

2. ON INDEPENDENCE IN VERIFICATION WORK

David Brown and Josephine Tucker

SOME DISCUSSION POINTS

1. The issue of independence goes to the heart of the questions: 'who is verification for?' What constituencies should it serve? How can it be given credibility?
2. The key debates include:
 - The verification functions for which independence of operation needs to be secured and protected
 - The range of relevant interests which have to be taken into account when assessing 'independence'
 - The transnational dimension in relation to producer sovereignty
 - The global public goods dimensions in relation to national responsibilities
 - Whether there is a need for suppliers of verification services to be formally accredited as competent, according to internationally recognised management standards
 - Funding mechanisms which can ensure independent functioning
3. How can independence be brought into the verification process in ways that are compatible with national sovereignty and the right of responsible states to manage their forests as they think fit, yet which also take account of:
 - a) The severe governance problems common in many timber-rich societies?
 - b) The global public goods dimensions of forests?
4. How can independent scrutiny best be delivered? Is it associated with certain types of organisations with strong moral credentials (are NGOs more able to act independently than private sector organisations, for example)? Or is it better envisaged as a product of institutional architecture rather than the purposes of individual actors? Alternatively, can independence be delivered through application of a standards based approach (for example, ISO, EMAS)? Would there be value in developing a set of professional standards specific to verification?
5. The approach from 'conflict of interest': what kinds of conflicts are acceptable or unacceptable? When can conflicts be managed and when do they have to be avoided?
6. What can be learnt from extra-sectoral experiences, e.g. the audit literature?

1. Introduction

The capacity to accommodate independent viewpoints and information underwrites the effective functioning of public administration, and enhances:

- Trust
- Credibility
- Transparency
- Stability and stable institutions
- National discipline.

To the extent that the potential for independent judgement counters (and, ideally, holds in check) interference in

administrative systems by political actors, it allows for adherence to professional standards and diminishes the propensity for, and costs of, corruption in public life.

The principle of independence is likewise central to the enterprise of verification, and engages directly with critical debates about good governance, 'national ownership' and efficiency.

The Institutional Frame

International and global processes have certain advantages over national processes when it comes to governance. This is particularly evident with regard



to their requirements for 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 (see, for example, VERIFOR case studies on ‘nuclear safeguards’ and UNFCCC).

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 but highly politicised negotiation, than through prescriptive and internationally agreed rules. Given the diverse and often conflicting nature of the global and national values that forests represent, and the severe governance problems common in forest-rich societies, this arena tends to be a highly contested one. How, then, can independence be brought into the verification process in ways that are compatible with national sovereignty, yet ensure that element of detachment which the global public goods dimensions 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 like 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 policing 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 seen as coterminous with verification. The small number of operators that has hitherto 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.

These distortions are reflected in public discourse around the theme of verification. Two examples will indicate the ambiguities which result (Box 1).

Definitions of ‘independent actors’ by reference only to their ‘independence’ are un-illuminating. Similarly, the concept of ‘advocacy-oriented independent forest monitoring’ would seem to many observers as something of an oxymoron.

Evidently, there is a need to unpack the notion of ‘independence’ in verification, and identify its main constituent elements. The most pressing need is to distance the practices of verification from particular interests. The central aim is arguably not to safeguard any particular functions or interests but rather to maximise the credibility of the verification system as a whole. There are numerous ways in which such credibility can come about, as this paper (and the case studies on the VERIFOR website, www.verifor.org) will substantiate.

