

## Forest Law Enforcement & Governance: The role of independent monitors in the control of forest crime

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*Illegal logging is an issue of major national and international concern. Combating illegal logging depends on effective enforcement operations to ensure compliance and identify forest crime. Independent monitors have an important role in 'monitoring the monitors' and verifying legality. This briefing paper examines the part that external agencies can play in this work. Drawing on a number of recent experiences, consideration is given to the way in which independent monitoring might be structured, and some of the issues which need to be borne in mind when decisions are made as to what forms of monitoring to deploy.*

### Policy Conclusions

- Independent forest monitoring (IFM - monitoring of enforcement activities in the forest sector on behalf of the state) differs from other forms of external monitoring by the high levels of independence and impartiality which it requires.
- Campaigning and advocacy are largely incompatible with IFM, though they may often be useful in other forms of external monitoring.
- IFM proceeds on the assumption that there is a functioning and legitimate legal framework. This assumption is problematic in many timber-producer societies, and calls for a broader approach than IFM alone.
- Recent IFM initiatives have created a momentum for reform, most notably through the injection of new information into national and international debates. There was evidence in some cases of increased discipline within the state enforcement agency and timber industry. Informants from producer countries were generally less appreciative of these benefits than those from consumer countries. This is limiting their impact.
- Local and international legitimacy are both important dimensions of verification. Without the support of all main stakeholders (including progressive elements within the forest industry) it is unlikely that monitoring will lead to sustainable reform.
- Developing a constructive profile for IFM and associated activities that emphasize incentives for good forest management as well as the negative aspects of forest crime, is a challenge that needs to be urgently addressed.
- IFM needs to be complemented by other activities to widen public engagement with the forest sector and to ensure pressure for its sound management.
- In the case of donor-assisted IFM, a clear exit strategy may help create a positive working environment and ensure an emphasis on capacity building and the forging of institutional links and ownership.

### Introduction

Illegal logging in the forest sector has become an issue of major national and international concern. Detective work by advocacy-oriented NGOs has revealed the massive extent of illegality. In many countries, illegal timber probably accounts for the majority of the trade. The legal production of timber is the first step on the road to sustainable forest management. This requires that effective mechanisms are in place to verify legality and detect forest crime. Existing accountability and enforcement mechanisms, including government law enforcement agencies, often have very low credibility. This is a major problem.

The control of illegality is now a central focus of global forest policy. Recent initiatives include:

- the G8 Action Programme on Forests;
- the US President's Initiative against Illegal Logging;
- the European Commission's Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT).

The EU-FLEGT Action Plan, for example, contains a series of measures by which the Commission proposes to reduce the

consumption of illegally harvested timber in the European Union. On the supply side, producer nations will be invited to sign 'voluntary partnership agreements' (VPAs) with the Union, under which they will verify the legality of all exported timber. Licensing systems will need to be put in place to formally guarantee legal production. Independent forest monitoring – external validation of official enforcement activities – is a key element of this verification (Box One).

Funding forest law enforcement through development assistance raises two important questions about effective and sustainable strategies, as well as the implications for equity of using trade instruments for governance reform:

1. Conditionalities linked to financing have provided important leverage in donor attempts to improve the quality of forest management. This may have value in cases where there are major failures of forest governance. However, conditionality is not necessarily a good way to build local ownership and long-term sustainability.
2. The market provides another lever for reform, this time from the demand side. But trade measures could

### Box 1. Some issues of terminology

In this briefing paper, independent forest monitoring (IFM) covers activities undertaken by third parties (NGO or private sector) on behalf of the state, to monitor processes of resource utilisation and assessment. In the case of IFM of enforcement operations, this implies 'monitoring the official monitor' (i.e. the performance of government law enforcement agencies). 'External monitoring' is a broader and more inclusive category, which includes IFM and monitoring by external agencies of forest operations without any necessary official sanction or the objective of verifying the activities of the official agency or any other intermediary. In practice, IFM of enforcement operations is likely to require that the monitor has some capacity to directly monitor the industry, as a check upon the information provided by the official monitor.

