systems emerge and consolidate.

Some of the highest profile cases have involved externally based agencies acting as independent scrutinisers of national control departments and forest industries. A variety of terms has been applied to characterise this role – ‘*independent observers*’ and ‘*independent forest monitors*’ (IFM) being the two most frequent designations. One early study by VERIFOR team members made a distinction between ‘independent forest monitoring’ and ‘external monitoring’, the extent to which the agency in question had been specifically contracted to the national authority being the grounds for the distinction (Brown et al., 2004). This distinction can be illustrated by the forest monitoring work of



two international environmental rights NGOs. Thus, Global Witness can be considered an independent monitor in Cambodia (hired as an ‘official’ observer working on contract to the Royal Government of Cambodia, albeit donor-funded), while the Environmental Investigation Agency (EIA) acted as an external monitor in Indonesia (acting with no official role in-country, although also donor-funded).

However, this usage notwithstanding, the term ‘independent observer’ is probably a more appropriate description than ‘independent monitor’ in the instances where Global Witness has been active (i.e. in Cambodia, Cameroon and Honduras), and should perhaps be retained as the label for special operations of this type. ‘Monitoring’ has about it a sense of the routine and continuous, and of activities undertaken mainly by line staff (see for example, Casley and Kumar, 1987). Typically, monitoring is conducted internally and systematically by all field staff for internal management purposes. It is confined to the assessment of routinised activities and does not depend on specialist knowledge, external comparisons or value judgements. This is contrasted with ‘evaluation’ which tends to be less frequent, and specifically designed to make comparisons, where timeframes are long and external influences diverse, attribution of causality is a complex operation and value judgements need to be made. Evaluation encapsulates this sense of multiple causality and the complexity of the assessment process.

The term ‘*independent auditor*’ is sometimes used to characterise the work of independent observers. However, ‘audit’ tends to imply a non-continuous assessment of performance. Audits tend also to have a systems rather than performance orientation, seeking to verify that the appropriate systems are in place and functioning more or less as they should, rather than to investigate specific activities or violations. In the financial literature from which much of the terminology of auditing derives, audits are divided into two main categories, on the basis of the purpose in hand – *internal* audits for the purposes of the commissioning organisation or ‘auditee’ and *external* audits for the purposes of parties external to the auditee (for example, the statutory provisions of a National Companies Act).

Arguably, the types of scrutiny in which environmental rights monitors have been involved are not of the monitoring or auditing types, but rather investigations with more specific purposes to do with assessing the capacities of national control agencies, and then (where appropriate) making the case for their reform. In the Global Witness instance, this last step involved publicising findings on the organisation’s own website, where they were picked up and utilised by its advocacy staff. As van Midwoud notes, the power that the monitor gained over the producer state in such situations, ostensibly operating on the producer state’s mandate but in fact part of a set of donor conditionalities, meant that, to many observers, it came uncomfortably close to supervising and controlling a bilateral governmental partnership (2006: 8). All this was outside the normal monitoring routine (though the NGO did also comment on that routine). It might be better to retain the label ‘independent observer’ for such exceptional arrangements, retaining ‘monitoring’ for the more usual activities undertaken by the internal control unit, and ‘audit’ for periodic assessments, usually with a much longer cycle, and with more of an orientation to assessing systems’ functions in a similar fashion to ‘financial audits’ or ISO accreditation. This distinction is not current in the policy literature, however, as the following sections will attest.

## 2.4 Comparing verification and certification

The final area of potential terminological ambiguity that needs to be addressed, to set the scene for the arguments that follow, concerns the difference between verification and certification. Chapter 1 noted that the rise of private sector certification predated the interest in verification, and that the limitations of certification help to explain the growing interest in verification, particularly in relation to governance reform. By and large, certification thrives where governance problems have already been resolved, but has not proven a very strong tool for addressing those problems itself.

In this book, verification refers to activities undertaken by a variety of agencies (public sector, NGO and private sector, often in combination) on behalf of the state, to review and assess official processes of resource utilisation and assessment. It has a number of features in common with forest certification, including the fact that it is likely to involve third-party verification and represents an attempt to link forest governance to environmental and other standards. However, it differs from certification in a number of ways (see Table 2.1).

Chapter 22 considers the contrast between certification and verification in more detail and assesses to what extent the two processes might usefully converge.

## 2.5 The EU proposals for Voluntary Partnership Agreements

A major stimulus for verification practice, and a strong driver for its advancement, is provided by the Voluntary Partnership Agreements (VPAs) that the EU is now seeking to negotiate with a number of producer countries. These are a new development, and likely to be a major innovation in international partnerships. No VPA has yet been agreed, but an element of 'IFM' is likely to be a fundamental requirement on the EU side. Thus, in its FLEGT Briefing Note No. 7 (EC, 2007), the EU proposes a 'timber legality assurance system' with five elements, as follows:

- 1 A definition of legally-produced timber that describes the laws that must be complied with in order for a licence to be issued and the checks that need to be made to determine compliance;
- 2 A system to track timber from forest operations to export that excludes timber from unknown or illegal sources from the supply chain;
- 3 A system to verify compliance with all elements of the legality definition and control of the supply chain;
- 4 Licensing of timber products for export, on an approved market participant or individual shipment basis; and
- 5 Independent monitoring to provide assurance to all interested parties that the system is working as planned and maintain its credibility.

The fifth element here, 'independent monitoring', may well turn out to be rather different to the IFM undertaken in recent years by environmental monitors (which was described above as 'independent observation'). Though the exact nature of this independent monitoring is to be decided on a case-by-case basis, it is likely to be much more routinised than the type of investigative work reviewed above. 'Investigative IFM' of the sort that has been undertaken by environmental rights monitors in countries

such as Cambodia, Cameroon, Honduras and Indonesia has had a highly sceptical character, to the extent that the organisations have responded to an expectation that problems would be found, and put a strong accent on the remedial in their reporting. However, the types of IFM that are commissioned under the VPAs are likely to be less challenging in style, giving greater emphasis to the positive. While this does not necessarily imply any blunting of the critical edge of the monitoring, more emphasis will probably be given to containing and managing any bad news, and seeking urgently to put in place redressive measures so that business confidence is sustained, than to denouncing malfunctioning systems and publicising their political underpinnings (which

**Table 2.1**  
**Certification and verification compared**

<b>Attribute</b>	<b>Certification</b>	<b>Verification</b>
Mandate	Voluntary procedure on the part of industry.	Undertaken in the name of the state services which exert obligatory statutory supervision over the industry.
Initiator	Forest Stewardship Council (FSC) scheme initiated by a group of individuals, NGOs and wood retailers concerned about possible tropical timber bans. Strong NGO leadership at the international level. Other schemes led by NGOs and/or industry.	Initiated by the state (and, in some circumstances, by donors) to assure legality and attest to good forest governance within the national territory. Strong official donor lead at the international level.
Present focus	Sustainable forest management, under conditions of good governance.	Legal compliance, under conditions of poor governance.
Systems or performance orientation	May vary, but often have a strong performance audit dimension.	Relates to systems, operators and consignments.
Additionality	Additional to government requirements.	Aims to ensure that some legal requirements set by the government are met.
Costs	The costs are borne by the industry (but in practice these have often been subsidised by donors and NGOs).	Costs may vary, but can be anticipated to be partly borne by the state; where global and international public goods are concerned, then subsidy from international actors and bilateral donors would also be justified.
Branding	Mainly commercial aims – to provide a green label, or move in that direction.	At least in theory, has no brand function (although it may ultimately come to offer one).
Geographic coverage	Approximately 96% of certified forests are temperate (Poku-Marboah et al., 2003), with high percentage of forest plantations.	Working systems very limited.

is perhaps the preferred mode of some environmental rights NGOs). It is also likely that producer governments will impose conditions to limit the uses that the monitoring agents can make of the data they unearth. To this extent, ‘independent monitoring’ may well prove to be an appropriate way of describing the type of activity under the VPAs, and differentiating it from international detective work (‘independent observation’) by environmental rights NGOs.

Another aspect of the proposed EU VPA-linked verification systems about which it is not yet possible to speak with authority concerns the issue of *operator* or *consignment-based* systems of verification. By and large, the verification systems that have been put in place to date have been largely focused on direct consignment assessment, either across the board or in areas known to be prone to problems. For legality assurance systems of the VPA type to be successful, it is likely that there will be a significant shift towards operator accreditation, backed up by periodic IFM. This is because of the strong trade orientation of the agreements in question, which contrasts with the more environmental bias of several of the existing observation arrangements. Operator accreditation is more conducive to the day-to-day needs of commerce than is a more consignment-based approach. The paradox is that producer governments are likely to be drawn to verification by the importance of international trade to their forest industries, but verification is also likely to be threatening to that trade in that it significantly increases the opportunities for external scrutiny of the industry’s performance. Operator licensing is likely to be the preferred option for producer governments because it will be less prone to provoking disruption of transactions, and also less costly in financial and management terms. Operators would be licensed to export timber and then subjected to regular checks on their control systems to maintain their licensed status. The controls in question might involve full chain of custody forest-to-export controls (as is presently undertaken by Finnish companies operating in Russia) or alternatively, controls on upstream production under a national tracking system and separate export controls at the individual operator level. Either way, the arrangement is likely to be less disruptive of normal patterns of trade than systematic consignment checks, and will function in a way that resembles certification systems as they presently operate. However, sceptics would argue that operator licensing is more vulnerable to political influence, and particularly suspect in the weak governance conditions in which verification is most urgently required.

## 2.6 Summing up

The new emphasis on the legality of internationally traded timber as a demand-side measure recognises both the potential of consumer markets to influence industrial behaviour and the failure of many earlier, more supply-side attempts to reform forest governance. Though still in process of development, the knowledge to develop systems for the verification of legal timber is available from a variety of sources, each of which contributes a distinctive terminology. While none of these is sufficient alone to deliver a working legality assurance mechanism, collectively they do permit some of the basic building blocks to be constructed.

To recapitulate, there are five major sources of learning on which to draw. The first strand of knowledge comes from the various *forest management and monitoring systems* that have already been established in producer countries around the world, not all of

them very effective though interesting and instructive nonetheless. The second strand of knowledge comes from the *experience of environmental rights monitors* ('independent observers'), such as Global Witness and the Environmental Investigation Agency. The third strand is a decade or more of experience with *forest certification*. Many of the obstacles that the certification movement has had to confront (such as construction of governance authorities, interpretation of conformity with often very complex and diverse national laws, selection of legality standards which address social issues as well as industry constraints, putting in place timber tracking systems, dealing with conflicts of interest, and policy on percentage-based claims) are very similar to those that verification now faces. The fourth strand comes from the *international processes* that are developing around the theme of verification, particularly the EU VPAs. All of these are considered further in Part B.

The final strand is from *extra-sectoral experience*. Outside of the forest sector, there are several instructive models and approaches. Not all have been entirely successful, nor are they easily transferable outside of their original context. But they point to the importance of a clear conception of the 'regalian functions' which must be retained by the state (regulation, adjudication, sanctioning), and the activities that can be outsourced. They also underline the value of building a solid platform of public engagement as a means to ensure the robustness and sense of ownership which are likely to be required if they are to survive in very turbulent political environments. What they all share is the involvement of a wide range of stakeholders in verification decisions, and the credibility that is generated out of the checks and balances between state, industry and civil society. It is to these extra-sectoral experiences that we now turn.

## Chapter 3

# Learning from extra-sectoral experience

### 3.1 The range of verification experiences

This chapter sets the scene for the detailed review of forest sector case studies by reviewing extra-sectoral experiences of verification activities, to identify some principles that might have cross-sectoral applications.

Although the idea of verifying the activities of the logging industry presumably goes far back into the history of the timber trade, forest sector verification is a relatively new endeavour in its more conceptualised and formal sense, and when viewed as a topic meriting serious national and international interest. Even the more established tropical forest verification systems are less than a decade old. None of them can yet be described as fully established and mature, and all of them are still suffering from periodic challenges which threaten their viability. These experiences provide a useful crucible for learning, though some care is required in seeking to derive general principles for action from systems still in formation.

Outside of the forest sector, however, verification is much better established and already extensively studied. This applies particularly to areas of activity where the international community has strong grounds – and the mandate – to intervene in the affairs of sovereign states. In such instances, there will be considerable opportunities for learning and sharing lessons. This chapter seeks to draw out some of these lessons. Among the reference agreements are: the Convention on International Trade in Endangered Species (CITES); the Nuclear Test Ban Treaty (NTBT) and other arms control agreements; the Kimberley Process for diamonds; the Montreal Protocol of the Vienna Convention for the Protection of the Ozone Layer; and the Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC). Other, more localised agreements of interest include the work of ombudsmen in diverse national parliaments, food standards agencies in Western Europe and international election monitors in various locations. The literature on these agreements is often quite situation-specific, and thus commonalities have to be sought at the level of analytical features rather than off-the-shelf rules.

Different verification systems have different, often multiple, aims which may include one or more of the following:

- Supporting enforcement of the law and ‘good governance’;
- Building market confidence;
- International policing, environmental controls and public protection;
- Ensuring efficiency and value-for-money; and
- Judicial and quasi-judicial functions (such as ombudsman and judicial review).

These aims may be both nested and mutually supporting. Thus, compliance with the international test ban treaty may have the immediate objective of ensuring the compliance of international parties but the ultimate aim of ensuring the maintenance

of health and safety standards. The latter helps to link national and international concerns, and ensures public buy-in on a global scale. In other cases, the aims may be more complicated. For example, public utility regulators have important verification functions, and these relate to the non-marketed nature of the services in question. The character of the services on offer, and economies of scale in their provision, mean that public services such as water, energy and transport cannot be marketed on a fully competitive basis, and utility regulators thus have an important role in ensuring not only that the services are delivered as promised, but that price and quality are also under the kinds of pressures that would elsewhere be assured by market competition. The work of ombudsmen, by contrast, is largely concerned with judicial process – to verify that agreed procedures have been followed, and that these procedures are serving the purposes intended. The primary aims of timber verification are a mix of at least three of those listed above: building market confidence, establishing environmental controls and promoting good governance. The fact that the aims are so diverse already hints at the challenges ahead.

The means of verification differ widely according to such factors as the character of the commodity under consideration, the nature of the parties to the agreement and the circumstances of the agreement governing its use. The character of the commodity also affects its verifiability, in the sense both of its *monitorability* (that is, the ease of observation of the activity or substance) and *assessability* (the ability to compare observed performance with a standard) (Greene, 1994: 4). Verification of carbon emissions thus demands different skills and judgements from those required for verification of traded diamonds, and both differ fundamentally in terms of monitorability and assessability from verification of the timber trade.

Verification mechanisms need to match their objectives, and these will reflect the underlying interests of the parties involved. If the necessity for verification has grown out of a demand from industry, then the mechanism will need to be acceptable to it, ditto where the driving force lies with civil society. If the demand is from the public but relates to the democratic process (as with ombudsmen), then the objectives will need to support that process, and not undermine it, otherwise credibility with an important constituency will be lost. In the case of timber, the demand appears to have come mainly from donors and constituencies in civil society (particularly, though not only, in the consumer nations).

Table 3.1 outlines a sample of the extra-sectoral experiences reviewed for this study and compares these with the timber industry from the perspective of ease and cost of verification.

### **3.2 Verification in international treaties and conventions**

Chapter 2 established that the notions of doubt and scepticism are central to the idea of verification and that a sense of additionality is implicit in the concept. Such additionality relates both to the procedures to be applied and to the publics whose interests they are to serve. This gives it meaning and value over and above conventional mechanisms of forest sector control, the purposes of which are restricted very much to the needs of a single party (the host government). The approach from the theory of treaty verification



Table 3.1 Comparison of some extra-sectoral experiences with verification and the situation for timber trade verification

Parameters	Kimberley Process	Nuclear safeguards	CITES	UNFCCC/ Kyoto Protocol	Food standards/ Meat processing	Tropical timber
<b>Commodity in verification</b>	Rough diamonds; sentimental value	Hazardous; small quantities in circulation	Very diverse commodities	6 greenhouse gases (GHGs)	Diverse, with varying degrees of processing	Diverse, primary and secondary
<b>Manageability</b>	High; small, easily handled in tamper-proof containers	High traceability	Very diverse; wide variations	Difficult to trace; measures operate at margins	High traceability	Low; bulky item but diverse uses
<b>Structure of the (supply) industry</b>	Highly centralised; small number of major players	Overlaps between peaceful and non-peaceful uses	Very diverse; often difficult to monitor	Wide profile, but relatively few major polluters	Diverse	Very diverse; decentralised
<b>Structure of market demand</b>	Limited; mostly in post-industrial north	Highly centralised	Diverse, in terms of customers & uses	Mitigation markets concentrated in north	Growing centralisation of retail supply favours traceability	Very diverse; local and international
<b>Capacity for international mobilisation</b>	High; industry image factor; humanitarian concerns	High; national security and health/safety aspects	Variable; high for charismatic	High public interest, though free-rider problem	High; health issues that impact directly on customers	High public interest in post-industrial north (variable in south)
<b>Monitorability</b>	High	High	Variable	Easy for CO <sub>2</sub> , not for other GHGs	High	Variable
<b>Cost-effectiveness of verification</b>	High	High for large quantities; more problematic for small	Very dependent on commodity	Low for non-CO <sub>2</sub> as few proxies	Relatively high	Probably high, and no price premium



largely institutionalises these elements of uncertainty and additionality, as the following definition (taken from a work on disarmament and arms limitation) suggests:

***‘Verification is a process covering the entire set of measures aimed at enabling the parties to an agreement to establish that the conduct of the other parties is not incompatible with the obligations they have assumed under that agreement.’***

(Sur, 1991:13)

The agreement in question can be a multilateral, regional or bilateral one, or relate to more generalised assessments of conformity with standards (for example, the law and legal process, as in the case of parliamentary ombudsmen). Much of the debate concerns multilateral agreements, though the analytical principles apply more generally.

This definition has a number of features in common with others that are standard in the field (see for example, Greene, 1994). Taking this view, verification should be seen as:

- a process of investigation and validation; and
- one that is broad and multilayered.

The theory of verification in a treaty context tends to focus on the dimension of process, and on verification as a complex mechanism rather than an act of technical inspection.

Why should there be this complexity? The answer lies in the fact that, for many treaties and agreements, there are a number of elements in the production situations and the political contexts of their operation that generate conflicting interests and demand a complex approach. By and large, the key areas of contention that arise in the implementation of such treaties do not relate to technical propositions, the validity of which can be established ‘objectively’, but rather to conflicts of interest between parties which can only be resolved through negotiation and compromise.

The complexity of verification systems tends to be a function of a number of influences, several of them interlinked. These include:

- The number of players with an interest in the agreement, and hence the range of authorities required to state an opinion before a verification decision can be reached;
- The variety of interests of the players and their relative powers;
- The level of confidence the players have in one another;
- The extent to which the verification decision can be characterised in absolute or relative terms; for example, the extent to which decisions are based on legal considerations and a strict reading of legal texts or more subjective issues with a higher degree of uncertainty; and
- The limits of tolerance in the system of diagnosis (that is, how precisely the facts of the case can be ascertained).

The operational rule in each case is that the more complex the variable, the more demanding the verification requirements. Logically, the wider the range of actors and the more diverse their views, the more difficult it will be to get them to agree. Similarly, a decision that is based on a simple inspection of an observable fact is clearly quite

different in its verification requirements to one that depends on a more evaluative judgement of multiple realities and intentions. Assessment of whether a meat processing facility has conformed to the prevailing production standards is a less demanding task than assessing the intentions of an unpopular government which is investing heavily in nuclear technology for ostensibly peaceable purposes. Where verification is based on a number of considerations and has a high degree of uncertainty, the process is likely to have a strong political component. Such considerations might, for example, include not just legal rules but also the future self-interest of the parties, their assessments of what tolerances they and other powerful parties would regard as acceptable, and the estimates of various actors as to the likely costs and benefits. As regards the limits of tolerance, the extent to which major breaches differ materially in their implications from minor ones will also condition the complexity of the verification response (nuclear safeguards are an obvious case in point). A minor problem of product labelling or transgression of operational boundaries is of a different order to a problem of systematic and serious breaches of agreements, with evident ill-intent and potentially profound effects.

### 3.3 What makes verification effective?

Drawing on the extra-sectoral literature, we can identify some of the principles that lead to effective verification. Not all the principles reviewed below are likely to be complied with in equal measure in every verification context; nor are they all equally relevant to the verification of legal timber. Where they are weak or lacking, the task of effective verification will be made more difficult, thus increasing the need for compensatory measures.

Ten general principles for effective verification can be identified from the extra-sectoral literature:

- Principle 1** Reciprocity;
- Principle 2** The ability to prevent migration to non-parties;
- Principle 3** A clear definition of the problems that the verification system is intended to address;
- Principle 4** Adoption of a systems approach and a focus on the distribution and balance of powers;
- Principle 5** Broad participation in the processes leading up to the verification decision;
- Principle 6** Clarity of assessment standards;
- Principle 7** The provision of incentives to report and to comply;
- Principle 8** Independent oversight;
- Principle 9** Inclusion of all stages in the chain of custody and special efforts to secure the most vulnerable stages;
- Principle 10** Incorporation of pro-poor approaches into the design of verification systems.

These ten principles are discussed in turn below. Eight case studies which illustrate these principles in action are also briefly reviewed in Boxes 3.1 to 3.8.

## **Principle 1: Reciprocity**

Where an agreement is fully reciprocal, in the sense of being equally binding on all parties, its verification is, to a degree, depoliticised. This is most obviously the case (in principle if not always in practice) with trade agreements, less often the case with agreements related to weapons and the environment. Some important international treaties are not fully reciprocal and for historical reasons some players stand outside them. The Nuclear Test Ban Treaty and the UNFCCC and its Kyoto Protocol (which some prominent countries such as the US have not yet ratified) are examples of non-reciprocal agreements. This renders their implementation and control highly political.

The Kimberley Process provides an interesting illustration of one possible route to establishing reciprocity in a situation of mutual mistrust, through a peer review mechanism (see Box 3.1). This involves a number of participants from producer states, along with industry and NGO representatives. With the Montreal Protocol on Substances that Deplete the Ozone Layer (Box 3.2), there was recognition of ‘common but differentiated responsibilities’ to accommodate the special needs of developing countries. An adjustment procedure then allowed countries to vary the pace of their phase-out without the need for treaty amendments (Brack, 2003).

### **Box 3.1** **The Kimberley Process Certification System**

**Key principles: reciprocity; non-migration; problem definition; broad participation; incentives to comply; impacts on the poor.**

The 2003 Kimberley Process Certification System (KPCS) for rough diamonds is an outcome of the ‘Kimberley Process’, which aims to end the trade in conflict diamonds. The basic elements of the agreement are that each participant undertakes to maintain internal controls over rough diamonds in their territories, ban the import of rough diamonds unless accompanied by a Kimberley Process certificate from another participant, acknowledge all parcels shipped into its territory to the exporting authority, and submit regular trade statistics.

The KPCS is not a legally-binding, international treaty but rather a voluntary international certification scheme based on agreed minimum standards; decision-making depends on consensus of the Parties. An innovative feature of its compliance system is the peer review mechanism. Review teams comprise representatives of three other governments and one each from NGOs and industry. Though purely voluntary, by mid-2005 18 reviews had been carried out and there was no country left in the KPCS that had not requested one. The KPCS also has a ‘complaints’ procedure through which any participant or observer can communicate with the Monitoring Working Group on the compliance of any other participant.

Despite early misgivings, the provision on consensus decision-making has proven in many ways to be a strength of the KPCS. In the early days of the agreement, a voting

**Box continues**

### Box 3.1 continued

arrangement would have had the effect of ‘ganging up’ on members who held contrary views. The possibility of an important participant walking away from the table was real, and this could have proven very destructive. While some decisions may represent the lowest common denominator, there are few major disputes.

Although production of alluvial diamonds is important to the livelihoods of the poor in a number of countries, this aspect has proven difficult to address in a process where the main concern has been to cut off the supply to rogue states.

Some of the basic lessons provided by the KPCS are:

- The vulnerability of diamonds to consumer action helped to bring the industry and several reluctant governments to the negotiating table.
- Heavy media pressure fostered by NGOs helped to keep the momentum going.
- A government ‘champion’ was important to the organisation of meetings, and South Africa has played this role.
- International interest (UN expert panels, the UN General Assembly resolution and positive references to the KP at two G8 meetings) has helped with momentum and legitimacy.
- The KPCS could not have been meaningful without strong industry participation. Had governments and/or NGOs attempted to design a certification system, the outcome would likely have been unworkable. The industry knew where the problems lay and how best to address them.
- While the KPCS is ‘voluntary’, diamond-producing and trading countries needed to be members, making membership virtually compulsory.

Source: Smillie (2005).

### Principle 2: Ability to prevent migration to non-parties

If parties or participants are able to withdraw from an agreement without incurring any substantial costs, when it suits them not to continue, then the force of the agreement is clearly weakened and this has knock-on effects on its ability to assess compliance and hold parties to the demands in question. A particular feature of the Montreal Protocol, one of the most successful treaties in terms of both compliance and impacts, is that the breadth of its international acceptance has severely restricted the possibility for industries to migrate to non-parties (see Box 3.2). Similarly, it was only when CITES reached a certain critical mass that it became possible to limit the negative effects of non-party influence. A critical step was Singapore’s entry into membership of CITES; it had hitherto severely undermined the Convention’s progress by acting as a major entrepôt of unregulated trade (see Box 3.3).

### Principle 3: A clear definition of the problems that the verification system is intended to address

An effective verification system is likely to be one that has a clear definition of its boundaries and aims. Thus, the decision of the Kimberley Process to restrict itself to alluvial diamonds (excluding deep kimberlite pipe diamonds) made sense in terms of

the problem it was intended to address (the part played by this extractive industry in fuelling war and conflict). A number of factors make alluvial diamonds a ready target for corrupt regimes, including their high weight-to-value ratio, their ease of extraction and the indiscipline in the global diamond market. This decision had two further effects: first, it achieved ready buy-in from the big diamond producers who are most protective of their international reputations (and who mainly produce deep kimberlite pipe diamonds) and second, it encouraged a collaborative approach to international verification as some important actors (particularly in processing industries) saw it as supportive of their long-term livelihoods, and recognised that it was in their interests to sign up (see Box 3.1).

### **Box 3.2**

#### **The Montreal Protocol**

**Key principles: reciprocity; non-migration; security of all stages; broad participation; incentives to comply.**

The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer is widely viewed as a highly successful environmental convention, with important lessons for the design of other treaties. The trade provisions under the Protocol have had the effect of discouraging migration to non-Parties in two ways: firstly, denying non-signatories access to ozone-depleting substances (supplies of which were concentrated in the hands of a few countries) and secondly, preventing industries from migrating to non-Parties, and accessing markets in Parties indirectly through them. But the strongest pressure to comply has been the commercial and other incentives available to encourage governments and industry to abandon the old polluting technologies and adopt new non-polluting ones (Barrett, 1999).

Brack (2003) attributes the success of the Protocol to a number of factors, including:

- Its responsiveness to changing scientific knowledge and technology (it has been modified five times to date);
- A recognition of ‘common but differentiated responsibilities’ (to accommodate the special needs of developing countries);
- An ‘adjustment procedure’ allowing countries to vary the pace of their phase-out without the need for treaty amendments;
- Broad participation (governments, industry, scientists, NGOs);
- The strong incentives for compliance built into the protocol, in the form of carrots (generous financial and technical assistance) and sticks (meaningful trade sanctions); and
- The speed with which industry was able to develop alternatives to depleting substances; these were often cheaper and more effective than the originals, thus providing a further incentive for compliance.

Source: Brack (2003).

**Box 3.3****The Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES)**

**Key principles: non-migration; broad participation; separation of verification from enforcement; independent oversight.**

The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a multilateral (inter-governmental) environmental agreement, the purpose of which is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

CITES regulates wildlife trade primarily through a distinctive three-tiered system of permits and certificates that must be issued by national authorities before specimens can leave or enter countries involved in international trade. Appendix I of CITES lists all 'species threatened with extinction', for which international trade is only authorised exceptionally. Appendix II includes species that may become endangered if commercial trade is not controlled, and for which trade is permitted subject to strict regulations in both exporting and importing states. Appendix III includes species specifically listed by individual Parties that need cooperation from other countries to control trade in order to prevent over-exploitation within their own borders.

The listings are the core element of the CITES system of compliance. Each Party is required to nominate a national 'Management Authority' which administers the licensing system and one or more 'Scientific Authorities' to provide guidance to the Management Authority on the effects of trade on the conservation status of the species in question. The CITES compliance system is based on self-reporting by the Parties, complemented and cross-checked by intelligence gathered by the Secretariat and by activist NGOs. Its ability to ensure compliance has been much aided by the growth in its membership (as of 2003, it had 160 member Parties, on all five continents) and hence its ability to avoid migration of trade to non-Parties. On-selling from one non-Party, Singapore, made for particular difficulties in international control, and the country functioned as a major entrepôt for unregulated wildlife trade until it ratified the Convention in 1986.

The huge numbers of CITES species and sub-species occurring in both the legal and illegal trade are daunting by any standards (at least 33,000 species in all), as are the wide variations in the value of commodities traded. These features pose major problems for compliance control, including verification, as customs officers cannot be expected to recognise more than a small fraction of the species of concern.

A basic dilemma in the CITES system is that the Convention has a strong orientation to compliance, but no central enforcement capacity. Nor does it have any ability to impose penalties, except insofar as it may press for them to be applied 'appropriately' by national authorities, without specifying their content (Matthews, 1996: 422). Verification in CITES depends heavily on the circulation of information between Parties. The lack of an independent means of on-site verification is a particular weakness. Verification relies

**Box continues**

### Box 3.3 continued

heavily on the detective work of NGOs, although only two of these (IUCN and TRAFFIC) have any formal status in CITES decision-making. In recent years, the CITES Secretariat has introduced a number of new procedures to strengthen the ability of the Convention to achieve its desired impacts. These include the ‘Significant Trade Review’ process, which investigates significantly traded Appendix II species, and a variety of inspection missions to be undertaken either by the Secretariat or by a team raised by it and acting on behalf of the Convention. Technical expert missions often receive prominent press coverage particularly when they focus on high-profile endangered species such as tigers.

CITES is one of the earliest multilateral environmental agreements and has been subject to a fair amount of criticism over the years. Criticisms of its compliance systems have tended to focus on its lack of effective teeth and its over-dependence on ‘soft law’ mechanisms to deal with non-compliance (Reeve, 2002: 250). By contrast, its supporters would argue that the existing structure of compliance, whatever its defects, may be a reasonable compromise given the limited means at its disposal and the unlikelihood of any radical change in its funding situation. They argue that the fact that some important international players expend considerable energy on attempts to rein it in suggests that it must already be working reasonably well.

Lessons to be learnt from this case study include:

- The ambition of a verification system is governed by its mandate. In the case of CITES, the main concern is to prevent unsustainable trade; its capacity to deliver on other objectives is necessarily rather limited. However, complementary mechanisms (such as significant trade reviews) can play a supportive role.
- Compliance and enforcement should be separate but complementary. Weaknesses in the compliance mechanism can be compensated for by the proliferation of means to generate compliance responses (including the broadening of participation to include non-governmental actors).
- Successful enforcement relies on cooperation between implementing Parties that bridges international and national levels; this may require significant investments in capacity-building.
- The verification system needs to be adapted to the complexity of the commodities in the trade. In the case of CITES, complexity is high, and this justifies a classificatory approach (the listings and permit system) ideally underpinned by strong institutions (the national management and scientific authorities); however, the Achilles heel of a permit system is its vulnerability to abuse.
- Like other aspects of international law, CITES has no policing power; however, reputational factors may be important in achieving compliance (more important, indeed, than financial considerations).
- Care is needed if sanctions are to be applied in an even-handed way, particularly where the Parties have unequal power on the international stage.

Source: Brown and Swails (2005).

**Box 3.4****The UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol**

**Key principles: reciprocity; non-migration; problem definition; broad participation; systems approach; need for clarity of standards; independent oversight (in the breach).**

Verification of gas emissions faces particular problems of uncertainty because of their intangibility, the variety of factors that influence them, and continuing disagreements on the monitoring methodologies. Verification under the UNFCCC aims to test compliance with the binding greenhouse gas (GHG) emissions reduction targets identified in the Kyoto Protocol, which involves verification of national emissions reduction performance as well as the effects of three ‘flexible’ mitigation mechanisms: (i) the emissions trading system; (ii) the Clean Development Mechanism (which involves collaboration between industrial and developing countries); and (iii) Joint Implementation (which involves collaboration across industrial societies). This box mainly considers national performance of Annex I Parties (industrial countries), though verification under the CDM is also briefly reviewed.

*Verification of national emissions reductions of Annex 1 Parties* must accommodate competing pressures: decentralisation of reporting responds to a political expedient (national sovereignty) but rapidly comes up against major capacity constraints (the lack of qualified technical personnel, particularly for Parties in the south). The UNFCCC has responded by offering both financial incentives and technical support, though the investments required are still considerable. The system is managed by the International Secretariat but based on national reporting. As with other treaties, the essence of effective verification under the UNFCCC lies in self-reporting according to a prescribed set of formats, backed up by a variety of institutional mechanisms to cross-check findings. The credibility of such an arrangement depends heavily on the effectiveness of the measures put in place to protect the system from political interference.

The entry into force of the Kyoto Protocol has brought about modified reporting requirements. Before the end of the first commitment period, each Party must put in place a *national system* for estimating greenhouse gas emissions and a *national registry* for recording transactions of emission reduction units generated by different types of activity – *certified emission reduction units* from CDM projects, emission reduction units from Joint Implementation projects and *removal units* from sink projects. The national system includes a comprehensive emissions inventory. They are also required to have made demonstrable progress in meeting their commitments under the Protocol, using a number of standardised, technical reporting formats.

**Box continues**



### Box 3.4 continued

The Kyoto Protocol offers an innovative two-part compliance procedure (involving facilitation and enforcement); this acknowledges the fact that this is new territory for all of the Parties. The presence of a facilitative process, combined with a well-defined sanction system, gives the Protocol a ‘more far reaching non-compliance procedure than in any existing environmental treaty’ (ENDs Report 2001, cited in Stokke et al., 2005).

The UNFCCC review process involves *expert review teams* (ERTs) for Annex 1 Parties. The ERTs’ role is to verify inventory systems and data submitted by a Party to the Protocol before and during the first commitment period (i.e. up to 2012). They also have a facilitative role, providing feedback to Parties, which helps them to improve their emissions inventories. The output of the expert review process is a report submitted to the Compliance Committee. A number of provisions help to ensure that the selection and composition of ERTs is impartial. Teams are selected by the Secretariat from experts nominated by the Parties and by inter-governmental organisations, a procedure which maximises contributions from different interest groups in the process. The Secretariat itself has a degree of impartiality by being accountable to the Conference of the Parties (COP) and subsidiary bodies. It is also funded by the Parties, with their contributions being based on the UN scale of assessment.

*Verification under the CDM* is challenging, in that it involves international collaboration between a variety of northern and southern partners, aims at long-term sustainability and requires additionality (in the sense that reductions must be additional to any emissions reductions that would occur in the absence of the project activity). The ‘sustainability’ and ‘additionality’ criteria are particularly demanding for verification.

Summarising verification within the UNFCCC, a number of general points can be made:

- Transparency and cost-effectiveness are important criteria; arguably, it would have been much wiser in the early stages to limit monitoring to fossil fuel emissions of CO<sub>2</sub> alone, as this would be the most straightforward, with a ready proxy in fossil fuel consumption, one of the main causes of pollution (Victor, 2001).
- Transparency and efficiency are particularly problematic when a system departs from a straightforward recording of observable phenomena (as with the CDM).
- Non-governmental actors may have important roles to play in areas which formal verification may fail to cover adequately (for example, mechanisms with high social impact); they may also encourage compliance where the internal controls are weak.
- Where a treaty imposes significant costs on its Parties, inclusiveness is a prerequisite for effectiveness; in the present instance, the presence of powerful non-Parties is a matter of some concern (these include the US and, until 2007, Australia, among the Annex 1 countries, and major polluters such as China and India among the non-Annex 1 countries).

Source: Peskett and Brown (2006).

In the case of the UNFCCC, on the other hand, there is an argument that the Convention would have been much better advised to attempt to control only the emissions of carbon dioxide from fossil fuels (see Box 3.4). This would have made the monitoring task much more straightforward, as there already existed both a ready proxy for the level of emissions (quantity of fossil fuels consumed) and measurable emission factors (quantity of emission by unit of the particular class of fuel). Other greenhouse gases among the six classes monitored under the UNFCCC are much less easy to measure (for example, methane and nitrous oxide which have no ready proxies or regular emissions factors by class of pollutant). The high ambition of the UNFCCC has thus complicated verification processes (Victor, 2001).

In the case of meat hygiene standards, there has been a gradual shift away from a prescriptive control system to a hazards-based one (see Box 3.5). This implies a movement away from imposing a complex set of rules that is to be applied universally to concentrating more on the location of the sites and activities which are most prone to the risk of contamination. Focusing on the level of risk allows for more cost-effective

### **Box 3.5** **Food standards agencies and meat processing**

**Key principles: chain of custody; incentives; independent oversight.**

Food standards provide an interesting comparative case study to timber verification, for a number of reasons. Firstly, food items are, like wood and fibre, widely traded internationally. Secondly, consumer nations demand high standards of the products in question in both cases. Thirdly, like forests, food figures as an important motif for the state of the environment, especially in the industrial north. And finally, food control and food safety have been the subjects of major institutional reforms in recent years within the European Union – reforms which have their origins in highly-publicised food crises, as well as in changing standards of public acceptability. However, the central concerns in food standards (which are human health and safety) have immediate and personal implications for western consumers at large, whereas in the case of wood and fibre, the primary interest is limited to those who are ‘environmentally aware’. Food also differs from timber, particularly in a trade context, in that it has intrinsic qualities (for example, its capacity to cause disease or sickness) that encourage its regulation, and thus national measures are unlikely to be contested under the WTO regime.

Food standards in Europe, particularly as they relate to meat and meat products, illustrate several features of general interest to verification. In recent years, there has been a shift in control system design away from a *prescriptive policy* whereby meat safety was sought through the application of prescriptive directives to ensure the adequate certification of meat, towards a more risk-oriented *hazards-based policy*. This new approach involves the identification of current hazards and the establishment of effective controls to minimise them. The new approach is felt to be less rigid, and quicker to respond to changing concepts of risk and to new technology, as well as much

**Box continues**

### Box 3.5 continued

easier to harmonise across cultural frontiers. In the UK, this is backed up by a set of systems guidelines on food safety hazard management (known as ‘HACCP principles’) to which all suppliers are required to conform. At the European level, there has been an increasing recognition of the need to adapt standards to local conditions, so that design is realistic and capable of effective implementation in the given context (for example, small-scale artisanal smoking of meat in Southern Europe is usually unsophisticated technologically, but generally involves short supply chains and is perceived as low-risk).

Verification in the meat industry relates to two broad areas of activity: assessing compliance of private operators within the food production systems regulations, and assessing the effectiveness of national control and enforcement arrangements at various levels (relating to the performance of the national ‘competent authorities’). Under current regulations, UK authorities are authorised to take account of operators who are participating in an assurance scheme. Schemes which certify that the standards of husbandry and welfare on a member’s farm or that standards of management within a processing facility meet nationally agreed levels of best practice are eligible for certain exemptions with regard to audit and monitoring. Incentives to conform involve both sticks and carrots. The ultimate negative sanction is de-licensing, which has immediate commercial implications. The positive sanctions relate to preferential market access and also the fact that the high traceability standards that the authorities demand serve both public and commercial interests (for example, they fit well with the stock control measures used by the supermarkets).

The EU has recently taken steps to broaden the range of organisations that can act as meat inspectors, while requiring that all practitioners conform to Standard EN 45004 (ISO 17020). Clear conflict of interest criteria apply: the body in question must be free not just from commercial interests but from all pressures that might affect its judgement, and free from any biases that might influence its findings.

Lessons from this case study include:

- The benefits of tailoring control system design to risk and vulnerability;
- The need to adapt verification mechanisms to the design principles (for example, linking audit requirements to risk assessment);
- The need to adapt standards to local conditions, to improve the likelihood of effective implementation;
- The incentive effects of linking new control requirements to established standards in a mutually reinforcing way (for example, giving credit for participation in accredited assurance schemes); and
- The value of a broad concept of ‘independence’ to ensure that verifiers are free from any biases that might undermine their credibility.

Source: Brown and van Midwoud (2006).

verification than control systems that rely on assessing conformity with broad prescriptive measures, and also allows for a more adaptive and responsive approach suited to particular circumstances.

#### **Principle 4: Adoption of a systems approach and a focus on the distribution and balance of powers**

If experience suggests the need to move beyond verification as a straightforward matter of licensing towards a more systems-oriented approach, then what, in practical terms, would this entail? The treaty literature offers useful guidance as to the institutional elements of the decision-making system.

A number of components may be included in a verification regime for treaty and convention obligations (Sur, 1991; Cameron et al., 1996; Reeve, 2002). In relation to the more complex treaties (arms limitation, for example), the verification regime is normally taken to include: legal commitments; data exchange and notification arrangements; monitoring methods; communication, consultation and clarification mechanisms; a method for making verification judgements; and possibly the compliance mechanisms (Findlay, 2003). The verification system is seen as all of these except, on some definitions, the compliance mechanisms (procedures for dealing with alleged and actual non-compliance). These tend to be viewed as part of the enforcement system, i.e. the various coercive mechanisms which can impose a demand to conform (variously, political and economic pressures, and sanctions such as the use of force), rather than merely to assess compliance. The point at issue here is not the definitional niceties of ‘verification’ as opposed to ‘enforcement’, but rather the need to separate the assessment of compliance from measures to deal with it. Good practice would advise keeping these two apart – so that the information base on which compliance decisions are taken is insulated from the sanctions that might be applied to enforce them and the politics that the latter would entail. Where the treaty or convention is a UN-mandated one (as with NTBT and Kimberley), enforcement assumes a highly political character. Kyoto is an interesting case in that it also separates facilitation and enforcement, and only the latter has judicial functions.

Lang (1996) emphasizes the value of separating judgements about compliance from the measures to deal with non-compliance by means of sanctions and ‘assistance measures’. She identifies three institutional elements as the minimum requirements for a satisfactory system of compliance control, and these provide a useful structure for any form of verification:

- 1 An institution to *collect information* from whatever sources are available to it;
- 2 A *‘reviewing mechanism’* to evaluate and interpret data (this is often entrusted to a separate body or bodies); and
- 3 A *‘taking measures’ function*, which is likely to be reserved for a political body (for example, the supreme authority of the treaty or convention, such as the Conference of the Parties), which acts either on the recommendations of the reviewing body, or on its own initiative.

The emphasis is on verification as a process, in which the key functions are (at least ideally) separately executed by different institutions. Such an information management system has the advantage of separating the operational levels between verification and

enforcement mechanisms and it also encourages a separation of decision-making levels between the political and technical. The functioning of the political body is the most contentious element, particularly in those situations where the mechanism is nested within a wider governance system which does not, itself, conform to ‘good governance’ criteria. As will be discussed later, this is particularly prevalent in the forest sector, where the commodity under review is well-suited to political liquidation (i.e. the level and character of offtake of the resource respond to the needs for funds of political actors), and where, therefore, there may be strong forces to encourage the political order to intervene in its extraction.

### **Principle 5: Broad participation in the processes leading up to the verification decision**

Where there are multiple players with an interest in the issue under review (which often goes with conflicting views), it follows that the decision-making processes should attempt to reflect this divergence. This calls for institutional fora which can accommodate multiple actors and interests and diverse sources of information, and a definition of legality that is acceptable to all of them. A mix of principle and pragmatism would appear to be necessary. For example, states may balk at the involvement of civil society actors in matters which are under state sovereignty (as has been the case with both Kimberley and CITES, for example). This may have some justification, in principle, in that state and civil society are not equal actors in the policy realm, and civil society actors often lack both democratic legitimacy and mechanisms for democratic renewal. The former is particularly the case with international civil society, which bridges sensitive political realms. There are also questions about the even-handedness of civil society actors. For example, conservation NGOs tend to focus much more on charismatic megafauna such as pandas, elephants and tigers, than on less emblematic biodiversity, in large measure because of the greater fund-raising power of the charismatics (Victor, 2001).

However, there are nonetheless strong grounds to open up the process to civil society actors. They may bring expertise to the table, and their inclusion can promote transparency in the process and help to engage the public at large. While they may have biases in their advocacy (for example, indigenous peoples’ rights are more easy to promote on the international stage than the generalised rights of the poor, because there is international legislation to support them), they are often the last recourse of the poor and marginal, whose interests are not necessarily well-represented in democratic processes. Decision-making in conventions such as CITES has arguably gained considerably from such widening of participation, though there remain concerns about accountability, particularly transnationally.

### **Principle 6: Clarity of assessment standards**

Agreeing a definition of legality is essential for any form of monitoring, and is thus a particularly critical step. The legal context for forestry in many countries is widely recognised to be complex and contradictory, with overlapping jurisdictions and competing rights. Judging from the experience of the treaties (and extrapolating to a context of non-reciprocity), agreeing such a definition may well prove a demanding and time-consuming affair.

The concept of ‘mandate limitation’ tends to have rather specific meanings in international arms negotiations, referring to the authority of the governing mandate. But it can also apply in a more idiomatic way to focus on the question of whether verifiers should be required to base their verification decisions on the mandate of the agreement, or should be allowed to introduce their own interests. Many of the major international treaties are very precisely ‘mandate-limited’, and verifiers are required to conform to a clear and legally-endorsed specification of their tasks, which is consistent for all parties to the treaty. Where there are suspicions that they have failed to do so, steps have often been agreed to narrow down the tasks. For example, allegations that the International Atomic Energy Authority inspectors were too prone to national bias led to a refinement of the system of recruitment, and they were required to pledge loyalty to the UN, not to their sponsoring states as had hitherto been the case (see Box 3.6).

The tendency in environmental fields for standards to be developed ‘on the job’ raises important questions regarding the identity of the verifiers and the controls placed upon them. A fundamental requirement for verifiers is that they must be willing to provide a positive endorsement for the verification decision when the conditions are met, within the agreed tolerances, and equally willing to oppose it when they are not. This may be an issue to which environmental watchdogs will need to give particularly careful consideration, should they decide to take on verification roles. As Haufler (2001) notes, this is a challenging area for advocacy NGOs, in that their normal mode of operations is to continually push for heightened standards, with an emphasis on the negative, and they may find it difficult (with some justification) to work primarily in positive mode. On the one hand, an excessively positive mode of operation risks co-opting NGOs and compromising their independence; on the other hand, an excessively

### **Box 3.6**

#### **The International Atomic Energy Authority**

**Key principles: reciprocity; non-migration; systems approach; value of independent oversight.**

The safeguards system of the International Atomic Energy Authority (IAEA) covers materials that can be used in nuclear weapons. The IAEA statute gives it the right to examine specialised equipment and facilities of member states to assure that they will not further any military purpose, as well as to require the maintenance of operating records, and to call for and receive progress reports. To facilitate verification, the statute also gives the IAEA the right to send in inspectors designated by the IAEA, after consultations with the state concerned. However, the statute stipulates that the agency’s activities shall be carried out with due observance of the sovereign rights of states. Safeguards Inspectors must be escorted by representatives of the state if it so requests. IAEA inspectors are recruited from the member states but are employees of the UN. They may not accept instructions from their own governments or breach the organisation’s confidentiality rules.

**Box continues**

### Box 3.6 continued

The ‘product’ of the IAEA’s verification activities is a statement of the amount of material unaccounted for over a specific period. This seeks to draw a conclusion about the non-diversion of declared nuclear material and the absence of undeclared nuclear material and activities in the state. If it is unable to draw such a conclusion, it will issue a finding to that effect.

Assessments of compliance and non-compliance are conducted by the IAEA Board of Governors, the IAEA Executive Body (comprising ten members designated by the outgoing Board) and twenty members elected by the General Conference. Ten seats are allocated on the basis of nuclear technology proficiency and 20 seats are selected on an equitable geographical basis. The Board of Governors ultimately decides on the degree of compliance by a state and also considers any question arising out of the interpretation of the safeguards agreement(s). Decisions are preferably made by consensus, but if such consensus is unattainable, the Board can decide by majority vote. The IAEA Statute does not prohibit a Board member from being involved in deciding on its own compliance.

The IAEA and its Board of Governors decide on necessary actions in accordance with its mandate. Presently, the IAEA is mandated to: call upon the non-compliant state to remedy the non-compliance; report the non-compliance to IAEA members, the United Nations Security Council and the UN General Assembly; curtail or suspend nuclear assistance; call for the return of materials and equipment made available to the state; and suspend it from the exercise of the privileges and rights of membership of the IAEA. There is an appeals procedure involving the International Court of Justice.

IAEA controls are thus marked by broad participation and a complex structure of international supervision through the structures of the UN. Its authority is weakened, however, by the fact that the five nuclear weapon states (China, France, Russia, the UK and the US) are independent of it, and by the fact that the European states safeguard their industry regionally, through the EURATOM safeguards system.

Among the lessons to be learned from this case study are:

- The value of strong institutions for standard-setting, information-sharing and policing/compliance;
- The need to maintain clear boundaries between routine monitoring, verification and enforcement;
- The value of broad participation in verification decisions, enhancing their legitimacy and international authority; and
- The need for an inspection system which ensures loyalty to the agreement, not to the interests of the individual Parties.

Source: Persbo et al. (2005).



negative mode could have very destructive effects. This is particularly likely in a sector such as forestry, where it has proven more difficult for NGOs to sustain a market than to undermine it.

### **Principle 7: The provision of incentives to report and to comply**

Strong treaties tend to have a strategic focus on incentives for compliance, and on the factors that might induce non-compliance and migration. Verification systems work best where there are strong incentives to comply and few to opt out of the treaty. These incentives may to varying degrees be financial, strategic or reputational. The Montreal Protocol is one example of a treaty whose effectiveness was strongly increased by its ‘win-win’ qualities (Barrett, 1999). The fact that there were clear wins available for powerful actors in the hi-tech industry helped to create the political will to sustain it (see Box 3.2).

A somewhat separate issue is that of *incentives to report*. How the reporting is done is also crucial. There is a paradox in that, in a situation of weak governance, the demand for effective reporting can itself fuel illegality because of the ways in which documents achieve a cash value in the marketplace (Brack et al., 2002). CITES, for example, has suffered heavily from fraudulent documentation, although technical advances are rendering this more difficult. The forest sector is even more prone to such fraud, because of the highly dispersed nature of its activities. Recent technological advances, involving computerisation and information retrieval (‘tamper-proof forms’ etc.) are of particular interest here, though not necessarily a panacea (see Chapter 23).

### **Principle 8: Independent oversight**

The EU FLEGT Action Plan comments that ‘independent monitoring makes verification systems more credible and less prone to corruption’ (Commission of the European Communities, 2003), and this view would be shared by observers of many different agreements. Normally, this would imply involvement of third-party monitors, operating independently of both first parties (the business) and second parties (its customers), as in the cases of international election observers (Box 3.7) and ombudsmen (Box 3.8). However, there are issues around the appropriate balance between self-reporting (whether by the industry or the licensing government) and external, independent oversight at all stages of the verification process. Self-reporting tends to generate responsibility though it may be low on external legitimacy, while independent oversight tends to favour the reverse. Many of the major international treaties attempt to strike a political balance between the two, although this may be to the satisfaction of none of the parties. Self-reporting has proven particularly unsatisfactory in strategic areas such as the Nuclear Test Ban Treaty, and there is a general scepticism about ‘asking the mouse to guard the cheese’.

### **Principle 9: Inclusion of all stages in the chain of custody, and special efforts to secure the most vulnerable stages**

Rather similar arguments apply in this area. Any weakness in the chain of custody is likely to be exploited by commercial operators, and not only by the unscrupulous. There exists a substantial literature on the vulnerable points in the chain, such as pre-shipment inspection. Where (as in the case of meat standards) verification practice has



moved away from prescriptive standards in favour of a risk-based approach, this has tended to respond to particular characteristics in the industry which concentrate risk on particular stages (see Box 3.5). In this case, most of the hazards are found on the farm, not in the abattoir, and hence it makes sense to focus on the original source of the hazard, not its downstream manifestation. In the forest sector, the forest management unit is often a weak point because of its physical isolation, and it may merit particular emphasis. However, compliance theory would again warn of the danger of perverse effects. These may imply movement of illegal practices to less problematic points in the chain of custody or, as in the case of the UNFCCC, the risk of leakage at the project

### **Box 3.7**

#### **International election observation**

**Key principles: clear problem definition; broad involvement in the process leading up to the verification decision; value of independent oversight.**

Election observation involves the purposeful gathering of information about an electoral process and the making of an informed judgement in terms of its fairness. Like the verification of legality of timber, election observation is not a universal practice but is used to alleviate doubts over the functioning of a routine process. Observers check on the veracity of claims, to improve the performance of the managing institutions and the overall governance system, and to increase the legitimacy of the operations under review.

International election observation requires particularly careful handling, as it is vulnerable to the accusation that it violates the sovereignty of the state. There is no international legal instrument that could underwrite the principle of election observation. Thus the negotiation of the terms of the election observation lies with the host government. International norms surrounding democracy are strong and these have helped give legitimacy to international election observation efforts, but beyond these norms, judgement on what is 'free and fair' remains ambiguous. Electoral law is not associated with fixed, universal standards, and the complexity of the electoral process makes the idea of any simple formula unrealistic. In response to these challenges there is a need to focus on the professionalism and expertise of the observers.

One of the most crucial grounds for bestowing acceptance and ownership on the observation activity is the positive perception of the election observers by stakeholders in the country concerned. Independence and credibility are fundamental requirements: they are associated with neutrality, non-partisan attitudes and even-handed methods including reporting techniques. The sporadic and short-term nature of many international observer processes is said to restrict their usefulness due to an overemphasis on the 'election day' to the detriment of the events and processes leading up to the election. One of the fundamental requirements for an election observer is the ability to distinguish between irregularities that are the consequence of low administrative capacity and those that are the expressed outcome of political intent.

**Box continues**

### Box 3.7 continued

In terms of impact and of resonance with the timber verification debate, there are those who would argue that external intervention may be good at exposing problems but that this does not necessarily lead to constructive change in the arena of democratic governance. Others argue that international election observation has contributed to the strengthening of basic standards of election administrators and has helped the growth of political parties and the development of organised civil society. Whether election observation can be a significant lever for governance reforms or is too simple an indicator to have an impact on the overall quality of governance is debatable. In robust democracies, the role of election observers and monitors is played by well-embedded national institutions – independent electoral commissions, non-partisan poll-watchers, the press and independent courts. Thus, the question is raised as to whether efforts and resources are better used in developing these other horizontal institutions of democracy rather than on election observation, which is just one part of the process.

Lessons from this case study include:

- International election observation requires particularly careful handling as it is vulnerable to the accusation that it violates the sovereignty of the state. Electoral law is not associated with fixed, universal standards, and the complexity of the electoral process makes the idea of any simple formula unrealistic.
- Independence and trustworthiness are fundamental requirements for bestowing credibility on the work of election observers. They are associated with neutrality, non-partisan attitudes on the part of the observers and even-handed methods including reporting techniques. The use of independent election observation raises questions of state sovereignty and the subjectivity of what constitutes ‘free and fair’ elections; in such a situation, the observers need to maintain high levels of professionalism and demonstrate their integrity.
- Independent election observation also raises questions about the extent to which external intervention can help strengthen domestic governance; as in the field of timber verification, it could be argued that it would be more effective to invest in strengthening internal governance institutions rather than focusing on an external, partial and potentially subjective perspective.

Source: Luttrell and Nash (2008).

level (that is, project activities which have the effect of shifting pollution to locations outside of the project boundary). In the case of the timber sector, as elsewhere, there are good reasons to ensure that compliance activities have a regional, supra-national component, based on essentially similar reasoning.

### **Principle 10: Incorporation of pro-poor approaches into the design of verification systems**

By and large, the extra-sectoral case studies do not present strong pointers for the timber sector in relation to equity. In the more prominent instances, international

### **Box 3.8**

#### **The work of ombudsmen**

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**Key principles: systems approach; clarity of standards; value of independent oversight.**

The term ‘ombudsman’ generally refers to an independent official appointed to receive, investigate and address complaints about unfairness in the administration of public services. Ombudsmen have played an important role in the process of state transformation in recent decades. From slow beginnings (the first ombudsman post was created in Scandinavia in the 19th century, though the underlying concept has its origins in the magistrature of the Ottoman Caliphate), the institution has been taken up on all continents and in many countries, albeit with varying levels of political commitment and success. There are now ‘ombudsman’ posts in over 120 countries, on all four continents. The institution of ombudsman is part of the story of state transformation in the 20th century; its effectiveness needs to be situated within the functioning of the encapsulating state, and variations in its mandate and performance can be related to the nature of the state in question (i.e. constitutional monarchy or republican, extent of separation of powers, etc.).

An ombudsman works on behalf of the public and usually has the authority to launch investigations on her/his own initiative. The focus is generally procedural: the ombudsman must satisfy her/himself that the proper procedures have been followed to reach an administrative decision; the decision itself is less frequently within the mandate.

Verification is a core working principle shared by all ombudsmen; however, the way an ombudsman is appointed, their legal statutes and security of office, the institutions to which they are accountable, as well as the possibility to hire staff and control a budget all affect the ability to act, and to act independently, in a verification role. Though parliamentary ombudsmen now exist in many countries, their effectiveness is often limited by their financing. Ombudsmen who depend too heavily on the executive for their financing are in a particularly vulnerable position. Independence can be reinforced in a number of ways (for example, through institutional structures that shield appointees from political interference, and rules that require them to report to broad publics).

All ombudsmen share a set of working principles which are common to systems of verification. Lessons to be learnt include:

- The most effective ombudsmen are those who seek to improve the workings of the administrative system, not to expose or denounce its deficiencies.
- Enforcing legality is not, as such, the prime mover and rallying point of ombudsmen. Rather, the main concern of the successful ombudsman is justice.
- There is a need for financing and reporting arrangements which enhance the fundamental values of the role (for example, financing arrangements that guarantee independence).

Source: Diaw (2008).

agreements focus on international benefits, and their effects on the poor at sub-national level are not a major concern; pro-poor effects are fairly low in the hierarchy of desired outcomes. This may relate to the high level of technical sophistication of the matter under consideration, so that the poor are unlikely to be engaged as a category (for example, in relation to nuclear safeguards) or to the generality of effects (as with the UNFCCC which monitors global public goods). There have been attempts with some conventions to assess their impacts on the poor. CITES is a case in point, though environmental and animal welfare concerns sit uneasily with social interests, and this makes it difficult to implement restrictive policies in legally consistent but still ‘pro-poor’ ways. Similarly, while impacts on poor producers are a concern of the Kimberley Process, they are not necessarily easy ones to champion given the structure and characteristics of the commodity chain for alluvial diamonds. Poor people may be very adversely affected by the loss of employment in diamond prospecting, but the beneficial effects of denying windfall benefits to politicians and warlords may be a much more compelling consideration for international decision-makers.

Where poor or marginal constituencies are an immediate concern, the evidence favours an approach to legislation which is proportionate to the need. Thus, in the case of meat hygiene standards (Box 3.5), special provision has been made for artisanal producers of smoked meats (mostly ham from Southern Europe), for whom the industry-level standards are often way above their technical capacity and financial purchasing power. The high demand for, and emblematic value of, such cultural products has encouraged special provision, and this has been justified in terms of risk assessment (such foodstuffs often being the product of relatively short and well-integrated commodity chains). Similarly, rather than banning preparation styles favoured by ethnic minorities (for example, ‘smokies’ – sides of goat or sheep with the skin still on, but the hair or wool singed off, much favoured by expatriate West Indians and Africans in the UK), extra investment has been made in investigating ways of ensuring that production methods are compatible with the cultural interest and the needs of the supervisory authority, and verification measures have been set accordingly. These benefits may be quite minor and peripheral, however, in Europe at least, most meat processing is now well-integrated into supermarket supply chains, and this encourages major economies of scale.

### 3.4 Summing up

Extra-sectoral experience thus provides useful clues as to how verification regimes may work in the forest sector. Elements such as institutional fora that can accommodate multiple actors and interests and diverse sources of information, and a definition of legality that is acceptable to all of them, would appear to be central to any verification agreement. Similarly, the separation of decision-making levels between the political and technical, and between compliance assessment and enforcement mechanisms at the operational level, would help to depoliticise elements of negotiation which need to be kept outside the political process. A sequential system of information management would seem to be advised, involving three well-defined elements (information gathering, information reviewing and taking measures), with the demarcation of a supreme authority (the ‘taking measures’ function) that enjoys broad public confidence and operates within the political process. This would be with the important proviso that the

‘political process’ in this reference should support democratic principles and ensure good governance in the sense of openness, transparency and public accountability. A capacity for independent oversight is likewise associated with strong international agreements, though with a balanced view of what this should involve, acceptable to both producers and consumers, and a strong emphasis on the forward-looking and constructive rather than the denunciatory and punitive.

The next section of the book (Part B) moves back to the forest sector and examines experience of verification to date within it, as an additional source of learning for the definition of workable verification regimes.

Part B

**Country case studies of forest  
verification**



## Chapter 4

# Preview of issues examined in the country case studies

### 4.1 Introduction

This chapter introduces the set of country case studies of forest sector verification that is presented in Chapters 5 to 16. These studies review the experience of national forest sector verification in twelve countries: Brazil, Canada (British Columbia), Cambodia, Cameroon, Costa Rica, Ecuador, Ghana, Honduras, Indonesia, Malaysia, Nicaragua and the Philippines. This selection covers a wide range of contexts, forest types and trade relationships. Table 4.1 summarises the major verification issues addressed by the case studies.

**Table 4.1**  
**Verification issues addressed by the country case studies**

<b>Countries studied</b>	<b>Key verification issues addressed</b>
British Columbia (Canada)	The focus of this case study is the Forest Practices Board, a unique agency that has the mandate to hold government and industry accountable for sustainable forest management. The case describes the role of this key institutional element of BC's control and verification system and examines how it maintains its independence.
Costa Rica	This case describes the Costa Rican forest administration system, which involves a mixture of state, state-private and independent agents in the control and verification of forest production. The case focuses particularly on the need to secure the financing of verification activities and the role of forestry professionals.
Honduras	This case describes an unreformed system of national forest control in which verification activities have been undertaken by an independent monitor brought in by the Human Rights Commissioner rather than by the forest sector.
Nicaragua	This case describes an emerging verification system. It illustrates the need for a clear legal mandate for verification and the fact that a system designed to tackle illegal logging does not necessarily deal with the greater problem of deforestation.

**Table continues**



**Table 4.1 continued**  
**Verification issues addressed by the country case studies**

<b>Countries studied</b>	<b>Key verification issues addressed</b>
Brazil	This case illustrates the importance of political commitment, visionary leadership and trans-sectoral coordination to tackle verification in the forest sector. It emphasises the ground-breaking legal and institutional reforms which, together with technological innovations, are enhancing the applicability and enforcement of laws that regulate land and forest use. It focuses predominantly on the Amazon region and highlights the way in which federal and state-level checks and balances are combined into an architecture-based verification system.
Ecuador	The focus of this case is Ecuador's innovative but short-lived Outsourced National Forest Control System (SNTCF) which delegated responsibility for monitoring and public administration of forest operations to three different bodies including active participation by civil society and the private sector. The case highlights the need for broad public support, clear legal remits and independent funding for a successful verification system.
Cameroon	Cameroon is one of the pilot countries that are actively preparing for the negotiation of Voluntary Partnership Agreements with the EU. The case describes a mostly donor-driven reform agenda which has led to some significant improvements in forest management, although there are still questions about long-term national ownership.
Ghana	Ghana's national verification system is in the process of being designed. The case study analyses elements of the system architecture and the importance of establishing independence. It also documents the level of investment required to take a sector previously under limited control through a reform process that has the confidence of both national civil society and the international timber market.
Cambodia	This case study focuses on one element of verification – third-party independent monitoring – with two contrasting service providers. It highlights that without national ownership within a domestic coalition for reform, donor-driven programmes stand little chance of success.
Philippines	The focus of this case is the 'Multi-Sectoral Forest Protection Committees' in the Philippines, which illustrate how an independent multi-stakeholder process can be designed and used as a state authorised forestry verification system.
Indonesia	Indonesia's verification system combines mandatory audits as well as industry self-regulation. The case illustrates ongoing work between the Ministry of Forestry and the Indonesian Eco-label Institute (a voluntary certification body) to: (i) define and trial a consolidated legality standard, specifically in response to FLEGT and prospects for a VPA; and (ii) strengthen mandatory SFM standards and accreditation of auditors. Complexities arise from continuing contestation of powers between central, provincial and district government.

**Table continues**

**Table 4.1 continued**  
**Verification issues addressed by the country case studies**

Countries studied	Key verification issues addressed
Malaysia	The three systems (Peninsular Malaysia, Sabah and Sarawak) stand out as examples of state-based verification of legality, relying amongst others on routine monitoring of harvest practices, paper-based timber administration and periodic audits of District Forest Offices and licence holders. The case highlights the interesting combination of voluntary audits (ISO, FSC) and mandatory audits (state or state-related) and discusses the issue of convergence between verification and certification.

It was noted in Chapter 2 that no formal forest sector verification systems linked to trade agreements are yet in place, in the sense of official arrangements that corroborate resource use in agreement with the law and deliver a certificate of compliance to facilitate international trade. However, these case study examples are instructive nevertheless, not least for the building blocks they offer for future systems design. Given the variability of initial conditions in the countries in question, the aim is to identify those principles of verification design that can be applied more generally, and those that are so clearly specific to their context as to warn against attempts to generalise.

Each case study was prepared by one or more members of the international VERIFOR research team, sometimes with the support of a national consultant. The duration of the initial research varied from a few weeks to several months. Most were completed in 2006. In the majority of cases, the situation continues to be very dynamic and a balance had to be found between taking a snapshot and engaging in a process of continuous updating.<sup>1</sup> The research consisted of a series of interviews with a wide range of stakeholders, examination of secondary literature and, in most cases, focus group meetings.

To facilitate comparison, a common analytical framework was developed to guide the country case studies. This framework (summarised in Box 4.1) covers three main areas: drivers, context and description of the system, each comprising a number of key variables. The first area, drivers, is concerned with understanding the impetus to create a verification system and the implications of the diverse forces at work for the varying outcomes. The second area, context, deals with the contextual constraints that might influence verification system design. The range of the existing verification systems underlines the importance of context in understanding both the pressures that lead to their development and their ultimate form. The third part of the framework, description, outlines the key features of each verification system. These three dimensions are elaborated in more detail below.

## 4.2 Drivers of verification

The incentives to put in place a verification regime resolve into two separable sets of issues. First, there are the drivers which create a demand in some quarters for verification to take place. The second set of issues relates to the willingness of government and industry to accede to this demand.

<sup>1</sup> For each case study, the completion date is indicated in a note at the beginning of the chapter, after which time no major updates took place.

### **Box 4.1**

#### **Summary of the analytical framework**

##### **Drivers of verification:**

- Factors that create a demand for verification; and
- Factors that encourage a country to accede to that demand.

##### **Contextual factors:**

- The character of the forest and timber industry, and the location of markets;
- Governance issues;
- The national politico-administrative framework, including the forest administration and the judiciary, and cross-sectoral considerations;
- The legal structure, particularly issues of resource tenure;
- Socio-structural influences; and
- External interests in the forest sector, particularly those of donors and international environmental activists.

##### **Description of the verification system:**

- Organisational structure;
- Institutional location;
- Legal foundation;
- Budgetary independence;
- Reporting structures;
- Pro-poor dimensions; and
- Impacts of the verification system.

Table 4.2 addresses the first of these issues, showing the range of interests and objectives that different stakeholder groups may have with respect to verification. The table offers a three-fold classification split between *promoters* (i.e. those who are likely to actively champion the cause), main *supporters* (who, while unlikely to take the lead, could well lend active support), and those who are more likely to be *neutral* or *opponents*. The table does not seek to characterise the behaviour of all actors in a class, whether individual or collective, but merely to indicate the roles that are typically played by particular institutions in deciding whether to invest in verification of legality. Thus, national forest authorities would seem to take leading roles on FLEGT matters only infrequently – though this is not to suggest that all the individuals who work for them are personally unconcerned. Similarly, local communities often have good reason not to support law enforcement efforts – not because they favour illegality, but because their experience of such efforts is often negative. Nor is the table intended to identify blame. For example, there may be good reasons for large-scale well-capitalised international forest industry having a greater commitment to long-term management than small-scale producers (though of course this may not always be the case), and for staff of forest ministries to find it difficult to act independently of the logging companies, when they are so dependent on them in many ways. The purpose of the table is to underline these frequent dilemmas, and to help understand why interests differ so widely in relation to verification.

**Table 4.2**  
**Key drivers for stakeholder involvement in establishing a verification system**

Objectives of establishing a verification system	Small-scale local forest industry	Large-scale international forest industry	National Forest Department	Producer government	Local communities	NGOs (national and/or international)	Donors
Stop illegal logging							
Strengthen law enforcement							
Limit unfair competition which makes SFM unprofitable							
Reduce loss of national assets (ecosystem services/biodiversity)							
Conserve global public goods							
Secure export markets							
Support forest people							
Achieve more equitable share of forest benefits within the industry							
Combat corruption							
Minimise loss of revenues to the state							
Achieve an export ban on tropical hardwoods							
Comply with donor conditionalities							
Negotiate decentralisation processes							

**Dark-shaded cells** = likely promoters; **light-shaded cells** = likely main supporters; **white cells** = likely neutral or opponents.

**Note:** This table illustrates the typical interests of different stakeholder groups, and the likely sequencing of those interests, but does not attempt to describe the situation in any particular country. The interests at stake will obviously vary greatly both between and within countries. The different objectives listed are not mutually exclusive.

The table underlines the fact that, in producer contexts, it is the international donors who have been most pro-active in seeking to put FLEGT systems in place. National governments have rarely taken the lead, though once the movement is under way, central government authorities could well see advantages in it, particularly as regards enhancing revenue capture and securing overseas markets. Forest authorities are less likely to support the cause, however, as these tend to be more closely bound into the existing systems of patronage. Similarly, logging companies are unlikely to be active early in the process, though once momentum is built up, large-scale international industry may well see benefits in it – much more so than small-scale local forest operators, which may fear marginalisation by international business. The category of ‘NGO’ is a broad and complex one and difficult to characterise in general terms. Some international and local NGOs tend to favour an active engagement with the timber industry and support international trade provided it is well-managed, while others are implacably hostile and see verification as offering an additional means to put pressure on the industry.

It is the combination of the interests and influences of such diverse stakeholders that needs to be taken into account when seeking to understand the dynamics of a verification system. The interests at stake could involve those directly related to FLEGT or other international policy processes, with the clear intent of improving the capture of revenues and the quality of forest law enforcement. Other possibilities include commercial interests (enhancing the brand), political considerations (the concern of a central government to control the economic activities in its provinces) and environmental and human rights concerns. What is apparent from this table (and likely to be common to most situations) is the location of many of the drivers outside of the forest sector, with local and international NGOs and other international actors being particularly prominent.

The political nature of the underlying drivers is well illustrated by the Brazilian case. The Brazilian government’s hostility to the FLEGT process derives largely from its view that the drivers of illegal logging in the country are mainly related to illegal land conversion, not illegal trade. It argues that the large volume of illegally sourced timber on the local market is a secondary effect of the scale of land conversion, and not its primary cause. Thus, the solution, as the Brazilian government sees it, does not lie in demand-side pressures relating to trade, particularly international trade (which, if valid, would justify international interest in Brazil’s forests) but rather in supply-side controls relating to land management practices (which are the sole prerogative of the sovereign Brazilian state). A secondary consideration in the Brazil case is that the country’s export trade is centralised on a small number of ports (less than twenty), and is thus amenable to national controls. The message from the Brazilian government is that these are matters for the sovereign state, and outside the remit of external, particularly northern, political influence. Somewhat similar arguments might be made for, say, Indonesia and other Asian countries, where land conversion for oil palm production and other agricultural crops may account for much of the deforestation. In most parts of Africa, capital-intensive land conversion is less important relative to harvesting practices (and in some cases, smallholder agricultural conversion, though this often comes in the wake of logging operations), and thus pressures focused on the timber industry could have greater impact. A clear lesson to be drawn is that, in any situation, the starting point in designing a verification system must be an assessment of

the underlying problems affecting the forest areas, and an appreciation of the measures that are capable of addressing them.

The ‘willingness to mobilise’ driver can be interpreted in various ways. It might indicate recognition by a producer nation of the extent of disorder within the sector and the need to get its house in order. Alternatively, it could simply be a containment measure without any radical intent, implying nothing more than an acknowledgement that responding early is the best strategy to control a situation that might otherwise get out of hand. In relation to a government’s willingness to address demands for verification, it may be necessary to distinguish between the interests of the government at large in establishing verification mechanisms, and the interests of the responsible forest ministry. In general, revenue-generating forest ministries would seem less enthusiastic than revenue-allocating ministries, such as finance, to tighten up forestry controls. In the case of Indonesia, for example, it was recognition by the Ministry of Finance of the massive scale of losses through illegal logging (indeed, in excess of the loans it was requesting from the IMF to address the financial crisis it then faced) that led, in the late 1990s, to pressure from within the government to improve the standards of forest management.

Once it is accepted that there is a need for improved forest control, and that verification of legality may exert positive pressures in that direction, the challenge resolves into establishing a verification system that is plausible and legitimate to all of the relevant publics. In the complex world of forest politics, it is unlikely that a verification system will be established autonomously by the forest authority. There are a number of reasons for this, including:

- The high costs involved in setting up a verification system additional to the existing structures of forest control;
- The implicit judgement that ‘things are not as they are claimed to be’ and that there is reason to doubt the normal functioning of the forest control system; thus, in diplomatic terms, a loss of face for the forest authority is likely to be implied; and
- The high risks to the political authorities and/or the forest industry in ‘opening up the books’ to external scrutiny, and the dangers that the forces that are unleashed (for example, the demands of indigenous peoples or the ‘good governance movement’) will prove difficult to contain.

It is much more likely that influences external to the forest sector – whether from within the society (for example, civil society activism) or from without (for example, international donors or environmental NGOs) – will be the ones to put pressure on the government to tighten up the forest management and control system, and that the measures introduced will be a response to compromises between the various parties involved.

The situation is evolving fast, however, and movements such as the EU/World Bank FLEG and the Brazil-led ALFA, are bringing their own pressures to bear on producer nations. Thus, while it is still unlikely that most producer governments or forest authorities would act autonomously to establish verification systems, the pressures upon them are subject to change. There may be the beginnings of a trend to expand these external influences, with regional forces becoming more prominent.

The responses of producer nations to any kind of external stimuli for verification are likely to be heavily conditioned by their political and commercial interests, as well as a range of contextual factors.

### 4.3 Contextual factors

Once there is recognition of the need for reform, those committed to the task must either work with what has gone before and proceed in incremental steps, or alternatively have sufficient support, capacity and resources to wipe the slate clean and start afresh. There are a number of structural and institutional constraints acting on a producer government which are likely to influence both its decision to act and the quality of the response. These can be classified into six main categories:

- Characteristics of the forest estate, nature of the associated timber industry, and markets for forest products;
- Governance issues;
- The national politico-administrative framework, including the forest administration and the judiciary, and cross-sectoral considerations;
- The legal structure, particularly systems of resource tenure and the manner of their expression;
- Social structure, both within and outside the forest areas; and
- External interests in the forest sector, particularly those of donors and international environmental activists.

These are reviewed below.

#### **Characteristics of the forest and timber industry, and the location of markets<sup>2</sup>**

The first influence on the propensity to accept a verification regime, and an important factor in conditioning the type of regime established, will be the character of the forest estate, particularly the abundance, value and homogeneity of the stock. The second influence will be the demand for timber and products on international markets. Other things being equal, a country with a large and high-value stock of timber and a prosperous export industry that is a major motor of the national economy is more likely to look favourably on the potential of verification of legality to enhance its international image and trade profile than a country with an impoverished stock and a marginal timber industry.

However, other factors may intervene. The contractual basis on which an industry operates can be anticipated to affect the strength of its interest in sound and legal long-term management. Long leases (of up to 100 years in Malaysia, for instance) would be expected to reinforce this interest, although with the provisos that local transformation capacity is adequately competitive and other players are properly controlled. Differentiation within the industry may also exert an influence. While the legitimate industry may have good reason to want to give proof of the legal origins of its output in a particular country, it may have to contend with a plethora of smaller producers and processors

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<sup>2</sup> We acknowledge the considerable assistance provided by James Hewitt of Global Timber in furnishing the data sets that are presented in this chapter.



who are constrained to buy their timber wherever they can source it and may be selling into a domestic market that is less concerned with legality.

The industrial structure may also have an inherent operational bias to illegality. For example, through a combination of international and internal pressures, several of the main primary producers (Indonesia and Malaysia are examples) have built up processing capacity far in excess of the annual allowable cut for the national forest estate. In the Indonesian case, the gap between the two is reputed to be of the order of 46% (2005). For such producers, decisions about verification may relate not just to how to keep the lid on internal pressures but also the level of control over the import trade on which they depend for part of the throughput of their mills. Mere good intent may be insufficient to guarantee that the industry stays legal, as expensive equipment has to be amortised, and this means operating at or near to capacity.

Trade factors may be important in generating pressures for reform and they help to explain responses to the EU's offer of Voluntary Partnership Agreements. Figure 4.1 shows the level of tropical hardwood exports in 2006, by source.<sup>3</sup> The sample covers the eleven tropical VERIFOR case study countries, which can be divided into three distinct groups:

- 1 The major tropical hardwood exporters, with annual export levels of the order of 10 million cubic metres and above: Malaysia, Indonesia and Brazil;<sup>4</sup>
- 2 A group comprising Cameroon, the Philippines, Ghana, Ecuador and Cambodia all of which have significant hardwood exporting industries, with annual production levels of several hundred thousand cubic metres.
- 3 Three Central American countries (Costa Rica, Honduras and Nicaragua) with no significant international timber trade.

Taking 2006 as the most recent reference year, the market destinations for timber products vary considerably across the VERIFOR country sample. Table 4.3 provides the percentage market share for a number of key consuming countries (the EU, the US, Japan and China). Here, the VERIFOR countries fall into three distinct categories:

- 1 East Asian countries – Malaysia, Indonesia and the Philippines – where the export market to Japan dominates;
- 2 South and North American countries – Brazil, Ecuador and British Columbia (Canada) – where the export market to the US dominates; and
- 3 West and Central African countries – Cameroon and Ghana – where the export market to EU countries dominates.