Box 1: Uses of the term ‘Independence’: Two Examples

Example One:

A Civil Society Initiative supporting an EU Regulation on sustainable forest management and the trade in illegal timber, drafted by a legal cabinet on behalf of three environmental NGOs in December 2004, makes twenty references to the term ‘independent’ but offers no definition of it. Among the ‘Objects and Definitions’ are statements such as the following:

- ‘Independent monitoring means a system of monitoring by an independent body of the operation of the licensing scheme for the purpose of detecting and reporting failures in the systems established by partner countries.
- Independent verification means verification by an appropriately qualified and independent organisation that [relevant actions] have been carried out in compliance with relevant legislation.’ [2004, Ch.1 Art.2, pp.24-5]

Example Two:

A Joint Statement, ‘The G8 in 2005: priorities for action on illegal logging’, issued by ten NGOs to coincide with the G8 Environment and Development ministerial meeting held in the UK in March 2005, stated:

‘The usefulness of Independent Forest Monitoring extends to all areas of forest management, including the detection of forest crimes and the auditing of government performance, to policy development and implementation. In countries where governance is poor and corruption rife, political support for the elimination of illegal logging is often correspondingly minimal. In these situations it is arguable *advocacy-oriented IFM* is most needed’ (emphasis added).

2. Perspectives on Independence: Actor and Function

This section examines these questions from two main perspectives:

- The *actor perspective* – which actors are best placed to guarantee independent oversight?
- The *functional perspective* – which are the functions that require the safeguard of independence if a verification system is to operate effectively?

Consideration is first given to the context in which verification must function, and then to the qualities required of the actors involved. Section 3 lays out some of the steps that might be taken to improve levels of independence within verification practice in ways that are both equitable and just.

We begin with an important caveat. The starting point for any attempt to design a credible system of verification must be the dynamics of the forest

administration and its relationship to the wider polity. No matter how well designed the verification system is, if the polity is 'neo-patrimonial' in its functioning (that is, rewards are allocated largely through political patronage, rather than the functioning of the market or an autonomous bureaucracy), then it is unlikely that verification agents will be able to operate independently. Regardless of the personal honesty or volition of the actors in question, the credibility of the overall system is likely to be low. The forest sector is replete with examples of this structural obstacle. Where it affects the forest administration, then it is also likely to adversely affect other aspects of public administration, such as the judiciary.

The capital-intensive nature of the forest industry is also prone to distort the functioning of the forest administration. In numerous well-known cases (Indonesia is a prominent example), the disjuncture between the official annual allowable cut and the installed capacity of the industry is so great as to make it difficult for the system to operate effectively, and independent functioning of forest agents may well be compromised by purely commercial pressures.

Much the same can be said of other contexts in which industrial policy imposes demands upon operators which may be incompatible. National policy in Cameroon, for example, has required concession-holders to install transformation capacity, but with no guarantee of long-term access to the raw materials needed to keep them working efficiently. Again, this represents a constraint on independence which is likely to override the attitudes and interests of the agents on whom 'independent functioning' depends.

In summary, the importance of the structure and operation of the public administration should not be underestimated when attempting to enhance the credibility of a verification regime. The simple desire of actors to maintain a balanced view – seeking independence from all interest groups – may be inadequate in contexts where decision-making is highly politicised or commercial pressures present an overwhelming constraint.

With this caveat in mind, we turn to the individual and functional attributes which might assure that verifiers operate independently.

The Actor Perspective

In this reference, one or both of two perspectives are possible:

- The first considers independence from the perspective of the agent, and focuses on the internal requirements for it to operate effectively;
- The other considers independence largely in terms of the external constraints upon the agent, rather than its internal attributes, on the grounds that the main threats to independence are from the external environment.

Outside of the forest sector (though rather more rarely within it), the tendency is to focus on the

former, seeking to identify the internal attributes of the actor which allow them to operate independently. However, the two perspectives may equally be combined. 'Independence' is a well-defined term in the humanitarian literature, for example, and clearly distinguished from cognate concepts such as 'impartiality' and 'neutrality' (Box 2).

To summarise these terms:

- Independence implies autonomy from influence of other parties in its decision making.
- Impartiality implies consistency in the application of judgments, the implication being that objectivity is applied to all contexts of judgement, irrespective of particular status criteria.
- Neutrality implies non-partisanship.