IFM has many similarities to independent audit, and requires the same kinds of discipline. Thus, 'independence' requires impartiality of all partisan interests, and also freedom from commitment to specific objectives which might prejudice the legitimacy and credibility of the monitor in the eyes of its stakeholders. As with auditors, where the monitor is hired to assess the adherence of other parties to their contracts, it is essential that it operates in a way which is not only non-partisan, but is not capable of being perceived as such. It obviously needs also to stick rigorously to the terms of its own contract.

well prove anti-poor in their effects, where they decrease access by poor people to the resources on which they have previously depended for their livelihoods.

This briefing paper addresses the issue of independent forest monitoring, drawing on the evidence of a recent research study undertaken by the authors for DFID's Policy Division (Brown *et al.*, 2004). This reviewed some pilot experiences of external monitoring of 'forest crime' in Cambodia, Cameroon, Indonesia and the Philippines, and drew lessons from similar experiences elsewhere in the North and South. The initiatives studied included both 'independent forest monitoring' and other forms of 'external monitoring' (see Box One). A range of interventions was covered, involving several donors – including DFID, the World Bank and DANIDA. Some of these are presented in Box Two. The emphasis was on external supervision of the forest industry. Industry-led initiatives such as certification were not directly addressed.

One of the problems in assessing the effectiveness of such initiatives is the multiplicity of the aims and interests with which they tend to be associated. There were usually two main areas of stated policy concern:

- Improvements in governance standards (well-embedded national ownership, and growing pressures for the resource to be managed accountably and transparently);
- Improvements in environmental standards (improvements in the forest condition).

Though not necessarily always acknowledged in monitoring contracts, a third area was pertinent to donor-funded activities:

- Social improvements (poverty alleviation and increased equity).

But other interests were implicitly at stake. For example, for the host governments the driving force was often the need to improve its image internationally. For donors, accountability in the use of aid funds, and proof of their positive impact, were two primary concerns. The timber industry was interested in protecting its market share and warding off NGO-inspired boycotts. While NGOs often wanted to conserve threatened species and ecosystems and/or safeguard the interests of forest-dwelling peoples. These concerns were sometimes in conflict.

## Lessons learnt from recent initiatives

### 1. Impact of IFM initiatives at the national and international levels

By and large, the independent monitors (IMs) were found to have been very effective in increasing the levels of information about the sector and the extent of illegality within it. They were also effective in revealing the political interests and relationships which underpinned these practices. In some cases, there was not only an increase in available information, but also evidence of increased discipline within the state enforcement agency and the timber industry.

The increase in information has increased the momentum for forest sector reform. This in turn had beneficial knock-on effects at the global level, where there has been a useful injection of new information into the international policy debate. There was also growing interest in neighbouring countries in the idea of IFM. All these aspects were positive.

### 2. Acceptability to different stakeholders and sustainability

External players particularly donor agencies and NGOs were the most appreciative of the role of IFM. The initiatives had often proven markedly less successful in generating a local constituency for change.

Sustainability is highly dependent on both local and international legitimacy. How they might be ensured is a matter of some debate. The forest sector in the tropics is an unusual one, as much of the policy debate is generated in the consumer nations rather than in the producer ones. Organisations that enjoy high legitimacy in consumer nations are not necessarily the same ones in which producer governments and industry have much confidence. These constituencies are difficult to reconcile.

Low national engagement can be attributed to a number of factors. At the practical level, such detective work is often physically dangerous, particularly for nationals (there were several instances of serious acts of aggression against the monitors), and this has implications for local participation. But the lack of a strong internal constituency for change also reflected the way the monitors tended to be locally perceived as associated with northern interests, and sometimes simplistic in their approaches to development issues in the host societies.