In the light of these figures, it is no surprise that the VPAs have made more headway with some of the African producers than they have in Latin America. European markets are crucial for most African producers and their supply chains to Europe are quite short. Buyer power is more easily exercised on them as a result. Latin America has a

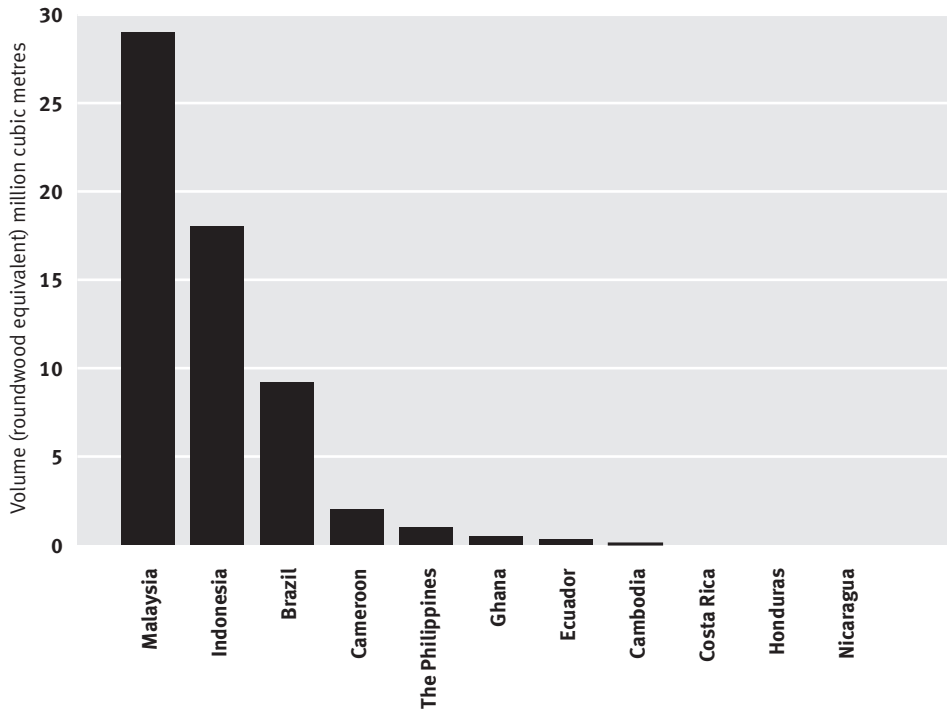
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3 Tropical hardwoods are defined here to include wooden furniture and to exclude fuelwood, pulpwood, pulp and paper.

4 The Malaysian export level is unsurpassed at almost 30 million cubic metres annually, but it should be noted that this includes significant amounts of rubberwood (*Hevea brasiliensis*), particularly in the furniture and fibreboard segments; this wood is derived from ageing rubber plantations, where the governance and conservation concerns are much reduced.



**Figure 4.1**  
**Levels of tropical hardwood exports for the VERIFOR case study countries (2006)**

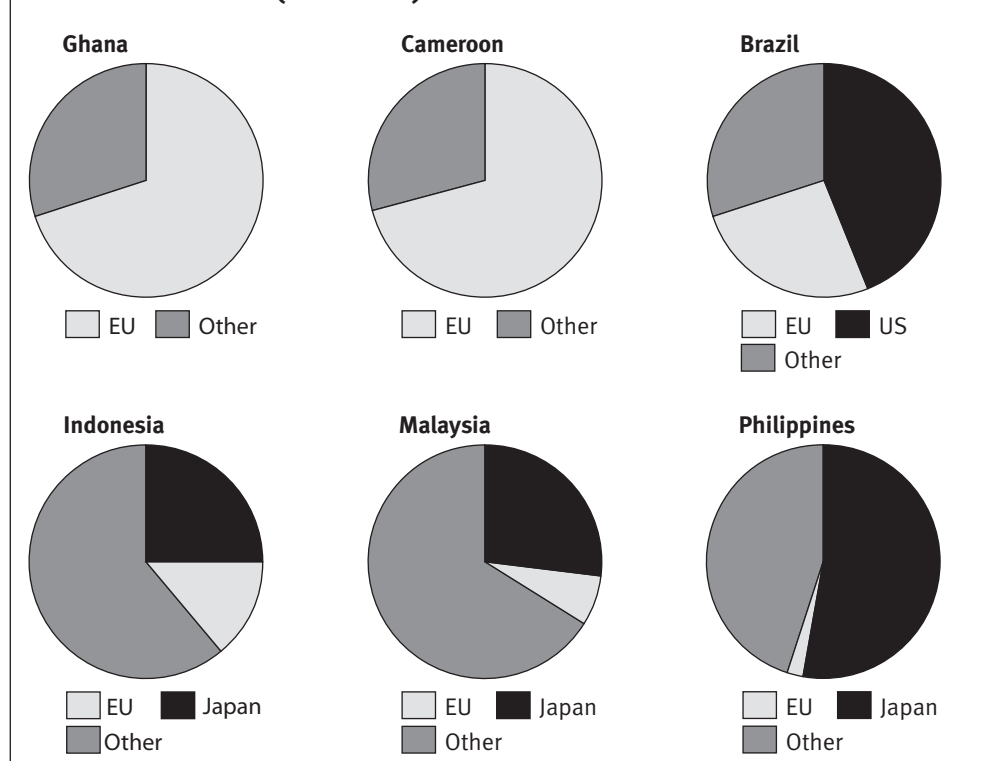


different pattern of timber trade relations, and while big producers such as Brazil do trade extensively with Europe, they are more oriented to the US and other (including internal) markets. For the Central American countries, external markets are very limited and external drivers for the improvement of forest governance are largely lacking. In these countries, the reform agenda is being driven almost exclusively by internal stakeholders, and international trade is rarely a major factor; other policy issues, such as human rights and biodiversity, appear more influential. Asian producers are globally important and very prominent in external trade, but physically close to the burgeoning Chinese market, and characterised by complex supply chains which mix products of diverse origins. Figure 4.2 contrasts the dominant position of the EU in the timber exports of Ghana and Cameroon with the much smaller EU market share in the timber exports of some of the other countries included in the study.

**Table 4.3**  
**Export destinations (2006) for the VERIFOR case study countries,**  
**expressed in percentages of their total exports**

Country	EU	Japan	US	China	Others	Total
Malaysia	7	27	8	10	48	100
Indonesia	14	25	10	9	42	100
British Columbia (Canada)	1	11	84	1	3	100
Brazil	26	1	44	7	22	100
Cameroon	71	0	3	17	9	100
Philippines	2	53	4	19	22	100
Ghana	70	0	20	3	7	100
Ecuador	8	0	86	2	4	100
Cambodia	-	-	-	75	25	100
Costa Rica	-	-	-	-	-	-
Honduras	-	-	-	-	-	-
Nicaragua	-	-	-	-	-	-

**Figure 4.2**  
**Main destinations for some producer countries exporting tropical**  
**hardwood to the EU (2006 data)**



Given these factors, the early interest shown by Malaysia and Indonesia in EU VPAs does call for some explanation. The desire to promote a strong and positive ‘environmental brand’ may be one important factor: both countries are developing strong plantation agriculture and tourism industries, and are projecting the high quality of their natural environments strongly onto the international stage. Internal social pressures may be another influence, as might the concern of certain segments of the industry to shore up their own shares in a declining market situation. Considerations of national prestige (these are major regional actors) are also relevant.

Where the forest industry is highly integrated both vertically (so that logging and transformation are in the hands of the same industrial actor) and horizontally (so that production is relatively homogeneous, and undifferentiated in scale and capacity terms), there are likely to be forces within the industry in favour of verification. This interest may prevail even where the industry is in decline. Indeed, it could even be that it will be strongest in such a situation. An industry in decline may need assured market access even more than a well-endowed one, particularly where much of the industry is in the hands of export-oriented companies that have invested heavily in technology, and have taken out long-term contracts with government and landowners. Ghana and Indonesia are cases in point. For such producers, the external pressures to formally legalise the trade may provide a welcome opportunity to squeeze the small producers out of the chain, to their own long-term advantage. In this respect, there may be parallels with the Kimberley Process for diamonds, where a few dominant industrial producers of kimberlite (deep mine) diamonds stand to benefit from tighter controls over the more dispersed and less disciplined alluvial (sedimentary) diamond producers and markets. The risk of the differences between opposing classes of timber producer being expressed in nationalistic terms may be an additional factor to contend with.

Where production is tainted by allegations of illegality, but is heavily oriented to ‘green’ eco-aware markets, verification may provide a powerful way to increase the pressure on the industry. However, the capacity of an industry to respond cannot be presumed, and a range of factors – from the constitution of the processing industry to the nature of the legal framework – may come into play. Vietnam, for example, has expressed an interest in agreeing a VPA with the EU, but putting this in place could be very challenging. Most of the throughput of Vietnamese mills and factories is provisioned from multiple sources located outside of the country in the South-East Asian sub-region. Tracking products made from wood harvested in diverse producer countries and processed in another one will be a complex and demanding operation. Diplomatic protocols between sovereign states make such tracking especially difficult. A limitation of the VPA approach is that, while the EU has the right to restrict imports into its territory from one VPA signatory country should the goods in question fail to satisfy the terms of the VPA, it would have no right to refuse them if they contain wood or fibre sourced in a third country and legally supplied via the intermediary EU partner state, regardless of European doubts as to the original provenance.

### **Governance issues**

Historically, governance influences have weighed heavily on the forest sector, particularly in the tropics. The centralisation of resource control that helped colonial powers manage recalcitrant colonies sowed the seeds of the habits of predatory use in the post-colonial

era, and it is these habits that the FLEGT movement is intended to address. Where timber production is intermeshed with party politics – either within dominant elements of the ruling class (as in most major producer states) or supporting the interests of a particular regime (as in Burma) – then the challenges can be immense. The element of extra scrutiny that is implicit in a verification system is unlikely to be favourably interpreted by national authorities for whom political stability, even survival, may be given greater priority than securing timber markets. A high proportion of timber-producing states are politically unstable for reasons which do not relate only to poor internal governance. They are also commonly located within turbulent regions and are often trapped in the vacuum of post-cold war politics (Baker et al., 2004).

Political interest, like excess installed capacity, may create its own pressures for predatory use. For example, the Indonesian military has long been under-funded by the national treasury, and has, at least until very recently, been left to its own endeavours to cover the shortfall in its operating costs (reputed to be about 70%). There are frequent allegations that the military is deeply immersed in illegal production and trade (Tacconi et al., 2004).

In such situations, attempts to build verification capacity from within the sector confront some major obstacles. Where there are strong and vocal local constituencies struggling to improve the quality of natural resource management, there are obvious grounds for seeking alliances with high-profile external partners. Where there are not, it may be more difficult for external actors to find a foothold. Each situation is distinctive and merits investigation on its own terms. Whatever the trajectory, an appreciation of the political dynamics of the society and how the forest sector fits into the political economy will be critical to the endeavour.

### **The national politico-administrative framework**

The balance of power and authority between the forest ministry and other departments of government affects the quality of forest governance, and also influences the ways in which the government responds to pressures to prove the legality of its forest management practices.

Imbalances in power relations within the structures of government may be as threatening to good governance as indiscipline and criminality in the industry, and these imbalances need to be researched. For example, forest ministers are typically granted very wide powers over the conduct of the industry, including disciplinary matters (fines for recalcitrant operators, etc.) and this power may distort the functioning of the forest administration quite fundamentally. First, an element of doubt is introduced into its management which can itself have quite pernicious effects (for example, are the levels of sanctions and fines that the minister claims to exercise over the industry actually implemented, or is there a gulf between claimed performance and the reality?). Second, where junior officials are aware of (or at least believe there are) abuses going on at higher levels, it is most unlikely that they will threaten their careers by challenging the *status quo* and indeed, it would be unreasonable to expect such individuals to adopt ‘whistle-blower’ roles (De Maria, 2005). The result tends to be a culture of non-cooperation (or worse, systematic opposition) throughout the forestry administration to any sort of governance reform. One manifestation of this is hostility to measures introduced to verify legality. Third, where the forest minister has strong links to the ruling party then

the ability to ‘act behind closed doors’ only reinforces the tendency for the industry to be used as a political milch cow. This both undermines democratic functioning and decreases the interest of the industry in any meaningful reform.

Where counter-balancing power arrangements are put in place, they have the potential to effect major improvements in forest governance, and create an openness to verification and other measures to improve the performance of the industry. One important locus of power is the finance ministry, as this has its own interest in the performance of the productive sectors and in ensuring efficient capture of the available revenue streams. Where poor governance is systemic in the government, the finance ministry may not be beyond reproach itself but, in any situation, understanding the governmental ‘architecture’ and the checks and balances within it are necessary elements in the political appraisal of verification systems.

Rather similar considerations apply to judicial functions, particularly the roles of the judiciary. The potential for effective verification is heavily dependent on the independence of the judiciary and its willingness to base its judgements on the evidence before it. Where that independence is compromised, the ability of a verification system to enhance the overall quality of governance may be limited. Awareness of these political realities may be crucial to understanding the functioning of the system, as the origins of weak forest governance may well lie partly outside the sector.

### **The legal structure**

The prevailing systems of resource tenure influence both the ability and the will of governments to undertake forest verification. Cost-effectiveness considerations mean that verification in forests that are almost entirely publicly-owned and homogeneous, with very few individual concessions, is likely to be much easier, at least at the technical level, than in forests that are dispersed among individual private owners or among smaller, community-based producers. British Columbia is an example of the first category, much of Europe, South-Eastern Canada and parts of the US (e.g. Washington State) are examples of the second, and parts of Asia (e.g. the Philippines) are examples of the third.

However, whether or not such activities are undertaken in public forests depends ultimately on the level of political will. This is more problematic than technical capacity. The perceived illegitimacy of the legal framework can exert a major influence over the willingness of governments to open up their forest industries to the public gaze, and resource tenure is likely to be a critical element. For example, where there are unresolved issues of indigenous peoples’ rights (as is the case particularly in many Asian countries), the government could well be unsympathetic to the verification enterprise. Overt hostility to indigenous peoples’ claims could be one reason, though it could simply be reluctance to lift the lid further off a simmering and intractable problem. Opening up any contentious areas to public deliberation is often seen by officials as courting controversy and something to be strongly discouraged.

The definition of the standard against which legality of forest enterprise will be judged is another area of contention. The logic in abstracting a legality standard out of myriad laws is clear enough: in many societies forest-relevant laws are numerous, diverse and contradictory (Indonesia, for example, has more than 800 forest-relevant laws). Thus, on purely practical grounds, the laws will need to be distilled down into a small number of measures that express the major intentions of the legislation. However,

achieving this distillation is likely to be a highly sensitive and delicate matter. Civil society groups – particularly indigenous peoples’ champions – are unlikely to forgo such an opportunity to promote their cause. At the same time, gatekeepers of national sovereignty are likely to strongly challenge the presumption that commercial interests should be able to influence what is accepted as ‘legal’ in the society, particularly where that definition requires abandonment of criteria which they may hold dear. These issues are discussed more fully in the section on legality standards in Chapter 19. Some interesting issues relating to legality standards are raised in the negotiation of partnership agreements. For example, while the European Commission’s FLEGT Action Plan (2005) makes clear that the issue of illegality is only an entry point into wider governance concerns, questions arise as to whether a ‘Trojan horse’ approach of this type would be likely to increase or, alternatively diminish, the willingness of the host government to reach policy closure on the initial agenda. The negotiation process could thus risk falling between two stools – failing to satisfy the producer government because it demands too much, and failing to satisfy civil society and indigenous peoples’ groups because it accepts too little.

### **Socio-structural influences**

Issues of social history and social structure impinge on the verification issue in a variety of ways. They do so most obviously in terms of the weak governance to which forest-rich societies are prone. The high value and other characteristics of this extractive resource both increase its propensity to undermine good governance and affect power relations in a variety of related ways. Thus, governments are often reluctant to take any steps that will increase the power of forest dwellers over the management of the resource, if this will diminish their own abilities to transact its benefits in the political realm. Powerful actors often emerge in such societies (the military in several countries, for example, and warlords in Liberia and the Democratic Republic of Congo) whose powers derive from or are reinforced by their abilities to capture the high value of the resource for their own purposes. The most parlous cases of poor governance in the forest sector are likely to be ones where the majority of the resource is in public hands (narrowly defined) and where the forest dwelling populations in closest contact with it lack tenurial security and are poor, marginalised and powerless as a result (Larson and Ribot, 2007). Levels of illegality tend to be highest in such cases, and the pathways to reform the most intractable.

Considerations of land and tree tenure are thus critical for forest governance and have important implications for the focus of verification efforts. Aside from the principle issue of the power of the state, the main questions concern which other actors have security of tenure of forest lands, and whether that security extends also to standing trees. In parts of South America, the ownership problem is, within limits, resolved both as regards land and trees, and forest dwellers can claim full ownership rights over both. This is the case in Ecuador and in parts of Brazil. In other situations, land tenure may offer some security to landowners, but this security does not necessarily affect tree tenure equally. In Ghana, for example, control over trees is vested in the President, regardless of the ownership of the land on which they grow. This was a constitutional provision until 1992, and is now subsumed under the forestry law. Such ambivalence may have a negative impact on the stewardship of the forest, in that it diminishes the sympathy

of landowners for timber operators, and it also lowers their commitment to uphold the law. In the longer term, it also decreases the incentives to replenish the stock of native species (Danso and Opoku, 2005).

Where traditional land claims are not upheld at any level, the potential for conflict is multiplied. Insecurity of tenure converts the forest dwelling population into squatters on public lands, whose very livelihoods become subsumed, by definition, into the sphere of 'illegality'. In areas where shifting cultivation is still the most economically rational form of land-use for those with limited capital, access to quite large land areas may be required to maintain soil fertility. Indigenous peoples may need even larger areas to maintain their traditional lifestyles, particularly where they depend heavily on wild animal meat for their protein and need access to a wide variety of non-timber forest products. These needs may not be incompatible with timber harvesting, though this would have to be established case-by-case. More likely is a situation where this incompatibility is presumed by the state, which then uses this presumption to justify satisfying only one constituency, namely the timber industry.

The lack of tenurial rights severely weakens the bargaining power of the poor, but equally important is their ability to defend their rights (Wells et al., 2006). The poor often find it difficult to defend their claims against outsiders, and are thus forced to adopt survival strategies which, while valid in the short term, risk gradually eroding their rights. Low ability to defend rights may be due to a lack of authority to challenge actions sanctioned by the state, or simply the high cost and administrative complexity of attempting to do so. It is also not uncommon for one form of tenure to become subordinated to another for essentially political reasons, a process which is especially likely to happen where community tenure lacks buy-in from the state. For example, community tenure is ostensibly already prevalent in Papua New Guinea and the Democratic Republic of Congo, but in both cases political factors strengthen the politico-industrial interest and weaken the claims of the poor (see, for example, Bird et al., 2007 and Hoare et al., 2007). In Cameroon, the attempt to reinforce community rights in the artisanal sector has led to frequent capture by the industry and spiralling illegality (Oyono et al., 2006). This poses an immense practical challenge for forest control and verification. All of these factors are likely to reduce the willingness of verification champions to take on the state-industry nexus, knowing that the affected rural communities may lack both the right and the means to defend their interests. Where, as in the Cameroon case, communities have little choice but to operate 'illegally' themselves for much of the time, the outcome could well be victim-blaming rather than the tightening up of a rapacious industry.

In situations where the forest estate is divided between industrial concessionaires and small and medium enterprises, economic considerations come to the fore. Costs that are relatively minor to capital-intensive industry may be substantial to the smallholder, and the way in which they are incurred (for example, whether they are front-loaded onto the producer) will affect the ability of the latter to conform. It is thus essential to understand the different classes of economic operator before the cost-effectiveness of particular verification efforts can be assessed.

The character of resource tenure also affects enforcement efforts. Where tree tenurial rights are weakly established or absent, one consequence could be the deflection of enforcement activities onto those with the least ability to change their behaviour. For



example, enforcers may become preoccupied with the activities of small-scale chainsaw operators – in part at least, because these are a ready focus for rent-seeking behaviour (i.e. bribery and corruption). This can obscure the underlying policy failures that are causing the rapid decline of the resource, which can often be found in the lack of incentives for conservation, and not in the criminal behaviour of the poor.<sup>5</sup>

It is therefore important for the legality assurance system to discriminate between different forms of ‘illegality’ and attention needs to be focused on whether the system helps to reveal the true grounds of ‘criminality’ and addresses behaviour that is amenable to reform. Diverting the energies of the legality assurance system onto small operators who have very limited abilities to change their practices is unlikely to succeed and is hardly compatible with ‘good governance’.<sup>6</sup>

The strength of civil society and its ability to participate in the legality debate may also reflect deep-seated socio-structural factors, and these were issues for the case study research. A recent history of revolutionary change or civil war may have a major influence on the confidence and reputation of civil society, as some of the South-East Asian cases exemplify. The extent of the association of social class structure and environmental activism is an issue for research. By and large, one would anticipate that high levels of environmental awareness and activism would be associated with an economically diversified society and a prominent middle class. As a corollary, countries with a small population and substantial forest areas, where the economy is heavily dependent on the rents from extractive industries and where social structures are highly polarised, would be anticipated to have fairly weak civil societies and low levels of environmental activism. ‘Environmental awareness’ is a more complex phenomenon; small farmers would be anticipated to have very high environmental awareness, though that may not translate into forms of activism that engage easily with the government or the aid community. A ‘strong civil society’ may not be strong in ways that suit modern political processes, particularly those with an international dimension. A weak civil society in its modern form tends to imply one with low NGO capacity and a small associational movement of a type familiar in the north. It does not necessarily imply lack of indigenous civil society capacity; the problem is that such mobilisation often has a largely ethnic or tribal character, and is reinforced by language differences. Wide geographic dispersion (which is almost implicit where there are still large areas of standing natural forest) compounds the difficulties. All of these factors diminish the ability to engage with international actors and ‘modern agendas’ and they can also be problematic for national governments.

An interesting question is whether social movements which champion environmental values will necessarily be ‘pro-poor’. In Africa, the NGO movement is incipient, and its links to a wider civil society are not unproblematic, particularly in relation to the interests of the poor. Internal capacity for NGO self-regulation is often limited, and this affects its capacity to speak with one voice. By the same token, its capacity to stand up

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5 As Rackham (1986) comments, the condition of the forest often has more to do with the factors that encourage tree growth than those that encourage tree cutting.

6 This danger is acknowledged in the World Bank FLEG strategy, which states: ‘*Despite the magnitude of the problem [of forest crime], there are few instances of prosecution and punishment. In fact, if there are prosecutions it is the poor, looking to supplement their meager livelihoods, who are victimized and sent to jail. Large-scale operators continue with impunity. Arguably, this is the worst form of violation of equity and justice, arising from a clear failure of governance and it needs to be addressed.*’ (World Bank, 2006: xi).



to powerful forces in the timber industry may also be limited, and highly dependent on the alliances which its members form with external organisations, and the levels of support that outsiders provide. Environmental NGOs tend to be stronger in parts of Latin America and Asia, although again, this does not guarantee that they will be 'pro-poor'. Some have a distinct urban bias, and questionable empathy with independent peasant producers or little interest in championing their cause. Development-oriented environmental NGOs may be active, though they tend to be strongest where they have a clearly defined constituency, as with champions of indigenous peoples' rights.

While social structure can be anticipated to impact on the potential for forest governance, and to affect the likelihood that investment in verification activities will impact positively on the quality of governance, the relationships are not determinant, and structure and governance do not necessarily interact in a mechanistic way. Thus, the issues need to be investigated on a case-by-case basis with due allowance for the influence of history.

### **External interests in the forest sector**

The extent of external interest in the forest sector is an important influence on the trajectory of forest sector reform. Such support may be particularly critical in forest-rich societies where political relations are imbalanced and governance is weak. These external supporters are normally of two main types: northern donors and environmental and human rights activists.

In recent years, the donor group with an interest in FLEG has been fairly narrowly drawn from the Bretton Woods Institutions (the World Bank and the IMF) and, particularly in relation to the VPAs, the northern donors in the EU group (chiefly Denmark, France, Germany, the Netherlands and the UK). Other donors have been active in geographical areas of particular national interest – thus, Australia in relation to Cambodia and other South-East Asian states. Prominence of the forestry sector in internationally supported policy processes such as national poverty reduction strategies may increase the donor interest, though the evidence to date is that forests and the environment are almost always under-represented in such processes (see Bird and Cabral, 2007). Of interest is the low participation in FLEG hitherto of major consumer nations such as China and Japan. International fora such as the Europe and North Asia FLEG meeting in November 2005 (which brought together former Soviet bloc countries) and the FLEG China meeting in October 2007 are thus interesting developments, which may help to broaden the participation of these major actors.

The environmental and human rights activists are often NGOs in the same Western European states as the main aid donors, though they also include the powerful conservation lobby in the US. The prominent role of northern environmentalists and rights advocates is a notable feature of the current FLEGT scene, and an important dimension of several of the case studies. The part played by these movements in the forest sector has not come about in isolation but has been part of a gradual change in the pattern of public authority in the post-cold war period – specifically the encroachment of private and non-governmental actors into areas formerly reserved for official authorities.

Different commentators have conceptualised this changing scene in different ways. Writing from a general governance perspective, Pastor (1999) focuses on the expansion in what he calls 'the dimensions of accountability'. Traditional accountability, he

argues, involves two dimensions: a horizontal dimension, between the institutions of government, which should not (at least in theory) encroach on the legitimate areas of responsibility of each other; and a vertical dimension of accountability of the government to its people, via elections and other means. Pastor proposes a third dimension of accountability, strengthening both vertical and horizontal accountability through the actions of international institutions. Goetz and Jenkin (2004), drawing on two case studies from India, consider forms of civil society activism that challenge the vertical-horizontal dichotomy around which accountability has classically been conceptualised. The two organisations in question have used methods normally associated with official state institutions of horizontal accountability. They describe this as a ‘hybrid form of accountability’ bridging the traditional first/second dimension divide – a form of direct citizen (vertical) engagement in (horizontal) intra-state accountability functions. In the forest sector, a complicating factor is the leading role played by external advocacy NGOs and private sector organisations (the distinction is not always very clear) in public accountability. These go beyond the established roles of non-government organisations in promoting industry self-regulation through certification schemes and the like (see Brosius, 1997).

Three aspects of this situation are of particular interest in the case studies that follow. First, the interests that the external (‘international’) organisations bring to bear on matters that have been hitherto treated as under the sanctity of the sovereign producer state. So profound has the international influence on national policy formulation become that the term ‘intermediary state’ has been coined to describe this relationship. The ‘intermediary state’ is one which readily takes up external expectation and global concerns into national policy (Kaul et al., 2003). Second are the relations between the external organisations and various national actors, both NGOs and civil society groups. The class dynamics which underpin these relations are an area of particular interest (Lipschutz and Fogel, 2002). The third issue is more strategic; it concerns the extent to which actions initiated outside of the society can contribute to the long-term resolution of internal governance challenges. Experience from other sectors and initiatives suggests that external pressures are likely to have limited long-term impact unless they work through the agenda of a nationally-led reform process, and some of the central thrusts of current aid policy (for example, multi-donor budgetary support linked to national poverty reduction strategies) aim to reinforce this link (see Booth, 2004 and De Renzio and Smith, 2005).

#### **4.4 Key elements and impacts of the verification system**

##### **Elements of the verification system**

Much of this book is devoted to identifying the necessary elements of a verification system, and how the system can be constructed so as to maintain high levels of political will. These issues are partly context-dependent, though there are also generic elements to be considered, as regards the functionality of the overall design.

The key features of a verification system, which were identified as of particular interest to the VERIFOR research, are summarised in Box 4.2. The first and most crucial influences on organisational design are the objectives of the system. Is the aim only to control law breaking and strengthen enforcement, or to address complex problems

## **Box 4.2**

### **Elements of a verification system**

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#### **Central objectives:**

- Does the system aim to control law breaking, to strengthen enforcement and/or to address complex problems relating to regulation and pressures on the industry?

#### **Institutional location:**

- How close is the system to the official government structure?
- How does the governance of the sector impinge on the functioning of the verification system?
- What is the technical capacity of the sector authorities?
- Are there linkages into other areas of governance reform and does this offer added leverage?
- Does the system depend heavily on the support of civil society and/or the media to operate successfully?
- What external controls exist over the verification scheme and over the publication of audits?

#### **Legal foundation:**

- What is the legal basis of the monitoring scheme (e.g. forest law, anti-corruption law); is illegal logging a civil or criminal offence?
- What are the legal authorities – who assigns, who controls and who punishes? Who is/are the legal authorities? Is there a separation of executive and judiciary functions? What separation exists between assignment of permits and concessions and exercise of law enforcement and control? What are the rules on conflict of interest?
- What are the legal conditions that need to be secured for the verification body/ies to function effectively? Is the performance of these bodies monitored and are redressive actions taken, as necessary?
- Are legal infractions assessed against a practicality standard (for example, is there always a legal alternative to the behaviour deemed illegal, and if not, what steps are taken by the legal authority to reconcile the conflict)? Ditto for a consistency standard.
- Are the resources provided to render the legal system effective, and if so, how?

#### **Organisational structure:**

- What is the extent of political and/or industry power and influence over appointments and the ways of working of the verification body?
- What are the methods and arrangements, if any, that secure independence and transparency?

#### **Budgetary independence:**

- How is the system financed, and what means, if any, exist within the financing to protect the system from external interference?
- Is the body sustainable in fiscal terms?

**Box continues**

**Box 4.2 continued****Cross checks and balances with other controlling bodies:**

- What is the extent of public oversight and what linkages exist with other agencies such as the police or armed forces?
- What is the enforcement responsibility of various actors?

**Reporting structures:**

- What are the links into the wider society, and do these help secure national legitimacy and ownership?
- To what extent is reporting automatic and immune to sectional pressures, or alternatively, excessively subject to them?
- Is there access to data once reported, and how transparent is the reporting process?

relating to regulation and pressures on the industry, or are there broader social goals relating to the potential for growth and welfare of the forest-dependent poor? Where the system aspires to social objectives and broader societal benefits, this is likely to impact very positively on the levels of participation and ‘ownership’ of civil society actors. Where the aim is only enforcement, on the other hand, this interest is likely to diminish. In such a situation, the conception of ‘criminality’ is a critical concern, particularly where the focus extends beyond the industrial concessionaires and includes small and medium enterprises.

A second factor is institutional location, which affects the propensity to sound governance in a number of ways – most notably as a reflection of the relationships between the forest ministry and the other relevant departments (finance, planning, local government and environment). Forest ministries are notably weak and marginal in many producer countries, a fact that has often been attributed to purposeful design (see, for example, Ross, 2001). This weakness may be compounded by a plethora of institutions with overlapping responsibilities, as well as by the excessive concentration of authority in the hands of a few individuals. Quite often, these institutional conflicts occur in an environment in which the necessary skills are notably lacking in the ministry, so that ‘redundancy’ between alternative providers is limited, and adherence to professional standards is thus doubly difficult to achieve. The inability of a forest control body to undertake its task effectively has often to be understood partly in relation to this unpropitious institutional environment.

A third area of interest concerns the legal foundation for the verification operations, including the identities of the relevant legal authorities and the legal basis on which monitoring is undertaken. Any changes that have been made to the legal framework to facilitate the operation of a verification system are particularly worthy of note. These changes might relate, for example, to attempts to ensure complementarities between the law enforcement agencies and the verification body in terms of roles and competences. The consistency of the legal framework is also relevant, as any inconsistencies would create a danger that, in meeting one legal requirement, there might be a risk of breaching another. This is particularly the case where forest authorities are partly but incompletely decentralised, so that different levels have overlapping and possibly contradictory

authorities. In such instances, any procedures that have been put in place to reconcile the resulting conflicts would need to be identified.

The capacity to adapt legal processes to resource users' needs provides an important measure of the commitment to equity and justice. Thus, where legal infractions are assessed either continuously or periodically against a practicality standard, there is potential for the system to respond to the constraints that actors face, especially those actors endowed with very limited means. The level of commitment is also exemplified by the willingness of authorities to develop appeals procedures, for both the industry and the populations with which it interacts.

Other dimensions of verification system design of interest to the research relate to the capacity for independent operation, and the extent of its immunity to the political pressures described above. The extent of budgetary independence is of evident interest here, in that verification decisions should be based on merit and unaffected by the financial interests of the verifying body. The ideal is long-term financial security, as this is likely to provide the strongest guarantee of commitment to independence. Where budgetary independence was compromised, this was of obvious interest to the research.

Similarly, reporting structures need to be protected from external interference. The ways in which information is processed reveal much about the commitment to truthful reporting, as does the clarity of the separation between information processing and the political decisions that are made with the information available. That the final decisions may be 'political' is perhaps less important than the recognition of this fact, and the willingness of the authorities to permit the circulation of the underlying information on which decisions are based. An issue of interest here is the extent to which political discretion is present in the information management process. Using appropriate management instruments, it is possible to 'design the politics out' and to make reporting automatic and immune from sectional pressures (see, for example, Brown et al., 2004). Evidence that such attempts have been made is clearly a strong sign of positive intent.

### **Impacts of the verification system**

Once a verification body is in place, evidence needs to be sought of its potential to effect positive change. Impacts should be assessed on at least two levels within the research framework: first, the range of impacts that the verification body seeks to deliver, and second, the extent to which these are 'pro-poor'. In each case, indicators of the commitment to positive outcomes need to be identified. These might include such considerations as the degree to which the social objectives are clearly articulated and whether structures were put in place at the very start to monitor and evaluate their attainment.

The producer government may present the objectives of the verification system in terms of governance reform, resource conservation and sustainable use, but its interest could be limited to industry profitability. Even where there is positive commitment to the wider concerns, reform may be incomplete, as priorities change. It can be anticipated that the narrower the range of aims of verification that are acknowledged by the government, the less likely it will be that these include poverty impacts. Where the latter are acknowledged, they may be based on differing concepts of poverty. For example:

- If poverty is seen primarily in terms of *public service provision*, emphasis will need to be put on how revenues are monitored and traced within the verification system, and then levels of service provision assessed. This could

be problematic and highly subjective; for example, if a concession agreement requires a concessionaire to provide social infrastructure such as clinics, schools and bridges, how is the provision to be assessed and by whom? Monitors may well lack the engineering knowledge to be able to assess the adequacy of these infrastructures.

- If poverty is seen in terms of *securing basic safety nets*, the emphasis would have to be on the provisions and respect of the '*cahiers des charges*' (contract specification, particularly as regards any social responsibility agreements), to see whether the verification system respects social conditions (for example, 'no cutting of a tree species of local value for its non-timber products within x km of a settlement, without the formal agreement of the community').
- If poverty is seen in terms of *economic integration and pro-poor growth*, the focus would have to be on macro-economic dimensions of revenue generation and deployment, the stimulus given by the enterprise to the wider society (e.g. employment opportunities) – and how to monitor both of these.

Key indicators of social commitment will be whether forest dwellers were involved in the design of the system, and what voice they have been granted over its operation. These concerns are unlikely to be stand-alone; they relate to the broader commitment of the national authorities to the good governance principles of accountability, transparency and public participation.

#### 4.5 Summing up

The preceding paragraphs have established that the process of putting in place a verification system has three phases. First, an appraisal is made of the underlying causes of poor forest governance, and an appreciation of the extent to which the problems in question might be addressed by improvements to timber production and trade. (Whether this appraisal is effectively carried out is another matter, of course; many of the cases which follow would draw this into question). Second, a decision is made by the government either to accede to the desire for reform or to resist it. (Variation in commitment to reform across government can also be expected to be the norm rather than the exception, as the case studies attest.) This decision will depend on a number of factors, relating both to the character of the forest industry and the demands placed on it by the society and by its external partners. Third, the verification system is designed, which could well prove to be even more protracted and politicised than the earlier two phases.

The next chapters review leading examples of verification system design in the forest sector in twelve countries. These studies are followed, in Part C, by a review of the important cross-cutting themes emerging from these country cases.



## Chapter 5

# The Forest Practices Board of British Columbia

**Note:** This case study was completed in April 2006 and is authored by Kate Schreckenberg. It is based on Schreckenberg, K. (2006) 'Verification in the Forest Sector of British Columbia', VERIFOR Country Case Study No. 2. London: ODI.

**Table 5.1**  
**British Columbia: some key statistics**

Statistic		Date	Data source
Population	4.3 million	2006	<a href="http://www.bcstats.gov.bc.ca/index.asp">www.bcstats.gov.bc.ca/index.asp</a>
Land area	95 million ha	2005	COFI, 2005
Forest cover	62%	2005	COFI, 2005
Public forest ownership	95%	2004	MoF, 2004
Industrial roundwood production	81.5 million m <sup>3</sup>	2006	MFR, 2007
Formal forestry sector employment	87,300	2002-3	MoF, 2003
Contribution of forestry sector to GDP	7.7%	2004	<a href="http://www.bcstats.gov.bc.ca/data/bus_stat/bcea/BCEACurr.asp">www.bcstats.gov.bc.ca/data/bus_stat/bcea/BCEACurr.asp</a>
Value of forest product exports	US\$9.6bn	2004	<a href="http://www.bcstats.gov.bc.ca/data/bus_stat/bcea/BCEACurr.asp">www.bcstats.gov.bc.ca/data/bus_stat/bcea/BCEACurr.asp</a>
Main international markets for timber	US and Japan	2006	MFR, 2007
TI corruption perception index (for Canada) (0-10, where 0 = most corrupt)	8.5	2006	Transparency International, 2006
Human Development Index (for Canada) (0-1, where 0 = very low)	0.95	2004	UNDP, 2006a

### 5.1 Introduction

The focus of this case study is the Forest Practices Board of British Columbia, a globally unique agency with a mandate to hold both the government and forest industry publicly accountable for forest and range practices. Other elements of the BC forest administration and control system are touched upon but not discussed in detail.



## 5.2 Why the need for verification?

Canadian forestry is predominantly a provincial affair with British Columbia (BC) being the country's most forest-dependent province. Forest covers 62% of the province's 95 million hectares (COFI, 2005) and the forest industry generates CAD1.2bn in annual revenues for the BC government (MoF, 2003).<sup>1</sup> In 2002/3 there were 87,300 forest workers (MoF, 2003), accounting for 4.4% of total employment in the province but total employment linked to the forest sector may be as high as 14% (MoF, 2004).

BC is known internationally for its unique flora and rare fauna, such as the spotted owl and the mountain caribou. Coastal BC is home to 20% of the world's remaining temperate rainforest (WRI, 2001). In the late 1980s/early 1990s the BC forest industry came under heavy fire from local, national and international environmental NGOs criticising the damage caused by an unregulated industry. A protracted dispute, known as the 'war in the woods', culminated in 1993 when tens of thousands of people protested the clear cutting of coastal old growth rainforests in Clayoquot Sound. Environmental groups consciously targeted BC exports in Europe and US forest products markets in an effort to increase regulation of the industry (Cashore et al., 2006), with the result that some European and American customers of the logging company active in Clayoquot cancelled their contracts.

Adverse publicity, both domestically and internationally contributed to the government decision to set up a Forest Resources Commission, bringing together representatives of labour organisations, the timber industry and local communities. The Commission found that 'past failure to recognize and adequately manage for forest values other than timber and to manage more intensely for timber values has put the very existence of B.C.'s largest economic sector at risk' (cited in SLDF/FW 2002). To remedy what it saw as a lack of consistency in forest stewardship, the Commission recommended bringing together several separate Acts and regulations in a single Forest Practices Code. This comprised some of the most stringent forest regulations in the world and performed an important role in increasing confidence in the manner in which the forest industry in BC operated (Cashore et al., 2006). In parallel with the establishment of the Code in 1995, the government created an independent Forest Practices Board (FPB) in the same year.

## 5.3 The FPB's mandate

The mission of the FPB is 'to serve the public interest as the independent watchdog for sound forest practices in British Columbia' with a mandate to:

- Audit forest practices of government and licence holders on public lands;
- Audit government enforcement of the Forest and Range Practices Act (FRPA; see below);
- Investigate public complaints;
- Undertake special investigations of forestry issues;
- Participate in administrative appeals; and
- Provide reports on Board activities, findings and recommendations.

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<sup>1</sup> CAD refers to the Canadian dollar, where CAD1 = US\$0.87 (January 2006).

Through these activities, the FPB can recommend improvements to forest and range practices and government regulations where these relate to the pursuit of specific forest practices.

There is broad support for the FPB from all the main stakeholders – government, industry, environmental NGOs and First Nations groups. One indication of this is that its mandate was reconfirmed under the new and radically different results-based Forest and Range Practices Act (FRPA). This came into effect in 2004 following industry concerns about the heavy burden of the prescriptive management of the Code ('forest stewardship by cookbook') and in the context of general deregulation following the election of a new Liberal government in 2001. Some conservationists who are highly dissatisfied with the FRPA consider the Board largely irrelevant to their cause of improving the policy framework for sustainable forest management and land-use planning. Some would like to see the FPB's mandate extended beyond mere stewardship to enable the Board to act as a policy watchdog that also has oversight of issues currently governed by the Forest Act, including determinations regarding road permits and cutting permits, the adequacy of the Timber Supply Review process, the determination and apportionment of the Allowable Annual Cut and determinations regarding issuance and renewal of tenure agreements (SDLF/FW, 2002). Reflecting a concern about the heavy footprint of other land-uses such as the essentially self-regulated gas and oil industry in the interior, there is also a view that the FPB mandate needs to be extended to the wider arena of natural resource use or land-use planning.

## 5.4 Verification system design

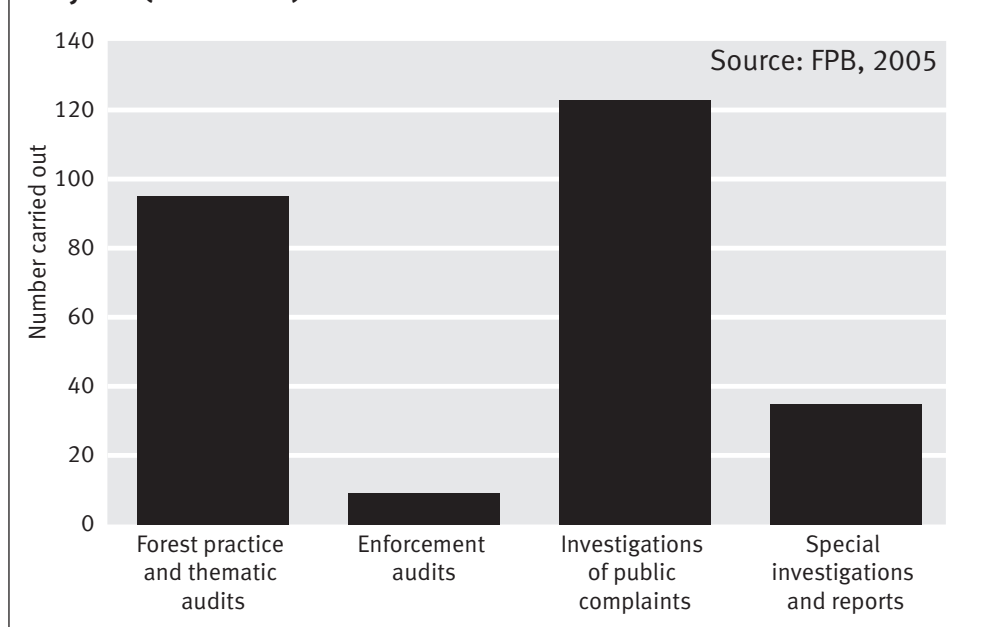
### Activities of the FPB

Through its range of activities, the FPB provides independent monitoring and oversight of forest and range practices in BC. Although it does not use the term verification for any of its activities, the sum of its activities achieves the function of many verifiers, namely to contribute to building confidence in the forest sector. The FPB is external to the forest sector and undertakes a range of activities, the frequency of which is indicated in Figure 5.1. These activities are described below.

### Audits of forest practices

Audits of licensee and government forestry operations examine some or all of the auditee's forest and range planning and practices in their licence area, including for example operational planning, road construction, maintenance and deactivation, timber harvesting, silviculture and fire protection. FPB audits are random but once a licence has been the subject of a Board compliance audit, it is removed from the 'pool' for audit selection for five years to ensure that more licences are audited and to reduce the possible burden of recurring audits on licence holders. Since 2002, when the FPB audited its first certified company, it has been willing to use information produced during inspections by certifying bodies. This reduces field time and costs for the Board and the licensee but is only possible if the audited company is willing for this information to be made public. Audit reports are released to the auditee first and then to the public and government.

**Figure 5.1**  
**Main activities of the British Columbia Forest Practices Board in its first ten years (1995-2004)**



### **Thematic audits**

A thematic audit examines forest and range planning and practices of one or more licensees that relate to a specific forest value in a selected geographic area, such as riparian, soil or visual quality.

### **Audits of enforcement activities**

An enforcement audit corresponds most closely to a narrow definition of a verification activity in that it is a random check on whether enforcement of the FRPA and regulations by government agencies is appropriate. It includes examination of compliance and enforcement policies and procedures as well as specific inspection files, reports, investigations, remediation orders and contravention determinations. It is often undertaken together with a forest practices audit to allow for cross-referencing between the results of the field audit and the compliance and enforcement actions of government agencies.

### **Complaints investigations**

In addition to random audits, the FPB has an ombudsman-like function, investigating a wide range of complaints, including complaints against government agencies, companies and individuals. During investigations, the Board acts as an independent and neutral investigator, not an advocate on behalf of the complainant. It may consult with all parties and attempt to resolve the complaint. On completion of an investigation, a report – including recommendations as appropriate – is submitted to the parties concerned, the public and the relevant ministers.

### Special reports

Of greatest public interest and potential policy impact are the special reports that the Board can produce on issues that come up frequently in audits as subjects of public concern. The FPB has complete freedom to choose which topics to investigate. Recent issues examined by the Board have included the Mountain Caribou, logging in highlands, forest practices relating to management of the mountain pine beetle epidemic, and the need to reconcile management of non-timber forest products with forestry planning and practices. In writing special reports, the FPB consults widely with all possible stakeholders.

### Enforcement and sanctions

The FPB cannot impose a penalty, even where non-compliance is encountered, but must rely on the Compliance and Enforcement (C&E) branch of the Ministry of Forests and Range (MFR) to follow up such cases as appropriate. The C&E branch can resort to a number of different enforcement actions depending on the gravity of the contravention, the most common of which are monetary penalties and violation tickets (C&E, 2004). More serious enforcement actions are available but rarely used. These include Stop Work orders, remediation orders, licence suspension or cancellation, timber sale disqualification and orders to vacate. In extreme cases, the C&E inspectors may recommend a prosecution by the Attorney General.

The Board may request to be informed about how its recommendations are implemented but has no power to ensure their uptake. However, it places strong emphasis on public information, making all its reports available to the public in both full and summarised form. Depending on the recommendations, a powerful and well-informed civil society can be relied upon to exert pressure on target groups (primarily the government and/or industry) to move forward with implementation.

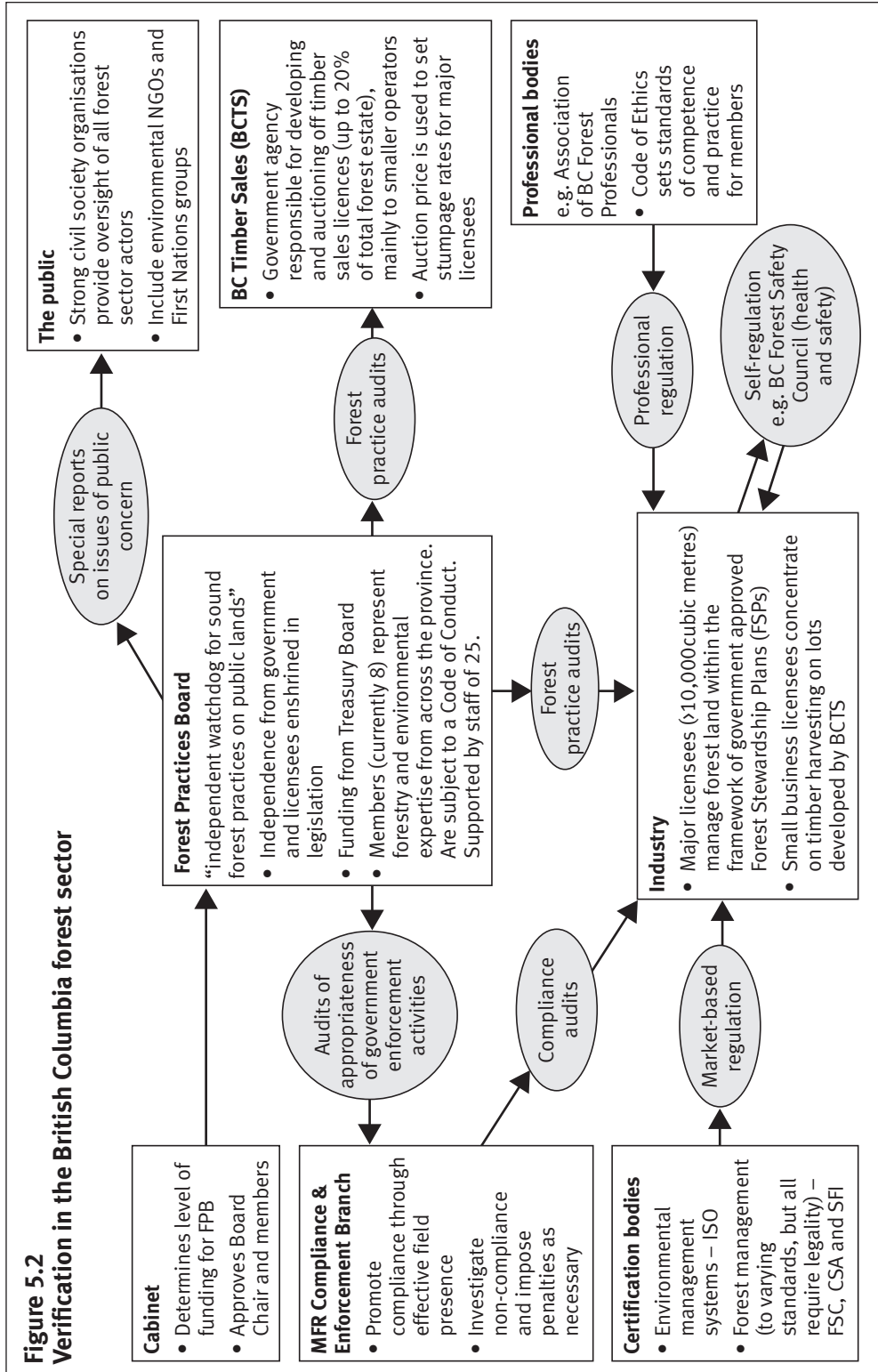
### Other actors in the forest governance system

Although the FPB is the only body with a specific mandate, other actors play important roles in ensuring the credibility of the BC forest sector (see Figure 5.2). These actors are described below.

The MFR's C&E branch ensures that forestry laws are being followed in BC's public forests and takes action where there is non-compliance. C&E staff evaluate licensee operations for risk and develop an inspection plan for high-risk priority sites. They also carry out reactionary inspections based on information received from other staff, agencies, operators or the public, and follow-up inspections to address identified concerns. C&E officials conduct more than 16,000 inspections per year to assess compliance with forest laws.

The *Association of BC Forest Professionals* (ABCFP) is a professional regulatory body of which any forester operating in BC must be a member. The ABCFP sets standards of competence and practice for its members to protect the public interest in stewardship of resources and to hold members accountable for their actions through discipline and quality assurance processes.

The *forest industry* has introduced initiatives such as the British Columbia Forest Safety Council. Created in September 2004, this not-for-profit association includes all of the major forestry organisations and is mandated to work within the forest industry



to eliminate fatalities and injuries. One of its first actions has been to create a Forestry Safety Ombudsman.

*Third-party certification* is widespread in BC. Most forest companies have environmental management systems certified by the International Organization for Standardization (ISO 14001 EMS). In addition, many of the larger companies are members of one of the three forest certification schemes used in Canada today: the Sustainable Forestry Initiative (SFI), the Canadian Standards Association (CSA) and the Forest Stewardship Council (FSC).

*Civil society* in BC is well organised. Environmental NGOs and First Nations groups play a particularly important role in drawing attention to practices they consider incompatible with sustainable forest management and/or land-use.

### **Independence of the FPB**

Within the limits of its mandate, the current FPB is seen by all parties to act with a high level of independence (FPB, 2006a). Its reports show no visible favourites, with recommendations targeted at both the forest industry and government. The Board's independence from licensees and the government is ensured by legislation, which also enables it to report to the public without interference and vetting. While the Board addresses its reports to the Minister of Forests and Range, the Minister of Environment, the Minister of Agriculture and Lands and the Minister of Energy, Mines and Petroleum Resources, its reports and findings are not provided to government for revision or comment in advance of public release. The Board also has the power to compel the submission of evidence in the course of its investigations, and it has the authority to audit and investigate the government's forest practices and enforcement actions.

The Board is accountable to the BC Cabinet. This means that the Board's independence – in terms of its funding and membership – is potentially vulnerable to manipulation by Cabinet and, indirectly, by the influential timber industry through its election support to particular political parties. The Board's funding, which was approximately CAD3.6m for 2004/5 and again in 2005/6, comes directly from the Treasury Board. This helps to protect it against funding pressures that might arise from an association with any of the four ministries responsible for the administration of forest lands. Nevertheless the Board is not immune to government-wide cutbacks and recently suffered a reduction from its original CAD5m budget, thus constraining its capacity for action. In terms of staffing, the Board has 8 members supported by a staff of 25 professional foresters, biologists, accountants and lawyers. Board members represent a broad range of expertise and experience in forestry and the environment from across the province. They are appointed in a personal capacity rather than as representatives of a specific interest group. A Code of Conduct has been adopted to ensure that Board members fulfil their statutory duties in a fair and impartial manner, free of personal considerations and interests. The Board Chair goes through a selection process and must be approved by Cabinet, as must other Board members who are recommended by the Chair.

## **Rules and procedures for verification**

### **Standards against which verification takes place**

The FRPA identifies 11 forestry and environmental ‘results’ to be achieved (e.g. in relation to timber, soils, visual quality or wildlife) but, unlike the preceding Code, does not specify clear, transparent and enforceable standards. Companies are expected to submit Forest Stewardship Plans (FSPs), which must state results for a particular ‘forest development unit’ and the strategies intended to achieve them. The first few FSPs reviewed suggest that they are very variable. Some include specific commitments, in which case the FPB will assess compliance with these commitments. Other FSPs specify measurable results, in which case the FPB will use criteria and indicators to assess the likelihood of achieving these results (FPB, 2006b). The FPB has therefore embarked on a collaborative exercise with a wide range of stakeholders to develop scientifically based indicators for each of the values identified in the FRPA.

### **Values and guiding principles of the FPB**

Following criticisms of the very negative style of early audit reports, which focused predominantly on highlighting ‘non-compliance’ or ‘significant non-compliance’ issues, the FPB now strives for a more constructive relationship with its auditees. The Board has developed a set of guiding principles (FPB, 2005), reflecting key organisational values, which are applied as a guide to day-to-day practices and operations. These specify that the Board:

- acts on behalf of the public’s interests, not those of any single group;
- is straightforward in its approach;
- emphasises solutions over assigning blame;
- behaves in a non-adversarial, balanced manner;
- treats all people with respect, fairness, and sensitivity;
- performs in a measured, unbiased and non-partisan manner;
- carries out its mandate with integrity and efficiency;
- provides clear and concise reports to the public;
- bases actions and decisions on knowledge, experience, and common sense; and
- is accessible and accountable.

### **Appeals**

Companies or individuals can appeal against a non-compliance determination at the Forest Appeals Commission. This independent tribunal has the statutory authority to hear appeals against administrative decisions made with respect to a variety of matters regulated by the FRPA, the Forest Act, the Range Act, the Wildfire Act and the Private Managed Forest Land Act. It consists of part-time members representing diverse business and technical experience supported by a staff of seven full-time employees. The FPB may also appeal decisions to the Forest Appeals Commission on behalf of the public.



## 5.5 Performance of the FPB

The FPB has no power to impose penalties or ensure the uptake of its recommendations, relying only on ‘moral suasion’ to achieve impact. Nevertheless, the Board’s independence means that its reports carry significant public weight. In tracking its own recommendations, the FPB finds that many are taken up without reference to the fact that they were originally recommended by the FPB. Although audits may cause work for MFR District offices, the FPB’s frequent recommendations for more and better tools and resources to improve enforcement are often welcomed by MFR headquarters. Some of the FPB’s special reports have had a very visible impact – one of its most high-profile special reports on ‘BC’s Mountain Caribou: Last Chance for Conservation?’ (FPB, 2004) resulted in the province setting up a unit for endangered species management. Nevertheless, just six months later, environmental groups produced a report claiming that, in spite of the urgency highlighted in the Forest Practices Board report, the timber industry was continuing to operate as usual in mountain caribou habitat (Mountain Caribou Project, 2005). In a similar vein, the FPB issued a report in 2004 to re-assess the situation following its 2003 report on the management and conservation of nesting habitats of the marbled murrelet, one of BC’s endangered species, and found that although there had been some improvements, conservation efforts were still limited and slow.

There is a high level of trust among all stakeholders in the activities of the FPB and it is generally seen to fulfil its limited mandate in a fair and effective manner (FPB, 2006a). Nevertheless, some critics consider the FPB’s lack of statutory tools to fine or instruct regarding non-compliances a significant weakness, leading to it being ‘ignored by both the government and the forest industry’ (FPB, 2006a). Others hold the view that its mandate should cover forest policy more generally and possibly even wider land-use issues. It could be argued, however, that the FPB’s credibility rests in part on the way it operates within its current mandate – stretching it slightly but not going beyond it to represent any particular perspective.

## 5.6 Lessons learned

The lessons emerging from this case study include the following:

- In spite of high compliance levels in BC, there is intense, often highly polarised, debate about verification of legality versus achievement of sustainable forest management.
- The FPB operates within a limited mandate – it cannot impose penalties and can only comment on policy of direct relevance to improving forest practices.
- In spite of these restrictions, its special issue reports enable the FPB to provide a neutral forum for constructive debate about key issues of concern to the public, including implementation of the new forest legislation.
- The independence of the FPB is important in ensuring that all stakeholders collaborate with the FPB and respect its outputs.
- A key to the FPB’s success is its constructive and professional tone.
- The FPB cannot assure verification on its own. It operates within a system of interacting components including other less impartial actors such as government, the private sector and a strong civil society.





## Chapter 6

# The evolution of the forest control system in Costa Rica

**Note:** This case study was completed in March 2007 and is authored by Guillermo Navarro, Hans Thiel and José Joaquín Campos. It is based in part on Navarro, G. and Thiel, H. (2006) 'The Costa Rican National Forest Control System' VERIFOR Country Case Study No. 6. London: ODI.

**Table 6.1**  
**Costa Rica: some key statistics**

Statistic		Date	Data source
Population	4.3 million	2005	UN Population Division, 2006
Land area	5.1 million ha		FAO, 2006
Forest cover	47%	2005	UN Statistics Division 2006
Public forest ownership	24%	2000	FAO, 2005
Industrial roundwood production	No data	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	17,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	1.6%	Average 1990-2000	FAO, 2004
Value of forest product exports	US\$18m	Average 1990-2000	FAO, 2004
Main international markets for timber	No data	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	4.1	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.84	2004	UNDP, 2006a

### 6.1 Introduction

Costa Rica has progressed from being one of the most heavily deforested countries to become a leader in plantation forestry, sustainable forest management, and the design and implementation of innovative forest policies aimed at protection and utilisation of forest resources and promotion of the forest sector. However, some studies (CATIE,

2001; De Camino et al., 2000) indicate that deforestation and illegal logging are still problems of considerable magnitude.

This case describes the complex mixture of state, state-private and independent actors involved in the control and verification of forest production in Costa Rica. It analyses how opposition both inside and outside the forest sector have undermined some important functional components of the administration, control and revenue collection systems.

## 6.2 Context of the analysis

Costa Rica has a continental area of 5 million hectares of which 62.8% is characterised as having a ‘forest capability’ (MINAE, 2001). However, an aggressive agricultural development policy between 1950 and 1990 resulted in one of the highest deforestation rates in the world and a pattern of highly fragmented forest cover. A critical point was reached in 1985 when forest cover was reduced to just 24% of the original forest area (Oficina Nacional Forestal, 2001). This led the state to implement a system of incentives to promote reforestation. The 1996 Forest Law introduced payments to compensate forest owners for the conservation of forest functions which provide environmental services to society (De Camino et al., 2000). These incentives, combined with a shift in national development policies towards marketing services and eco-tourism, have succeeded in increasing forest cover to 46% of the national territory in some stage of forest regeneration (De Camino et al., 2000).

The majority of authorised timber now comes from agroforestry systems and forest plantations, with only 4% still coming from natural forest. Nevertheless, a significant proportion (22%) of the total wood industrialised is still estimated to be illegal, coming largely from trees outside forest where the forest administration has less control (Oficina Nacional Forestal, 2004).

## 6.3 Background on the Costa Rican forest control system

### Organisational structure

The Costa Rican State Forestry Authority is responsible for directing forest management. It is made up of four entities: the National System of Conservation Areas (SINAC) and the National Forestry Financing Fund, both of which answer to the Ministry of Environment (MINAE), the National Commission for Sustainable Forestry composed of academic and research institutions which recommends science-based policy instruments such as forest management standards, and the National Forestry Office, which is a participatory body for designing policies and includes various stakeholders from the private forestry sector and ecological organisations.<sup>1</sup>

SINAC was created by the 1998 Biodiversity Law as a decentralised and participatory management and coordination system organised around 11 conservation areas. Each of these has a regional administrative centre in which operational and financial decisions are taken with a relatively high degree of autonomy. Direct contact with clients takes

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<sup>1</sup> The National Commission for Sustainable Forestry was previously called The National Commission for Forest Certification.

place in the 32 local SINAC offices which manage the process of ‘forestry promotion and control’, including:

- Checking timber harvesting requests in the office and through field inspections;
- Granting timber harvesting permits (THPs) to forest owners;
- Verifying that timber harvesting is carried out in accordance with the National Standards for sustainable forest management and other relevant provisions;<sup>2</sup>
- Issuing timber transport permits (TTPs) and tags to forest owners;
- Controlling timber transport; and
- Enforcing the law on administrative issues and reporting infringements to the judiciary.

The function of overseeing timber harvesting operations in the forests was delegated to forest regents in 1991. These are independent professional foresters accredited by the Professional College of Agricultural Engineers (CIA). It is the responsibility of the CIA’s Executive Forestry Overseers to supervise the work of the forest regents. Currently, approximately 150 forest regents are in charge of 4000 forest regencies per year.

Other actors in the forest control system are the National Police, who check the TTPs at roadside checkpoints, and Forestry and Natural Resources Surveillance Committees (COVIRENAS). These civil society groups have a mandate under the Forest Law to provide social control and oversight over all activities related to the use of natural forests and wildlife, but under the coordination and supervision of SINAC.

### Forest administration

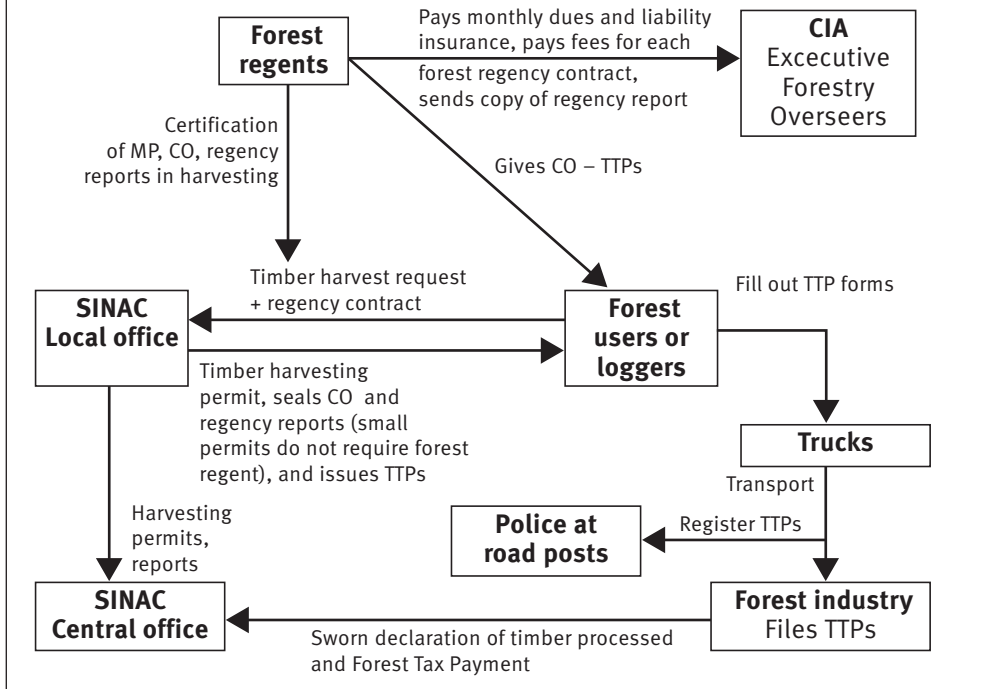
Figure 6.1 illustrates the flow of administrative procedures within the forest control system. Several options exist for requesting permission to harvest timber. Forest regents are required to supervise the preparation of management plans (MPs) for natural forest and commercial forest inventories (IFs) for trees on pasture land. They may also issue certificates of origin (COs) for trees from forest plantations or agroforestry systems, which can be harvested and transported without restrictions. ‘Small permits’ (SPs) can be prepared by local SINAC officers for landowners wishing to harvest less than 20 trees for domestic use.

Once a timber harvesting request is approved by SINAC, the forest owner must hire a forest regent to supervise harvesting, with the contract being registered at the CIA together with payment of a fee. SINAC can then issue the timber harvesting permit (THP). During 2004, SINAC local offices issued 3747 THPs, of which more than 50% were small permits, 10% were MPs and IFs, and the rest were COs (Arias, 2005). Forest regents submit reports to SINAC at the start of operations and during harvesting. Once these have been checked, SINAC issues timber transport permit (TTP) forms and plastic tags for marking logs to the forest user. When harvesting operations are concluded, the forest regent sends a closing report to SINAC together with any unused TTPs and tags.

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<sup>2</sup> The law allows the administration to either do this verification itself or contract it out to external auditing firms or individuals.

**Figure 6.1**  
**Flow of administrative procedures within the Costa Rican forest control system**



### Control procedures

Figure 6.2 shows the flow of verification and control procedures. Local SINAC offices carry out field inspections before issuing THPs. Forest regents are responsible for monitoring the execution of THPs, and the registration of their contracts at the CIA allows the Executive Forestry Overseer to supervise their work. SINAC issues TTPs only after receiving a positive forest regency report, which they may even verify in the field. Arias (2005) reports that local SINAC personnel performed 2188 field inspections of MPs, IFs and SPs during 2004.

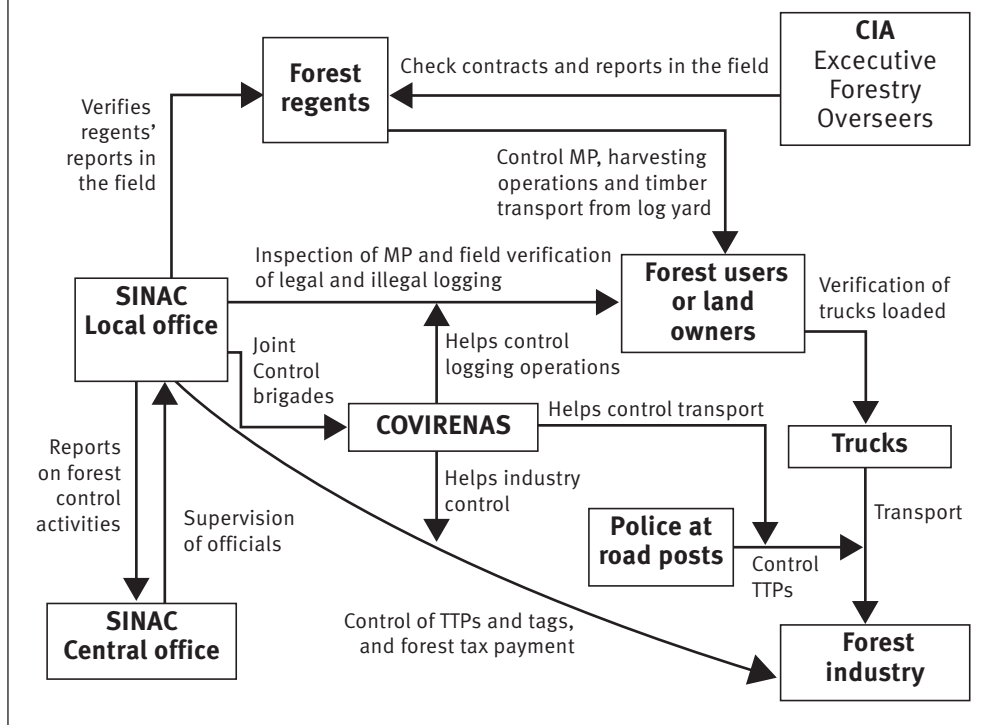
TTPs can be used as a document for control of the chain of custody, in which the forest user and industry can verify the amount and type of products transported from the source to the end destination. TTPs are checked at road checkpoints by the police, often in conjunction with joint SINAC and COVIRENAS brigades. Local SINAC officials inspect the industry to make sure that all stockpiled logs and timber are legally obtained, by checking the TTPs and tags. In addition, they collect all used TTPs and make sure that forest taxes have been paid for the correct volumes and periods.

### Verification, cross-checks and enforcement

The system has a number of built in cross-checks and balances (see Figure 6.3):

- Forest users and forest regents can check the quality of the administrative services and functions of local SINAC and CIA officials, and report irregularities at the administrative, professional (CIA) and judiciary levels.

**Figure 6.2**  
**Flow of control procedures within the Costa Rican forest control system**

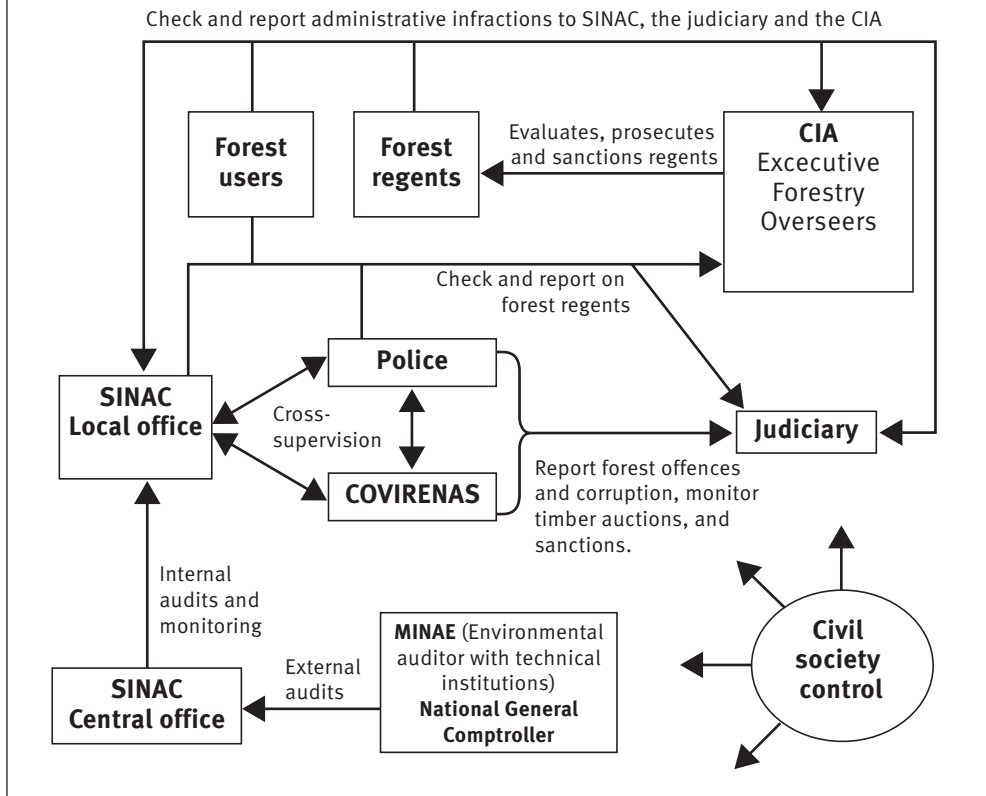


- SINAC officials, COVIRENAS and the police cross-check each other's control activities. Any illegally transported or felled timber is seized pending an eventual judiciary sanction. The judiciary auctions the timber and places the money in an account, from which 50% is paid to the municipality and 50% to the forestry fund if the accused is found guilty.
- SINAC, the police, COVIRENAS, the forest user or any member of civil society may denounce to the CIA and the judiciary a forest regent who has acted incorrectly.
- SINAC central offices carry out internal audits and periodic monitoring of local offices. Occasional external forest audits by universities and research organisations are organised by the MINAE Environmental Auditor and the National General Comptroller's office.

### Financial independence

Much of the forest control and verification system is supposed to be financed from a forestry fund, created by the Forest Law (No. 7575) with the aim of promoting the development of the forest sector, its administration and control. The forest fund is derived from a general forest tax, auctioning of seized forest products, and other sources such as donations. The forest tax is 3% of the transferred value of the logs at the moment of primary processing. This transferred value is established by SINAC, which is meant

**Figure 6.3**  
**Cross-checks and sanctioning in Costa Rica's administrative and verification procedures**



to receive 23% of the sum for administration, control, environmental education and promotion of the forest sector.

However, lack of clarity in the text of the law led the Costa Rican Forestry Chamber to contest the forestry tax arguing that there were inconsistencies in the determination of the base amount for the collection of the levy. Although these inconsistencies could be resolved legally, there has been a lack of will in SINAC to do so and the forest tax is no longer collected. This imposes a significant financial stress on the different elements of the forest verification system, limiting its operational efficiency severely. The consequences of this financial stress include the following:

- To make up the shortfall, the SINAC forest control unit has been financed from the National Park Fund and the central government core budget as well as from the forest fund. However, insufficient funding has led to a certain loss of independence, with officials sometimes having to accept the provision of transport and food by forest users when carrying out field inspections. Lack of funds has also meant that very few external and internal audits have been contracted by SINAC to evaluate administrative and control activities at central and local offices of SINAC, police, forest regents, and the CIA.

- The budget of the Environmental Auditor, who works in the Ministry of Environment, is supposed to be covered partly from the forest tax. Without it, the auditor's resources for carrying out his duties are very limited and he is perceived to be weak and ineffective.
- In the case of the CIA, supervision of forest regents should be financed by 2% of the forest tax revenues, which now have to be found from its membership dues and forest regency fees. As a result, the CIA has inadequate capacity and resources to oversee and systematically control forest regents (there are only two Executive Forestry Overseers for the 6-8000 regent reports produced each year), and acts only when a regent is denounced by a third party.

Budgetary independence is also an issue for forest regents who are paid for their services directly by the loggers or forest owners. This makes them susceptible to the economic interests of their clients and reduces their performance and independence in the verification system. It has been reported that most THPs are not followed up with the required closing report by the forest regent mainly because forest owners lose interest after the timber has been removed and are not willing to pay the regent for the last inspection visit.

Other bodies such as the police have a budget outside the forest sector, which allows them to operate with independence. However, the police role in the forest verification system depends on political will, and their control does not cover all possible important timber routes, limiting the effectiveness of their actions. Likewise, civil society inspectors organised into COVIRENAS brigades work on an *ad honorem* basis with no financial support, and under the supervision of SINAC, which makes them dependent and ineffective.

### **Legality standard**

According to the Forest Law, the legality standard for forest resource use is defined in two conditions: observance of harvesting prohibitions and compliance with required procedures for the allowable forest harvest. Sanctions include imprisonment from three months up to three years, together with confiscation of the machinery and equipment used. However, as the forest legislation does not specify sanctions for each of the prohibitions described in the law, prosecutions become very complex. This frequently leads to the suspension of criminal proceedings and, in practice, allows offenders to act with impunity.

The National Commission for Sustainable Forestry is responsible for recommending standards for sustainable forest management to SINAC to be enacted as a part of the mandatory legality standard in Costa Rica. These standards turned out to be very complex and difficult to interpret, allowing for much discretion by SINAC officials and leading to an administrative ban on obtaining THP for natural forest due to the complexity of accessing a legal permit. Forest owners, therefore, prefer to transform forests into pasture land by eliminating the forest cover surreptitiously, and then requesting a harvesting permit to clear all the commercial trees on this 'pasture' land. This kind of harvesting permit is less costly to obtain, and offers higher potential revenues per hectare. According to FUNDECOR (2003), 30% of the trees harvested in pasture lands between 1999 and 2001 in the Region of Sarapiquí were actually part of a natural forest that had been degraded intentionally.



## 6.4 Performance of the system

### **Distribution and coordination of functions**

The Costa Rican forest control system has been established with a range of actors carrying out different functions to enable easy cross-checking between actors. However, the central actor, SINAC, has been weighed down by additional functions. These include the administration of ‘small permits’ which, according to the Forest Law, should be administered by Regional Environmental Councils and municipalities. As Regional Environmental Councils were never established and MINAE suspended the authority of municipalities to issue SPs because of their low technical expertise and institutional capacity, SINAC has had to take on this task. At the same time, the legal mandate to undertake preliminary field inspections before approving a THP only if there was a reasonable justification to do so has been replaced by an administrative order (MINAE Directriz DM-173-2001, 30 January 2001) requiring field inspections before approval of all THPs. As ‘small permits’ make up more than half of all THPs, this has resulted in a huge administrative burden for SINAC’s local staff and increased waiting times to between one and three months for this type of permit (Arias, 2005).

Lack of coordination within the system is particularly problematic for police control units, which are isolated in the forest control chain and have no information from SINAC about the activities they are supposed to control. Nor do they have the capacity to verify timber species, calculate volumes or cross-check TTPs with the origin of the timber loaded on the truck. Instead they simply register information contained in the TTP in exercise books, with no further reporting or link to any other structure of the verification and control system. Furthermore, the police only check trucks that stop voluntarily at the checkpoints to show TTPs. This implies that clandestine timber transports in closed trucks or vehicles which simply do not stop, will never be detected unless further (non-systematic) road checks are carried out by SINAC and COVIRENAS.

One of the main criticisms of the current system is the power it puts in the hands of the forest regents (Ferrouki and Aguilar Schramm, 2004). Their supervision is therefore a critical function. By law, the CIA is responsible for the administration, supervision and sanctioning of its own members, the forest regents, with no external oversight. SINAC therefore has no competence to control the work of forest regents and there is little coordination between SINAC and the CIA’s Executive Forestry Overseer office. However, the CIA has a poor record of investigating allegations against forest regents, with only a few cases resulting in temporary suspensions and none in a loss of accreditation (Esquivel, E., 2005, pers. comm.). Since regents are poorly controlled, they generally do not complete their duty of supervising a harvesting operation from start to finish, and end up delaying or failing to submit regency reports.

In part, this is because forest regents have been overloaded with responsibilities related to the control of forest harvesting operations, management, engineering and silvicultural functions, as well as dealing with administrative tasks such as transport permit requests. One solution might be to rebalance the division of labour between forest regents and forest engineers, allowing the latter to assume responsibility for smaller harvesting operations. The forest control system should perhaps also more clearly identify and define the roles of important stakeholders, such as loggers, truckers and intermediaries, who currently remain informal actors in the system with very little accountability.

### Is the forest control system targeting the right actors?

SINAC's focus on controlling those who operate legally, combined with a lack of systematic control of processing industries, leads to the criticism that the system does not sufficiently tackle illegal timber use and forest conversion. Recently, therefore, MINAE has decided to develop and implement a Strategy for Control of Illegal Logging (ECTI) with the objective of integrating, strengthening and consolidating the administration, control, and protection of the use of forest resources at the national level. It aims to diminish illegal logging and related activities, and their negative environmental and social consequences, and to promote wide participation of all sectors of civil society in all these processes.

### Can a control system be pro-poor?

Throughout the evolution of the forest control system, pro-poor policies have been adopted. For example:

- Regarding land tenure, forest users have several ways to prove legal ownership or possession rights of the property to obtain legal access to the forest resource.<sup>3</sup>
- Forest tax has to be paid by the forest industries, not by the owner of the resource, facilitating forest harvesting by forest users (including small landowners).
- The forest fund is used to pay landowners for the environmental services which their natural forest, forest plantations and agroforestry systems provide to society. The system recognises several types of land tenure, and prioritises small owner organisations and regions where communities have low development indexes.