The general audit literature (that dealing with financial or management audits, for example, not forest sector audit as such) also provides a wealth of material on which to draw. For example, a recent EU directive on audit of competent national authorities in the food industry lays out the following conditions:

'The Audit Body should be free from any commercial, financial, hierarchical, political or other pressures that might affect its judgment or the outcome of the audit process. The audit system, audit body and auditors should be independent of the activity being audited and free from bias and conflict of interest.' <http://www.food.gov.uk/multimedia/pdfs/scofcauditguidelines.pdf> (Art.5.3)

Some of the principles in this literature include:

- The minimum requirement would be one of impartiality as when 'an official monitor is required to be 'impartial and free from any conflict of interest as regards the exercise of the tasks delegated to it' (EC regulation 882/2004 on official controls for the verification of compliance with feed and food law).
- Management standards tend to set out clear guidelines for independence, focusing on the need to make sure that the accredited body has no influences which would impair its judgement in relation to a case.
- Alternatively, the emphasis may be on the activities which the monitor must perform; for example: 'the monitor must be independent of any party that it is likely to scrutinize or criticise, in the course of its official work' (EC regulation 882/2004).

An Actor-Oriented Classification

When one seeks to translate these principles into practice in the forest sector, there are a number of alternatives. Key questions include:

- What kind of actor? 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

Box 2: Independence, Impartiality and Neutrality in the interpretation of the Red Cross/Crescent

Independence

Implies a principle of action, and a status of autonomy. An organisation which is independent (such as the Red Cross) must be sovereign in its decisions and actions, according to the principles and criteria which apply to it, not subject to the interests of any other body or power.

Thus: *[The Red Cross] Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.*

Impartiality

In humanitarian terms, this is a principle of action, in which the sole criterion for action is need. Help must be provided solely on the objective criterion of need. The same rule is applied to all parties (though the result is not necessarily support to all parties).

Thus: *[The Red Cross] makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.*

Neutrality

The ICRC defines neutrality is a principle of abstention. A neutral party must not intervene either to deny or to permit an action which would aid the efforts of a particular Party. As with independence and impartiality, neutrality is the product of a status, not an interest, and is uninfluenced by the changing interests of other parties.

Thus: *In order to continue to enjoy the confidence of all, [The Red Cross] Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.*

of the system?

- What professional safeguards?

We will consider these variables in turn.

Independence and Organisational Class

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 that proponents would characterise as the spread of democratic accountability through a process of 'transnationalisation', but opponents would see as the active undermining of it through a process of 'spreading corporatism'. Though international civil society involvement in defining national agendas and policing states for their conformity to them may have important positive aspects, it leaves many questions unanswered about who is responsible to whom, and whose interests are championed in the process.

In the forest sector, there has been a growing tendency to view civil society organisations (particularly NGOs) as the natural guardians of independent standards. This is particularly the case with the stages of the verification process that are regarded as the most prone to influence. Thus, routine chain of custody control has been of minor interest when compared with activities such as the independent monitoring of the performance of supervisory government agencies. With regard to IFM, private sector actors tend to be viewed with considerable suspicion (particularly by NGOs), allegedly compromised by their bottom line of profitability, as well as by their frequently close associations with the timber industry. The donor community has supported this approach, to the extent that it has viewed civil society actors as the major vehicle

to hold producer governments to account for the proper use of public resources in extractive industries. This has led to 'an advantage of trust' developing between international donors and environmental rights NGOs, which some see as a disquieting development (cf. Ronit and Schneider, 1999: 245).

Are NGOs necessarily superior actors to private sector operators, 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. For example, hands-on donor support has generally been high for crusading NGOs, but often much lower for the private sector, which has been largely left to its own devices.

However, some evidence does exist to allow the proposition to be tested. In Cambodia, for example, Global Witness (NGO) was succeeded by SGS (private sector). In Cameroon, 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, 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 one category of actors as inherently exhibiting independence or the lack of it, though 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 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). Allaying these suspicions would appear to call for a broadening of criteria in the selection of independent verifiers, and for more consideration to be given to the national constituency.