IFM must, of necessity, operate under the assumption that there is a functioning and legitimate legal framework. But this is often problematic, even fallacious, in timber producer states. Among the barriers to legality in the case study situations were:

## Box 2. Some examples of independent and external monitoring

**IFM in Cambodia.** Following influential advocacy-oriented work in Cambodia, Global Witness was selected in 1999 by the donors and appointed by the Royal Government of Cambodia (RGC) as the independent forest monitor with the objective of ensuring reporting accuracy and validation of reports on forest crimes. This was one component of the 'Forest Crime Monitoring and Reporting Project' (FCMRP). Its brief was to record and track action against forest crimes, to strengthen forestry law enforcement and set up IFM of RGC progress in addressing forest crimes. A 'Forestry Focal Point' was set up by the Prime Minister in the Council of Ministers (RGC's highest executive body) to 'facilitate management and oversight of experts'; to receive periodic reports from the FCMRP and pass them to Ministries, the PM, the donors and the Press; and to resolve conflicts between the various parties. Global Witness's tenure as IFM in Cambodia was marked by many difficulties, and many accusations of non-compliance on both sides. In 2003 its contract was revoked by the RGC. The private sector company, SGS-Forestry, has since been appointed as IFM.

**IFM in Cameroon.** In 1999 an independent observer was appointed (as a structural adjustment conditionality) to work with the Cameroon Inter-ministerial Committee for the allocation of forest concessions. Two local legal and accountancy firms were employed whose brief was to increase the rigour and objectivity in the scrutiny of tenders. In 2002, a forest management plan oversight initiative was developed in Cameroon, and official (but largely donor-funded) contracts awarded, respectively, to Global Witness (for enforcement monitoring) and Global Forest Watch (for monitoring of forest operations). Global Witness had already been operating in the country on a trial basis for a year. Both contracts aimed to make authoritative information available to national and international users regarding the industry's respect for forest management plans.

**The Philippines' Multisectoral Forest Protection Committees** (MFPCs) were established in 1992 by the Department of Environment and Natural Resources (DENR) under the Monitoring and Enforcement Component of the World Bank-funded ENR-SECAL Program. By 1999, a total of 314 committees had been established at regional, provincial, municipal and community levels. Members of the MFPCs were made up of individuals from various government organizations, non-government organizations, the media, church, communities, local government units, academia, youth groups and civic groups. The common functions of all MFPCs were to serve as a collection point for information on illegal activities, tapping into the independent networks of their members, to act as a special monitoring arm of the DENR; to run information and education campaigns; mobilize members' networks in support of forest protection; and to publicise the committee's discussions and findings. The MFPCs role is therefore to support the DENR, on a variety of fronts (including monitoring the performance of its officers), and their brief is thus rather broader than 'IFM' alone.

**External monitoring in Indonesia.** The Environmental Investigation Agency (EIA) is an international campaigning organisation which has been engaged on forest crime issues in Indonesia since 1997 and works closely with the Indonesian environmental NGO Telapak, as well as regional partners in Papua, Kalimantan, Sumatra and Sulawesi. EIA/Telapak (EIA/T) was included in a group of organisations (predominantly NGOs) involved in 'external' monitoring of forest issues who received funding from DFID Indonesia's Multi-stakeholder Forestry Programme. With this funding, EIA/T has undertaken investigative work around the issue of illegal logging and has focussed heavily on capacity building of local NGOs to document and disseminate evidence of forest crimes. They have worked outside the structures of government enforcement, not as an 'IFM'.