However, the high cost of permit preparation and the bureaucracy involved in accessing a permit still limits poor people's access to legality. Furthermore, as some kinds of land tenure in the agricultural frontier, where the poor live, are still not recognised by SINAC, illegal operation is the only way for these farmers to access the market.

## 6.5 Conclusions

The following conclusions can be drawn from the Costa Rican case study:

- A product of 35 years of development within the forest sector, the Costa Rican forest control system has had limited success, but a good level of stability. Generally, it has the support of environmental groups, a broad base of civil society, forest professionals and forest administration officials, in dynamic balance with active opposition from the subjects of the control system: loggers, intermediaries and industrial actors. Greater involvement of non-forest sector actors in developing the system might make it less vulnerable to attacks by strong stakeholders within the forest sector.
- Adequate financing of any verification instrument is crucial for good performance. The forest tax has not been effective; however the control system has been able to survive with other sources of funding.

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<sup>3</sup> Land ownership can be proved by certification from the judiciary that the titling process is underway and that the process has no conflicts or challenges, and that there is a plan of the property inscribed in the cadastral register.

- Financial independence of the different components of the system is crucial. Budgetary dependence of the forest regent on the logger threatens independence of action. In addition, the oversight and verification bodies such as the CIA, the Environmental Auditor and COVIRENAS lack the financial resources to operate efficiently.
- When the legal framework imposes restrictions on timber harvesting in natural forests which are too heavy to cope with, forest users tend to bypass the forest administration and find other strategies to access the timber they want to harvest. An effective legality standard must also be supported by clearly defined and enforced sanctions, otherwise offenders will continue to act with impunity.
- Public competences can only be delegated to private or civil society bodies if a government body retains oversight and control over the activities which are handed over. When administration and oversight of the forest regency was delegated to the CIA, functions started to be added to the forest regents' role such that they became overloaded with responsibilities other than forest control. Forest control became ineffective and was difficult for the forest administration to coordinate.
- There needs to be a clear distinction between forest management and regulatory activities. The fact that forest regents combine a management role (writing management plans) with a regulatory role (inspecting and certifying correct implementation of the management plans) inevitably leads to a conflict of interests.
- Data collection must be accompanied by systems for cross-checking. The police, COVIRENAS, forest regents and SINAC do not have an information system for cross-checking the information they gather against THPs, making effective forest control difficult and ineffective because every actor of the verification and control system impinges only on a very short segment in the production chain.
- Local governments are not playing an active role in the administration and control of the forest resource use in their territories. Nonetheless, national policies and forest laws are oriented to decentralisation and deconcentration of the administration of forest resources. This shift of responsibilities brings a cost that is rarely considered, as funds are required to create the capacity in these local and regional bodies to effectively own their forest resource administration and control.

## Chapter 7

# The national forest control system of Honduras

**Note:** This case study was completed in May 2008 and is authored by Mauricio Sánchez, Guillermo Navarro and Carlos Sandoval.

**Table 7.1**  
**Honduras: some key statistics**

Statistic		Date	Data source
Population	7.2 million	2005	UN Population Division, 2006
Land area	11.2 million ha		FAO, 2006
Forest cover	41.5%	2005	UN Statistics Division, 2006
Public forest ownership	75%	2000	FAO, 2005
Industrial roundwood production	1.32 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	18,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	2.8%	Average 1990-2000	FAO, 2004
Value of forest products exports	US\$40m	Average 1990-2000	FAO, 2004
Main international markets for timber	US	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	2.5	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.68	2004	UNDP, 2006a

### 7.1 Introduction

The Honduran case represents a largely unreformed system of national forest control in which the only internal verification activity concerns checking compliance with the requirements for obtaining an extraction and transportation licence. The case study highlights the important role played by an independent monitor brought in by the Honduran National Commission for Human Rights in response to the high level of corruption and conflict in the forest sector.

## 7.2 Background to forest control in Honduras

### Forest loss and degradation

The culture, traditions and economy of Honduras have traditionally been based on agriculture and cattle raising, even though 87% of the national territory (according to official figures) is appropriate for forestry. However, a growing number of people are now becoming involved in logging. For some it is a modest supplement to family income while for others it is a major source of wealth and power.

The forested areas of Honduras – where approximately 1.5 million people live – have the highest poverty levels in the country (UNDP, 2006b). Forestry activities are one of the few available means of generating an income, and many people become involved in illegal logging and trade due to a lack of employment opportunities. They typically provide labour for powerful economic actors in the timber industry, or clear land on their own account for farming and ranching expansion.

There has been no systematic monitoring of forest cover in Honduras but official data indicate that annual reduction of forest cover has remained around 1% for the last 30 years (AFE-COHDEFOR, 2006). Illegal forest production could range from 75% to 85% in broadleaf forest and 30% to 50% in pine forest (FEHCAFOR et al., 2003). Based only on estimates of clandestine pine wood production, a 2003 study found that direct financial losses for the Honduras government vary between US\$55m and US\$70m per year (ibid.).

The implementation of any forest verification system in Honduras will have to contend with extremely serious problems such as corruption and political cronyism. In line with the old adage that ‘there’s good fishing in troubled waters’, some large forestry industrialists have taken advantage of the chaos in forest control operations in Honduras to increase their capital at the expense of deteriorating forest resources and the environment. Not only have they used the situation, they have also helped worsen and perpetuate that chaos through the placement of people in important public positions who serve their own interests and are prepared to bribe officials attempting to prevent the destruction of forest resources (EIA, 2005).

### Forest land tenure

Land distribution in Honduras dates back to the Spanish colonial period, but problems still exist in the definition of land rights, mainly in the north-eastern departments of the country. According to Forest Law, Decree No. 85-71, forest areas are classified as either Public Forest Areas (state and communally-owned *Ejidales*) or Private Forest Areas (including tribal-owned lands supervised by the state).

The ownership and usufruct rights over land and forest resources often overlap, are disputed, or are simply ignored (Del Gatto et al., 2004). Pressure on the land is constant, to the extent that there are indigenous movements whose principal objective is the recovery of lands that today are in the hands of other landowners or that have been designated state property.

### How has forest control been confronted historically?

Prior to 1971 the state had very little control over the forest sector in Honduras. This changed with the enactment of the 1971 Forest Law and nationalisation of forest cover

in the period 1974-1992. Forest cover was returned to landholders between 1992 and 2000, when attempts were made to develop new paradigms for forest management. At the end of 2007, a new Forest Law was approved. This law for the first time recognised the forestry sector as separate from the agriculture sector, with its own budget, and established the national Institute of Forest Conservation (*Instituto Nacional de Conservación y Desarrollo Forestal, Áreas Protegidas y Vida Silvestre* (ICF)), to replace the Forest Authority (*Corporación Hondureña de Desarrollo Forestal* (AFE-COHDEFOR)). The law also entailed the creation of funds for forest reinvestment, introduced a fairer distribution of forest benefits among forest-holding communities, local governments and the central government, and established stricter environmental regulations.

Several non-governmental organisations are active in the environmental field. At the political level one of the most influential is the *Alianza Cívica*, promoted by *Cáritas de Honduras*, which primarily focuses on defending the environment against mining operations. With a greater focus on forest protection, the Olancho Environmental Movement (*Movimiento Ambientalista de Olancho* (MAO)), promoted by Catholic priest Andrés Tamayo, works at a more popular level including the organisation of protest marches and other peaceful demonstrations. Olancho is one of the most important timber-producing areas of the country, with a high concentration of (legal and illegal) loggers. The pressure exercised by these civil society movements, in particular MAO, has been instrumental in generating the political will that led to the approval of the new Forest Law in September 2007.

### 7.3 The legal mandate for forest control

The legal framework of the Honduran forest control system is very broad and dispersed, comprising over 21 laws and regulations. The principal instrument is the new Forest Law which, among other things, considers environmental damage to forests to be a crime and has introduced much more severe sanctions for illegal logging.

The legal mandate for forest control lies with the ICF which is in charge of supervising industrial extraction, transport and processing of forest products. But other state entities, such as the National Police, the Secretariat of Natural Resources and the Environment, the Environmental Public Prosecutor and the municipalities may also participate in forest control activities.

The Environmental Public Prosecutor of the Public Ministry (*Ministerio Público*) and the Armed Forces have played a very active role in forest control, intervening in joint operations carried out directly in the forest and on the highways. Based on Decree No. 153-95, the Honduran National Commission for Human Rights (*Comisionado Nacional de los Derechos Humanos* (CONADEH)) also launched an Independent Forest Monitoring (IFM) initiative in 2005, which aims to strengthen efforts to fight illegal logging (see Box 7.1).

Recently, national and sub-national entities for inter-institutional coordination have been created to assist governance and modernisation of the legal framework. At the national level, the Honduran Forest Agenda is an independent body that acts as a permanent forum for cooperation among forest sector stakeholders. It enables public institutions, private actors and NGOs to participate on equal terms in the planning process that is intended to guide the sustainable development of the country's forest

resources. In the North Coast region of Honduras, the Broadleaf Forest Management Network (REMBLAH) is a non-profit and non-political civil society organisation that promotes cooperation among stakeholders in the forest sector.

### **Box 7.1** **IFM in Honduras**

CONADEH is the national ombudsman established with the aim to ‘guarantee the rights and freedoms recognised in the Constitution of the Republic’ (Decree No. 153-95), including the right to a healthy environment. To engage in this environmental aspect of its mandate and to respond to increasing public concerns about illegal logging, CONADEH started consultations with Global Witness in 2004, and in 2005 the two organisations jointly launched an IFM pilot project in Honduras. From the start, this project received the official backing of the then Forest Authority (AFE-COHDEFOR), which saw it as an opportunity to improve its damaged image by showing a commitment to transparency and external scrutiny.

Despite very limited funding, the project has continued to be operational for more than three years, and has grown in staff and geographical scope. Its main objectives are: (i) to generate reliable information about illegal logging and its associated trade; (ii) to ensure the objectivity and transparency of monitoring operations undertaken by the Forest Authority; and (iii) to strengthen the operational capacity of the Forest Authority through undertaking joint field missions and sharing experience and skills. After the initial one-year pilot phase, the role and support of Global Witness has been gradually diminishing as the lead of IFM implementation has been handed over to CONADEH. At present the project is carried out entirely by the latter, without assistance from Global Witness. An important step in consolidating the project was the establishment in 2007 of an Inter-institutional Consultative Committee that reviews the IFM reports prior to their publication. This Committee includes the Forest Authority (now ICF), the National Anticorruption Commission, the Environmental Public Prosecutor, the State Attorney for the Environment, the Armed Forces and representatives of forest professional bodies and civil society groups. Inevitably the large number of participants in this Committee has made its functioning a bit more complex, but it has also been helpful in enhancing the project’s recognition and improving the level of follow-up of reports.

## **7.4 Design of the forest control system**

Honduras has no consolidated forest verification system. The ICF is directly in charge of administering the Forest Law and governing the administration of the country’s forest resources.<sup>1</sup> It also has the power to approve the formulation and implementation of forest management plans for public and private forests and to authorise timber extraction in line with approved management plans. The main activity verified is compliance with

<sup>1</sup> The system currently being implemented has not changed significantly from that implemented by the ICF’s predecessor, AFE-COHDEFOR, pending development of new regulations and technical and administrative specifications.



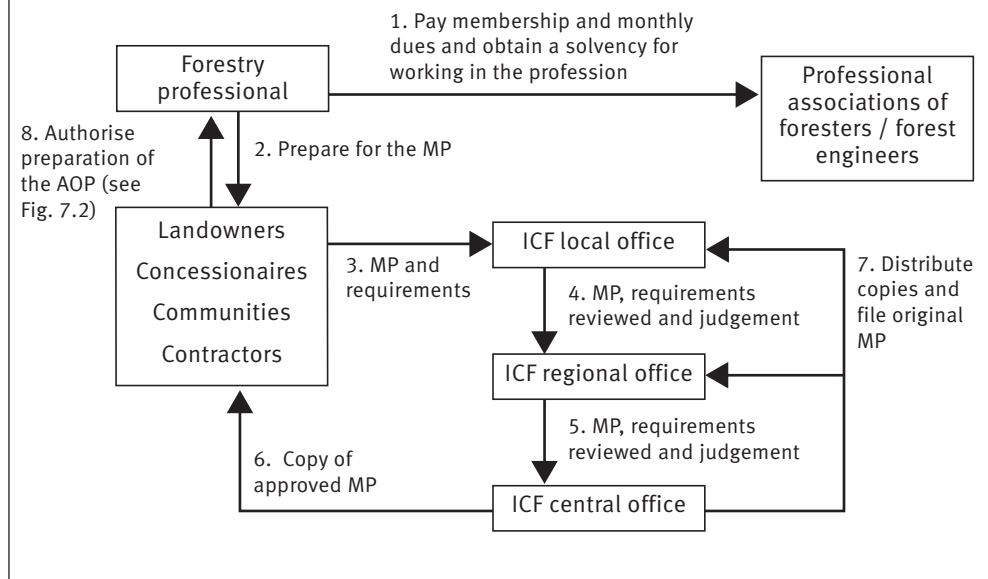
the requirements for obtaining an extraction licence. This consists of the preparation and approval of a Management Plan (see Figure 7.1) followed by the preparation and approval of an Annual Operations Plan (see Figure 7.2).

The Annual Operations Plan (AOP) is the technical instrument for executing a Forest Management Plan; its formulation and approval involve the landowner, the technicians assigned by the landowner and regional ICF officials (although for a temporary period in 2006, operational plans were approved in the central ICF offices). Figure 7.2 shows the steps and the actors involved in the approval and implementation of operational plans.

After the AOP is approved and the landowner or authorised contractor has paid the municipal taxes, payment is made to ICF for administrative services and the regional office provides the transport permit.<sup>2</sup> This permit issuance serves two principal objectives: to verify the legality of the products that are being transported and to verify lumber production from the industries, with respect to the volumes of roundwood received.

The regional offices of ICF also grant non-commercial extraction licences, which prohibit sale of products. However, violation of these permits is almost institutionalised as permit holders routinely extract more wood than authorised for domestic use and sell it in local markets knowing that little is done to control the practice. Other violations include logging of healthy trees using permits granted to extract dead, fallen or standing burned trees. Similarly, licences granted to remove pine trees affected by the southern pine beetle, *Dendroctonus frontalis*, may be used to cut healthy trees outside the areas

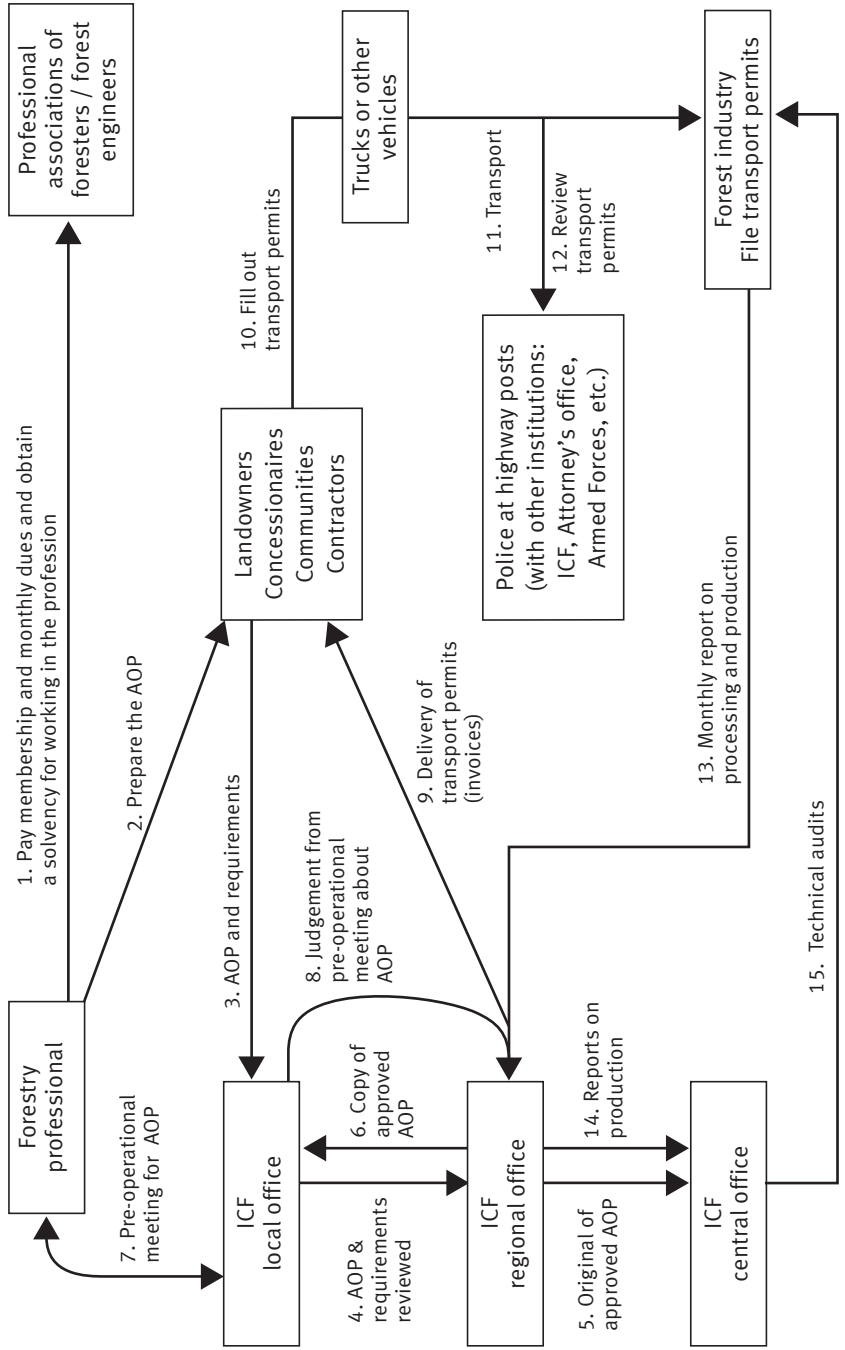
**Figure 7.1**  
**Administrative procedures for the approval of Forest Management Plans in Honduras**



<sup>2</sup> Under the new Forest Law, the ICF has an independent budget but, until a new regulation has been published to implement the Law, the existing system of payments by landowners remains.



**Figure 7.2**  
**Administrative procedures for the approval and implementation of Forest Operational Plans in Honduras**



affected by the pest. This has been corroborated by the IFM Pilot Project, as shown in some of its reports (CONADEH and Global Witness, 2005; Global Witness and CONADEH, 2006).

Within ICF, the Technical Audit Department (DAT) is responsible for directing control operations and verifying the implementation of technical standards and regulations. It works in four areas:

- Evaluating forest management plans at the national level;
- Maintaining a register of forestry industries;
- Maintaining a register of local lumber yards; and
- Auditing forestry industries and local depots, for which it is supposed to use a standardised methodology also used by regional ICF offices.

Verification of the AOP in the forest covers the pre-operation, execution and final close-out stages, which must show correct implementation of, among other things, physical demarcation, protection activities, road construction and maintenance, silvicultural treatments (seed-producing trees, waste management, periodic thinnings, etc.), care of remnant trees, use of transport permits and erosion prevention and control. However, lack of human and material resources means that verification is rarely undertaken in a sufficiently thorough manner.

Transport verification consists of reviewing the transport permit to confirm that the original document and exact copies of it are on board the vehicle and have been completed, showing the amount of wood reported and the amount transported, the date the permit or invoice was issued, the resolution number of the operations plan, ICF seals, confirmation of the dimensions of the pieces transported and data on the vehicle described in the invoice.

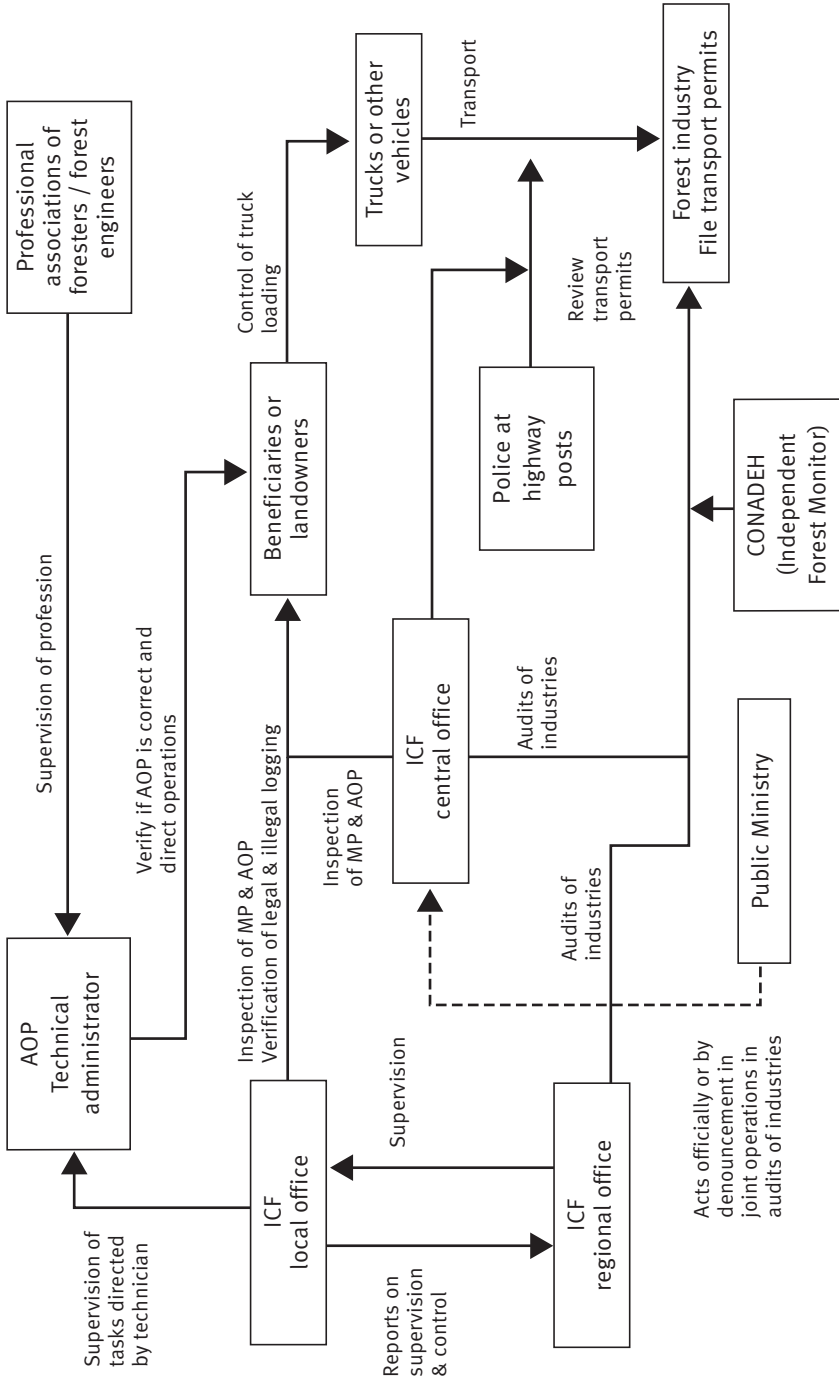
Figure 7.3 shows the relationship between ICF officials and other actors carrying out verification activities, either jointly with the ICF or independently. The police have the authority and the responsibility to request the transport permit at fixed control posts and on any part of the transport route for products on their way from the forest to the industry. The district attorney's office carries out similar verification activities to the ICF, but using a different methodology and standards. An important extra-sectoral actor is the IFM project implemented by CONADEH (see Box 7.1).

## 7.5 Performance of the forest control system

Up until very recently, the main actor in forest control in Honduras has always been the Forest Authority (AFE-COHDEFOR). This body, created in 1974, was assigned control of all the forests located in public and private forested areas, including their conservation, reforestation, exploitation, industrialisation and trade of the products derived from them. In 1992, when nationalised forest areas were returned to landowners, AFE-COHDEFOR changed from being the de facto 'owner' and administrator of forest resources to being the supervisor, assigned to functions that did not generate revenues such as the approval of forest management plans on private lands and the coordination of auctions for wood from national forests.

According to the report of an auditing commission (Flores and Eveline, 2004), 38% of AFE-COHDEFOR's financial and logistical resources were concentrated on its

**Figure 7.3**  
**Intra- and extra-sectoral actors involved in forestry verification in Honduras**



headquarters in Tegucigalpa. Less than 24% of its total resources were allocated to the four regions of the country that produced more than 92% of the nation's roundwood. Financially AFE-COHDEFOR was dependent on timber sales and payments from the private sector. It was widely criticised by environmental groups for being ineffective and plagued by corruption. To remedy this, its replacement, the ICF, has been established as a decentralised agency attached to the Presidency with its own budget and financial autonomy. It remains to be seen whether the ICF will manage to reduce illegal logging in Honduras.

Under the AFE-COHDEFOR regime, the Technical Audit Department (DAT) had the most important verification responsibilities in the system, but these were centralised at headquarters. The fee charged as a 'forestry tax' was not sufficient for maintaining an administrative system this complex as well as providing funds to the DAT for conducting control and verification operations throughout the country.

In 2006, according to the DAT, 90% of audits revealed some kind of anomaly (to a greater or lesser degree), but only 3% of the cases were resolved due to the existing legal quagmire, irregularities made by actors in the processes, or negligence or a lack of will within the Administration. Although there is a procedural manual with a methodology for conducting audits, officials can decide to put it aside at their discretion.

The Environmental Public Prosecutor believed that AFE-COHDEFOR did not have a defined protocol for conducting audits and that there were no controls, and that the Public Ministry should participate in a review of the DAT to make the methodologies of both institutions compatible. As an example, mention was made of an audit that took the Environmental Public Prosecutor almost three months to complete, whereas AFE-COHDEFOR did it in one-and-a-half days.

IFM field mission reports produced by CONADEH are submitted to the members of an Inter-institutional Consultative Committee for review, and are subsequently published on CONADEH's website. IFM has now become the main mechanism highlighting the fact that field activities are not being implemented in accordance with the licences granted.<sup>3</sup> However, observers point to three remaining main weak points in the current implementation of IFM in Honduras:

- The lack of protocol for selecting the dossiers or harvesting operations to be audited, which means that the IFM could eventually be manipulated politically to target a particular sector of violators;
- The lack of standards that ensure an objective evaluation; and
- The fact that the IFM auditors may be exposed to threats to their personal safety from violators.

## 7.6 Lessons learned

The case of Honduras shows that real stakeholder ownership is needed for successful forest control and verification. The inclusion of organised civil society, the private sector and the municipal governments in the formulation of state policies on forest control has been important in the last two decades. However, the opening of the central government

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<sup>3</sup> More than 50 mission reports have been published in the first three years of activities; all are available at [http://www.conadeh.hn/informes\\_monitoreo\\_forestal.htm](http://www.conadeh.hn/informes_monitoreo_forestal.htm).

to public policy formulation has been limited in most cases to consultation rather than real participation in policy-making.

In Honduras, a cultural tendency to evade regulations that govern human behaviour is widespread and deeply rooted in all levels of society and the forest sector is no exception. Economic and political power go hand-in-hand and both are frequently applied to enable powerful groups to ignore or circumvent regulations, from the simplest procedure up to the level of the Law. However, it is not only the powerful who avoid the law. Non-commercial extraction licences are a measure that is supposed to favour the poor. However, the fact that these and other licences are routinely violated with impunity encourages a culture of flouting established regulations. The response to this culture of evading regulation is the culture of making unrealistic rules and over-regulation of productive activities. Combined with the confusion and uncertainty surrounding land tenure, this proliferation of regulations and requirements is such that full compliance is impossible (Del Gatto et al., 2004).

Finally, this case study provides a valuable lesson about IFM. Usually IFM is defined as the use of an independent third party that, by agreement with state authorities, carries out forest monitoring activities (Global Witness, 2005). This independent third party has usually been assumed to be a non-profit NGO or a private company. However, the Honduran experience indicates that a national public institution can also be an effective independent forest monitor, as is the case of CONADEH, which does not necessarily need the consent of other state authorities.<sup>4</sup> This represents an interesting variant to previous IFM projects elsewhere and suggests a more endogenous and institutionalised approach to IFM.

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<sup>4</sup> Albeit not required by law, the IFM project in Honduras enjoyed the official recognition of AFE-COHDEFOR. According to most stakeholders this facilitated its work and contributed to the establishment of a collaborative relationship with AFE-COHDEFOR (and its successor, the ICF).

## Chapter 8

### Forest verification in Nicaragua

**Note:** This case study was completed in March 2007 and is authored by Filippo Del Gatto, Guillermo Navarro, Ove Faurby and Armando Argüello.

**Table 8.1**  
**Nicaragua: some key statistics**

Statistic		Date	Data source
Population	5.5 million	2005	UN Population Division, 2006
Land area	12.1 million ha		FAO, 2006
Forest cover	42.7%	2005	UN Statistics Division, 2006
Public forest ownership	No data	2000	FAO, 2005
Industrial roundwood production	No data	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	9,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	0.7%	Average 1990-2000	FAO, 2004
Value of forest product exports	US\$12m	Average 1990-2000	FAO, 2004
Main international markets for timber	No data	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	2.6	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.70	2004	UNDP, 2006a

#### 8.1 Introduction

Nicaragua is considered the poorest country of the American continent, with an annual per capita GDP (Gross Domestic Product) of US\$950 (BCN, 2006; PNUD, 2005). While the forest sector's contribution to the GDP is minimal, contributing only about 1%, forests are perceived as the country's most important natural resource for economic development and poverty reduction. Approximately 43% of Nicaragua's territory is covered by forests (5.2 million ha), more than half of which (approximately 3 million ha) is suitable for production-oriented forest management.

This case study describes Nicaragua's forest control system, with particular reference to its verification features. It illustrates some key aspects of forest control and verification systems, which may also be relevant for other countries, including:

- *A strong focus on operator compliance.* In Nicaragua control and verification activities are oriented towards timber extraction and processing operations, while the allocation of harvesting rights by the forest authority has been subject to minimal scrutiny. There are, however, indications that this is changing. For example, investigations carried out in 2006 uncovered the fraudulent allocation of small-scale logging permits to large timber companies.
- *A limited attention to deforestation.* Land-use change for cattle ranching and agro-industry is the main cause of forest loss in Nicaragua. In spite of this, forest control and verification focus heavily on logging activities, while deforestation receives attention only when it is carried out in protected areas, going virtually unchecked elsewhere. Though here again, positive changes appear to be underway, with the recent legal specification of deforestation as an environmental crime.

## 8.2 The discourse on forest control and verification in Nicaragua

The national debate on forest control and verification in Nicaragua focuses on illegal logging and the associated trade. These activities are perceived by the general public as the main drivers of deforestation. Such a perception is compounded by the media which often describe the timber sector as a 'mafia' that devastates the environment and undermines state authority and legitimacy.

Most stakeholders therefore share a sense of urgency with respect to stopping illegal logging and trade. Private timber operators experience the effects of this in a negative way: excessive rules, too many controls and an overly critical public opinion that blames them for a problem – deforestation – for which in reality they have limited responsibility. The fact is that despite the widely assumed link between illegal logging and deforestation, these two phenomena are not closely related in Nicaragua. While illegal logging appears to be higher, in volumetric terms, in pine forests (Richards et al., 2003), deforestation occurs almost totally in the broadleaved forests of the Atlantic region and is fuelled mainly by cattle ranching and agriculture investments (Faurby, 2005).

If illegal logging is not the main force behind deforestation, then what are the origins of this national discourse that has homed in on the timber industry? According to some observers, the power of the cattle ranching lobby is one factor. Forest sector entrepreneurs argue that such a lobby has a vested interest in keeping public attention and government efforts focused on forest operations, deflecting attention from land-use conversion to ranching. And in Nicaragua as elsewhere, the 'crusade' against illegal logging provides politicians with a high-profile way of presenting themselves as committed public servants. In the run-up to the 2006 elections, this led to an increase in the rhetoric around illegal logging and the approval of new legal instruments, both arguably driven more by a desire for publicity than a real interest in finding lasting solutions.

### 8.3 Control and verification mandates

Forest control and verification in Nicaragua are based on a complex legal framework, composed of multiple normative instruments, including:

- The 1987 Autonomy Statute of the Atlantic Coast Regions (Law No. 28);
- The 1988 Law of Municipalities (Laws No. 40 and 261);
- The 1996 Environment Law (Law No. 217);
- The 2003 Forest Law (Law No. 462);
- The 2005 Law of Environmental Crimes (Law No. 559); and
- The 2006 Logging Ban Law (Law No. 585).

These legal instruments establish a multi-agency arrangement, with several institutions and actors involved in control or verification activities (see Figures 8.1 and 8.2). Each institution or actor has its own mandate defined by law, but there is no overall mandate for the entire forest verification system.

Some of these mandates enjoy broader public support than others. Such support does not appear to be related either to the specific merits of the mandate or to the level of stakeholder participation in their definition. More relevant appears to be public perception of the level of fulfilment of the mandate in relation to the explicit discourse on illegal logging. Thus although there is broad public endorsement of the mandate of the National Forestry Institute (INAFOR) to control forest use, the same cannot be said for the manner in which INAFOR is fulfilling its mandate. In contrast, recent efforts of the State Attorney for the Environment to investigate illegal logging have been praised by the media and large sections of the public.

### 8.4 Verification in Nicaragua: design and practice

As noted above, the arrangements for forest control and verification in Nicaragua involve multiple institutions and actors. Some of these can be considered intra-sectoral mechanisms, as established by the Forest Law and its Regulation. Others are extra-sectoral arrangements established by different legal instruments such as the Autonomy Statute of the Atlantic Coast Regions, the Law of Municipalities, the Environment Law and the Law of Environmental Crimes. Although described separately below, in reality the two systems overlap and some actors (e.g. municipalities) play a role at both the intra- and extra-sectoral levels.

#### **Control and verification mechanisms established by the Nicaraguan Forest Law**

Figure 8.1 shows the intra-sectoral control and verification system, with its main actors and their functions. The system has a strong emphasis on operator compliance (supervision of forest owners or permit holders that carry out harvesting operations).

INAFOR, an executive agency under the Ministry of Agriculture and Forestry (MAGFOR), is responsible for routine control and monitoring of forest resource use outside protected areas; INAFOR also inspects forest products processing and trade. These functions are delegated to INAFOR's municipal officials. Their main tasks include:

- Office review of forest management plans and annual harvesting plans;
- Field inspections of forest sites;



- Revision of monthly reports submitted by forest regents – accredited forest professionals;
- Control of transport activities; and
- Audit of industry facilities.

To support INAFOR's control responsibilities, the Forest Law also establishes the delegation of forest administrative and monitoring duties to forest regents, whose public duties include:

- Corroborating the correct elaboration of forest management plans and annual harvesting plans;
- Supervising logging operations;
- Ensuring the correct use of transport permits; and
- Filing monthly reports to INAFOR's local office.

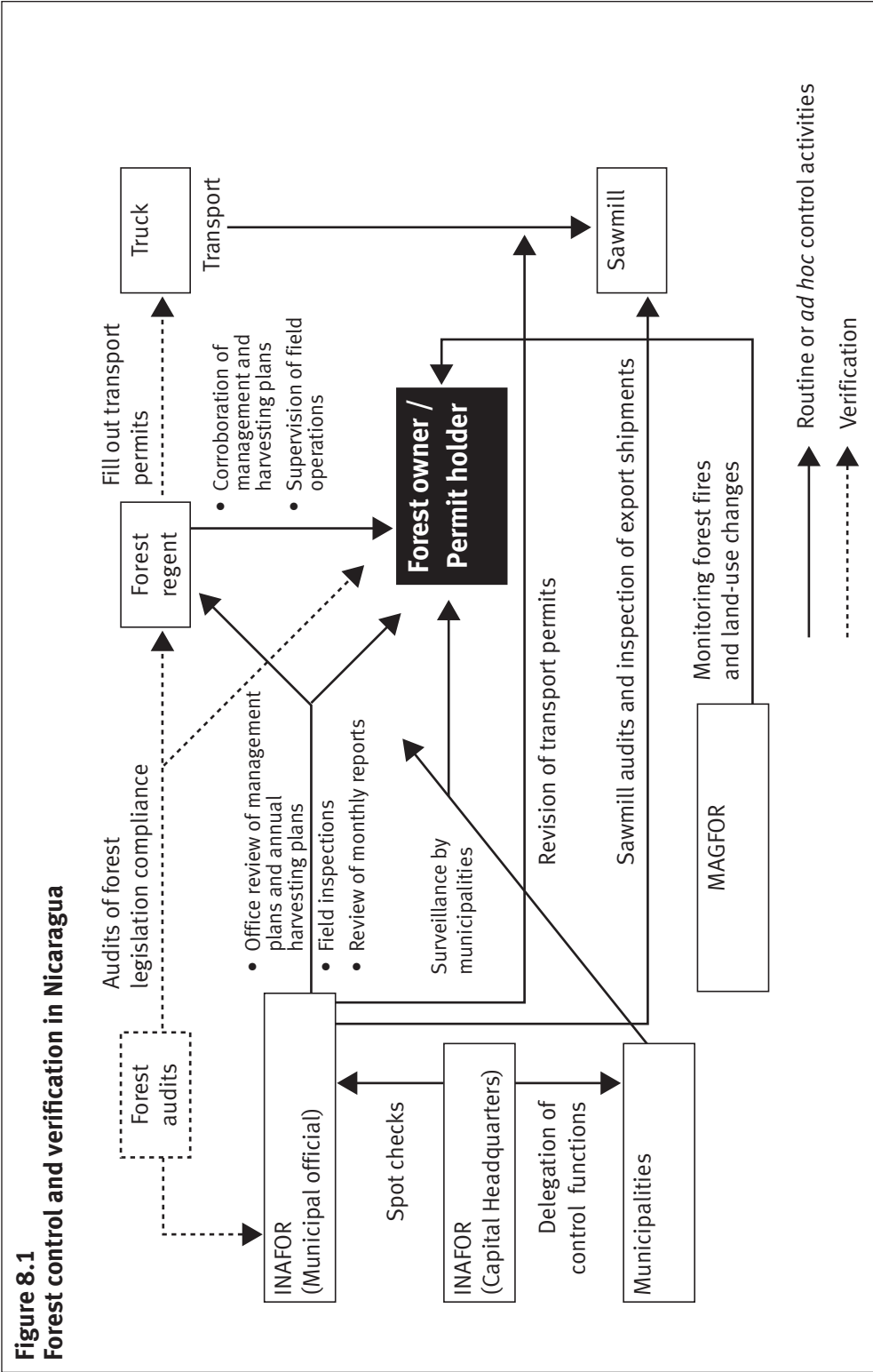
INAFOR's municipal officials are in theory inspected through spot checks from its capital-based Monitoring Department. But these are usually sporadic and rather superficial, so INAFOR's local officials can operate with a high degree of autonomy (CINCO and CIP, 2006).

Local governments can enter into partnership agreements with INAFOR, under which the municipalities can assume forest administrative and control functions. A number of these agreements have already been signed, but most are only just starting to get off the ground. Some municipalities are also involved in the control of forest fires and land-use changes. However, outside protected areas this is primarily the responsibility of MAGFOR.

In theory, the forest audits can be considered the 'verification piece' of this multi-layered control system. These third-party audits are established by the Forest Law and should be carried out by independent and specialised individuals or companies, accredited by INAFOR. Their aim is to check the implementation of forest management plans and annual harvesting plans. Through this action, forest auditors can verify the acts of timber operators and forest regents (and indirectly also of INAFOR's municipal officials). But funding has been the Achilles' heel of the forest auditors. While they should be contracted by INAFOR, the Forest Law does not specify the source of the funds for their payment. As a result, this verification mechanism has not yet been implemented.

In July 2006, INAFOR and the UK-based NGO Global Witness signed an agreement for the implementation of an Independent Forest Monitoring (IFM) pilot project in Nicaragua, with the mandate to generate reliable information about illegal logging in the country and ensure the objectivity and transparency of the monitoring activities carried out by the relevant authorities (INAFOR and Global Witness, 2006). According to some observers, the function assigned to forest auditors has been carried out, at least in part, by the independent forest monitor. But most stakeholders (including the IFM team) hold a different view and argue that the IFM initiative should support and observe the work of forest auditors, and not be considered as replacing their work.

**Figure 8.1**  
**Forest control and verification in Nicaragua**



### **Forest verification by extra-sectoral agencies**

Figure 8.2 illustrates the extra-sectoral control and verification system, as established by diverse legal instruments. Again, the system has a strong emphasis on operator compliance.

The 2006 Logging Ban Law prohibited forest harvesting operations in all protected areas. Prior to this change it was possible to carry out forest management activities in certain protected areas. In such cases, INAFOR could issue a logging permit only after the approval of the forest management plan by the District Office of the Ministry of Environment and Natural Resources (MARENA). Monitoring forest operations in protected areas was also a responsibility of MARENA's District Office, as was controlling the transport of forest products coming out of them. All these functions have been eliminated with the logging ban in protected areas, but MARENA is still responsible for investigating deforestation and illegal extraction activities in such areas.

The Law of Municipalities gives a significant monitoring and surveillance role to local governments, which is usually carried out by the Municipal Environmental Unit (UAM) through field inspections in collaboration with INAFOR's or MARENA's local officials. In the two Autonomous Regions of the Atlantic Coast (North Atlantic Autonomous Region, RAAN, and South Atlantic Autonomous Region, RAAS), this role is carried by the Natural Resources Secretary (SERENA) of the regional government.

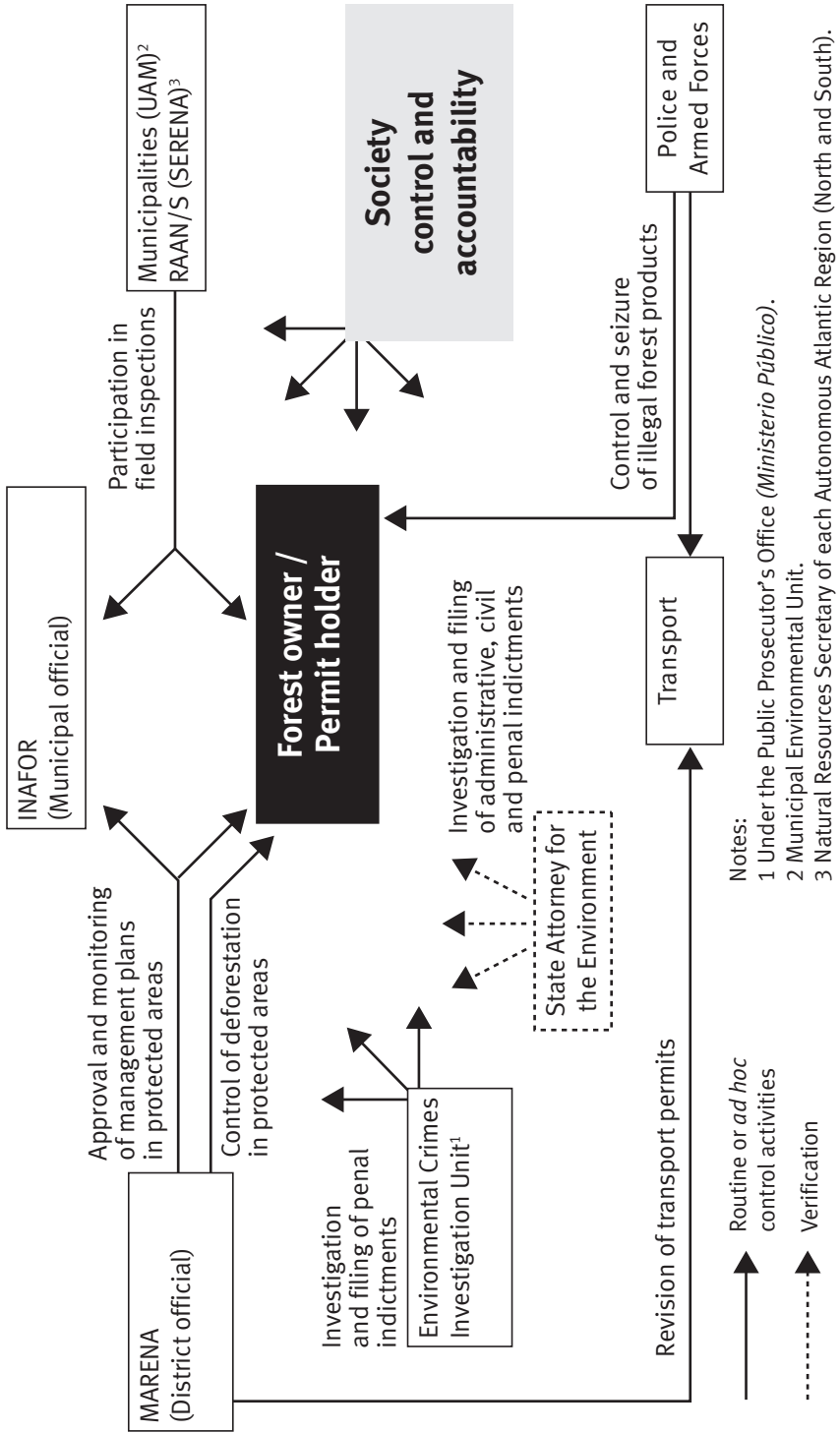
The National Police and the Armed Forces are required to support INAFOR's and MARENA's efforts to control forest products transport. Following the Logging Ban Law, they also have a key role in monitoring the application of the new logging prohibitions, particularly (but not only) along the country's borders.

In this case, the 'verification element' of the system is represented by the State Attorney for the Environment, established by the 1996 Environment Law as a special branch of the Attorney General's Office, and responsible for representing and defending the interests of the public and the state on environmental matters. This institution has been very active in recent years in the fight against illegal logging. As shown by Table 8.2, in 2005 more than 50% of all the cases investigated concerned illegal logging, transport and processing of timber.

The Environmental Crimes Investigation Unit was established in 2006 within the Public Prosecutor's Office to support the application of the new Law of Environmental Crimes. This unit can carry out its own field investigation of violations established under this law. Although it is too soon to tell, it could eventually become a new forest verification element of Nicaragua's overall forest governance system.

These two entities are funded through the budget that the National Assembly approves annually for their host institutions (Attorney General's Office and the Public Prosecutor's Office), so their funding is somewhat independent from external interference. However, in Nicaragua part of the timber industry has close ties with the main political parties, which in turn have a strong grip on most government institutions, including the Attorney General's Office and the Public Prosecutor's Office, resulting in a high level of vulnerability to political manipulation.

**Figure 8.2**  
**Extra-sectoral forest control and verification in Nicaragua**



**Table 8.2**  
**Cases investigated by Nicaragua's State Attorney for the Environment in 2005**

Crimes	Number	Percent
Illegal logging, transport and processing of timber	310	53.2
Illegal fires	57	9.8
Others (e.g. poaching, illegal fishing, pollution of air/water/soil, illegal extraction of materials)	216	37
Total	583	100

**Source:** Procuraduría Ambiental, 2006.

## 8.5 Which verification functions can be identified?

As established by the Forest Law, the main aim of the forest audits (which, as noted above, have not yet been implemented) is to assess the performance of timber operators and forest regents against an established set of forest management norms. They therefore have a quite restricted *monitoring function* with a strong focus on single elements of the entire forest governance system.

Considering that forest auditors should be accredited, contracted and paid by INAFOR, it appears unlikely that they will be able to move their attention upwards to the resource allocation practices of this institution. Indeed, this wider focus is not in their mandate established by law.

Despite having a much broader mandate, the State Attorney for the Environment has generally carried out a rather narrow monitoring function, with a heavy emphasis on investigating legal compliance by individual operators. However, this is changing. The main driver behind this change has been the widespread abuse by INAFOR of permits designed in the Regulation of the Forest Law for small forest areas located within farm lands (and therefore not requiring the elaboration of a management plan). The abundant and illicit allocation of such permits to large companies working in extensive forest areas has driven the State Attorney for the Environment to focus on the entire system (including INAFOR's resource allocation decisions and institutional performance), thereby gradually assuming a broader *audit function*.

In both verification mechanisms there is no definition of a formal *feedback function*, through which the information generated by forest auditors or the State Attorney for the Environment can be validated and subsequently returned to the relevant institutions in order to contribute to the reform process. Likewise, there is no established procedure for making the information accessible to the wider public.

By contrast, both mechanisms have a clear link to the *enforcement function*. Forest auditors' reports, once approved by INAFOR, can be used as technical information for the application of the sanctions established by the Forest Law and its Regulation while the State Attorney for the Environment has the authority to file indictments requiring enforcement actions to INAFOR (for administrative sanctions) and the judicial system (for civil and penal sanctions).

## 8.6 Performance of the verification mechanisms

### Forest audits

It is not possible to assess the functioning of forest audits, since they have not yet been implemented. Nonetheless, most stakeholders express a positive appreciation of this mechanism and regret its lack of implementation.

As shown in Figure 8.1, routine control of forest operations is delegated to INAFOR's municipal officials in collaboration with forest regents. These two actors are part of the local 'forestry community' (defined broadly as the group of actors related to the local forest sector). Unsurprisingly, cases of non-compliance by local timber operators are dealt with using an accommodation approach that favours soft enforcement measures. In general, violations tend to be viewed as acceptable mistakes (justifiable due to the difficult working environment) and treated with wide flexibility in the application of sanctions. This helps maintain the social cohesion of the local forestry community (Pendleton, 1998). But at the same time it engenders distrust among extra-sectoral actors.

In this context, many observers believe that forest audits are a necessary (and relatively soft) mechanism, which could bring an extra level of transparency and accountability, and at the same time be acceptable to the local forestry community.

### State Attorney for the Environment

The data in Table 8.2 show the commitment and effort of the State Attorney for the Environment, who carries out remarkable work with extremely scarce resources.

More than half (53.2%) of all the cases investigated in 2005 concerned illegal timber harvesting, transport and processing, while none dealt with deforestation. This is surprising considering that Nicaragua loses between 50,000 and 70,000 hectares of forests each year (FAO, 2005; Faurby, 2005). As argued at the beginning of this case study, land-use change for cattle ranching and agriculture investments is by far the main cause of forest loss in Nicaragua, much more than forest logging operations.

Therefore, while the work of the State Attorney for the Environment reflects the common discourse on illegal logging and to some extent the public's desire for action, it can be argued that it is actually doing very little to tackle the loss of the country's forest resources.

Likewise, the impacts in terms of wider forest governance appear limited. Timber operators tend to reject the activities of the State Attorney for the Environment. Firstly, they (understandably) perceive a bias against them, while deforestation is neglected. Secondly, the actions of the State Attorney for the Environment have often been accompanied by a harsh rhetoric against timber operators. Thirdly, the legal approach is different. The legality standards applied by the State Attorney for the Environment are based on the Environment Law and the Law of Environmental Crimes, and are different from those applied by INAFOR and timber operators that are based on the Forest Law and its Regulation. The new and vague Logging Ban Law has added even more legal uncertainty.

All this has created a sort of barrier of mistrust and resentment between the two sides. In the words of Lang (1996), '*control takes place only to the extent that it is accepted by those to be controlled*'. If one accepts this view, it could be argued that the work of the State Attorney for the Environment in recent years has not been very constructive for promoting a more enabling environment for forest governance in Nicaragua.

According to the State Attorney for the Environment, the lack of attention to deforestation in 2005 was caused by the fact that ‘clear cutting’ and ‘forest land-use change’ were not clearly identified as crimes until the new Law of Environmental Crimes came into effect in mid-2006. Therefore, despite the confusion around legality standards, this new law could eventually promote a shift in the State Attorney for the Environment’s work and a more even-handed approach to forest offences. This would certainly help Nicaragua’s forests.

## 8.7 Lessons learned

The lessons that can be learned from this case study include the following:

- Public support for a verification mandate is not necessarily a function of its scope or of stakeholder participation in its definition. In Nicaragua, such support appears to be more closely related to public perception of its level of fulfilment by the relevant institution or actor.
- In addition to individual institutional mandates, there may be a need for an overall legal mandate for the entire forest verification system. In Nicaragua, several legal instruments establish a multi-agency arrangement, with a number of institutions and actors involved in control or verification activities. Each institution or actor has its own mandate defined by law, but there is no overall mandate for the entire forest verification system.
- Clarity is needed as to which legal framework applies. The legality standards applied by the State Attorney for the Environment are based on the Environment Law and the Law of Environmental Crimes, while those applied by INAFOR and timber operators are based on the Forest Law and its Regulation. The new and vague Logging Ban Law has added even more legal uncertainty.
- Funding sources must be clearly defined during system design. In Nicaragua, forest auditors (the key element of the forest verification system) are not yet operational because the Forest Law does not specify the source of the funds for their payment.
- If IFMs are brought in, there needs to be a clear understanding of their role with respect to the mandate of other institutions or actors – are they supporting or replacing these bodies?
- Finally, this case raises the important question of the *goal* to which verification activities contribute. Is the focus of concern legal compliance, or some other higher level public issue, such as deforestation? Thus although in Nicaragua land-use change is the main cause of forest loss, control and verification activities have focused on timber extraction and processing operations. System design must be clear about the impacts it is trying to achieve.

## Chapter 9

# Forest law compliance within the Brazilian forest governance system

**Note:** This case study was completed in December 2007 and is authored by Hans Thiel. It is based in part on Thiel, H. and Viergever, M. (2006) ‘Giants Don’t Leap: Verification in Brazil’s Process towards Sustainable Forestry’, VERIFOR Country Case Study No. 5. London: ODI.

**Table 9.1**  
**Brazil: some key statistics**

Statistic		Date	Data source
Population	186.4 million	2005	UN Population Division, 2006
Land area	835.6 million ha		FAO, 2006
Forest cover	57.2%	2005	UN Statistics Division, 2006
Public forest ownership	No data	2000	FAO, 2005
Industrial roundwood production	132.2 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	471,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	3.4%	Average 1990-2000	FAO, 2004
Value of forest product exports	US\$2.2bn	Average 1990-2000	FAO, 2004
Main international markets for timber	No data	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	3.3	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.79	2004	UNDP, 2006a

### 9.1 Introduction

This case study illustrates the importance of political commitment, visionary leadership and trans-sectoral coordination to tackle the causes that underlie illegal deforestation, predatory forest exploitation and associated corruption in Brazil. These are leading to groundbreaking legal and institutional reforms which, together with technological



innovations, are enhancing the applicability and enforcement of laws that regulate land and forest use. An interesting decentralised forest administration, control and verification system is emerging from this reform process in which the authority and several competences are exercised concurrently between the national level and the state forest administrations with support of an innovative information system.<sup>1</sup>

Brazil is a country of continental size with 57% of its land area occupied by forest. Sixty percent of the Amazon basin is Brazilian. Production chains that use timber account for 4% of Brazilian GDP and 8% of its exports, generating more than US\$1.4bn fiscal revenue annually and creating approximately 2 million direct and indirect jobs. More than 85% of the country's timber production from natural forests comes from the Brazilian Amazon, where 2570 logging companies, operating in 72 timber production regions (*'polos madeiros'*), generate a gross annual income of US\$2.5bn. The value of exported timber from the Brazilian Amazon is just under US\$1bn per year, with 30% of these exports going to EU member states (Thiel and Viergeveer, 2006).

More than two-thirds of the 17 million m<sup>3</sup> of roundwood produced in the Brazilian Amazon in 2003 originated from land clearance. Cattle ranching and soy bean cultivation, responsible for 70-80% of deforestation, have been an enormous source of illegal timber for the industry. This is because agriculture, unlike legal forest management, does not require formal land tenure. Land tenure registration is very precarious in Brazil and unresolved tenure promotes predatory use and exploitation of the forest instead of sustainable forest management and conservation. Hence there is considerable disparity between authorised timber volumes and the amount of forest consumed by the forest industry. As much as 80% of the total timber production in the Brazilian Amazon is estimated to be illegally sourced (PAS, 2006).

## 9.2. Drivers and mandate for forest control and verification

Concern over the alarming deforestation rates in the Brazilian Amazon, and Brazil's position as the world's biggest producer and consumer of tropical wood products, led the Brazilian government to create the National Forest Program (NFP) in 1998 and to reinforce it in 2000. The programme was the result of a broad, participatory process involving more than 600 organisations of different segments of society, with the aim of promoting the sustainable development and conservation of forests in a manner compatible with other public policies. The NFP itself aims to decrease deforestation by: (i) doubling the coverage of reforested areas to ensure timber supplies for the industry, thereby reducing the pressure on natural forests; and (ii) promoting sustainable forest management through capacity-building. A pivotal element of the programme is to regularise the complex tenure and management situation of forest land, especially in the federal public forests. In 2003 the Interinstitutional Commission to Coordinate the National Forest Program (CONAFLO), composed of 37 institutions belonging to different sectors, was created by Presidential Decree to implement these policies.

The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), through its ProManejo Forest Resources Management Program, was another key

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<sup>1</sup> Concurrent exercise of a public competence: delivery of the same competence or function by national and sub-national public authorities, each within their level of hierarchy and their territorial jurisdiction.

driver of reform. ProManejo's main objective was to support the development and adoption of sustainable forest management in the Brazilian Amazon. It included the evaluation of forest administration and verification systems that were in place and the development of more efficient and transparent options. Active since 1999, ProManejo was implemented within the context of the Pilot Program to Conserve the Brazilian Rain Forest (PPG7) which is funded by the G7 member countries, the European Community and the Netherlands. Although the PPG7 provided financial and technical support, the project was driven by the Brazilian government in collaboration with civil society and the private sector.

The Permanent Inter-Ministerial Working Group to Reduce Deforestation in the Brazilian Amazon (GPTIRID), coordinated by the Chief of Staff Office (*Casa Civil*) of the Presidency of the Republic, was also established in 2003.<sup>2</sup> The GPTIRID consists of 13 line ministries that have an interest in, or an impact on, the Brazilian Amazon, together with enforcement bodies (the *Ministério Público* and the Federal Police) and technical organisations such as the Brazilian Space Agency (INPE).<sup>3</sup> Its Plan of Action supports monitoring and control, land-use planning, and sustainable economic and infrastructure development (GPTIRID, 2004).

Between June 2003 and May 2006, the *Casa Civil*, the Ministries of Environment (MoE), of National Integration, and of Planning, Budget and Management, together with seven Amazonian states generated a new development framework for the region, the *Plano Amazônia Sustentavel* (Plan for a Sustainable Amazonia) (PAS, 2006). The aim of this plan is to coordinate federal and state-level actions within a sectoral and territorial context, encouraging the active participation of civil society, the private sector, the states and the municipalities. Through decentralisation and inclusive regional policy-making oriented to achieve societal dialogue and consensus, the PAS hopes to reverse regional inequalities, concentration of rent, social exclusion and predatory growth patterns. The general guidelines of the PAS are to promote land-use planning, regularise land tenure and minimise illegal deforestation through enforcement, monitoring and promotion of more intensive forms of land-use. It emphasises good governance, legal compliance and the active presence of all levels of the state in the region as a prerequisite for sustainable growth. The PAS also underlines the need for regional economic integration both within national borders and within the South American Amazon Region.

All these processes benefit from a very strong political mandate involving the highest levels of government and key civil society actors. Although the explicit discourse converges around concerns over deforestation, weak governance and inequities in the Brazilian Amazon, the sovereignty-sensitive issue of tropical forest as a global public good and the 'internationalisation of the Amazon' are also seen as threats and are therefore important drivers for action.

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<sup>2</sup> The *Casa Civil* is a very powerful body which intermediates between the executive and legislative powers, with a mandate that includes the examination of all draft laws.

<sup>3</sup> The role of the *Ministério Público* is to investigate criminal offences and to denounce them to the Judiciary. The *Ministério Público* is independent of the Executive.

### 9.3. Institutional architecture

The current framework within which all major public sector environmental institutions operate is provided by the National Environment System (SISNAMA), whose major body, the National Environment Council (CONAMA), consists of 103 representatives from all segments of society. SISNAMA advises the government, promotes studies, proposes guidelines and also determines norms and procedures in relation to environmental matters. The central body of the system is the Ministry of Environment, which is responsible for planning, coordinating and supervising environmental policies. At the national level, the executing agency is IBAMA. At the sub-national level, the state environment agencies are responsible for implementing programmes and projects as well as environmental monitoring and control in their jurisdiction. They may establish their own norms and procedures as long as these are not in conflict with federal legislation. When state agencies lack the necessary capacity, IBAMA is expected to step in.

The Brazilian constitution introduced the mandate for the decentralised and concurrent exercise of forest authority by the central government, the states and the municipalities in 1998. However, it was only in March 2006 that the new Law on Public Forests reformed the 1965 Forest Code, giving states and municipalities responsibility for licensing and monitoring forest-related activities in private, state and municipal forests and conservation units of their respective jurisdictions. Concurrently with the states, the federal agency, IBAMA, oversees the delivery of these decentralised competences and law enforcement. This decentralised forest administration is to be implemented within an innovative, transparent information system that enables the national forest authority to oversee and supervise the states. The new law also created the Brazilian Forest Service to regulate the management of the Federal Public Forests, promote sustainable forest management and manage the National Fund for Forest Development. Furthermore, the 2006 law went some way towards enabling the forest sector to operate legally by, for the first time, allowing legal timber production on public forest land under a concession system.

The states had until October 2007 to assume forest competences in the SISNAMA framework, including establishing their own forest administration and control systems. These systems are required to be linked into both the National Forest Information System (SISCOM) and the National Environment Information System (SISNIMA). Although the states have the freedom to implement their own forest administration and verification systems, they can also request cooperation from IBAMA. The terms of such cooperation are set by the federal authority and include an agreement to introduce electronic systems and a multi-stakeholder commission to follow up. IBAMA can provide the states with the newly developed forest administration system, DOF (*Documento de Origen Florestal*), and training in its use.

Enforcement is separated vertically between the federal and state-level *Ministérios Públicos*, both layers acting concurrently in prosecuting law infringement and bringing offenders to the criminal courts. Administrative sanctions such as timber seizures or fines are administered concurrently by IBAMA and the environmental bodies of the federal states.

The role of Brazilian civil society, acting as independent monitors in this process, cannot be ignored: the capacity of environmental NGOs, the media, industry and academia to exercise societal control and scrutiny over public actors is relatively high.

## 9.4. Administration and verification of land-use change and timber harvesting

### Land-use and land-use change

For properties in the ‘Legal Amazon’, only 20% of the area may be deforested, with the remaining 80% being maintained as a ‘legal reserve’.<sup>4</sup> To support the state environmental agencies in implementing this regulation, IBAMA’s PPG7 developed the land-use planning system, the System of Environmental Licensing in Rural Properties (SLAPR), which combines environmental licensing of rural properties with monitoring and control of land-use change. To obtain an environmental licence (LUA), the geo-referenced boundaries of the property, the legal reserve and protection areas on steep slopes and alongside watercourses must be entered into the system, so that environmental authorities can monitor forest cover change through satellite images. Uptake of SLAPR varies between federal states: some, such as Mato Grosso, have been operating it for years while others, such as Roraima, have not yet introduced it.

### Timber harvesting

Before submitting a forest management plan, a timber company must obtain an environmental licence (LUA) and a ‘prior approval’ document (APAT) (MMA, 2006a). The APAT verifies legality of land tenure, legal status of the persons or companies involved, and proof of existence of the forest in question through a geo-referred map over a satellite image. These parameters have been the most common features of fraudulent activities to launder illegal timber by using fictitious companies and/or non-existent forests through fake timber-volume-credits.

Once these legal conditions are verified, a forest management plan or a permit for land-use change may be submitted for appraisal to the relevant state environmental body.<sup>5</sup> Management plans for natural forest must meet the sustainable forest management standards set out by the federal government in Normative Instruction No.5. These plans must be prepared by and executed under the technical responsibility of a forest engineer or agronomist registered by the Regional Council of Engineering, Architecture and Agronomy (CREA). Once the administration approves the management plan it issues an authorisation to harvest/exploit (AUTEX) which generates a timber-volume-credit in the Declaration of Origin (DOF) system. Those forest operators registered within the system and within a new technical cadastre can then access the DOF system online, just as bank clients can use cash machines to withdraw money from their accounts.

The system allows timber producers to administer their own timber volumes and offer these volumes online to registered consumers from the industry. Once a consumer has accepted the offered timber consignment online, the transaction is registered by the system and the agreed timber volumes (by species) are automatically debited from the volume credit. The producer then prints out the bar-coded timber transport permit (also called DOF). When the timber is delivered to the industry, the permit information

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<sup>4</sup> The ‘Legal Amazon’ of Brazil is defined by law to include the states of Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Mato Grosso, Maranhão and Tocantins.

<sup>5</sup> In states that have not yet taken over forest administration this is still done by IBAMA’s regional or local offices.

is entered into the DOF system, which automatically cross-checks it with the database and then generates a volume-credit for the industry. This enables the industry to issue its own DOF permit to transport its produce to its clients.

By giving the producer the responsibility for printing the DOF permit and reporting back to the administration, this new system is reducing costs, bureaucracy and the risk that timber volumes are fraudulently used by third parties. An interesting innovation is the link established between producers and consumers within an administrative process: this opens the way for the creation of an electronic market for legally produced timber.

### **Verification and monitoring**

Verification of compliance in the forest is carried out concurrently by officials from the state environmental agencies and by IBAMA. All management plans must be monitored at least once every three years using detailed guidelines (with checklists and indicators) for verification of legal compliance by the operator (IBAMA, 2004). Execution of management plans is supposed to be monitored by the professional that holds the technical responsibility, but this is seldom the case. Sabogal et al. (2005) recommend that the responsibilities of these forest professionals should be better clarified and that IBAMA and CREA should prosecute misconduct more effectively. There is also concern about the independence of forest professionals, since their services are directly paid for by those executing the management plan (i.e. loggers).

State and federal environmental authorities do spot-checks on the roads to verify that timber consignments have the correct transport permit. Using the bar codes, they can validate the permit information with that in the online DOF database. The electronic cross-checks inherent to the DOF system also trigger alerts which enable the authorities (the MoE, IBAMA, the Federal Police and the Federal Prosecutor) to optimise and target their verification and enforcement activities. They are further helped to detect illegal deforestation by the DETER programme, a highly efficient satellite-based monitoring system developed by INPE that is able to detect land-use change in the Brazilian Amazon every 15 days (see [www.obt.inpe.br/deter](http://www.obt.inpe.br/deter)).

### **Feedback**

In accordance with government policy on public access to information, all information about deforestation and forest licensing must be made accessible through the internet. The states had until September 2007 to take up the DOF system or to set up their own similar systems, allowing IBAMA free access to the information so that it can be integrated into the National Forest Information System (SISCOM), which cross-checks information with the publicly accessible DETER programme and the federal technical cadastre (Chavez, J.H., 2006, pers. comm., September). In future, all approved forest management plans will also have to be registered in the National Cadastre of Sustainable Forest Management Plans that will be publicly accessible on the internet and will be operated by IBAMA (MMA, 2006b).

## 9.5 Power and independence

The political will, leadership and inter-institutional coordination at the highest levels of government make the forest governance system that is emerging from the reform process in Brazil very strong, when compared with similar processes elsewhere in Latin America. Environmental authorities do not act in isolation, but within a coordinated array of public bodies acting complementarily to enforce forest law and enhance governance in the forest sector.

Although still under construction, the decentralised Brazilian forest governance system creates two independent layers of institutions, those at the federal level and those acting at state level. The horizontal independence between the layers is enhanced by a vertical independence, since most actors of the system such as the environmental authorities, the *Ministérios Públicos*, the Police, INPE or CREA are completely independent of each other. Table 9.2 provides a brief overview of the relationships between the various actors and systems.

## 9.6 Performance and impact of the system

Between the creation of the GPTIRID in 2004 and March 2007, 18 larger-scale and approximately 400 smaller-scale enforcement operations were carried out. The results reported by the MoE are impressive (MMA, 2007): 460 imprisonment orders have been issued and offenders have been fined more than US\$1.3bn.<sup>6</sup> Approximately 814,000m<sup>3</sup> of roundwood, 471 tractors, 171 trucks and 643 motor chainsaws are reported to have been seized. Due to the slow judicial process, the actual numbers of people imprisoned and fines collected are much lower. Nevertheless they have had enormous impact on law compliance and corruption tolerance standards in the forest sector.

One of the most spectacular actions that exemplifies the impact of coordinated enforcement was '*Operação Ananias*' in Altamira in the state of Pará in February 2007 which involved 150 agents, 39 cars, a helicopter and a plane. As a result of this action, a criminal network of civil servants and loggers was dismantled and 37 incarceration orders issued. The Minister of Environment declared that crime detection times had been reduced by 50% thanks to the new DOF system.

The Ministry of Environment furthermore declared that deforestation had been reduced by 52% during the years 2005 to 2006 (MMA, 2007). Data from INPE also show that from 2004 to 2005 deforestation declined by 31% from 27,429 to 18,793 km<sup>2</sup> (INPE, 2007).

The influence that forest policies and verification of law enforcement have on these figures is difficult to differentiate from other macro-economic and extra-sectoral factors such as low prices for agricultural commodities on the world market. Nevertheless the Brazilian experience shows that verification of forest law compliance has to be embedded within a comprehensive forest governance system in which political, normative, institutional and societal factors interact in a coherent and sustained way to achieve desired results.

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<sup>6</sup> The imprisonments applied to 333 private sector individuals, 113 federal public servants, 3 policemen and 17 state public servants.

**Table 9.2**  
**Verification of forest law compliance in Brazil**

Object of verification	Legal mandate	Functions (actors and systems involved)					Public feedback & information
		Administration/control	Monitoring/verification	Taking measures	Sanction (administrative or criminal)	Oversight	
Land-use/authorised land-use change (ALUC)	Keep 80% legal forest reserve in legal Amazonia (A.1.511/25.7.96)	EBS/(IBAMA EBS) Issue environmental licence (LUA) SLAPR system	IBAMA (GPTIRID) Concurrently with EBS DETER SYSTEM	Federal police, federal and state prosecutors (GPTIRID)	A: EBS/(IBAMA EBS) C: Judiciary	Public access to the PRODES and DETER systems on the internet	National Environment Information System (SISNIMA) open to the public
Timber use from ALUC on private or communal land	Permission to use and transport timber from ALUC (20% of area)	Owner to submit documentation for previous appraisal (APAT)	EBS/(IBAMA EBS) verify authenticity of documentation	EBS/(IBAMA EBS) not issuing APAT	A: EBS/(IBAMA EBS) C: Judiciary		
Timber harvesting in natural forests on private or communal land	Previous approval to SFM (APAT-IN NO. 4 11.12. 2006) Technical procedures for SFM (IN NO. 5 11.12. 2006)	Professional to prepare cutting plan (ALUC) or management plan (SFM)	Technical responsibility to oversee execution of cutting plan	CREA?	A: CREA?	National cadastre of forest management plans	
		EBS/(IBAMA EBS) issue AUTEX (SISPROF SYSTEM): introduce timber volume credit into the DOF system Producers/consumers print out DOF timber transport permit and manage their timber volume credit	EBS/(IBAMA EBS) Producer/consumer Automatic cross-checks of DOF system	Federal police, federal and state prosecutors (GPTIRID) Random spot-checks on road and at the industry	A: EBS/(IBAMA EBS) seize timber and fine C: Judiciary	DOF systems or similar systems of the EBS (SISFLORA-MT)	National Forest Information System (SISCOM)
Timber harvesting in federal public forests	Law (11.284) on public forests	Brazilian forest service to give out and regulate concessions in federal public forests	Private audits on concessionaire compliance every three years	IBAMA	A: IBAMA seize timber and fine C: Judiciary	National inventory of federal public forest	

EBS: environmental bodies of the federal states.

IBAMA EBS: At time of writing, IBAMA was in the process of transferring function to the EBS (deadline was September 2007)

ALUC: authorised land-use change



## 9.7 Lessons learned

The Brazilian case illustrates how inter-ministerial cooperation and coordination – involving parts of government not usually involved in policy discussions on forest development, such as the Ministries of Justice, Defence, and Science and Technology – has strengthened national efforts to address the problem of illegality. This approach, channelled through a broadly supported National Forest Program, together with political leverage at the highest level and strong individual leadership appear to be critical ingredients for success in achieving reform.

Legal reform has also been important with the most significant legislative change being the 2006 Law on Public Forest Management, which has gone some way towards reducing uncertainty around land tenure. It also accepted the principle of verification and introduced the requirement for 3-yearly independent audits of concessions given out on public forests.

Independence is ensured through the system's architecture. Environmental authorities do not act in isolation, but within a coordinated array of public bodies operating complementarily to enforce forest law and enhance governance in the forest sector. The decentralisation of regulatory functions to the states sets the challenge to clearly define the division of responsibility between the different levels of government, each acting concurrently within its hierarchy and jurisdiction. According to the principle of subsidiarity, the national authority may nevertheless take on forest monitoring and enforcement responsibilities in some forest-rich states in the Amazon, in which environmental agencies are seriously under-resourced and in need of capacity-building.

Finally the case illustrates how the application of innovative technology (e.g. satellite technology to monitor land-use change) can offer new possibilities for regulatory control (Bird and Thiel, 2007). There has been considerable investment in a number of technologies, including online databases, to help address the challenge of effecting control over such a widely dispersed sector. This comprehensive information system allows national and federal authorities to audit and verify the actions of a decentralised forest administration and control system. Public access to this information allows oversight by civil society and so reduces arbitrary decisions and corruption.





## Chapter 10

# Ecuador's Outsourced National Forest Control System

**Note:** This case study was completed in December 2007 and is authored by Guillermo Navarro, Filippo Del Gatto and Martin Schroeder. It is based in part on Navarro, G., Del Gatto, F. and Schroeder, M. (2006) 'The Ecuadorian Outsourced National Forest Control System', VERIFOR Country Case Study No. 3. London: ODI.

**Table 10.1**  
**Ecuador: some key statistics**

Statistic		Date	Data source
Population	13.2 million	2005	UN Population Division, 2006
Land area	27.7 million ha		FAO, 2006
Forest cover	39.2%	2005	UN Statistics Division, 2006
Public forest ownership	77%	2000	FAO, 2005
Industrial roundwood production	2.67 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	40,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	1.8%	Average 1990-2000	FAO, 2004
Value of forest products exports	US\$44m	Average 1990-2000	FAO, 2004
Main international markets for timber	No data	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	2.3	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.76	2004	UNDP, 2006a

### 10.1 Introduction

In 2003 the launch of Ecuador's innovative Outsourced National Forest Control System (*Sistema Nacional Tercerizado de Control Forestal (SNTCF)*) attracted worldwide attention. The system delegated responsibility for the monitoring and public administration

of forest operations to three different bodies with the following roles: policing the transport of forest and wildlife products, monitoring activities within the forest, and carrying out administrative and verification functions. This case study analyses the development of this forest control system with integral verification activities which was in full operation for only a few months before its success made it the target of fierce opposition inside the country, eventually leading to its partial suspension and overall weakening.

## 10.2 The politics behind the SNTCF

With an annual loss of 137,000 hectares of forest, Ecuador has the highest deforestation rate (1.2%) in South America (FAO, 2000). This is fuelled in part by widespread illegal logging, variously estimated at between 50% and 75% (Álvaro, 2003; Echeverría, 2004; *The Economist*, 2003). The SNTCF was conceived in Ecuador's 1999 Forestry Strategy as a means to combat this high level of illegal logging. Although the Forest Strategy was the outcome of a broadly participatory process, the SNTCF itself was developed by a relatively small group of people and institutions:

- Leadership was provided by a few highly qualified, dedicated and charismatic senior officials inside the Ministry of Environment (MoE).
- CEDENMA (the Ecuadorian Committee for Nature and Environment Protection), the most vocal and technically competent environmental advocacy group in Ecuador, represented the urban civil society voice.
- The private timber industry participated, mainly through AIMA and COMAFORS in alliance with small timber traders.<sup>1</sup> However, in spite of their official position in favour of controlling illegal logging, they were never really supportive and became the main opponent when administration and monitoring services were delegated to the Ecuadorian branch of the Swiss company Société Générale de Surveillance (SGS) (*The Economist*, 2003; Álvaro, 2003; Thiel, 2004).
- A few bilateral and multilateral donors provided technical and financial assistance to the implementation of the forest policy and especially to support civil society in its oversight role. These included the German international cooperation enterprise GTZ, the United States Agency for International Development (USAID) the Inter-American Development Bank (IDB) and the UN's Food and Agriculture Organization (FAO).
- Forest professionals and their associations were also involved, but with a limited voice.

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<sup>1</sup> AIMA (Ecuadorian Association of Wood Industrialists) is a broad association of Ecuador's forest-based processing industries, including the biggest plywood producers. COMAFORS (Corporation for Sustainable Forest Management) is a non-profit organisation dedicated to the promotion of sustainable forest management, linked to AIMA. It is also a founding member of *Vigilancia Verde*, the public/private body charged with policing the transport of forest and wildlife products. Furthermore, COMAFORS' Executive Director at the time was hired by PriceWaterhouseCoopers to work on the tender documents for the outsourcing of administrative and verification services.

Notable by their absence were any governmental institutions outside the MoE.<sup>2</sup> This became problematic because a good part of the opposition to the system came from inside the MoE, prompted by hundreds of employees afraid of losing informal benefits generated by the *status quo*. It is possible that, had other ministries been involved, the employees of which did not have a stake in the existing system, a critical mass of institutional will could have been generated, capable of counterbalancing the MoE's internal resistance.

Also missing were two direct stakeholders: indigenous peoples and private forest owners, who together control the majority of the country's forests and represent hundreds of thousands of forest-dependent people.<sup>3</sup> Although civil society organisations occupied an important political space in the establishment of the SNTCF, indigenous or non-indigenous community-based civil society groups and forest owners from rural areas were almost totally absent. Those people who participated were by and large university educated, environmentally concerned, Quito-based actors from the country's urban middle class.

### 10.3 SNTCF's legal framework

The delegation of public duties to private entities is provided for in Ecuador's Political Constitution and in the 1993 State Modernisation Law (Echeverría, 2004), but the legal foundation for the SNTCF is the 1981 Forestry and Conservation Law and its Regulations. However, the complexity of the system required the development of a specific legislative framework for its implementation:

- MoE Ministerial Decree No. 86 (December 2000) recognised the control role of *Vigilancia Verde*, a public/private body consisting of the MoE, the police, the army and five local environmental NGOs.<sup>4</sup>
- MoE Ministerial Decree No. 131 (January 2001) introduced important new standards for forest management and defined the role, functions and responsibilities of forest regents, who are professional foresters recognised by the MoE (see Figure 10.1).
- Executive Decree No. 2609 (May 2002) authorised the MoE to delegate administrative and supervisory responsibilities to a private company. This decree allowed the MoE to issue Ministerial Decree No. 50 (July 2000), which defined the legal basis and administrative procedures for implementing the delegation process. In May 2000, the Ecuadorian branch of the Swiss-based company SGS was awarded a contract after an open competitive bidding process.
- By June 2004, several further decrees refined the norms and administrative procedures for forest management and harvesting in natural forests, plantations and agroforestry systems, and responsibilities and obligations of the forest regents.