Agency and Architecture

Independence is not solely nor necessarily a characteristic of single organisations, however, and it may be helpful to focus the discussion more on system features than on specific steps or agency attributes. While environmental watchdog-based IFM delivers one limited form of accountability, this is not necessarily a particularly democratic form, nor one that is sustainable in the longer term. Greater and more stable democratic accountability could well come from architectural arrangements to deliver independence through fora of public scrutiny rather than the reliance on moral pressures emanating from individual operators.

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 (ODI Forestry Briefing No.6). 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. 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 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 VERIFOR case study No.3).
- British Columbia, which has some similar features, though with more of a statutory emphasis.¹

Peninsular Malaysia also takes an 'architectural' approach to independence, but rather than an 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 (MTCC), as well as audits of State Forestry Departments against ISO9001:2004 Quality Management Standards.

Another solution may be to co-locate the monitoring function within a statutory body mandated to investigate abuses of power. In Honduras, for example, an external IFM has hitherto 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.

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 to a national public than externally driven, single agency approaches, as well as greater robustness and sustainability.

The Functional Perspective

An alternative perspective on independence would be to focus on the different functions represented in the process of verification. This may include such steps as:

- Routine and periodic audits
- Certification (to the extent that certified operations may be recognised as a valid element in the verification process)
- Licensing bodies
- Independent forest monitors (IFM)
- 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 3). However, the stage which is generally regarded as the crucial one – IFM – is as yet free from any such constraints, and this is a cause of some concern, particularly in quarters close to producer governments. To the sceptic the key issue is: 'who monitors the monitor?' 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.

3. Verification in Practice

In this final section of the paper, we consider the implications of the above for the practice of verification. The concern is to ensure that independence operates in ways that are credible to all the legitimate parties, as well as equitable and practicable. We focus on four areas of concern:

- The nature of the mandate for verifiers, particularly IFM.
- Commercial confidentiality.
- Financing verification in ways that ensure independence is sustained.
- Some practical issues arising.

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. The notion of 'mandate limitation' may be of value here (in a conceptual as opposed to temporal sense, referring to the need to limit the verifier to the terms of its specific mandate). Audit theory and the standards literature would recommend a narrowing of functions with an emphasis on agreements between the parties as to the objective standards to be assessed. However, critics would argue that such narrowing of functions is likely to be counter-productive, and to reduce verification to a box-ticking exercise. A much greater impact, they would claim, comes from assessors who roam widely and are free to challenge the self-assessments of the state and industry.

Experience both within the sector (comparing environmental rights monitors with private sector operators) provides some justification for this view, at least in the short term, and similar conclusions might be drawn from a critical review of the standards literature. On this view, the IFM, at least, should be encouraged to take on

wide-ranging roles (see, for example, the VERIFOR case studies for Cameroon and Cambodia).

This does, however, imply a major shift in emphasis in verification work. Is it legitimate to broaden 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 governance reform, but is it appropriate to, say, EU VPAs? Though some parties may well conceive these in broad terms, to do with social development and sustainability as much as legality, the producer governments are likely to view them as having a fairly restricted, trade-based function, and in no sense a vehicle for political reforms

Similarly, what happens in a situation in which the IFM takes up environmental positions antagonistic to the state, justifying its orientation in terms of the evidence thrown up by its monitoring work? As when, for example, it argues that the concession system is incompatible with the global public goods values of forests. The standards

Box 3: ISO General requirements for accreditation bodies and certification systems

ISO is the best known system of standards, though there are other relevant (and often cognate) systems such as EMAS (the European Eco-management and audit scheme which operates in the EU and 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.
- 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, not just environment), ISO 14001 (environmental management systems) and ISO 19000 (oversight of monitoring systems, combining ISO9000 and ISO 14000). The Malaysian states, among others, make extensive use of these. However, in the present context, the two series of greatest interest are those operating in the fields of accreditation and certification: ISO17011² ('General requirements for accreditation bodies accrediting conformity assessment bodies'), and ISO65/EN45011 ('General requirements for bodies operating product certification systems').³

These set clear performance standards which are intended to foster confidence in the operator and the services it delivers. As an example of the approach, ISO65/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.
- Ensure confidentiality at all levels of its operations.