**Other examples** include: **Vigilancia Verde**, in Ecuador, is a supervisory system involving both private and public institutions (government, international private sector, police, army, NGO). Their main task is to control the transport of round wood and timber between the forest and markets. Professional 'forest stewards' supervise timber-harvesting activities. The arrangement is funded by a trust fund, financed partly by fines and seizures. A constitutional challenge has been made over the involvement of a foreign private sector provider, and the system is currently suspended. The **Forest Practices Board** in British Columbia is an independent public watchdog for sound forest practices in the Province, which audits government enforcement of its forest code, as well as the practices of forest operators on public lands. Its brief includes the investigation

- Complex and inconsistent laws which created obstacles both for large-scale operators and small producers;
- Failure by the legal system to recognise many well-established resource rights and claims;
- Lack of transparency or participation in the regulatory process such that attempts to police the regulatory regime often end in victimisation of the rural poor;
- Profound objections of many rural dwellers to the land management regimes developed during the colonial and post-colonial eras;
- Unclear distribution of powers between different levels of government, further confusing the facts of illegality;
- A tendency for policy and regulatory processes to be captured by elites, resulting in the selective use

of enforcement mechanisms and discrimination against the poor.

IFM is not in a position, of itself, to address these ambiguities. Many locals resent what they see as the excessive preoccupation of outsiders with the issue of forest crime, to the detriment of these other barriers to improved forest governance. The resolution of these constraints may be equally as important as crime detection in advancing sectoral reform. This has severely restricted local buy-in to the fight against forest crime.

### 3. The focus on forest 'crime'

One of the main difficulties in the use of external resources to assist with the detection of 'forest crime' is the way in which it tends to polarise interests. At its worst, this can lead to a complete breakdown of relationships between

the monitor and its national partners. The problem is most clear when it comes to the economic role of forests. The Philippines case was an exception as attempts had been made to acknowledge the needs of the industry, and this had helped to build a high level of local support. Elsewhere, the industry tended to perceive the monitor (rightly or wrongly) as hostile to its interests.

Such problems of ownership were not unexpected, for monitoring is threatening to the less reputable parts of the industry and to its fellow-travellers. Nevertheless they are of concern. Most of the initiatives depended on donor conditionalities not only to initiate but also to sustain them. Declining international recourse to this instrument indicates the need to search for other, more responsive and less provocative, means to support forest reform. One such means is likely to be the market benefits associated with the promotion of legitimate trade. To date, IFM has proven a rather indiscriminating tool. This draws into question the extent to which trade interests can be pursued through initiatives driven largely by international human rights and environmental concerns.

Another outcome of monitoring that focuses on 'forest crime' is that decision-makers tend to become preoccupied with verification, which can divert attention away from the positive efforts of the progressive industry. The label of 'forest crime detection' is also prejudicial, to the extent that it is perceived as stigmatising its targets in advance of proof of their guilt. Concern with forest crime is unavoidable when it comes to verifying the legality of forest products. But there are more positive indicators of management performance which do need to be tracked – and given some prominence – if the sector is to advance. These include the positive steps taken by progressive forest operators to invest in management planning, consult with local populations, and limit negative impacts on the environment.

Developing a constructive profile for IFM and allied activities that recognises positive developments in the sector, as well as focussing on the negative forest crime aspects, is a challenge that needs to be urgently addressed. This is a challenge for the sector, and not just for the monitors.

#### 4. Type of Institution

Most local informants were supportive of the involvement of international organisations in attempts to improve forest governance. International agencies can be very beneficial, as they can generate momentum for change and provide positive links to external networks. An external perspective was also regarded by many informants as essential to public credibility. Industry-led initiatives with no external validation were regarded very sceptically by most observers.

The preference of almost all observers was for an NGO rather than private sector provider. The only exception was in specialist areas such as monitoring of concession allocations. NGOs tended to be preferred because of their strong social values and motivations, and their spirit of public service and self-sacrifice. The absence of a profit-motive increased their credibility, as did the much reduced likelihood that they would have compromising relationships with the forest industry and government.