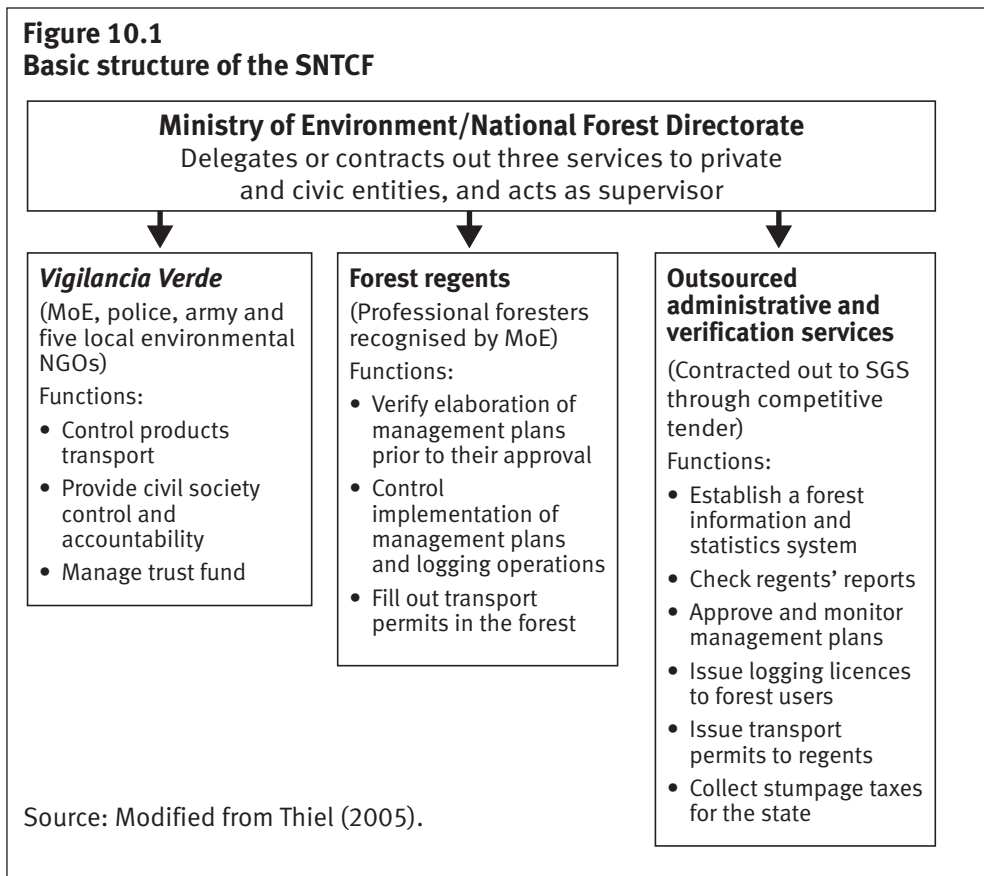
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<sup>2</sup> Though there was limited participation of the National State Modernisation Council.

<sup>3</sup> Private forest owners did, however, participate as opponents to the system, often mobilised and backed by local timber barons.

<sup>4</sup> The NGOs in *Vigilancia Verde* are *Fundación Ecuatoriana Populorum Progressio* (FEPP), *Fundación Natura*, CARE Ecuador, *Fundación Maquipucuna* and COMAFORS.

**Figure 10.1**  
**Basic structure of the SNTCF**



Despite these attempts to clarify the legal status of the system, the constitutionality and validity of the contract between the MoE and SGS were challenged by the forest industry. In May 2003 the State Attorney General upheld the contract. However, in October 2003, Ecuador's Constitutional Tribunal ruled against the outsourcing of services to SGS, judging that the Administrative Act placing forestry administration and supervision in private hands was unconstitutional. The court also declared unconstitutional the administrative measure authorising SGS to collect fees for its services.

The ruling did not directly address the question of the validity of the SGS contract, prompting CEDENMA and other groups to believe that the contract was still valid. However, the MoE unilaterally reclaimed all the administration and supervision duties previously delegated to SGS, throwing the contract with this company – and the entire key third component of the SNTCF – into disarray. According to many observers, internal opposition within the MoE is currently the main barrier to the signing of the new addendum negotiated by all the main actors in mid-2004, which would allow re-establishment of the system.

## 10.4 Background of the SNTCF

### Organisational structure of the system

The SNTCF embodied an integrated approach to forest law enforcement, aimed at improving transparency, reducing bureaucracy, and tackling corrupt and illegal practices. The basic structure (shown in Figure 10.1) involves the MoE outsourcing the responsibility for forest monitoring and administration to three different entities: the first a public/private body (*Vigilancia Verde*) policing the transport of forest and wildlife products, the second a number of private actors (forest regents) with the public function of monitoring activities within the forest, and the third a private company (SGS) tasked with carrying out forest administration and verification services. Outsourcing administrative and verification services to the SNTCF was supposed to free up the MoE's resources to tackle the central problem of deforestation and clandestine illegal logging.

The work of SGS entailed the establishment and operation of a forest information and statistics database providing multiple services on behalf of the MoE, such as checking elaboration and implementation of forest management plans, issuing logging licences and transport permits, and collecting stumpage taxes for the state. To finance its work, SGS was authorised to collect a fee of US\$2.50 directly from the forest user or logger for every cubic metre of timber harvested from natural forests (in addition to the stumpage tax of US\$3 per cubic metre for the MoE) and a fee of US\$0.10 per cubic metre cut in forest plantations (exempt from stumpage tax).

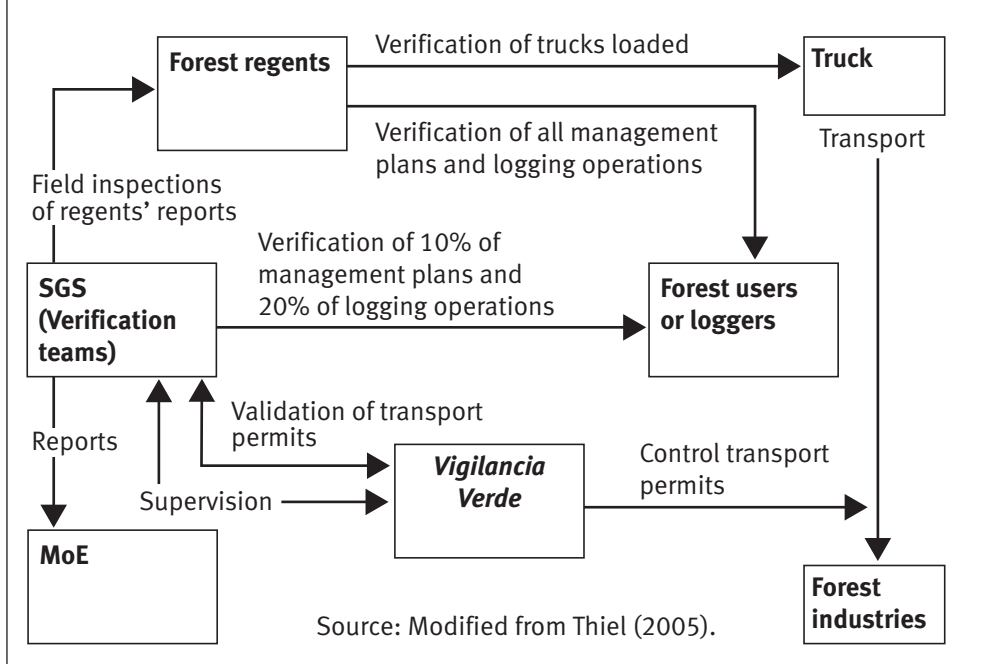
### Administration and control services

The core aim of the SNTCF was to provide two complementary functions: (i) efficient administration services to reduce the transaction costs of bureaucracy and provide incentives for legality; and (ii) effective control services that increase detection and punishment of illegal activities.

A pivotal element of the new administrative system was the information and statistics database which was to connect all administrative units at regional and local level, as well as *Vigilancia Verde*'s road checkpoints. The new system greatly speeded up administrative procedures. SGS's contract with the MoE gave the company just eight hours to approve (or reject) a management plan and issue (if approved) the relevant logging licence and transport permits on behalf of the MoE to the user/logger and to the forest regent. To carry out these services, and facilitate access to legality for small producers, SGS's contract included the establishment of a network of regional, local and mobile Administrative Units. However, in spite of this network, the remoteness of most forests meant that SGS could only carry out its field inspections after approval of the management plans and the start of harvesting operations. This obviously reduced the opportunity to prevent irregularities.

Control services were also shared out among the three different entities of the outsourced system (see Figure 10.2). SGS supervised loggers and the forest regents. The forest regents, in turn, were responsible for supervising all licensed harvesting sites: inspecting and reporting on the correctness and accuracy of forest management plans, harvesting and post-harvest operations. A loophole in the system was that forest regents inspected and certified management plans which they themselves had elaborated. They were also responsible for verifying volume loaded, species and other

**Figure 10.2**  
**Flow of forest control services**



relevant information for each truck leaving the forest. Violations or irregularities were noted in an indictment report, based on which the MoE could take the necessary steps to enforce the law. However, although Ecuador's Penal Code considers illegal logging a criminal offence punishable with up to four years in prison, the MoE is under political pressure to apply only administrative sanctions based on the forest legislation (e.g. fines and seizure of illegal products), which are not compatible with the seriousness and scale of forest crimes.

*Vigilancia Verde* controlled the transportation of all forest and wildlife products. At its peak, it operated a network of 12 road checkpoints and six mobile patrols, each comprising representatives from the forest authority, civil society, the police and the army. These teams operated on a 24-hour basis with members reassigned to different control points every 15 days. The MoE, in turn, verified that the confiscation of any product by *Vigilancia Verde* was carried out according to the norm. The MoE was to supervise and audit SGS on a permanent basis and sanction any contractual violation.

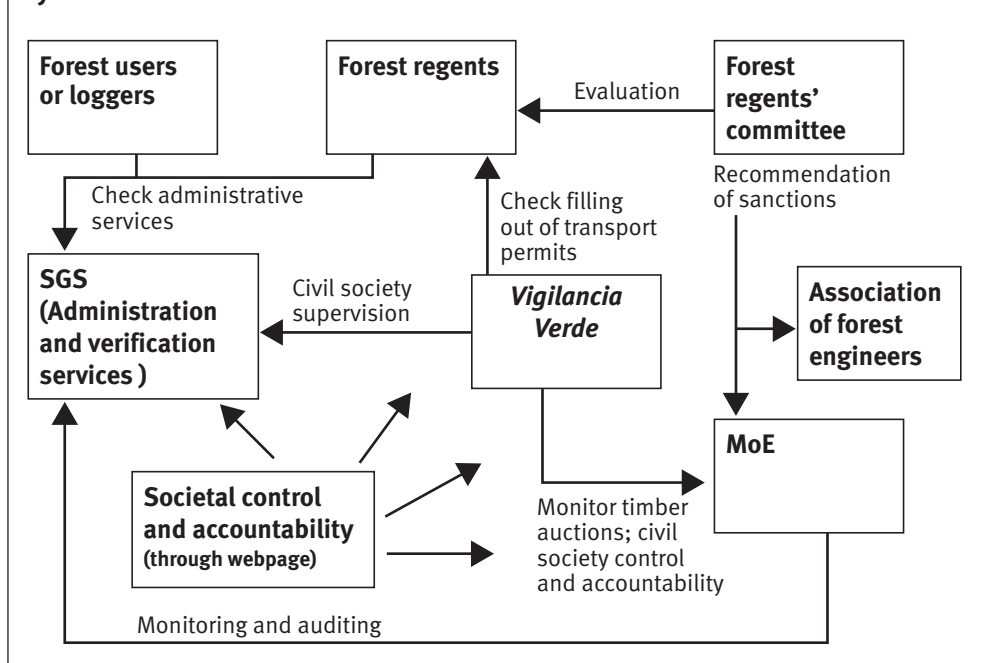
### Cross-checks and balances

Apart from the official verification services carried out by the different entities, the system had inbuilt cross-checks and balances which allowed all participants to monitor the specific activities of the others and report any irregularities (see Figure 10.3).

In addition to controlling road transport, *Vigilancia Verde* also closely checked other entities in the system:

- It verified the transport permits that the forest regents received and filled out on behalf of the forest authority.

**Figure 10.3**  
**System of cross-checks and balances in the SNTCF**



- It had a direct interest in supervising auctions of confiscated timber, carried out by the district offices of the MoE, since it received 50% of the sale value.
- Through its civil society advocacy groups, *Vigilancia Verde* performed a social auditing role of the MoE at the national and local level.
- In addition, *Vigilancia Verde* members provided civil society oversight of the functions of SGS at road checkpoints and in mobile patrols.

SGS played a role in directly validating information in the system on product transportation, and in controlling and reporting any irregularities in the performance of any member of *Vigilancia Verde*.

The system of cross-checks and balances also includes a Forest Regents' Committee, responsible for processing any reported irregularity or infraction committed by a forest regent, and for recommending eventual sanctions to the MoE and to the regent's Association of Forest Engineers.

Until the suspension of SGS's work, forest regents and forest users were ideally positioned to scrutinise the quality of the administrative services delivered by SGS. In addition, the MoE monitored the services contracted out to SGS and had the authority to sanction any contractual infringement. The establishment of an open access webpage (with data from the information and statistics database) was supposed to enhance the overall transparency of the entire system.



## Pro-poor dimensions

The design and establishment of the SNTCF were driven, at least in part, by a pro-poor focus. A key underlying objective was to provide more transparency within the marketing process as a prerequisite for an improved and more equitable negotiation between forest holders and timber traders. The establishment of peripatetic administrative units, as specified in SGS's contract, responded to this objective. Their function was to bring administrative services directly to communities, so small producers could reduce their dependence on timber intermediaries, ensure legality at diminished transaction costs, and eventually generate higher profits.

The SNTCF-related legislation provided simplified operational rules for small-scale forest management in natural forests, for wood exploitation outside forest areas, and for the conversion of up to 30% of individual property to non-forest land. Special permits were introduced to facilitate the extraction of certain timber species from agroforestry systems. Likewise, timber exploitation in plantations and other planted forest areas required only minimal bureaucratic efforts.<sup>5</sup> In addition, Executive Decree No. 346 allowed poor forest holders without an official land title to obtain logging permits by proving land tenure through a certificate showing that land titling was in process or through a declaration supported by three witnesses attesting to the possession of the land.

The SNTCF did not go as far as establishing different verification standards and taxes for small-scale forest owners. The latter are in fact disadvantaged by having to pay more per cubic metre for the services of forest regents because fixed costs (such as transportation) mean that regents charge higher unit fees for smaller volumes.

## 10.5 Impacts

It is difficult to evaluate the SNTCF's impacts because the three components worked together for only a few months in the second half of 2003.<sup>6</sup> In October 2003, the MoE suspended SGS's services, after which the entire system broke down. However, the general separation of responsibilities for assigning permits, controlling permits and punishing infractions promoted by the SNTCF and the involvement of multiple controls and actors did significantly increase the detection of forest-related irregularities and crimes. In 2002, *Vigilancia Verde* seized 5000m<sup>3</sup> of illegal timber, five times more than the state acting alone in 1999. In the few months of 2003 when *Vigilancia Verde* and SGS were acting together, the amount of timber confiscated increased sharply, suggesting that if SGS had continued its work the seizure of timber could have been nearly double that of the previous year. In those same few months SGS recommended to the MoE the suspension of 42 logging licences, for logging outside allotted areas, logging higher volumes and different species than those authorised, fraudulent use of transport permits, etc. Some observers argue that it was this success that led to violent protests against SGS (threats against staff, offices attacked and computers stolen), carried out by local people but stimulated by vested interests.

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<sup>5</sup> Although even these transaction costs remain higher than those for agricultural activities.

<sup>6</sup> SGS's activities started in mid-June 2003 in the Province of Esmeraldas and were expanded to national level from the beginning of August.

## 10.6 Lessons learnt from the rise and fall of the SNTCF

The rise and fall of the SNTCF provide some important lessons relating to the establishment and design of a forest control and verification system. The design and social acceptance of the SNTCF were favoured by a period of political stability in terms of national policies and mandate. It was also an output of a Forest Strategy perceived to be providing concrete actions to solve the problems of deforestation and illegal logging and trade. The implementation of the SNTCF was supported by the existence of two influential allies, the urban environmental movement and the donor community, and the participation of strong and politically active actors through *Vigilancia Verde*.

At the same time, a number of factors led to negative perceptions of the legitimacy of the SNTCF and its ultimate fall. Prime among these was the inability of environmental stakeholders to counterbalance weak governance, influential industrial interest in the *status quo* and the disengagement of key rural stakeholders owing to the insufficiently pro-poor focus of the SNTCF. The SNTCF might have been strengthened against its detractors had it recognised the need to obtain the buy-in of those who had benefited from the old system and implemented a clear transition agenda for actors such as MoE officials for whom the SNTCF implied a dramatic change in function. Its popularity might have been greater had it introduced a compensatory or incentive mechanism for forest users to counterbalance the burden of increased forest control. This weakness was compounded by the perception that the outsourced verification fee collected by SGS, in addition to the unchanged stumpage tax, constituted not only an increase in the cost of accessing legality, but also two payments for the same function. Finally, the legislative uncertainty caused by a failure to rigorously evaluate constitutional and institutional incompatibilities, particularly with respect to delegation of state powers, gave opponents of the SNTCF the opportunity to attack its legitimacy.

In terms of SNTCF performance, SGS was efficient and transparent in providing timely online information to the MoE, the public and interest groups. However, SGS confronted a conflict of interests because it had both administrative and control functions, a situation inherited from the previous (and current) forest control system implemented by the MoE.

The SNTCF experience also highlights the importance of funding each component of the system in a way that ensures protection from external interference. *Vigilancia Verde's* funding came in part as grants from donors and companies, both of which could compromise the independence and sustainability of the system, and 50% from the sale of auctioned timber, which could provide a perverse incentive for illegality (as detection of illegal timber becomes more profitable than prevention). In the case of SGS, the fact that it was paid directly by the users of its services was one of the most controversial elements of the entire system, and an important factor in the opposition to it. However, had it been paid by the MoE, it would have been much more vulnerable to high-level political pressures, possibly manifested in delays in payments. Finally, the payment of forest regents by forest owners or timber traders made them susceptible to the economic interests of their clients.

During its short period of operation, the SNTCF succeeded in controlling various types of illegality in the forestry sector, such as illegal transport of forest products and fraudulent harvesting permits. It corrected institutional bad habits such as corruption,

influence and ‘political clientelism’. However, a lasting concern, particularly of the Ecuadorian private forest sector, is that the SNTCF focused only on those seeking to operate legally. Clandestine harvesting activities, deforestation, forest industries and wood markets were left in the hands of the MoE, in spite of its questionable capacity for control.

## Chapter 11

# The forest verification system in Cameroon

**Note:** This case study was completed in March 2008 and is authored by Paolo Cerutti and Timothée Fomété.

**Table 11.1**  
**Cameroon: some key statistics**

Statistic		Date	Data source
Population	15.5 million	2002	(MINEFI, 2002)
Land area	47.3 million ha		(Republic of Cameroon, 2005)
Forest cover	45%	2005	(MINFOF and FAO, 2005)
Public forest ownership	86%	2005	(MINFOF and FAO, 2005)
Industrial roundwood production	2.3 million m <sup>3</sup>	2006	(MINFOF, 2007a)
Formal forestry sector employment	12-13,000	2006	(MINEFI, 2006)
Contribution of forestry sector to GDP	6%	2004	(CBFP, 2006)
Value of forest products exports <sup>1</sup>	244bn CFA	2006	(INS, 2006)
Main international markets for timber	China, Italy, Spain	2006	(MINFOF, 2007b)
TI corruption perception index (0-10, where 0 = most corrupt)	2.3	2006	(Transparency International, 2006)
Human Development Index (0-1, where 0 = very low)	0.51	2004	(UNDP, 2006)

<sup>1</sup> CFA1 = US\$0.002 (March 2008).

### 11.1 Introduction

Cameroon is at the centre of global concern about illegal logging. The forest verification system in the country provides exceptional insights on ways to improve forest governance at national and regional level. The introduction of independent observers in the allocation of forest titles and in forest control activities has been instructive both as regards issues of ownership and independence of verification processes and the potential impacts on forest management practice.

In November 2007 Cameroon entered into negotiations of a Voluntary Partnership Agreement (VPA) with the European Union.

## 11.2 The national forest sector

Productive closed forests on drained land in Cameroon cover about 17.5 million hectares (Eba'a Atyi, 1998). A zoning plan drafted in 1993 divided the national territory into a permanent forest domain (PFD) and a non-permanent forest domain (NPPFD). The bulk of annual timber production is harvested in about 100 forest management units (FMU) inside the PFD.

The forest sector is the second-largest source of export revenue in Cameroon's economy after petroleum, representing 16% of national export earnings in 2003 (with a value of approximately US\$380m), and about 6% of GDP (CBFP, 2006). The logging and timber processing industry is highly concentrated, with more than 80% of national timber production being generated by fewer than 20 large, predominantly European, companies. The installed processing capacity of the formal forest sector is estimated at about 1.9 million m<sup>3</sup>, while the processing capacity of the informal forest sector has recently been estimated at about 0.3 million m<sup>3</sup> (MINEFI, 2006), though a comprehensive assessment of the latter is still lacking.

The economic crisis that affected Cameroon at the end of the 1980s had a major impact on the forest industry. It led to a rapid increase in the number of accredited logging companies, notably national ones (Eba'a Atyi, 1998). The adoption of a new forest law in 1994 then caused a serious decline in the availability of legal timber. This, combined with the limited capacity of the Ministry of Forests and Wildlife (MINFOF) to control forest operations, contributed to the forest sector becoming a breeding ground for illegality. As one illustration of this, records for 1998/1999 showed official timber exports of approximately 2.9 million m<sup>3</sup> but official production of only 1.9 million m<sup>3</sup> (MINFOF, 2004).

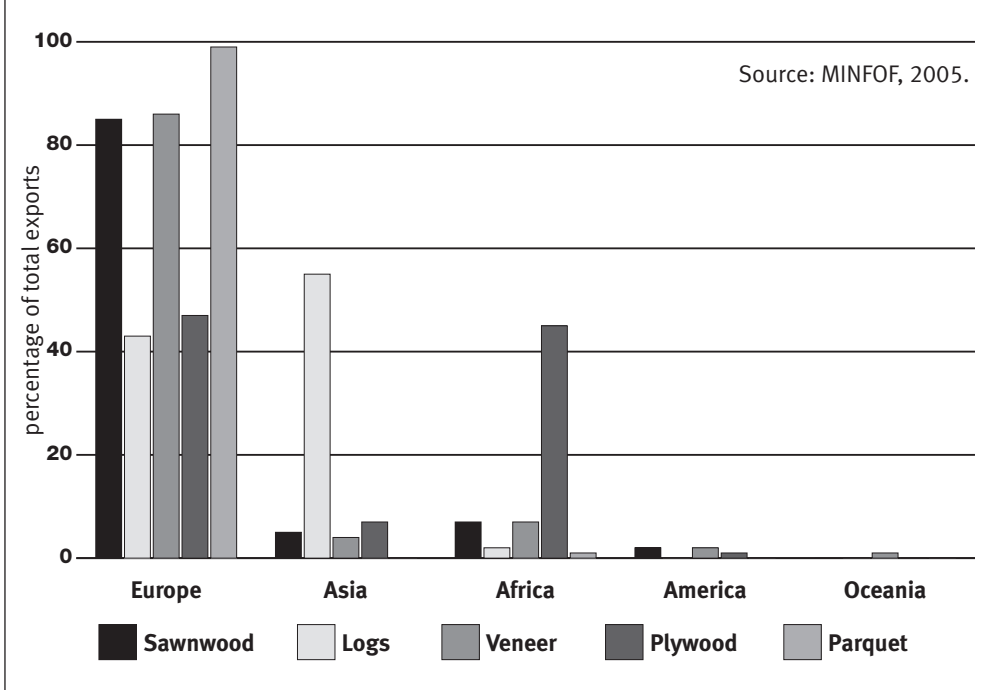
Reported illegal forest activities pushed the donor community to press for more effective forest law enforcement and verification in Cameroon. Pressure on national authorities to comply with donor conditionalities and sectoral policy objectives came at a time when the country's international image was also seriously under threat. In both 1998 and 1999, for example, Cameroon was rated by Transparency International as 'perceived to be the most corrupt country' in its international surveys.<sup>1</sup>

Access to the European market is crucial to the national timber sector since Europe is still the predominant destination of Cameroon's timber exports (see Figure 11.1). This helps to explain why the EU FLEGT process has so quickly gained momentum not only in the political sphere but also within the industrial private sector and the national civil society. As part of this process, Cameroon started negotiating a Voluntary Partnership Agreement (VPA) with the EU in November 2007.

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<sup>1</sup> Cameroon was rated 85th out of 85 countries in 1998; and 99th out of 99 in 1999. By 2005 it had risen to 137th out of 158, and by 2006 it was 138th out of 163.

**Figure 11.1**  
**Relative importance of Cameroon's timber export destinations (2005)**



### 11.3 Mandate and legal framework of forest control and independent forest monitoring

Under the 1994 law, FMUs were to be allocated by auction and harvested in accordance with approved management plans. However, in 1996 and 1997, the ministry still allocated many FMUs administratively, in clear breach of the law (Global Forest Watch, 2000). Following these irregularities, the World Bank recommended changes and pushed them through as conditionalities of the third phase of the Structural Adjustment Program (SAP III) (Cerutti and Tacconi, 2006). These changes included the appointment of an independent observer of the concession allocation process.

In 2000, in compliance with Article 124 of the 1995 implementing decree, MINFOF issued a document instituting the control system to be applied within the forest administration. The system was built around a Central Control Unit (CCU) and Provincial Control Brigades, and was designed to ensure that: (i) regulations for logging activities were applied; (ii) taxation data and statistics were collected and analysed; and (iii) fraudulent exploitation would be discovered and prosecuted.

In fact, the CCU was allocated only five foresters who were poorly equipped for field investigation missions, under-paid and disconnected from the central authority. This encouraged personnel to see forest control primarily as an opportunity for raising private revenue, and not as a means of effectively managing the forest estate.

Following widespread concern, particularly in the donor community, at this failure of the traditional control system to ensure good governance, a number of independent observers were introduced to carry out control and verification functions. There were three of these, as outlined below.

### **Forest titles allocation process**

In line with the World Bank requirements, the Cameroonian government introduced an independent observer in the Inter-ministerial Committee which oversaw concessions allocation. A private sector legal and accountancy firm (Cabinet Behle of Douala) was hired to fulfil this role and report to the Minister of Forests, which is the ‘supreme authority’ in issuance of titles. Cabinet Behle withdrew at the end of the first phase, and was replaced by Cabinet Bloch-Kolle in 2003.

### **Operational compliance in the forestry sector**

Based on reports from donors that Cambodia had faced similar illegal logging problems and that the UK-based environmental rights NGO Global Witness had helped to address them, the Cameroonian government invited this NGO to undertake two scoping missions in 2000, financed by the UK Department for International Development (DFID), the World Bank, and the Canadian International Development Agency (CIDA). After the scoping missions had taken place, the presence of an Independent Observer (IO) became a conditionality of the SAP III, and Global Witness was granted a contract in 2002 for a longer independent monitoring mission of forest operations. The fact that the contract was paid directly by various donors, allocated non-competitively, and that the IO’s presence was linked to a conditionality, did little to generate national ownership and empowerment.

In 2005, the UK-based NGO Resource Extraction Monitoring (REM) replaced Global Witness under a new contract funded by the European Commission. Since then, it has been implementing a project on ‘Independent Monitoring of Law Enforcement and Governance’ (IM-FLEG). The main objective of REM’s present mandate is ‘to contribute to the application of the principles of good governance in the forest sector in order to improve law enforcement’ (Resource Extraction Monitoring, 2006). This contract was due to expire in March 2008, but, at the time of writing, it was being extended for an initial period of three months. After this period, the funding of the IM-FLEG will be covered under the umbrella of the Forest and Environment Sector Programme (PSFE), which was adopted in 2004 as an instrument to streamline the donors’ funds with the priorities of the Cameroonian government towards the improved management of the forest and environment sectors.

### **Monitoring forest concessions**

In 2000, the Global Forest Watch (GFW) network, an initiative started in 1997 by the World Resources Institute (WRI), presented ‘An overview of logging in Cameroon’ (Global Forest Watch, 2000). The overview brought together analyses based on satellite images, GIS techniques and data on the forestry sector in Cameroon. Following the 2000 overview, GFW/WRI signed a contract with MINFOF to act as a third verification layer, to monitor forest operations using remote sensing techniques.

Timber products export control and chain of custody development were handled during this period under a contract with the Société Générale de Surveillance (SGS), a Swiss private sector company, first hired in 1994 to handle the control of exports of non-processed timber (i.e. logs) and the collection of related export taxes.

The role of these observers/controllers in the institutional set-up was formally recognised in 2005, when a National Forest and Fauna Law Enforcement Strategy (SNCFE) was adopted. Implementation of the SNCFE has been accompanied by a significant increase in the number of forest controllers and the equipment available to them. The CCU was replaced by a National Forest Law Enforcement Brigade in 2005, initially composed of six members but increased to twelve in 2006.

As a result of the structural adjustment reform process and the need to increase the forest sector contribution to national income, the Ministry of Finance (MINEFI) has also become more involved in the forest sector. Decree 08/009/PM of 23 January 1998 transferred to the Ministry of Finance all the fiscal competences previously exercised by the Ministry of Forests. Moreover, in March 1999, the Forestry Revenue Enhancement Program (PSRF) was created within MINEFI in order to ensure a rigorous monitoring of fiscal revenues in the forest sector and to increase its contributions to the state budget. The PSRF was created as a collaboration framework between MINEFI and MINFOF, and the two ministries were supposed to exchange information for a more effective and streamlined data collection and detection of infractions (Cerutti and Assembe, 2005). To date, however, neither ministry has regarded collaboration through the PSRF as a priority, and cross-checking of data and information is still very weak.

#### 11.4 Organisation of forest control and verification

Figure 11.2 provides an overview of the framework of the different actors involved in forest control and verification in Cameroon, and the functions they have been allocated. Control personnel check the legality of any forestry-related operation (harvest, transport, processing and export) by private companies, individuals or village groups, and their compliance with the relevant regulations. Monitoring in the field is both routine and in response to requests by concerned individuals, civil society organisations or the private sector. Where illegal activities are discovered, the control officers are expected to: (i) list the relevant offences in the mission report; (ii) write a statement of offence which is a basic document for legal actions to be taken; and (iii) seize logs, timber or any forestry product and equipment as material evidence.

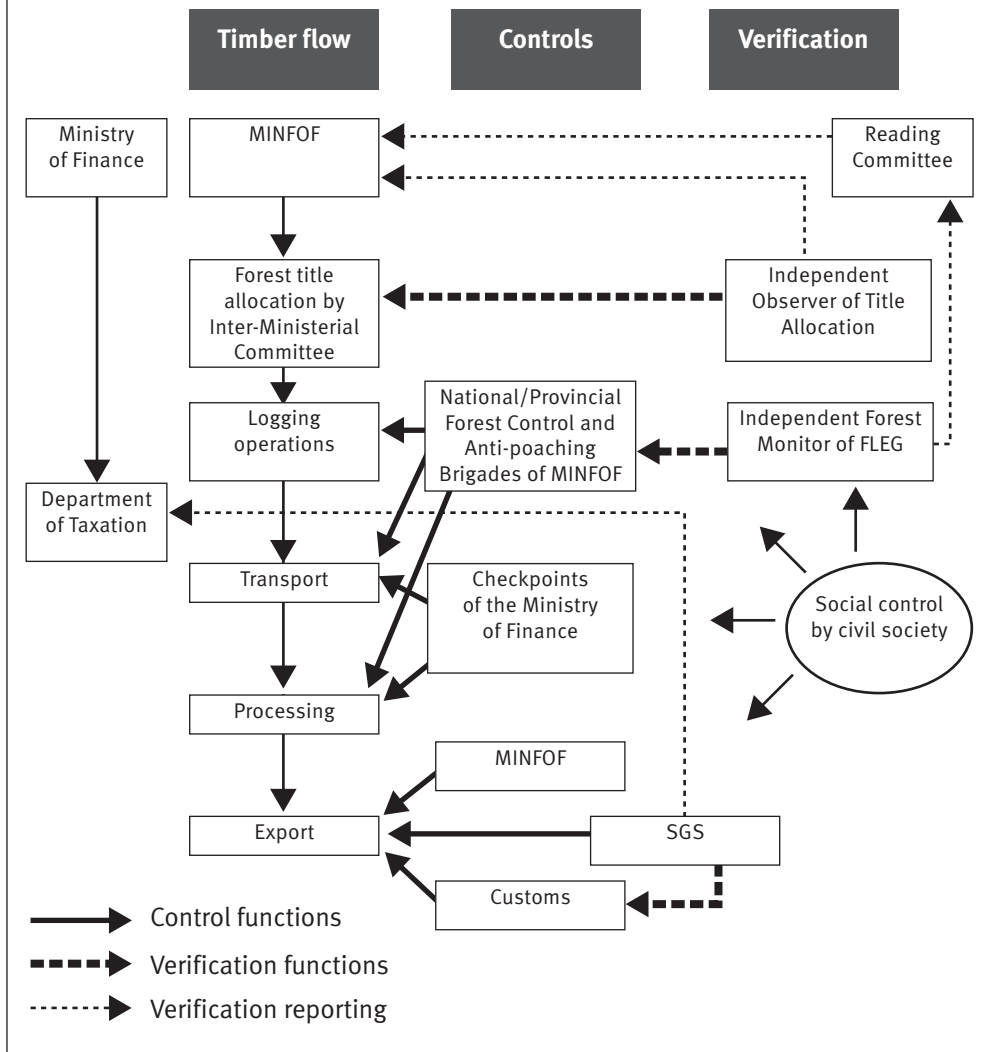
The efficiency and functioning of the control system is supposed to be assessed through an annual internal audit by the General Inspector of MINFOF. No audit, however, had yet been carried out at the time of writing this chapter.

Verification of field operations occurs when the IM carries out joint missions with the National Forest Law Enforcement Brigades. An innovation recently introduced by the IM has been to take a thematic approach to the implementation of field missions, whereby one or several forest law enforcement missions are devoted to a specific category of forest exploitation permits.

An interesting innovation in the Cameroon case has been the introduction of an institution to process the information generated by the IM. As field control mission reports tended to contain facts and conclusions for which there was no agreement



**Figure 11.2**  
**Verification actors and functions in Cameroon**



from the parties involved, a ‘Reading Committee’ (*Comité de lecture*) was created to validate their findings. This is made up of forest law enforcement officers, the IM and donor representatives. The Committee examines control mission reports before they are submitted for approval of the Minister of Forests and Wildlife, following which they are made available to the public through the monitor’s own website and the national press. Sanctions are based on statements of offence and the reports of the IM/MINFOF joint field mission, and recommendations made to the Minister. Appeals and arbitration procedures are addressed by the Reading Committee. The Committee is intended to contribute to improved transparency, though sanctions and actual payments related to discovered infractions are still very difficult to verify, not least because of the above-mentioned weak collaboration between the MINFOF and the MINEFI. Additionally, the

whole decision-making process is subordinated to the interests of the MINFOF Minister. Meetings are convened by him, as and when he thinks fit, with the most recent trends indicating a greatly decreased number of meetings held (Resource Extraction Monitoring, 2007). Decisions on levels of fines and penalties are also taken by the Minister, behind closed doors. This leaves the process vulnerable to politicisation.

To support the follow-up of forest law enforcement activities, donors have funded the establishment of three computerised databases. First, the Computerised Forest Information Management System (SIGIF), based within MINFOF since 1998, was developed by CIDA-funded consultants to manage timber production and related matters, such as areas of logging titles, area taxes due, active permits during a tax year as well as miscellaneous technical information. In the context of the VPA negotiations and the issuance of a 'legality document', a newer version of the SIGIF is under construction and should follow the entire chain from the stumpage to the port and guarantee the legality of forest operations. A second database, a special version of the SIGIF (*TRINITE II Forêts*), has been set up to help the PSRF manage the amounts of forest tax to be paid by each company. Third, the Computerised Forest Infractions and Information Management System (SIGICOF), developed by Global Witness in 2005, should contain data relating to forest law enforcement missions undertaken, enabling the daily management of forest-related legal cases. To date, however, the SIGICOF is not used within the administration, leading to a duplication and confusion of functions among concerned ministries (forests, finance, justice), which continue working in isolation (Resource Extraction Monitoring, 2007). The failure to harmonise these three systems limits their effectiveness and prevents the system from achieving its full potential.<sup>2</sup>

### 11.5 The verification system: an interim assessment

It is widely acknowledged that the incidence and scope of illegal forest activities in Cameroon's forest management units has progressively decreased since 2001. Structural conditions have probably played some part in this, notably the new allocation of FMUs that has allowed logging companies to obtain legal access to timber. This process started again in 2000 after almost three years of suspension due to the 1996/7 irregularities. However, the performance of the control and verification system has also been a factor in reducing the illegal logging, by increasing compliance in FMUs and increasing the availability and transparency of information. There has also been growing recognition of the positive roles that civil society organisations can play in improving forest governance, as attested by their involvement in the VPA preparation process. However, when a deeper assessment is made of the control and verification framework, responsibility for the functioning and maintenance of control and verification systems still seems to lie excessively with external donors, and ownership by the relevant ministries is still very limited.

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<sup>2</sup> In fact, the failure to harmonise information systems also relates to a fourth system, originally PAGODE, now replaced by SYDONIA. The PAGODE system (Automated Management Procedures for Customs Operations and External Trade) allowed all merchandises reaching Douala to be cleared before export took place. Since January 2007, a new automated Customs system, SYDONIA (Automated System for Customs Data) has been launched in Douala and has replaced the PAGODE system. SYDONIA has the potential to be linked to data introduced or produced by other databases, notably those focusing on the timber sector, but this interconnection is not functional as yet.

Indeed, even after almost six years of independent monitoring, forest law enforcement missions suffer from serious weaknesses – many of which stem from this lack of ownership. This situation reinforces the argument that full ownership of a forest law enforcement system by the relevant ministries is difficult to build if the ministries have to acquiesce to the conditional introduction of an independent monitor. In fact, the list of weaknesses found in the most recent annual report of the Independent Monitor describes a situation on the ground not very different from that seen at the end of the 1990s (Resource Extraction Monitoring, 2007). The weaknesses listed include:

- Centrally planned field control missions have become the rule, and the Provincial Brigades (arguably the key link in the chain of forest control) have been rather marginalised and are playing a secondary role. They are not allocated enough funds to carry out control missions. Some Provincial Brigades rely on logging companies to cover some of the costs of their missions, leading to questions about their objectivity.
- Poor staffing and lack of equipment including transportation have caused field missions to be sporadic. This makes the controls less effective as MINFOF officers often do not have access to basic background data such as production records, previous enforcement reports or original maps showing the boundaries of the exploitation permits. They also lack the budget to hire vehicles for removing any timber they seize.
- There is no effective monitoring of the work done by law enforcement officers nor is there a system of sanctions against those who do not follow required procedures. A particular weakness is that forest law enforcement officials rarely question actions taken or documents signed and/or issued by the central administration.

Coordinated action to suppress illegal activities is low because many key players such as the police, army and magistrates are still largely unaware of the existence of any control strategy. Thus the various control systems (forestry, finance and customs) do not yet cover all forest activities.

On paper, the FLEGT process has been a good catalyst for developing a national legality standard for timber, and a ‘draft zero’ document has already been prepared to start negotiating the VPA. Though the process for developing these criteria initially left much to be desired as regards consultation of civil society, more recently civil society organisations have been better engaged and indeed have been very active in the preparation of this strategic document.

The experience of the Reading Committee, where the IM and the national control brigade’s control reports are analysed, is unique in central Africa and has played a particularly important role in allowing for ministry buy-in to the verification system. Though an interesting and largely positive development, the performance of this committee has been limited by the fact that the Minister still remains the supreme authority and has almost complete discretion on whether or not to follow through with an infraction case, and on the financial value of any sanctions imposed. Long delays in convening Reading Committee meetings and the absence of mechanisms to follow up on and confirm the sanctions taken against the non-compliant have tended to limit the efficiency of the system. One notes that, although the Reading Committee cannot

be said to function effectively, the problems with it arguably lie outside the verification system as such, and reside more in the overall structure of forest governance which is still largely unreformed.

The fact that the SIGICOF database on infractions has not yet been put into use by forest law enforcement services means that forest-related litigation continues to be a mosaic of multiple procedures and actions taken by individuals from different services, with no attempt to coordinate information (Resource Extraction Monitoring, 2007). The resulting inefficiency in law enforcement practices together with the low penalties being applied to forest law infractions means that illegality can still be profitable, even when infractions are detected and punished (Resource Extraction Monitoring, 2007).

## 11.6 Lessons learned

While much of the international interest in verification has been in the activities of the mainly international, specialised organisations and NGOs, some actors belonging to the private sector (e.g. monitors of the auction process, and SGS) have also played important roles in the Cameroonian context. As far as monitors for the forest allocation process are concerned, conflicts of interest have been avoided by selecting monitors through a competitive process among several highly recognised consultants in the law and accounting/financial auditing profession.

Reliance on international NGOs for the delivery of independent forest monitoring has been based on claims that these organisations, unlike the public and private sectors, would have no direct interest in the sector and would have ideals to defend in terms of good governance. They also have a reputation to maintain and are usually considered by the international community to be more credible. However, the need to select from the very limited number of NGOs which can deliver this type of services does reveal the limitations of the market. In the case of Cameroon, Global Witness's contracts were awarded administratively (without competition) under pressure from the donors, and REM was the only organisation to bid for the follow-up contract in 2005. Moreover, there have been several allegations, made especially by logging companies and the Ministry of Forests and Wildlife, that the choice of a campaigning NGO led to misuse of information and non-respect of its contractual terms. Such charges remain difficult to assess since there is no system of professional accreditation of IFMs, nor an institutional mechanism through which such an assessment could take place.

The three monitors operating in Cameroon, whilst working towards a similar objective (improved governance of the forestry sector), faced different constraints and had different impacts. It could be argued that in cases where objective standards were set (such as the list of criteria to be checked before granting a concession), the work of the monitor was facilitated and the impacts bigger than in cases where the negotiations of sanctions happened behind closed doors and only responded to ministerial discretion. In such instances, transparency did not improve.

One lesson that can be drawn from the Cameroonian experience is that the control and verification systems must rely on objective procedures with clear legal prescriptions for decisions to be taken at key nodes in the system. Where objective criteria do not exist (as in, for example, the amounts of sanctions to be issued against faulty operators), there is a considerable amount of frustration among the civil servants in MINFOF, and

this may undermine the effectiveness of the whole verification system. Subjectivity on such important matters may foster inequitable treatments among logging companies and, indeed, corruption.

Another important lesson learned is that, if the Ministry does not buy into the reform process or the reforms are pushed through via conditionalities, even the application of objective criteria does not necessarily achieve real governance improvements. For example, the reports of the two monitors for the attribution of concessions in the period 2000-2005 reported numerous doubtful and suspicious practices, although there is little evidence of any of their concerns being taken seriously or bidding practices being modified. This would have been expected if governance had indeed improved and were the Ministry to have really supported the reforms it was supposed to implement. In fact, the 2006 Economic Audit of the Forestry Sector noted that fair competition had diminished over time in the auction process and that the Independent Observer reported that equity among bidders was not always respected (MINEFI, 2006).

The GFW monitor, though not directly involved in high-visibility actions, such as the field missions conducted by the monitor of forest activities, had, and still has, an important long-term role in providing credible information on the overall state of the sector and enhancing the capacities of the Ministry to deal with new cartographic technologies and planning activities. While the work of this monitor has not attracted the same level of international attention as the concession monitor, it has played an important and complementary, albeit low-key, role. However, in this case also, ownership by the Ministry remains a critical issue for the adoption, development, and implementation of acquired capacities once the monitor leaves the country.

All that said, the role of civil society monitors has been important in increasing public awareness on issues such as illegal logging, and in providing donors with the information needed to press the government into taking remedial action. Civil society engagement for the verification of legality of forest activities can be seen as an essential step towards increased in-country ownership of the verification system, as well as increased credibility of the broader forest governance system.

## 11.7 Conclusion

Cameroon has gained considerable experience of verification operations in the management of the permanent forest estate, employing a range of actors in the NGO and private sector, and including forest sector and legal/financial specialists. While Cameroon's experience shows how important external oversight can be in improving information dissemination and transparency, it warns against any over-simplistic interpretation of the institutional requirements for forest verification.

An important feature of the Cameroon experience – particularly compared to the experience in, say, Cambodia – has been the flexibility built into the approach, allowing for the development of new institutions and mechanisms to integrate the various elements of the verification system, and to validate the information they provide. Even though they are not yet fully operational, the following are of special interest:

- The development of computerised information systems and institutional structures recording timber production and allowing for many important tasks to be performed on fiscal issues, such as tax collection; and

- A separation of powers (administration, monitoring and audit, and sanctioning) as a first step to ensuring independence, with independent observers acting as watchdogs with no power of sanctioning; and the Reading Committee ensuring discussions take place and acting as an arbiter in case of disagreement between the monitor and the national control brigades.

Overall, the Cameroon case shows that external support and pressure (especially in the form of donor conditionalities) can play an important role in establishing forest control and verification systems. However, national ownership and a secure funding mechanism are critical for the independence and effectiveness of the system. There is a view that, in Cameroon, over-dependence on donor funding for the implementation of the system has undermined its sustainability and increased vulnerability during periods of resource shortage.



## Chapter 12

# Ghana: tackling governance reform through system design

**Note:** This case study was completed in September 2007 and is authored by Neil Bird. It is based in part on Bird, N., Fomété, T. and Birikorang, G. (2006) 'Ghana's experience in timber verification system design', VERIFOR Country Case Study No. 1. London: ODI.

**Table 12.1**  
**Ghana: some key statistics**

Statistic		Date	Data source
Population	22.1 million	2005	UN Population Division, 2006
Land area	22.8 million ha		FAO, 2006
Forest cover	24.2%	2005	UN Statistics Division, 2006
Public forest ownership	100%	2000	FAO, 2005
Industrial roundwood production	2.16 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	30,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	4.9%	Average 1990-2000	FAO, 2004
Value of forest products exports	US\$110m	Average 1990-2000	FAO, 2004
Main international markets for timber	Italy, Germany, US	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	3.3	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.53	2004	UNDP, 2006a

### 12.1 Introduction

The development of a timber verification system has been the subject of considerable attention in Ghana since 2005. Significant investment has been made in an innovative design that builds on the existing statutory controls in the forest sector. To-date, however,



the proposed system remains incomplete, despite considerable international interest and support to encourage its introduction. This case study therefore focuses on the system design concerns and shows the level of investment required to take a sector previously under limited control through a reform process that has the confidence of both national civil society as well as the international timber market.

## 12.2 Drivers of the emerging verification system

Timber production is an important element of Ghana's economy, making up approximately 5% of GDP. It is the fourth-largest foreign exchange earner, having provided around 12% of Ghana's foreign exchange between 1990 and 2000. The timber sector is therefore a key part of the national economy, and has a strong political dimension including the involvement of elite groups in the industry. There is evidence that very high profit-taking has been prevalent for some time (Birikorang and Rhein, 2005), with the timber industry having grown considerably over the past twenty years. This has been driven by three main factors: (i) soft loans from the World Bank to the industry, investing in forest operations and primary processing; (ii) a log export ban; and (iii) the under-pricing of timber by the Ghanaian government. This led to a doubling of installed capacity of the wood processing sector during the 1990s, with the installed sawmilling capacity reaching an estimated 3.4 million m<sup>3</sup> by 2001, which was up to ten times the estimated sustainable yield from within the permanent forest estate (World Bank, 2007). There is a growing concern that the national timber supply is rapidly diminishing as a result of this industrial growth strategy. With this concern comes a realisation that greater control is now required to bring some hope of future for the forest sector, even with a shift away from natural forest wood supply to one that is more dependent on forest plantations.

The high-value end of the trade is strongly focused on the international market, with countries in the EU being Ghana's main wood trading partners. These countries accounted for just over half of total wood exports in 2004, with key markets including Germany, Italy, France, the UK and Spain. The international dimension of this wood trade requires Ghana to be sensitive to changing demand and led to an early interest in the EU Voluntary Partnership Agreement (VPA) scheme. Prospective financial incentives offered by the EU are also considered important. An international discourse has therefore had a strong influence on the framing of the proposed verification scheme, with the development agency of the UK – one of Ghana's major trading partners – having been heavily involved in its evolution.

Ghana's involvement in the Africa Forest Law Enforcement and Governance (AFLEG) process, leading up to the Yaoundé ministerial meeting in October 2003, also contributed significant political impetus to address national deficiencies within the forest sector.

## 12.3 The mandate of the verification system

The timber sector in Ghana is characterised by poor levels of governance, with widespread disregard of the forest law. The national institution responsible for forest control, the Forestry Commission (FC), has not been effective in monitoring and enforcing legal

compliance (World Bank, 2007). The FC also retains a number of potentially conflicting functions (e.g. law enforcement, monitoring, forest management, and revenue collection). The emerging national verification system seeks to address these two factors: a sector operating outside the law and a national forest authority unable to fulfil its mandated function of safeguarding the national forest patrimony.

### Forest legislation

An important milestone in national forest legislation was the Concessions Act, No. 124 of 1962. Under Section 16 of this Act, all timber lands were brought under the jurisdiction of the President, empowering the Ghanaian state to exercise controls of protection, management and development. As part of these control measures, the first steps toward establishing a chain of custody for felled timber were made in the Trees and Timber Decree 1974 (NRDC 273), which required the Forestry Department to divide Ghana into districts and allot to each district a locality mark. It also required timber-exporting companies to register a 'property mark' with the Forestry Department.

The Timber Resources Management Act, No. 547 of 1997 (TRMA), aims to ensure that timber harvesting is consistent with the sustainable management and utilisation of the timber resources of Ghana. The Act established a new category of timber right – the timber utilisation contract (TUC) – and, with a few exceptions, all timber harvesting has to be carried out under such contracts. Under Section 19 (1) of the TRMA '*Any timber right, concession or lease granted under any enactment and valid immediately before the commencement of this Act shall continue in force for a period not exceeding 6 months from the date of the coming into force of this Act.*' Although the TRMA became law on 17th March 1998, pre-existing timber rights have continued, bringing the forest law into widespread disrepute.

Amendments to the TRMA and its subsidiary regulations were made in 2002 with the passing of The Timber Resources Management (Amendment) Act, 2002 (Act 617) and the Timber Resources Management (Amendment) Regulations, 2002 (LI 1721). These legal changes were introduced to allow:

- Competitive bidding in the allocation and utilisation of timber resources; and
- The implementation of Social Responsibility Agreements that require concession holders to assist communities within the contract area with social amenities.

Despite this evolving legislative framework for timber production, the forest sector in Ghana is bedevilled by a very high incidence of illegality. Much of the domestic supply of lumber is derived from illegal chainsaw milling. *The Ghana wood industry and log ban export study* (Birikorang et al., 2001) estimated that in 1999 out of the 3.7 million m<sup>3</sup> of timber harvested, illegal chainsaw activities accounted for 46% (1.7 million m<sup>3</sup>), while illegal industrial logging accounted for a further 24% (0.9 million m<sup>3</sup>). The number of people involved in chainsaw milling is considerable, with estimates as high as 50,000 (Otoo, 2003). One reason for its extensive operation is that chainsaw milling has undoubtedly distributed benefits to the poor. The transportation of lumber by head load fetches daily rates more than five times the daily minimum wage. Farmers often prefer instant payments for trees from illegal chainsawyers than promises from the forest sector institutions for benefits that are eventually distributed in a non-transparent way. Above all, chiefs, as landowners, have been crowded out of decision-making by

the local government system and the FC's presence at the district level. Consequently, they often turn a blind eye to illegal logging (Birikorang et al., 2001).

Recent attempts to control illegal timber harvesting, especially outside forest reserves, have involved a series of *ad hoc* control measures, including the registration of chainsaw operators, the establishment of mobile forest protection action groups and strict felling controls. Other measures have included coordinated actions by the military and police to crack down on operators and the confiscation of lumber, equipment and vehicles used in illegal timber harvesting operations. However, these control measures have failed to have the desired impact, mainly because of the high demand for wood and the low penalties involved. Poor institutional capacity at the district level has either prevented detection of illegal activities or (it is alleged) allowed massive connivance of forestry staff with illegal operators.

It can be seen that the legislation put in place to control harvesting and protect the forestry resource has been either inadequate or not properly enforced. The reasons have much to do with the political economy of the country, and the political leverage exerted by the large timber millers, which dwarfs the technical reasons that are often cited. Such constraints will have to be addressed if the verification system is to prove an effective instrument to secure legality.

### **Main institutions in the forest sector**

The Ministry of Lands, Forestry and Mines (MLFM) is responsible for policy development, while the executive agency is the Forestry Commission (FC). However, the state institutions associated with the forest sector have been in a state of flux for many years. Previous laws, and their subsequent repeal and re-enactment spanning a total of 17 years, placed the FC in an advisory position to the Ministry, while the Forestry Department and other sector bodies retained their positions as implementing agencies. Under the most recent legislative reform – the Forestry Commission Act, Act 571 of 1999 – the four previously separate public bodies and civil service departments involved in the regulation of Ghana's forestry and wildlife were subsumed as Divisions under the FC. The establishment of the Forestry Commission under this Act resolved the conflict between a proposed National Forest Authority to replace the old Forestry Department (which would have a mandate to regulate and manage Ghana's forest resources), and Ghana's 1992 constitution that mandated a Forestry Commission to take charge of the responsibility of protecting, managing and developing the nation's forest and wildlife resources.<sup>1</sup>

### **12.4 Verification system design**

A major initiative began in January 2005 with the start of the Validation of Legal Timber Programme (VLTP). The origins of this initiative lie in the joint programme management of forest sector reforms, agreed between government and development partners in the early 2000s. A log-tracking proposal was developed by the Forestry Commission, containing new institutional arrangements and log-tracking processes to improve the regulation of the forest resource and to control illegal activities. The

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<sup>1</sup> The legal resolution arrived at reflected the perspective of the office of the Attorney General and Ministry of Justice.

experience of the FC's contracted private sector technical partner (SGS) in Ecuador and Cameroon prompted the programme to direct much attention on institutional reform, the legal backing for this reform, and its likely financial impacts on the forest sector.

The purpose of the VLTP is to put in place an efficient and cost-effective system for demonstrating the legal origin of timber, and subsequently, legal compliance of forest management. The government of Ghana has pledged to invest US\$2m of its own resources to develop the new system. The VLTP has four main objectives:

- To improve the monitoring of forest resource utilisation;
- To improve revenue flows from timber harvests;
- To maintain access to a major export destination (i.e. the EU); and
- To establish the first step towards sustainability.

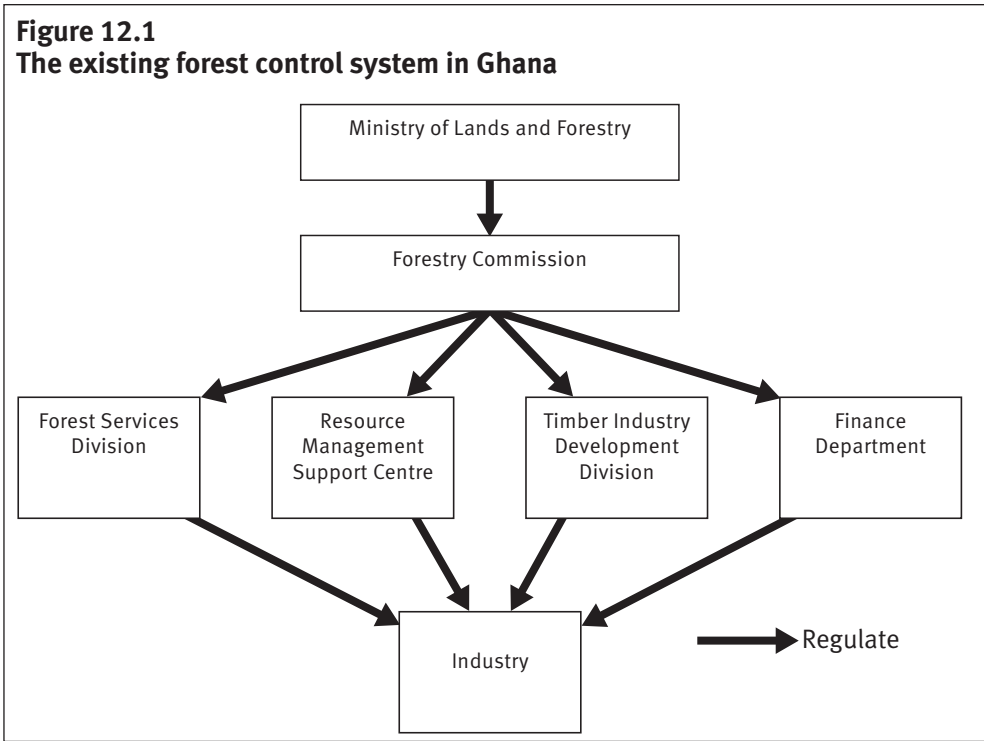
### **The Timber Validation Agency**

The role of the Forestry Commission would be radically redefined under the proposed system being explored by the VLTP (see Figures 12.1 and 12.2). The verification of the regulatory activities of the Forest Services Division (FSD) and the Timber Industry Development Division (TIDD) would become the responsibility of a new institution: the Timber Validation Agency (TVA). With the establishment of the TVA, the FSD would then be able to focus on its core responsibilities – the granting of timber rights and monitoring and law enforcement – while potentially ceding its forest management functions to the private sector. The TIDD of the FC would continue with its role of inspecting log arrivals at processing plants, input/output analysis of processing plants, and the grading and inspection of timber exports. Much of the challenge lies with clearly setting out the roles and responsibilities of the TVA – a process that remains incomplete despite two years of concentrated effort.

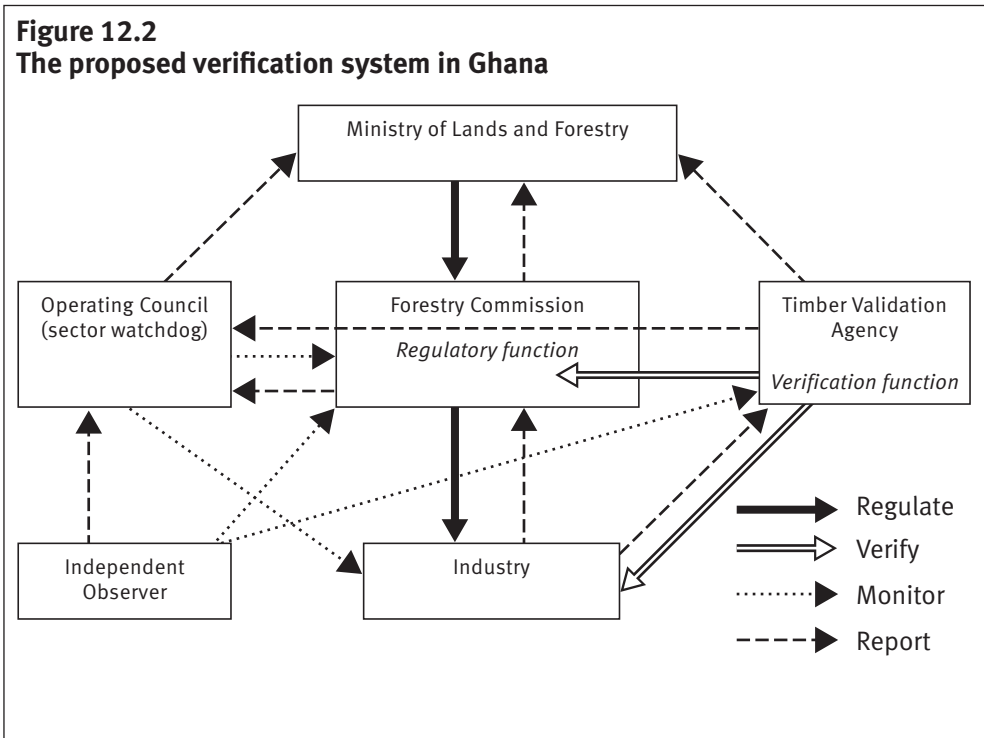
The degree of separation between the TVA and the FC is a crucial design consideration. It remains to be seen whether the present system design – which envisages an autonomous agency created under the umbrella of the MLFM – will lead to the necessary level of independence required for the main stakeholders to have confidence in the system. This new institutional structure is without precedent in Ghana and so is untested. The establishment of the TVA will be a substantial undertaking and may require legislation to establish its legal mandate. The timescale for this to happen is uncertain, yet it clearly represents a significant hurdle to an early introduction of the proposed verification system. It is planned that the TVA will become self-financing over a three-year period through payments made by the timber industry for its services. This strategy depends to a large degree on it attracting support from the timber sector, and this seems quite ambitious given the longstanding differences between the Forestry Commission and the wood-using industry.

The wood industry has been averse to the numerous trade and industry controls of the FC and believes it does not get value for money from the Commission. The FC's perspective is that there is a tendency for the wood industry to press to maintain its profit levels and to perpetuate the *status quo* that guarantees it preferential access to the resource. This position is reflected in the industry's currently expressed preference for moving slowly with the transition to an electronic-based resource accounting system. In 2004, the wood industry commissioned a study into its own operations and concluded that it needed increased throughput volumes to break even (Bruks Associates, 2004).

**Figure 12.1**  
**The existing forest control system in Ghana**



**Figure 12.2**  
**The proposed verification system in Ghana**



However proponents of Ghana's forest fiscal reforms think the study's conclusion is the problem rather than the solution (Birikorang and Rhein, 2005).

The industry has long complained of the high cost of doing business with the government bureaucracy. The proposed new verification scheme based on less control interventions, accompanied by a more efficient log tracking system (allowing for faster data reconciliations) should resolve a number of these issues. Anyway, the log tracking project's impact on wood flows to the industry is likely to be less important than the fact that, with or without the project, the industry will face (and in fact is currently facing) increasing resource scarcity. The VLTP objectives, for their part, blend well with the intended fiscal and institutional reforms that would also look for ways of deregulating the industry, for instance in the area of pricing and marketing timber, as well as in the transfer of future forest management roles to the private sector.

On the other side of domestic stakeholder negotiations are the forest owners, the traditional authorities, district assemblies, forest fringe communities, farmers, community forest committees and youth organisations who consider their fortunes to be tied to the degree of transparency in forest transactions and appropriation of forest revenues. These voices are currently being echoed by civil society in the VPA consultation process.

### **The Independent Observer**

An Independent Observer is the second major design feature of the proposed verification system. The observer's main function is to increase the credibility and transparency of the system. The system design envisages a separation of function between the TVA and the Independent Observer. Implementation of the verification system would rest with the TVA, with its final output being the certificate of legality. The role of the Independent Observer would be to test the standards of the system. Several observers have suggested that a partnership between a reputable international organisation and local non-governmental organisations may be the way forward to quickly establish an observer. However, this is another untested strategy, which brings with it questions of legitimacy. A balance may need to be found between the early introduction of such a body and its likely sustainability.

### **The Operating Council**

The third and final new element of the verification system is a proposed Operating Council, which would act as the sector watchdog, with representatives from the main institutions and stakeholder groups. The council would oversee the functioning of the entire forest control programme, follow up forest law enforcement in general, and run a conflict resolution mechanism.

## **12.5 Conclusion**

Considerable investment has been made to establish a national verification system in Ghana. The VLTP within the FC is the lead initiative that aims to set in place the necessary institutions, processes and structure that will meet the needs of independent verification, and specifically the demands of the EU Voluntary Partnership Agreement. The initial focus by government appears to have been a technical one: to put in place the forest control technology (timber tracking) that would allow for the validation of legal

timber. The challenge now is to achieve the right institutional mix to ensure a credible verification system and to establish the legal basis of the system itself.

One important question is who will have the last say in matters of legal compliance. With the culture of litigation that now exists in Ghana there is the danger that the control system could become emasculated by civil actions in the courts. Hence the high priority that needs to be given to establishing all components of the entire system under legal statute.

Four key lessons have already emerged from this experience, which may be of interest to other countries that are considering embarking on timber verification. The first is that the current state monopoly over the forest control system has presented many challenges in terms of improving accountability and transparency within the sector. Second, commitment from government is essential to set the right economic price for timber and to ensure the equitable distribution of revenues, upon which the sustainability of the sector ultimately rests. Third, a process mutually acceptable to all the main stakeholders will likely necessitate a phased implementation of the timber verification system. The introduction of a credible system is not a short-term measure and should be measured in years, certainly not in months. Finally, the initial focus of government to improve technical aspects of the control system needs to give way to a more nuanced approach, that acknowledges – and addresses – the political dimension of reform within the timber sector.

## Chapter 13

# The experience of independent forest monitoring in Cambodia

**Note:** This case study was completed in June 2007 and is authored by Cecilia Luttrell. It is based in part on Luttrell, C. and Brown, D. (2006) 'The Experience of Independent Forest Monitoring in Cambodia', VERIFOR Country Case Study No. 4. London: ODI.

**Table 13.1**  
**Cambodia: some key statistics**

Statistic		Date	Data source
Population	14.1 million	2005	UN Population Division, 2006
Land area	17.7 million ha		FAO, 2006
Forest cover	59.2%	2005	UN Statistics Division, 2006
Public forest ownership	100%	2000	FAO, 2005
Industrial roundwood production	166,000 m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	15,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	6.6% 0.5%	1990-2000; After logging ban in 2002	FAO, 2004; IFSR, 2004
Value of forest products exports	US\$84m	Average 1990-2000	FAO, 2004
Main international markets for timber	China, Taiwan, Japan and Thailand	2004	Miller and Boscolo, 2004
TI corruption perception index (0-10, where 0 = most corrupt)	2.1	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.58	2004	UNDP, 2006a

### 13.1 Introduction

This case study compares the experience and impact of two contrasting examples of independent monitoring in the forest sector of Cambodia. In so doing it focuses on one specific element of verification.



Cambodia is one of the poorest countries in South-East Asia, having suffered from a long history of conflict. Forestry has been an important sector in the country's recent development. Between 1991 and 1998 Cambodia exported an estimated US\$2.5bn worth of timber. In the 1980s and 1990s timber exploitation was marked by widespread mismanagement and corruption, leading to disorder and violence. From 1995 onwards, the international community began to focus on the implementation of forestry legislation and reform as a means of addressing state failures in the sector. In 1999 the World Bank and other donors funded the Forest Crimes Monitoring and Reporting Project (FCMRP). This included the appointment of an independent monitor (IM) to monitor the performance of the two ministries involved: the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of the Environment (MoE). In 1999 the IM contract was awarded to Global Witness (GW), a UK-based environmental rights NGO, which had been actively campaigning against forest law abuses in Cambodia. The relationship between the IM and the Cambodian government deteriorated as controversial cases came to light and little was done about them. In 2003, the government withdrew GW's contract and awarded a similar IM contract to a Swiss-based private sector company, SGS. In February 2006 SGS's operations were suspended due to lack of funding and the IM function has been in abeyance since that time.

## 13.2 Ownership

### External drivers

The introduction of an IM was associated with the focus on the enforcement of forestry legislation as a means of addressing governance failures, a concern of both donors and NGOs. In the 1990s, violence in the forest sector, the power politics of the Cambodian elite and the international community's growing environmental agenda led to a heightened profile being given to the illegal logging issue in the policy arena. From 1995 onwards, implementation of forestry legislation and the issue of state performance became important foci of donor interest.<sup>1</sup> In 1995, a joint World Bank, UNDP and FAO mission suggested that improved control of the forest areas could increase government revenue by over US\$100m a year (McKenny, 2001:2).<sup>2</sup> The mission's main recommendations to achieve this were to improve the technical and policy oversight of the sector and increase timber royalties. In the same year, GW began to publish hard-hitting reports on illegal exports and activities in the forest sector. Over time, Global Witness broadened its campaign to take on an agenda of 'good governance'.

At the time of the introduction of the IM, the Cambodian government (RGC) was looking to improve its image internationally. However, in a country heavily dependent on foreign aid, the initiatives remained largely donor-driven and the IM became a conditionality requirement of a World Bank US\$30m Structural Adjustment Credit. There was no strong domestic coalition pushing for accountability in the sector and no real RGC commitment to the reform.

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<sup>1</sup> However, this focus on legislation would appear to contradict le Billon's view (2002) that the problems were less the result of weak regulatory capacity of the bureaucracy and more connected to the parallel 'shadow state' system which allowed non-state actors to acquire power and led to a situation of 'warlordism'.

<sup>2</sup> These estimates were later revised to between US\$40m and US\$80m (World Bank, 1999).

## The mandate of the IM

The official ‘mandate’ of the IM took the form of a contract with the RGC. However GW’s Terms of Reference (ToR) were exceedingly broad and general. Roles and responsibilities of partner agencies were often unclear and/or unendorsed. Thus many of the agencies which, according to the GW ToR, were supposed to report to GW, were not aware of the requirements and no Memoranda of Understanding were agreed with them. SGS’s experience was similar. The lack of clarity over legal mandate, objectives, what was to be monitored and what outcomes were expected was a weakness of the design in both cases and resulted in low levels of trust (Malayang et al., 2002).

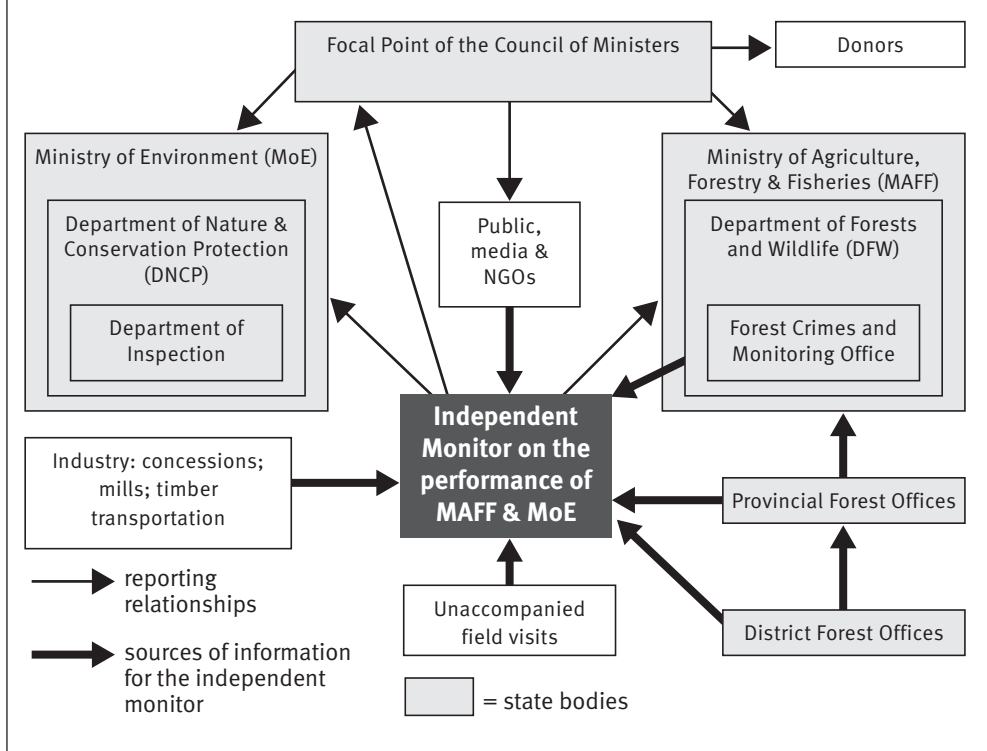
### 13.3 Verification system design

The FCMRP established a Forest Crimes and Monitoring Unit with three components. The first two components – the Forest Crimes and Monitoring Office (FCMO) located in the Department of Forests and Wildlife (DFW), and the Department of Inspection (DoI) located in the Ministry of Environment – were expected to operate parallel information ‘case tracking systems’ (CTS), to monitor infractions in logging concessions and protected areas respectively, with a computer system to link their data to provide national reports. Provincial and district offices were to feed information into the monitoring units on a monthly basis. The third, and key, verification component was the IM (see Figure 13.1). The role of the IM was to audit RGC records and determine whether the FCMO and the DoI were carrying out their respective mandates effectively, and to verify that any crimes were properly reported and that any claimed official actions had actually been accomplished. During the GW period, a ‘Focal Point’ (a representative body from the Council of Ministers, the RGC’s highest deliberative body) had the responsibility of receiving crime reports from GW (and periodic reports on the monitor’s assessment of the enforcement agencies’ performance from the FCMRP) and passing them on to ministries, the Prime Minister, donors and the press.

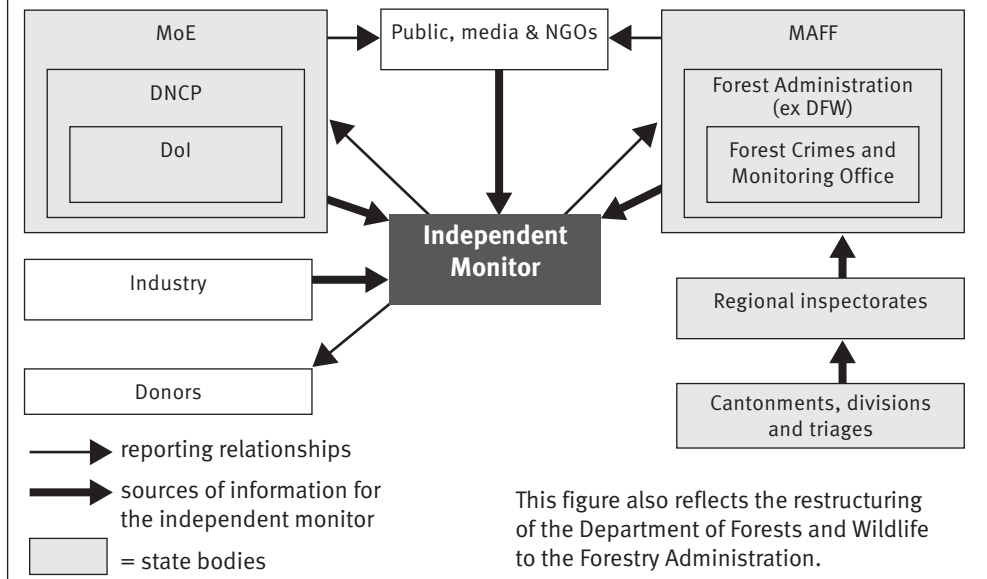
The ToR of SGS were in many ways very similar to those of GW. However, as illustrated in Figure 13.2, there were some limited, but arguably significant, differences. These changes to the ToR included a clear statement that the monitor should not be ‘responsible for undertaking any monitoring or inspection activities for the primary purpose of detecting and investigating such incidents’. Rather the monitor’s purpose was to ‘validate’ that all crimes were being reported. The term ‘independent oversight’ was absent from the new ToR. In addition, there was no longer a third-party body (i.e. the Focal Point) for SGS to report to or to act as an oversight mechanism.

GW and other observers were highly critical of these changes, suggesting that they signified increasing government power to influence the monitor (Global Witness, 2005). As GW had been perceived by some to have overstepped its mandate, the DFW and the donors hoped that the work of the new monitor would follow a more regular and restrained approach – more in line with a typical auditing function. SGS was intended to act as an auditor of the existing CTS (a role not prioritised by GW) rather than as an investigator of forest crimes. In practice, SGS limited its role almost exclusively to monitoring the use of the CTS.

**Figure 13.1**  
**Structure of the independent monitoring system in Cambodia (1999 to 2003)**



**Figure 13.2**  
**Structure of the independent monitoring system in Cambodia (2003 to 2005)**



## **Delivering independence: points of contention**

### **Overlap between advocacy and monitoring**

One area of contention concerning the ‘independence’ of the monitor in the case of GW was its overlapping role as both a monitor and an advocate. There were accusations that information gathered by GW during its independent monitoring role was being used for advocacy. Prior to its role as monitor, GW had a track record in Cambodia of advocacy-oriented work dating back to 1995. The RGC’s view was that GW had an agenda of its own, and that this fundamentally compromised its ability to act as an independent monitor. Problems also arose over the issue of personnel. From 2001 the GW contract manager had strong family connections in the Cambodian political opposition and a background in governance and human rights rather than technical forestry. These two factors reinforced doubts among the RGC and its supporters as to the monitor’s intentions. From early 2001, there was an almost total breakdown of relations and cooperation between the monitor and the forest authorities until the contract was withdrawn in 2003.

### **Weak management**

The location of the Focal Point (the third-party reporting body) in the Council of Ministers was problematic. The Focal Point considered itself to be under-resourced; no funds were provided by the project to investigate the independent monitor’s reports, and there were no technical staff assigned to them. Above all, there was no incentive for the individuals in the Focal Point to be drawn into what were often highly contentious issues with political ramifications. It was widely felt that the Focal Point existed more to limit the damage to the RGC than to pursue the cause of improving forest governance.

The inability of the Focal Point to play its part as specified by the GW ToR may have led to the decision to remove this buffer function from the SGS ToR. This meant that there was no capacity for arbitration in the event of disagreement between the monitor and the ministries. Nor was there any body to ensure that the monitor complied with its ToR (for example, as regards the diligent recording of reported crimes).

### **Lack of civil society oversight**

Local civil society in Cambodia is weak. In the early 1990s, the international community supported the development of a Cambodian civil society and a number of large, professional NGOs emerged. These have proven effective in areas such as promoting public awareness and participation but less successful in taking on issues which involve greater political risks, such as corruption. There are also few opportunities for the general public to input directly into policy-making and there is little evidence of the government seeking out or responding to civil society demands. The weak capacity of local NGOs means that international NGOs often have a stronger voice.

With SGS’s appointment as the independent monitor, donors were of the view that for credibility and acceptance of the system (both nationally and internationally), there needed to be public and civil society involvement in the verification process. Furthermore, conflicts generated during GW’s tenure had negative effects on levels of donor interest – as regards both support for independent monitoring and broader interest in the forestry sector in Cambodia. Donors became reluctant to react to NGO concerns or to jeopardise

their relationships with the RGC over these issues. Thus, except for the World Bank, few donors showed an interest in SGS's activities. Because of this decline in interest the RGC was unlikely to respond directly to public pressures and concerns, thus the concerns raised by these 'external monitors' were seldom responded to in any way. For example, neither the RGC nor the donors responded to the NGOs' concerns about the first and second SGS reports (see Global Witness, 2004 and Forest Certification Watch, 2004).

### **Source of funding**

GW was initially funded by grants from the UK Department for International Development (DFID) and the Australian Agency for International Development (AusAID), channelled through FAO and administered under a UNDP Trust Fund. From 2000, the Danish International Development Assistance (Danida) also provided direct bilateral funding for GW's independent monitoring work in Cambodia. One of the limitations of the SGS model, however, was that the monitor was paid for out of the World Bank's 'Learning and Innovation Loan' as part of the Forest Concession Management and Pilot Project. This meant that the IM was paid for by the Forest Administration, the same institution that it was required to verify. The transportation of logs (confiscated after the logging and transportation moratorium in 2001) was resumed in January 2005. At the government's request, SGS took on the role of monitoring the log transportation and the validation of log volumes. Some donors and NGOs criticised SGS for not checking the legal origin of the logs (Bernsen and Cochrane, 2005). This example suggests that there is a need to isolate the IM from any situation where their results may be biased by concerns to ensure an extension of their contract.

## **Rules and procedures**

### **Verification standards**

The Cambodia case was characterised by a lack of clear and undisputed standards against which to verify legality. This situation continues today. To take the issue of legality of the source of timber, for example, there are no formal boundaries of the permanent forest estate and there is little clarity over indigenous title to land. Cambodia's Forestry Law distinguishes between state and private land, and between production, community, protection, flooded and conversion forests but these distinctions are not always clearly employed in practice. This, combined with the present state of confusion and parallel systems of land registration and titling, means it is possible, for instance, to register private ownership of land with one ministry although it might previously have been classified as 'permanent' forest reserve by another.

### **Rights and obligations**

Access to information proved an issue for the independent monitors. The GW ToR gave the NGO the freedom to undertake unaccompanied field visits and included a clause granting the IM '*direct access to RGC records and files relating to concessions, parks and protected areas and other State forest-lands*' as well as to customs records on information '*pertaining to detecting, reporting, monitoring and suppressing of illegal or unauthorized forest activities*'. However, no mechanisms were put in place to effect such access, and the issue soon became a recurrent problem for the monitor (Global Witness, 2002: 3).