'Related bodies' are those with a significant element of common ownership with the certification body; they need to operate in ways that prevent their owners from influencing the certification activities. Likewise, 'consultancy' and accredited certification cannot be marketed together, nor can an impression be given that they might be linked.

Governing bodies should represent all the interests involved in the process of certification, without any single interest predominating. The aim is 'a structure that safeguards impartiality'.

While on the surface of it these set clear standards, issues are raised about both the levels of independence they require, and also 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, even if acknowledged. 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 (cf. Bass, 1998). The emphasis is firmly towards the consensual; thus, the ISO 17011 standard (which applies to CPET verifiers, for example) 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 (Proforest/ISEAL, 2005).

literature (eg. ISO65/EN4501) tends to emphasise the need to ensure that the monitor is free from commercial interests that might influence its judgement, but should the contrary not also apply? Freedom from commercial associations should be matched with freedom from opposing views. These are questions which ultimately take the debate beyond the brief of forest law enforcement and trade, into the realm of societal dynamics and strategies.⁴

Commercial Confidentiality

An allied issue concerns the extent to which verifiers are given access to concessionaire information that is commercially confidential, and the uses they are allowed to make of such information. As the discussion of international standards underlines, there is a danger that the principle of confidentiality is used indiscriminately to prevent the public from being informed about matters that it is their right to know (payments to political parties and leaders would be a case in point). However, respect for reasonable confidentiality is also an important principle, with legal ramifications as well as being a likely requirement for genuine buy-in from the industry.

Thus, the key question here is:

How can proprietary information be defined in a way that leads to effective monitoring, but which also protects legitimate business interests?

Financing Independent Scrutiny

The evidence in this reference concerns two sets of activities. Technical inspections are often funded by the industry or state revenue, and such arrangements appear to work reasonably well, albeit with some concerns about conflicts of interest and the closeness of the suppliers to the industry. Weak points in systems of forest administration are often those at the interface between powerful industrial forces and public responsibilities in isolated environments. In the case of Ecuador, for example, the forest regents represent a vulnerable node, in that they are required to scrutinise the operations of the industry on whom they depend for their payments and functioning. In the SNTCF model, an attempt was made early on to ensure the regents' independence, by requiring them to post a substantial financial bond. However, under pressure from the industry, this requirement has now been abandoned, with negative effects on public trust. The regents are now widely perceived as being too close to the industry and subject to unacceptable conflicts of interest.

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 hardly from all interests in the forest estate. This has an obvious governance rationale, and would probably be the preferred approach from the point of view of risk. The lack of external credibility of many forest management systems usually derives from allegations of collusion between the government and the industry, and from the known propensity of such extractive resources to undermine good governance. It is in these terms that the apparent contradictions between 'advocacy' and 'independence'

can be reconciled, at least in the view of some players.

At the same time, credibility at the national level in the producer states (particularly the critical element of government buy-in) is likely to come from a broader conception of independence, and a willingness of key players to maintain their distance from all parties with an interest in influencing the future condition of the forest estate. A degree of balance thus needs to be struck, and verifiers need to convince stakeholders that their judgments will be influenced only by the facts in front of them, and not by their partisan interests. Financing needs to confirm, rather than subvert, this principled behaviour.

There are strong arguments in favour of financing from national sources, particularly those under democratic control. Ombudsmen arrangements provide a useful model here. Securing and allocating funds by the national legislature would, in theory, 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 in need of monitoring). 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. Though this has some positive features, it also makes it potentially vulnerable to influence, both directly (from government) and, indirectly, through the political connections of the timber industry.⁵

Other alternatives do exist (see Brown et al, 2004). Some systems operate, at least in part, by hypothecating fines and penalties – though this principle is suspect in that it creates an 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 Multisectoral Forest Protection Committees in the Philippines. However, it is arguable that this creates a risk of capture by particular interest groups (in this case, national and international NGOs, which alone had the funds and the time to invest in low-return activities, albeit ones with a strong social vocation).