#### 5. Campaigning and advocacy

The conclusion of the ODI study was that campaigning and advocacy are largely incompatible with IFM though they may

often be useful attributes of other forms of external monitoring. The benefits of campaigning and advocacy are recognised in terms of increased commitment and motivation, external credibility, and ability to internationalise the debate. These qualities are of interest to the industry as well as to activists. For international trade promotion, the cachet of a 'green label' from an environmentalist or human rights organisation is potentially more beneficial than that from a body allied to the industry.

At the same time, combining oversight and advocacy runs the risk that the monitoring role is subordinated to the advocacy agenda, that trust is inhibited from developing with partners and that the national debate is distorted in favour of particular interests. The concept of IFM relies on legitimacy and credibility in the eyes of a wide range of stakeholders. Association of an IFM with a particular advocacy position may increase credibility in some quarters, but is likely to diminish it in others. A strong advocacy agenda can be a barrier to the participation of national civil servants, when it is directed against the interests of key stakeholder groups such as the forest industry. Civil servants are not in a position to take sides publicly, whatever their private sentiments. This factor may be just as important as 'corruption' in explaining the obstructive attitudes of many civil servants to the work of the monitors. Allowing a monitor to pursue its own advocacy agenda is likely not only to draw into question its own independence in the eyes of important national stakeholders, but also to undermine the authority and credibility of its international sponsors.

### Important issues for the future

#### The design of the monitoring system

In planning programmes of verification, consideration needs to be given to the various elements which can, in combination, create a positive momentum for change. These include the following:

- The regulatory function needs to be monitored at all relevant stages (concession allocations and the whole production and marketing chain), if the overall effectiveness of the system is to be secured.
- The simultaneous presence of one or more external monitors, in addition to the official IM(s), may facilitate the circulation of information, and keep up the pressure for systematic reform.
- Attention needs to be given to the reporting framework within which the monitor works, and the validation of its findings through appropriate fora which widen ownership and accountability.

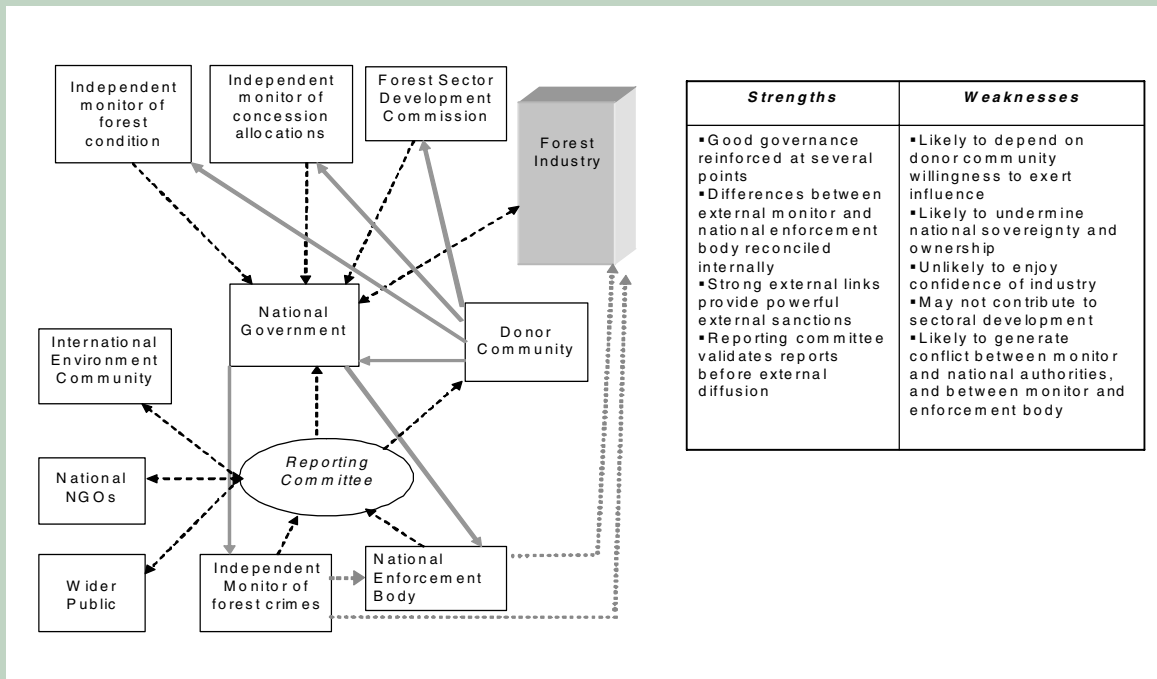
As regards the reporting framework, the two key functions are those of an *institutional buffer* and an *information filter*. These are normally combined. Examples include the 'Comité de lecture' in Cameroon; the multi-partner structure and forum in the Philippines and Ecuador; and the Forest Practices Board in British Columbia, Canada. All of these involve some kind of reporting body to receive, assess and validate monitoring reports, in advance of their publication by the monitor, and to act as an intermediary between it and the government. In some cases, representatives of different government ministries and donors are involved (as in the case of Cameroon); in others (as in British Columbia), the Board is a parastatal, and insulated from political influence.