In the case of the SGS ToR, all of the inspections were to be ‘facilitated’ by the Forest Administration and the IM was precluded from carrying out ‘*random checking of reported illegal actions that have not already been passed on to the relevant agency for action*’. The World Bank Inspection Panel report (Inspection Panel, 2006) voiced concern that these ToR prevented SGS from independently initiating field investigations.

The lack of clarity over reporting was another clear design fault. In 2001, GW launched a controversial report which was timed to coincide with a Consultative Group meeting of Cambodia’s major donors and the RGC. This release was considered by the DFW as untimely. It led to the formalisation of reporting protocols with a view to bringing the monitor under tighter government control. The new protocols agreed in June 2001 required that crime reports should be forwarded to the Director of DFW and Department of Inspection with copies to the Ministers of MAFF, MoE and the Focal Point Coordinators. Response times were agreed but there was disagreement over whether, if the government did not respond within the agreed time, GW was then free to release the information into the public domain. The ToR gave the IM the right to publish, but there was no provision in the reporting protocols as to who should arbitrate in the event of the government not responding in time. The IM was ultimately required to make the judgement itself.

Under the terms of SGS’s appointment, quarterly reports were not to be released to the public until they had been verified by the RGC. The RGC and its agencies had 30 working days from receiving a quarterly report to verify its contents. After this, the monitor was free to release its findings even if they had not been verified. However, in comparison with the GW ToR there was less clarity over what information could be published.

#### 13.4 Performance of the system

In the first year, the FCMRP concentrated on training those responsible for the reporting and computer systems and a number of positive achievements were identified. However, after this point relations between the FCMRP technical experts and GW on the one hand and the RGC on the other started to decline. The technical advisors claimed that they were being deliberately hampered in their work and that not all cases recorded were being entered into the CTS (Miller, 2004:6). Most significantly, it became clear that the FCMO was either unable or unwilling to report crimes by ‘powerful’ people (ibid., 2004:3). Following a project evaluation, the FCMRP was suspended early in October 2002 (Malayang et al., 2002).

The results of the project evaluation were positive to the extent that the FCMRP was viewed as adding to the crime data handling capabilities of the RGC as well as increasing public, civil society and donor interest in forestry reform. Overall, however, the evaluation concluded that the project had failed to meet its goals. In addition, the design was felt to have attempted a ‘techno-fix’ approach which was not explicit enough in addressing the problems of low political commitment and weak governance that underpinned the poor performance of the sector. For example, the project did not address the administrative inflexibilities faced by national counterparts that prevented them from carrying out their expected roles. The narrowness of the design was also said to restrict donor opportunities for wider, and more positive, engagement in the sector (ibid.).

## **Impacts on wider governance**

Assessing the impact of any form of independent monitoring as one element of a forest reform process poses some difficulties, given the other potentially influential forces such as, in this case, the wider FCMRP, the logging moratoria and the suspension of concessions. However, there is a widespread perception amongst observers in Cambodia that GW's monitoring did have a disincentive effect on illegal operators, and increased the discipline of both the official enforcement agency and the industry. The most notable and public effect, however, was on the information and understanding available to the national and international community.

GW claimed to have had an impact on two significant policy-related events in the forest sector: the logging moratorium introduced in 2002 and the cancellation of concessions (Global Witness, 2003). GW may certainly have played a role in these events but other factors such as the conditionalities for the release of World Bank loans and the fear that these would be delayed due to the quality of the management plans may also have contributed. There is widespread agreement that GW significantly raised the profile of the illegal logging issue in Cambodia. However there are some questions as to the longer-term impact of its work there. Despite GW's success in exposing the political economy of the forest sector, it was less successful in achieving long-term change and did little to encourage buy-in from the Cambodian side.

The role of GW as an IM needs to be considered together with its role as an advocacy organisation. GW argues that its impact would not have been so great without the high profile that the advocacy role gave it. This suggests that real impacts of the IM were not achieved by the design of the independent monitoring so much as the way in which GW used this opportunity for the purposes of advocacy.

## **Impact on donor behaviour**

Among the unintended impacts of the first phase of monitoring was a significant change in the attitudes of many donors to forest sector work in Cambodia. It could be argued that the conflicts generated during GW's tenure had negative effects on the level of donor interest – as regards support for independent monitoring and broader interest in the forestry sector in Cambodia. The will for political engagement in the sector has significantly decreased and donors are reluctant to react to NGO concerns or to jeopardise their relationships with the RGC over these issues. Those donors that are still engaged in the forest sector are limiting their attention to lower-risk issues such as protected areas or community forestry. The attention of other donors has shifted to the land sector.



### 13.5 Lessons learned

The two types of independent monitoring discussed in this case study are very different. GW took an investigative approach, often in conflict with the agencies being monitored, in its attempt to address deeper governance issues, whereas SGS performed an auditing role with the support of the Forest Administration. Clearly, a distinction has to be made between the two in terms of both their activities and their objectives. GW has been criticised for interpreting its ToR too broadly and not being able to move beyond a pre-existing advocacy role, while SGS has been accused of interpreting its ToR too narrowly and not seeing beyond its remit. SGS's performance should, however, be understood in the context of a marked retreat of donor interest in Cambodian forestry.

General lessons to be learnt from this case study include the importance of system design, including precision over the roles and responsibilities of the independent monitor, a management mechanism that integrates the IM within the rest of the control system, and clarity over the legality standards to be verified. More fundamentally, issues associated with the design of verification systems in contexts of low political will, and under-developed local civil society, remain unresolved.

A conclusion to be drawn may be that different mechanisms and approaches are appropriate in different situations and periods in the evolution of a sector, but that it is the constellation of players, rather than the individual competences of each, which ultimately determines the effectiveness of any approach. In terms of impact, the most productive approach may be to appoint a non-advocacy organisation as the IM while ensuring that NGO watchdogs are available and able to maintain pressure on, and oversight of, the independent monitor. To do this in a sustainable way requires attention to be paid to the development of a strong domestic coalition, and a degree of government commitment to the reform. One means of bringing this about is through linked capacity-building which gradually builds the local ability and will to engage with the monitor.





## Chapter 14

# The Multi-Sectoral Forest Protection Committees in the Philippines

**Note:** This case study was completed in June 2008 and is authored by Robert B. Oberndorf. It is based in part on Cruz, R.V.O. and Pulhin, J.M. (2006) 'Review of Multisectoral Forest Protection Committees in the Philippines', VERIFOR Country Case Study No. 7. London: ODI.

**Table 14.1**  
**The Philippines: some key statistics**

Statistic		Date	Data source
Population	83.1 million	2005	UN Population Division, 2006
Land area	29.8 million ha		FAO, 2006
Forest cover	24.0%	2005	UN Statistics Division, 2006
Public forest ownership	90%	2000	FAO, 2005
Industrial roundwood production	1.5 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	60,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	1.0%	Average 1990-2000	FAO, 2004
Value of forest product exports	US\$83m	Average 1990-2000	FAO, 2004
Main international markets for timber	No data	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	2.5	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.76	2004	UNDP, 2006a

### 14.1 Introduction

Accelerating forest destruction in the Philippines led, in the post-Marcos era, to some major reforms in forest governance and management. Of particular interest to forest verification system design was the adoption of a participatory approach to forest

resource use monitoring, involving the establishment of ‘Multi-Sectoral Forest Protection Committees’ (MFPCs). The use of MFPCs provides an example of how an independent multi-stakeholder process can be designed and used as an important structural element, which benefits from a high level of ownership, transparency and credibility, within a state-authorised forestry verification system. However, the Philippines’ experience also illustrates the pitfalls of trying to institutionalise the MFPC model, such as the resistance by some stakeholders to the use of non-governmental actors for forest resource management, which led to a lack of operational support to MFPCs in some areas.

## 14.2 History and early implementation of the MFPCs

At the beginning of the 20th century there was approximately 50% forest cover in the Philippines, but by the 1980s only 10 million hectares of the country’s original 27 million hectares of forest remained. Rapid forest loss was due to a variety of factors, including concession logging, illegal logging, land-use conversion, and slash-and-burn or ‘kaingin’ farming. The government and public’s recognition that something had to be done to address the loss of forest resources coincided with the institution of more participatory and decentralised forms of natural resource governance, especially after the People’s Power Revolution in 1986. This included the Department of Environment and Natural Resources (DENR) devolving some authority over forest resource management and planning to Local Government Units (LGUs) at the provincial, municipal and city levels (Cruz and Tapia, 2005).

As early as 1975, Presidential Decree 705, otherwise known as the Forestry Reform Code, had initiated a multi-sectoral forest protection initiative. However, few of the early initiatives were really multi-sectoral in nature (World Bank, 2008). Although some involved local non-government actors, including members of the Catholic clergy (FAO, 2008), most consisted of *ad hoc* enforcement committees comprised of military and other law enforcement authorities at the national and local level. In 1992, the World Bank-financed Environment and Natural Resources Sector Adjustment Loan (ENR-SECAL) gave the DENR the opportunity to pilot a MFPC model based on the broad participation of key stakeholders. Under the ENR-SECAL programme, the first 15 pilot MFPCs were organised with five committees established at the regional level, five at the provincial level, and five at the municipal level.

The MFPCs were intended to provide the DENR with a network of public, private, and non-governmental organisations to support it in forest protection and governance. It was hoped that a mixed group of environmental advocates, including NGO leaders, priests, and civic leaders, would be less easy to threaten or bribe than an individual (Ganapin, 2001).

The ENR-SECAL programme paid for the consultants and the expenses of DENR personnel who provided most of the initial facilitation and mobilisation work and funded the preparation of the 1994 Manual of Procedures for MFPCs. It also supported the first National MFPC Congress in 1995, the nationwide assessment of MFPCs in 1997, the cost of technical assistance, acquisition of aircraft and sea vessels for patrolling and surveillance, and livelihood development in selected upland communities.

In 1994, then-President Fidel V. Ramos recognised the benefits of the work of the MFPCs and ordered their institutionalisation within the DENR. Other MFPCs were

therefore established by the DENR, in collaboration with various sectoral organisations, throughout the country. Over 300 MFPCs were created in the Philippines during the height of the World Bank-supported programme.

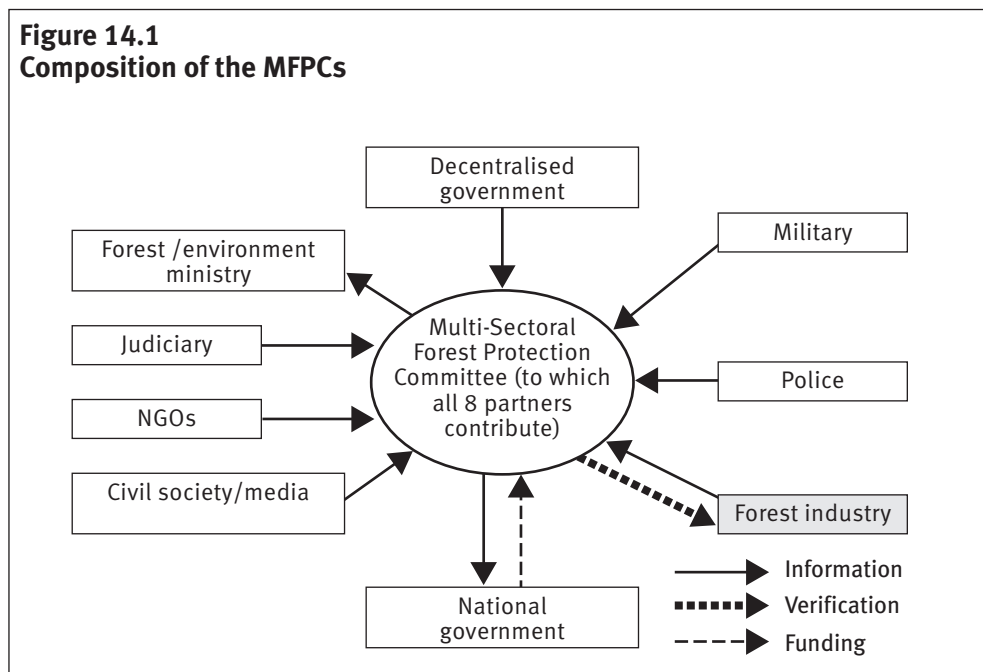
### 14.3 Mandate and structure

The MFPCs' role in the management of forest resources in the Philippines was, and in instances where they remain operational still is, to carry out surveillance and monitoring activities, both of industrial concessions and community-based forest management activities. Findings of compliance or non-compliance are reported to the enforcement authorities within the DENR. The authority for this comes from the original 1975 Presidential Decree and subsequent regulations and operational guidelines enacted and drafted by DENR in the 1990s.

The MFPCs were originally designed to be made up of representatives from the national government, DENR staff, Local Government Units (LGU), the military, police, civil society and the media, and NGOs (see Figure 14.1). Consultants on the ENR-SECAL programme appointed representatives from the various entities that made up the MFPCs. These representatives would then report back to their own organisations. With the establishment of the National Federation of MFPCs (through which MFPCs could share problems and lessons learned), there were essentially four levels at which the MFPC structure was operating in the country during the height of the programme in the late 1990s (national, regional, provincial and municipal).

While the tasks of MFPCs at different levels varied according to their scale of operation, they all had common basic functions. These ranged from networking in the monitoring of illegal logging activities to promoting public awareness in environmental/

**Figure 14.1**  
**Composition of the MFPCs**



forest protection activities and providing alternative livelihood opportunities, particularly for upland community dwellers who were dependent on illegal logging and other illegal forestry activities. The operations of the MFPC programme, as contained in the World Bank's Manual of Operating Procedures (MOP), included the following stated tasks: policy review and implementation; assessment of existing forest protection operations and activities; identification of critical areas; forest surveillance and monitoring, apprehension and confiscation of illegal products; information and education campaigns; and livelihood development (Cruz and Tapia, 2005).

While the MFPCs *per se* never had any legally mandated enforcement authority, the organisations their members represented did, such as the DENR, LGUs, various military units and police. Representatives from these entities would pass information gathered through MFPC-coordinated activities to their respective organisations, and also feed information to the rest of the MFPC members on their organisational activities and initiatives. In this way the efforts of the various groups could, in theory, be more effectively coordinated and synergies maximised. Various MFPCs did organise joint enforcement mechanisms through cooperation of their respective organisations at the local level, such as setting up road checks to stop the illegal transport of timber and conducting field missions to halt illegal logging operations.

#### 14.4 Relationship to DENR and LGUs

MFPCs were always intended to support, rather than replace, the official government-mandated forest control systems of the DENR and its Forest Management Bureau. The DENR is the government agency principally responsible for forest management in the Philippines, including the execution and issuance of all agreements and permits related to timber resources utilisation in the country. Replacing the Timber Licence Agreements (TLA) previously issued to industrial-scale concessions, these now include the Community-Based Forest Management Agreement (CBFMA), Industrial Forest Management Agreement (IFMA), the Socialised IFMA (SIFMA), and the Protected Area Community-Based Resources Management Agreement (PCBRMA).

Nested below the national level, the DENR structure is supported by Provincial and Community Environment and Natural Resources Offices (PENRO, CENRO). During the 1990s, when the MFPC model was being rolled out, the PENRO and CENRO offices and line agency staff were directly responsible for the implementation of DENR policies, programmes, projects and activities, and the enforcement of Environment and Natural Resources laws and regulations at the provincial and community level. Within this forest governance framework, LGUs share with DENR the responsibility for the sustainable management and development of forest resources within their territorial jurisdiction (DENR, 1998).

#### 14.5 Performance

##### Impacts on illegal logging

The experiences of the more than 300 MFPCs that were formed during the lifetime of the ENR-SECAL programme (roughly 1992-1999) in forest protection and enforcement activities were varied. Some MFPCs were more successful than others, dependent

largely on the amount of available financial and logistical resources for operations, the critical mass of individuals and organisations concerned with forest protection willing to participate in MFPC activities, and the level of support from LGUs. At the height of the ENR-SECAL programme, when the financial and technical support was most abundant, the MFPCs were most effective in reporting and stopping illegal harvesting operations, both large and small-scale. However, when the ENR-SECAL programme ended, many MFPCs found it difficult to perform any tasks that required financial inputs such as travel, communications and participating in workshops, particularly at the federation level.

Though some stakeholders had initially been reluctant to accept the involvement of non-governmental actors in forest management activities, this position changed as the benefits of using such actors became evident and the culture within government shifted. Real determination of local government executives to enforce forest laws and regulations combined with the presence of active NGOs, media and religious groups were commonly observed in areas where the MFPCs were most successful in their campaigns against illegal logging.

Some MFPCs, such as those in Region 2 (North-Eastern Luzon) and in Region 11 (Southern Mindanao) managed to continue to operate after the end of the ENR-SECAL programme with support from member agencies (government and non-government) and individuals. These areas are distinguished by the political and financial support of an active civil society, strong media, active involvement of the church, and strong support from leaders of the LGU (Cruz and Tapia, 2005). In places where support from the civil society and the LGUs was lethargic, the few surviving MFPCs were noted to have limited accomplishments.

### **Pro-poor impacts**

There was a common recognition of the need to complement enforcement activities with alternative livelihood development, both to keep forest-dependent communities out of the forests, and to cushion the effects that increased enforcement activities would have on small-scale illegal loggers. Some MFPCs were able to assist communities in linking up with providers of financial and technical assistance, so as to engage in non-forest-based livelihoods. But in most places, MFPCs did not even have the resources to come up with a plan to improve the livelihoods of the local communities.

The gains made in stopping illegal logging operations and the transport of illegal forest products became difficult to sustain, as the MFPCs were simply unable to provide meaningful assistance for forest-dependent communities in developing viable alternative sources of livelihood.

### **Weaknesses in system design and implementation**

Multiple factors were responsible for the limited success and sustainability of the MFPC model:

- *Lack of support by some field-level DENR staff.* In spite of the promotion of the MFPC model by senior DENR staff, an institutional culture existed which believed it was the DENR's responsibility to manage the forest resources of the country, and that the public should not be included in this role. The resulting lack of support by field-level staff created tension, especially with regards to the

actual role of the MFPCs, as questions were raised as to whether the MFPCs should be monitoring and reporting on the activities of DENR personnel as part of their mandate. In hindsight, DENR management recognises that more should have been done to educate field-level staff and explain why the MFPC model was being adopted, in order to ensure their buy-in.

- *Rapid expansion without adequate training.* The rapid rolling-out of the MFPC model without sufficient training on the roles, responsibilities and operational norms of the MFPCs led to inconsistent interpretation at the local level by LGUs, DENR staff and other participants and confusion during implementation.
- *Loss of operational independence.* Some MFPCs are reported to have been ‘captured’ and controlled by various interest groups in the country, falling under the influence of warring illegal logging patrons and even becoming directly involved in illegal logging activities (Acosta, 2008).
- *Unintended negative impacts on forest-dependent communities.* The negative impacts of some MFPCs on weaker players within the sector must be understood within the historical context. From the colonial period until the early 1980s, the Philippine’s forest policies had promoted a highly regulated, centrally controlled and industry-biased approach to forest management. Such policies placed access and control of the country’s forest resources into the hands of the power elite who had the resources and political connections to exploit these resources commercially for their own personal gains. The uneducated and the less privileged majority – particularly most of the upland communities – were largely barred from enjoying the potential benefits of the country’s forest resources (De Guzman, 1993). Within this context it is no surprise that the MFPCs had an undue influence on small operators and poor communities; these groups simply presented easier targets for enforcement than the large concessions controlled by powerful elites that were often immune from prosecution due to the ready resources at their disposal, both in terms of money and power.

## 14.6 Current status and future roles of the MFPCs in the Philippines

The phasing-out of large timber concessions (that began in the early ‘90s), combined with institutionalisation of CBFMAs and similar tenure instruments, dramatically changed the landscape of forest management and utilisation in the Philippines. Community-based forest management and similar approaches are now more prominent than concession forest management. Forest law enforcement, therefore, is now focused primarily on monitoring the forest utilisation activities of communities, though monitoring of the few remaining large concessions continues.

Despite changes in the focus of forest law enforcement, the major constraints to effective enforcement remain the same as in the past. These include the inadequate ability of the government to enforce existing laws effectively, a lack of programmes to create a socio-economic environment that is conducive for sustainable forest management, and a growing population that remains largely dependent on forest resources in order to simply get by on a day-to-day basis. The gap between the resources (human and financial) available and the actions necessary is plainly too large for law enforcement

to be effective. The personnel that DENR currently has available (approximately one forest guard for every 4,000 hectares of forests to be covered) are hampered by insufficient logistical and legal support needed to motivate and empower them to conduct effective enforcement of the country's forest laws and regulations. An on-going rationalisation plan of the government through Executive Order No. 366 issued on October 4, 2004, will trim down public sector employment by as much as 40% when fully implemented (Acosta, 2008). Such reductions in staffing will only further reduce the already limited human resources available for forest law compliance and enforcement activities in the country.

Under such conditions, those responsible for monitoring and compliance within the forest sector can easily succumb to corruption and abuse of authority. This is compounded by the poor economic conditions in rural areas, where local communities cannot escape from their heavy reliance on forest resources for their livelihoods. The absence of alternative means of generating income combined with an ever-increasing population has only heightened their dependence on harvesting forest resources, which is often done in violation of existing laws and regulations.

Overcoming the obstacles to effective law enforcement in the Philippines will therefore require a two-pronged approach that improves governance mechanisms for forest law compliance and enforcement, while at the same time facilitating improvement of the economic conditions of forest-dependent communities through alternative livelihoods development. It is within this complex and difficult context that resurrection and institutionalisation of the MFPC model is being considered.

The number of MFPCs still operational today is uncertain due to the inactivity of the National Federation of MFPCs that is supposed to be responsible for facilitating the coordination of all MFPCs in the country. Nevertheless, the potential of MFPCs as an effective forest law compliance support modality is suggested by the existence of MFPCs in some areas of the country where there is local financial, social and political support for their activities, adoption of variants on the model such as the provincial task force on illegal logging in Davao del Norte that was created with the support of the LGU, and the brief but significant accomplishments of many now-defunct MFPCs. As long as there is support from the civil society groups and LGUs, this appears to be a strategy viable enough to make the DENR willing to reactivate MFPCs in select areas.

The DENR has indicated its renewed commitment to adopt the MFPC as a protection and development strategy. This is manifested in the Revised Master Plan for Forestry Development (FMB-DENR, 2005) and in the 2005-2010 General Program of Action for the Forestry Sector of the DENR. Between 2005 and 2010 the DENR aims to support the reactivation and strengthening of 97 MFPCs nationwide. It has proposed the allocation of about US\$15,000 annually per MFPC to help finance part of the costs of their operations.

The DENR also plans to support other forest protection initiatives including rapid response task forces against illegal logging, multi-partite protection councils and multi-sectoral monitoring teams to ensure compliance of project implementers with the terms and conditions of their project agreements and other relevant laws and regulations (Amaro, 2006). Some initiatives have already been implemented, including the creation in 2004 of the Task Force Sagip Kalikasan (Save Nature) through enactment of DENR Special Order No. 2004-888. This task force operates under the direct supervision of



the DENR Secretary, operating on a 24-hour basis with the ability to strike anywhere throughout the country (Acosta, 2008).

How resurrection of the MFPC model will ultimately be manifested is yet to be fully decided. The DENR is currently working with the World Bank to have an in-depth study conducted on the MFPC experience in the Philippines, which should commence in the latter half of 2008. Findings from this study will be discussed during a series of regional multi-stakeholder workshops feeding into a national workshop, which will produce a plan of action for institutionalising the MFPCs, including identifying necessary human resource and long-term financial requirements.

## 14.7 Lessons learned

In review, the strengths of the MFPC model include the broad national participation in the design and implementation of the governance model, a high level of public and government ownership and legitimacy of the system, direct impacts on stemming illegal activity within the forest sector, involvement of a variety of key players within the system, and an overall high level of independence in the operation of the MFPCs.

With regards to public participation in verification activities, the case illustrates the need for a clear mandate for roles and responsibilities of all stakeholders and adequate capacity-building to ensure consistent understanding of the system design in various locations. Particularly important is ensuring the buy-in of DENR staff at all levels.

The effectiveness of what is essentially a decentralised model of forest sector verification depends on strong local support especially if technical, administrative and financial support from the national level is limited. Thus the willingness and commitment of local NGOs and other civic groups will be critical to the future success of MFPCs. The same is true for the LGUs which will most likely provide the muscle and serve as a stabiliser of the MFPC model in addition to acting as a source of funding for local activities.

Local support is not sufficient, however, and a mechanism for long-term financial support from the national government must also be identified to ensure the sustainability of MFPCs and their ability to act independently of different interest groups.

Finally, the operational procedures of the model must be reviewed to minimise negative impacts on small poor operators and communities. In this respect, experience also suggests that the simultaneous implementation of development programmes in areas where the MFPCs operate will enhance the likelihood that forest law compliance can be improved over the long term.

## Chapter 15

# Verification of legal compliance in Indonesia

**Note:** This case study was completed in August 2008 and is authored by Adrian Wells. It is based on Wells, A., Ngadiono and Asycarya, D. (2008) 'Systems for Verification of Legality in the Indonesian Forest Sector', VERIFOR Country Case Study No. 9. London: ODI.

**Table 15.1**  
**Indonesia: some key statistics**

Statistic		Date	Data source
Population	222.8 million	2006	UN Population Division, 2006
Land area	181.2 million ha		FAO, 2006
Forest cover	48.8%	2005	UN Statistics Division, 2006
Public forest ownership <sup>1</sup>	99%	2000	FAO, 2005
Industrial roundwood production	36.7 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	549,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	3.4%	Average 1990-2000	FAO, 2004
Value of forest products exports	US\$4.2bn	Average 1990-2000	FAO, 2004
Main international markets for timber	Japan, China, Europe, US, Taiwan, South Korea	2005	ITTO, 2005
TI corruption perception index (0-10, where 0 = most corrupt)	2.4	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.71	2004	UNDP, 2006

<sup>1</sup> This figure includes areas of the National Forest Estate that are subject to customary claims, although the existing forest law does not recognise these as private rights. The 1% figure for private ownership is also likely to be an underestimate, as there are extensive areas of smallholder timber plantation and agroforestry areas under private ownership, outside the National Forest Estate.

### 15.1 Introduction

Indonesia supplies one-third of all producer country exports of tropical timber – second only to Malaysia ([www.globaltimber.co.uk](http://www.globaltimber.co.uk)). With high levels of illegality, the country's forest sector has become the focus of a wide range of donor, NGO and private sector initiatives

aimed at promoting legal and sustainable trade. This chapter describes the influence of these initiatives on Indonesia's evolving verification system including the introduction of a legality standard, and ongoing reforms to outsourced auditing of industrial timber concessions, in an attempt to tackle illegality and enhance sustainability.

Indonesia was the first country to formulate a standard for verification of legal timber, as a step towards sustainability. Indonesia is also of interest given its attempts to introduce greater independence into mandatory verification systems. It demonstrates the importance of wider governance reforms (involving determination of legal claims in forest land, more effective law enforcement and measures to regulate installed processing capacity) to deliver effective verification. Indonesia also illustrates the challenges of rapid political and administrative decentralisation for forest verification. In sharp contrast to Malaysia's federal system, Indonesia retains a uniform approach to forest verification, focused predominantly on central government licensing of concessions and timber industries.

Following a brief description of the forest sector context in Indonesia and the drivers and legal mandates for verification, this chapter describes the various components of Indonesia's verification system – spanning timber administration, mandatory compliance certification and export registration. The chapter continues with a discussion of current strengths and weaknesses, and possible enabling reforms. It concludes with a summary of lessons learned.

## 15.2 Context

Some 70% of land in Indonesia constitutes the National Forest Estate, under the direct management of the state. Industrial forestry has dominated policy and practice for decades. However, although the forest sector generated US\$7–8bn per year in foreign exchange earnings over the 1990s, stark poverty continues to exist in forest areas. According to Indonesia's Centre for Economic and Social Studies (CESS), the proportion of poor households and villages in and around forest areas is 10% higher than in non-forest areas (CESS-ODI, 2005).

Since the collapse of the Soeharto regime in 1998, the importance of the industrial forestry sector to growth and revenue generation has declined. The reasons include a reduction in the Annual Allowable Cut as the resource base dwindles, a recent spate of law enforcement operations targeting illegal logging, and increased market competition with other processors such as Malaysia and China. However, this also leaves a legacy of substantial overcapacity in the processing sector.

The Indonesian government has since identified forestry as one of three priority sectors, alongside fisheries and agriculture, for economic revitalisation. Current emphases include a growth in industrial and community-based tree plantations to meet a severe supply gap that is otherwise fed by illegal logging. This, however, faces a number of significant policy challenges.

First, significant areas of the National Forest Estate are now heavily degraded or deforested. At the same time, some 1.5 million hectares of forest on private, titled land outside the Forest Estate now produce more than 6 million m<sup>3</sup> of timber a year. Compare this to the 2006 allowable cut of 8.15 million m<sup>3</sup> for all 170 commercial timber concessions, covering 6.7 million hectares – only a small proportion of which remains

active. This has prompted calls to grant local people private rights, at least in areas of the Forest Estate that are no longer productive, to plant and manage trees. Estimates suggest that a 10% change in area allocated for smallholder tree crops would generate around US\$850m in economic value and around 500,000 jobs (Brown et al., 2006).

Second, only 10% of the National Forest Estate has been fully gazetted in line with stipulated procedures (including notification of local communities). These requirements present a significant challenge for existing licence holders. Without comprehensive cadastral data, the exact extent of proprietorial claims in forest remains unclear. At the same time, Law 41/1999 on forests treats areas under the control of traditional law communities (*Hutan Adat*), not as private forest (*Hutan Hak*) but as merely one category of the National Forest Estate. This mirrors the fact that there is currently no mechanism for registration of collective claims – despite recognition of traditional law systems in the Basic Agrarian Law (1960) (Contreras-Hermosilla and Fay, 2005). As a consequence, significant areas of the National Forest Estate are disputed by local people.

Third, the relative distribution of authority between central and local government is heavily contested. The introduction of political and administrative decentralisation in 1999 significantly increased the authority of district governments and the Special Autonomy provinces (Aceh and Papua) over natural resources. However, concerns that local government licensing was fuelling rapid land conversion and illegal logging led to a recentralisation of control, most recently under Regulation PP3 of 2008. Most categories of licence now remain the authority of the Minister of Forests. Local government may only continue to license areas for community-based reforestation or for environmental services.

### 15.3 Drivers of forest control and verification systems

There are a number of important drivers behind forest sector verification in Indonesia.

A principal concern of the government has been to revitalise the timber industry in the wake of the 1997 financial crisis. This includes the withdrawal of industrial logging concessions that are either underperforming or no longer active, following mandatory compliance audits by Independent Assessment Bodies (LIAs). These mirror standards and procedures established by Indonesia's existing voluntary SFM certification scheme – the Indonesian Eco-label Institute (LEI).

Another key driver has been the impact of civil society campaigns to tackle rampant illegal logging on Indonesian markets abroad, compounding the effects of declining productivity and price competition with producers such as China. Prominent campaigns include ground-level monitoring by the NGO alliance EIA–Telapak, and efforts to bring pressure on European buyers by Greenpeace ('Partners in Crime') and Friends of the Earth ('The Dirty Five'). These campaigns prompted improvements in sourcing by buyers, and reforms to public procurement policies by some of Indonesia's main European buyers including the UK.

Civil society campaigns have also prompted:

- A Memorandum of Understanding (MoU) with the UK on measures to tackle illegal logging. This initiative pioneered work to formulate a standard for legal compliance.

- Equivalent MoUs with other consumers including the US, as well as policy work facilitated by the World Bank on '10 Steps' for the effective prevention, detection and suppression of illegal logging. These cover: (i) creating accountability; (ii) defining legality; (iii) improving monitoring; (iv) archiving data; (v) ensuring transparency; (vi) tackling overcapacity in timber processing; (vii) promoting legal timber trade; (viii) building law enforcement capacity; (ix) amending laws; and (x) prosecuting and convicting forest criminals.
- A range of private sector trade initiatives with their own standards for verification of legal origin (VLO) and legal compliance (VLC), including the Tropical Forest Foundation (TFF) and the WWF Global Forest Trade Network (GFTN).
- Wider societal pressure for action. This in turn resulted in a Presidential Decision in 2004 mandating coordinated law enforcement sweeps across Indonesia (*Operasi Hutan Lestari* (OHL)).

The latest driver of change has been a decision by the European Union to open up dialogue with the Indonesian government on a possible Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT). Amongst other effects, this has prompted a decision to adopt a Timber Legality Assurance System (TLAS), spanning a legality standard, chain of custody, verification and independent monitoring, as a matter of national policy.

#### 15.4 Legal mandates for verification

Law 41/1999 on forests and Law 32/2004 on decentralisation provide the overarching legal mandate for monitoring and verification in the forestry sector. Implementing regulations under each of these laws provide for supervision and control of forest policy implementation. These include PP6/2007 on forest management (as amended PP3/2008), PP38/07 on the distribution of authority between central and local governments, and PP41/2008 on the structure of local government.

Specifically, PP6/2007 (Article 125) mandates both monitoring (routine data gathering) as well as evaluation (assessment of forest management planning and utilisation). PP38/07 adds that this is a concurrent responsibility of central, provincial and district government, with central government also responsible for standard-setting.

A bundle of administrative orders (Ministerial Decrees) provides further direction on the distribution of roles and responsibilities for monitoring and evaluation, across three areas:

- Timber administration (PUHH), including the collection of stumpage fees (PSDH) and reforestation levies (DR). This includes detailed guidance on the responsibilities of local government for pre-harvest inventories, the approval of annual cutting blocks, the reconciliation of production statistics with pre-harvest inventories, and the administration of transport permits.
- Compliance certification, requiring periodic auditing of natural and plantation forest concessions, as well as primary, wood-based industries, against mandatory SFM criteria and assessment guidelines. Responsibility for audits is split between a Ministry of Forestry Working Group (*Pokja*) and 16 Independent Assessment Bodies (LPIs) accredited by the Ministry.

- Mandatory export registration (ETPIK), requiring prior endorsement by the Timber Industry Revitalisation Board (BRIK) that an operator obtains timber from only legal sources.

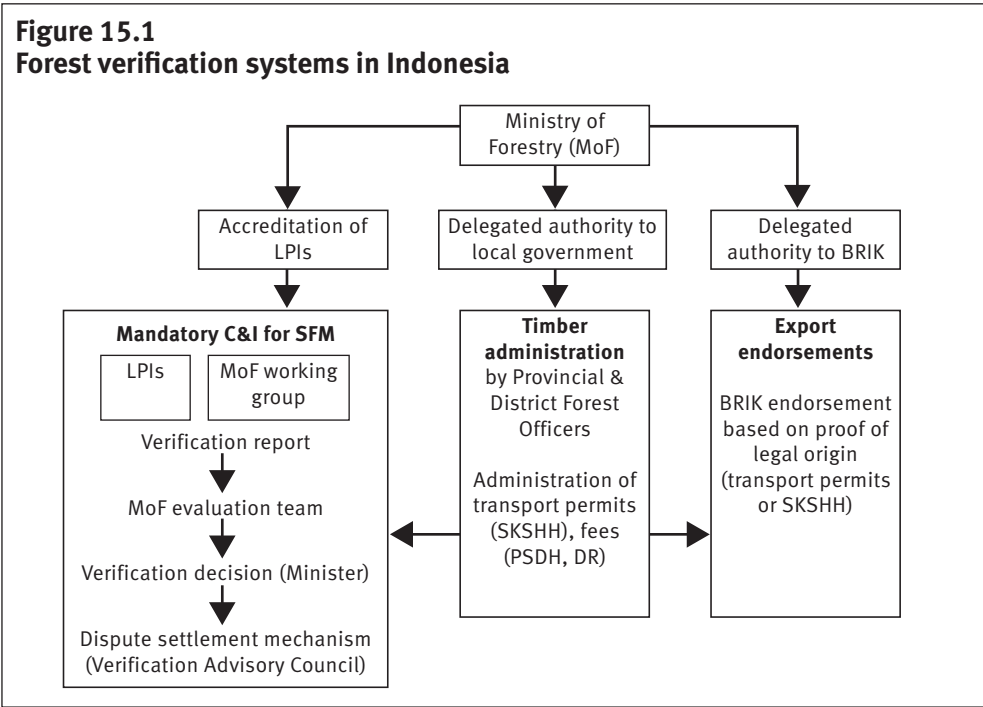
### 15.5 Verification systems

#### Overview

The three components of Indonesia’s forest verification system (timber administration, mandatory compliance certification and export registration) each work under the delegated authority of the Ministry of Forestry, and are summarised in Figure 15.1. Under this system, compliance audits of individual licensees, as well as export endorsements by BRIK, will examine monitoring data generated by routine timber administration in order to verify compliance.

Table 15.2 compares in outline the scope and content of these three components. Significantly, no one policy or regulation draws together these three components under a single legality assurance system. This creates certain gaps and inconsistencies. Amongst others, LPIs remain the specific domain of central government, even though all levels of government are responsible for both monitoring and evaluation. Equivalent outsourced audit structures do not exist at local government level, e.g. to facilitate oversight of district forest offices by the provinces, or of licences issued by governors or district heads.

In addition, the system does not provide for third-party oversight, independent of either the Ministry or industry. For example, the LPIs are directly accredited by the Ministry of Forestry, which then evaluates audit reports. Only summaries of the audit reports are made available for public consumption.



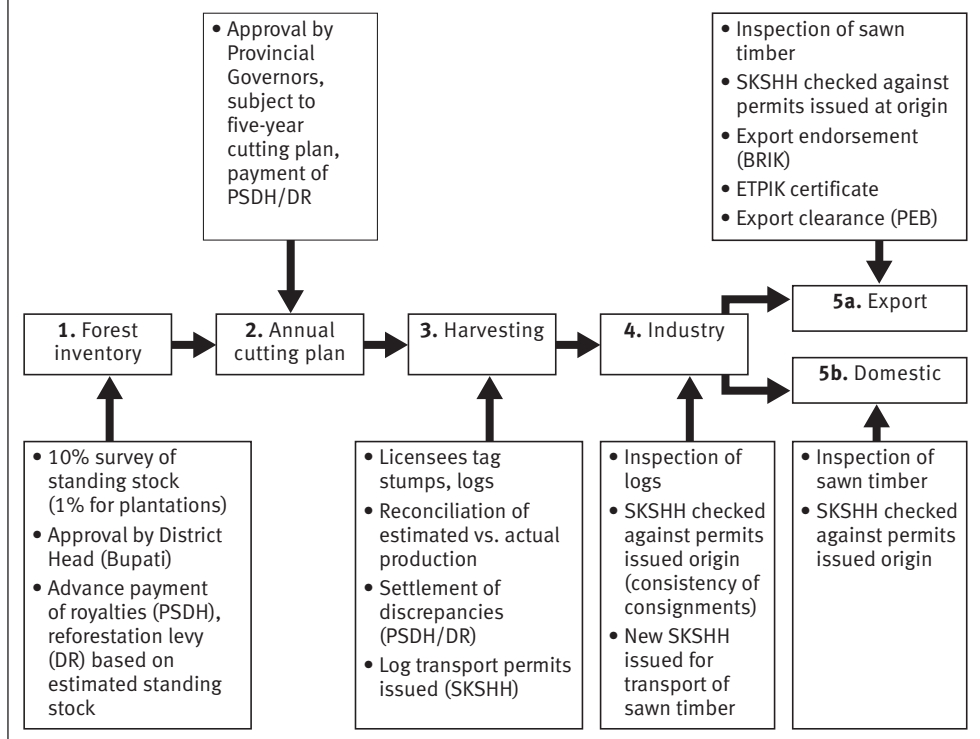
**Table 15.2**  
**Key elements of Indonesia's forest verification system**

	<b>Timber administration</b>	<b>Export endorsements</b>	<b>Auditing of licence holders</b>
<b>1. Purpose</b>			
	Revenue, legal origin	Legal origin	Revenue, sustainable forest management, industry revitalisation
<b>2. Scope</b>			
Resource allocation, licensing	No	No	No
Forest management	No	No	Yes
Chain of custody	Yes	Yes	No
<b>3. Components</b>			
Legality standard	Timber administration (PUHH), collection of royalties and levies (PSDH, DR)	Legal origin based on transport permits (SKSHH)	Mandatory SFM standards
Information systems	Pre-harvest inventories, production data, spatial data (boundaries, cutting blocks)	Production data (in-house database)	Routine monitoring data
Monitoring and enforcement	Yes	Yes	No
Audit	Yes – by Ministry of Forestry	No	Yes – by auditors accredited by Ministry of Forestry
External oversight	No	No	No
Verification decision	Ministry of Forestry	BRIK	Ministry of Forestry
Dispute settlement	No	No	Yes (Verification Council)
<b>4. Independence</b>			
Separation of powers (third-party, independent)	No	No	No
Outsourcing	No	Yes	Yes
Financing	Producers (fees)	Exporters (levy)	Ministry of Forestry

### **Timber administration**

Routine timber administration (and in particular the administration of transport permits, or SKSHH) by local government constitutes an input to both compliance audits by the Ministry of Forests and the LPIs, as well as export endorsements by BRIK. Timber administration remains paper-based and consists of five main steps summarised in Figure 15.2.

**Figure 15.2**  
**Timber administration (PUHH) in Indonesia**



### Mandatory compliance certification

Mandatory compliance certification was introduced in a bid to revitalise flagging timber industries – saddled by debt following the 1997 financial crisis, increasing price competition and a declining resource base. In 2002, the then Minister of Forests was faced with the choice of revoking or extending around 100 timber concession licences. A decision was made to extend only those capable of meeting mandatory SFM standards.

A series of Decrees was then issued introducing mandatory compliance standards and assessment guidelines for:

- Natural forest concessions (Decrees 4795/Kpts-II/2002 and 208/Kpts-II/2003 on SFM at management unit level);
- Plantation forest concessions (Decrees 177 and 178/Kpts-II/2003 on SFM at management unit level); and
- Wood-processing industries with installed capacity of over 6000m<sup>3</sup>/year (Decrees 6884/KPTS-II/2002 and 325/Kpts-II/2003 on, amongst other things, the legality of wood sourcing).

The Minister of Forests also introduced an outsourced audit system under Decree (SK) No. 6420/Kpts-II. This drew on and adapted independent forest certification processes established by the Indonesian Eco-label Institute (LEI). The outsourced audit system consists of:



- *Independent Assessment Bodies* (LPIs), accredited by the Ministry of Forestry, to undertake audits of concessions and forest industries. LPIs each consist of a field assessment team and a technical committee to evaluate data. LPIs are accredited on the basis of their administrative and technical capacity, as well as their independence. In particular, LPIs may not be shareholders of assessed forest companies, either at an institutional or individual level. Nor should they have provided any form of consultancy services for assessed companies, institutionally or individually. Costs of LPI audits are covered by the Ministry of Forests in the first three years, after which companies will be responsible for their own assessment costs.
- *A Ministry of Forestry Evaluation Team* assigned to evaluate LPI audit reports and to advise the Minister over an appropriate verification decision on the performance of licensees. Also entrusted with the ability to select members of the Verification Advisory Council (see below), the Evaluation Team holds considerable sway over the audit process.
- *A Verification Advisory Council* – a multi-stakeholder council established by the Evaluation Team to address disputes over audit reports and verification decisions.

The Ministry of Forestry accredited up to 16 ‘capable’ LPIs to audit forest industries against mandatory standards and assessment guidelines. In the event, the scale of the task meant that the LPIs shared their workload with an equivalent Ministry of Forestry Working Group (*Pokja*). Of the 27 forest concessions audited under the first round of assessments in 2003, 13 failed to meet the required standards.

### **Export endorsements**

In a further bid to revitalise a flagging sector, the Ministers of Trade, Industry and Forestry signed a joint decree (SKB No. 803/MPP/Kep/12/ 2002 and No. 10267/Kpts-II/2002) establishing the Timber Industry Revitalisation Board (BRIK) on 13 December 2002. The decree provided that BRIK’s members consist of forest industries. The decree also vested BRIK with the sole authority to verify the validity and consistency of transport permit (SKSHH) documentation attesting to legal sourcing by wood-based industries, as a condition for Export Registration (ETPIK). BRIK charges members a monthly fee, depending on the scale and type of industry.

## **15.6 Key strengths of the system and constraints on verification**

The policy intent behind Indonesia’s verification system cannot be disputed. The introduction of mandatory standards and assessment guidelines, and the accreditation of outsourced auditors were necessary steps in improving forest sector governance and disciplining the industry. The LPI audits in particular provide a means to both tackle illegality and support licence holders as they progress towards sustainability. BRIK too was a potentially significant innovation, intended to encourage industry to self-regulate where government’s own resources for verification of chain of custody are limited. However, Indonesia’s existing verification systems also face a number of key constraints.

### **Paper-based timber administration, limited resources for oversight**

Current timber administration (PUHH) is arguably a log tallying mechanism rather than a means to guarantee legal origin. Transport permits do not always provide information on the ultimate origin of a consignment of timber. This makes it difficult to guarantee chain of custody for processors sourcing through a number of different intermediaries. Ministerial Regulation (Permen) 55/2006 introduced revisions to the timber administration process previously regulated under Ministerial Decree (SK) 126/Kpts-II/2003. This places greater emphasis on self-regulation by companies to reduce transaction costs. However, the Regulation does not address problems of weak coordination and supervision between levels of government. Provinces do not routinely audit forest management and timber administration by districts. Districts in turn lack the resources to oversee field officers. These officers work to weak incentives; many of them have little prospect for promotion and lack the resources to fulfil their basic responsibilities.

### **Lack of independence and transparency in forest sector audits**

Steps have been taken to ensure the independence of accredited LPs from companies under assessment. However, the Ministry of Forestry retains full authority to accredit auditors, evaluate reports and issue verification decisions. This has raised concerns over the vulnerability of the LPI audit system to possible political interference. At no point is there public access to the evaluation process or audit reports. Even the dispute resolution mechanism, the Verification Advisory Council, remains under the control of the Ministry, being appointed by the Ministry's Evaluation Team. The fact that the Council has hardly ever met since it was established may be one indication of its perceived lack of importance. Only a limited period is permitted for the submission of complaints, and these too are unavailable to the public until after a decision has already been made.

### **Lack of physical inspections and potential conflicts of interest in export endorsements**

BRIK failed to reassure markets such as the UK of legal sourcing, mainly because there were no physical inspections of logs or mills built into its systems. BRIK only worked to check that log quotas set for individual mills matched volumes contained in transport permits (SKSHH). That BRIK is itself an industry body also raised concerns over conflicts of interest. Indeed, allegations that BRIK acted to consolidate its own export cartel through the imposition of illegal charges subsequently led the Ministry of Trade to withdraw support for the organisation. The Ministries of Trade, Industry and Forestry have, however, agreed to extend BRIK's current mandate to the end of 2008 pending a decision on a future export endorsement scheme. In the meantime, BRIK continues to manage a valuable database on wood sourcing by the timber industries.

### **Joint enforcement sweeps – undermining verification processes?**

In 2004, the President of Indonesia issued an instruction for Operation Sustainable Forests (OHL), a rapid-response enforcement measure that involved joint sweeps by the MoF and the police. The operation, aimed at tackling rampant illegal logging, was in part a response to evidence generated by civil society monitors such as EIA-Telapak. However, lack of reference by law enforcement agencies to existing verification processes arguably undermined the latter's value as a mechanism to tackle illegality within the sector.

## Impacts on the poor

Current verification systems are unlikely to reduce poverty amongst forest-dependent communities, due to the transaction costs of complying with rules on forest harvesting, and continuing lack of clarity over local people's rights to forest land and resources.

Community forest managers need to obtain multiple permits in order to manage and harvest timber. These include a transport permit for each consignment of timber. For trees planted on private land, this permit requires proof of ownership – which most local communities do not have. Costs are aggravated by the imposition of local government taxes, over and above collection of forest taxes, levies and licence fees by the Ministry of Forestry (Multi-stakeholder Forestry Programme, 2006a).

Second, the fact that local communities may have no legal certainty means that they are often targeted by enforcement sweeps. In 2005, customary community logging licences (IPKMA) in Papua came in for particular scrutiny under OHL. These had been issued by the Papua provincial government but were subsequently deemed illegal by the Ministry of Forestry. On the one hand, OHL successfully prevented the abuse of IPKMA permits by smuggling syndicates to access and launder timber. On the other hand, IPKMAs constituted the only legal means for local communities to generate income from timber on customary lands. OHL withdrew any prospect of direct community management of natural-forest timber – a situation which continues to hold true three years later (Multi-stakeholder Forestry Programme, 2006b).

## 15.7 Efforts to strengthen verification systems

There is official recognition of the constraints facing Indonesia's existing verification architecture. The political will also exists to reform and consolidate its various components within a single Timber Legality Assurance System (TLAS) – responding in part to negotiations around the possible VPA with the EU.

Ongoing and proposed reforms include:

- The development of a consolidated standard for verifying legality, that brings together timber administration (PUHH), as well as legal compliance by forest concessions and processing industries;
- The development of forest information systems and related transparency protocols;
- Proposals to introduce greater independence into verification systems, including independent accreditation of auditors; and
- Proposals to institutionalise independent civil society observation; despite having made a critical contribution in the fight against illegal logging, this has so far not been incorporated into formal verification design.

### **The development of a consolidated standard for verifying legality**

The regulatory framework governing the forestry sector in Indonesia is highly complex. Existing timber administration, compliance certification and export endorsements each deal with separate elements of this framework. Efforts to review and bring together the critical requirements needed to determine legal compliance began in 2003, under the UK–Indonesia MoU on illegal logging. That process has now set the precedent for equivalent efforts elsewhere in the world. The current agreed standard will, however,

need to remain a dynamic document if it is to accommodate more recent reforms on Community-Based Forest Management (CBFM) under Regulation PP6/2007.

Work to develop the standard was initiated in 2003 by a joint UK–Indonesia MoU / Nature Conservancy (TNC) team. The first draft standards included provision for: gazettement; social and environmental impact; community relations and workers rights; timber harvesting laws and regulations; forest taxes; log identification, transfer and delivery; and timber processing and shipping.

Stakeholder consultations on the draft highlighted major differences of opinion over its legitimacy and practicality. First, it did not adequately address Free, Prior and Informed Consent (FPIC) and the legal gazettement of concession boundaries (substantial areas of the National Forest Estate are in dispute). Second, it had not yet been tested in respect of planted and community-managed forests. Stakeholders recommended further work to harmonise the standard with relevant laws and regulations. It was also agreed that the Indonesian Eco-label Institute (LEI) should take forward facilitation of the standard, given its broad membership and strong technical credibility.

The Ministry of Forest's Timber Administration System (PUHH) was later incorporated into the standard. LEI facilitated efforts to differentiate the standard across three forest management regimes:

- Natural forest, planted forest and community-based forest management units within the National Forest Estate;
- Licences for timber harvesting in the National Forest Estate, but not based on management units; and
- Timber from private land and other areas outside the National Forest Estate.

A fourth part of the standard relates to transport and chain of custody from source to primary processing, and onwards to secondary processing and/or export.

The standard was further field-tested for planted forest; natural forest; private community forests (*butan rakyat*), and primary and secondary wood-processing industries. These field tests helped inform draft guidelines for verification. Agreement on a final version of the Standard was reached on 22 January 2007. *Ad hoc* teams have since been established for the development of system procedures and a governing body responsible for overseeing the standard.

However, important challenges remain. The Indonesian environmental NGO WALHI is concerned that the current version downgrades provisions on forest gazettement and FPIC. This includes a shift away from FPIC in favour of requiring only consultation with local communities. WALHI has also highlighted the lack of mechanisms for verifying the credibility of documentation, and re-iterated the criticism that the standard only frames the *status quo*, despite a call by the Indonesian Upper House for radical reforms to land tenure and natural resource management (TAP MPR IX/1999). At the same time, industry remains concerned that a complex standard will lead to increased production costs and loss of competitive edge to other countries where standards on tenure and indigenous rights may be much weaker (see Wells et al., 2006).

### **Information systems, forest sector transparency**

Significant steps are being taken to improve forest information systems as the basis for verifying legal compliance. This includes work to:

- Establish a Forest Resource Inventory System (FRIS) with technical assistance from South Dakota State University and the World Resources Institute (WRI) – providing public access to reliable, accurate and up-to-date information on forest and timber resources and related decisions in a usable format;
- Put in place transparency protocols, governing access to forest sector information (a Transparency Task Force has since been established to develop a Ministry of Forestry Disclosure Policy); and
- Link spatial information on concessions and cutting blocks with data on mill consumption data (RPBBI), to assist in verifying chain of custody. For example, the EU FLEGT Support Project has contracted Helveta (a private company specialising in technology for traceability and supply chain control) to help the Ministries of Forest and Finance integrate four disparate databases holding information on forest inventory, industry, mapping and revenue.

### **Enhancing independence**

In a step to enhance credibility, the Ministry of Forestry and the LEI have entered into a Memorandum of Understanding to develop a system for independent accreditation of auditors. This complements proposals to establish a separate governing body to oversee the legality standard. Both are vital if the existing verification system is to look beyond the performance of individual licensees, to also scrutinise forest sector administration – including resource allocation and licensing decisions by the Ministry itself. The degree to which this arrangement can introduce genuine independence does, however, depend on effective representation of different stakeholder groups on such a governing body.

Crucial also is supervision of verification decisions by the Minister, with adequate provision for due process in the event of a dispute. Here, the newly established National Forestry Council (DKN) has the power to investigate and conduct hearings, providing the basis for a credible dispute resolution mechanism along the lines of LEI's Certification Appeals Body. The DKN is, however, currently dependent on MoF for its funding. To be impartial, DKN would need to be financed independently of MoF (see Wells et al., 2006).

### **Institutionalising independent observation by civil society**

Civil society has made a critical contribution towards tackling illegal logging in Indonesia. Yet it has no formal place within existing verification structures. Under a future TLAS, proposals include delivery of independent observation through *ad hoc* committees established by the DKN and/or its regional chapters (DKD).

## 15.8 Broadening impact

If verification systems are to have significant impact, a range of broader reforms may also be necessary, beyond efforts to establish a legality standard and enhance independence and civil society oversight. Some of these reform measures are outlined below:

- A legitimate solution still needs to be found within the framework of the legality standard that addresses the concerns of local and indigenous peoples over land claimed as National Forest Estate. Regulation PP6/2007 introduced a range of time-bound licences for community-based forestry management, but does not address disputes over underlying tenure. Civil society alliances are working to demonstrate approaches to FPIC, but these have yet to be integrated into formal forest gazettment and allocation processes.
- Verification mechanisms are not yet in place for community-based forest management. Yet in terms of volumes of timber produced, CBFM can be significantly more productive than, and almost as important as, industrial concessions. The lack of tailored verification systems, and the evidence these generate, leaves community-based licence holders vulnerable to arbitrary withdrawal of their rights by enforcement agencies. Existing verification systems are also likely to render CBFM enterprises unviable given the transaction costs involved. ‘Lighter’ approaches might involve verification by grassroots organisations embedded in the community.
- There remains a case for transferring greater authority to regions for verifying operator compliance, in line with current laws on decentralisation and Special Autonomy regions. Where the Ministry of Forestry has struggled with the workload of auditing hundreds of licence holders, it could restrict its own role to oversight of verification by local government counterparts. However, as long as the responsibilities of local government are not matched by authority, they will have little incentive for monitoring and control.
- Effective verification depends on effective law enforcement. This includes: (i) scaling up efforts to systematically document legal case handling, in the absence of written judgements and in the face of weak integrity in the judicial system; (ii) strengthening the basis for prosecution of illegal logging crimes – e.g. the powers of the Indonesian Financial Transaction Reporting and Analysis Centre (PPATK) to prosecute forest-related financial crimes; and (iii) ensuring that law enforcement sweeps take adequate account of prior audit reports when making determinations of illegality.
- Finally, reforms to verification systems will be unlikely to succeed unless the major drivers of illegal logging are also addressed – in particular excess installed capacity amongst forest-based industries. An Industrial Restructuring Roadmap has been developed, but has yet to be officially endorsed by government.

## 15.9 Lessons learned

Existing verification systems in Indonesia enjoy strong government ownership. Like Malaysia, their governance is heavily influenced by voluntary forest certification processes. This includes resort to outsourced auditing in a bid to enhance efficiency and credibility. Yet it stops short of credible third-party independent oversight – leading to allegations of political interference and conflict of interest.

There is nevertheless a commitment to improve on current arrangements – drawing on the experience of independent certification initiatives such as LEI. Current priorities for reform include:

- Enhanced forest information systems and, in particular, transparency protocols; and
- Independent accreditation of third-party auditors, and the development of a separate governing body to oversee the legality standard – removing the Ministry of Forestry’s monopoly on the audit process.

However, Indonesia also demonstrates how the efficacy of verification systems depends on broader reform. In particular, agreement needs to be reached over a legitimate, scaleable means to identify and address the legal claims of local and indigenous peoples in forest land; local government requires a stronger incentive to buy into verification processes; law enforcement sweeps need to reinforce rather than override verification processes in determining legal compliance; and efforts need to be made to implement existing recommendations on industrial overcapacity as a driver of illegal logging.

## Chapter 16

# Multiple approaches to improving forest control in Malaysia

**Note:** This case study was completed in June 2008 and is authored by Adrian Wells. It is based on Wells, A., Thang, H.C and Chen, H.K. (2008) 'Systems for verification of legality in the forest sector, Malaysia: domestic timber production and timber imports', VERIFOR Country Case Study No. 8. London: ODI.

**Table 16.1**  
**Malaysia: some key statistics**

Statistic		Date	Data source
Population	25.3 million	2005	UN Population Division, 2006
Land area	32.9 million ha		FAO, 2006
Forest cover	63.6%	2005	UN Statistics Division, 2006
Public forest ownership	93%	2000	FAO, 2005
Industrial roundwood production	30.8 million m <sup>3</sup>	Average 2001-2005	ITTO, 2005
Formal forestry sector employment	208,000	Average 1990-2000	FAO, 2004
Contribution of forestry sector to GDP	6.7%	Average 1990-2000	FAO, 2004
Value of forest products exports	US\$3.3bn	Average 1990-2000	FAO, 2004
Main international markets for timber	Japan, China, Taiwan	2004	Global Timber, 2007
TI corruption perception index (0-10, where 0 = most corrupt)	5.0	2006	Transparency International, 2006
Human Development Index (0-1, where 0 = very low)	0.8	2004	UNDP, 2006a

### 16.1 Introduction

This chapter presents the fascinating diversity of verification structures that has evolved under Malaysia's federal system, by which its 13 states have separate jurisdiction over their forest estates. While uniformity of practice has been achieved among the eight timber-producing states in Peninsular Malaysia, verification systems in Sabah and



Sarawak (on the island of Borneo) have evolved separately.<sup>1</sup> This reflects differences in the institutional arrangements for forest management, as well as key differences in licensing and timber administration depending on the nature and extent of the forest estate. This has resonance for other large, highly decentralised countries such as Indonesia.

The Malaysian case is of particular interest because of the composite, multi-agency structures responsible for forest control. Verification is generally delivered through audit of forest management systems, and there is a range of these which include:

- Mandatory Sustainable Forest Management (SFM) audits of licence holders by state forest authorities;
- Mandatory SFM audits of state forest authorities by federal government;
- Audits by accredited certification bodies against International Standards Organization (ISO) standards voluntarily adopted by federal and state forest authorities; and
- Audits by accredited certification bodies against SFM standards voluntarily adopted by state forest authorities and individual licensees.

Given Malaysia's role as a major processor and re-exporter of timber from elsewhere in the region, this case highlights the measures taken to restrict and administer certain categories of import under pressure to prevent illegal trade.

Following a brief description of the forest sector context in Malaysia and the drivers and mandates for verification, this chapter analyses the approaches to verification taken in Peninsular Malaysia, Sabah and Sarawak as well as in relation to timber imports. A discussion of the impact of verification is followed by a concluding section presenting lessons of interest to other countries.

## 16.2 Context

Forests in Malaysia cover 19.5 million hectares or around 60% of the country's land area. Of this, 14.9 million hectares have been designated as Permanent Forest Estate (PFE), including 11.2 million hectares of production forests.<sup>2</sup> Much of the remainder consists of state land banks for conversion and development. Both the PFE and the state land banks remain in public ownership. Only a very small proportion of forest cover (7%) occurs on private or native customary lands, or in aboriginal reserves.

Around 200,000 people are engaged in the formal forestry sector (FAO, 2004). Over the period 2001-5, annual industrial roundwood production averaged 30,766,000m<sup>3</sup> (ITTO, 2005). In 2003, the Malaysian timber industry accounted for 3.4% of GDP and 4.3% of total export earnings. That year, Malaysia was also the world's third leading exporter of logs after Russia and the US; the second largest exporter of plywood after Indonesia; and eighth leading exporter of sawn timber. As supplies of domestic timber decline, and with around 1000 sawmills in operation, a growing proportion of Malaysia's production consists of re-exports of timber originally sourced from a variety of neighbouring countries including Indonesia, Papua New Guinea and Myanmar.

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<sup>1</sup> The eight timber-producing states in Peninsular Malaysia are Pahang, Selangor, Terengganu, Johor, Kedah, Perak, Negeri Sembilan and Kelantan.

<sup>2</sup> The term Permanent Reserved Forest, equivalent to PFE, is used in the Peninsular states.

Key markets include Japan, China and Taiwan. Other significant markets include the European Union (for producers in Peninsular Malaysia), India and the Middle East.

### 16.3 Drivers of forest control and verification systems

Verification-related developments in Malaysia's forest sector are mainly shaped by a desire to remain competitive. They include:

- The introduction of standards-based management under the 'Malaysian Criteria and Indicators, Activities and Standards of Performance for Forest Management Certification' (MC&I); a national certification scheme, the 'Malaysian Timber Certification Council' (MTCC); and 100-year 'Sustainable Forest Management License Agreements' (SFMLAs) in Sabah;
- The introduction of ISO standards for many aspects of forest administration, under a Prime Ministerial drive to improve efficiency; and
- Substantial investment in installed processing capacity to enhance value added; supporting measures include region-specific bans and quotas on log exports.

Existing forest control systems also reflect a push by both the federal government and some civil society organisations to tackle over-exploitation and illegal logging. State governments have historically had an interest in maximising revenue generation. But in the early 1990s, the federal government intervened to curb illegal logging and to tackle excessive opening of forest areas and over-harvesting by the Peninsular states. Mandatory audits of state forestry departments against the MC&I for SFM are one outcome.

A decline in the domestic timber resource has led to increasing reliance on timber imports and plantation development to meet production shortfalls. Malaysia has therefore had to introduce a range of import measures to ensure the legality of imports (in particular from Indonesia), under heavy scrutiny by civil society groups such as TRAFFIC Southeast Asia and the Environmental Investigation Agency (EIA).

The prospect of a Voluntary Partnership Agreement (VPA) between the European Union and Malaysia on Forest Law Enforcement, Governance and Trade (FLEGT) introduces a new market-led pressure to improve standards. Negotiations have resulted in extensive debate over:

- Levels of independence of the supervisory bodies, as the entities responsible for monitoring and auditing are largely government-funded or owned;
- Levels of civil society participation and oversight in the design and implementation of verification systems; and
- Pressures to recognise indigenous peoples' claims on land and compensation, where 93% of Malaysia's forest area remains in public ownership (FAO, 2005).

The issue of indigenous claims has dogged both the development and application of the MC&I, as well as ongoing negotiations over the VPA. There has been ongoing legal dispute over the rights of aboriginal/native groups in respect of the Permanent Forest Estate. This has been complicated by the absence of clear standards to benchmark administrative compliance with legal requirements to determine, extinguish or admit aboriginal/native claims. Both sets of issues are before the federal courts arising out of cases in both the Peninsula and Sarawak (see Box 16.1).

**Box 16.1**  
**Ongoing disputes over aboriginal and native customary rights in Malaysia**

Malaysia's Court of Appeal has affirmed a fiduciary duty on the Peninsular states to gazette areas where aboriginals are able to establish an interest in land, and to compensate these as well as usufruct rights should they be withdrawn. This highlights the need for clear guidance and standards on public notice and the arbitration, admission, compensation and/or incorporation of aboriginal/native claims under processes to either gazette forest land or to alienate it for conversion.

It has also been argued that the indicators and means of assessing compliance in the MC&I are not sufficiently specific or performance-based to address disputes with local communities. Amongst other problems, mechanisms do not yet exist for the management and disbursement of compensation to aboriginal or native communities.

Finally, apart from District Officers or the Department for Aboriginal Affairs, there is currently no independent, third-party referee to oversee and adjudicate aboriginal/native customary claims with credibility amongst all parties.

The lack of adequate standards and mechanisms for resolution of claims may be one reason why parties have often had to resort to the civil courts where settlement might otherwise have been achieved through negotiation or arbitration. Not only is this highly inefficient, implying significant transaction costs for all parties involved, but the lack of a funded legal aid system also means that communities have to rely on pro bono legal assistance.

## 16.4 Mandates for verification

Malaysia's systems for legal verification involve complex, multi-agency structures, providing oversight over domestic production and timber imports. These have evolved along different trajectories in the Peninsula, Sabah and Sarawak.

Under Article 74 (2) of the Federal Constitution, Malaysia's 13 states each have jurisdiction over land as well as forest gazettelement, management and licensing. Malaysia does not, therefore, constitute a single entity for the purposes of forest management. In Peninsular Malaysia, all states have now adopted the National Forestry Act (1984). Under their terms of accession to the Malaysian Federation, Sabah and Sarawak regulate their forestry sectors under their own enactments and ordinances. These include the Sabah Forest Enactment 1968 (amended 1992) and Forest Rules (1969), as well as the Sarawak Forest Ordinance 1954 (amended 1999).

A National Forestry Council (NFC) was established in 1971 to coordinate policy between the federal and state governments. This supervised the development of the National Forestry Policy, to which all states adhere. The NFC also agrees the annual allowable cut (AAC) for each state in Malaysia on a five-yearly basis. However the executive authority of the federal government (the federal Forestry Department) only

extends to the provision of advice and technical assistance to the states, as well as training, research, and the maintenance of experimental and demonstration stations.

In all three jurisdictions (the Peninsula, Sabah and Sarawak), all forest produce originating from the Permanent Forest Estate (PFE) or state land outside the PFE is considered the property of the state. All exploitation of forest produce must be licensed and administered by the State Authority. Licensees in permanent reserved forests are required to develop and implement forest management, harvesting and reforestation plans. Forest officers are vested with powers of arrest, search, seizure and investigation. State Forestry Directors stipulate fines and/or pursue prosecution of offenders.

There are some important jurisdictional differences between the three systems, and these have implications for verification design (as summarised in Table 16.2):

- *Differing objectives.* For example, Sarawak's system is partly geared to ensuring compliance with log reservation quotas for domestic processing, and partly to controlling imports from Indonesia. By contrast, Sabah is geared to bringing concessionaires up to standard for Forest Stewardship Council (FSC) certification of sustainable forest management.
- *The organisational structure of forestry agencies.* Whereas in the Peninsula and Sabah, responsibility for the management, development and regulation of the forest sector lies with the state Forestry Directors, Sarawak has taken the unique step of outsourcing these tasks to a state enterprise, the Sarawak Forestry Corporation (SFC).
- *Responsibility for forest management and the duration of concession licences.* In the Peninsula, short-term (typically 12-month) harvest licences are generally issued in respect of Forest Management Units (FMUs) managed directly by state forest authorities. Sabah, by contrast, has adopted 100-year Sustainable Forest Management License Agreements (SFMLAs), where licensees bear full responsibility for FMU management. This is also the case in Sarawak though here Forest Timber Concession Agreements are typically only of 25 years' duration, subject to renewal.
- *The roles of the federal government in forest control.* In the Peninsula, but not Sabah and Sarawak, the federal Forestry Department undertakes routine SFM audits of state-managed FMUs. However, responsibility for administration of timber imports rests with a federal statutory body, the Malaysian Timber Industry Board (MTIB), for the Peninsula and Sabah, and with the Sarawak Timber Industry Development Council (STIDC) for Sarawak.
- *Legal provision for aboriginal and native rights.* Current laws in all three jurisdictions preclude an aboriginal or native customary interest in land in areas gazetted as PFE. But, unlike the Peninsula, ordinances in Sabah and Sarawak do make provision for the identification, excision or extinguishment of native customary claims in return for compensation.

**Table 16.2**  
**Summary comparison of forest verification systems in Malaysia**

	Peninsula	Sabah	Sarawak	Import/export
<b>1. Underlying objectives</b>				
	Revenue; sustainable forest management	Revenue; sustainable forest management; restoring logged-over areas	Revenue; log reservation quotas for domestic processing	Compliance with Indonesian log and sawn timber export ban; action to curb trans-boundary smuggling
<b>2. Scope</b>				
Resource allocation, licensing	No	No	No	No
Forest management	Federal SFM and MTCC audits of State FMUs	SFMLA Audits by Forestry Department	Cross-regional audits of licences and Regional Offices by SFC	No
Timber administration	ISO 9000, MTCC audits	ISO 9000 audits	Cross-checks between Harwood Sdn. Bhd, SFC, STIDC; ISO 9000 and 14000	ISO 9000 audits
<b>3. Components</b>				
Information systems	Paper-based timber administration	Proposal to move from paper-based to computerised timber administration	Partially computerised timber administration; proposals to link SFC and STIDC databases	STIDC, customs, Forestry Departments (Sabah and Peninsula) – but not linked
Monitoring & enforcement	District Forest Offices: harvest monitoring, log administration, mill throughput	District Forest Offices: harvest monitoring, log administration, mill throughput	SFC: harvest monitoring, log administration Harwood Sdn. Bhd: log reservation quota STIDC: mill throughput	STIDC/MTIC: verification of exporting authority with Malaysian embassies, import licensing, timber administration Customs, port authorities: inspections

**Table continues**

**Table 16.2 continued**  
**Summary comparison of forest verification systems in Malaysia**

	Peninsula	Sabah	Sarawak	Import/export
<b>3. Components continued</b>				
Audit	Federal SFM audits; MTCC SFM and CoC; ISO 9000, MTCC	SFMLA Audits by Forestry Department or (where these are disputed) third-party auditors; ISO 9000	Cross-regional audits by SFC; ISO 9000 and 14000	ISO 9000 Audit-General, State Auditor
External oversight	Public informants	Public informants	Public informants	No
Verification decision	By State Executive Committee (licensees); By Federal FDs or National Forestry Council (State FMUs)	By Forestry Department or State Executive Committee (Chief Minister and Attorney General)	By Forest Department or State Executive Committee	No
<b>4. Independence</b>				
Separation of powers	No	No	SFD and SFC share the same Director General	
Outsourcing	No	Third-party auditor where State SFM audits are disputed	Harwood outsourcing, but wholly owned by STIDC	No
Financing	By federal/state	By state	By state	By state/federal

## 16.5 Verification in the Peninsular states

In the Peninsula, each state qualifies as a single FMU with responsibility for the preparation and implementation of management plans under which short-term cutting licences are issued. State forestry departments are subject to compliance audits of two kinds:

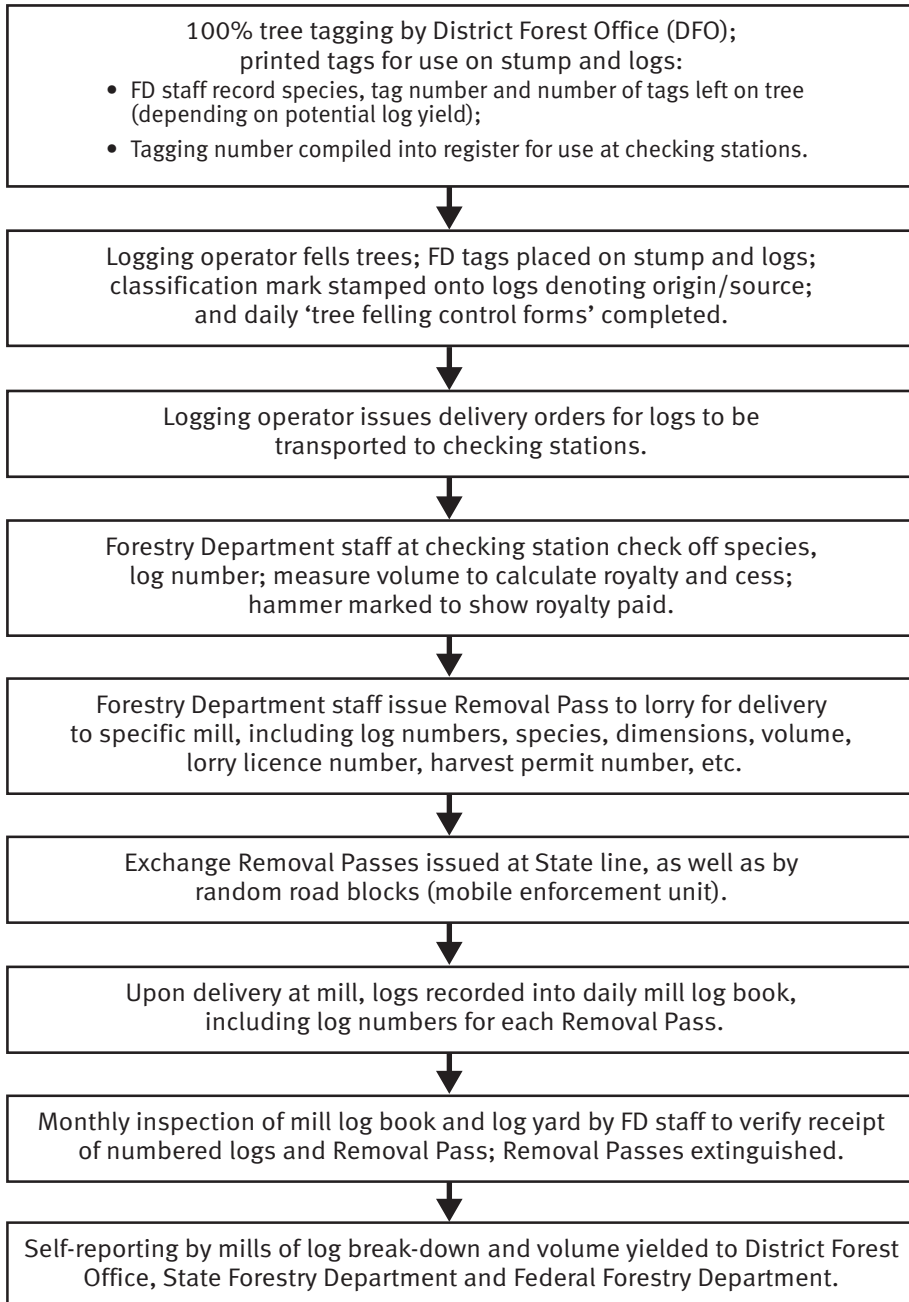
- Mandatory audits of state FMUs by the Federal Forestry Department, against the MC&I for sustainable forest management (SFM); and
- Voluntary audits of state FMUs by MTCC and accredited ISO certifiers.

In the special case of the Perak Integrated Timber Complex, there are also voluntary FSC audits of longer-term licensees.

### Routine monitoring and enforcement

Existing arrangements for harvest planning and timber administration within state FMUs are described in Figure 16.1. Day-to-day monitoring of legal compliance by licensees is primarily the responsibility of District Forest Officers (DFOs). Forest rangers in charge

**Figure 16.1**  
**Timber administration in Permanent Reserved Forests in Peninsular Malaysia**



(Source: Wells et al., 2008)

of each licensed area conduct monthly inspections during harvesting to ensure that boundaries, buffer zones and cutting limits are respected. Post-harvest inspections are conducted to assess damage to residuals, and calculate royalties, followed by a post-felling forest inventory to determine residual stocking and appropriate silvicultural treatment.

Special units may be deployed by DFOs for regular inspection of compartment boundaries, as well as twice-monthly road blocks and inspection of mill log yards. These units may also be deployed in response to allegations by the public of illegal logging or log transport. Such public participation is encouraged by a reward system. Assistance from the police and the armed forces may be sought, especially in conducting road blocks. DFOs submit monthly reports to their state forestry department, which may conduct spot-checks of operations.

### **Mandatory audits of state FMUs**

An 'Internal Auditor Team' within the federal Forestry Department performs annual SFM audits of state FMUs in the Peninsula using MTCC assessment procedures. The audit examines monitoring data such as monthly reports, and includes spot-checks of management practices in selected forest areas. The procedure also evaluates steps taken by state FMUs to tackle the 'Corrective Action Requests' (CARs) that are identified under MTCC assessments for forest certification. Thus, mandatory audits by the federal Forestry Department and voluntary MTCC audits are mutually reinforcing.

### **Voluntary audits of state FMUs**

In addition to internal SFM audits by the federal level, there are currently two complementary but unrelated voluntary audits relating to forest management and timber administration in the Peninsular states. These are described in turn below.

### **Malaysian Timber Certification Council**

MTCC was established in 1998 to oversee the implementation of a voluntary certification scheme, against the MC&I for sustainable forest management. Though nominally an independent organisation established under the Companies Act (1965), MTCC remains under the authority of the federal Ministry of Plantation Industries and Commodities. MTCC received initial funding from the Ministry to cover the cost of its operations during the first few years after its establishment. It is now financed by the interest generated from an endowment provided by the Ministry from the collection of export levies on timber and timber products.

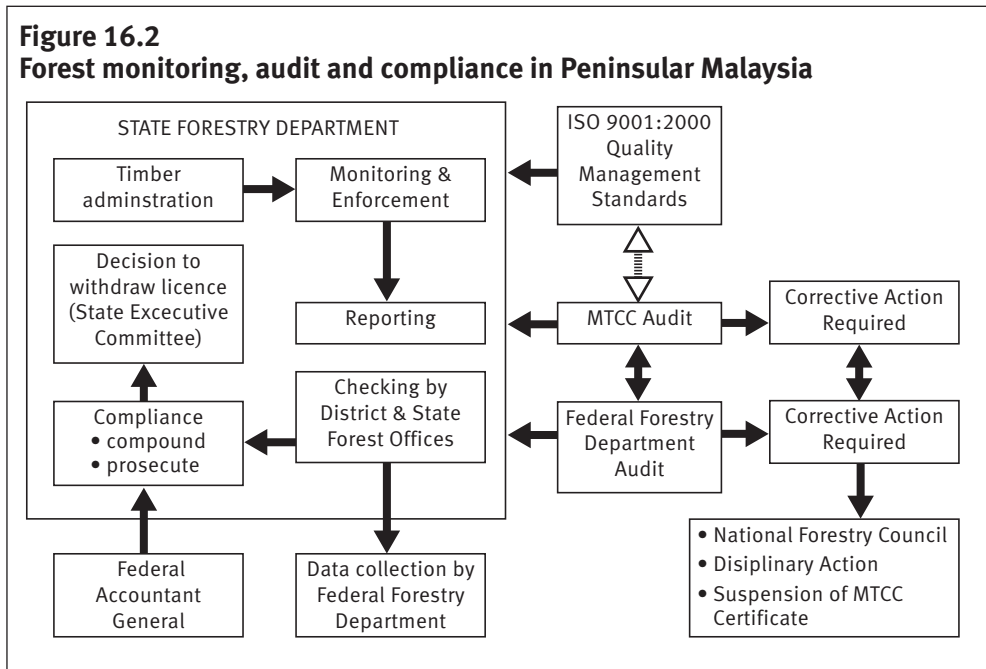
By the end of 2005, MTCC had certified 4.67 million hectares of permanent reserved forest spanning all eight timber-producing states in Peninsular Malaysia, each of which is designated as a single FMU for the purposes of MTCC certification. MTCC also certified 55,949 hectares of the Sela'an Linau FMU in Sarawak, which is managed by Samling Plywood (Baramas) Sdn. Bhd. From 2006, certification has shifted to compliance against an updated standard, MC&I 2002. In addition, MTCC has established 'Assessment Procedures relating to Requirements for Chain-of-Custody' (RCOC). Assessments are conducted by registered organisations or companies appointed by MTCC.