Practical Steps that might Reinforce Independence

a) *The central foci: accountability and transparency*

In seeking to put in place systems that are independent of partisan interests, it is easy to lose sight of the fact that the main aim is to find ways of ensuring that verification statements are authoritative and generate trust. More may be gained by redesigning national decision-making structures than over-focussing on independent monitoring. For example, in many national systems, the supreme authority for forest operations is a single individual – the Minister for Forests. Decisions are often taken by this individual on an administrative basis, and behind closed doors. In such a context, transparency and accountability will be difficult to guarantee, regardless of the attitudes of the forest sector personnel, or the other actors involved in verification activities.

In such contexts, a number of institutional steps are possible:

- Putting in place a ‘reviewing mechanism’ (Lang, 1996) to generalise authority and increase transparency. The Comité de lecture in Cameroon was strong in this regard, though rather less so in relation to national ownership (for reasons which are not necessarily easy to overcome).
- Broadening the participation in the ‘supreme authority’ might also be advised, on much the same grounds – particularly where – as in the above example – authority currently rests with a single individual and important decisions are not transparent (Ibid).
- Routinisation of activities also helps to depoliticise sensitive processes, and aids transparency (Brown et al, 2004).

b) IFM vs. EM

A practical way forward in relation to the crucial forest monitoring stage is to uphold the distinction between independent forest monitoring and external monitoring (as was proposed in the ODI report to DFID on IFM in 2004 [Brown et al]).

This would imply two different sets of rules:

- IFM: quite narrow in its remit, requires independence of all parties and should avoid advocacy;
- External monitors (EMs): less constrained and free to adopt advocacy positions.

There would then be a focus on maintaining constructive relations between the IFM and its publics (including EMs). IFM would be restricted to official audit-type scrutiny, with all the restrictions that this implies, but there would be clear rules on the circulation of information and ensuring transparency.⁶ Their independence might well be reinforced by professionalisation, binding all IFM providers to observe a set of professional standards as a condition of their licensing. IFMs would not be able to adopt advocacy positions, but – once validated – the information that they generated would be made available in appropriate ways for other organisations (including advocacy groups) to use as they think fit.

In the words of the ODI IFM Review:

‘more attention [would need] to be given in programme design to validating the evidence and then ensuring its availability to the public through appropriate institutional arrangements, rather than leaving it to the IFM to champion its cause unaided and consuming the time and effort of other parties (the donor community particularly) in limiting the collateral damage which results’ (Brown et al, 2004: 40).

There are, however, some underlying ‘chicken and egg’ issues here. For example, the present pool of IFM providers is very small, and this has proven a problem when it comes to competitive tendering. While there are external factors at work (for example, the small size of the present demand and the low level of financing has no doubt deterred some prospective bidders), the present imperfections in the market might argue against over-professionalisation of the

verification discipline, and give some support to those who would favour maintaining its present diversity. In addition, different solutions might be indicated where independent monitoring is envisaged as a permanent and routine feature of a verification system, or as an interim measure used by donors or others in the attempt to ‘kick-start’ governance reform and develop national accountability.⁷

c) Generalising the oversight

Assuming that these practical problems can be resolved, the attention might then turn more to the principles of oversight which 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 the process of validation should be generalised in the sense that no single individual or organisation should have the power to decide on standards (formal or informal), nor to pronounce unilaterally on the performance of systems or actors.⁸ Relations should be structured accordingly. The ‘Comité de lecture’ employed in Cameroon is again suggestive, though other arrangements may be possible which contribute more strongly to the generation of national ownership.

d) The approach from ‘conflict of interest’

One approach to the issue of conflict of interest is to take a taxonomic view. For example, in an interesting paper dealing with the requirements for ethical certification, Proforest 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 (ISEAL/ Proforest, 2005). We can group these 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;
- *Practical necessity* – 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.

A process-oriented approach is advised, which aims at achieving conflict-free outcomes through systematic identification of conflicts and then 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. Mission or reputation alone is not seen as an effective way to manage conflict of interest, particularly in the longer-term.

