

No. 1. Strategies for Independent Monitoring

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Summary

This paper considers options for independent monitoring of the timber trade, as a component of verification systems. It presents various possibilities relating to verification design, and poses a series of questions regarding the timing of monitoring activities, the mandate of monitors, and the handling of monitoring information.

Independent Forest Monitoring

Independent monitoring (IM) is an important component of effective verification. It can:

- provide checks to governments and their publics on the veracity of claims;
- give feedback to managers on improving performance;
- strengthen the legitimacy of verification systems.

The EU FLEGT Brief No. 9 sees independent monitoring as one element of a generic timber legality assurance system, which would typically comprise:

- i. A definition of legally-produced timber
- ii. A secure chain of custody
- iii. A verification system to link (i) and (ii)
- iv. The issuance of licenses
- v. Independent monitoring to enhance credibility and ensure transparency.

Though it is still early days, there are already a number of institutional options on offer. These include:

1. External environmental and rights monitors.
2. Commercial audit firms.
3. GIS-based monitoring.

Pilot activities have mainly been funded by donors. However, as the EU Action Plan advances, there are increasing calls for host governments to develop their own positions. This *Options* paper responds to growing demands from decision-makers in producer states for advice on this topic. Among the questions posed are:

- **Organisational considerations:** How can IFM best be delivered? What institutional arrangements are required and which agencies make appropriate monitors?
- **Timing:** When should monitors be called in?
- **Mandate:** What should be their brief?
- **Information management:** How should their findings be processed?

Key Questions in Independent Monitoring Design

Agency vs. architecture?

How should IFM be structured? To date, much of the international interest has focused on the work of single agencies, particularly environmental NGOs (E-NGOs). However, there are some interesting approaches which are not agency-based, and which derive their legitimacy from the structured arrangement of the various actors involved. In such cases, it is the checks and balances between the players which provide the assurances of independence and transparency, not the credentials of the individual operator. Examples include Ecuador and the Philippines (VERIFOR Case Studies).

Such composite arrangements are probably the ideal, though they tend to be the product of favourable circumstances – both a perceived crisis in forest management and a high level of national will to address it. More often, circumstances are less encouraging, and there is some element of local resistance to the idea of monitoring. Where this happens, the most feasible option may be to bring in a single agency.

Local or external monitor?

Producer governments often have concerns about the sovereignty dimension of IM, particularly where external agencies are involved. Over-dependence on international actors is not necessarily conducive to local capacity building either. On the other hand, external links and global publics can help to give monitoring operations their teeth, and without them, IM tends to be politically vulnerable. As long as the market for their operations is limited, national agencies may find themselves excessively exposed if they try to operate alone. There are thus strong arguments to involve external actors. In such circumstances, an essential requirement is that they operate within a national capacity development strategy, and with due deference to sovereignty considerations.

NGO or private sector?

Evidence suggests that both can be effective. Much depends on the context. If there is no national buy-in and donor interest is fragile, then bringing in an E-NGO rights monitor might prove a high-risk strategy. A commercial monitor could appear

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less threatening, and its reduced ambition an acceptable price to pay to achieve some level of national legitimacy. But in other situations, the choice may be less restricted.

A monitor on official contract?

Where the producer government is hostile to the whole enterprise, then there may be little to gain by their contracting an official monitor. It may be more productive to encourage them to agree to an external monitor (EM), probably an NGO, operating without a contract to the state. It would be important to ensure that the EM was afforded the necessary official support and protection. However, where the government is solidly behind the enterprise, the same support and protection might be better afforded to an official IM.

Given that this is still an underdeveloped field, a professional cadre of monitoring organisations does not yet exist. However, as verification work develops, there will be growing opportunities for professionalisation of the discipline, and for generic performance standards to be applied.

a) Timing

Timing of monitoring is often a sensitive issue. Again, a great deal depends on the state of forest governance, and the level of national will. Viewed from the perspective of a forestry decision maker with a mandate for reform, there are a number of possibilities, which relate both to the timing and duration of the work. For example:

- i. Where the decision maker in question has strong evidence of governance problems and a serious level of illegality, which is recognised by key components of civil society but not by the senior levels of government or the industry, then arguably, it is useful to call in a monitor early to demonstrate the scale of illegality. They might then withdraw, at least temporarily, to provide 'policy space' for the government to address the problem.
- ii. Alternatively, where the government is already aware of the problem, and is working in concert with civil society to address it, then it would seem wiser to hold back on external involvement until a strong national platform is built. The IM might then be brought in later, to validate the system that has already been put in place.
- iii. There again, where senior levels of government and industry are unaware of the problem and uninterested in its solution, and civil society capacity is lacking but long-term donor interest is strong and assured, then there may be a case for a longer contract to draw out the systematic aspects of the problem.

b) Mandate

Given the sensitive commercial and political dimensions of forest sector work, a clear specification of the IM's mandate is likely to be an essential confidence-building measure.

EU FLEGT Brief No. 9 adopts a clear position on this issue, noting 'the role of IM is limited to assurance that the verification and licensing meet agreed criteria, and does not include reporting on forest crime' (2005: 5). The interesting question is then raised as to whether it would be possible for the same agency which is serving as the IM to be involved in separate work on forest crime. In line with principles

of auditing, institutional separation may well prove to be advised, but with mechanisms in place to encourage sharing of information.

c) Information management

Experience in an international treaty context underlines the importance of separating the three stages of verification work, namely:

- i. Information generation
- ii. Information reviewing
- iii. The 'taking measures' (compliance) function [Lang, 1996:694-5]

By and large, information review should be in the hands of a body with a formal national mandate, which reports to (but is preferably not excessively subject to) a political authority. Where there are uncertain legal and regulatory frameworks, as well as commercial and political sensitivities, such a body should validate the information obtained. This is particularly important where there is a risk of litigation against the legal authority or the monitor. There is an evident danger that 'validating the evidence' will become a pretext for suppressing the facts, though there are ways to counter this. For example:

- i. Meetings of reviewing committees should be made as automatic and regular as possible, to avoid their politicisation;
- ii. Clear time frames need to be given for the sharing of findings, to prevent bureaucratic delays being used as a cover for non-release;
- iii. IMs should be required to publish and disseminate validated findings systematically, and then to invite the public's views; there should be agreed procedures to handle disagreements between the parties.

Conclusion

Independent monitoring is an important component of effective verification, though it may be better seen in functional rather than agency terms. Its immediate reference point is the legality of the timber trade, though there are wider considerations of the state of overall public governance. Good governance implies high levels of public accountability and transparency, both of which require the exercise of political will. Various monitoring arrangements are possible, each with its champions. The ultimate test is one of perceptions – namely that the relevant national and international publics have faith in the credibility of the verification decisions delivered.

References

VERIFOR Case Studies: Ecuador (2005); The Philippines (2005)
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(See the VERIFOR website www.verifor.org)

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