

5. OWNERSHIP IN RELATION TO THE DESIGN OF VERIFICATION SYSTEMS

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SOME DISCUSSION POINTS

This paper uses a working definition of 'ownership' as the 'active support to and ability to control' the objectives, process and outcomes of a verification system. The paper examines some of the issues around the theme of ownership of verification systems, and the possible strategies for developing ownership. Topics of interest include:

- 1. The relationship between the objectives of the verification system and levels of ownership*
Do verification systems, which are designed to address national priorities and to complement the structure of national institutions, have a higher level of ownership than those based on donor conditionality or access to international markets?
- 2. How to generate wide state ownership*
Whether government ownership is increased by engaging a broad section of public agencies and decentralised levels other than the national level Ministry of Forestry? Participation, and support, by a range of other agencies both vertically and horizontally can help to counter opposition to the introduction of verification systems.
- 3. The relationship between government ownership and 'public' ownership*
Increasing participation and including of diversity of view points can increase public ownership. However, consulting with a variety of view points does not always increase 'public ownership' but may merely give voice to a number of interest groups.
- 4. The importance of robust institutions to encourage participation and ownership*
The strengthening of accountability and transparency mechanisms increases public ownership of, and involvement in both the design and implementation of the verification system. Safe guards are needed to guarantee protection from retribution if individual and public participation in oversight mechanisms is to be encouraged.
- 5. Ownership as a developing process*
Are there different degrees of 'ownership' and can it be developed sequentially, and through constituency by constituency? Is broad ownership of the process as important during the development phase of the verification system as during the implementation and supervision stages? Might attempts to create widespread buy-in by all interested parties merely stall the implementation of the process?
- 6. Ownership and interest*
Can true ownership be achieved when the impacts of the verification system are not perceived to be beneficial? Are levels of ownership likely to be increased or decreased by the outcomes and impacts?



Introduction

Much of the current debate around 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 emphasise 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 purposes of this discussion, 'ownership' is defined as the 'active support to 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 to be bound by the results. This paper examines the issues that the concept of 'ownership' raises and the possible strategies for developing verification systems which guarantee 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 linked hypotheses.

Hypothesis 1

The objectives of the verification system determine the degree of ownership. Thus, verification systems which are designed to address national priorities and to complement the structure of national institutions will have high levels of ownership.

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 allows an understanding of the different interest and actors the verification system is intended to serve. The various VERIFOR case studies 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 aim of the private sector to gain access to international markets
- the desire of the national government to increase revenues
- the desire of the national government to respond to internal social forces from NGOs 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 for credibility on the international market, and partly by the state, whose interest reflected public concerns about the environment and the need to securing the revenue stream (Wells, 2006). In the case of Ecuador, the verification system was introduced in response to internal social pressures (Navarro et al., 2006), whereas in Cambodia and Cameroon, the introduction of independent monitoring was the result of donor conditionalities (Luttrell and Brown, 2006; Bird et al., 2006).

These pressures may occur simultaneously and can be mutually enforcing (e.g. responding to internal pressures for increased transparency can also boost international reputation) but others are problematic and contradictory in terms of ownership. This is the case with verification systems motivated by 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 regulation¹ 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

¹ Council Regulation (EC) 2173/2005 of 20th December, 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

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 to national ownership and commitment. and 'conditionalities' play a much reduced role. Coercion in the form of overt conditionalities from donors is viewed as a poor instrument to build such ownership, as it is incapable of generating domestic commitment and thus unsustainable.

In the case of the Voluntary Partnership Agreements (VPAs) there are underlying geopolitical realities involved in the relations between partner countries and the EU. A number of motivations and pressures encourage producer countries 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 partners and accommodation of their 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 by definition imply the influence of stakeholders based in the EU, and this, by definition, 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 raises the question of whether NGO watchdogs (international or national) may be more able to build a national constituency than an independent monitor operating on contract to the state. Weak ownership seen in both of these cases was not only to do with the external source of the initiatives but also the lack of attempts to create national ownership of the monitoring.

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 the case of Ghana the government is now investing \$4 million of its own resources in the system (Bird et al., 2006).

Strong national ownership of the verification system may be more likely to be found in those systems which were introduced to serve domestic agendas rather than to access international markets or to deliver donor conditionalities. However, whatever the initial objective, national ownership can be enhanced through strengthening the complementarities between existing institutions such as the current procedures for monitoring and audit which may exist in the sector. One of the reasons behind the success of the CITES verification system for example, is the way that it is rooted in national reporting systems and state sovereignty as the basis for the control system.

Hypothesis 2

Government ownership can be increased by engaging a breadth of agencies and decentralised levels.

Ownership may also be affected by the degree to which agencies other than those in the forestry sector, are 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). When much of the opposition to the introduction of the verification system subsequently came from within the MoE, 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 over the debate on 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 from 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 (Thiel and Viergiver, 2006). Public funds allocated for the development of verification systems stood at \$4 million in 2006. 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 deconcentrated 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

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 is a crucial component of an effective verification system. The design of the SECAL project in the Philippines was too ambitious for the Department of Environment and Natural Resources' existing capacity, and both the Kimberley Process and the introduction of international nuclear safeguards faced similar capacity problems resulting from the design of system (Smillie, 2006; Persbo et al, 2005).

