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# Meeting the challenge of timber legality verification

A POLICY BRIEF PREPARED FOR VERIFOR AND FAO





## Key points

- 1 Forest illegality can be discouraged by increasing the benefits that stakeholders are able to obtain through legal means
- 2 Forest law enforcement should ensure the optimal payment of forest rent
- 3 Legality standards should recognise differences in the scale of timber production
- 4 The state must guarantee the independence of timber legality monitoring
- 5 New technologies are helping to improve forest law enforcement, transparency and governance. Political, legislative and institutional support is essential for their effective deployment
- 6 There is significant potential for convergence between timber legality verification and the likely demands of REDD in post-2012 arrangements on climate change
- 7 Multi-stakeholder dialogues are an essential component of effective forest governance reform
- 8 Timber legality verification can play a useful role in wider forest governance reform

### Box 1: VERIFOR

The VERIFOR project is an applied research collaboration involving partners in four institutions—the Overseas Development Institute (ODI) in the United Kingdom, the Tropical Agricultural Research and Higher Education Center (CATIE) in Costa Rica, the Central African office of the Center for International Forestry Research (CIFOR) in Cameroon, and the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC) in Thailand. The project has produced a series of country-level case studies in the three tropical regions and a global-level synthesis, which are presented in the book *Legal Timber: Verification and Governance in the Forest Sector* (ODI, London, 2008).

More information on VERIFOR can be obtained at [www.verifor.org](http://www.verifor.org) and from David Brown at [d.brown@odi.org.uk](mailto:d.brown@odi.org.uk)



Worldwide, interest in timber legality is growing. The handwringing that has sometimes characterised debate on illegal logging is giving way to practical measures designed to increase the proportion of timber that is harvested and traded according to the law.

Proponents argue that the verification of timber legality can encourage good forest governance and ensure access to markets that might otherwise be restricted. This policy brief considers the merits of that argument. It draws on the collective knowledge of 100 forest governance practitioners and researchers who, in late 2008, attended an international workshop on the issue organised by the VERIFOR project (Box 1) and the Food and Agriculture Organization of the United Nations (FAO). It describes the process of effective timber legality verification, identifies the challenges, and presents eight key messages for policymakers.

## The context

Tropical forests are of great global interest, largely because of their rich biological and cultural diversity, huge carbon stores, and the millions of mostly poor people who depend on them for their wellbeing. The timber industry has long been accused of responsibility for tropical forest degradation and deforestation. In the late 1980s and early 1990s, environmental groups called for bans on the trade of tropical timber as a way of discouraging the excesses of logging companies.

Others, however, thought bans would be counterproductive. From the ensuing debate arose the idea of certifying forests in which high standards of forest management were practised, thereby providing markets with independent information about the origin of timber. In 1993 a group of timber traders and environmentalists created the Forest Stewardship Council, the first of many initiatives aimed at encouraging forest certification. Principles and standards for forest certification were developed that dealt with the social, environmental and economic components of forest management.

The impact of certification has, however, been uneven. It has been least successful in those forests for which it was conceived—tropical forests—but has spread quickly in northern countries, where forest management is often less problematic.

The realisation that tropical timber producers were struggling to achieve certification coincided with an increase in international concern about illegal logging in the tropics and also about the rights of the forest-dependent poor and indigenous groups. There were good reasons for such concern: in some parts of the world, estimates of the extent of illegal logging were alarmingly high. The toll of illegality on poor and indigenous people was often severe.

## Policy stepping stone?

Where certification has proven particularly challenging, the verification of timber legality offers a first step to improving forest management. It will, say advocates, help reassure consumers that in buying tropical timber they are not supporting illegal logging and also provide producers with access to markets that might otherwise close altogether.

As currently conceived, timber legality verification can usefully be separated from routine forest control in at least two ways:

1. It is deployed where there is clear *doubt* about the capacity of the existing control system to ensure the legal production of timber.
2. It involves a quest for *additionality*: that is, the involvement of additional actors (not always from within the forestry sector) and additional measures to counter doubt about the status quo.