### ISO 9001 (2000) quality assurance standards

In the mid-1990s, the federal Forestry Department introduced ISO quality assurance standards (now updated to ISO 9001:2000) to ensure conformity with administrative procedures for 'Sustainable Timber Production from Inland Natural Forests in Permanent Reserved Forests'. These now apply to all eight timber-producing states in the Peninsula. The assessment procedure is purely output-based, requiring completion of forms and other documentation related to compliance with harvest planning and control measures. Audits are conducted annually by the accredited body, SIRIM QAS – a Malaysian company specialising in certification, inspection and testing.

Figure 16.2 describes the complement of monitoring, audit and compliance measures that operate in Peninsular Malaysia.



### Strengths of the Peninsular verification system

There is potentially strong complementarity between mandatory and voluntary audits in the Peninsula case:

- Voluntary (MTCC) and mandatory (federal Forestry Department) audits of sustainable forest management are mutually supportive, as both are conducted against the MC&I. Federal SFM audits provide a means to follow-up on and secure closure on CARs identified by MTCC assessors.
- MTCC Requirements for Chain-of-Custody Certification provide critical oversight of mill processing, where mandatory systems otherwise rely on self-reporting of throughput and recovery rates by mill operators.
- Audits against ISO 9001:2000 Standards of Performance ensure consistency in administrative procedures, including internal monitoring and reporting by state Forestry Departments.

## **Weaknesses of the Peninsular verification system**

There are four main areas of concern over the verification-related activities in the Peninsula.

### **Chain of custody issues**

Despite 100% tagging of harvestable trees with unique serial numbers, the administration of removal passes remains entirely paper-based. The lack of a centralised computer-based system makes it difficult to track individual consignments, including confirming that removal passes are cancelled off at their stated destinations. A further difficulty arises from the MTCC's RCOC reliance on suppliers to sign a self-declaration that non-certified raw materials or products do not contain wood from questionable sources. With no forest rangers permanently stationed at mills to monitor throughput and recovery rates, this represents a potential loophole which could allow timber from controversial sources (domestic or imported) to enter the production chain.

### **The scope and frequency of audits**

Audits are problematic in several respects. Firstly, MTCC, federal SFM and ISO 9001:2000 audits are restricted to the Permanent Reserved Forest. No equivalent mandatory or voluntary audits exist for timber extraction and administration with respect to neighbouring state and alienated lands undergoing conversion. Secondly, there is no explicit link between ISO and SFM audits as there is between MTCC and federal SFM audits. Existing ISO audits of forest administration are purely document-based and do not go on to look at forest management outcomes. Thirdly, the sheer size of some large FMUs makes it difficult for auditors to ensure sufficient coverage. A case in point is the state of Pahang (which comprises a single FMU of over one million hectares of Permanent Reserved Forest). Audits would be enhanced under proposals to subdivide larger states into a number of FMUs.

### **Independence**

Although MTCC operates on the interest generated by its own endowment fund, it remains under the authority of the federal Ministry of Plantation Industries and Commodities. MTCC's perceived independence would be enhanced by an accreditation system. The few certification bodies currently registered with MTCC to conduct FMU audits (e.g. SGS, SIRIM QAS) would need to register with the Department of Standards to enable them to issue MTCC certificates directly. In this way, MTCC could step back from issuing certificates of compliance, and focus instead on overseeing the MC&I standard.

### **Compliance measures**

The decision to withdraw licences for severe infractions remains in the hands of the State Executive Committee (effectively the state cabinet). There are, however, currently no published guidelines on the criteria for licence withdrawal, including the use of audit reports to arrive at sanctioning decisions. Summaries of the State Executive's decision are not made public.

## 16.6 Verification in Sabah

Under the Federal Constitution, Sabah constitutes a separate legal jurisdiction with respect to forestry. Its Forestry Department is therefore not subject to SFM audits by the federal Forestry Department. Measures for forest monitoring and timber administration are broadly similar to those in the Peninsula. However, unlike the Peninsula's system of short-term harvest licences, Sabah introduced a new system of 100-year Sustainable Forest Management License Agreements (SFMLAs) in 1997. Each SFMLA constitutes an individual Forest Management Unit (FMU) in its own right. This shifts the focus onto compliance by licensees, who are responsible for all management, as opposed to compliance by state forest management authorities.

### **Routine monitoring and enforcement of SFMLAs**

As in the Peninsula, DFOs in Sabah are responsible for routine timber administration. Responsibilities include the preparation of 'Comprehensive Harvesting Plans', and the administration of charges and removal passes. To enable traceability to stump, the Sabah Forestry Department is currently developing measures for computerised log tracking incorporating bar-coded tags, timber disposal permits and removal passes. Existing arrangements for harvest planning and timber administration are described in Figure 16.3.

DFOs also monitor compliance with FSC-equivalent management standards established under SFMLAs on forest conservation, reduced impact logging, silvicultural treatment, forest protection, and community forestry and development.

One effect of the policy of 100-year SFMLAs is that the withdrawal of licences can only take place in very exceptional circumstances, where there is evidence of large-scale non-performance. Where delicts are less severe, the DFO works directly with licensees to bring them into full compliance with standards established under SFMLAs. DFOs assist SFMLA licence holders in the development of annual work plans and quarterly progress reports. DFOs also ground-truth licensees' 'Annual Compliance Reports' as an input to the compliance audits by Forestry Department Headquarters.

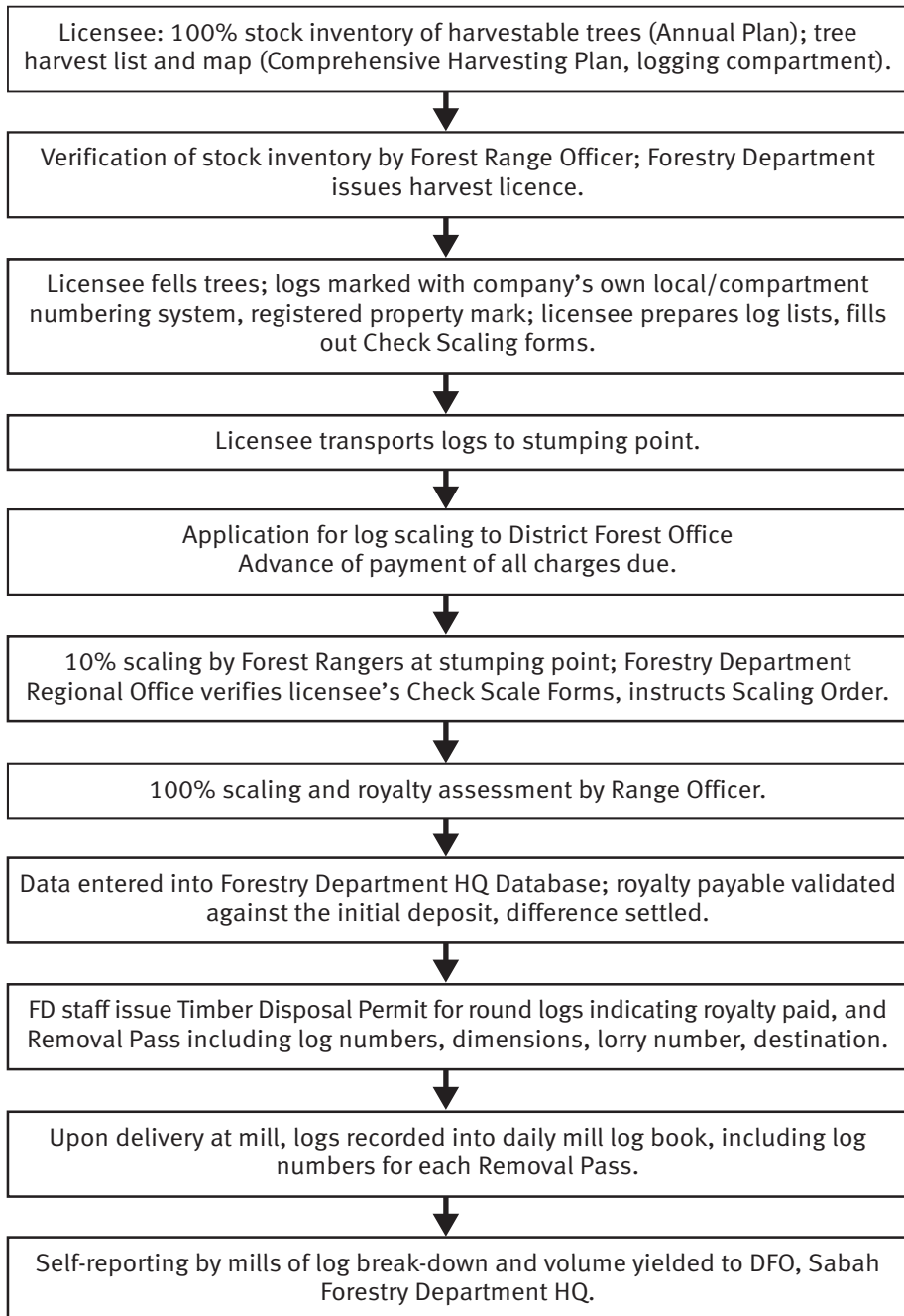
The Sabah Forestry Department established a new Enforcement and Investigation Division in August 2002. This Division works in collaboration with the Anti Illegal Logging Unit of the Sabah Chief Minister's Office, as well as with the police and armed forces. Through provision of in-house training in investigation, as well as monitoring, control and enforcement by Operational units and DFOs, the Division's work has led to a dramatic increase in convictions for illegal logging (the number of which increased from 12 in 2001 to 194 in 2004).

### **Mandatory audits of licensed operations**

#### **Audits of SFMLAs by the Sabah Forest Department**

The Sabah State Forestry Department has introduced a 'General Procedure for SFM Audit', against the 125 clauses of the standard SFMLA. These are framed around the ten FSC Principles. As such, audits work to both secure compliance and to bring licensees up to standard for certification purposes.

**Figure 16.3**  
**Timber administration for SFMLAs in Sabah**



The General Procedure for SFM auditing is implemented by a designated audit team within the Sabah Forestry Department. The audit team gives an overall assessment of sustainability to the Sabah Forestry Department Director. The Director then issues a Compliance Certificate (possibly subject to Corrective Action Requests). Where licensees have consistently failed to meet their terms, the Director may submit a recommendation for suspension to the State Executive Committee. The decision to withdraw or uphold a licence rests with the Executive Committee, which includes the Chief Minister and the State Attorney General. Since 1997, two licences (out of 18) have been withdrawn for non-performance, and another case remains pending. In a fourth case, the licence was upheld, following the intervention of third-party independent auditors.

Audit reports are not made available to the public unless there is a specific request for access. In the absence of established guidelines on confidentiality of the audit process, the Sabah Forestry Department makes its own determination as to the merit of such requests.

#### **Ad hoc third-party audits of licensed operations**

SFMLA holders are not currently involved in any voluntary certification schemes. The Sabah Forestry Department has nevertheless resorted to third-party independent auditors to complement its own 'General Procedure for SFM Audit'. In one instance, this was instituted where significant inconsistencies were identified between a licensee's Compliance Report and the assessment of the DFO.

The use of a third-party auditor also reflects pressure from industry to introduce greater transparency into the audit and verification decision process. No procedure has yet been established to determine when third-party auditors may be brought to bear.

#### **Voluntary audits of the Sabah Forestry Department**

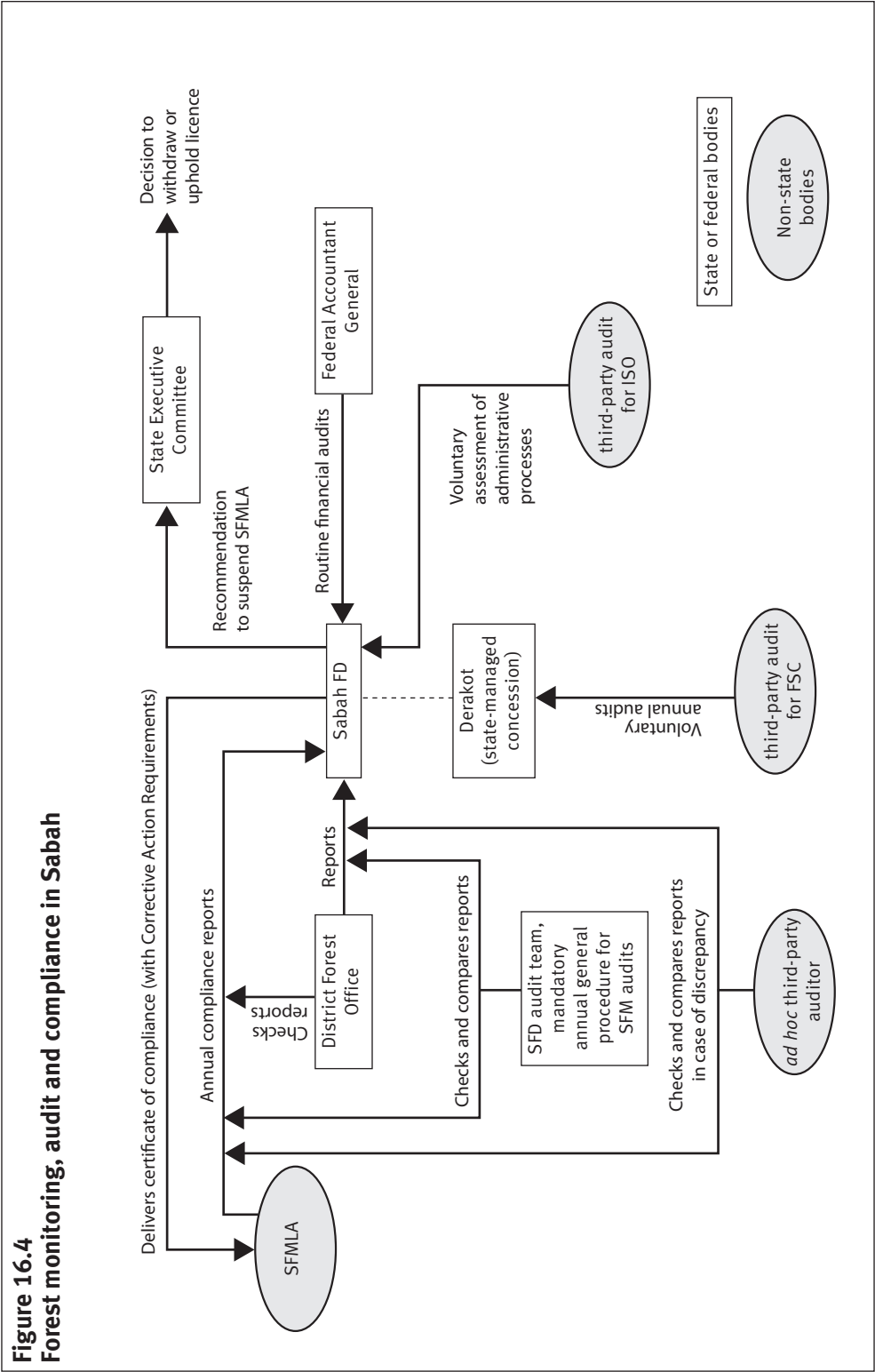
Sabah is not subject to SFM audits by the federal level. It is however subject to audits by accredited bodies with respect to ISO-certified administrative procedures. To date, the Sabah Forestry Department has designated a handful of processes for assessment against ISO 9001:2000 standards of performance. However, their scope of application is less comprehensive than those in the Peninsula, being so far restricted to procedures for royalty collection and preparation of Comprehensive Harvesting Plans. They do not yet apply to the 'General Procedure for SFM Audit'.

A special case in Sabah is the FSC-certified model concession at Deramakot which remains under the direct management of the Forestry Department. The 55,000-hectare concession seeks to provide a model for long-term SFMLA licensees to progress towards certification. As a concession under state management, monitoring and audit systems differ from those applied to SFMLAs. Management practices are audited by an FSC-accredited third-party auditor, Global Forest Systems (GFS). As SFMLAs come up to standard, the likelihood is that some of these too will seek FSC certification. Figure 16.4 illustrates the system of forest monitoring, audit and compliance in Sabah.

#### **Strengths of the Sabah verification system**

With mandatory audits focusing on licensees (SFMLAs), the Sabah Forestry Department has much greater power to penalise forest managers than is the case in the Peninsula. Another key strength is Sabah's focus on compliance management, with routine audit

**Figure 16.4**  
**Forest monitoring, audit and compliance in Sabah**



providing the basis for building capacity and improving performance over time. In other states, forest control places greater emphasis on compliance enforcement, including post-harvest inspections, than on mentoring licensees to bring them up to standard.

## **Weaknesses of the Sabah verification system**

### **Chain of custody issues**

Sabah is planning to introduce a computerised timber administration system, including 100% tagging at stump. Until this is introduced, the link between timber administration and harvest control is weaker than in the Peninsula.

### **The scope and complementarity of audits**

SFM and ISO audits do not currently reinforce each other. Complementarity could be enhanced by expanding the scope of ISO audits to cover the entire product chain from harvest planning to oversight of mill throughput (and also including the ‘General Procedure for SFM Audit’). The Forestry Department procedures could also be upgraded in line with ISO 14000 and ISO 19000 standards for environmental management and systems monitoring.

### **Independence and transparency**

There are no set procedures for public access to audit reports and verification decisions by either the Forestry Department or the State Executive Committee. Nor is there yet clear guidance on resort to third-party independent auditors in the event of disagreement over the Forestry Department’s assessment. Both are widely viewed as essential to safeguard the credibility of the ‘General Procedure for SFM Auditing’ in the eyes of industry and wider society.

## **16.7 Verification in Sarawak**

Sarawak, like Sabah, developed its own systems for verification of legal compliance within the forest sector. The key difference with Sarawak lies in its composite multi-agency structure for policy-setting, regulation, monitoring and enforcement under the overall authority of the Sarawak Minister for Planning and Resources Management (MPRM), who is also the Chief Minister of the State. With both upstream and downstream operations consolidated into six main industry groupings, this structure enables close control of the timber sector by the state government.

Unlike the Peninsula, there is no mandatory federal auditing. Unlike Sabah, mandatory state audits do not make use of third parties. Sarawak has, however, made extensive use of ISO standards.

### **Routine monitoring and enforcement**

While measures for harvest monitoring and timber administration are broadly similar to the Peninsula and Sabah, the structures for delivering these set Sarawak apart.

First, harvest monitoring and timber administration now fall under the jurisdiction of the Sarawak Forestry Corporation Sdn. Bhd. (SFC). SFC is a private company owned by the state government. SFC was established to outsource core functions of the Sarawak Forest Department, and to introduce greater efficiency into the system. The SFC has since

established a number of dedicated Business Units. These include the Sustainable Forestry and Compliance Business Unit (SF&C) responsible for harvest planning and monitoring, and the Security and Asset Protection Business Unit (SAPU) responsible for enforcement. The Forest Department itself now focuses on policy, regulation and licensing.

Second, Sarawak has outsourced monitoring of its 60% log reservation quota for domestic processing to Harwood Timber Sdn. Bhd. This is a wholly-owned subsidiary of the Sarawak Timber Industry Development Corporation (STIDC), a statutory body responsible for promoting the Sarawakian timber industry. The remaining 40% of round logs may be exported. Harwood also manages depots at which imports from Indonesia are warehoused pending inspection and clearance.

### **Harvest planning and monitoring**

The Director of the Forest Department first approves a Forest Management Plan (FMP), including road alignment and construction, and guidelines on logging operations. A General Harvesting Plan is prepared prior to the commencement of operations on the ground, followed by a Detailed Harvesting Plan for individual blocks. Approvals for infrastructure development and harvesting are given to licensees according to their operational progress. If required steps are not carried out, SF&C issues a request for corrective action before work can proceed. SF&C has established procedures for logging inspection and issuance of coupe clearance certificates, as well as monitoring and reporting on progress with harvesting and block closure. These focus on 100% post-harvest inspection rather than monitoring of ongoing harvest operations.

### **Timber administration**

As in the Peninsula and Sabah, timber administration in Sarawak consists of three main steps: log identification; measurement and settlement of royalty payments; and the administration of removal passes (as summarised in Figure 16.5). The system is currently administered in two different ways. The first, the standard system, applies to around 70% of production. The second, a computer-based system, covers the remainder. In both cases, the companies are responsible for log tagging.

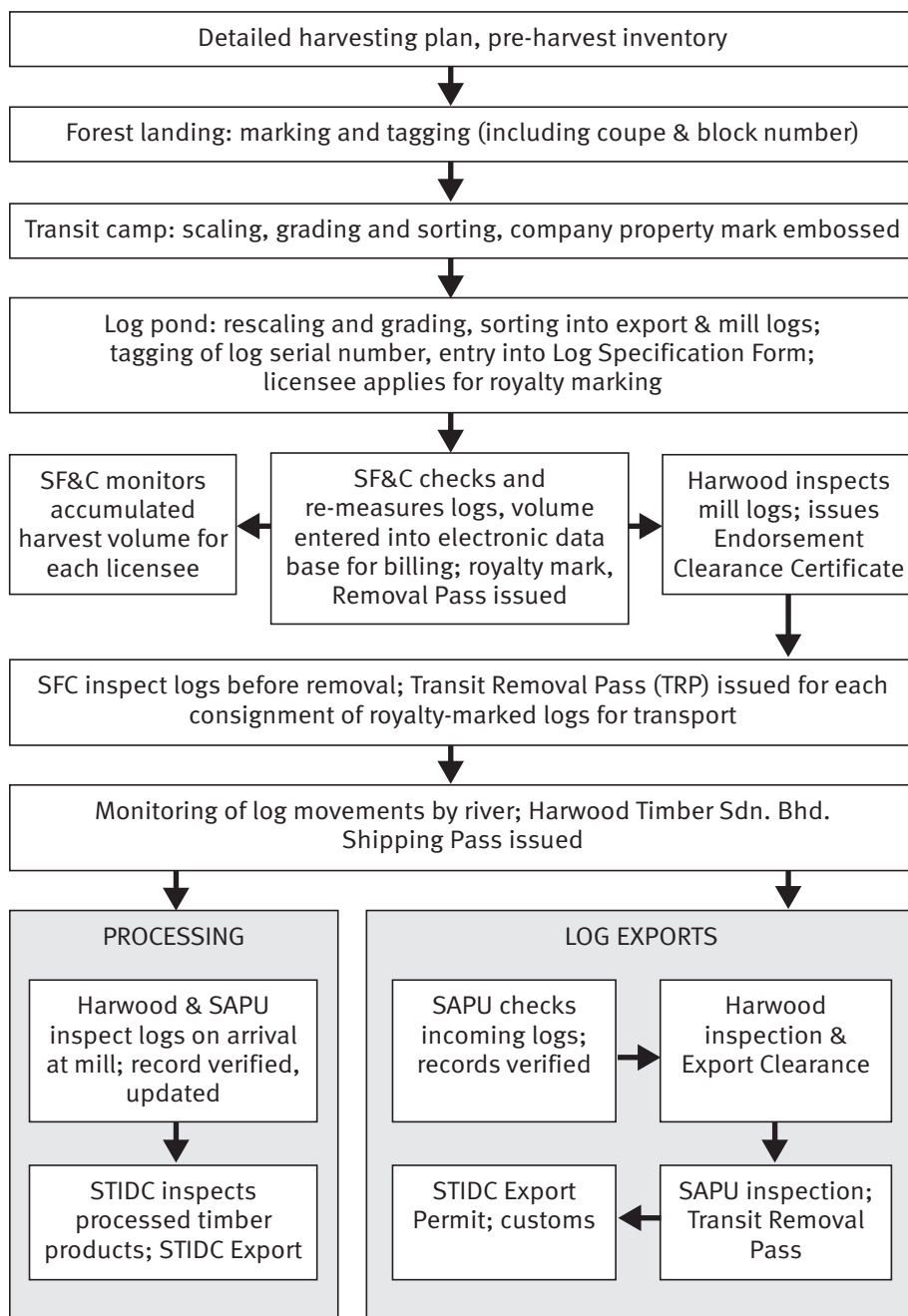
Harwood works in tandem with the Sarawak state government's timber administration to ensure that licensees comply with the 60% reservation quota on logs for domestic milling. Harwood submits monthly reports to the Ministry of Planning and Resource Management, the Director of Forests, STIDC and SFC. These document log movements within the state, as well as timber licensees' compliance with established reservation and export quotas. Mills are required to submit monthly reports to STIDC, which assess throughput against SFC and Harwood production figures, as well as STIDC export permits for both logs and sawn timber.

### **Enforcement**

Mobile police brigades routinely establish road blocks and monitor border areas for possible movements of illegal timber. Marine and river police are also active. Both the SFC Security and Asset Protection Unit (SAPU) and STIDC enforcement officers spot-check mills and individual timber consignments. SFC refers appropriate cases to the Forest Department to seek prosecution. STIDC, however, can order business activities to cease in respect of unregistered mills, or mills that have committed an offence.



**Figure 16.5**  
**Standard timber administration in Sarawak**



**Sources:** Global Forestry Services, 2004, p. 9; Harwood Timber Sdn. Bhd, 2005, pers. comm., 27 September; Sarawak Forest Department and Sarawak Forestry Corporation, 2006, pers. comm., 24 July.

## **Mandatory audits of licensees and forest control systems**

Sarawak is currently putting in place a range of mandatory audits of both the forestry control system and compliance by licensees. These include Cross-Regional Audits by SF&C. This began in 2005 and is still under trial. The audits focus on both the operations of SFC Regional Offices and compliance by the major industry groups. A full audit structure and procedures are still under development. In addition, the State Internal Audit Department in the Chief Minister's Office undertakes system and financial audits of the timber administration system, including oversight of royalty billing. As in Sabah, there are no federal audits for SFM. But unlike Sabah, Sarawak does not make use of third-party auditors where the results of mandatory audits are disputed.

## **Voluntary audits of licensees**

Elements of Sarawak's forest control system are ISO-certified and routinely audited for consistency and transparency in administration and information management. All SF&C and SAPU processes are ISO 9001:2000 and ISO 14001:1996 certified. Harwood's log monitoring systems are also subject to routine audits against the ISO 9001:2000 Standard. Figure 16.6 presents the overall system of forest monitoring and audit in Sarawak.

## **Strengths of the Sarawak verification system**

Pending roll-out of the Cross-Regional Audits, verification is largely delivered through a system of cross-checks within the timber administration system – between SFC, Harwood and STIDC. If, for example, Harwood's computerised tracking system detects discrepancies in respect of individual log consignments, these are automatically reported to SFC for investigation. The planned development of a system for online reconciliation of imports, domestic production, mill production and exports would strengthen this system further. Monitoring of domestic reservation and export quotas by Harwood has the added advantage of introducing greater efficiency into the management of both log reservation quotas, as well as the company's own supply chains.

## **Weaknesses of the Sarawak verification system**

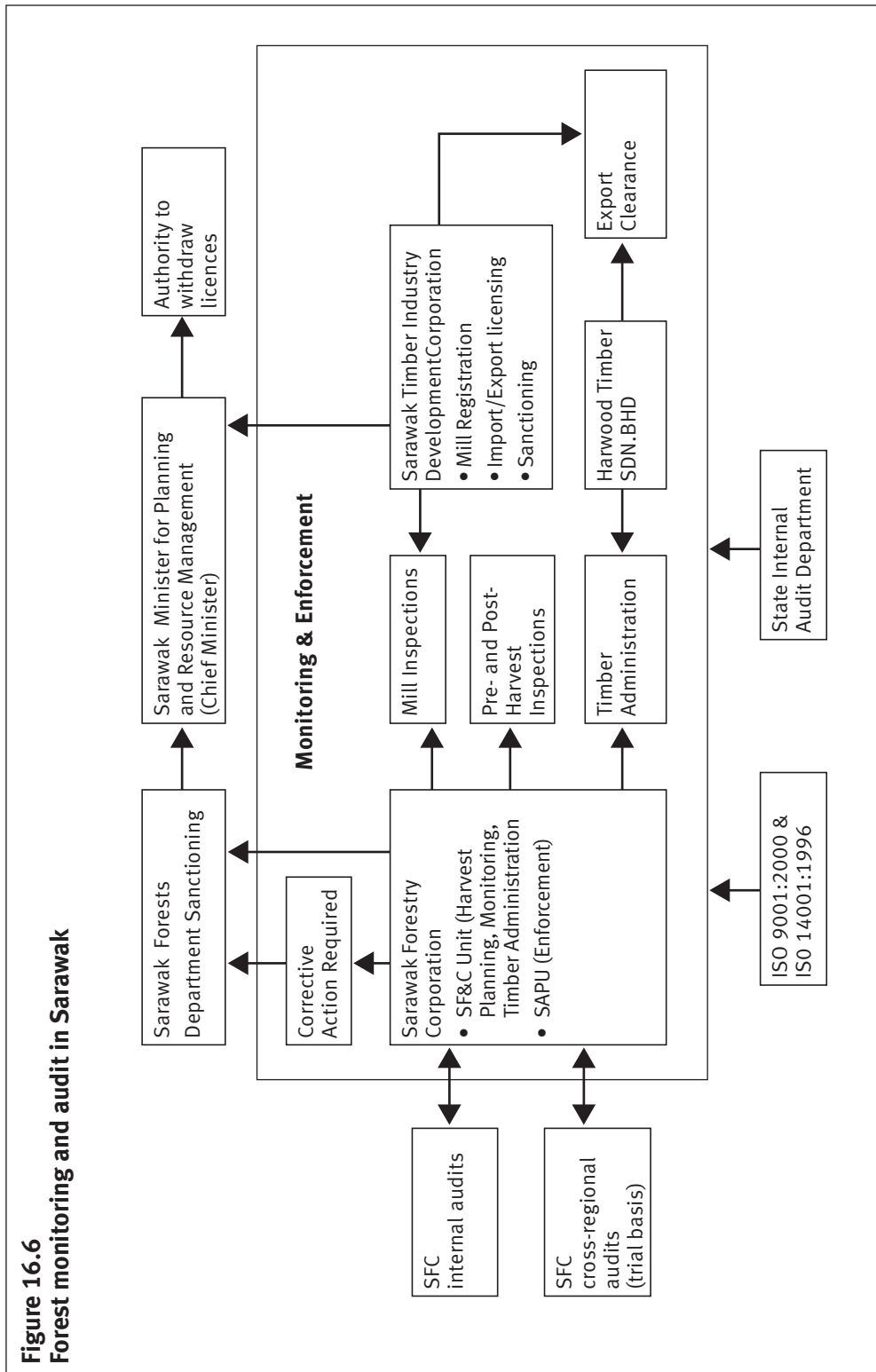
### **Chain of custody issues**

Without tagging at the stump, the current system of timber administration functions more as a means for log tallying than a guarantee of legal origin. In the Rajang basin, the development of a computer-based tagging and log tracking system has provided an important step towards addressing these concerns, but steps have yet to be taken to apply this elsewhere.

### **Harvest monitoring**

Current monitoring and control of harvest operations are delivered chiefly through pre-harvest planning and post-harvest inspections. Pre-emptive control could be strengthened by stepping up monitoring during harvest operations. Monitoring is, however, constrained by government cost-cutting. One solution might be greater use of remote sensing. Further attention is also needed to the allocation of core functions between the Sarawak Forest Department and the SFC, and options for re-allocating or further outsourcing these to ensure monitoring and enforcement gets the investment that it needs.

**Figure 16.6**  
**Forest monitoring and audit in Sarawak**



## Independence

Beyond the use of ISO standards (and a single MTCC-certified concession in Sela'an Linau), existing certification systems make no provision for third-party auditors. As a wholly-owned subsidiary of STIDC, Harwood's role in monitoring log reservation quotas is arguably a delegation of functions within the state administrative structure, as opposed to genuine outsourcing to a third party. Harwood nevertheless maintains that its log endorsement activities remain totally independent from statutory bodies such as STIDC.

## 16.8 Verification of timber imports

Arguably quite strong forest control and verification systems are now in place for locally grown timber. However, as management of the national resource has been progressively improved, attention has increasingly turned to timber imports, which have long been recognised as a potentially weak point in the system.

Under the Customs Act 1967, all imported timber is subject to standard customs clearance procedures, including the submission and verification of written declarations of value, quantity as well as Country of Origin. A number of additional measures have been taken to regulate timber imports in response to civil society reports of illegal logging and related source-country export restrictions. However, verification involving cross-checks, either between different agencies responsible for timber administration or between difference types of audit, is less developed than is oversight of domestic production.

All imports of round logs, as well as basic manufactures, require the prior authorisation of MTIB in the Peninsula and Sabah, or STIDC in Sarawak. MTIB/STIDC will only authorise these imports where there is proof of *bona fide* source, as verified by the Malaysian embassy in the source country. The relevant embassy must endorse the issuing authority in the source country (for example, the Myanmar Timber Enterprise) in respect of every shipment.

On 25 June 2002, the Government of Malaysia banned imports of Indonesian round logs, in response to a corresponding Indonesian export ban, and subsequently extended this to a range of products.

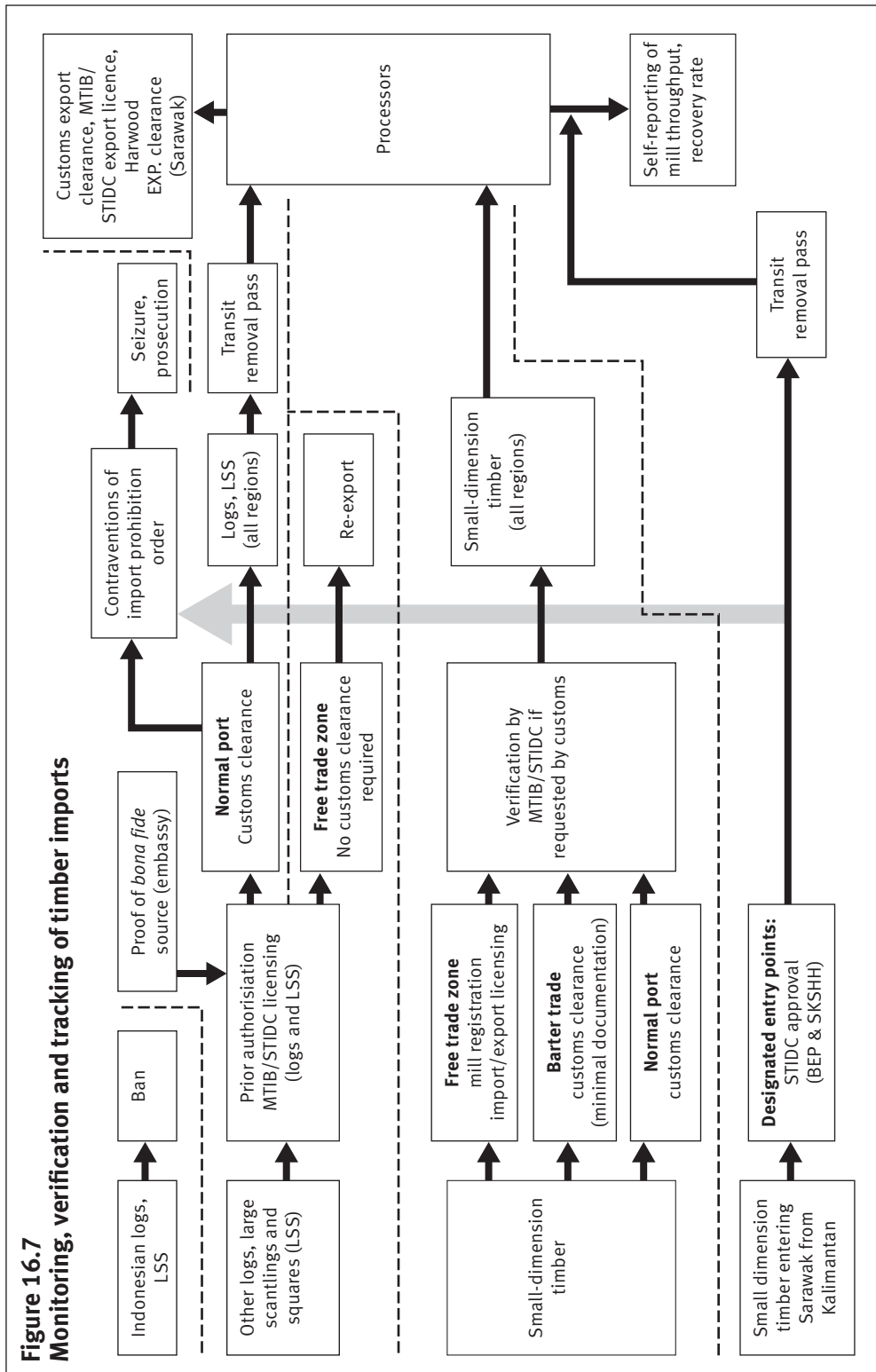
With growing concern over the provenance of small-dimension timber from Indonesia, STIDC has taken the additional step of administering imports of small-dimension timber under trans-boundary agreements with the neighbouring territory of West Kalimantan. Sawn timber imports are now restricted to five designated points of entry into Sarawak.<sup>3</sup> STIDC authorisation is subject to proof of valid Indonesian transport permits (SKSHH) and customs documentation (PEB).

Customs have the power to seize and prosecute when scheduled items are imported without the prior approval of MTIB/STIDC. MTIB and STIDC are also empowered under the Customs Act to enter premises, carry out inspections and examinations, and prohibit sale or export of timber. MTIB and STIDC conduct regular inspections/visits to entry points including ports and private jetties alongside Royal Malaysian Customs and Port Authorities. Figure 16.7 presents the system for monitoring, verification and tracking of timber imports.

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3 Sematan (sea port), Biawak, Tebedu, Batu Lintang and Lubok Antu.

**Figure 16.7**  
**Monitoring, verification and tracking of timber imports**



### **Strengths of the verification system for timber imports**

MTIB/STIDC are vested with wide-ranging powers to control timber imports. Sarawak's decision to license and issue removal passes on consignments of small-dimension sawn timber entering the state from Indonesia, potentially closes an important loophole for illicit timber to enter the supply chain.

### **Weaknesses of the verification system for timber imports**

There remain some substantial concerns as to the effectiveness of the system, as described below.

#### **Endorsements by Malaysian Embassies**

While Malaysian embassies in source countries are required to verify the good standing of suppliers in order to qualify for MTIB/STIDC import licensing, this does not provide a guarantee of the legality of individual consignments.

#### **Imports of small-dimension sawn timber**

Removal passes do not have to be issued for consignments of smaller-dimension timber, making it difficult to trace where it goes in the country. This permits mixing of timber from potentially illegal sources into the production chain. The only exception is Sarawak, where STIDC authorises and tags imports of small-dimension timber from Kalimantan. But, even there, there is currently no mechanism to verify the credibility of Indonesian export documentation. Malaysian import measures do not yet reflect an expansion of the 2004 Indonesian export ban to cover all categories of sawn timber.

#### **Information systems**

While import statistics are collected by MTIB/STIDC and Customs, systems are not yet in place to enable online reconciliation of import data with domestic production and reported mill output, to assess likely levels of smuggled timber entering Malaysia's production and export stream. STIDC has begun to look into this, but progress has been slower than in the Peninsula and Sabah. In all three jurisdictions, computerised log tracking would greatly assist with online reconciliation.

#### **Limited resort to audit**

State or federal audits have not yet been introduced in respect of import measures, except for internal audits of enforcement agencies' own operations. ISO 9001:2000 standards now apply to certain import measures such as MTIB inspections, but these are purely output (document) based and do not work to reinforce any other form of audit.

## **16.9 Effectiveness of forest sector control and verification**

Malaysia's existing forest control systems enjoy strong governmental support, and this reflects the importance of the sector to both revenue generation and Malaysia's international reputation.

A series of verification steps has been introduced progressively in recent years to improve the effectiveness of the system. Action by the federal government in the Peninsula in the early 1990s to raise the level of penalties and introduce stricter guidance on the

issuance of licences and concessions had a dramatic impact on rates of illegal logging and on over-harvesting by states.

Audits have also begun to play an increasingly important role. In the Peninsula, states that do not meet Corrective Action Requests under federal SFM audits are held to account by the National Forestry Council. Failure to address Corrective Action Requests also risks suspension of MTCC certification – as happened with the state of Terengganu in 2002.

The active participation of public informants in reporting cases of illegal logging has also played a role, and suggests that the systems do enjoy quite broad societal support. There are nevertheless some areas of concern.

First, there are possible gaps in the chain of custody, though these vary according to the extent to which individual states: (i) rely on paper-based administration; (ii) tag back to stump; (iii) administer timber from land outside of the Permanent Forest Estate; and, (iv) tag and track timber imports (in particular small-dimension timber from Indonesia). Information systems are also not yet linked to allow rapid reconciliation of declared mill throughput with legal production and imports.

Second, enforcement is constrained by limited resources to monitor harvesting operations – including headcount and cost constraints on forest authorities.

Third, notwithstanding the range of mandatory and voluntary audits, there are concerns over:

- Whether the scope and intensity of existing audits are sufficient, especially where entire states count as single forest management units as in the Peninsula.
- Whether existing audits are genuinely complementary in terms of scope and methodology. For example, although SFM audits look at both timber administration and forest management outcomes, ISO audits may only examine elements of the former.
- Whether the mandatory bodies are sufficiently independent given the fact that responsibility for mandatory monitoring and audit is restricted to state-, state-owned, or state-funded bodies, with only limited resort to third-party auditors.
- Whether there is sufficient openness and transparency in the systems; the lack of guaranteed public access to mandatory audit processes and verification decisions by forest authorities or state executives is a weak point, from a governance perspective.
- Lack of well-developed appeals and dispute resolution mechanisms to guarantee the perceived integrity of some mandatory audit processes.
- The relatively limited powers of the federal government in respect of mandatory audits of Peninsular state forest authorities.

However, the greatest challenge for verification is the legal claims of aboriginal/native customary groups in respect of the Permanent Forest Estate. None of the forest verification systems address this issue, with the possible exception of SFMLAs in Sabah which contain some provisions on community forestry and community development.

## 16.10 Lessons learned

The case of Malaysia illustrates how different forest control and verification approaches can develop within the same federal structure in response to different forest sector contexts at state level. In all three jurisdictions (Peninsular Malaysia, Sabah and Sarawak), an incremental approach to increase credibility has been taken, based on reinforcing existing monitoring and verification systems.

The case shows that composite structures that combine voluntary (ISO and FSC) audits and mandatory (state or state-related) audits can potentially reduce the need for intrusive *ad hoc* external observation of the country's forest management operations. However, the effectiveness of the arrangements depends on a number of factors. In particular:

- Existing procedures need to complement each other in respect of scope, sampling and frequency, to deliver genuine checks and balances – including protocols for comparative evaluation of audit results.
- Outsourced monitoring and verification functions and related accreditation processes need to be insulated from government influence.

The fact that some elements of forest control are outsourced to state-owned enterprises (e.g. Harwood in Sarawak, and the timber industry regulators in all three jurisdictions) means that market demand for fully independent verification may not be met. Another issue that reduces public confidence and raises concerns about possible political interference is the lack of established procedures allowing public access to state audits, and related verification decisions. Sabah is responding to this need for guaranteed independence by working towards full FSC certification for all licensees. Elsewhere, the process for accreditation of auditors is key to independence. Experience with MTCC also indicates that representation on standards/accreditation bodies is essential in maintaining credibility – especially where these are semi-private.

This case is also interesting in its use of ISO standards, reflecting a general drive to improve administrative efficiency. However, most ISO audits (mainly 9000) are output-based, focusing on compliance with administrative procedures, as opposed to outcomes (legality, SFM). This may demand an upgrade to ISO 14000 and/or 19000.

As most domestic timber production is legal with respect to licensing and transport, commentators are now more concerned with the nature of the legal standards (particularly relating to land tenure and SFM) against which compliance is assessed. Although the courts have ruled in favour of native rights, these have yet to be reflected in reform to regulations governing gazettment, forest management and compensation. There are a range of forest regulations governing licensing, harvest planning and timber administration. These are only now being consolidated into a single definition of legality, under work to develop a VPA between Malaysia and the EU. The closest equivalents to a definition of legality have so far been SFM standards established for MTCC and state SFM audits, and ISO audits of compliance with administrative procedures. These have stood in for verification of legality in the absence of a dedicated procedure.

In terms of domestic timber production, computerised tracking has been seen to be useful to guarantee legal origin and improve control of harvesting in trials in Sarawak – and is therefore being considered for wider adoption. However, as a major importer



of timber, Malaysia also needs to deal with verification of legality in source countries as well as at home. This raises two sets of challenges:

Verification at point of entry – embassies may be requested to verify the good standing of operators in source countries, but the face value of official source-country documentation is deemed sufficient at point of entry. Effective customs cooperation is therefore essential in preventing fraud, but a regional system of trans-national auditing has yet to emerge.

Separation of imported and domestic material in processing and export streams, to give reassurance to buyers – amongst other things, this demands that all imported consignments (including sawn timber) are issued removal passes, and tracked to point of processing.

Finally, the experience of Sabah and its 100-year licences shows that verification is not just about enforcement. It can also be an important tool for gradually bringing forest management systems towards full legal compliance.

Part C

## **Reviews of cross-cutting issues**



# Chapter 17

## Presenting the cross-cutting reviews

### 17.1 Introduction

The country case studies presented in Part B have illustrated a great diversity in terms of the driving forces behind verification and the contextual factors determining the design of the verification system. For example, some countries have taken an incremental approach, building on existing control systems, while others have undergone more dramatic changes, often catalysed by external interests. In some cases verification has been the remit of single bodies while elsewhere the responsibility lies with multiple actors. The impacts of verification have ranged from negligible to significant and unexpected.

This brief chapter outlines the major issues relating to verification system design that have emerged as common themes in the country case studies and that are addressed in more detail in the subsequent cross-cutting review chapters. These issues include critical influences on, and impacts of, verification systems.

### 17.2 A conceptual matrix to analyse verification system design

In spite of the great variation evident in the case studies, it became clear during analysis of the findings that four broad functional areas need to be considered in any verification process. These are:

- The political mandate for verification;
- Its legal and institutional bases;
- The design of the verification system; and
- The outcomes the system is intended to achieve.

These areas were initially discussed in Chapter 4 and are illustrated here in the conceptual matrix shown in Table 17.1. This matrix is intended to serve a number of purposes. First, it draws together the elements of the verification system into a conceptual sequence, linking the design of the system to the political mandate under which it is established, the legal and institutional environment in which it will operate, and its effects on the ground. Second, it identifies key themes which need to be addressed to assess the workability of the system; thus, the key theme under mandate is likely to be *ownership*; under legal and institutional basis, the *legality standard*; under the design, the extent to which the system is able to preserve its *independence* of political influences; and under outcomes, the downstream *impacts* of the system. And, third, it underlines the need to make an effective link between the drivers that create a demand for verification and the ways in which verification judgements are delivered and closure is brought about.

**Table 17.1:**  
**A conceptual matrix for analysing verification system design**

	Political mandate	Legal and institutional basis	Design	Results
<b>Issues relating to elements of the system design</b>	<b>The aims of verification</b> <ul style="list-style-type: none"> <li>■ governance reform</li> <li>■ improved forest conservation</li> <li>■ capturing benefits of growth</li> <li>■ poverty reduction</li> </ul>	<b>The ‘rules of the game’</b> <ul style="list-style-type: none"> <li>■ forest governance systems:               <ul style="list-style-type: none"> <li>□ legal framework</li> <li>□ legal tradition</li> <li>□ access to information and justice</li> <li>□ public and private rights and responsibilities</li> </ul> </li> <li>■ national forest administration:               <ul style="list-style-type: none"> <li>□ national forest control system</li> <li>□ national standards of performance</li> <li>□ compliance regime</li> </ul> </li> </ul>	<b>The design of the verification system</b> <ul style="list-style-type: none"> <li>■ building blocks</li> <li>■ organisational characteristics</li> <li>■ architecture</li> </ul>	<b>The outcomes of verification</b> <ul style="list-style-type: none"> <li>■ public support</li> <li>■ progressive governance</li> <li>■ effects on poor</li> <li>■ objectives met</li> <li>■ collateral factors</li> </ul>
<b>Issues relating to process of the system design</b>	<b>The drivers</b> <ul style="list-style-type: none"> <li>■ individual and organisational drivers: local, national, international</li> <li>■ political culture</li> </ul>	<b>Policy closure: actors and authority</b> <ul style="list-style-type: none"> <li>■ supervision</li> <li>■ facilitation</li> <li>■ participation</li> </ul>	<b>The delivery of verification</b> <ul style="list-style-type: none"> <li>■ participation</li> <li>■ resolution of conflicts</li> <li>■ phasing</li> </ul>	<b>Measurement &amp; interpretation</b> <ul style="list-style-type: none"> <li>■ indicators</li> <li>■ evaluation</li> <li>■ feedback</li> </ul>
<b>Key theme</b>	<b>Ownership</b>	<b>Legality standard</b>	<b>Independence</b>	<b>Impacts</b>

Concerning the key theme of *ownership*, which is the subject of Chapter 18, it is clear that government ownership of the process is a necessary but not sufficient condition for verification to be credible. For credibility to be achieved, other stakeholders need to buy into the underlying objectives of the verification system. Broad stakeholder ownership is achieved partly through active involvement in system design and implementation. Yet, different actors have different expectations and objectives, so getting the right balance is difficult and likely to be quite situation-specific. Governments need to be flexible enough to allow room for positions advocated by the wider public, and the balance between government and public responsibilities has to be worked out on a case-by-case basis.

Verification requires a clear and unambiguous set of rules for determining compliance. However, legal and regulatory frameworks affecting the forest sector are often highly complex and do not provide a clear enough basis for audit. In the short term this situation requires: (i) a prioritisation of existing laws and regulations depending on the objective

and mandate of the verification system; and (ii) augmenting regulatory frameworks with clear standards of performance. Both of these require the development of a national *legality standard*, as described in Chapter 19.

In terms of the scope of a legal standard there is a wide range of options – from a minimalist approach (for example, restricting attention only to timber harvesting rules) to one that has a much broader agenda, including social and developmental aims. As legality is a sovereign issue, a range of approaches can be anticipated. To define the scope of a standard requires clarity over the objective(s) of the verification system, which in turn depends on the relevant policy and legal framework in the country under review. Definition of the standard offers an important opportunity for broad stakeholder consultation, so that the views of different interest groups can be taken into account. Another important issue is whether such standards will operate as codes of practice or be enacted under the law. The former maintains a strong link with the forest administration and has the advantage of ease of implementation. The latter has the potential advantage of allowing the ultimate decision, when it comes to resolving conflicts, to be made extra-sectorally, by the courts.

Maintaining a high degree of *independence* is central to the credibility of a verification system, as discussed in Chapter 20. This may be achieved through the external origins and associations of the verification actors; through the types of organisations involved in verification (e.g. NGOs, private sector companies); or through adherence to professional standards. Alternatively it may be generated more by the institutional architecture than by the attributes of particular actors. There are widespread concerns that verification delivered through one actor is not sufficient to guarantee independence. There must be mechanisms that ensure the accountability, transparency, objectivity, competence and acceptability of the system, and to ensure that it includes sufficient cross-checks and balances. Independence of public reporting is an important design feature of verification systems.

Chapter 21 describes the final theme of the conceptual framework, that of *impacts*. To date, there is very little (if any) experience of formal impact assessments of forest sector verification systems. This is due to several factors: (i) many of the systems are too recent to have been assessed; (ii) impact assessment is complex and requires considerable resources; (iii) the attribution of impacts to the verification system is often not clear; and (iv) in cases of low ownership of the system, there may be little interest in assessing impact. Developmental impacts are particularly poorly understood at the present time. However, at the highest political level, many countries have equitable forest management as an explicit policy goal, meaning there should be a cascade of policies and laws ensuring some developmental impact of forest use. By increasing compliance, verification should logically support the achievement of this policy goal.

The discussion on the four themes of the conceptual matrix is followed by two chapters (22 and 23) which examine emerging agendas: first, the tendency towards convergence between verification and private sector certification, which is coming about as governments seek to respond to external demands in ways that are acceptable to the industry; and, second, the role of information technologies, notably remote sensing and online databases, which is particularly strong in Brazil.

The final chapter of this section considers the performance and record of multi-stakeholder processes as a means of furthering policy in contexts of widely differing

stakeholder interests, authorities and power. This discussion is a particularly critical one for systems design, in that international and national civil society support is likely to be heavily dependent on the ability not only to bring together multiple stakeholders but also to maintain their long-term support. These interests need to be reconciled in a manner that allows the process of negotiation to be brought to successful closure, despite the divergent and even conflicting aims of the various parties involved.

## Chapter 18

# Ownership of forest verification systems

**Note:** This review is authored by Cecilia Luttrell and is based on Luttrell, C. (2007) 'Ownership in relation to the design of verification systems', VERIFOR Briefing Paper No. 5. London: ODI.

### 18.1 Introduction

Much of the current debate about verification in the forest sector emphasises the concept of 'ownership' as a pre-requisite for long-term sustainability of the system and its robustness in dealing with change. Dictionary definitions of ownership lay emphasis on the ability to 'control and use for one's purposes' as an important feature of ownership. In this sense, ownership encompasses more than 'participation in' or 'support for'. De Renzio et al. (2006) propose one definition of ownership (in the context of a discussion on aid alignment) as 'a social consensus about the legitimacy of the institutions that govern decision-making and the ability to meaningfully participate in these'. For the purposes of this discussion, ownership is defined as the 'active support of, and ability to control' the objectives, process and outcomes of the verification system. This implies that relevant constituents have a stake in the system, that they are interested in the outcomes, and that they are willing to support the process and be bound by the results. This chapter examines the issues and possible strategies to develop verification systems which guarantee or at least enhance ownership.

The wider literature on how ownership is defined and achieved suggests that for a system to be 'owned' it must:

- Be nationally driven in term of objectives and motivations;
- Reflect national perspectives (for example be linked to the sector's own plans and policies);
- Complement the structure of national institutions and processes;
- Match available national expertise, capacity and resources;
- Serve the interests of a broad range of public actors and therefore be designed through participatory and inclusive processes with contributions from a diversity of sources; and
- Incorporate principles of accountability and transparency in its implementation.

The discussion below is arranged around six related themes.

### 18.2 Objectives

The first factor to consider when looking at issues of ownership is the reason for, and the main drivers behind, the introduction of a verification system. This helps in understanding the different interests and actors the verification system is intended



to serve. The differences seen in the country case studies in this book show that the establishment of a verification system may be rooted in a variety of objectives. These can be internally or externally driven and may include:

- Conditionalities on donor assistance;
- The desire of the private sector to gain access to international markets;
- The desire of the national government to increase revenues; or
- The desire of the national government to respond to internal public or NGO demands for sustainable forest management or the protection of rights.

For example, the impetus for the strengthening of Malaysia's verification systems was driven partly by pressures from industry, which was seeking credibility on the international market, and partly by the state, which was seeking to secure the revenue stream and to respond to public concerns about the environment (see Chapter 16). In the case of Ecuador, the verification system was introduced in response to internal social pressures (see Chapter 10), whereas in Cambodia and Cameroon, the introduction of independent monitoring was the result of donor conditionalities (see Chapters 13 and 11).

These pressures may occur simultaneously and can be mutually reinforcing – for example, responding to internal pressures for increased transparency can also help boost international reputation. Other drivers can be contradictory in terms of ownership, as is the case with verification systems associated with donor conditionalities and the desire to access international markets. For example, donors may have a number of objectives in encouraging the development of verification systems, ranging from increasing accountability over the use of aid funds, to the promotion of pro-reform voices. The EU licensing regulation (EC, 2005a) hints at the diversity of objectives embodied in the FLEGT initiative: *'The Action Plan put emphasis on governance reforms and capacity building, supported by actions aimed at supporting multilateral cooperation and complementary demand side measures designed to support the consumption of legally harvested timber and contributing to the wider objective of SFM in timber producing countries.'* Different objectives result in varying challenges and opportunities for increased ownership.

The term ownership needs to be treated with some caution. It is most often used in situations where the likelihood of its occurrence is most in doubt. The term is commonly used in discussions relating to donor-associated systems to indicate the degree to which there needs to be acceptance of externally-initiated ideas by national players. A question raised by the VERIFOR case studies is the degree to which conditionality-driven verification systems can breed strong ownership. One of the philosophies behind the introduction of conditionalities on loans is that their acceptance shows a high level of commitment to an action on the part of the recipient state. However this view rather ignores the political realities of how, and why, conditionalities are accepted. If ownership is defined as 'active support to and ability to control the objectives, process and outcomes of the verification system', ownership and conditionalities would appear to be at odds. The case study from Cambodia underlines the dangers associated with substituting conditionalities for ownership. The conditionality mechanism failed because there was no strong domestic coalition and no government commitment to the reform.

By and large, donor interest has shifted away from conditionalities. The new architecture of international aid is geared toward fostering national ownership and commitment, with conditionalities playing a much reduced role. Coercion in the form of overt conditionalities from donors is viewed as a weak instrument to build such ownership, as it is incapable of generating domestic commitment and is thus unsustainable.

In the case of the Voluntary Partnership Agreements (VPAs), there are underlying geo-political realities involved in the relations between partner countries and the EU. A number of motivations and pressures encourage a producer country to sign up to VPAs and will have implications for defining the level of ownership. In addition, notions of ownership may contradict the notion of partnership associated with the VPAs. By definition, partnership means *less* ownership as a result of the sharing of influence between the partners and the need to accommodate differing interests and standards.

As with systems based on donor conditionalities, verification systems that are reliant on the international market also imply an erosion of national ownership. For example, VPAs imply the influence of stakeholders based in the EU, and this may dilute national ownership.

Related to this is the question of how requirements for international monitoring can avoid interfering with ownership of resources ostensibly under sovereign control. The independent monitors introduced to Cambodia and Cameroon both sought to bring international influences to bear on sovereign resources and this raised problematic questions of ownership. On the one hand, the protection generated by international associations was seen by many as valuable, as it allowed the independent monitors to act with a freedom denied to nationals. On the other hand, it was felt that national ownership of the process was weakened by this international influence. The challenge to national ownership in both of these cases may have been related not only to the international nature of the monitoring function but also to the type of organisation carrying it out. This would suggest that NGO watchdogs (international or national) may be more able to build a national constituency than an independent monitor operating on contract to the state.

In Ghana, early debates surrounding verification and the Validation of Legal Timber Programme were driven by donor interest in confronting governance failings in the sector. There have since been attempts to deepen involvement of industry, civil society and various elements of government. One clear indicator of increased national ownership may be the degree to which a national authority is prepared to resource the initiative. In this case, the government is now investing US\$2m of its own resources in the system (see Chapter 12).

Strong national ownership may be more likely to be found in those verification systems which were introduced to serve domestic agendas, rather than those designed to access international markets or deliver donor conditionalities. However, no matter what the initial objective, national ownership can be enhanced by strengthening the complementarities between existing institutions and procedures. These might include, for example, the current procedures for forest monitoring and auditing. One of the reasons behind the success of the CITES verification system is the way it is rooted in national reporting systems and state sovereignty as the basis for the control system (see Chapter 3).

### 18.3 Involvement of extra-sectoral and decentralised government bodies

Ownership may also be affected by the degree to which agencies, other than those in the forestry sector, are involved in the establishment of the verification system. A lesson emerging from the case studies is the need to engage with parties outside the sector to ensure broad government ownership. In the Ecuador case study, the lack of participation by other government institutions was especially problematic as it resulted in the isolation of the implementing ministry, the Ministry of Environment (MoE). Much of the opposition to the introduction of the verification system was subsequently from within the MoE, and there was no external political will to counterbalance this internal resistance. Similarly the Indonesian case study shows that the Ministry of Forests may not possess the mandate to reach policy closure on the debate of legality standards as some of the issues relate to land administration. An alternative therefore may be to place the verification system under another agency or a parliamentary commission. It does suggest however that there are advantages in ensuring that decisions on the verification system are taken at the most senior levels of government.

In the case of Brazil, there was a high level of commitment of national bodies in a number of related verification processes such as the National Forest Programme, the Interministerial Committee to Combat Deforestation in the Amazon and the PPG7 (see Chapter 9). Such broad and embedded ownership is partly a reflection of the wide and trans-sectoral process of involvement of many important public bodies but is also linked to the strong sense of sovereignty in Brazil over the right to manage the Amazon.

A recurring theme in the case studies is the need to take into account the decentralised levels of government. In Indonesia, the Ministry of Forests has devolved powers for timber administration to the district level but this does not match the distribution of roles and responsibilities as specified in laws on administrative decentralisation (Wells et al., 2006). This has led to confusion and overburdening of the districts as they have little implementing capacity (see Chapter 15).

The issues here range from the varying degree of will and commitment of central and decentralised bodies to the differing capacities available for implementation of the system. The existence of adequate capacity in the responsible institutions represents a crucial component of an effective verification system. For example, the design of the SECAL project in the Philippines was too ambitious for the Department of Environment and Natural Resources' existing capacity (Cruz and Pulhin, 2006) and, outside of the forestry sector, both the Kimberley Process and the introduction of international nuclear safeguards faced similar capacity problems resulting from the verification system design (Smillie, 2005; Persbo et al., 2005).

This raises the question as to whether capacity-building is critical in ensuring ownership. In Cambodia, *Court Watch*, a national 'external' monitor, works constructively with the judiciary and feeds back its findings into the reform process: it is precisely this set of activities that gives it the access it needs to monitor the process (Luttrell and Brown, 2006). Setting up a monitoring mechanism without corresponding measures for enhancing capacity can result in a lack of ownership in the system. However, the very process of capacity-building may compromise independence if it is carried out by the same body undertaking the verification activities.

Much of the discussion surrounding ownership assumes that the government will be a key player in any forest-sector related verification system and that external assistance must always be channelled through the government to achieve ownership. Need this always be the case? In Indonesia the idea has been voiced that the VPA could best proceed on the basis of a business-to-business initiative rather than through building the capacity and credibility of state verification systems. This raises further questions about how to build public or citizen-based ownership.

#### 18.4 Participation and ownership

In discussing ownership, an important distinction needs to be made between national ownership, which is often taken to mean government authorship, and a wider definition of public, or citizen-based, ownership.

It can be argued that, in the case of democratic states, government authorship does equate with wider public ownership. However, in many contexts this may not hold true, particularly where levels of public legitimacy of state systems are low, and it is in these cases where a narrow interpretation of ownership is most problematic. The most obvious danger raised by a narrow definition of national ownership is that it can skew the verification activities towards the government's interests and away from those of excluded groups. Building ownership in a country where there is little within-country trust in the capacity of the official structures to manage their own affairs requires a very different approach to that in countries where public trust in state institutions is high.

It could be argued that government ownership can be equated with public ownership only when there has been adequate representation, good consultation and effective engagement of relevant constituents in decision-making. Characteristics of this may include evidence of responsiveness, flexibility to incorporate new ideas from civil society, engagement in continuous dialogue to ensure initial consent is maintained, and a plan with structured milestones for implementation. A critical element of this is public access to information about the process.

A commonly voiced opinion is that increasing the number of players and the diversity of viewpoints will increase ownership. For example in the Philippines, the development of a multi-stakeholder forum has, in some cases, generated sub-national ownership. The EC's FLEGT Briefing Paper No. 9 emphasises the need for broadening participation over the definition of legality standards since the harm caused by failure to comply with laws affects a multitude of stakeholders (EC, 2005b). However, a question is raised by the case studies over the degree to which drawing on a variety of viewpoints increases 'public ownership' or merely gives voice to a number of interest groups. The Ecuador case, for example, suggests that the introduction of reforms will not be successful if only promoted and supported by middle class and urban-based elite without wider participation. The concept behind the Ecuadorian outsourced forest control system (SNTCF) was a broad participatory process with multiple consultations but consultation over design was limited to the forest sector at the national level and there was little involvement of forest owners and indigenous groups beyond those groups at the national level. Others, such as mid-level ministry officials and some professional colleges associated with the timber industry, were also excluded from the implementation

process. The SNTCF lasted for only a short period in 2003 before the outsourcing of the administrative and supervising functions was suspended.

Increasing NGO interaction in the process does not necessarily increase the breadth of ownership. Arguably, the way in which advocacy organisations were hired as independent monitors in Cambodia and Cameroon did little to generate a broad national constituency for change, and public ownership was low. Similarly it could be argued that the domination of some of the Multi-stakeholder Forest Protection Committees in the Philippines by certain environmental interest groups (with largely middle-class perspectives) has narrowed the breadth of ownership of these committees by excluding other community viewpoints. A similar criticism can be made in the Ecuador case (see Navarro et al., 2006).

Ownership goes beyond participation, and it cannot be assumed that consultation will help strengthen ownership. There is a need to maintain flexibility within options to ensure the results of consultative processes can influence decisions. In addition, as shown by the consultative workshops held on the legality standards in Indonesia, consultation does not necessarily result in a consensus. This is an issue where there is unlikely to be a straightforward 'win-win' outcome where a number of actors can all gain ownership. It is the process following these consultations, and the steps taken to address conflicts of interest and to include those that have been excluded, which are important in developing ownership. Furthermore, consultations that raise issues which are not taken on board in the design of the verification system can result in the alienation of interests.

## 18.5 **Strengthening accountability and transparency**

There is an argument in favour of increasing the attention given to building links with mechanisms of accountability and transparency of the verification system itself. The lack of such mechanisms can undermine effective verification. Mechanisms to promote accountability and transparency can include, for example:

- Building links with judicial review processes and parliamentary commissions;
- Increasing the direct involvement of the public and civil society through the press or interactive web pages; and
- Increasing access to ombudsmen and dispute resolution mechanisms.

In Indonesia the low levels of public accountability and transparency over decision-making and revenue management in forests are rooted partly in a lack of enabling legislation on transparency and access to information. There is also a limited use of judiciary and legal aid but an Ombudsman Commission has been established and local parliamentary committees are reasonably active in providing oversight of the executive.

Increasing the rhetoric of support for accountability is not enough in itself to encourage members of the public or individual employees to become actively involved in holding institutions to account for corrupt behaviour. Whistle-blowers commonly experience threats or subtle discrimination. This suggests the need for confidential reporting channels and safeguards to guarantee protection from retribution if individual and public participation in oversight mechanisms is to become a reality.

## 18.6 Sequencing

There are various stages in the establishment and operation of a verification system where ownership can be built or developed:

- During the planning stage with careful consideration of which actors initiate its development and why;
- During the design stage where the inclusion and omission of various structures and processes can affect the level of ownership;
- During implementation and supervision of the verification system; and
- During evaluation of the impacts of the verification system.

There is some suggestion from the case studies that ownership is particularly important during certain stages of verification system development and that different forms of ownership are preferable at different stages of the system development. Broad ownership may not be necessary during all stages. For example, some cases of successful reform processes have taken place without ownership in the early stages.

Ensuring broader ownership at the start of a reform process is likely to be problematic, as the outcome and impacts are unclear. In some cases, ownership was developed only after long periods of negotiation and this period of front-end investment was crucial for success. The early stages of the Kimberley Process for example, were characterised by a lack of acceptance by some parties, later to be overcome. Equally, experience from Indonesia has shown that attempting to reach full ownership by all interested parties of a key dimension of the process (in this case, the legality standard) could stall implementation. Reform, in the Ecuador case, was pushed through rapidly by a small group of reformers. The speed with which the reforms were introduced led to rejection by some of the parties and wider participation was needed in the later stages to ensure successful implementation. Currently there is new interest in reviving the system in a more inclusive manner both at the national level and with the involvement of local government.

## 18.7 Ownership and impacts

Perhaps one of the most obvious means of generating ownership is to ensure that the verification system has a positive impact. Ownership is not only achieved by a process that encourages participation and involvement, but one that delivers clear beneficial outcomes. This is perhaps more problematic than it sounds, as to date few verification systems can claim such benefits. Indeed, some studies suggest that a heavy burden of transaction costs will be borne particularly by the smaller operators. Ecuador is a case in point.

In the case of VPAs, the unclear outcome of signing up to these agreements and the risks of closing down the market due to the inability to reach the required standards are very real disincentives which could well undermine ownership in the initiatives. A careful consideration of the distribution of costs and benefits is therefore necessary. More certainty as to where the burden of financial liabilities is likely to fall may encourage ownership of the process amongst those who are being monitored. This suggests the need for some guarantees or buffers to lower the risks faced by producers. These may include committing those who play an oversight role to an agreement that the acceptance

of legality standards will not be altered or, if a stepwise approach is to be adopted, an agreement on the degree to which the standards will change over time. In the case of market driven mechanisms it may be more realistic to view ownership as an issue of concern for the consumer countries more than for the producer ones.

## 18.8 **Summing up**

Several factors have been identified as influencing the ownership of verification systems. Firstly, the objectives of the verification system are an important determinant of the degree of ownership. Thus, verification systems which are designed to address national priorities and to complement the structure of national institutions are more likely to have higher levels of ownership. Government ownership can be increased by engaging a breadth of agencies and decentralised levels but government ownership does not necessarily reflect public, or citizen-based, ownership. Increasing participation and drawing on a diversity of viewpoints as well as strengthening accountability and transparency can help to increase public ownership. Consideration of sequencing is important, as broad ownership of the process is less important during the development of the verification system than during the implementation and supervision stages. In addition, there is more potential for true ownership when the impacts of the verification system are perceived to be beneficial.



## Chapter 19

# The legal basis for forest sector verification systems

**Note:** This review is authored by Adrian Wells and is based on Wells, A. (2006) ‘The legal basis for verification systems – standard setting for legal compliance’, VERIFOR Concepts Paper No. 1. London: ODI.

### 19.1 Introduction

Verification of legality demands a set of unambiguous standards for determining compliance. Without a set of predetermined standards, the process will lack objectivity and be vulnerable to the accusation that it is driven by political interests. In the forestry sector, legality standards will vary depending on whether they are intended to serve national interests, bilateral trade agreements, government procurement contracts, or voluntary certification initiatives.

Irrespective of their purpose, the formulation of legality standards is often the subject of protracted negotiation. In many countries legal and regulatory frameworks governing the forest sector are highly complex and efforts at legal standard-setting have struggled with the need to strike a workable balance between:

- Practicality – most legal frameworks are costly to comply with, and do not provide a clear basis against which to measure compliance; and
- Perceived legitimacy – existing legal frameworks may make weak provision for local and indigenous peoples’ rights.

This chapter draws on numerous legal standard-setting efforts by producer and consumer countries, as well as private-sector and NGO initiatives. Five sets of issues are examined:

- Existing efforts at legal standard-setting in the forestry sector;
- Failures in existing laws and regulations;
- Measures to address the practicality and legitimacy of legal standards;
- The process to develop an effective legality standard; and
- Implementation of a standard, including the mandates needed to gazette a standard and to issue certificates of legal compliance.

### 19.2. Legal standard-setting efforts in the forestry sector

#### **National standard-setting for sustainable forest management**

A number of producer countries have set standards for legal compliance through the development of mandatory Criteria and Indicators (C&I) for sustainable forest management (SFM). These include:



- Ecuador (Chapter 10), where the Ministry of Environment facilitated the development of mandatory C&I as the basis for multi-stakeholder monitoring and verification under the Outsourced Forest Control System (SNTCF).
- Costa Rica (Chapter 6), which developed equivalent mandatory C&I for SFM under its National Forestry Certification Commission.<sup>1</sup> The latter now provides the basis for verification of legal compliance by private forest owners.
- Indonesia (Chapter 15), where the Ministry of Forests designated mandatory C&I for SFM as a yardstick for compliance assessments of concessions and mills by government-appointed auditors.
- Malaysia (Chapter 16), which also developed C&I for SFM in an effort to retain market standing. These now provide the basis for mandatory public audits, as well as certification of state forest administrations and licensees by the Malaysian Timber Certification Council.

### **Standard-setting under bilateral trade agreements**

Regional and bilateral processes on Forest Law Enforcement and Governance (FLEG) have also worked to promote mandatory standard-setting processes. Although these have a narrower remit than C&I for SFM, focusing explicitly on existing laws and regulations, they may apply to a wider range of activities than most national C&I processes, spanning not only forest management but also timber processing and export licensing. The 2002 ‘UK–Indonesia Memorandum of Understanding (MoU) on Cooperation to Improve Forest Law Enforcement and Governance’ in particular set an important precedent for subsequent efforts to develop standards for trade in legal timber.

More recently, the EC Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan and Council Regulation 2173/2005 mandated the negotiation of licence agreements (Voluntary Partnership Agreements or VPAs) for imports of legal timber into the EU. Partly in view of the constraints on unilateral mandatory standard-setting under WTO-GATT, the EC FLEGT policy envisages that each producer country should develop its own definition of legally-produced timber. This should provide an ‘unambiguous, objectively verifiable and operationally workable’ standard, and should also be amenable to change in light of regulatory reforms (EC, 2005b).

Indonesia’s legality standard will now be gazetted under a proposed VPA with the EU. Equivalent standard-setting processes have also now been initiated under VPA processes in Cameroon, Ghana and Malaysia, in response to FLEGT. The recent amendment to the US Lacey Act prohibiting the import of timber cut in violation of national and international law gives these initiatives additional impetus.

Reliance on national laws is, however, problematic. Existing laws and regulations are often complex, unclear and the subjects of legal dispute. In Indonesia, despite several rounds of public consultation over a period of five years, concerns remain over whether the standard is either: (i) sufficiently robust on requirements for legal gazettement of concession boundaries, and the Free, Prior and Informed Consent (FPIC) of indigenous and local people; or (ii) over-complex, leading to increased production costs and loss of competitive edge to other, cheaper producers with less stringent standards in place (Wells et al., 2006).

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<sup>1</sup> This was renamed in 2007 as the National Sustainable Forestry Commission.

## Procurement policy

Some importing countries have established policies on government procurement of legal and sustainable timber. Amongst others, guidance issued by the Central Point of Expertise (CPET) for UK government timber procurement policy states that forest managers should hold legal rights to harvest, and that forest managers and contractors should comply with national laws on forest management, the environment, labour and welfare, health and safety, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as payment of royalties and taxes. However, precisely because countries' laws may be vague and contradictory, the guidance also states that *'...it will be necessary to have or develop a practical working definition of 'legal' or a set of core laws which must be met which has support from major stakeholder groups. This can be done through a national standard-setting process or other appropriate means.'* (CPET, 2006: 3)

## Voluntary certification initiatives

Voluntary timber certification initiatives have also developed their own non-binding standards and protocols on compliance with producer-country laws, with the aim of promoting trade in legal and sustainable timber. Examples include the Tropical Forest Foundation's label for legality and Chain of Custody and the WWF Global Forest Trade Network (GFTN)'s guidance on responsible timber purchasing and legal compliance. These adopt a pragmatic step-wise or phased approach to implementation – including legal origin and legal compliance as milestones on the path to SFM (see Box 19.1). This reflects a concern that a focus on legality should not detract attention from the goal of sustainability, but that full legal compliance and sustainability are also unattainable at first instance for many forest owners and managers.

## 19.3 Failures in existing laws and regulations

It is often challenging to translate national laws and regulations into standards for legal compliance that are both practical and legitimate in the eyes of most stakeholders.

### Practicality

The poor in particular face considerable barriers to legal compliance, even when they are accorded forest user rights. This reflects the complexity of current regulations and the high transaction costs of obtaining permits. In Honduras, these problems have forced members of community-based forest cooperatives into illegality where the economic returns for timber on the domestic market were already slim. In Costa Rica, full compliance with mandatory C&I for SFM leaves managers US\$200 in deficit per hectare, necessitating subsidies through Payments for Environmental Services (Navarro, G., 2006, pers. comm., April).

Legal and regulatory frameworks are also not usually designed for purposes of audit. In particular, regulatory provisions may not be sufficiently specific to provide unambiguous standards of performance. Laws may be especially vague with respect to land tenure and local community rights.

### **Box 19.1**

#### **Step-wise approaches to legality**

The Protocol for Validation of Legal Claims, as developed by the Dutch standards institute Keurhout in association with the Netherlands Timber Trade Association (NTTA) ‘lowers the bar’ on legal compliance, but as part of a three-step process towards SFM certification. The first step relates to legal origin, including whether timber has been harvested in compliance with laws and regulations in the country of origin governing permits, respecting protected areas, species, tree dimensions and harvest volumes. The second step requires compliance with all other relevant laws and regulations pertaining to forest management including labour and environmental standards. Timber that complies with legal origin, as well as the second level of legal compliance is considered ‘transition timber’ moving towards SFM certification – the third step and the highest level of management performance. ‘Transition’ licence holders are expected to enter into a third-party verified programme for progressive realisation of SFM standards against agreed time-bound targets.

A similar approach has been adopted by the private sector verification company SGS’s Independent Validation of Legal Timber (IVLT). This distinguishes Verification of Legal Origin (VLO), focusing on production rights, legality of ownership and tax payments, from Verification of Legal Compliance (VLC) with respect to forest management planning and exploitation. Under this system, rules on VLO and VLC can be progressively tightened, enabling continuous improvement over time.

Another private sector company, Proforest, has developed the Modular Implementation and Verification System (MIV) to support phased approaches to certification (Nussbaum et al., 2003). The MIV has been adopted by schemes such as the WWF GFTN. The MIV system distinguishes three levels of legality, spanning:

- *Respect of resource rights:* legal rights to harvest; protection of the legal and customary rights of local people; and payment of applicable fees, royalties and taxes;
- *Legality of operations:* compliance with all relevant local, national and international laws and regulations on environment, tenure, indigenous and workers rights, community development, health and safety, trade etc; as well as a system for tracking changes in legal requirements and compliance; and
- *Control of unauthorised activities:* including identifying possible threats, developing systems for prevention and control with other stakeholders, and monitoring the success of control activities.

### **Legitimacy**

Legal frameworks governing the forestry sector are frequently the subject of severe contestation. In Indonesia, Law 41/1999 on forests recognises forest subject to private title and excludes it from the National Forest Estate. Yet customary rights are not accorded equivalent treatment – despite legal provision for their recognition and registration

(Contreras-Hermosilla and Fay, 2005). As a result, existing delineation of the National Forest Estate often overrides customary rights and land-use systems. The legality standard developed under the UK–Indonesia MoU has consequently been criticised as legitimising the *status quo*, even reinforcing exclusion of customary landowners and small-scale producers.

## 19.4 Strengthening the practicality and legitimacy of legality standards

### Restricting the scope of a legality standard

Given the complexity of existing legal frameworks, a number of initiatives have chosen to restrict legality standards to a critical sub-set of laws and regulations. So, depending on national context and the objectives of verification, a standard might include some or all of the following components:

- *Legal origin* defined simply as the legal right to harvest, or as also including prior determination and settlement of tenurial claims, legal gazettelement of concession boundaries, as well as the Free, Prior and Informed Consent (FPIC) of local communities with respect to cutting operations on community lands;
- *Legal harvesting* including compliance with permit conditions, payment of royalties, forest management regulations including mandatory C&I for SFM, as well as laws on environment, labour and welfare and health and safety;
- *Legal processing* including compliance with domestic processing quotas, guarantees against mixing with non-legal sources, and payment of processing levies; and
- *Legal trade and export* including export licensing, procurement of necessary CITES authorisation and customs clearance.

The determination of which laws and regulations to exclude or include under a standard can, however, be highly contentious, in terms of: (i) whose rights may be subordinated in the process; and/or (ii) who ends up bearing the transaction costs of compliance.