Such bodies have three broad sets of aims:

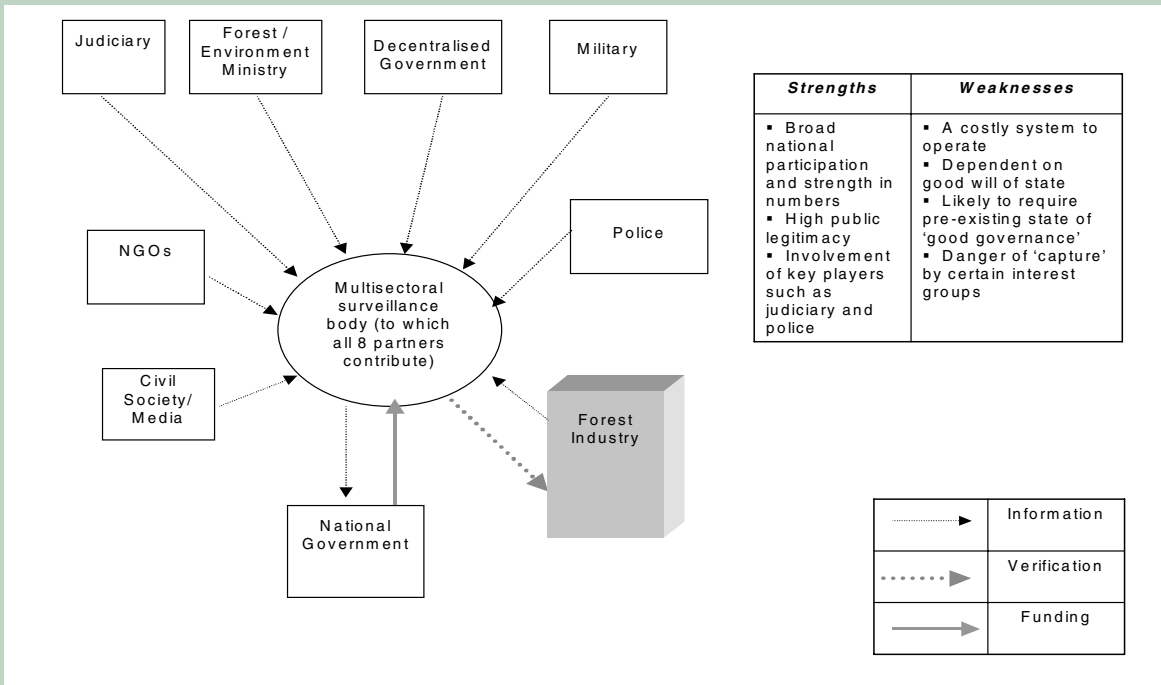
- to share responsibility for the information generated,

**Box 3.**

**Figure 1. Independent monitor and verifying national enforcement body, both reporting to a governmental committee**



**Figure 2. Multisectoral surveillance body**



apply high standards of quality control, and enhance public transparency and accountability;

- to safeguard the independence of the monitor;
- to routinise reporting, so that decision-making processes are depoliticised. In these ways, public credibility and participation can be maximised and monitoring used to best effect to advance sectoral reform.