Initiatives to provide timber legality verification typically combine support for governance reform with the leverage that can be provided by market demand for verified timber. This is the basis, for example, of the European Commission's Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT), which was approved by the European Union Council in October 2003 and has led to the development of voluntary partnership agreements (Box 2). Several regional initiatives are also under way (e.g. Box 3); all are still evolving and hence there is an opportunity for informed policy debate to assist their development.

One view of timber legality verification is as a stepping stone to the wider uptake of certification. Another sees it as an alternative way of securing the public policy goal of improved forest management and conservation. European public procurement schemes, however, will eventually require sustainable as well as legal timber; ultimately, then, legality verification alone will not suffice, at least in those markets, and sustainable timber production must be the ultimate aim.

### Box 2: Voluntary partnership agreements

The European Union's FLEGT Action Plan proposes the development of voluntary partnership agreements (VPAs) between the EU and individual timber-producing countries (FLEGT partner countries) under which legally produced timber exported to the EU would be identified by means of licences issued in partner countries. VPAs aim to reinforce the ability of partner countries to control illegal timber production and offer a mechanism to exclude illegal timber from EU markets. VPAs are under negotiation between the EU and a number of countries; the first, with Ghana, was agreed in principle in September 2008.

## Message 1: Forest illegality can be discouraged by increasing the benefits that stakeholders are able to obtain through legal means

If all interest groups value the forest equally, an effective forest policy will ensure that each pays an equitable share of the costs associated with managing the forest. In reality, however, such costs often fall disproportionately on forest owners or traditional users.

Such inequity creates conditions in which illegal logging and deforestation are likely to thrive. Laws might be required to ensure that other forest stakeholders, including the wider public, pay their fair share of forest management costs and thus provide an incentive for legal forest activities. Experience in Costa Rica, Mexico and elsewhere has begun to show the benefits to forest management of payments for environmental services.

Forest law enforcement has a tendency to focus on the illegal activities undertaken by the forest-dependent poor. Often, such people have little choice other than to conduct their operations illegally because of the high transaction costs associated with operating legally, or because they have been denied the right to use the forest for legitimate purposes. This propensity to 'blame the victim' should be avoided and measures taken to ensure that usage rights are fair and equitable. Governments could also establish facilities to assist small or marginalised operators to do their business legally.



### Box 3: Regional experiences

#### African forest governance reform

In Africa, ministers at a regional conference on forest law enforcement and governance in 2003 agreed to fight illegal logging and to improve laws and regulations, forest-sector governance, and local development. Subsequently, forest-sector reforms in several African countries have addressed forest law enforcement and governance and regional cooperation has been strengthened. Countries that have moved towards VPAs (Box 2) include Ghana, Cameroon, the Central African Republic, Congo and Gabon. Ghana signed the first African VPA in September 2008 and Cameroon was expected to follow suit soon after. The governance of forest administrations of those countries engaged in formal VPA negotiations has already been observed to have improved.

#### ALFA in Latin America

In 2006, the Amazon Cooperation Treaty Organization (ACTO), the membership of which comprises Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, initiated the Amazonian Forest Law Application Process (ALFA) with the objective of supporting ACTO members to improve forest law enforcement in the Amazon Basin.

Several studies to identify the main obstacles each country faces in improving forest law enforcement have been completed and others are under way. Next steps in the process include identifying specific indicators for better forest law enforcement in the Amazon and establishing the basis for improved regional cooperation.

#### The East Asia FLEG process

Among other things, the East Asia Forest Law Enforcement and Governance (FLEG) process, which began in 2001, has increased public awareness in the region on the impacts and causes of illegal logging and its associated trade in illegal forest products. In addition, it has prompted the commencement of several regional and national-level initiatives to improve forest law enforcement and governance; some countries are also negotiating VPAs with the European Union.

However, action is still needed in the region to:

- Actively involve agencies with broad multi-sectoral oversight or criminal justice responsibilities
- Develop regional enforcement mechanisms and integrate the decisions of the East Asia FLEG's Bali Ministerial Declaration into the work programmes of regional institutions and organizations
- Instil ownership at the country level and actively encourage governments of uncommitted key countries in the region to join the process.