In Indonesia, for example, a number of NGO and private-sector trade initiatives argued that a legality standard that adopts an expansive interpretation of national laws is likely inoperable in situations of weak government. In a situation where only 12% of the National Forest Estate has been legally gazetted (Contreras-Hermosilla and Fay, 2005), requirements to secure the FPIC of local communities and to delineate concession boundaries present a significant challenge for most licence holders. Yet at the same time, indigenous rights groups regard these measures as a minimum in addressing the grievances of customary groups whose rights have been overridden by forest land allocation and delineation.

Similar tensions over the scope of a legality standard arose in Ecuador. While standards for legal compliance under the SNTCF were initially limited to forest management, industry argued that the system targeted legal operators, and excluded illegal deforestation and land-use change from its purview. Subsequent agreement to incorporate land-use under a new, decentralised mechanism has, however, raised concerns over institutional capacity and the cost of enforcement (Thiel, H., 2006, pers. comm., May).

## **Adjustments to the compliance regime**

Alternatives to a narrow legality standard may include adjustments to the compliance regime. This includes gradually phasing in a standard, and/or placing greater emphasis on compliance management.

### **Phasing in a standard**

As outlined in Box 19.1, step-wise approaches which attempt to reconcile legitimacy with workability are being promoted by several NGOs. In principle, such step-wise approaches can also be adopted for mandatory standard-setting by national governments. This, however, implies rigorous auditing to secure incremental improvements in compliance across the board. It is also controversial in presenting short-term proxies for legality (such as ‘legal origin’) that add up to less than what producer-country laws and regulations require.

### **A greater emphasis on compliance management**

Compliance with standards demands not just enforcement, but also measures to gradually improve operator performance. This means better distinguishing those offences that trigger compliance enforcement (e.g. administrative sanctions and/or prosecution), from those that trigger compliance management (e.g. corrective action requests). The Malaysian State of Sabah has adopted this approach to gradually close the gap on legality through routine audits and capacity-building of its 100-year Sustainable Forest Management License Agreements. An effective compliance management system would likely enhance capacity to meet a legality standard, without having to reduce its scope.

### **Legal and institutional reform**

In many cases, the practicality and legitimacy of legality standards may ultimately depend on comprehensive legal and institutional reform. This includes reforms to: (i) ensure the state fulfils its own duties in respect of land administration and the rights of indigenous peoples; and (ii) reduce the transaction costs of legal compliance.

### **Holding the state to account in respect of its own responsibilities**

Tensions between ‘lowering’ and ‘raising’ the bar for legal compliance partly reflect the lack of clarity over whether a verification system should secure compliance merely by licensees or also by the state. In the case of Indonesia for example, negotiated land allocation and settlement of forest boundaries with local communities arguably constitute a constitutional and statutory obligation of the state, rather than a duty that can be imposed on concessionaires. Similarly, standards for boundary gazettement and free and prior consent are in large part the responsibility of forestry administrations, not licence holders.

The fact that only a small proportion of the Indonesian National Forest Estate has been legally gazetted reflects a failure on the part of government that should not necessarily be passed on to licence holders to resolve. Similar arguments could be made in Malaysia where recent rulings of the Court of Appeal affirm a fiduciary duty on government to gazette aboriginal lands and to put in place measures for payment of reasonable compensation where such land may be taken for other purposes (arguably, including logging). The issue, therefore, is not whether such requirements should or

should not be incorporated into a legality standard. Rather, it is one of ensuring that obligations for delivery against elements of a legality standard are clearly allocated between licensees and the state.

Similarly, if a standard is to secure compliance by state administrations as well as forest users, then it cannot function in isolation from broader guarantees on public accountability. This includes statutory rights on access to information and participation, public complaints mechanisms (ombudsmen – an effective agent in Papua New Guinea) and legal empowerment (in Malaysia, for example, the lack of legal aid potentially constrains recourse to the courts by local communities to resolve boundary disputes).

### **Reducing the transaction costs of compliance**

In recognition of the fact that verification may impose particularly heavy costs on small operators, Ecuador introduced a number of key reforms to reduce the transaction costs of legal compliance under the SNTCF. These included:

- Making it easier for poor forest holders to prove possession of land, in order to obtain logging permits;
- Bringing administrative services directly to community forest managers;
- Simplifying operational rules for SFM; and
- Introducing tax exemptions on permits for extraction of certain timber species from agroforestry systems and minimal bureaucracy for extraction of planted timber.

It should, however, be noted that the development of a legality standard could also exacerbate the costs of compliance by placing a ‘premium’ on administrative requirements necessary for legal validation of exports. In weak governance environments, this demands effective public oversight if the requirements of a standard are not themselves to provide an opportunity for rent-seeking (Bohanic, A., 2006, pers. comm., April).

## **19.5 Developing an effective standard**

Successful agreement over a legitimate, practical standard demands broad-based, multi-stakeholder participation. Examples include Costa Rica’s national C&I for SFM, which evolved out of a comprehensive overhaul of the forestry sector.

This is not, however, straightforward. In the absence of effective public complaint and oversight mechanisms, national standard-setting processes often present stakeholders with a unique opportunity to contest existing legal norms as is illustrated by the case of Indonesia. Nor does agreement guarantee a stable consensus. Despite development through a process of broad-based consultation, the success of Ecuador’s SNTCF meant that it quickly unravelled under political pressure from industry. The difficulty of reaching agreement is further complicated by the differing demands of consumers, under import legislation, procurement policies and timber certification initiatives. In the eyes of some producer countries, these simply work to ‘shift the goalposts’.<sup>2</sup>

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<sup>2</sup> Timber producers in Malaysia refer to previous efforts to establish standards for SFM under a programme of collaboration with the Dutch standards institute Keurhout, which failed to secure the acceptance of Dutch NGOs.

The key lies in the ability of the institutional mechanism for developing a legality standard to resolve such political differences. This demands close attention to:

- Political oversight of the process (executive or legislative), and whether this has the mandate to make an authoritative determination of legality. In the Indonesian case, for example, neither the facilitating institution (the Indonesian Eco-label Institute) nor the Ministry of Forestry has the mandate to settle the main area of legal dispute outstanding, namely land tenure (Contreras-Hermosilla and Fay, 2005).
- The perceived credibility of facilitating institutions, such as the National Commission for Forest Certification in Costa Rica, which comprises national universities, technical NGOs and research centres.
- Appropriate use of alternative channels (e.g. the courts) for dispute settlement.

The time needed to develop an appropriate mechanism and to reach agreement may well clash with the demand-side pressure for a legality standard. Care needs to be taken to ensure the latter does not simply reduce the negotiation of standards to a technocratic process, without sufficient attention to the mandates and capacity necessary to resolve legal conflict.

## 19.6 Implementing a standard

If the intention is to develop a mandatory benchmark for legality, then thought must also be given to how it is gazetted in law, and the mandate needed to issue certificates of compliance. Depending on the agreed scope of a legality standard, it may be appropriate to gazette a standard by Prime Ministerial or Presidential (as opposed to Ministerial) Decree – especially where a standard impinges on sectors such as land, labour rights and taxation which lie beyond the purview of ministries of forestry or the environment. For the same reason, it may be more appropriate to vest authority to issue certificates of legal compliance in a national standards or certification body, as opposed to a single (e.g. forestry or environment) ministry (Nguiffo, S., 2006, pers. comm., April).

## 19.7 Summing up

While the development of a legal standard may create the space for stakeholder debate, it is by no means guaranteed to resolve differences over the legitimacy of the current legal framework, and the practicality of compliance. Legal and institutional reform may first be needed to (amongst other things) ensure the state fulfils its own obligations in respect of land administration and indigenous rights, and to reduce the transaction costs of staying legal.

The timescales needed are likely longer than demand-led processes such as FLEGT are likely to withstand – over five years in the case of Indonesia. Interim solutions may be found in adjustments to the compliance regime, including: the phased introduction of standards; and a greater focus on compliance management to bring forest managers up to standard.

Successful standard-setting ultimately depends on: (i) facilitation by a technically competent organisation with strong legitimacy, such as a national certification body;

and (ii) oversight by institutions with the mandate to resolve legal challenges and reach ‘policy closure’. Depending on the degree of legal conflict, this could demand oversight by inter-ministerial or parliamentary commissions, as well as appropriate resort to judicial interpretation or review.

Beyond standard-setting, choices must also be made over the legal mandate to gazette a standard and issue certificates of compliance. Where standards cover compliance with laws and regulations across a range of sectors, vesting authority in single ministries (e.g. forestry or the environment) may not be sufficient.





## Chapter 20

# Independence in verification work

**Note:** This review is authored by David Brown and Josephine Tucker and is based on Brown, D. and Tucker, J. (2006) 'On Independence in Verification Work', VERIFOR Briefing Paper No. 2. London: ODI.

### 20.1 Introduction

The capacity to accommodate differing viewpoints is central to the effective functioning of public administration. It reinforces citizenship and provides guarantees of trust, credibility, transparency and national discipline. To the extent that the potential for independent judgement opposes (and, ideally, holds in check) interference in administrative systems by political actors, it allows for the maintenance of professional standards and diminishes the propensity for corruption in public life. The principle of independence is likewise central to the enterprise of verification. It engages directly with critical debates about good governance, 'national ownership' and efficiency.

#### The institutional framework

International and global processes have certain advantages over national processes when it comes to governance (see Chapter 2). This is particularly evident in relation to independent oversight. A common feature of most global conventions, international agreements and audit processes is the definition of clear rules by which to establish the independence of actors at key nodes in the verification system. Significant resources are expended in establishing these standards and on ensuring that they are met. However, this is a much less well-developed principle in the forest sector. Lacking an internationally binding agreement, the tension between national sovereignty and global interests and responsibilities tends to be expressed more through processes of informal, highly politicised negotiation, than through prescriptive and internationally agreed rules. The question is raised as to how independence can be brought into the verification process in ways that are compatible with national sovereignty, and yet ensure that element of detachment which the global public goods dimensions of forests require.

Recent thinking in the forest sector has been largely focused on one step in the verification sequence: independent forest monitoring (IFM). This owes much to the high-profile work of independent forest monitors in countries such as Cambodia and Cameroon. In these instances, IFM was employed as an instrument of donor conditionality and applied in circumstances in which there had been a clear breakdown of confidence between the producer state and its official donors. Though the monitors were NGOs, their ability to act 'independently' in investigative roles derived partly (and paradoxically) from their close association with one of the parties – the donor community.

The dominance of this type of work has arguably introduced a bias in verification thinking towards a single stage in the process (IFM), which tends nowadays to be viewed

as synonymous with verification. The small number of operators that has so far been active further distorts the picture. There is as yet little by way of ‘case law’ which would allow generalised systems to be discerned or professional standards to be proposed. Evidently, there is a need to unpack the notion of ‘independence’ in verification, and identify its main constituent elements. The central aim should not be to safeguard any particular functions or interests but rather to generate the maximum level of credibility for the verification system as a whole.

## 20.2 Perspectives on independence: actor and function

This section examines these issues from two main perspectives: consideration is first given to the context in which verification must function (the *actor perspective* – which actors are best placed to guarantee independent oversight?), and then to the qualities required of the actors involved (the *functional perspective* – which are the functions that require the safeguard of independence if a verification system is to operate effectively?).

### The actor perspective

International extra-sectoral practice helps to highlight some of the main issues associated with independence. ‘Independence’ is a well-defined term in the humanitarian literature (including, for example, the principles of the International Red Cross and Red Crescent Movement) and clearly distinguished from similar concepts such as ‘impartiality’ and ‘neutrality.’ Thus:

- *Independence* is defined as autonomy from association with, or influence of, other parties in its decision-making;
- *Impartiality* is defined as consistency in the application of judgements; and
- *Neutrality* is defined as non-partisanship (‘not taking sides’).

When one seeks to translate these principles into practice in the forest sector, there are a number of alternatives. Key questions include:

- What type of organisation? State? NGO? Private sector?
- What relationship to the host society? National actor? International actor?
- Independence sought through the integrity of the individual actor or through the architecture of the system?

These variables are considered in turn below.

### Type of organisation

The notion of independence tends nowadays to be linked in the development literature with the interventions of civil society actors. This is common to many sectors, not just forestry. It has been associated with a movement which proponents would characterise as the spread of democratic accountability through a process of ‘transnationalisation’, but which opponents would see as the active undermining of such accountability through a process of ‘spreading corporatism’. In the forest sector, there has been a growing tendency to view civil society organisations (particularly NGOs) as the natural guardians of independent standards and of public morality more generally. The donor community has tended to support this approach, viewing civil society as an important

vehicle to hold producer governments to account for the proper use of public resources in extractive industries. There are allegations that this has led to ‘an advantage of trust’ developing between international donors and environmental rights NGOs, and some see this as a disquieting development (see Ronit and Schneider, 1999: 245).

Are NGOs necessarily superior actors to private sector agencies, as tends to be assumed in activist quarters? Assessing this claim is difficult. There have been only a few experiments to date, and these are not necessarily comparable. However, the VERIFOR country case studies present useful (though not conclusive) evidence to test this proposition. In Cambodia (Chapter 13), for example, Global Witness (NGO) was succeeded by SGS (private sector). In Cameroon (Chapter 11), a variety of operators have acted as independent monitors including Global Witness, REM and Global Forest Watch (NGOs), SGS and Cabinet Behle (private sector). In Indonesia (Chapter 15), EIA (with NGO and private sector wings) has operated as an external monitor. On the evidence of these cases, there seems no *a priori* reason to regard any one category of actors as inherently superior from the point of view of independence. That said, there are strong grounds to support the view that NGOs are better placed to influence international public opinion, and probably also to promote transparency.

### **International vs. national actors**

The debate on IFM has also tended to feed a belief that change in timber-producing states is likely to come primarily from exogenous sources. One extrapolation of this view is that, in highly factionalised states, nationals cannot act independently because they will never be free of political associations, even if only in external perceptions and by default. Radical critics would argue that applying the principle of independence in primarily geographic-cum-moral terms serves only to reinforce the subordination of third world countries to first world interests, and symbolises their ideological dependence on the north. For some, there is a suspicion that this is a means for activist groups to impose a boycott on tropical timber in northern markets by a novel route. To others, there is the scent of a hidden agenda, and IFM is alleged to complement certification in privileging low-cost northern temperate producers over high-cost tropical ones (see Smouts, 2002). That such suspicions arise may reflect underlying concerns about the selection of independent verifiers, and the weak involvement of the national constituency.

### **Agency and architecture**

Independence is not solely a characteristic of single organisations, and it may be helpful to focus the discussion more on system features than on specific steps or agency attributes. While independent monitoring by environmental NGOs delivers one form of accountability with a high international profile, there are concerns about the sustainability of this form in the longer term. Greater and more stable democratic accountability could well come from architectural arrangements to deliver independence through the presence of adequate checks and balances.

There are two main variants of the architectural approach: *passive* and *active*. A good illustration of the passive class is provided by the Philippines Multi-sectoral Forest Protection Committees (MFPCs) (see Chapter 14). In this case, independence is ‘passive’ in that it arises out of the architecture of the system, and does not inhere in the purposes of any particular actors. While this is a virtue so long as a wide variety of interests are

involved (in that it requires no active defence of independence against political interests), it is clearly a weak form to the extent that a reduction in the number of players may well produce a system that is biased in its functioning. This indeed appears to have happened in the Philippines, in that, as funds and support have diminished, the MFPCs have come to depend heavily on the voluntary participation of NGOs, most of them oriented to environmental activism, not to local or national economic development.

Alternatively, architectural approaches can be ‘active’, in the sense that mechanisms are deliberately built into the structure to promote independent functioning. The classic instances here are:

- The Ecuador outsourced monitoring system, where the monitoring function is dispersed across a number of different agencies (NGO, state and private sector) and independence derives from the checks and balances between them (see Chapter 10).
- British Columbia, which has some similar features, though with more of a statutory emphasis (see Chapter 5). This case is a particularly interesting one, as it underlines the importance of the credibility of the overall system, rather than particular organisational attributes.
- Peninsular Malaysia (see Chapter 16) also takes an ‘architectural’ approach to independence, but rather than adopting a multi-stakeholder arrangement, focuses on checks and balances between different public sector and external audits. These include mandatory audits by the Federal Forestry Department, third-party assessments under the Malaysian Timber Certification Council, as well as audits of State Forestry Departments against ISO 9001:2004 Quality Management Standards.
- An alternative solution may be to co-locate the monitoring function with a statutory body mandated to investigate abuses of power. In Honduras, for example, an external IFM has acted under the supervision of the Honduran Human Rights Commission, although the latter intends to take over the IFM role itself, at some future date (see Chapter 7).

Such architectural solutions would seem to offer greater potential for in-country accountability as they operate within existing systems of governance. In theory at least, this ought to deliver a higher level of accountability, robustness and sustainability to a national public than externally driven, single-agency approaches.

### **Functional independence**

An alternative perspective is to focus on the exercise of different functions within the process of verification, rather than the actors who carry out those functions. Possibilities in this field include:

- Routine and periodic audits;
- Certifiers;
- Licensing bodies;
- Independent observers; and
- External but overlapping mechanisms (such as ombudsmen).

Several of these functions are likely to be covered by international standards bodies, properly accredited and certified, and (with some qualifications) these may offer important assurances as to the quality of delivery (see Box 20.1). However, the stage which is generally regarded as the most sensitive in the forest sector – independent monitoring – is as yet totally unregulated. This is a cause of some concern, particularly in quarters close to producer governments. Given the significance of the economic, social and commercial interests at stake, there are certainly grounds to consider whether IFMs should also be certified according to international standards, as well as controlled professionally.

### 20.3 Verification in practice

What conclusions can be drawn from this review of independence in forest verification? The concern is to ensure that verification is carried out in ways that are credible to all the legitimate parties, as well as equitable and practicable. Four areas are of particular concern: (i) the breadth of the mandate of the verifiers; (ii) the constraint of commercial confidentiality; (iii) issues of financing to ensure that independence is sustained; and (iv) the issue of conflicts of interest.

#### **The breadth of mandates: governance reform or trade labelling?**

The first point of contention is the mandate of the verifier. An essential requirement is that the objectives of verification are clearly specified, and assessed in ways that are both credible and objective, as well as trusted by all legitimate stakeholders. Audit theory and the standards literature would recommend as narrow as possible a set of functions, with an objective definition of the standards that are to be assessed. However, critics would argue that such narrowing of functions is likely to be counter-productive, and liable to reduce verification to a box-ticking exercise under conditions that are excessively controlled. A much greater impact, they would claim, comes from assessors who are free to ‘chase their quarry through whatever fields it leads them’, and they cite the much greater impact of environmental rights monitors in countries such as Cambodia and Cameroon to support their case.

This does, however, imply a major shift in emphasis in verification work. As with debates on legality standards (Chapter 19), the question becomes the legitimacy of broadening objectives to the point where the focus risks moving away from technical audit to bigger questions, such as issues of political economy. This may have benefits in relation to agendas of general governance reform with broad national buy-in, but it may be less appropriate to trade-related measures such as the EU VPAs. Particular concerns have been expressed about NGO monitors that have taken up environmental positions antagonistic to the state and industry, justifying their positions by the evidence thrown up in the course of their monitoring work. Critics would argue that it is quite inappropriate for ostensible ‘independent observers’ to take up hostile positions on such matters as the timber concession system. The standards literature (e.g. ISO 65/EN4501) emphasises the need for monitors to be free of commercial interests that might influence their judgement. There is a view that the freedom should be more general, and include freedom from association with any form of partisan constituency. Costa Rica may be a

### **Box 20.1**

#### **ISO general requirements for accreditation bodies and certification systems**

ISO is the best known system of standards, though there are other relevant (and often similar) systems such as EMAS, the European Eco-management and Audit Scheme, which operates in the EU and the European Economic Area. International standards offer a number of benefits in the present context, including:

- International recognition;
- Lack of association with specific governments or interests;
- Clarity and consistency;
- Universal access and reference status;
- Participatory definition; and
- Wide but voluntary application.

Some of the ISO standards are already quite widely applied in the field of timber verification such as the ISO 9000 series (on general quality management), ISO 14001 (on environmental management systems) and ISO 19000 (on oversight of monitoring systems, combining ISO 9000 and ISO 14000). The Malaysian states, among others, make extensive use of these standards. In the present context, the two series of greatest interest are those operating in the fields of accreditation and certification: ISO 17011 ('General requirements for accreditation bodies accrediting conformity assessment bodies'), and ISO 65/EN45011 ('General requirements for bodies operating product certification systems').\*

These set clear performance standards which are intended to instil confidence in the operator and the services it delivers. As an example of the approach, ISO 65/EN4501 requires the certification body to:

- Be an identified legal entity, with a separate authority in respect of certification;
- Confine its operations to specific certification activities;
- Identify clearly the links it has with any larger organisation;
- Ensure that its activities, and those of related bodies and non-permanent employees, do not affect the confidentiality, objectivity and impartiality of the certification work;
- Differentiate its certification work from any consultancy/advisory activities; and
- Ensure confidentiality at all levels of its operations.

Governing bodies should represent all the interests involved in the process of certification, with no interest predominating. The aim is 'a structure that safeguards impartiality'.

**Box continues**

\* The ISO 65 standard is identical to the European standard EN 45011. Both ISO 17011 and ISO 65/EN 45011 have been adopted, *inter alia*, by the Central Point of Expertise on Timber Procurement (CPET), a timber procurement advisory service established by the UK government.

**Box 20.1 continued**

While on the surface of it, these set clear standards for operators in the public domain, issues are raised about both the levels of independence they require, and the conversion of the principles into practice. In the former reference, a point of contention is the extent to which potential conflicts of interest are tolerated. In the latter reference, the voluntarism of the system, its heavy emphasis on confidentiality and its lack of association with quasi-policing functions, are constraints and have contributed to the 'safe image' of the ISO approach (see Bass, 1998). The emphasis is firmly on the consensual; thus, the ISO 17011 standard no longer prohibits members from acting where they have a conflict of interest; the standard now only requires that potential conflicts be identified and managed (see Proforest/ ISEAL, 2005).

useful model here, in that all those involved in verification are required to affirm their neutrality on such matters.

There may also be a case for establishing some principles of oversight that would serve both to validate the data generated by the IFM and facilitate its circulation to broad publics, ensuring transparency and accountability. A basic requirement might be a *non-veto principle* – that is, no single individual or organisation has the power to decide on standards, nor to pronounce unilaterally on the performance of systems or actors (see CPET, 2006). The 'Reading Committee' approach employed in Cameroon is suggestive, though other arrangements may be possible which contribute more strongly to the generation of national ownership.

**Commercial confidentiality**

An allied issue concerns the extent to which verifiers are given access to concessionaire information that is commercially confidential, and the use they are allowed to make of such information. There is a danger that the principle of confidentiality will be used indiscriminately to prevent the public from being informed on matters that they have a right to know about (payments to political parties and leaders would be a case in point). However, respect for confidentiality is also an important principle, with legal ramifications, and probably essential for buy-in from the industry.

**Financing independent scrutiny**

Technical inspections are often funded by the industry or from state revenue. Weak points in systems of forest administration are often those at the interface between powerful industrial forces and public responsibilities in isolated environments. In both Costa Rica and Ecuador, for example, the forest regents are a vulnerable node. Though supposedly independent, the fact that they are usually paid by forest owners or timber traders leaves them open to the accusation that they are beholden to their clients.

An equally contentious area is independent forest monitoring, which has hitherto depended heavily on donor funding to secure its independence from political and industry interests. This may deliver independence from the producer government and the industry, though not from all interests in the forest estate.



There are strong arguments in favour of financing from national sources, if these are under democratic control. Ombudsmen arrangements provide a useful model here (see Chapter 3). Securing and allocating funds by the national legislature would help to ensure a degree of independence from both partisan political forces and external funders. In practice, however, the legislature may well be subordinate to the state apparatus, so that the effect may be to reinforce, not diminish, the ‘governance conundrum’ (i.e. the situation where authority lies in the hands of those whom outsiders would regard as most suspect). Even in the case of British Columbia (a ‘high governance’ situation, as conventionally defined), the Forest Practices Board is not accountable to the Legislature (unlike the BC Ombudsman and Auditor-General), but receives its funding from the Treasury. This makes it potentially vulnerable to influence, both directly (from government) and, indirectly, through the political connections of the timber industry.

Other alternatives do exist (see Brown et al., 2004). Some systems operate, at least in part, by hypothecating (earmarking) fines and penalties – though this principle is suspect in that it creates a public interest in indiscipline. Alternatively, stakeholders may be encouraged to participate on a self-funding basis. This was the case with the second phase of the Multi-sectoral Forest Protection Committees in the Philippines. However, this can risk leaving the verification body open to capture by particular interest groups.

### **The approach from ‘conflict of interest’**

Underpinning much of the debate about independence is concern about conflicts of interest. The certification literature is instructive here. In relation to ethical certification, for example, ISEAL identifies a range of interests which might lead to conflicts of interest. Some of these are highly pertinent to the issue of independence in service delivery (Proforest/ISEAL, 2005). These can be grouped under five generic headings:

- *External pressures* – whether political or financial. Financial pressures may concern direct sources of income or indirect commercial pressures (for example, a desire not to affect the wider profile of a company’s work);
- *Conflicts between legitimate, allied functions* – for example, where capacity-building work may interfere with independence, to the extent that this is perceived to give the organisation an interest in positive assessments of a partner under scrutiny;
- *‘Judge and jury’ problems* – as when the same organisation is involved in both accreditation and standard-setting, or certification and standard-setting;
- *Advocacy* – where an organisation’s mission is held to compromise its objectivity; and
- *Practical necessities* – as when an organisation or individual is recognised to have interests in conflict, but to be the sole available agency or actor with the necessary competence.

The Proforest/ISEAL report advises a process-oriented approach, which aims at achieving conflict-free outcomes through systematic identification of conflicts and the application of a range of mechanisms for their management (ibid.). These would include: *removing the conflict* through separation of activities or their prohibition; identification of *rules and systems*, as with ISO Guides (though, as noted above, these do not always

resolve the conflicts in question); use of *checks and balances*; and ensuring that the activities in question are subject to *transparency and balance*.

## 20.4 Summing up

Interest in independence in the verification literature has tended to focus on IFM, the justification being that this is where it is most critical. A clean bill of health from a sceptical IFM as to the legality of a country or producer's timber supply would itself be sufficient to validate the whole chain. It does not necessarily follow, however, that this function needs to reside in a single agency.

Two concerns emerge as critical: first, the steps which all actors need to take to safeguard their independence, and second, the steps which governments and their partners need to take to ensure long-term transparency and accountability, in relation to the information generated by independent verifiers.



## Chapter 21

# Developmental impacts of forest sector verification systems

**Note:** This review is authored by Kate Schreckenber and Neil Bird and is based on Schreckenber, K. and Bird, N. (2006) ‘Developmental Impacts of Verification Systems in the Forest Sector’, VERIFOR Briefing Paper No. 3. London: ODI.

### 21.1 Introduction

This chapter reviews the likely impacts of verification systems, drawing on the experiences reported in the VERIFOR country case studies. There has been very little formal impact assessment of forest sector verification systems to date. Of all impacts, developmental impacts appear to be the most poorly considered, understood or planned for. Aside from the perennial problem of attributing causality to development interventions, there seem to be two main reasons for this. First, many of the verification systems are recent and their developmental impact is, as yet, undetermined. Second, where a system has been externally imposed, there may be little national interest in assessing its impacts. Thus, findings are necessarily tentative at this stage. Nonetheless, a number of issues can be highlighted from the emerging global experience of legal verification in the forest sector:

- How can the interests of all stakeholders be taken into account in ways that allow clear and unambiguous objectives to be set for the verification system?
- What is the nature of the likely developmental impacts of a verification system and how can these be assessed so there is some degree of confidence over attribution?
- How can one separate out implementation issues from the influence of the legal framework on which the system is based?
- How can potential negative impacts of verification be minimised?

### 21.2 Stakeholders, drivers and objectives of verification systems

The establishment of verification systems has been driven by several different objectives. These vary, depending on which stakeholders are involved and who holds the greatest power to push through their agendas. Each group of stakeholders may have very different reasons for wanting to see a verification system established. Some of these interests are stated explicitly, while others (including, at the national level, the resolution of forest tenure rights and, at the international level, addressing imbalances in timber trade) may be unstated. As discussed in Chapter 18, some objectives may be mutually reinforcing while others may be in conflict, requiring compromise in the system’s design.

For many stakeholders, the ultimate goal is likely to be ‘improving national economic growth in a sustainable manner’. The potential for verification to lead to poverty reduction is often not stated explicitly – a reflection, perhaps, of the fact that poverty champions, such as national civil society, often have the weakest voice during the design of verification systems. There is an ongoing debate about whether verification systems should be poverty-neutral or actively designed to have positive impacts on the poor. The EU Action Plan for Forest Law Enforcement, Governance and Trade appears to take the neutral approach, seeking solutions to the illegal logging problem, which ‘do not have an adverse impact on poor people’.

In a limited sense, a verification system *per se* has only one overarching objective, namely to demonstrate that observable behaviour on the ground is compatible with existing legislation. Individual components of a verification system may, however, have their own objectives, which sometimes make specific reference to development objectives. In Ecuador, for example, the establishment of the public/private body *Vigilancia Verde* as one of three components of the verification system included the objective of involving civil society in verification and making legality more accessible for small-scale producers. In the Philippines, the Multi-sectoral Forest Protection Committees (MFPCs) were tasked not only with verification but also with delivering extension services and helping to create alternative livelihood opportunities.

### 21.3 Direct and indirect impacts of verification systems

In achieving its main purpose of verifying compliance with existing legislation, a verification system can have many impacts. These may be direct or indirect.

Direct impacts of the verification process include:

- *Increased compliance.* This is the most evident impact of a verification system and has been observed in several countries. In Ecuador, for example, seizure of illegally transported wood doubled in the two years after the introduction of the verification system, while more than 120 logging licences were withdrawn for non-compliance.
- *Increased government revenue from penalty infractions.* Catching non-compliant operators has brought in additional, significant revenue for governments as far apart as Cambodia, Cameroon and Malaysia.
- *Increase in other claims and disputes.* Verification may be disputed. For example, the Verification Review Council in Indonesia was established to deal with complaints regarding certification of forest management units.
- *Increased operating costs for industry.* Compliance is likely to be more costly than operating illegally. Although the difference may sometimes be only marginal in financial terms (as appears to be the case in Ecuador), in other countries compliance entails considerable costs in meeting bureaucratic requirements.
- *Increased availability and accuracy of information.* Establishment of new verification systems relies heavily on modern information technology, as the Brazilian experience has demonstrated. The use of tools such as GPS and satellite tracking systems provides a greater degree of information about the source and movement of timber than has been possible previously.

Indirect impacts, arising from the use of the products of the verification process, include:

- *Concentration of the industry.* As verification of compliance becomes more stringent, some (often small) companies may be unable to meet the necessary standards. In addition, small producers often bear a relatively higher burden of sanctions because they are easier to apprehend by under-resourced government officers and have less political clout than major industrial concerns. In the case of Costa Rica, the fact that it takes one year to obtain approval for management plans has led to the development of a discretionary system that favours those with political or financial power. As smaller producers are forced to cease operation, the industry is increasingly concentrated in a few hands.
- *Small operators marginalised into illegality.* As the legal industry becomes more concentrated, small producers may be pushed into illegality. In the case of Indonesian Papua, police sweeps were very effective in stopping illegal movements of timber. However, these also had a severe impact on the poor, as all community forestry licences were withdrawn. The cancellation of these licences was apparently because they were being abused by syndicates to secure access to the resource. This left communities in illegal limbo, with entire villages imprisoned while they were investigated by the police.
- *Displacement of illegal timber harvesting to non-forest lands.* The limited focus of verification systems on forest land and timber production – at the expense of clandestine harvesting and land-use change – has pushed illegal activities into other (agricultural) land-uses, as noted in Costa Rica.
- *Improved planning.* More accurate information about actual harvested yields can translate into better planning at the level of the processing industry.
- *Greater transparency.* Wider circulation of information leads to greater empowerment of communities, as in the case of Cameroon where communities receive a proportion of the forest taxes in a public ceremony. It can also lead to greater engagement by civil society and other stakeholders in forest policy processes. The availability of information online in the Brazilian log tracking system initially led to the federal environmental agency IBAMA being overwhelmed by public criticism.
- *Impact on forest policy process.* A high level of disputes can eventually lead to the downfall of the verification system, as happened in Cambodia. However, initial antagonism can also result in a longer-term positive impact of raising public awareness of forest governance issues, as has been the case in Cameroon.
- *Disincentive to plant trees.* Depending on the cost structure, verification may act as an unwitting disincentive to plant trees. This is the case in Ecuador, where planted trees now have higher transaction costs to bring them to market than agricultural produce.

#### 21.4 What factors determine the impacts of a verification system?

As is evident from the previous section, the impacts of verification can be wide-ranging and may be perceived as negative or positive by different stakeholder groups. To maximise

the chances of successful implementation of a verification system, it is important to understand which factors determine its impacts.

### **Policy and legislation**

The aim of a verification system is to verify that the law is being implemented. Thus, even an excellent verification system cannot deliver more than is required under the law. In the case of British Columbia, NGOs and others continue to be concerned that, in spite of an effective verification system that delivers very high compliance levels, sustainable land-use is not being achieved under the present legislation, stringent though it is relative to that in other countries. According to the environmental movement, improving verification is desirable but the real need is to improve the province's forest laws. In tropical timber-producing countries, there is similar concern about the lack of consideration of the needs of forest-dwelling communities within the existing policy and legislative framework. In a review of forest-related laws and enforcement in Bolivia, Cameroon, Canada, Honduras, Indonesia and Nicaragua, Colchester et al. (2006) found that the rights of the poor are inadequately protected. Under these conditions, any verification system that leads to more rigorous enforcement of the law is likely to actively disadvantage the poor.

### **Design of the verification system**

The question of which laws to verify (see Chapter 19) enters into the design of the verification system. An important element of the design is the degree of independence that is achieved. As discussed in Chapter 20, independence can be achieved in a number of ways including through the architecture of the system (involving several different actors who can check each other) and/or by focusing on the independence of key components of the system (e.g. the independent monitor in the Cambodian and Cameroon cases). A system that is not independent, but beholden to a particular set of interests in the forest sector, is more likely to ignore impacts that affect other interest groups.

### **Implementation of the verification system**

A verification system may be well designed but constrained by financial and/or staff constraints. As discussed in Chapters 9 and 23, the new satellite-based system established by IBAMA in Brazil allowed for the creation of location-specific maps to highlight legal and illegal timber harvesting. The robustness of this system is weakened by the need to secure funding on a three-monthly cycle to purchase the relevant mapping images so that government inspectors can stay one step ahead of illegal loggers. IBAMA also has a limited number of staff to carry out sufficient inspections on the ground. Funding is a constraint in almost all the cases reviewed, an extreme example being the Philippines, where many of the MFPCs ceased to function once project funding ended.

For some roles, the approach taken by specific actors within the verification system may also have an effect on the kinds of impacts created. Thus, the role of independent monitor in Cambodia was first filled by Global Witness, an international advocacy-oriented NGO, which raised considerable suspicion as to the monitor's agenda. In contrast, its successor, the private company SGS, was accused of interpreting its ToR too narrowly and not seeing beyond its remit. In British Columbia, the Forest Practices Board has become more conciliatory and constructive over the years in an attempt

to improve the timber industry by praising good practices and innovation as well as criticising non-compliance.

## 21.5 How can negative developmental impacts be minimised?

Several of the indirect impacts of verification systems may prove negative for poor people. Such negative impacts are generally unintended and sometimes unexpected. They may result from an insufficient understanding and recognition of:

- The interests of different stakeholders;
- Their power to impose their interests; and
- The separate impacts of different components of the verification system.

From a developmental perspective, there is great interest in ensuring that negative impacts on poor people are minimised. At the very least, poor people should be enabled to access dispute resolution mechanisms (e.g. through provision of legal aid) to appeal against any negative impacts that arise from verification. However, the VERIFOR country case studies and the broader literature also suggest a number of possibilities for minimising negative impacts.

### Explicit statement of objectives and objections

A clear and unambiguous statement of the objectives, and possible objections to these, during the design phase of the verification system may help minimise its negative impacts on the poor. Unresolved concerns may lead key individuals or institutions to block the effective implementation of the system. In Ecuador, for example, one of the unstated reasons why the Ministry of Environment did not wholeheartedly support outsourcing of some of its administrative functions to a private sector operator was the loss this implied of a key revenue-generating activity. The Ecuador case points to the value of embedding the verification system within a broader policy reform process (i.e. the national forest programme), which, *inter alia*, allows for the objectives to be determined through consensus in a transparent way.

### Poverty and social impact assessment

Ideally, the design of a verification system should benefit from an *ex ante* poverty and social impact assessment (PSIA). Identifying any likely impacts of these kinds in advance will help enable: (i) better decisions to be made about which interventions should proceed and how; and (ii) mitigation or compensation measures to be implemented, as necessary. Importantly, PSIA's can provide insights into the differential distribution of impacts among different groups in society, and particularly the impact burden experienced by vulnerable groups.

The use of PSIA's or an *ex ante* cost-benefit analysis for all stakeholders could also help stakeholders to reach agreement on the relative importance and acceptability of the different possible impacts. Some of the unexpected or undesirable impacts might be considered sufficiently serious to require a complete rethink of the verification system, and possibly of the legal framework on which it is based.



### **Parallel process of legal reform**

Verification cannot substitute for legal reform. Hence, if developmental impacts are desired, these need to be specified in the forest legislation, the functioning of which is being verified. For example, where rural communities lack basic rights, there needs to be a pathway to change the law to ensure that rigorous law enforcement does not unjustly disadvantage them. The impacts of verification will vary according to the extent to which the legal and regulatory framework is amenable to such change.

### **Recognition of the legality of poor people's modes of using timber**

Building on the previous point, the legal change that may be required is simply to achieve recognition of the reality of how poor people use timber. In both Costa Rica and Ecuador, licences are given for several land tenure systems, recognising the fact that small producers often do not have full title. Similarly, the Brazilian Law on Public Forest has opened the door to legality for timber harvesting operations in 45% of the Brazilian Amazon where harvesting was previously illegal on public forest land. The 100-year concessions being allocated in Sabah, Malaysia, recognise not only the usufruct rights of communities within these concessions, but also their right to establish community forests. In addition to recognising the uncertain tenure status of many forest-dwellers, some laws make the distinction between trees in forests and those planted in agroforests or small plantations. Thus Costa Rica allows farmers to obtain free transport permits for felling up to three trees per farm per year. Farmers who have planted trees in agroforestry systems or forest plantations do not need a permit; they simply need to obtain a certificate from a forest regent.

### **Increased access to legality for poor people**

Several of the verification systems reported in the country case studies attempted to make it easier for small producers to access legality. In Ecuador, this was achieved through the introduction of regional, local and itinerant administrative units to bring administrative services directly to communities. In Brazil, timber transport permits can be obtained over the internet, even in very remote locations.

### **Improved information flows and transparency**

Providing more information, in a form that is accessible to small producers, is an important way of facilitating their engagement in the verification process. In the case of Cameroon, communities can hold their local councils accountable as they now know how much tax revenue is being distributed to them from the central forest fund. Improved information flows may also open the verification debate to non-forest-rich areas, the residents of which might object to the return of forest taxes to communities in forest-rich areas only.

## Monitoring and evaluation

In addition to *ex ante* impact assessments, verification systems need to be subject to consistent and transparent monitoring and evaluation to understand the impacts on different groups. Examples of existing measurable indicators provided in the case studies include:

- Increased financial resources made available by government;
- Increased enforcement capacity (trained staff, cases prosecuted, etc.);
- Reduced bureaucracy (time taken to obtain a logging permit; number of administrative steps required by the forest user);
- Strengthened checks and balances within the regulatory system that satisfy all parties; and
- Increased national ownership that includes both government and wider civil society.

Processes are also needed to ensure that the results of monitoring and evaluation activities can be reported freely and that any necessary remedial action is taken.

## 21.6 Summing up

The complexities of the drive to legality assurance in an international framework are nowhere more apparent than in relation to the assessment of impacts. The diversity of stakeholders with an interest in the forest is compounded by the introduction of new stakeholders into the process and new concerns relating to the custodianship of global public goods. Minimising negative impacts prior to implementation and ensuring that the system can be amended to take account of unexpected impacts are key issues to be addressed if the long-term sustainability of the verification system is to be ensured.



## Chapter 22

# Convergence between forest certification and verification in the drive to legality assurance

**Note:** This case study is authored by David Brown and Neil Bird and is based on Brown, D. and Bird, N. (2007) ‘Convergence between certification and verification in the drive to legality assurance: assessing the pros and cons’, VERIFOR Briefing Paper No. 6. London: ODI.

### 22.1 Introduction

The drive to legality assurance in the international timber trade has increased interest in the potential of private sector forest certification schemes to serve as a means to both promote sustainable forest management and verify the legality of forest production. There is evidence of a convergence between the two streams of policy, with several producer governments reported to be willing to treat certification as a surrogate for formal legality assurance. Whilst such a convergence does offer benefits in terms of reducing the costs and administrative load to producers, it is not without risks. This chapter considers the pros and cons of the convergence.

Since the early 1990s, forest certification has been one of the main means to promote sustainable management practices and a number of certification schemes have risen to prominence. The Forest Stewardship Council (FSC) scheme established in 1993 was the early front runner and for a number of years was the sole international accreditation organisation. Its decision-making structures were innovative in the way they brought together divergent interests, and through its ‘Principles for Forest Stewardship’ the FSC helped define what sustainable forest management should look like. Other certification schemes followed, initially at the national level (the Canadian Standards Association scheme and the Sustainable Forestry Initiative in the United States). However, the main competition for the FSC has come from a regional initiative – the Pan-European Forest Certification scheme (PEFC) launched in 1999. The success of the PEFC in working with European industry interests and small forest owners led to its re-launch in 2003 as the Programme for the Endorsement of Forest Certification schemes, with global coverage. The largest area of certified forests worldwide now comes under the PEFC brand (Nussbaum and Simula, 2005).

### 22.2 Legality in certification schemes

All of the major forest certification schemes demand proof of legality as a precondition for receiving a certificate (see Table 22.1).

**Table 22.1**  
**Legality and sustainability requirements in the major forest certification schemes**

Certification scheme	Legality requirement	Sustainability requirement
Canadian Standards Association (CSA)	✓	✓
Forest Stewardship Council (FSC)	✓	✓
Malaysian Timber Certification Council (MTCC)	✓	✗
Programme for the Endorsement of Forest Certification (PEFC)	✓	✓
Sustainable Forestry Initiative (SFI)	✓	✓ [provided COC system is used]

**Note:** The five certification schemes included here are those that are accepted by the UK's Central Point of Expertise on Timber Procurement (CPET), and the comparisons shown are taken from CPET's own assessment of these schemes.

**Source:** [www.proforest.net/cpet/cpet-s-assessment-of-evidence/assessment-of-certification-schemes-category-a/](http://www.proforest.net/cpet/cpet-s-assessment-of-evidence/assessment-of-certification-schemes-category-a/)

Of particular interest in the present context is the freedom granted to certifiers to make their own judgements as to the level of compliance with national laws. Where the government in question has clarified the legal requirements, the certifier will draw on these standards in making a decision on legal compliance. More problematic are those situations in which the law is contested by important interest groups. There is a danger that in such situations certifiers will hesitate to explore any conflicting interpretations (for example, between the view of the state and the views of civil society).

In the case of the FSC, compliance with the law is one of ten principles of sustainable forest management which must be complied with if a forest operation is to be certified. These principles are expressed as generic (global) FSC Criteria and Indicators (C&Is), which have then to be adapted to the national context. This is usually done through the development of national certification standards involving a process of stakeholder consultation. In the absence of such guidance, certifiers have to interpret the generic C&Is themselves, putting together a checklist which is then available for public view. They may well draw on international advisory standards such as those proposed by the International Tropical Timber Organization (ITTO) and, in the sub-regional context of Central Africa, the African Timber Organization. Using such guidelines, the individual certifier then makes a judgement as to whether there has been legal compliance. The short time available for most forest certification assessment missions means that this decision has often to be made quickly, based on readily available evidence. In effect, the application of the law is turned into an auditing event. This is not necessarily a foolproof process, but certifiers are protected by the non-liability clause within the general introduction of the FSC C&Is. This states: 'FSC and FSC-accredited certification organizations will not insist on perfection in satisfying the P&C' (Para 4 of the Introduction). Clearly this is some way removed from a legal process in the sense implied in a court of law.

Certification has proven an effective instrument in certain types of forests, chiefly planted forests and others with a high degree of standardisation and secure access and ownership rights. This has been typically the case in the temperate regions of Western Europe and North America, and (to a varying extent) Central and South America. However, certification has proven less applicable in other contexts, particularly the tropical regions of Africa and South-East Asia where natural forests are more complex in their structure (and thus, less easily reconstituted after harvesting) and where, for a variety of reasons including the colonial inheritance, access and ownership rights are problematic. These countries have also tended to be ones which are considered ‘high-risk’ in the timber trade, because of their questionable levels of forest governance.

### **22.3 Verification as a new policy initiative**

It was partly in recognition of these problems that, in the early 2000s, attention turned to the verification of legality as a vehicle to progress international forest policy. This was seen by some to offer a more feasible way of improving the quality of forest management, without recourse to complex notions of sustainability. Legality was considered a much simpler concept, and one that would be easier for states to deliver.

However, as the drive to legality assurance has advanced, under the impetus of initiatives such as the EU’s FLEGT programme, there has been evidence of a growing convergence between the two movements – certification and verification. Paradoxically (given its more complex associations), certification has been increasingly viewed as a potential surrogate for legality assurance, and several producer governments are reported to be considering treating some private sector certification schemes as equivalent to verification of legality, thus providing a ‘bye’ for certified concessions in relation to the administrative demands of legality assurance. This convergence is quite separate from industry-led initiatives to ‘verify’ timber in terms of legal origins and legal compliance (for example, the FSC’s ‘Controlled Wood’ standard, and SGS’s ‘Validation of Legal Timber’ programme).

How should this convergence between certification and verification be assessed, in relation to the quality of forest management and the broader issues of social justice and equity for forest-dependent peoples?

### **22.4 FLEGT and legality assurance**

Legality assurance is a much narrower concept than sustainability, focusing only on the compliance of the logging and transformation activities with international, national and local laws, rather than more demanding issues relating to sustainable exploitation in its various ecological, social and economic dimensions. That said, legality assurance still represents a major challenge, particularly in the developing world. The extent of the challenge is evident from some of the case studies covered in this book. An extreme case is that of Indonesia (see Chapter 15), where there are about 800 forest-relevant laws, regulations and decrees. In such situations, ensuring conformity with all national and local laws may be factually impossible. As discussed in Chapter 19, deciding which of the laws are central to legality assurance may be no easy task. The forest industry is likely to press for the narrowest interpretation, limited only to forest sector standards;

campaigning NGOs are likely to press for much broader interpretations, bringing in issues of tenurial rights and the interests of indigenous groups. This may well create an impasse, with governments unwilling to arbitrate between the two.

In other situations, the challenges may be more straightforward – at one extreme, how to overcome complicity by state actors with dishonest industry operators; at another, worthy technical demands which prove difficult to translate into practice, thus compromising the efforts of even the most legitimate operators to ‘act legally’.

## 22.5 The convergence: pros and cons

The present convergence between legality assurance and certification is a new development and one that is likely to have implications both for certification bodies and certifiers, and the movement to assure legality. In operational terms, such a convergence has much to recommend it. However, certification and verification are contrasting types of instruments, and their intentions are arguably different (see Table 22.2).<sup>1</sup> This section first examines the arguments in favour of the convergence, and then the arguments against it.

**Table 22.2**  
**Some key differences between forest certification and verification**

<b>Certification</b>	<b>Verification</b>
Private sector-led voluntary initiative	Government-led statutory initiative
Global in scope and practice, but most advanced in the north	Global in scope, but not in practice; focuses on ‘high-risk’ countries
Aims to achieve the broad concept of sustainable forest management	Aims to achieve the narrower concept of legal compliance
Involves both process and performance standards	As yet unresolved, though the EU position on VPAs is to favour performance standards

### Arguments for the convergence

First, the fact that all the major certification schemes demand adherence to national and local laws as a precondition for certification implies that there is an essential overlap between certification and verification of legality. If a forest area is certified then the wood production from that forest must be in compliance with all relevant laws. It therefore makes sound financial and administrative sense, both for producer companies and governments, to treat certification as a surrogate for legal verification in that it avoids duplication of bureaucratic requirements and associated costs.

Second, because certification relies in the last analysis on an independent assessment of adherence to legality by an accredited certifier (usually a commercial firm), legality assurance under certification avoids the danger to national sovereignty that might be perceived when outsiders (donors, NGOs and others) are drawn into debate with producer governments on the interpretation of national laws.

Third, the new demand-side schemes, such as the various European procurement schemes that have recently been put in place, are felt by their champions to be working

<sup>1</sup> For a fuller comparison see Table 2.1.

well, and they may provide models for producer as well as consumer states. Schemes such as the UK's Central Point of Expertise on Timber (CPET) aim to provide detailed information and advice on how public sector buyers and their suppliers can meet the UK government's requirement that only timber from verified legal and sustainable sources be used by their contractors. Such schemes appear to address a real need among timber buyers and retailers who wish to operate on a legal basis, but who have hitherto found it difficult to assess their suppliers.

CPET identifies four key dimensions of legality: use rights, compliance with relevant laws, payment of government taxes and compliance with the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Use rights are usually the most problematic. For example, the Malaysian Timber Certification Council (MTCC) has been opposed by rights NGOs on the grounds that native customary rights may be eroded by the formalisation of forest tenure (see Chapter 16 and Nussbaum and Simula, 2005).

In purely practical terms, it is beyond the capacity of procurement schemes to assess individual suppliers. These schemes rely on certification standards to act as proxies in this regard. Producer governments seem to be looking to certification schemes for largely the same reasons. Proponents would argue that, while such schemes may not be ideal with regard to legality assurance, they are good enough for the purpose and solve a real dilemma for the forest industry.

Experience outside the forest sector would also support this positive assessment. For example, meat standards authorities in Europe recognise the value of private sector certification schemes, and reward enterprises that have taken the trouble to comply by lowering the regulatory requirements on them (see Chapter 3). This would seem eminently sensible in managerial terms.

### **Arguments against the convergence**

Not all commentators are so favourably disposed to the convergence. Criticisms of the use of certification as a surrogate for legality assurance relate to issues both of principle and of practice.

#### **Issues of principle**

To sceptics, the fundamental issue is the legitimacy of voluntary schemes as surrogates for national governance. They contend that certification is a tool of the commercial sector and was not designed to serve either the public interest or the regulatory requirements of nation states. Such schemes may provide a credible market-based solution for forest operators who wish to demonstrate their high standards of forest management to consumers of wood products. However, critics argue that certification should not substitute for the legitimate place of government in regulating national economic activity. International accreditation agencies such as the FSC or PEFC are not answerable to electorates in the same way that national democratic governments are. If these agencies are answerable at all, this tends to be across national boundaries rather than within them. Indeed, it could be argued that certification schemes have the potential to undermine the development of states by paralleling essential state responsibilities that need to emanate from national institutions as defined under the constitution. This may be particularly pertinent to the case of fragile states where there is an attempt to rehabilitate state



institutions. On this view, legal compliance is not an area where the private sector has legitimacy to operate on its own.

A second criticism is that certification schemes were not designed for the purpose of ensuring legal compliance. Rather, forest certification was established with the aim of helping legitimate forest users demonstrate responsible forest management (Colchester, 2006). Certification schemes have thus been designed with a very broad goal in mind – that of sustainable forest management – rather than the more limited objective of legal compliance. Also, a specific user group was targeted in the design of certification schemes, namely those who wish to demonstrate high levels of forest stewardship. In contrast, legal verification needs to apply to all operators in the forest sector. In order to have any effect, verification must be able to identify those who operate beyond the law and, through enforcement activities, bring such actions to an end.

As Figures 1.1 and 1.2 in Chapter 1 demonstrate, certification is largely undeveloped in those countries where illegal wood production is common. It is most advanced in countries where legal compliance is not considered to be a major problem for policy development and is largely restricted to the developed north (although there is certification of forest plantation schemes in the south). The reasons why certification has not moved forward more quickly in tropical natural forests reflect the significant constraints that forest management faces in terms of economic, ecological and social goals in these environments. None of these constraints can be easily or quickly addressed, as experience over the last decade has shown. One assumption that can probably be made in this situation is that the lack of certification in these environments is not the result of lack of commitment or effort on the part of the certification bodies. A corollary of this, sceptics would argue, is that any rapid increase in the numbers of certified forests in hitherto uncertifiable regions is likely to be the result of a compromise on standards, rather than a sudden change in the levels of compliance with them.

### **Issues of practice**

Environmental rights NGOs have alleged that there are instances where certification standards have been accepted as proof of legality in situations when there is clear evidence of illegal production. Even where such claims are justified, they do not totally undermine the enterprise; it is inevitable that some mistakes will be made. Nonetheless, they may reinforce the suspicion that because commercial interests are driving the process, this is leading to compromises on standards of performance.

### **Other areas of concern**

There are two other main areas of concern:

- Conflicts of interest between service providers; and
- Anti-small producer and anti-poor biases.

*Conflicts of interest.* An issue that warrants attention is the power of accreditation bodies to prevent conflicts of interest arising with individual certifiers. The arrival of legality verification as a major new international policy initiative has led to a response by the certification industry in order to capture new business. As a result, certifiers could find themselves verifying legal compliance under public sector timber legality assurance schemes whilst also certifying legal compliance under private sector certification

schemes. There is a potential conflict of interest here, which could lead to allegations that commercial interests are influencing compliance decisions. This is over and above concerns that certification personnel may sometimes cross the line in their relationship with those operators they certify. Despite accreditation organisations having rules to limit this abuse it remains a grey area. The problem is accentuated by the practice of some certifiers to contract certification missions to freelance consultants who could find themselves ‘working for both sides’.

*Anti-small producer and anti-poor biases.* A recurrent theme in this book is the relationship between policy and equity. Many legally-compliant (and particularly small-scale) operators have seen no financial incentive to invest in voluntary certification schemes. Such operators would be put at a disadvantage should certification be used as an early proxy for legal compliance. With certification having already been taken up by the more capital intensive forest operators worldwide, there is a danger that small-scale operators will be squeezed by these larger concerns. Early market capture would be won by existing certified operators through their advantage of being able to demonstrate legality in a credible way, particularly in the higher-value export markets. This could accentuate the incipient consolidation of the industry (a point considered further in Chapter 26).

## **22.6 Ways forward – certification as a complement to verification?**

High-profile controversies surrounding the issue of forest certification are not new and have become part of the territory for all of the major certification agencies. What may be new, however, is the effect on certification of the heightened interest in the issue of legality. This is a product of the policy focus on FLEGT, particularly the implementation of the EU Action Plan. The rise of this theme in forest policy could well have a profound influence on public perceptions of, and interest in, questions of legality. This could particularly affect consumer markets, most obviously negatively and at the high-risk end of the spectrum. Both accreditation bodies and certifiers will need to take note of these developments and increase their vigilance over the application of their standards. In countries in which Voluntary Partnership Agreements with the EU are presently under development, legality definitions are likely to be very strongly in the public eye. Certifiers may have to revise the criteria by which they assess legal compliance with national standards in such situations, again with increased rigour and transparency in mind.

A rather different issue is how the convergence of certification with verification should be assessed in broader governance terms, not just as regards the interpretation of legal compliance. There are surely good *prima facie* grounds to welcome any measures that promote the likelihood of sustainable management and of the public consultation mechanisms needed to achieve it. Likewise, it makes sense to give preferential treatment to those operators who are already trying to act legally, and to absolve them from unnecessary additional costs. However, critics would argue that using certification as a proxy for legality is ‘putting the cart before the horse’. To be effective, verification of legality requires the authority of the state and clear lines of responsibility not linked to financial interest. Transferring this authority too far towards the marketplace risks undermining legality in the interests of commerce even before the FLEGT movement has got seriously off the ground.

Thus, there are some strong arguments to maintain not only a conceptual but also an institutional separation between certification and legality assurance. This separation would give priority to state definitions of legality standards and would encourage a rigorous and single-minded assessment of them.

If this interpretation is accepted, two sets of conditions could be imposed on certifiers:

- Certifiers may need to be much more rigorous and transparent in making their judgements of conformity with the law, if their interpretations are to be accepted without question by NGOs and other activists, and ultimately by the public at large.
- Accreditation agencies would need to take steps to ensure that their aims are not compromised by commercial goals, in relation both to:
  - Assessments of compliance with the standards, particularly with the passage of time; close tracking will be required to ensure that there is no downward trend in the standards applied.
  - The individuals and organisations on which they draw to assess compliance; care will need to be taken to avoid any conflicts of interest.

There may well be a need for clear codes of conduct to govern both streams of work and maintain their separation. It may also be useful to consider some sort of licensing scheme for verifiers of legality.

## 22.7 Conclusion

There are some ambiguities in the present functioning of the major systems of certification with regards to proof of legal compliance, and it is likely that these ambiguities will be magnified and underlined by the new movement to verify legality. An important message is that both streams of regulation, voluntary and statutory, need to develop simultaneously. However, one must not forget the issue that brought them both into being – the need to improve the generally poor governance of the forest sector. The state clearly has a critical role to play, being answerable to its citizens (even if imperfectly) in a way that private sector institutions are not.

This assessment is not necessarily relevant only to the certification movement. The context for legality assurance would also seem to be changing, so the effects could be two-way. Particularly in the area of institutions, forest authorities may have much to gain from looking to the experience of certification over the last decade and seeking to build upon its strengths when they come to verify legality. These strengths lie in the areas of systems governance and the accreditation of service providers – both areas where legality assurance is presently under-conceptualised and on which its credibility will depend. Thus, while the convergence of certification and legality assurance may present a particular challenge to the more established movement (certification), this movement may yet have something to offer to the new policy initiative.

## Chapter 23

# New technologies to support improved forest governance

**Note:** This case study is authored by Neil Bird and Hans Thiel and is based on Bird, N. and Thiel, H. (2007) 'New technologies in support of improved forest governance: factors influencing success', VERIFOR Briefing Paper No. 7. London: ODI.

### 23.1 Introduction

The application of innovative technology opens up new possibilities for regulatory control in the forest sector. The introduction of new technologies is gradually taking place as countries recognise the potential benefits and develop the necessary capacity. This chapter examines these new technologies from a forest governance perspective and suggests how they can be supported by institutional arrangements that strengthen public accountability and transparency and allow for independence of action. The chapter starts with a general overview of these technologies in the context of the forest sector, followed by a consideration of the evidence, with particular reference to Brazil. Finally, the chapter draws together the findings and identifies some key issues that influence the successful uptake of technology in forest governance systems.

### 23.2 What technologies are involved?

A major innovation in recent years has been the introduction of *remotely sensed data* taken from satellites and high-altitude aircraft to produce detailed images of forested landscapes over large areas. Images of whole forests can now be acquired with an ease that allows this information to be readily used by forest authorities to identify anything from forest fire events to unauthorised clearings within the forest.

As the information is in digital form, it can be transformed and incorporated into *geographical information systems* (GIS) and combined with other types of geographical information sources (e.g. topographic maps) to build up a comprehensive analysis of forest cover and, over a period of time, land-use change (of which deforestation is clearly a major interest). Overlays of official forest boundaries taken from topographic maps can now be readily combined with recent satellite imagery to highlight the difference between the gazetted forest boundary and the present-day forest cover.

Other information can be added into the GIS through the use of hand-held *global positioning systems* that identify and record the location of point data. Relevant data for the forest sector range from the location of wood processing facilities to the position of log collection points in the forest and even individual trees.

*Internet-based technologies* (including easily accessible online and integrated databases) offer new opportunities to communicate information that was previously

paper-based. Administrative forms and authorisation permits that form the core of national forest regulatory controls can now be transferred electronically between the forest authority and users, offering huge savings in time and effort. The World Wide Web is an exceptional tool for making forest administration information available more broadly and in a transparent way.

### **23.3 What is expected from these new technologies in forest governance systems?**

There are a number of governance failings in the forest sector that these new technologies need to address. Insufficient coordination and connection between government information and administration systems leads to considerable inefficiency. Land tenure records, environmental administrative procedures, land-use change monitoring, and public tax and revenue collection data may be lacking, incomplete or out-of-date. Where forest administration offices are located in regional centres remote from forest areas, rural businesses often find it difficult to ensure that all the administrative requirements associated with legal compliance are kept in good order.

More broadly, a common problem is the poor accountability of the forest authority caused by a lack of information. Data on forest licences and revenue payments are often not open to public scrutiny, which lays the system open to misuse.

However, if large-scale uptake of new technology in the forest sector is to occur then the various user groups need to appreciate the benefits. From the perspective of the state, three major benefits can be identified:

- The expectation of greater transparency and reduced opportunities for corruption. Through the automation of input and output standard forms and permits, there is less scope for the forgery of paperwork.
- More likelihood of the timely publication of statistical information including geographical data, licensing and sanctioning processes and outcomes. This will greatly increase the overall transparency of the regulatory system, increasing public confidence in the regulatory authority.
- The possibility of improved public sector management. This may come about by, for example:
  - Simplifying bureaucratic tasks;
  - Improving public revenue collection;
  - Optimising the allocation of limited law-enforcing resources to strategic enforcement;
  - Easing the identification of bottlenecks in the administrative system which can act as points for delay and possible corruption; and
  - Improving communication between different parts of the government administration, resulting in the timely supply of information for policy decisions.

Forest operators can also expect direct gains from the improvements in the private sector investment climate that come about when there are more transparent and competitive concession allocation procedures and timber sales, and better tools available in the electronic marketplace. The latter aspect is weakly developed in many tropical timber-

producing countries but offers the possibility of a much faster and more efficient system of sale compared to traditional marketing methods. The use of new technologies should also lead to more convenient and affordable services for all forest stakeholders through streamlined delivery, particularly by allowing e-access to administrative procedures for private users, even in remote areas.

### 23.4 What factors prevent technologies from contributing to enhanced forest governance?

The introduction of new technologies is not driven solely by technological considerations, although these can be significant. Other factors need to be considered when evaluating the potential role that technology can play within a regulatory system. As the Ecuador case study illustrates, political factors can act as a major constraint, especially when the forest sector is given low political priority. Interest groups that benefit from the *status quo* are likely to oppose improvements in the regulatory system if they will lose out as a result. Thus, strong leadership from within the public administration, industry or civil society (or a combination of all of these), may be required to lobby politicians to support change. The introduction of new technologies may also be undermined where there is a general lack of government policy and strategies for their introduction and management. This is often a government-wide problem and its resolution goes beyond the forest sector.

In addition, public inertia can act as a constraint. Where the citizenry has limited opportunities for participation in decision-making, they are less likely to embrace technological advances which might improve its quality. Such attitudes can be entrenched by a general lack of trust in the ability of public institutions to carry out their statutory functions. Legal factors also need to be considered. A legal framework that does not recognise electronic identities for administrative purposes or remotely sensed data for law enforcement will require revision prior to the full introduction of new regulatory controls. This may slow down the introduction of technology, particularly with regard to monitoring legal compliance.

Institutional factors can act as significant constraints on the uptake of new technologies. Common problems include such issues as limitations in the public budget and infrastructure devoted to forest administration and the consequent lack of trained staff to keep up with technological change. The technology is still expensive and beyond the means of many cash-strapped public services. The concentration of diverse responsibilities in a single institution – as is often the case with the national forest authority – may deny the opportunity to benefit from specialisation. The pooling of IT expertise is simply not possible in small institutions (where such expertise may be confined to one or two individuals).

Effective implementation is likely to depend on some inter-departmental collaboration. However, a lack of coordination between institutions over the introduction and development of these technologies, and overlapping and/or conflicting roles and competences between different levels of government are further constraints that may need to be addressed.

Finally, technological constraints also need to be overcome. In many rural areas access to the internet remains unreliable or simply non-existent. In addition, although computer hardware has improved hugely, reliability remains a problem where dust

and humidity levels are high. A lack of both specialised software and remotely sensed data continue to hamper efforts to increase the uptake of such technology in the forest administration process. For example, the use of visible band imagery is constrained in the humid tropics, where cloud cover severely limits the number of days in the year when such data can be collected. Even when fairly complete data sets are available, matching these images to field observations may prove difficult if the resolution of the imagery is not sufficiently high, constraining their application to law enforcement activities.

### 23.5 How can these constraints be overcome?

These constraints are now starting to be addressed in a number of countries. A particularly instructive example is Brazil, which has made significant investments in new technology as a response to both national and international concern over deforestation in the Amazon. Three areas of reform have hastened the uptake of technology in the forest sector.

First, there has been clarification over the roles and competences of the different levels of government. This is a common problem in countries where decentralisation has moved ahead in recent years without there being a clear resolution of regulatory mandates.

Second, specific attention has been given to strengthen the professional competences of the forest administration. The traditional field-based ethos of many national forest departments has often limited an appreciation of the potential gains to be obtained from the uptake of modern technological systems. This is slowly being addressed as a more computer-conscious generation of young technicians has joined government administrations.

The third area of reform has been the creation of new systems, with the considerable public investment required to make such systems operational. This can only come about when there is sufficient institutional and political will to make new financial resources available through the annual budgetary process of government.

These three areas of reform are discussed below.

#### **Clarifying roles and competences of different levels of government**

As noted in Chapter 9, Brazil's National Environmental Council (CONAMA) made a major policy change in late 2006, giving the states within the federation one year to assume forest competences within the framework of the National System of Environmental Management (SISNAMA). All states had to put in place their own forest administration and control systems by that date, linked into both the National Forest Information System (SISCOM) and the National Information System of the Environment (SISNIMA).

At the time of writing, a protocol for sharing roles and responsibilities in a new decentralised forest regime (MMA, 2006c) is under discussion by the Interinstitutional Commission to Coordinate the National Forest Programme (CONAFLOR). This is an important step forward. Prior to these resolutions, the federal agency for the environment (IBAMA) had overlapping competences with the states, leading to inefficiency, duplication and even serious conflict. Unclear division of roles and competences between levels of government made it impossible to establish a coherent land licensing and forest administration system, and severely limited the gains from the uptake of new technology.



Although the states had the freedom to implement their own control systems, cooperation was also forthcoming from the federal agency. The supply of such expertise includes an agreement to introduce electronic systems and a multi-stakeholder commission to monitor their introduction. The federal-level institutions, IBAMA and the Ministry of the Environment (MMA), have made a newly-developed electronic forest control system available to the states at no cost, and also provide training in its introduction (see section 23.6 below).

The monitoring of illegal forest activities nationwide is still carried out by the federal agencies, under the coordination of the Permanent Inter-ministerial Working Group to Reduce Deforestation in the Brazilian Amazon (GTPDA). The Presidential Decree that established the GTPDA provided for the involvement of ten ministries to ensure a broad collective response. National technology-providing bodies, such as the National Institute for Space Research (INPE), are also involved. The provision of technical data sets (e.g. remote sensing) has been a critical factor in developing an overview of the situation throughout the Amazon to guide regulatory actions. Considerable reliance is now placed on the DETER system, a satellite-based monitoring system which is able to detect illegal deforestation in the whole Amazon region in what is near to 'real-time'.

### **Strengthening the competence of public forest authorities**

Since 2003, IBAMA has engaged a significant number of new employees, adding more than a quarter to its staff strength. This has happened in parallel with disciplinary activities that removed dozens of staff indicted on corruption charges. As a result, there is now a critical mass of young, proactive professionals within IBAMA, confident in the use of new technologies. A similar process is now under way at the state level, since the decentralisation process of forest competences to the states does not include the transfer of resources from IBAMA.

### **Creating new electronic information systems by statute**

Resolution 379 of the National Environmental Council (CONAMA) created a system that requires all state environmental agencies to set up forest information systems. Basic standards and minimum criteria to be adopted by all these state information systems are defined at the federal level. The state systems must allow open access in order to feed information into the National Forest Information System (SISCOM).

According to Normative Instruction No. 5 (MMA IN No. 5 / 11.XII.2006), all approved forest management plans will have to be registered in the National Cadastre of Sustainable Forest Management Plans (CNPM), which will be open for public access over the internet. This information will be updated in a centralised database at least twice a year and an annual report will be provided by each level of government to the federal forest service.

This degree of information management would simply not have been possible prior to the introduction of electronic databases. Some of the early information systems were pioneered at the state level, particularly in the state of Mato Grosso (see Box 23.1).



### **Box 23.1**

#### **Technologies supporting forest sector reform in Mato Grosso, Brazil**

During 1999, the State Environmental Foundation of Mato Grosso (*Fundação Estadual de Meio Ambiente* (FEMA)), with support from the internationally-funded Pilot Program to Conserve the Brazilian Rain Forest (PPG7), developed the Land Zone Planning System (*Sistema de Licenciamento Ambiental em Propriedade Rural* (SLAPR)). SLAPR, which became operational in 2000, was a pioneering information system in Brazil with its main objective being the reduction of illegal deforestation. It combines environmental licensing of rural properties with monitoring and control of land-use change in a centralised database. The system applies to private forests and contains the following information: the geo-referenced boundaries of each licensed property, the 'legal reserve' area within the property that must retain forest cover and all 'protection areas' including steep slopes and buffer zones along watercourses. Once an environmental licence is issued for a given property all these data are entered into the system so that monitoring of forest cover change from satellite images can be done and enforcement activities initiated, if necessary.

Initially this system proved to be slow in making any noticeable impact on law enforcement. Data from 2004 showed that illegal deforestation in licensed areas had not been significantly reduced compared with unlicensed areas, indicating that enforcement and sanctioning of illegal deforestation continued to be weak.

These flaws became apparent in June and August 2005 when two spectacular anti-corruption operations called *Operação Curupira 1* and 2, were carried out as coordinated actions between the Ministry of Environment, the *Ministério Público* and the Federal Police. These operations discovered that certain officials at FEMA had favoured those carrying out illegal deforestation by manipulating the satellite images and producing fake documentation to launder timber that had been illegally obtained.

Shortly after these two operations, FEMA (which had been a semi-autonomous foundation) was suspended and subsequently replaced by a state institution within the public administration, called SEMA (*Secretaria de Estado de Meio Ambiente de Mato Grosso*). SEMA added two new technologies to the SLAPR system to administer these competences in Mato Grosso: a database of forest product producers and consumers (CC-SEMA) and an online forest products administration and control system (SISFLORA).

To harvest timber or clear natural forest in Mato Grosso, an environmental licence (LAU) must be obtained as part of the SLAPR system. Additionally, a forest management plan or a deforestation permit must be approved by SEMA, which then generates a timber-volume 'credit' in the SISFLORA system. Timber producers can manage the timber-volume 'credit' online and print out their timber transport permits themselves. To do so, they must have been previously registered in the CC-SEMA database. To be registered in CC-SEMA, users have to prove their legal status and compliance with relevant

**Box continues**

**Box 23.1 continued**

regulations (as regards tenure, taxes, environmental licences and municipal approval, etc.). This is done to ensure that the whole production chain is covered by the control system and to prevent fake companies being used to launder illegal timber (as has happened in the past).

Once registered in CC-SEMA, forest operators can access the SISFLORA system online by entering a personal password. Producers can access the timber volumes and offer these volumes online to registered consumers from the industry. Only when the consumer accepts the timber which has been offered, and the transaction is entered into the system, are the timber volumes automatically debited from the volume credit (by species) of the management plan. A barcode-individualised timber transport permit is then printed out. An interesting innovation of this system is the link established between producers and consumers in an administrative process. This offers the potential for an electronic exchange (market) for legally produced timber between actors that are registered in the CC-SEMA.

## 23.6 Replacing discredited paper-based controls with electronic systems

In Brazil, a new electronic forest administration and control system has been under construction for several years by IBAMA. This is the DOF system (*Documento de Origen Florestal*) that was introduced nationwide in September 2006. In order to comply with this new control system, forest operators must register within an administrative database, the CTF (*Cadastro Técnico Federal*). CTF has been in place since 2001 and is also accessible online. In contrast to the CC-SEMA database of Mato Grosso (Box 23.1), users can register themselves online. However, if the authenticity of information entered is suspect, the forest administration can ask the user to submit supporting documentation in hardcopy format (Chaves, J.H., 2006, pers. comm., September).

In both DOF and the SISFLORA system of Mato Grosso, the new barcoded timber transport permit (DOF or GF) that is generated electronically replaces the previous (and discredited) ATPF paper transport permit. The new timber transport permits inform road checks about the origin and volume of the logs. Upon arrival at the wood processing plant, the barcoded document is used to read the information into the system online and to generate the 'volume-credit' that industry needs to issue their respective transport permits (DOF or GF) for intermediate products. Compared to the former system, the producer now has the responsibility for printing the DOF or GF and reporting back to the administration, thus reducing costs and bureaucracy. The barcode individualises the timber transport permit and protects the system against fraud. The fact that the system is online protects it against possible arbitrariness of local bureaucrats and reduces its liability to corruption. In addition, it is now possible to link timber at the industry location to the original logging site in the forest, thus establishing a credible chain of custody that can be verified by spot checks carried out by the authorities. All the states are legally obliged to give IBAMA free access to this information so that it can be integrated into the federal SISCOM system.

One constraint in using these new systems is user awareness of the internet and/or computer literacy levels. However, internet access is expanding rapidly in Brazil. For example, the public pension system now allows people to access the system online, even in remote areas, and receive their pension. IBAMA plans to provide access to computer terminals for those who use the DOF system, through its regional offices across all the Amazon states.

Another practical constraint is the current lack of online access to the database at the logging site. Hence, information about volumes and species need to be determined beforehand, thus reducing the flexibility to take these decisions at the logging site. This demands much better planning of harvesting and timber transport operations, and a level of efficiency and consolidation of the industry that is not universal.

### **23.7 The successful uptake of new technologies in forest governance systems**

The evidence presented above suggests the successful uptake of new technologies for forest regulation and verification activities will depend on progress being made in six key areas. These are briefly described in the following paragraphs.

*Key policy issues.* Support from the highest levels of government appears an essential precondition. By their nature, decisions about technology have to be made at the centre, and then taken up systematically at all levels. This is important as the use of new technologies may have significant cost implications for government. The expense of purchasing commercial satellite imagery or software applications can be considerable, so the benefits to be gained need to be well communicated. The case needs to be made most acutely during the annual budget hearings associated with the national budget cycle. Such investments should also appear in medium-term financial planning instruments, such as Medium-Term Expenditure Frameworks (MTEFs), where they are part of the government's budget programming. The benefits will thus need to be understood by decision-makers (including the legislature), as well as the wider public and the media. This may depend on more general government policy across the administration on the use of such technological systems.

*Key legal issues.* A legal framework that recognises the use of new technologies for law enforcement and allows for the conduct of public administration procedures online is another key requirement. Such provisions rarely exist in current legislation, and it is therefore important that any strategy to introduce technologies in the state regulatory system pays attention to early legal reform. Such legislation is unlikely to be high up the political agenda if it is confined to the forest sector. More broad-ranging reform that encompasses wider elements of the government administration in the uptake of these technologies may therefore be an important tactic in ensuring such legislation passes through the legislature in a timely manner.

*Key institutional issues.* There needs to be a clear definition of roles and competences in the design of the institutional architecture and the societal arrangements that support any forest governance system. Forest control technologies should be integrated with technologies used in the wider government structures (e.g. land tenure, judiciary, tax and revenue). However, such integrated actions are not easy to manage and some type of inter-sectoral commission is likely to be necessary to oversee the change. Forest

authorities must be capable of using these technologies to produce strategic information, if they are to have a visible impact on law enforcement. This may require the creation or strengthening of communication units in the forest administration. Private sector participation in the introduction and maintenance of new technology may need to be considered to enhance the speed of implementation. Technologies can also promote decentralised actions by radically improving communication between the federal and state levels. In addition, these technologies can also be effective tools for the central level to monitor and oversee the performance of decentralised competences by regional or local authorities.

*Key technological issues.* Technical infrastructure is obviously a prerequisite, so that users can link to the internet. A particular problem is likely to be access to the internet at the logging site. Logging camps are often too remote to be accessible to wireless technology at present, although the rate of technological change is overcoming this constraint with remote access to databases through mobile phone networks. Reliability of access and security of data management are also fundamental prerequisites for any technology-based control system. In order to safeguard these new electronic systems, the forest sector can benefit from looking at the experience of other sectors (e.g. the banking sector) to ensure electronic data protection and security.

*Key enforcement issues.* Law infringements that have been detected using new technological resources often end up in slow bureaucratic sanctioning processes within the administration or the judiciary. If offences are not sanctioned in a timely and effective manner, the resultant erosion of public confidence will undermine the credibility of the forest governance system. Independent and efficient sanctioning entities and a vigilant civil society are therefore crucial to close the cycle on forest law enforcement if new technologies are to have the desired impact.

*Key cultural issues.* Low levels of basic education in many rural communities increase their dependence on intermediaries, regardless of whether the forest administration works with modern systems or with traditional paper-based ones. This in turn increases the risks of corruption. It is particularly important therefore to inform and educate such users about the rules and procedures required to harvest timber legally and to offer them simple and accessible systems. At the same time, the myth that rural communities are reluctant to use modern technologies and the internet has already been broken, as evidenced by their enthusiastic use of mobile phones and SMS-messages. The introduction of new technologies in the forest sector needs to build on this potential.

## 23.8 Summing up

New technologies can offer increased possibilities for addressing governance failings in the forest sector, and significant benefits to the main user groups, including the state, forest operators and other stakeholders. However, the uptake of these technologies can be hindered by political and institutional factors as well as technological constraints. These obstacles are now being addressed in a number of countries and the experience of Brazil is instructive as it shows the value of a three-pronged approach that includes: (i) clarifying the roles and competences of different levels of government; (ii) strengthening the professional competences of the forest administration; and (iii) creating new structures and investing in their operation. More broadly, for countries to take full advantage of

the benefits offered by new technologies, they will need to address six key areas, covering policy, legal, institutional, technological, enforcement and cultural issues.

## Chapter 24

# Multi-stakeholder processes: lessons for the process of timber verification

**Note:** This review is authored by Cecilia Luttrell and is based on Luttrell, C. (2008) 'Multi-stakeholder processes: lessons for the process of timber verification' VERIFOR Briefing Paper No. 8. London: ODI.

### 24.1 Introduction

There has been a proliferation in the sources of authority in public governance over the last couple of decades and this has led to a variety of partnerships between the state, the business sector, NGOs and other civil society actors, and to the development of multi-stakeholder processes to reconcile their views. Multi-stakeholder processes (MSPs) have also been advocated as a means to engage with stakeholders around Forest Law Enforcement, Governance and Trade (FLEGT), including the development of public policy. In view of the polarisation of interests and views that are typical of the forest sector, questions are raised as to how to bring closure to such policy processes.

### 24.2 When to develop a multi-stakeholder process?

Given the raised expectations that MSPs can create, the high transaction costs involved and the potential conflict with democratic processes, they need to function in ways that enhance the credibility of public policy development, rather than undermine it. A key question is 'In which contexts and over which issues is it appropriate (or not) to develop an MSP?'. The answer will depend on a range of factors such as:

- The objective of the MSP;
- Whether the MSP is intended as an opportunity for dialogue or a decision-making forum; and
- The executive and legal mandate of the process to bring closure on, and to help implement, the decisions reached.

#### **Clarity over the objective of the MSP**

An important first step is to be clear over the objectives of the MSP. One reason for the popularity of MSPs is that they are believed to promote better outcomes than when individuals or institutions work in isolation. This increased effectiveness is held to result from the wider range of inputs available and the breadth of commitment which is generated. It is also argued that the inclusive nature of MSPs can reduce costs by making initiatives more reflective of stakeholders' needs, thus reducing the time spent on conflict resolution. In terms of implementation, MSPs may play a role in filling gaps

in government enforcement. Citizens' groups might, for example, be able to monitor compliance and identify violations that an understaffed agency might miss.