Conclusion

In a context in which the principle of verification is not yet established as of general utility, there are strong grounds to support a widening of the discussion of verification practice beyond the confines of donor-supported IFM.

Two concerns emerge as critical:

- The steps which all actors need to take to safeguard their independence.
- 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.

An interesting question raised is whether verification practice would benefit from the consistent application of sets of management and service standards specific to the sector, and shared between its practitioners. There are strong grounds for this at some stage, though arguably this would require a larger number of national and international players than are currently operational.

References

- Bass, S. 1998. 'Forest Certification – The Debate about Standards', *Rural Development Forestry Network Paper 23b*, ODI London.
- Brown D, Luttrell C with A Casson, R Cruz and T Fometé, 2004. 'Forest Law Enforcement and Governance: the role of independent monitors in the control of forest crime', ODI *Forestry Briefing Papers*, No.5.
- Cruz R and M Tapia , 2005. 'A Review of Multisectoral Forest Protection Committees in the Philippines', ODI *Forestry Briefing Papers*, No.6.
- FERN et al, 2004. NGO Statement, 2005. 'The G8 in 2005: priorities for action on illegal logging', joint statement of seven environmental NGOs following the March 2005, G8 Environment and Development ministerial meeting in Derbyshire, UK.
- Lang, W, 1996. 'Compliance control in International Environmental Law: Institutional Necessities', *Heidelberg Journal of International Law*, 56, pp. 685-695.
- Proforest, 2005. 'Managing conflict of interest in certification', Report for the ISEAL Alliance, February.
- Ronit K and V Schneider, 1999. 'Global Governance through Private Organizations', *Governance*, Vol.12 No.3, pp 243-266.
- Smouts M-C, 2002. 'Forest Certification and timber labelling', Panel: The Moral Assessment of Global Trade, ISA Convention, March.

See also VERIFOR Case Studies – forest sector and extra-sectoral (www.verifor.org)

Footnotes

¹The independence of the Forest Practices Board (FPB) is assured by legislation and it reports directly to the public without interference or vetting. Its eight members are appointed by Cabinet, representing a broad spectrum of forestry and environmental experience. The Board also has the power to compel the giving of evidence in the course of its investigations, and it has the authority to audit and investigate government's forest practices and enforcement actions.

²These ISO and European standards are identical.

³Both of these have been adopted (*inter alia*) by the Central Point of Expertise on Timber (CPET) procurement reference point, established by the UK Government.

⁴The issues here do not just concern political boundaries but also responsibilities. Do verifiers have a legitimate interest in international goals unrelated to the legality of trade, but relating to the conservation of global public goods? If they do, then who (among national and international actors) is to pay for securing them?

⁵The Board's funding, which was about \$3.6million for 2004/5 and again in 2005/6, comes directly from the Treasury Board. This helps to insulate it from 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 \$5 million budget, thus constraining its capacity for action.

⁶Though it would complicate the discussion unnecessarily, there is a case for viewing the designation 'IFM' as a misnomer for what is, in fact, independent observation of a periodic and non-routine kind. The term 'independent observer' may thus be more appropriate. It also has the advantage for finding a ready translation into French (*observateur indépendant*)

⁷Again, however, this presupposes the existence of an intervening 'hidden hand'.

⁸Cf. UK Timber Procurement Policy , "Definition of 'legal' and 'sustainable' for timber procurement", *CPET*, 10/2005.

David Brown is a Research Fellow with the Forest Policy and Environment Group at ODI, and Director of VERIFOR. Josephine Tucker is Projects Administrator with the Forest Policy and Environment Programme, and VERIFOR Administration and Communications Officer.

VERIFOR Briefing Papers

Series editor: David Brown (d.brown@odi.org.uk)

Administrative editor: Josephine Tucker

(j.tucker@odi.org.uk)

<http://www.verifor.org/>



This paper is an output from a research project funded by the European Union, under its Tropical Forestry Budget Line, and the governments of the Netherlands and Germany. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of ODI, the European Union or other donors.

Ministerie van
Buitenlandse Zaken