## Message 2: Forest law enforcement should ensure the optimal payment of forest rent

Forest law enforcement has two distinct components: harm reduction and revenue optimisation. Examples of harm include: the removal of protected or otherwise highly valued species; logging in protected areas; harvesting undersized or oversized trees; harvesting on steep slopes; the pollution of watercourses; neglecting the health and safety of workers; and damage to the livelihoods and welfare of forest dwellers.

Most laws operate on the principle of deterrence—the inhibition of criminal behaviour by fear of the consequences (sanctions or penalties). The level of deterrence is a function of the probability of detection and the severity of the sanction. High sanctions with low detection rates would be inefficient. Legal systems, therefore, should aim to set ‘reasonable’ penalties that are proportionate to the level of harm and to adjust enforcement accordingly.

Forest-related tax evasion and corruption are intimately linked to the structure of the forest licensing and revenue system and to other fiscal policies. Reducing tax evasion requires increased monitoring and a system of fines. Since monitoring can be costly, lawmakers should aim for a system in which the increased revenue produced by monitoring is at least greater than the cost of monitoring. Devoting disproportionate resources to monitoring those operations most likely to comply with the law would be inefficient. Clever monitoring would focus on those operations least likely to comply voluntarily. Timber legality verification systems should provide officials with incentives to comply with their obligations in forest law enforcement, as well as penalties for their failure to do so.

In countries where the legal system is functioning well, the perceived probability of detection is higher than the actual risk: increasing information about efforts being made to enforce forest laws can therefore help to increase compliance. New technologies offer interesting possibilities as to how this might be achieved (see Message 5).

## Message 3: Legality standards should recognise differences in the scale of timber production

One of the key challenges in formulating legality standards is to address the development issues associated with the forest sector in general and the timber industry in particular. In many tropical countries this industry is characterised by a small number of highly capitalised companies that focus on the international market, together with a much larger number of smaller businesses that supply domestic markets. This latter group ranges from medium-sized family enterprises to individual operators.

It is important to understand the implications of standard-setting for the poorer groups working within the forest sector. One challenge to be addressed at an early stage of any reform process is the need to recognise small-scale operators within the legal system.

Legal compliance policies should distinguish between private (or communal) and publicly owned forest. The legality standard for Indonesia has begun to make this distinction. It is a composite standard, providing separate criteria and indicators for four different forest classifications: state forest, management unit-based; state forest, non-management unit-based; state forest, community managed; and proprietary rights forest and non-forest areas. By recognising such differences within a standard there is a higher likelihood that the system will complement broader national development strategies.



## Message 4: The state must guarantee the independence of timber legality monitoring

A paradox of timber legality verification is the need to ensure both its independence and its compatibility with national sovereignty. Independence has three dimensions: autonomy in decision-making; impartiality; and neutrality. The private sector is often accused of contradicting the first two, and the third might be a problem for environmental groups.

Most timber verification models involve independent forest monitoring (IFM—perhaps more accurately, ‘independent observation’), which can be defined as activities undertaken by a third party on behalf of the state to assess officially sanctioned processes of resource utilisation and control. It is designed to give credibility to the legality verification system and to provide data for improving the system over time.

Independence requires a mandate to assemble competent staff without interference, to investigate freely, to have unfettered access to information, and to have assured freedom to publish results. Complete independence is difficult to achieve, but a system of checks and balances—such as the structuring of decision-making to promote transparency, and the use of IFM—will help reduce the risk of undue political interference. Ultimately, independence cannot be assumed; it must be ensured by the state through contract, agreement or law, and proven by the party involved through its behaviour.

If the independent monitor has its own ideological objectives, such as to conserve tropical forests, to bring about better environmental performance, or to better serve disenfranchised stakeholders, then those objectives need to be explicit from the beginning. They should also be accepted by the national authority in order to avoid a perception of bias in the advice provided by the monitor. A formal arrangement between the governance structure and the independent monitor can bolster the implementation of IFM by providing a defined manner in which findings and subsequent advice are delivered to those with the power to act.