However, the effectiveness of a multi-stakeholder process is not only determined by its ability to deliver objectives but also by the way in which it brings credibility and legitimacy to the decision-making process. A 'rights' perspective stresses the right of citizens to be involved, and the legitimacy that derives from the very fact of such participation, whereas a more pragmatic approach views MSPs more as an opportunity for participants to voice their opinions and develop a common understanding of issues under debate (van Bodegom and Hijweege, 2006).

### **MSPs as a decision-making mechanism**

Multi-stakeholder involvement can help enhance dialogue and transparency of a process of policy development, but not all MSPs will aspire to take ultimate decisions. Thus a distinction needs to be made between:

- Those cases where the objective of the MSP is to provide an opportunity for dialogue and consultation, but not decision-making (which is in the hands of a more specific body, perhaps a democratic authority); and
- Those cases where the process is intended as an actual decision-making forum.

Consultation or participation in a process does not necessarily imply the ability to implement the decisions made. If MSPs are to be designed as decision-making bodies, they need to have the necessary authority. Questions arising include:

- Whether the multi-stakeholder body has a clear executive and legal mandate to make decisions and to bring policy closure;
- The limits of the decision-making powers of the MSP;
- The definition of the MSP vis-à-vis relevant government agencies; and
- The relationship of the MSP to democratic accountability mechanisms.

The degree to which the multi-stakeholder body has a clear executive and legal mandate to make decisions and to bring policy closure will depend on the context. The sources of authority which are required to bring closure on a decision vary according to the nature of the issue as well as the legal and administrative tradition in question. The legal tradition will determine which functions lie within the exclusive domain of the state and which can, legally or constitutionally, be outsourced to multi-stakeholder bodies. For example, in the case of legality standards, there may be a need for legislative or judicial approval of the standards selected, and thus, a multi-stakeholder forum may not be an appropriate body for decision-making.

It is important that the MSP is clear on the exact limits of its decision-making powers and there needs to be a shared understanding of the competence of the multi-stakeholder body vis-à-vis relevant governmental agencies. In the case of an internationally driven MSP, this includes explicit consideration of how the actions of the MSP relate to official agendas and ensure coordination with country-level and international policies and processes. One criticism that has been made of the partnerships launched at the World Summit on Sustainable Development (WSSD), for example, was their lack of coordination and synergy with official global and national sustainable development agendas (Malena, 2004).

The involvement of non-state actors in MSPs is often argued to be necessary to allow some citizen representation in policy-making. This is frequently invoked in contexts where state entities are not trusted, or where some significant actors feel the need to counterbalance the power of the state. In these contexts, MSPs have been viewed as a step in furthering democracy in that they allow a wide range of voices to be heard in decision-making processes. However, as democratic structures do exist, even if they function imperfectly, there is a danger that the MSPs will function to undermine democracy rather than to strengthen it. Ribot (1999) has raised the concern that MSPs might undermine existing state-society accountability mechanisms by contradicting political or administrative laws, or disabling more accountable local representation.

Thus, MSPs need to be designed in such a way that they contribute to democratic functioning and do not seek to usurp it.

### **MSPs as an opportunity for dialogue**

There is a view that the real value of MSPs is in the process of dialogue and not in concrete decision-making. MSPs connected to the WSSD were ‘decision-finding rather than decision-making’ and remained restricted by the ‘iron law’ that only governments can negotiate with governments (Bäckstrand and Saward, 2004:16). However, a lack of formal decision-making function does not rule out stakeholder influence. Even without implementing powers or authority, some MSPs have achieved progress through dialogue, consensus-building and network-strengthening as well as providing a platform for informing public policy.

Each MSP thus needs to be clear as to its status. The exact status (formal or informal) of the consultation should be made clear, as well as the relationship to government. Failure to specify the extent of their authority is a weak point of many MSPs and can undermine the commitment of stakeholders to the engagement.

## **24.3 Issues of participation**

Critical aspects of participation include:

- The types of stakeholders to be included;
- Measures to be taken to avoid exclusion of certain groups;
- The manner in which power dynamics are addressed;
- Mechanisms for ensuring independence; and
- Transparency and accountability mechanisms.

### **Who to include**

One way to enhance the credibility of an MSP is through ensuring participation of a diversity of stakeholder groups. A key challenge is getting the right stakeholders. There are a number of criteria for this depending on the objective of the process, including:

- Those whose support is necessary to implement decisions or whose lack of support could undermine the process;
- Those who can bring expertise to the issue at hand; and
- Those who have the ‘right’ to be included as they may be affected by the decisions taken.



Increasing the diversity of perspectives can help to augment knowledge and understanding. Bringing in expertise and new opinions helps better inform a policy process. The inclusion of powerful players, and those whose support is needed to make policy decisions work, can increase ownership and prevent sabotage at a later date. For example, the Kimberley Protocol for diamonds set up three informal working groups with private sector, NGOs and representatives from concerned countries; this helped to bring expertise into the process as well as to increase transparency (Smillie, 2005).

The forest sector has particularly diverse and conflicting demands from stakeholders, and wide participation may thus serve as a useful way to defuse potential conflict.

A key dilemma is how to define who has a legitimate interest. Guidelines on best practice in MSP design tend to focus on the use of clear criteria and a transparent process to identify stakeholders (Malena, 2004; Hemmati, 2002). These guidelines relate to:

- Representativity;
- Organisational mandate;
- Specific competences; and
- Compliance with specific values.

The ‘right to be included’ is a powerful criterion for stakeholder selection. MSPs have an obligation to involve those who are affected by actions or decisions, particularly when the impacts may be negative. A process of selection based on openly articulated standards of representation and legitimacy will help to avoid dominance by those groups that have the loudest voice. Care will be needed, however, to ensure that such accreditation does not have a distortionary effect, by creating barriers to the involvement of small players and marginal groups.

### **Maintaining independence**

The issue of who appoints the representatives is also critical. Legitimate processes need to be established to ensure that appointments are logical and transparent. Self-selection of representatives by key constituencies may help generate legitimacy. In a review of the ‘Extractive Industries Transparency Initiative’ (Publish What You Pay and Revenue Watch, 2006), it was reported that in many countries, independence of the multi-stakeholder committee was undermined because civil society was not allowed to select its own representatives. Self-selection may be particularly important in relation to politically charged issues, and can strengthen the accountability of the representatives to their constituents.

The financing mechanism is another important determinant of independence and credibility. Government funding can lead to distortion of the agenda and private sector funding is often perceived to compromise the mission, values and reputation of the MSP. On the other hand, expecting stakeholders to participate on a self-funding basis is not necessarily the ideal solution either, as each organisation will have a differing capacity to remunerate its attendees and thus there is the risk of capture by particular interest groups which have the necessary funds and the time (Bäckstrand and Saward, 2004). In the case of the World Commission on Dams (WCD), efforts were made to find diverse funding sources in order to demonstrate that the WCD was not beholden to any one set of interests (Dubash et al., 2001).

### Levelling the playing field: avoiding exclusion

Many stakeholders are not able to participate in MSPs due to their lack of resources or capacity. Lack of suitable institutional forms is often cited as another reason for the lack of representation of certain groups. Specific measures to help ‘level the playing field’ might include:

- Formalised power-sharing rules;
- Increased representation of ‘weaker’ stakeholder groups;
- Policies to ensure balanced resourcing;
- Capacity-building measures; and
- Ensuring access to information.

For example, the WCD paid travel costs for those representatives who needed support and this helped ensure wider inclusion (Dubash et al., 2001). Holding regional consultations can also help to mobilise grassroots input.

There are however a number of risks in attempting to channel participation. These include:

- *False homogenisation*: the risk of stereotyping people into ‘categories’ that suit the interests of the decision-makers but do not reflect the diversity of local interests.
- *Nominal as opposed to meaningful participation*: the physical involvement of marginalised groups, and even verbal participation by them, does not guarantee that their concerns will be heard. It is therefore important to prevent MSPs being perceived as paying ‘lip service’ to participation. This can be avoided by providing prior information to participants on whether, and how, actions will be undertaken to address the issues raised.
- *Token processes*: in many situations, engagement ‘outside the conference room’ may be a more effective form of influence than engagement in the public forum (Hemmati, 2002).

### Allowing contestation and recognising power differences

Views vary as to how much commonality of values, interests and objectives is necessary or desirable. Some level of manifest conflict is not necessarily undesirable. One feature of effective MSPs is that they enable and encourage healthy contestation. Attempts to overcome power differences and to focus on reaching consensus can gloss over dissenting views and ignore potential conflicts. Instead of assuming that political differences have somehow to be eliminated or neutralised temporarily, it may be more useful for facilitators to seek to increase the decision-making powers of disadvantaged groups (Edmunds and Wollenberg, 2002). This involves acknowledging disparities of power and addressing sensitive issues head-on. To do so may require that acceptable parameters of divergence are established and partners are encouraged to discuss to what extent it may be necessary to ‘agree to disagree’. An MSP that attempts to address the concerns of all the stakeholders can deprive individual actors of the opportunity to be heard. Building opportunities for individual expression can help to avoid such tension. The multi-agency Safe Motherhood Initiative for example, was able to cope with fundamental disagreement over the issue of abortion by allowing certain members to opt out of some activities while still remaining within the overall partnership (Malena, 2004).

## Clarity of procedures

Effective and wide consultation from an early stage tends to be associated with strong multi-stakeholder processes, so that interested parties can influence the formulation of the main objectives, the methods of delivery and performance indicators (see for example van Bodegom and Hijweege, 2006). A well-balanced steering committee can help with the technical planning and help set the agenda. Specific roles and responsibilities of each partner need also to be explicitly agreed. This involves making sure that the designated responsibilities of each partner correspond to their legitimate rights and appropriate roles as well as their specific competences and interests. A clear definition of purpose and roles and a precise definition of expected results and outputs are also critical to accountability further down the line. Equally, though clarity is important, there is also a need to allow flexibility in terms of objectives and content to enable the underlying complexity of an issue to be recognised and to allow for new insights (Hajer, 2005).

In the case of decision-making MSPs, there are a number of choices which have to be made, including whether to use consensus or rely on majority voting, and how to deal with minority views. Many processes introduce internal structures (such as governing bodies, advisory committees and consultative groups) with their own decision-making powers and processes. Stratified sampling around interest groups which are organised into sub-chambers (as in the case of the Forest Stewardship Council) can avoid the dominance of one group. In the case of the Children's Vaccine Initiative (an alliance of United Nations, private sector and non-governmental organisations), the private sector was engaged in implementation but excluded from broader policy-oriented decision-making processes to avoid conflicts of interest (Malena, 2004).

Above all, MSPs take time. The design of an MSP requires realism over the time needed for dialogue and the immediate pressures of the political cycle. This has been a concern with Ghana's VPA-related Multi-stakeholder Platform where deadlines are said to have been set by external and international policy requirements and not by the Platform itself (Beeko, 2008).

## Enhancing procedures for accountability and transparency

Multi-stakeholder processes face particular problems of accountability due to their multiple, and often unclear, sources of authority. Without accountability, MSPs quickly lose their legitimacy. It is important therefore to clarify to whom the stakeholders are accountable, and to set up relevant reporting and evaluation mechanisms. There are a number of techniques that can be employed for enhancing accountability (Benner et al., 2002), including:

- 'Internal accountability' (boards, oversight committees);
- 'Professional accountability' (adherence to professional codes of conduct);
- 'Reputational accountability' (naming and shaming);
- 'Market accountability' (reward/punishment by consumers); and
- 'Financial accountability' (accounting standards).

In general, accountability can be strengthened by maintaining transparency and adopting proactive communication strategies. The EC's 'General Principles and Minimum Standards for Consultation' outline the importance of clear content of the consultation

process and the need for targeted and predictable communication (see van Bodegom and Hijewege, 2006).

Accessibility of information is an important point and distinct from that of information availability. Article 6 of the ILO Convention concerning Indigenous and Tribal People in Independent Countries states that governments shall ‘consult the peoples concerned, through appropriate procedures’ and ‘in a form appropriate to the circumstances’. It is one thing to disclose information, but it is another to make that information comprehensible to all.

## 24.4 Conclusion

There are a number of compelling reasons for the introduction of a multi-stakeholder element into the design of a verification system. These include the need to:

- Increase effectiveness through increased capacity and technical input;
- Increase political support for the process by involving influential players and those who may act to undermine its progress; and
- Enhance the legitimacy of the process by involving a wide range of stakeholders.

Such differences in motivation have implications for levels of participation and the nature of the process to be employed.

In relation to legality assurance, multi-stakeholder input can take place at a number of stages along the verification chain and can take the form either of a mechanism for decision-making or a forum for increased dialogue and consultation. Where the MSP is designed as a forum for dialogue, it is important that this should be made clear upfront, with the limits of the process clearly laid out. Where the MSP is intended to play a decision-making role, practical requirements include:

- A clear mandate for decision-making and implementation of those decisions;
- Clarity over whether the nature of the issue allows a pluralistic body to make legitimate decisions and bring closure;
- Relevant decision-making and implementation bodies represented amongst the stakeholders;
- Adequate resources to adhere to certain key principles (such as allowing ample time, and maintaining transparency and independent funding); and
- Sufficient institutional or political support to implement the decisions made.



Part D

**Designing effective and equitable  
forest verification systems**



## Chapter 25

# Principles and practice: verification system design in the forest sector

### 25.1 Introduction

This chapter revisits the ten general principles behind effective verification which were identified in Chapter 3 based on extra-sectoral experience, to further illuminate the processes of forest verification. The analysis here also draws on Chapter 4 which looked at the country case studies of verification and Chapters 17 to 24 which examined the cross-cutting issues that emerged from these studies.

The notion of ‘effectiveness’ depends, to a significant extent, on the criteria that the interested party imposes on the phenomenon under consideration. Based on the evidence of the case studies, it seems that a central requirement to developing an effective verification regime is to identify principles and systems that will enjoy high national ownership and that are sufficiently robust and flexible to withstand constant challenges not just to their day-to-day functioning but even to their very existence. Such challenges are almost inevitable in a turbulent arena such as forest management (particularly in the tropics, where polarised ‘conservation vs. production’ perspectives typically take root), as attested by many of the case studies presented in this book. Robustness and flexibility emerge as important attributes in the systems that have already been implemented, and there is good reason to believe that they will be desirable attributes of any future systems, especially in contexts where forest governance is still largely unreformed. In such contexts, the drive to introduce legality assurance measures is likely to meet with significant opposition from forces defending the *status quo*.

In assessing the relevance of the principles drawn out of the review of extra-sectoral case studies in Chapter 3, account needs to be taken of the fact that most of the processes considered there were international ones. By contrast, the forest sector processes considered in Part B are mostly national in character, though binding, at least in principle, on all actors within the national territory. Only in the cases of the VPAs (all of which are still under negotiation), do these processes have an international character though purely (at least at this stage) at a bilateral level, EU-producer state.

### 25.2 Applying the principles of verification to the timber trade

In the paragraphs that follow, the principles identified in the review of extra-sectoral verification models are revisited in the light of the forest sector case studies, as issues that may need to be taken into consideration in any approach to verification system design.



In seeking to apply such principles to the forest sector, account needs to be taken both of the characteristics of timber as an internationally marketed commodity, and the lack of an international treaty to control the sector and the trade. While timber is a tangible commodity (which should render it more easily verifiable than, say, atmospheric carbon), it is also highly variable in its characteristics (which adds to the difficulties of verification, particularly at vulnerable links in the supply chain, such as customs and port authorities).

A similar mixed picture is presented in relation to timber markets. Because it is such an identifiable commodity and substantial in volume, timber is more easily recognised in transit than, say, diamonds. However, timber markets are decentralised across the producer countries and beyond, with no dominant interests in the market which could exert a strong proprietary interest over the commodity and thereby influence public perceptions (unlike, say, the leading company, De Beers, in the global diamond market). Timber also has multiple uses, some of them prestige and luxury, others more mundane. Thus, challenges to the prestige end of the market will not necessarily affect the propensity to consume. Again, this contrasts notably with commodities such as diamonds, which have a restricted range of prestige and industrial uses, and are much more vulnerable to the effects of loss of international image. These characteristics are likely to pose particular difficulties for verification of timber production and trade, and increase the difficulties of achieving positive impacts of verification measures.

### **Principle 1: Reciprocity**

Reciprocity between signatories, so that all of them are equally bound by the terms of the agreement, has been established as an important principle for effectiveness of international verification regimes. The forest sector experiences are distinctive in this respect. Where the forest sector agreements are national or sub-national in character, then a degree of reciprocity is implicit, at least in principle, and national law provides a mechanism to encourage broad compliance. The Philippines' Multi-sectoral Forest Protection Committees and Ecuador's Outsourced Monitoring Systems are examples of this approach. The main concern in such cases is whether nominal equality of standards in fact favours particular categories of producer and disadvantages others, in the latter instance most likely the small and medium enterprises. At the international level, there is as yet no forest sector agreement that would require such reciprocity. Recent international experience has merely confirmed that a reciprocal regime, equally binding on all its signatories, is unlikely to be achieved in the forest sector, even in the medium term. Any attempt to force through such a regime by one set of parties would be unfavourably received by others. Thus, in designing a legality system for the forest sector of a bilateral character, the focus has to be on ways to overcome the lack of reciprocity by surrogate means.

Some lessons can be learnt from extra-sectoral experience as to how to overcome the sovereignty constraint in the absence of a principle of generalised reciprocity. Perhaps the most promising way would be to build on peer review as was done in the case of the Kimberley agreement on diamonds. This helped to engender a single community of producer countries, bound by the same set of rules and interests. It would also help address the issue of comparability. It is arguable, for example, that consumers in the importing countries will be unwilling or unable to discriminate between different

legality standards in relation to the VPAs, and this may lead to allegations of unfairness from those producer states for which the bar has been negotiated particularly high. Regionalisation of standards would be one way to manage this pressure without any ‘dumbing down’, though the feasibility of this is questionable. Van Midwoud (2006) makes a strong case to apply a peer review mechanism to the forest sector VPAs.

### **Principle 2: Migration to non-parties**

The VPA approach has limited ability to sanction migration to non-parties when compared with the extra-sectoral conventions considered in Chapter 3, a fact which is particularly pertinent for Asian producers who have easy access to the burgeoning Chinese market. Some producers (such as those in West and Central Africa) are already quite heavily dependent on green markets, and the relative simplicity of their commodity chains increases the likelihood of their compliance. By contrast, the Chinese market has not been notably green to date, and questions are already being asked about the European Union’s ability to exert demand-side pressures on producers such as Malaysia and Indonesia which have substantial opportunities there. Agreement by such producers to sign up to VPAs could have knock-on effects, though it would need to be accompanied by other measures to circumvent migration to non-parties if the impacts are to be sustained. The two most obvious measures would be international diplomacy and NGO advocacy. However, China’s accession to the WTO could also have positive effects, particularly insofar as it reinforces the country’s growing dependence on retail markets that are already eco-sensitive.

Use of demand-side pressures in consumer societies (as in the VPAs) to divert trade away from non-conforming suppliers towards compliant ones, even in the absence of an obligatory set of market rules, is a bold initiative which may well deliver benefits, though the problem with it (at least in the early days) is that first-user advantage may come at the price of unusually high political risk. First users must evaluate the security of market access that they may gain against the fact that their industries could well find themselves opened up to an unusual level of international scrutiny, particularly by NGOs. Some producer states may well feel that they have more to lose by compliance than by non-compliance, in both financial and reputational terms, especially as non-signatories to VPAs will not be denied market access, at least in the shorter term. In such instances, the final decision as to whether an early adopter accepts a forest verification regime is likely to be influenced as much by the other gains they can secure from the EU, of a general developmental nature, as by the immediate benefits of the VPA.

The VPAs are evidently a compromise and their bilateral and non-reciprocal character limits their potential to transform forest governance. Positive financial incentives at the demand end of the chain would undoubtedly provide strong incentives for the tropical partners to comply, but it seems unlikely that these incentives could be provided, at least in the short term. The experience of certification warns against optimism on this score, and the situation is further constrained by the fact that a price premium on ‘legal timber’ cannot be offered as an alternative to that of ‘illegal timber’. The scope to enhance the market value of one product by labelling it as ‘verified legal’ is limited by the very restricted opportunities that are likely to be available to downgrade the opposition, once the good in question has been permitted access to the European market. Northern publics would seem likely to assume that any product that reaches their markets must

be legal, and that discrimination between legal and illegal products has been made before the goods reach them. The additional measures currently under consideration by the European Union constitute one response to this situation (see, for example, Brack, 2006), though it is as yet uncertain what measures, if any, will be adopted there.

The voluntary nature of the VPA negotiations is also constraining in other ways. For example, a risk-based approach has much to commend it, both logically and on cost-control grounds, as the experience of meat processing standards shows (see Box 3.5). Within national territories, this strategy may (at least in some cases) be valid in the forest sector case. However, applied at an international level, the political costs are significant in a situation of non-reciprocity. Propensity to illegality is not evenly distributed across producer countries, and a number of factors intervene to affect national-level risk, ranging from the general quality of governance (including, but not restricted to, forest governance) to the character of the forest estate (diverse old-growth forests or simplified stands of plantation species). Attempts by northern consumers to narrow down international efforts to focus on the high-risk, low-governance cases could well be resisted by the target countries, who will complain at the lack of even-handedness in the strategy. All producer countries have equal access to the trump card of national sovereignty over their forest estates.

One dimension of the ‘migration to non-parties’ effect at the domestic and regional level lies in the fact that timber verification regimes typically apply only to ‘forest’ areas and many deforestation and illegal logging activities go on outside legally-defined forest zones. They are therefore not captured – or worse still, might even be encouraged – by tightening up on forest management. Such leakage effects may require the involvement and commitment of parties outside of the national forestry administration if they are to be avoided. To the extent that they involve the displacement of illegality outside of one national territory, they would provide a further argument in favour of a regional approach.

### **Principle 3: A clear definition of the problem areas**

A clear definition of the problem(s) that the intervention is intended to address is fundamental to effective verification system design. The key consideration here is the origins of *doubt*. Verification, as treated in this book, responds to an element of doubt about the functioning of a routine control system, which in turn implies *additionality* in the means applied to address that doubt. Thus, a logical way to approach the issue of problem definition is to ask why an element of doubt arose in the first place, and what end-state would indicate that this doubt had been substantially overcome.

The problems in question vary both situationally and over time. For example, a distinction may need to be drawn between contexts in which the demand for verification derives from concerns about flagrant criminality and the links between criminal mafia and the party political order (an indiscipline that may be found in all extractive sectors of the economy) and those where illegality is driven more by structural forces – either within the sector (for example, policies that have generated an installed capacity of the industry way above the annual allowable cut) or extra-sectorally (for example, agricultural policies that favour land conversion). There are a number of instances in the case studies where questions are raised as to whether the ostensible goal of the change process responds to the real drivers of change in forest use; in cases such as

Brazil, Indonesia and Nicaragua, the point at issue is the balance between forces that are internal to the sector and those that have extra-sectoral origins.

The conception of the problem may well change progressively. Thus, the first stage in many forest reform processes is to ensure basic levels of legality in the operation of the industry and the behaviour of the key actors (such as the military) who can undermine them. More elevated concerns may be introduced only later when there is capacity for a more nuanced approach. In Malaysia, for example, most domestic timber production is now legal with respect to licensing and transport, so commentators and activists are becoming more concerned with the nature of the higher-order legal standards, particularly those relating to land tenure, indigenous rights and sustainable forest management against which compliance can be assessed, as well as with loopholes in the control systems for log imports from elsewhere in the Asian region.

The ideal is a process of open national dialogue in which the problems to be solved are clearly defined and their sequence agreed, as a preliminary to a more progressive path of reform. A hierarchy of objectives is likely to apply, commencing with short-term steps that are specific to the industry and progressing to more socially demanding matters with a longer timeframe, as follows:

- 1 Compliance with standards for legal forest management (legal timber harvesting);
- 2 Conformity with requirements for legal land-use (regulated or reduced deforestation);
- 3 Payment of taxes to increase public revenue (to secure or increase exports to demanding markets, or to increase the revenue share that is actually collected);
- 4 Correctness of the administrative forest licensing processes (good governance); and
- 5 Conformity with broader environmental and social standards and developmental goals.

Commonly, such aims are intertwined. An example is Ghana, where verification aims to improve the monitoring of forest resource utilisation and revenue flows from timber harvests, while also maintaining access to a major export destination (the EU) and taking the first steps towards long-term sustainability of resource management.

As Chapters 18 and 21 underline, a clear definition of the problem areas demands considerable clarity on motivation. Sometimes the problem has already been identified through confident and democratic means – for example, a national dialogue on forests, with a multi-stakeholder process to define forest policies and action plans on forests often as part of a National Forest Programme (NFP). Through these kinds of processes, the problem that the verification system is expected to resolve can be defined, explicitly stated and agreed upon by key actors. Where there are no clear links to the national democratic process, the challenges are much greater. The global public goods aspects of tropical forests adds to the complexity here, as they increase the range of external voices (often northern actors in development agencies and NGOs) with an interest in the national outcome. Where conditionalities of donor agencies linked with other sectors are involved, (for example, financing from structural adjustment loans as in the cases of Cambodia and Cameroon), the complexity is further multiplied. Finally there are also situations in which the process of change is a response to pressure from the international

community in so-called ‘failed states’ in which illegalities in the forest sector have been linked with war and human rights abuses (as in Cambodia, Liberia and DRC). In such instances, the forest sector may be unusually subject to international influence, with the possibility of only very limited national ownership (as in the UN moratorium on logging in Liberia from 2003 to 2006). The main challenge in these situations concerns the transition to democracy, and how to build national constituencies for change in conditions where external actors have set the rules.

#### **Principle 4: Adoption of a systems approach and a focus on the distribution and balance of powers**

Once the initial problems have been defined, the next step will be for political decision-makers to assess the extent to which the existing forest administration and control system can be improved. If the prognosis is negative, there may be a need for a complete reform. A decision in that direction would depend heavily on the level of political will in the society – this being understood as high national commitment for better forest sector governance. Such decisions need to be underpinned by a sound political analysis. The scenario to avoid is the one that puts the onus for action onto those actors with the least power to deliver the desired outcomes. As several of the cases attest (Brazil, Ecuador and the Philippines, for example), political will may be uneven over time, and opportunities have to be taken when they arise in the hope that once the ball is rolling, momentum can be maintained.

Even where more limited reforms are envisaged, political will is still likely to be a central concern as a very high level of initial financial and human investment may be required to launch the process (as in the Ghana case). By the same token (and more commonly in the range of cases under review), lack of political will is highly problematic given the primacy of the sovereign state over the forest resource. Many of the case studies relate to scenarios that seek to cope with a lack of political will, looking for other means to sustain the transformation processes and generate the resilience to withstand likely challenges. The way in which information is handled is likely to be a central consideration here, as this is central to the credibility of the verification system.

Political decentralisation may also help to generate political will, though perhaps in a perverse fashion. In Indonesia, for example, tensions between national ministerial, provincial and district levels have served to increase the interest of the central authorities in verification, as they are otherwise starved of information on activities at the regional level. However, transparency is still limited with regard to verification decisions, which remain the exclusive privilege of the Minister of Forests, and thus the proliferation of political actors does not necessarily lead to real governance reform.

Systems for information handling are strong in cases such as Ecuador and Cameroon, and the latter is particularly interesting in that there was a very positive evolution at an early stage from an externally imposed monitoring regime to a system for managing and acting upon information with the potential for long-term integration into a national government system. Cameroon’s Reading Committee (which reads and adjudicates on information from the independent monitor) was a key institutional innovation, though the excessive powers of the Forest Minister undermined its aim of contributing to improved transparency. Though this positive potential has not been fully sustained, the principle still applies.

Administration, monitoring, audit, enforcement and external oversight are potentially conflicting functions. Some verification systems have (or aspire to develop) a significant level of separation of functions so that the building blocks are a set of autonomous actors, each with power over different functions. However, the majority of systems still concentrate functions in the hands of a few actors, with generally negative implications for the quality of governance. Therefore, an important general principle of verification system design may be to reduce concentration of functions and instead try to distribute them between autonomous bodies that do not respond to the same command and control chain. This principle is clearly upheld in the design of the new timber validation system in Ghana, which is envisaged to assign the basic functions of administration, validation, audit and external oversight to four separate, self-governing institutions.

A major requirement is separation of powers between data gathering, information management and sanctioning activities. This in turn helps secure a clear separation of decision-making levels – both between the political and technical levels, and between the operational fields of verification and enforcement. Lang's classification, noted in Chapter 3, which identifies three institutional elements as the minimum requirements for a satisfactory system of compliance control, underlines this point. She points (1996) to the need for:

- An institution to collect data;
- A 'reviewing mechanism' to evaluate and interpret data, and provide useful information; and
- A 'taking measures' function, reserved for a political body, the 'supreme authority', which acts on the recommendations of the reviewing mechanism.

The emphasis is on verification as a process, and different functions are separately executed by discrete institutions. Such a system of information management provides the formal feedback function through which the information generated by verification actors (such as monitors, observers, auditors and environmental prosecutors) can be validated and subsequently returned to the relevant institutions in order to contribute to the reform process.

However, there are three additional requirements which also need to be present to provide some assurance that the arrangement will contribute to enhanced governance. The first is a workable appeals mechanism to ensure that mistakes can be corrected and, more generally, to keep key players in the NGO community and forest industry on board. The forest sector is notorious for imprecision in the information base (maps are often particularly unreliable) and while this may be knowingly exploited by unscrupulous elements of the industry, there is still a need to ensure that basic standards of fair-mindedness are applied on both sides.

The second additional requirement is a mechanism to ensure that information, once validated, is made available for public consumption in a transparent and accountable way. This is far from being the norm. For example, the general practice in Malaysia of not making state audit reports available to the public as a matter of course (though available on special request) has led to low transparency. Interestingly, in Sabah, the industry itself has asked for greater transparency, leading to the appointment of an *ad hoc* third-party auditor. The need for transparency does not necessarily imply that advocacy groups are given complete freedom to diffuse the information in ways they



think fit – the mechanism has also to conform to the good governance requirements of the appeals mechanism (it being much easier to use information to destroy the credibility of actors in the forest sector than to enhance it), and this may require some element of confidentiality, particularly in the early stages. In addition, there are issues of legal liability, both for official actors (forest ministers, for example) and private ones. That said, the forest industry has generally proven much less litigious than, say, the diamonds industry, and this has given some licence to advocacy groups.

Necessary as such steps are, they are nevertheless fraught with difficulty and potential for manipulation, which underlines the importance of the third requirement – that the procedures for information management are themselves embedded within a broader and adequately functioning governance system. One of the major challenges in a number of the cases reviewed (Cambodia underlines the point, though the issue is quite general) is that the ‘taking measures function’ (or ‘supreme authority’) needs to enjoy public confidence. If it does not, the boundary between the technical and political levels is likely to be severely compromised. Some technical measures can be taken to restrict the damage (for example, convening the reading committee with a regular and automatic rhythm, to prevent individuals from using their powers to block the decision-making process), but an important lesson to emerge is that isolated attempts to reform forest governance will find it hard to transcend problems in the wider governance environment, and these may need to be addressed in concert with (preferably, in advance of) the concerns that are more specific to the forest sector.

In some of the VERIFOR case studies, the principle of separation of powers is barely evident. Usually the relevant state agency (through its different departments, units, local offices or other actors) seeks to retain an important supervisory role and power over the key functions. This may be an acceptable compromise in some cases (for example, small countries with uncontentious management problems and restricted revenue generating power). Often, however, such concentration of functions will conflict with good governance. A concern to avoid such conflict underlies the decision not to give the British Columbia Forest Practices Board the right to sanction and enforce. Although considered a weakness by some critics, others argue that this separation of functions is actually a strength, when a broader view is taken, bringing the Board into line with well-established extra-sectoral practice regarding the separation of compliance assessment and enforcement (see Chapter 3).

While over-concentration of functions in the hands of the state is likely to be a problem, experience warns against attempts to delegate functions that are likely to be regarded as public competences. The ‘regalian functions of the state’ (that is, regulation, adjudication and sanctioning) can only be delegated to private bodies if government maintains oversight and control. Costa Rica and Ecuador provide contrasting examples of such attempts. The constant political challenges from which the Ecuadorian outsourced system suffered underline the importance of prior clarity about the functions that are exclusive to the state in its exercise of public authority and which therefore, cannot be delivered by a private or a societal actor. But there is a need also to be clear on the performance of external roles. Functions to be delegated to private and other non-state actors should be consistent with their specific roles. Many would question, for example, whether NGO environmental watchdogs are ideal candidates for trade-based verification work because they tend to be biased in assessing the industrial concession

approach, as they are often implacably opposed to it. Equally, the specific roles and responsibilities of the police and judiciary in the sanctioning process need to be carefully delineated. Given the high commercial interest in the forest sector, the potential for political interference is acute.

There is a view that compliance mechanisms (i.e. procedures for dealing with alleged and actual non-compliance, including adjudication and enforcement) should remain with the state, although in reality nowadays, environmental activism appears to be transferring some of these powers (including some *de facto* adjudication) to elements of civil society actors without necessarily any corresponding responsibilities or mechanisms for appeal. While this has a justification where the legitimacy of the state is in doubt, it does not necessarily deliver 'good governance' itself. This is one of the dilemmas of the 'poor governance' conundrum.

### **Principle 5: Broad participation in enhancing the effectiveness of verification processes**

Bringing the illegal logging agenda within the priorities of a national process such as the National Forest Programme (NFP) signals that the verification system has a strong political mandate, ownership by the society, and some legitimacy. A clear mandate given to the government to lead and coordinate the implementation of the NFP, as well as to take action towards implementation of any agreements reached, are also of great benefit. However, there are likely to be two obstacles to such national engagement in forest verification. First, as is evidenced by most of the present case studies, NFP processes to date have rarely addressed design issues relating to forest verification systems, in terms of roles, institutional architecture or legality standards. An additional process of dialogue, confidence and consensus-building may be needed to address these concerns. The second issue is more fundamental. This relates to the difficulty of bringing about any form of policy closure on forest governance, particularly in the tropics where stakeholder interests are multiple and highly polarised, and blocking a process may seem preferable to some parties to achieving a compromise.

Neither the case studies of Part B nor the in-depth review of multi-stakeholder processes (MSPs) in Chapter 24 offer any magical formula by which such problems can be resolved. Social class structures are often complex, and a wide variety of forces, many of them outside the forest sector, may need to come together before civil society can gain sufficient space to seriously influence political processes or to act independently of the dominant political elite. However, a number of useful lessons can be learnt.

Firstly, it is important to be clear over whether the participatory mechanism is intended to function as a decision-making process (where closure can be brought to an issue) or an opportunity for dialogue to inform subsequent decisions. The use of MSPs as a decision-making mechanism (as opposed to a forum for dialogue) is most favoured in contexts where the multi-stakeholder body already possesses a clear mandate for decision-making and implementation of the decisions it makes. This will depend on both the matter under discussion and the context, as the source of authority which is required to bring closure on a decision will vary according to both the issue and the legal and administrative tradition. This tradition will determine which functions lie within the exclusive domain of the state and which can, legally or constitutionally, be outsourced to pluralistic bodies. In the case of legality standards for example, there is



usually a need for legislative or judicial approval over the process of definition, and thus the final say rests with the government.

Secondly, as the Ecuador case shows, a commitment to a multi-stakeholder process can lead to a policy impasse. Where that policy impasse relates to fundamental questions with ramifications beyond the forest sector, on issues which some NGOs and civil society regard as non-negotiable (most evidently, indigenous peoples' rights), a stalemate may be difficult to avoid. Where the main stakeholders understand, agree and accept that, in the event that no agreement is reached in the consultative process, the forest authority has the responsibility to take a final decision, there is an in-built pressure to compromise and the closure conundrum can be overcome. Costa Rica provides a model in this regard, in that stakeholders are required to sign up to an open agenda before they engage in deliberations, and the final authority (the national government) has considerable democratic legitimacy. However, this country's situation is exceptional, both in terms of the strength of democratic functioning, and the wide span of beneficiaries. With Costa Rica's heavy dependence on ecotourism and middle-income status, benefits are enjoyed much more widely there than is often the case elsewhere.

Thirdly, the credibility of an MSP can be enhanced by careful attention to the type of stakeholder included in the process. Effective MSPs require institutional or political support for decisions to be implemented. The Ecuador case shows how the process needs to be both participatory *and* inclusive. Although participatory, the approach taken in this country did not include key stakeholders who might have provided useful support when it faced opposition, either from Ministry staff or from civil society activists. Indigenous peoples' groups, forest owners and staff of other government institutions (with no personal stake in the *status quo*) might all have played such championing roles.

Finally, the Ecuador example also underlines the need to be aware of who loses out in a reform process, and to seek to keep them on board. This is one of the major limitations of using donor conditionalities to pursue policy reform, as this takes decision-making out of the national political realm and leaves any differences of interest unresolved.

In summary, while one must be cautious about assuming that the necessary preconditions for forest verification can be easily generated from scratch, there is evidence that design does matter, and that a participatory process can compensate to some extent for the lack of initial political will. This is likely to have knock-on benefits further down the decision-making chain, when contentious verification decisions have to be made. An open and transparent dialogue towards better forest law enforcement and governance is an important building block, particularly where this is part of an on-going and more inclusive political process. Dialogue can help to build better communication, credibility and trust between all stakeholders involved in the timber production chain. Credibility can be enhanced within a process of trust and confidence between societal actors – it does not always need to involve new (or even external) institutions. This is an issue that risks being lost in the drive to impose externally driven agreements. A verification system doesn't always or only serve the needs of an external timber market, as the Central and South American cases demonstrate, and national and local credibility and involvement are likely to be important assets which precede such external interests, and should therefore be fostered in advance of them wherever possible.

## Principle 6: Clarity of assessment standards

Legality standards must be clear and simple and within the capacity of the system to manage without recourse to expertise that is in short supply in the official sphere. As Chapter 19 underlines, an effective verification effort relies on a clear and unambiguous standard against which to verify. However there are many cases in which the legal framework underpinning forest management has not advanced to the point where a clear set of standards can be formulated, let alone converted into criteria and indicators. In such situations, a process expressly dedicated to the formulation of a legality standard is needed both to condition the viability and efficiency of the verification system, and to secure and enhance the robustness which is essential to its future survival.

In the contexts under review, the challenges that this presents would seem as much political as technical. Even where the problem is widely recognised in the society (as, for example, in Indonesia where forest-relevant legislation is in abundance) it may nevertheless be difficult to find the catalysts to develop and refine a national standard. Where those catalysts relate to externally imposed processes (for example, VPAs), the political challenge may be heightened. In the case of Ghana, for example, there was early resistance from civil society to the notion of abstracting a legality standard from the law, merely to conform to the requirements of an externally initiated VPA (although this resistance has subsequently diminished as a more participatory process has developed). Ideally, a process of legal reform will precede the clarification of the standard, as in the case of Brazil. Incorporation within a national policy process will also facilitate the necessary refinement and streamlining that such clarification requires, as occurred in Ecuador where the national criteria and indicators were stripped down to the bare minimum for verification purposes. In British Columbia, Canada, the existing legality standards were felt to be too rigid and prescriptive – hence the move towards a more results-based system. Such a change is only possible where there is confidence in the good faith of the industry, and a willingness to cede to it responsibility for the means to achieve the desired results. Where there is scepticism of the industry on all fronts, such a move may be ill-advised.

A number of cases underline the importance of clarity not only in the legality standards but also in the sanctions that may be brought to bear to encourage conformity. The case of Costa Rica underlines this point and also indicates the need to link sanctions to incentives, a point that is considered further below, in Principle 7.

A number of issues need to be borne in mind if the legality standard is to have practical utility. It is crucial that the legality standard should be accepted and understood by the actors who will have to comply with it. A participatory process with diverse stakeholders tends to have limited space for addressing detailed technical issues. This would require keeping the forest norms few and simple. However, this practical imperative needs to be set against the underlying interests that the verification process is intended to address. It is the social benefits that are the prime concern for many stakeholders, so it is essential that this concern be resolved if the policy process is to be brought to successful closure and if there are to be positive development impacts. The most high-profile concern relates to pressures from civil society activists to pursue critical social issues such as indigenous peoples' rights, but this issue is only one component (albeit an important one) of the range of social and environmental issues that are likely to be sidelined if the focus is excessively geared towards the technical and practical.

Experience with standards for sustainable forest management provides useful insights into these policy debates. Broadening the sphere of interest to include social and environmental issues was the big breakthrough in the treatment of certification standards for SFM. This was largely the result of civil society pressures and it can be anticipated that the same pressures will be brought to bear on the verification of legality.

Weaknesses in present practice point to some of the dangers ahead. For example, environmental legislation in a number of cases decrees that all forest concessions should be subject to an environmental impact assessment (EIA). This often fails to occur (as, for example, in Ghana) and even where the failure is acknowledged, there is rarely any attempt to reconcile the regulatory requirement with the extant forest law (for example, by legislating that a valid forest management plan would be an acceptable alternative). Similarly, social laws are often ignored, for example, as regards labour and employment practices including compliance with insurance and compensation schemes. Thus, the point at issue may not just be failure to embrace longstanding social agendas such as indigenous rights but, at a more down-to-earth level, compliance with existing legislation.

One of the barriers to progress here is that the relevant national legislation is often extremely broad. A practical approach to address this difficulty would involve acknowledging the economic, environmental and social goals of forest management, as are now recognised in all major international forest-related treaties and private sector standards. This would mean that verification activities should address more than just the forest law. Monitoring of compliance with EIAs, existing labour and welfare standards and health and safety legislation would be undertaken as part of the verification activities. This would not necessarily favour the larger and well-capitalised multinational concerns. Environmental and social legislation often takes into account the size of the enterprise when standards are set, and there are interesting extra-sectoral experiences (for example, relating to artisanal production of speciality smoked meats in southern Europe) which also point to the ability of legislation to accommodate the needs of small and medium enterprises without forgoing the requisite safeguards.

### **Principle 7: Creating incentives to comply and report**

An underlying dilemma with forest verification is that the focus tends to be on those timber cutters who operate legally, as verification offers only limited possibilities for action to control forest conversion and clandestine illegal timber. Great care needs to be taken, therefore, to ensure that legal operators are incentivised to comply and report, and that their openness will have its positive reward.

The issue of incentives applies at two levels: the industry (auditee) and the system. The extra-sectoral case studies underline the strategic value of a focus on incentives for compliance, with a firm eye placed on the factors that might induce non-compliance and migration to non-parties of the verification agreement. The incentives to the industry need to be clear. The evidence suggests that those elements of the forest industry that are well-integrated into international markets are mindful of their reputations, and see this as a key aspect of risk management. This may be less pressing on the less capitalised elements of the local industry, which have less investment in the sector and less to gain from compliance with international standards. The danger is that inappropriate regulation will lead to bifurcation of the sector, sanitising the international trade but

not necessarily contributing to environmental sustainability. This has been a problem with the meat industry, where a thriving export trade, conforming to high technical standards, may exist alongside a local market which gives little regard to prevailing international standards of human and animal health. In such a situation, it is the national public that loses out. In the forest sector, the effects may be negative for both the national population and (because of the erosion of the stock) the long-term interests of the international industry. The Ghana case is particularly instructive here, in that the Forestry Commission established a clear principle of action early on that the needs of the sector would be treated in their totality, with no discrimination in favour of the export trade. Apart from the immediate national benefits, this approach is likely to favour a realistic appraisal of alternative trade opportunities, whether inter-continental (for example, destined for European markets) or regional (destined for markets such as Nigeria).

Officials also need to be incentivised. In a number of the forest sector cases (Cambodia and Cameroon, for instance), non-willingness to comply on the part of lower-level civil servants tended to be interpreted by NGO activists as proof of corruption, and this has tempered the way in which such activists have approached the issue of reform. Corruption is often widespread in the sector, but the attitude of bureaucrats may be conditioned as much by the desire for self-preservation as for monetary gain. Again, this would encourage a focus on the reform of forest governance structures rather than on lower-level interventions that could well end up as a form of ‘victim blaming’.

A rather different dilemma arises in relation to the issue of sanctions and penalties. Clear standards require clear sanctions for non-compliance. Even where the standards themselves are agreed, there may be disputes over legal categorisation – specifically as to which legal code (administrative or criminal) applies. The disadvantage of the administrative route is that the locus of decision-making remains within the forest institutions. Where (as in Cameroon) it is the functioning of these that is most in doubt, the capacity for verification to contribute to governance reform may be limited. An additional problem is that penalties are rarely commensurate with the value of the timber, and thus offer little disincentive to non-compliance with the standard. The governance conundrum again applies. Those countries that manifest poor governance of the forest sector tend to be those in which the interlocking dynamics of the sector militate against reform. An industry which knows that, whatever its delicts, the consequences are likely to be paltry compared to the illicit gains, is under little pressure to change its behaviour in progressive directions. The message is that expensive and time-consuming verification measures need to be located within wider programmes of forest governance reform.

As regards the incentives for industry to provide information for verification (itself a major element of transparency and ‘good governance’), the forest sector is particularly unfavourably placed as many of the operators are not listed companies and have every interest in withholding information that might compromise their market advantage. The onus is very firmly on those who wish to discipline the industry to establish the value of a rule-based culture and the careful management of information – open information flows where this is appropriate, but equally, a guarantee of confidentiality where it is not. The term ‘mandate limitation’ in its more restricted sense may encapsulate the requirements here, and the main challenge may be to those civil society activists who would wish to move into the verification industry. Unlike governance research,

verification work does not necessarily offer unfettered opportunities to ‘bust open’ the political economy of failing states. A more restrictive and industry-focused approach is likely to be required. The same line of reasoning would favour a focus on ‘compliance management’ (in the sense applied in cases such as Malaysia and British Columbia, Canada) rather than ‘compliance enforcement’. This issue is dealt with in more detail in the following paragraphs.

### **Principle 8: Independent oversight**

The principle of independent oversight is valid in its own right but also complements other issues of principle already discussed, most notably the separation of powers. The fact that the forest sector is often a state monopoly, and marked by poor governance partly in consequence of this, accentuates the importance of introducing independent actors and viewpoints into verification system design. The particular origins of the verification movement have tended to encourage a focus on one stage in the sequence (independent monitoring or independent observation) and on the actors who might best safeguard that stage. However, the issues are more general and relate not only to the final stages of verification but also to all the upstream actors and interventions that need to be protected from political and financial influences. In some situations independence is compromised by the fact that the forest industry retains too many responsibilities – for example, where it is responsible not just for its own activities but also for payments to field supervisors, as with forest regents in Ecuador. A clear distinction needs to be made between forest management and regulatory activities. Combining management roles (for example, writing management plans) with regulatory roles (for example, inspecting and certifying the correct implementation of those plans) inevitably leads to a conflict of interest of a type that needs actively to be avoided rather than just ‘managed’.

Thus, safeguarding independence is as much an issue with local field monitors in Central and South America as it is with the independent observers who might be asked to sign off on VPAs. All the indications are that, if such roles are to be accepted by all those with a legitimate stake in the sector, then ‘independence’ needs to be sought in all three of its dimensions – neutrality and impartiality as well as independence (see Chapter 20) – and that independence from the ‘usual suspects’ (namely producer government and industry) is not sufficient to deliver credibility. This has implications both for governments (drawing into question ‘independent verification’ by state subsidiaries in Malaysia, for example) and for NGOs (anti-industry activism would appear incompatible with official IFM roles).

Where the producer state has retained firm control over the verification process, the preferred option has tended to be close to the government, with the limitations that this implies. Thus, the Indonesian Independent Verification Institutes (LPIs) are supposedly independent evaluation companies (accredited by the Ministry), but their independence is doubtful because their activities are funded by the Forestry Department and the final decision on extending or revoking permits is still in the hands of the Minister, with no guarantee of transparency. A more promising case may be that of Malaysia, where the focus has been on routine auditing, though this is often consigned to state-linked, semi-private enterprises such as Harwood or the Malaysian Timber Certification Council (MTCC). This compromises independence and is leading to a shift towards third-party FSC and ISO certifiers and *ad hoc* third-party verifiers. At the same time, the

independence of the MTCC is being improved by the establishment of an endowment fund to cover its operational costs, though it is likely to remain under the authority of the Federal Ministry of Plantation Industries and Commodities.

Where the external aid community has driven the process, the emphasis has tended to be on IFM undertaken by advocacy-oriented NGOs. This is one way to provide credibility to sceptical actors, and is of particular value where there is a legitimate case to 'kick start' a process of governance reform, and shake industry and authorities out of complacency. However, to date at least, IFM undertaken by advocacy-oriented NGOs has not necessarily been a very effective way of generating national ownership in the producer societies, and has proven a fragile mechanism for sustaining long-term governance reform. This cannot be placed only (or primarily) at the door of the individual IFMs – they have operated in hostile environments and their objectives have often been investigative, clandestine ones, discouraging information-sharing in the early stages. In several cases, the general tenor of the broader interventions in which they functioned was also infertile ground for achieving ownership or governance impacts, because of their inherent negativity. In Cambodia for example, the IFM functioned as part of a 'forest crimes reporting system' which prejudiced the whole system to the negative. This built-in bias has tended to increase the political vulnerability of such independent monitoring efforts. However, even as a general principle, reliance on individual actors as the guardians of moral virtue would seem inherently unbalanced, and altogether too prone to pit verifier against state, in a situation where the cards are stacked heavily against the former.

On sustainability criteria, among others, a more complex form of delivery may be favoured, in which individual players mutually reinforce and cross-check each other – as in Ecuador, Indonesia and the Philippines. The Brazil case is instructive as it involves a combination of state and federal institutions and an array of public bodies, both horizontally and vertically integrated. Joint control operations promote its integrity. However, such a system does require a high level of political will.

Where such will is lacking, other composite approaches may prove effective. Multiple civil society involvement arguably has more potential to blunt the opposition of key elements in government and to overcome much of the hostility of the industry. Institutions which are naturally predisposed to transparency – such as universities – have not been much involved in verification to date (though there are exceptions, as in Costa Rica) but the intervention of such actors would not only help to free verification from excessive association with a partisan 'anti-industry' bias but would also introduce a rhythm and timeframe more attuned to the long cycles of forest exploitation.

The British Columbia case is a particularly interesting example of independence enshrined in legislation. Authority lies outside the forest sector, and accountability is to Cabinet, not the Forest Ministry. Members of the Forest Practices Board (FPB) act in personal capacities and do not represent stakeholders. There is a confidential appeals procedure to sustain the confidence of the industry and the whole arrangement is restrained and highly professional in tone. The Board reports directly to the public, and political actors do not have the power to interrupt the information flow. It delivers its findings as it judges them (sometimes in favour of one party, sometimes in favour of another), and operates in line with the full requirements of independence (i.e. independence, impartiality and neutrality). The FPB does not undertake verification on its own. It



operates within a system of interacting components including other potentially less impartial actors such as government, private sector and the diverse components of a strong civil society.

Having financial arrangements in place to ensure that the whole system can be sufficiently and sustainably financed is an important requirement for success. Matching resources and capacities during system design is crucial, and may help sustain an appropriate and effective distribution of power. Financing of verification operations is often problematic and can compromise independence. It can sometimes be a matter of choosing the financing option which is the least bad, as optimum solutions are rarely available. In Ecuador, funding for *Vigilancia Verde*, the public/private coalition charged with policing the transport of forest and wildlife products, came in part as grants from donors and companies, which compromised the independence of this body, and 50% from the sale of auctioned timber, which could have provided a perverse incentive for illegality (as detection of illegal timber became more profitable than prevention). The forest regents were usually paid by forest owners or timber traders and were therefore susceptible to the view that they were too close to their clients. The private company, SGS, tasked with administration and verification duties, was also paid by users and similarly vulnerable. However, had such actors been paid by the Ministry of Environment, they would have been much more vulnerable to high-level political pressures and other machinations such as delays in payments and or the withholding of payments.

The Multi-Sectoral Forest Protection Committees (MFPCs) in the Philippines provide an example of how an independent multi-stakeholder process could be designed and used as a state-authorised forestry verification system, which benefited from a high level of ownership, transparency and credibility due to the wide assortment of actors and interests involved. However, once generous World Bank funding ceased, MFPCs were easily open to capture by specific and well-funded interests, such as environmental NGOs. Adequate public financing mechanisms might help to sustain the model and avoid partisan associations, though it could also distort participation in favour of the state.

### **Principle 9: Inclusion of all stages in the chain of custody and special efforts to secure the most vulnerable stages**

This principle has two aspects. First, a focus on vulnerability at operational levels, through development of a system or systems to trace the movement of goods along the value chain with a particular focus on weak points such as the tree-felling site; and second, a focus on institutional vulnerability and on the need to protect vulnerable actors in the chain of supervision. The first of these can be largely addressed through technical means (see, for example, Crossin et al., 2003). The second aspect, however, is more complicated and subject to political forces.

Recent innovations in technology have significantly increased the possibilities for regulatory control although, as Chapter 23 notes, technological advances alone will not bring about improved forest sector governance. Information is as powerful a tool in the wrong hands as it is in the right ones and there are instances (the case of Mato Grosso State in Brazil, for example) where poor governance has confounded the intentions of the investment in technology, and increased rather than restricted the opportunities for rent-seeking behaviour. The potential of new technology to concentrate information in a few hands, instead of spreading it more widely, makes it something of a two-edged sword.

Nor does technology provide a guaranteed way of mastering the complexities of modern production systems where, for example, timber of multiple and multi-national origins is mixed in the sawmill or processing facility, as is often the case in South-East Asia.

Institutional diversity within the regulatory authorities may also provide a barrier to information management. Thus, in Cameroon, there are four information systems for tracking movements of logs and lumber, involving the forest and finance ministries and the customs service, but these remain unreconciled despite numerous promises from the government. Similarly, in Costa Rica, the different bodies responsible for forest verification lack an information system for cross-checking the information they gather against timber harvesting permits, making effective forest control difficult and ineffective. Each actor in the verification and control system impinges on only a very short segment in the production chain.

The message, therefore, is that the introduction of technologies within the state regulatory system needs to accommodate the requirement for effective information management and this raises issues of an essentially political nature, relating to clarifying the boundaries of authority and harmonising objectives between government services.

### **Principle 10: Incorporation of pro-poor approaches into the design of verification systems**

Several of the innovations under review have been strongly driven by the environmental concerns of conservation NGOs with no strong development interests, and this would draw into question the notion that a 'modern' civil society sector will necessarily ensure that the verification system that is delivered is equitable and 'pro-poor'. Rather than being integrated into the verification system design, pro-poor agendas tend to be either add-ons or, worse, stymied by the enormity of the legislative changes that would be implied in the reform of indigenous rights (as in the South-East Asian cases). An additional difficulty with strong environmental drivers is that basic economics tend to be marginal to the central concern of environmental sustainability. This can lead to much higher compliance costs for the small producer than for the large, as in Ecuador.

Verification systems can also prove anti-poor by default, as the impetus given to law enforcement can easily develop into a form of victim blaming. Law enforcers may find it easier to clamp down on small producers and community groups than on politically well-connected members of the forest industry who are able to buy their way out of difficulties. This was the problem with some of the MFPCs in the Philippines, where small operators and poor communities represented much easier targets for enforcement than powerful elites, and in Cameroon, where the vulnerability of community forestry to capture by the forest industry has been interpreted more as a problem for community endeavour than for the industry. However the problem is a general one, particularly where career paths for government officials are based more on patronage than merit, and where the job market is so restricted that few are willing to step out of line.



### 25.3 **Summing up**

No single model, approach or component emerges from the case studies as essential to verification design. However, the diverse systems reviewed in the preceding chapters are, in their different ways, comparable responses to the pressures that the sector confronts, allowing (per the ‘Conceptual Matrix’ in Table 17.1) for variations in the legal and institutional environment, the political mandates, and the developmental objectives publicly and privately pursued. The principles considered above are ones that can be anticipated to improve the functioning of any verification system, whatever the interplay of such factors. However, they do not necessarily guarantee its effective operation, particularly in cases where the underlying governance problems are not addressed.

The last chapter in this book revisits the governance conundrum and assesses its implications. The overall conclusion to be drawn is that different arrangements are appropriate in different situations and periods in the evolution of a sector, but that it is the constellation of players, rather than the individual competences of each, which ultimately determines their effectiveness. Finally, the Appendix presents a number of policy messages that can be drawn from the above-mentioned principles and the evidence in Part B, as a reference point to be borne in mind when verification systems are to be designed and implemented.

## Chapter 26

# Conclusions: verification of legality and forest governance reform

### 26.1 Introduction

The VERIFOR study has covered an emerging area of forest policy research which combines forest sector-specific and technical concerns with bigger questions about global, national and sub-national governance, mechanisms of national and international public accountability, and the balance between sovereign state control and the international stewardship of global public goods. The verification movement is, as yet, in a very formative stage and it is not possible to pronounce on its course with any certainty – either in a specific country context or more generally – so any assessment of its effectiveness can be only suggestive at this stage. This, the final chapter of the study, reflects on both the nature of the challenges which verification presents and the evidence available as to the effectiveness of the various policy initiatives to date. Underpinning these concerns is an interest in transformation at two levels: first, to move from forest governance arrangements that are often coherent and well-embedded, albeit also highly transactional and inequitable, to rule-based systems which might better serve the purposes of producer and consumer societies; and second, to reconcile two sets of standards, the industry interest in financial profit and risk reduction and the interest of broader publics in social and environmental legitimacy and sustainability.

### 26.2 The balance between sovereign state control and the international stewardship of global public goods

Forests and trees are a powerful motif on the international stage. They provide an emotive indicator of environmental wellbeing on a global scale. They have important international public goods dimensions, which are likely to grow in importance as concerns such as climate change move centre-stage in global policy. Tropical forests in particular are widely held to be under-regulated, even unregulated. In these respects, international interest in the fate of the world's forests is easily explained.

However, the accentuated external interest in the issue of illegal logging of tropical forests does require some explanation. It is illustrative of a wider movement that is one of the more distinctive elements of the course that globalisation is taking. Much of the recent debate on the interface between foreign and national capital has focused on the ways in which the interests of the former have to be accommodated, under the forces of globalisation, within national laws and regulations. In such situations, the encroachment of foreign interests into the sovereign affairs of states has been justified by the need to protect their consumers from contamination or other faults in the products in question.

Health concerns, for example, justify high levels of intervention in the affairs of overseas meat producers, to ensure that they abide by the standards that consumers expect, and health and security matters likewise justify international involvement in national policies on nuclear energy. In both cases, the transnational dimension of the trade is regulated more by the standards of the consumer than the producer, and there is a clear logic in this imbalanced relationship. By contrast, there is a growing class of products – timber is one of them, though there are now many others (from bananas to baseballs, clothing to carpets, and diamonds to designer wear) – where the external interest is neither material nor selfish, but which expresses a moral concern about the origins of the products rather than the material effects of their consumption. Though it would be mistaken to present the fair-trade movement as only value and not welfare driven (in that the welfare of affected individuals is a primary concern), it is mainly the welfare of those who are directly affected by the production process and not consumption that is at stake. Yet it is the latter (i.e. those affected by the consumption process) that are, in significant measure, championing the cause of fair-trade advocacy. There are international dimensions here, but they are not the ones that would most easily come to mind.

Such concerns express strong and positive public values, and they imply a generalisation and internationalisation of moral standards which is surely commendable. However, as a factor in policy negotiation in the forest sector, they are challenging in at least two respects. First, the connection is not self-evident between, on the one hand, the worthy desire of the consumers to ensure that the products they consume do no harm to those immediately affected by their production, and, on the other, the changes of policy which may be the outcome of their concerns. There is a danger that whatever the good intentions of those policies, their effects may be less than positive. In the present case, for example, there is no evidence that development policy for the forest-rich south is being driven by the interests of the northern timber industry, but this could well still prove to have been the effect, *ex post*. At the very least, the industry is likely to use its considerable financial and political muscle to try to capture and channel the direction of the emerging policies. Low-cost tropical production is an evident threat to high-cost, high-labour-standard temperate industry, and if that comparative advantage is the result of illegality, then there is a clear commercial interest in its elimination. Second, there are understandable sensitivities in the producer states, particularly within the governments who act as guardians of national sovereignty, at the prospect of foreign intervention in their national affairs which goes beyond the material and self-evidently legitimate concerns of foreign consumers. Negotiating the new legality standards has proven unexpectedly contentious in a number of instances, and the fact that interested donor states are often the former colonial powers has only increased the sensitivity.

The challenge is therefore to harness the strong moral concern for fair trade in timber with the real interests of the national populations that are most affected by the lack of it and most vulnerable to suffering if the new policy directions are found to be wanting. These populations are located in the producer, not the consumer, countries.

### **26.3 Verification as a driver of governance reform**

A second, and related, area in which the subject matter of this book presents challenges for forest policy concerns the fact that only to a limited extent has action been initiated

from within the producer societies. The main drivers for change have been located predominantly (though by no means only) in the international domain. This is a complex issue and it does not imply any local complacency about illegality. Illegal practices in the forest industry have long been a cause for concern in many of the producer societies. However, except in some specific situations (chiefly in Latin America), the formal processes described in this book have tended to be initiated by external actors within the context of international policy reforms. The extent to which the interventions in question (as opposed to the underlying interests) are adequately embedded in the local context is thus a matter of some concern. Moreover, even where there have been significant internal drivers for change, the problems which people want to see addressed are often only partly to do with illegal practices of the timber industry. There is an issue, therefore, about the entry point that 'illegality' provides into the concerns that most affect tropical forest dwellers.

For many activists, both local and international, illegal production is but one entry point – albeit a currently high-profile and convenient one – into wider debates and concerns, and it is embraced largely as a vehicle to leverage other, higher-order benefits. In all probability, relatively few of those concerned by the FLEGT movement in timber-producing states regard the legality of international timber trade as their only or main preoccupation. The movement will indeed have been judged a failure by many of the activists if its success is restricted to offering a new green trade label to tropical timber producers, as a proof of the legality of their production and as an innovative form of market certification in a primarily commercial frame of reference.

These concerns pose particular difficulties for policy development. Compliance theory suggests that the main factors that lead to increased compliance are likely to be strong external pressures to comply, a high likelihood of detection, and an assurance of heavy punishment in the event of non-compliance (see, for example, INECE, 2005). In tropical forested countries, the local and national constituencies that are pressing for compliance are often quite restricted. Many of those who might be anticipated to contribute most enthusiastically to policing and detection may be reluctant to intervene. This is partly the result of the fact that, in low-governance contexts characterised by complex and unworkable legal regimes, very large numbers of otherwise law-abiding citizens are likely themselves to be acting illegally, or to be vulnerable to such perceptions, as well as to be living in situations of considerable tenurial insecurity, and hence most unlikely to 'cast the first stone'. There is a growing corpus of work which addresses this issue (see, for example, Colchester et al., 2006).

Interesting questions are raised about the approach to governance reform from the illegal timber trade. Is international trade (which is reciprocal, by nature) a strong vehicle for governance reforms (which tend to have a more unidirectional character)? Is verification of legality proving a good entry point for governance reform? More generally, can one use sector-specific actions in one sector to kick-start wider and more generalised processes of governance reform? Forestry is arguably a particularly demanding sector (much more so, say, than minerals or energy), in that use values are multiple, production and markets are highly dispersed and decentralised, and its products (diverse species of timber from different environments) are easily substitutable.

Interesting questions are also raised about strategy and impact. The approach from the theory of governance might suggest, for example, that the biggest gains will

be had from actions that attack poor governance at its foundation rather than through its effects. On this reasoning, it could be argued that independent monitoring of forest concession allocations is likely to be more effective than independent observation of forest operations, and that, in consequence, greater investment should be made in the former than in the latter. As manifest in the Cameroon case, the argument would be that concession allocations go to the heart of patrimonialism in public governance and thus, introducing a more rule-based system would severely reduce the potential for poor governance. Efforts should thus be concentrated on making sure that the findings of such monitoring are incorporated into future allocation procedures and lead ultimately to more systematic reforms. By contrast, independent observers of forest operations can do good work, and with a much higher international profile, but may find it more difficult to address the underlying weaknesses in governance. As in the Cameroon case, there is only so much that can be done by external leverage to challenge poor governance. Cameroon's Reading Committee has been a positive innovation, but external actors have not been able to challenge the exclusive authority of the forest minister over downstream enforcement and compliance control.

#### **26.4 Mechanisms of national and international public accountability**

The sensitivities that surround the drive to legality in the timber trade derive ultimately from the tensions that exist between the sovereign and international dimensions of the forest sector, and the attempts to use that sector as a vehicle for wider governance reforms. However, the most tangible expression of these sensitivities has been the ways in which certain private actors and agendas have been introduced into the public domain. By and large, these actors have been NGOs and civil society activists. It is the roles of environmental rights NGOs that have been most controversial, and most subject to claims that they are intervening in matters beyond their remit. There is some irony here, in that private actors – in the sense of industrial operators – have long enjoyed immense privileges in exploiting national forests, and have prospered greatly by so doing, even to the detriment of those forest-dwelling populations with prior claims over the lands in question. Those who object to the 'privatisation' of responsibility for the state of the forest (in relation to NGO roles) might do well to remember the extent to which the forest condition is already subordinated to private sector interests (in relation to the timber industry).

At one level, therefore, the encroachment of NGOs as private actors into the public domain has not merited the charge that it abuses national sovereignty in a way that is fundamentally new and challenging. What may be more radical, however, is the fact that these private actors have also taken on norm-making roles. That national actors are doing this is not unexpected, and not especially controversial. The same approach from international actors is more controversial, both because of their non-national status and the disproportionate support they have received from the international community. The independent forest monitors in countries such as Cambodia and Cameroon are the most high-profile instances covered in this book, though other organisations not covered here (the likes of Greenpeace, for example) have played somewhat similar roles both in this sector and elsewhere. Though the forest monitors worked to fairly well-defined monitoring briefs, very much in the manner of traditional control bodies (though arguably much

more penetratingly), they have not sought to limit their subsequent pronouncements to these matters, and have made clear that their underlying interests are not technical but value-driven and normative. Their positions on industrial exploitation of forests are often clear and hostile, and they have not hesitated to identify and publicise the party political ramifications of the forest industry in question. This has, indeed, been one of the revelations of this kind of investigative work.

To western observers outside of the forest sector, the most distinctive feature of verification systems has been these independent monitors, and IFM has been the most evident and controversial private location of authority in FLEGT. The historical importance of IFM in the emerging field of verification is reflected in current policy preoccupations, most notably the VPAs, and the chequered course of most VPA negotiations can only be understood in relation to sensitivities over IFM.

There is a danger that the FLEGT movement will become preoccupied with IFM, indeed it could be said that, in some important respects, this is already the case. Despite the interesting work done by some of the environmental monitors, IFM is but one step in building a verification system, and is not seen as an essential one by many interest groups. The country case studies considered in this book have illustrated that there are a number of other approaches to FLEGT that are less dependent on IFM, particularly in societies with sizeable and vocal middle-class constituencies.

If deadlock is to be averted in the negotiation of new verification systems (most obviously VPAs), it may well be useful to start by recognising that the underlying concern is not external exposé but rather governance reform, and that public accountability should be the central element of good governance. Accountability is a more critical dimension of good governance than the participation of external actors and takes precedence over any particular mechanisms to enhance it, including IFM.

Using the richness of the case studies discussed in this book as a starting point, and focusing attention on accountability not exposé, interesting themes emerge which are critical to both good governance of the forest sector, and good governance more broadly in some hitherto fractured and unstable states. All directions converge on national identities and interests within the producer states, and on ensuring that all actions at the interface of national resources and external interests are both well rooted in national values and imperatives and able to deliver on them. The way forward would thus lie in building up national capacity for public voice as a precursor to international actions. The roles available to donors may lie not only in the forest sector. They may be best advised to encourage the collaboration of producer governments and civil society across a broad front, using their own influence to champion national actors and interests, with external actors operating in supporting roles.

## 26.5 Concluding remarks

The experiences reviewed in this book attest to the view that effectiveness and credibility depend crucially on perceptions, and will often be under threat. If a verification system is to be sufficiently robust to learn from its mistakes, it will need to generate a broad range of national champions who are willing to defend it against all manner of challenges – and, where necessary, put pressure on the industry and government to take firm steps to rectify their deficiencies, rather than just cover them up.

This perspective provides a justification for seeing national capacity-building as a prerequisite for an effective verification system. This would open the way for more creative and more ‘architectural’ approaches to verification system design than technical models and approaches in which credibility and moral virtue rest primarily with the actions of individual advocacy groups. An independent monitoring function may well still be required. A variety of options exist for its provision, consistent with a commitment to an objective assessment of the evidence. The case studies present a number of these options – almost all of them, it should be reiterated, still in process of formation.

The approach adopted depends to a significant extent on the timeframe for the delivery of a verification system. If this is viewed as an achievable short-term goal (as with some VPAs it might be), this encourages a focus on independent forest monitoring as conventionally understood. Such an approach might work effectively, but it runs the risk of falling between two stools. Private sector ‘professional auditors’ may well appear too safe for the international NGO community. More activist monitors will satisfy the NGOs, but they could antagonise sovereign producer states, and there must be questions about the ownership and sustainability that they generate. Though performance should not be pre-judged, one can readily imagine a situation developing in which external monitoring activities serve to fatally discredit a verification system, at an early stage, in circumstances where there would have been a case for a more process-oriented, cautious and ‘capacity-building’ approach. This could well have perverse (and negative) effects on the conservation of the resource. While there is certainly a case for strong-minded IFM, a longer-term perspective offers other verification options of a more structural nature, and these may be more promising as regards ownership and sustainability in the producer states. The legality assurance system will need to be tailored to the specific context of each partner country. Different instruments may well be applicable in different contexts (and in different countries), though strong and diverse national participation and ownership would seem an essential requirement in all of them. The growing importance of non-European markets underlines this point.

A major conclusion to be drawn is that effective verification needs to be seen in the context of a wider process of forest governance reform. Attempts to use verification activities as an independent and free-standing source of such reform are unlikely to be effective, particularly in the longer term. This is because they leave untouched the major structural weaknesses that generate illegality. These findings do not resolve the problem of how to kick-start reform in low-governance situations but they do suggest that there are no easy solutions, and that the road to reform in such contexts can only be harder not easier than in those where indigenous pressures already exist. There is emerging evidence that trade pressures can help leverage governance reforms if exerted in a flexible and responsive way. The sectoral and extra-sectoral approaches discussed in this study suggest a variety of options for verification systems design that may contribute to this flexibility. At the end of the day, the aim should be to help empower producer societies to husband their national resources effectively while safeguarding the interests of the weak and vulnerable, not merely to expose the limitations of existing systems of resource control.



## Appendix: Policy messages

This Appendix presents a set of policy messages drawn directly from the findings of the VERIFOR study and offered here as possible pointers to the development of effective and equitable verification systems. They are organized in four sections, responding to the four themes highlighted in the conceptual matrix (Table 17.1) – namely: ownership, legality standards, independence and impacts. Each policy message is accompanied by a supporting strategy which provides suggestions for implementing the policy on the ground. These policy messages and supporting strategies are in no way considered prescriptive but rather attempt to distil some of the useful experiences gained by countries struggling with forest sector verification to date.

### Ownership of verification systems

Policy message	Supporting strategy
<b>1 The objectives of the verification system determine the degree of ownership</b>	<b>→</b> Verification systems which are designed to address national priorities and to complement existing national institutions and policy processes will have high levels of ownership
<b>2 The aims of the reforms need to be agreed and specified in advance of the process of systems design</b>	<b>→</b> Responsibilities for implementation and decisions on who should bear the burden of costs should be apportioned in relation to the aims and objectives of the reforms. Preservation of global public goods should be the responsibility of the global community, whereas national goods are the responsibility of national governments. Conversely, non-beneficiaries should not be required to bear the costs
<b>3 Government ownership can be increased by engaging a breadth of agencies and decentralised levels</b>	<b>→</b> Engaging with parties outside the forest sector may help to ensure broad government ownership. Where decentralised government is well-advanced, this may be essential
<b>4 Increasing public participation and drawing on a diversity of viewpoints increases public ownership</b>	<b>→</b> Government ownership does not necessarily reflect public or citizen-based ownership. The two can be equated when there has been adequate representation, sufficient consultation and effective engagement of the relevant constituents in decision-making, and when mechanisms are in place to reconcile conflicting views



**Policy message****Supporting strategy**

- 5 Strengthening accountability and transparency mechanisms increases public ownership** → Systems design should reflect good governance criteria with due regard to political realities. Public access to information about the process is critical if the public is to become actively involved in holding institutions to account. This involvement should be further encouraged through the provision of confidential reporting channels and safeguards to guarantee protection from retribution
- 6 A careful consideration and communication of the distribution of costs and benefits of the verification system is necessary to maintain ownership over time** → Ownership is not only achieved by a process that encourages participation and involvement, but one that delivers clear beneficial outcomes and certainties over where the burden of costs is likely to fall. Maintaining ownership may require features such as buffers to lower the risks faced by producers or a clear understanding of the degree to which the standards will change overtime

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**Independence of verification systems**

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**Policy message****Supporting strategy**

- 7 Independence is an aspect of good governance, and should be built into verification system design** → Independence should not be treated simply as an ‘add-on’, to be consigned to a single agency (this will increase vulnerability). It may also derive from the inter-relationships between actors, and the checks and balances in the systems design. Poor governance problems should be challenged at source, in advance of verification system design (for example, over-dependence on single political actors, intervening non-transparently; individual actors having a right of veto, unsupportive of the democratic process)
- 8 To be effective, ‘independence’ must mean independence of all partisan interests in the verification process, including those of governments and the forest industry but also of civil society groups and opponents of industrial logging** → Independence should be secured on three axes – *independence* (autonomy from the principal parties), *impartiality* (consistency in the application of judgements, with no favouritism) and *neutrality* (non-partisanship, ‘not taking sides’). Where absolute independence is infeasible (for example, many systems will require financing by governments and donors), active steps should be taken to safeguard the independence of the verifying body, and to ensure its even-handedness

<b>Policy message</b>	<b>Supporting strategy</b>
<b>9 Independence is not associated with any specific class of actors (private sector, NGO, etc.) or with particular origins (national vs. international); however, actors may differ in their ability to share information and to put pressure on delinquent performers in this way</b>	→ Emphasis should be given to the constellation of players and to their respective strengths and weaknesses, not to safeguarding the assumed moral virtues of particular actors
<b>10 Independence is best built into verification systems by purposeful design</b>	→ Active arrangements are likely to be more effective and robust than passive ones. Institutional fora should specifically aim to bring designated players together according to clear rules of interaction; participation should not just be voluntary and open-ended. There is also a need to specify and adhere to policies relating to conflicts of interest
<b>11 Adherence to international standards provides a credible assurance of independence</b>	→ Verifiers should conform to international standards such as ISO, both in relation to accreditation (e.g. ISO 17001 and ISO 65/EN 45011) and performance standards (e.g. ISO 9000, 1401, 1900)

## Legality standards

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<b>Policy message</b>	<b>Supporting strategy</b>
<b>12 Defining a legality standard is likely to be a pre-condition for effective verification, and the more complex the legal framework, the more necessary will be its abstraction into a legality standard</b>	→ Two steps are implied: <i>prioritisation</i> of existing laws and regulations depending on the objective of the verification system and the mandate of the lead institution; and <i>augmenting</i> regulatory frameworks to incorporate clear standards of performance

**Policy message****Supporting strategy**

- 13 Clarity of objectives is essential** → Whether a standard can be both applicable and legitimate is ultimately rooted in the ability to agree on the objectives of verification. This has created a pressure to pare down the stated objectives of verification to allow consensus to be reached around a more specific standard, the objectives of which could be revisited at a later date. Phasing-in a standard, sharing liability with the state, differentiating compliance measures and tackling the transaction costs of compliance may all work to enhance a standard's applicability
- 14 Legality standards need to be practicable** → Practicability implies adherence to principles of *legitimacy* (i.e. broad stakeholder acceptance as the benchmark for legal compliance), *applicability* (i.e. the standard needs to be implementable, without imposing transaction costs that render compliance uneconomic) and *specificity* (it must be measurable and have clear standards of performance, otherwise auditing legal compliance will be difficult)
- 15 Legality standards have variable components; the objectives of verification will determine what these are** → Components to be considered include *legal origin* (the legal right to harvest, perhaps also including prior determination and settlement of tenurial claims, legal gazettement of concession boundaries, as well as the Free, Prior and Informed Consent (FPIC) of local communities with respect to cutting operations on community lands); *legal harvesting* (including compliance with permit conditions, payment of royalties, forest management regulations including mandatory criteria and indicators for sustainable forest management, as well as laws on environment, labour and welfare and health and safety); *legal processing* (compliance with domestic processing quotas, guarantees against mixing with non-legal sources, and payment of processing levies); and *legal trade and export* (export licensing, procurement of necessary customs clearances)
- 16 When defining legality standards, focussing on the compliance measures may be as important as defining their scope** → Distinctions may need to be made between those offences that trigger *compliance enforcement* (e.g. an administrative sanction and/or prosecution), and those that trigger *compliance management* (e.g. corrective action requests)

Policy message	Supporting strategy
<b>17 The processes by which the standard is to be defined may be as important as the standards themselves</b>	→ The institutional mechanism for developing a legality standard needs to be able to resolve differences between stakeholders. The fundamental requirement is oversight by an institution with the legal and political mandate to reach ‘policy closure’
<b>18 The legal status of the standard needs to be clear</b>	→ This requires attention to four sets of issues: (i) the requirement to gazette the legality standard; (ii) determination of whether the chosen standard does represent applicable laws and regulations in line with the stated objectives of verification; (iii) the mandate to issue certificates of legal compliance; and (iv) liability where determinations of compliance prove to be false or inadequate.
<b>19 Definition of a legality standard places duties on the state as well as on forest users</b>	→ If a standard is to secure compliance by state administrations as well as forest users, it cannot function in isolation from broader guarantees on public accountability; this includes statutory rights on access to information and participation and public complaints mechanisms, and legal empowerment

## Developmental impacts

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Policy message	Supporting strategy
<b>20 Verification systems must recognise, and respond to, the differing objectives of a wide range of stakeholders</b>	→ Multi-stakeholder resolution mechanisms need to be part of verification system design. Such mechanisms may benefit from being embedded within a broader policy reform process (e.g. national forest programmes)
<b>21 Verification is an information-intensive process. The information collated through all verification activities therefore needs active and transparent management</b>	→ Efficient and effective verification can benefit from the introduction and implementation of new technologies, from global positioning systems to online databases. Policies on access to information must be clarified from the start and should promote greater transparency wherever possible

**Policy message****Supporting strategy**

- 22 Verification systems need to encompass issues of resource acquisition if they are to address the root causes of much of the conflict within the forest sector** → National verification system design needs to look further than resource flows (and the emphasis on ‘the chain of custody’) and include examination of legal compliance in resource acquisition
- 23 If verification systems are not to disadvantage the poor, mechanisms need to be developed that ensure that regulatory compliance is accessible to all groups** → The use of mobile administrative units of the forest authority, as well as internet access in more developed economies, can improve regulatory access for all forest user groups. This requires that decentralised services are fully committed to the aims of the reform. Steps also need to be taken to ensure that administrative procedures do not disadvantage the poor – for example, permit costs for small landowners and/or those selling small volumes should be commensurate with the interests of these categories
- 24 An explicit monitoring and evaluation framework is needed to measure the overall impact of any national verification system** → A conceptual framework should be developed during verification system design that links a number of complementary criteria and indicators to facilitate subsequent monitoring of the verification system. The body responsible for taking action on the results of the monitoring should be clarified

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