



# Promoting Rights in the Forest Sector: Some Issues & Challenges

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# Some Questions about Development Assistance & Rights

How successful has external aid to the forest sector (official & NGO) been in:

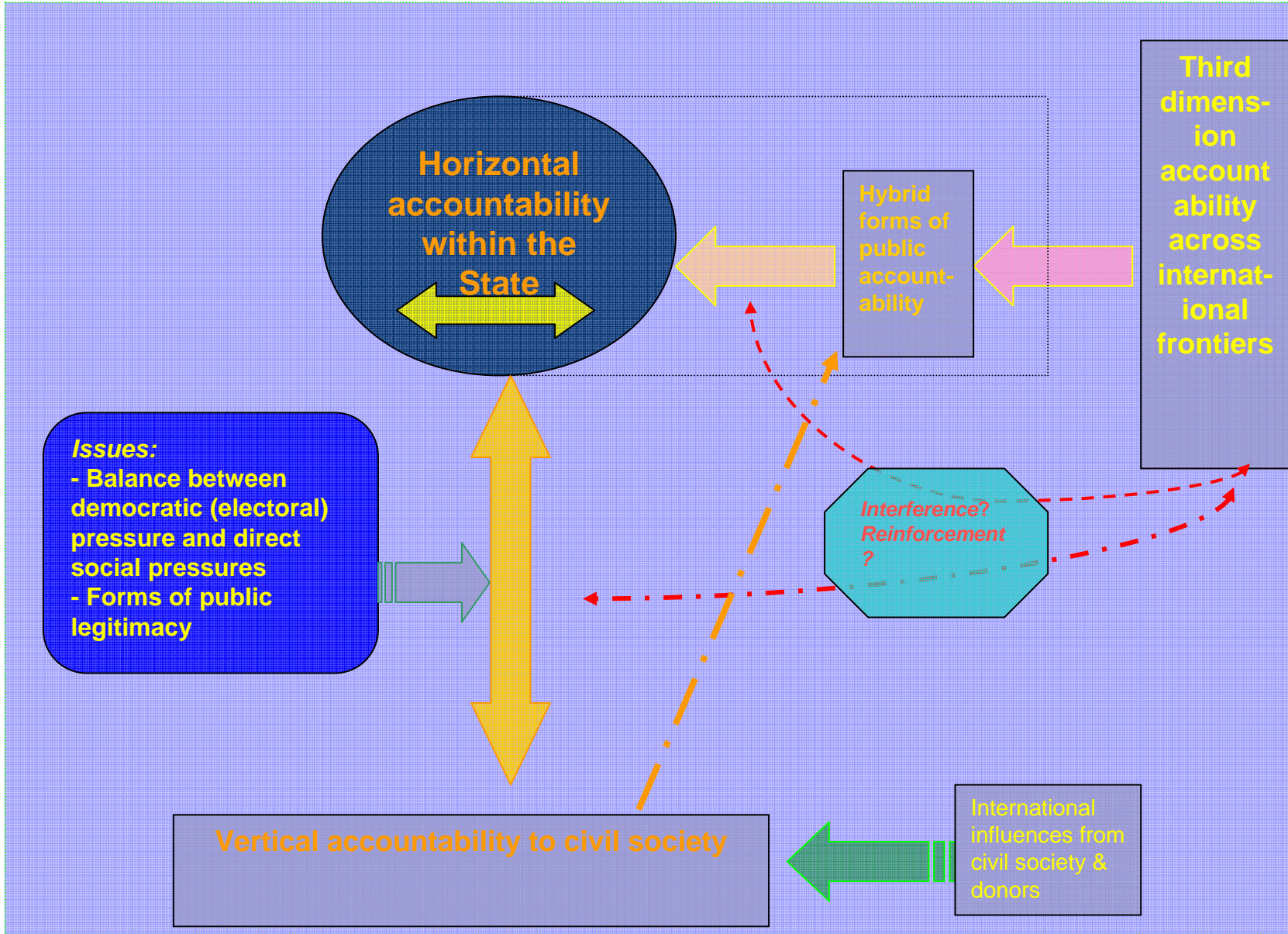
□ Helping develop a positive rights regime?

.....in a way that contributes to poverty alleviation?

.....while promoting accountability, responsibility & 'good governance'

Some evidence:

1. Issues around forest law enforcement & governance (FLEG)
2. Wildlife management





# Forest People's Rights

## *Often marginal:*

- **Legal & regulatory frameworks:**
  - often profoundly anti-poor
- **Social and economic rights: marked by weak tenure and tenurial insecurity**
  - Post-colonial state has been resistant to surrender of rights
  - customary laws may still be applied but over-ridden by statute law & industry/private interests
- **Political and civic rights: tend also to be very weak**
  - Civil society often under-developed (as a political force)
  - May be restrictions on who can bring legal actions in the sector:



## Some Views - 1

“The legal framework is the alpha and omega of a rights-based approach”

*[Julia Hausermann, Rights and Humanity]*

“One of the most significant improvements that can be made to forest management (in the tropics) ...is simply the enforcement of legislation”

*[World Bank~WWFAlliance/ SGS]*



## Some Views - 2

From an IFAW Teacher's pack, for teaching children about 'the threats facing wild animals hunted for food':

*Question:* 'True or False? Most countries where...bushmeat is a problem do not have laws against hunting or the trade'

*Answer:* 'False! Many...have very good laws to protect wildlife'



# Phases of development assistance to forestry

- Industrial forestry (1960s-'70s)
- Social/Community devt. forestry ('70s)
- Environmental forestry ('80s)
  - Incl. Tropical Forestry Action Plans (1985~)
- Sustainable management of RNR ('90s)
  - 1992 UNCED: sustainability=sust. livelihoods
  - Forest certification (industry) and C&I (governments)



# Trends in development assistance to forestry

- **NOTE: Amalgam of concerns (econ, ecol, soc):**
  - Trade, industry and macro-economic development
  - Governance reform
  - Environment (deforestation) & conservation of biodiversity
  - Pro-poor development
- Rights *not* central – though 'community participation' as a cross-cutting theme
- Two continuing foci of interest:
  - Sustainable forest management
  - Poverty alleviation



# The 'Logic' of SFM

<<< A basic requirement for implementing SFM is ... a permanent forest estate.