Timber legality verification systems need to be robust and sustainable. Conventionally, IFM is seen as an activity to be undertaken by a single (often non-governmental) agency. However, there may be a case for other institutional means, such as peer review, to help create a climate of trust and ensure that findings are methodologically and scientifically sound and supported by the evidence. An interesting question, as yet unresolved, is how to fund the process of IFM without affecting its independence. Transparency is an essential element.

As with other aspects of forestry, particularly in the tropics, the establishment of effective IFM is likely to be hindered by a shortage of suitably skilled professionals working in governmental, private-sector and community-based institutions. Well-thought-out, long-term capacity building programmes could therefore be needed.

The body that undertakes IFM will inevitably face a daily dilemma: how to avoid alienating the government and other actors while ensuring it is not only independent but seen to be so. One approach is to work on a ‘no surprises’ basis: if a negative finding is made, the organisation involved is informed and given the chance to fix the problem before it is made public. To ensure the independence of the process, however, the transgressing organisation must have no ability to change the results of the monitoring or to prevent their publication.



## Message 5: New technologies are helping to improve forest law enforcement, transparency and governance. Political, legislative and institutional support is essential for their effective deployment

Technological tools available today include remote sensing, digital photography and videography, radar, communication technologies such as the internet and mobile phones, and software that enables the integration and analysis of large quantities of data. Well used, they can facilitate transparency, improve response times against transgressors, decrease the costs of monitoring, and democratise access to information.

Technology is useless, however, unless applied within a framework that guarantees the capacity to analyse the data generated by the technology, political commitment to law enforcement, and a management system that leads to action on the ground.

Technological tools need to be used in an integrated way. A system to detect deforestation and forest degradation, for example, can be integrated with timber tracking. When combined with systems for the authorisation of forest operations and species identification they can be used to alert authorities to illegal activities and to verify timber legality.

In Brazil, a number of linked systems are designed to control the authorisation of logging, detect logging activities, track timber transportation, control the chain of custody, facilitate enforcement follow-up, and generate reforestation credits. A scheme for alerting authorities to transgressions integrates and cross-checks the data generated within these systems. Increasingly the aim in Brazil is to make these tools available publicly via the internet, opening up the possibility that social networks within civil society can assist in data collection and analysis. The wide availability of mobile phones, even in remote areas, is also greatly accelerating the speed of communication and the ability of otherwise marginalised people to coordinate their activities, obtain and convey timely information, and share resources.

In some countries, the use of technologies in forest law enforcement, governance and timber verification is poorly supported in law. Evidence generated through satellite imagery or digital photography, for example, might not be recognised in the criminal justice system and therefore cannot be used to convict transgressors. There is also a risk that forest departments will become technological 'islands', introducing innovative technologies that other departments—including the police—do not use or understand. In the wrong hands, information can also be used to suppress transparency and extract rents, so mechanisms to ensure accountability are needed.

The introduction of timber tracking, an essential component of timber legality verification, is hindered in some places by the lack of a clear government strategy in which a single timber-tracking system is introduced and made mandatory. The selection of inappropriate—and expensive—systems is another obstacle. Company resistance is yet another: some do not want transparency and others are concerned about the cost. Ideally, each country will develop a timber-tracking system best suited to its needs by combining expertise in forestry, computing and product tracking.





## Message 6: There is significant potential for convergence between timber legality verification and the likely demands of REDD in post-2012 arrangements on climate change

There is a high probability that reducing emissions from deforestation and forest degradation (REDD) will be included in post-2012 arrangements on climate change. The drivers of forest loss and forest degradation are often illegal, so there is a clear overlap between REDD and timber legality verification.

Under most concepts of REDD, payments will be made to help reduce deforestation and probably also forest degradation, although it is unclear if this will be through a market-based or fund-based mechanism (or both). Some of the drivers of deforestation and forest degradation can be addressed by payments. It is difficult, however, to directly address illegal activities through payments, so where such activities are prevalent there will be a need to address underlying causes, including poor forest governance.

Under REDD, countries will be expected to set up their own systems to monitor changes in forest area and forest degradation which, when combined with information on carbon stocks, can be used to estimate emissions. Country reports will be reviewed for reliability by expert teams. For projects undertaken through the Clean Development Mechanism, verification is already carried out by accredited entities; a similar model could be applied to REDD.