This raises the question as to whether capacity building is critical to ensure 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 which gives it the access that it needs to monitor the process. Setting up a monitoring mechanism without corresponding measures for enhancing capacity can result in a lack of ownership in the system. However, the process of capacity building may compromise independence if it is carried out by the same body carrying out 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 always has to be channelled through the government system 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 new questions about how to build ownership.

Hypothesis 3

Government ownership does not necessarily reflect public, or citizen-based, ownership. Increasing participation and drawing on a diversity of viewpoints increases public ownership.

The aid dynamic is not equally strong in all the examples of verification systems covered by the

VERIFOR case studies (for example the verification systems in Ecuador and Costa Rica were not aid-driven). Discussion of the term 'ownership' raises different issues in these situations as it is a term often employed in the context of aid. One of the main distinctions to be made in a discussion of ownership, is between 'national' ownership, which is often taken to mean government authorship, and a wider definition of public, or citizen-based, ownership. Equating these two types of ownership involves assumptions that capable and accountable states are in place.

It can be argued that, in the case of democratic states, government authorship does equate with wider public ownership. However, in many contexts 'government ownership' does not necessarily mean 'public' ownership or legitimacy 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 activities towards the government's interests and away from those of excluded groups. The debate relates to the issue of public legitimacy of state systems. Building 'ownership' in a country where there is little within-country trust in the capacity of official structures to manage their own affairs, requires a very different approach than 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 is public access to information about the process.

A commonly voiced opinion is that increasing the number of players and the diversity of viewpoints involved will increase ownership. For example in the Philippines, the development of a multi-stakeholder forum has, in some cases, generated sub-national ownership. FLEGT VPA Briefing Paper 9 (EU, 2005) emphasises the need to broaden participation in the definition of legality standards since the harm caused by failure to comply with laws affects a multitude of stakeholders. However, the case studies raise a question over the degree to which drawing on a variety of view points increases 'public ownership' or merely gives voice to a number of interest groups. The Ecuador case suggests that the introduction of reforms will not be successful if only promoted and supported by middle class and urban-based elites 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 at lower levels. Others, such as mid-level Ministry officials and some professional colleges associated with the timber industry, were also excluded in the implementation of the system. The SNTCF lasted for only a short period in 2003, before the suspension of the outsourcing of the administrative and supervising functions.

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 the some of the Multi-stakeholder Forest Protection Committees in the Philippines by certain environmental interest groups (dominated by 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 result in ownership. There is a need to maintain flexibility to ensure that the results of consultative processes can influence decisions. As shown by the consultative workshops held around 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 in which all the actors involved can gain ownership. It is the process following these consultations, and the steps taken to address conflicts of interest and include those that have been excluded, which are important in developing ownership. Furthermore, if consultations raise issues which are not taken on board in the design of the verification system, interest groups may be alienated by the process.

Hypothesis 4 **Strengthening accountability and transparency mechanisms increases public ownership.**

There is also an argument for increasing the attention given to building links with mechanisms of accountability, and the transparency of the verification system itself. The lack of such systems (which might range from building links to judicial review processes and parliamentary commission mechanisms, to increasing the direct involvement of the public and civil society through the press or interactive web pages, and increasing access to ombudsmen and dispute mechanisms) can undermine effective verification.

In Indonesia there are low levels of public accountability and transparency over decision-making and revenue management in forests, a situation which is rooted partly in a lack of enabling legislation on transparency and access to information. There is also limited use of the judiciary and legal aid, but an Ombudsman Commission has been established and

local parliamentary committees are reasonably active in providing oversight of executive.

Increasing the rhetoric of support for public involvement in accountability processes is not in itself enough 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 there is a 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.

Hypothesis 5 **Broad ownership of the process is less important during the development of the verification system than during the implementation and supervision stages.**

There are various stages in the establishment and operation of a verification system where ownership can be built or developed:

1. during the planning stage, with careful consideration of who initiates its development and why;
2. during the design stage where the inclusion and omission of various structures and processes can affect the level of ownership;
3. during implementation and supervision of the verification system; and
4. through the public perception of the impact and outcome of a verification system where the objectives may or may not be achieved

There is some suggestion from the case studies that the importance of ‘ownership’ varies depending on the stage of verification system development, and that different forms of ownership are preferable at different stages. It may be that broad ownership is less critical in some stages than others. For example, some cases of successful reform processes have taken place without ownership in the early stages. The experience of Ecuador suggests that broad ownership was perhaps less important than the presence of key individuals in forcing the reform agenda.

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, which was later 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. In the Ecuador case reform was pushed through rapidly by a small group of reformers. The speed with which the reforms were introduced led to their 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.

Hypothesis 6

True ownership can only be achieved when the impacts of the verification system are shown to be beneficial.

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.

The unclear outcome of signing up to a VPA, and the risk of closing down an entire market because of inability to reach the required standards, are very real disincentives which could undermine ownership of the initiatives. A careful consideration of the *distribution* of costs and benefits is therefore necessary. More certainty about where the burden of financial liabilities is likely to fall may encourage ownership of the process among those whose activities are being monitored. This suggests the need for guarantees or buffers to lower the risks faced by producers. These may include committing NGOs in an oversight role to an agreement that the agreed legality standards will not be altered - or, if a stepwise approach is to be adopted, a clear agreement on the degree to which the standards will change over time. Finally, in the case of market-driven mechanisms it may be more realistic to view 'ownership' as an issue of concern for the consumer countries, and less so for the producer ones.

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