Sharing of responsibility is particularly important where overall governance standards are low and the monitor is vulnerable to political pressures. In such situations, the donors (and, ideally,

other actors) need to be in a position to defend the work of the monitor should its findings prove politically disagreeable. To the extent that an independent profile isolates the monitor, there is need for an institutional mechanism to protect its ability to 'speak truth to power'. Information should ideally be handled on an automatic basis – as regards convening meetings of the reporting body and the publication of agreed findings. This takes decisions about when to meet and what to publish out of the political realm.

Figures One and Two (Box Three) present two options (among several) for the design of regulatory monitoring, which provide

the buffer and filter functions in contrasting ways.

Verification is a field which requires specialist skills, and little may be gained by requiring monitors to take on functions for which they are ill-adapted or which might compromise their impartiality. Excessive preoccupation with other activities, such as local capacity-building, may thus be inappropriate. At the same time, long-term crime detection can impose great strains on local actors, particularly the staff of enforcement agencies. The development of an exit strategy for the independent monitoring operation, right from the inception stage, may help create a positive working environment, and ensure that capacity building functions are not marginalised by high-profile detective work. Whether these capacity-building services should be provided by the monitor or others would have to be decided situationally.

### Parameters for decision-making

A number of variables need to be considered when designing verification systems. As regards *the context*, these include:

- the extent to which the problem to be addressed is localised or widespread;
- the clarity and predictability of the policy environment;
- the extent of the public's involvement in the fight against illegality;
- the likelihood of consensus being reached among the institutional actors involved.

The less specific each of these variables is, then the more important it will be to ensure that IFM is complemented by other activities which reinforce its effectiveness, and address weaknesses in the policy environment.

As regards the *characteristics of the preferred provider* (for example, NGO or private sector; campaigning organisation or service-deliverers), much will depend on the range of interested parties. Relevant variables include:

- how specific the activities of the provider are;
- the extent to which the provider is likely to be prepared to compromise on its aims;
- the level of competition between different providers;
- whether there are external pressures on the provider, in relation to professional performance standards.

There is no one blue-print for verification design. Where, for example, there are numerous competing providers, then the choice of the IFM may be relatively unconstrained, in that it will be under strong pressures from various quarters to perform according to standards with wide acceptability. However, where there are few providers, then the attitudes and interests of the chosen organisation can be expected to play a much more determinant role.

Putting these sets of factors together, there may be some contexts in which IFM would be highly problematic and investment costs excessively high. In such situations, it may be preferable for donor consortia to insist on external monitoring, as a form of conditionality. In yet other situations, IFM may be unproblematic and easily routinised, much in the style of an annual business audit. The most interesting area for donor intervention and support is probably the middle ground,

where there are challenges to be addressed, but there is some expectation that investments will achieve reasonable returns.

### Conclusions

There is a paradox in IFM in that it is most urgently needed in situations where forest management has reached crisis point, not where there is the likelihood of a rapid improvement in performance. The starting point is thus not ideal, and the governance challenge particularly complex.

The overall picture which emerges is one in which IFM plays an important – but inevitably incomplete – role in the promotion of legality and the suppression of illegality. Agencies undertaking IFM need to be protected in carrying out this task, and to be equally protective of their impartiality and integrity. Institutional rules and structures need to be put in place to enhance both of these elements. A range of complementary strategies need to be adopted to develop sectoral policy and practice. These may include other approaches to broaden public ownership and supervision, increase revenue capture and ensure that revenues are put to good effect. The particular forms that such activities take will depend on the national context and its trading relationships.

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