Many of those involved in negotiations over climate change know little about forests and the forest tenure and law enforcement issues that need to be addressed. The forest sector should build links with such people and promote better understanding among them.

## Message 7: Multi-stakeholder dialogues are an essential component of effective forest governance reform

Forest policies will have greater legitimacy if they are developed with the intimate involvement of forest stakeholders. Multi-stakeholder dialogues (MSDs, also called multi-stakeholder processes) aim to involve all those who have a legitimate stake in forests in dialogue on the management of those forests. They also offer an alternative to the adversarial approaches that, for several decades, have characterised many forest debates.

Recent experience has shown the value of MSDs in building the trust that is needed for public confidence in official decisions and the development of timber verification initiatives. MSDs are not simply about getting stakeholders to sit at the same table; they are also about improving transparency and accountability, raising awareness, and increasing knowledge.

By encouraging a greater range of views and experiences—including those of previously marginalised groups—MSDs are also likely to lead to policies that are more efficient and effective than those developed in isolation. Moreover, the learning and buy-in that MSDs foster among stakeholders can help in policy implementation: citizens' groups, for example, can help monitor compliance and identify violations that an understaffed agency might miss.

MSDs face many pitfalls. Marginalised groups might lack the resources or educational background to participate fully. There might be confusion about the purpose of MSDs and their ultimate power to influence decisions. There is a risk that MSDs will undermine rather than reinforce democratic processes. They can also be expensive and time-consuming. Their slow pace can act as a brake on policy development and therefore slow down reform. There needs to be clarity as to who is participating and why, and also who is being excluded. In the long run, however, policies developed through an effective MSD are likely to be more cost-effective than 'top-down' policies that fail to address the underlying conflicts.

MSDs work best when they have a clear mandate, defined rules of engagement, accountability, and a commitment to implementation. They are not a substitute for good government but can lead to better governance. They should aim for 'deep' consultation, meaning that not only the people directly involved but also the people they seek to represent should be fully informed about and involved in the process.



## Message 8: Timber legality verification can play a useful role in wider forest governance reform

On its own, timber legality verification will not solve deep-seated problems of forest governance. It can, however, play a significant role in addressing such problems. Effective verification should therefore be seen in the context of a wider process of forest governance reform; attempts to use it in isolation are likely to fail because it does not address the underlying weaknesses that lead to illegality. Ultimately, the aim of all international-level forest governance interventions should be to empower producer countries to manage their forests effectively while safeguarding the interests of the weak and vulnerable, not merely to expose the limitations of existing systems of resource control. By providing opportunities for capacity building, inter-sectoral cooperation and stakeholder participation, and by offering a way in which producers can maintain access to international markets, timber legality verification can help catalyse long-lasting improvements in forest governance.

### Box 4: Forest Law Enforcement, Governance and Trade Support Programme for ACP Countries

FAO's Forestry Department recently commenced a programme funded by the European Commission to support FLEGT in ACP countries (a group of 79 countries in Africa, the Caribbean and the Pacific).

Expected results are:

- 1 FLEGT-related information and knowledge effectively collected, analysed and shared at national, regional and intra-ACP levels.
- 2 Forest governance strengthened so that FLEGT-related policies and legal frameworks are adopted at national and regional levels.
- 3 FLEGT-related institutions effectively strengthened at national and regional levels.
- 4 Pilot interventions that create added value and/or bridge critical gaps in FLEGT processes are supported.

*This policy brief is an output of the International Workshop on Legality of Traded Timber: The Development Challenges, which was held at FAO headquarters, Rome, Italy, on 24–26 November 2008. It also draws on the VERIFOR project (Box 1). More workshop outputs are available at [www.verifor.org/about/outputs/international\\_workshop.htm](http://www.verifor.org/about/outputs/international_workshop.htm). FAO recently commenced a new project to provide support for forest law enforcement, governance and trade in African, Caribbean and Pacific countries (Box 4). The workshop was a collaborative effort of FAO and VERIFOR (ODI, CATIE, CIFOR and RECOFTC) with the support of the European Union and the Governments of the Netherlands, Norway and Germany.*

Published by VERIFOR and FAO, 2009.