However, enforcement of land use designations remains a major challenge.

*The rights of local communities ... interacting with the forest should generally be respected - insofar as this does not reduce the flow of desired benefits from the forest.*

>>>

[World Bank/WWF Alliance, 2003]



# 1. 'Forest law enforcement, governance & trade' [FLEGT]

- International initiatives to control illegal logging and trade, for example:
  - G8 Action Programme on Forests
  - US President's Initiative against Illegal Logging
  - EU Action Plan for FLEGT
  - Bilateral agreements
- Series of regional FLEGT processes (Asia, 2001; Africa, 2003; Latin America, 2005?)



# The Scale of 'illegality' [1]

## ■ % of national trade which is illegal:

- Cambodia [94%]; Amazon [90%]; Bolivia [90%];  
Myanmar [80%]; Indonesia [>51%]; Cameroon [50%];  
*[Forest Trends, 2003]*

## ■ Examples:

### - Cameroon

- Loss of revenue c. £56 mn./yr.
- Est. damages owing c. \$465 mn./yr.  
*[Auzel et al, 2002]*



# The Scale of 'illegality' [2]

## ■ Canada

- C\$300 - 1,000 mn./year, lost to theft & fraud (1990-5)

## ■ Effects on northern timber markets:

- Estimated that 23-30% of international hardwood lumber & ply are traded illegally
- Depressing world prices by 7-16%
- Losses to US economy c. US\$460 mn/yr.

*[Flynn, 2004]*



# The Nature of 'Illegality'

## ■ *Illegality as crime typically means:*

- Harvesting without, or fraudulent use of, title
- Logging out of boundaries/encroachment on PAs
- Logging of unauthorised/undersized species
- Excess harvest
- Non-compliance with licence
- Pollution of environment thro' industrial activities



# The nature of illegality [2]

*But also: barriers to legality due to:*

- Complex and inconsistent laws
- Regulations that victimise the poor
- Failure of the law to recognise legitimate claims
- Unclear distribution of powers between levels of government
- Selective use of legal instruments to restrict access by the poor
- Lack of coherence in national planning strategies



# Actions taken to combat illegality

## Heavily donor-driven:

- Independent monitoring [in some cases, as a loan conditionality] ~ IM of forest concession allocations/forest operations/ government control services
- Funding of internatl. & natl. environmental/HR watchdogs
- Industry measures (forest mgt. audits, etc.)
- Impending trade restrictions (EU VLAs, etc.)
- NOTE: Formal recognition that a complex problem demanding multi-disciplinary approaches and governance reform
  - Has led to some interesting research (CIFOR/DFID/PROFOR on FLE & RL)



# FLEG in practice - positive effects

- For donors & their representatives (↑knowledge & influence)
- For the industry (improved business environment)
- For governments & governance (transparency, revenues)
- For rights promotion:
  - Increases transparency in resource management
  - Highlights areas of non-fulfilment of duties
  - Raises the issue of how duty bearers can meet their obligations
  - Links to governance reform (decentralzn, revenue capture, etc.)



# Problem areas?

- Oversimplifies the legal framework (⇒ industrial forestry)
- Subordinates local agendas to external ones:
  - Reduces the space for local actors to contest their claims
- As regards the poor:
  - Subordinates the concept of 'rights' to the needs of SFM
  - Idealises the 'deserving poor'
  - Creates a hierarchy of rights claimants ('undeserving poor')
- Through improved enforcement:
  - Criminalises the poor
  - increases costs of local users



## 2. The case of Wildlife

A similar story, with some positives but a tendency to:

- ❑ Repressively apply the law, with add-on mitigation measures
- ❑ Simplify & distort the legal context
- ❑ Idealise interest groups ('subsistence' cf. 'commercial users')
- ❑ Diminish national ownership (but ↗ state agencies' power)
- ❑ Diminish, not increase, the ability to claim local rights, through:
  - reinforcing industrial forest zonation policies
  - Weaken local access rights (against vague promises of long-term gain)
- ❑ Pursue low-governance strategies to improve governance



# Some recommendations

- **Development assistance:**
  - Need to protect/enhance the development assistance stream
- **Need to build local platforms and ownership**
  - Demands a longer time-frame
  - More complex structures and relationships [see ODI's VERIFOR Project]
- **External NGO interventions (envtl. watchdogs/conservation agencies)**
  - Widen platforms for public involvement/'monitoring the monitors'
- **Promote a rights agenda**
  - *But not just upholding legal definition of rights*
  - *Also implying legislative change in favour of S,E &C rights*



# Why a rights perspective?

- **The Critical challenge: Resource tenure**
  - A critical dimension of insecurity/social risk
- **Rights: holistic framework helps to reconcile the local/national/international in policy development**
- **Encourages an 'upward orientation' for lobbying & advocacy**