



Options for forest verification

Minutes of the Experts' Meeting on Verification in the Forest Sector

Hotel Barcelo Albatros, Palma de Mallorca, Spain

April 27 – 28, 2006



Compiled by Neil Bird, Robert Oberndorf, Josephine Tucker and Cecilia Luttrell



CONTENTS	PAGE
Preface	3
 DAY ONE	
1. Introduction to VERIFOR and aim of the meeting	4
2. Theme One: ownership in relation to the design of verification systems	5
3. Theme Two: the principle of independence in verification practice	7
4. Group discussion on the themes of ownership and independence	9
5. The social dimensions of verification in FLEGT processes	12
 DAY TWO	
6. Theme Three: setting standards for legality compliance	13
7. Theme Four: the developmental impacts of verification	14
8. Group discussion on the themes of legality standards and developmental impacts	16
9. Regional perspectives on verification systems	18
10. Closing remarks of the workshop	19
 Boxes	
Box 1. The Ecuadorian Outsourced Forest Control System	7
Box 2. Systems for verification of legal compliance in the forest sector, Malaysia	9
Box 3. Forest Practices Board, British Columbia, Canada	11
Box 4. Ghana's experience in timber verification system design	14
Box 5. Timber verification in Cameroon	16
 Annex	
Participants list	20

Preface

This document is a record of an experts' meeting on verification in the forest sector, held in Palma de Mallorca on the 27th and 28th of April 2006. The meeting was organised by the VERIFOR research project, which is co-funded by the EU's Tropical Forest Budget Line and the Governments of the Netherlands and Germany.

Four key themes identified by the VERIFOR team - on Ownership, Independence, Legality Standards and the Developmental Impacts of Verification - were used as starting points for discussion. In addition, country case studies were described to illustrate some of the concepts being explored. 34 participants from 15 countries in Africa, the Americas, Asia and Europe worked in group and plenary sessions, with presentations from the VERIFOR team and invited participants. One innovation of the meeting, and the research project more broadly, was the inclusion of extra-sectoral experience with verification systems.

The format of this report mirrors the meeting agenda, with the main sections following the thematic sessions of the meeting. The country case study presentations appear as Boxes within the text. Summaries of the working group discussions are recorded in separate sections following the main themes. The report concludes with some reflections on verification systems as seen through the eyes of those in whose countries considerable investments in verification are now taking place.

A complete record of all the workshop outputs is available at the VERIFOR website: www.verifor.org.

DAY ONE

1. Introduction to VERIFOR and aim of the meeting

The meeting began with an introduction to the VERIFOR research project.

VERIFOR research aims

Through its programme of applied and comparative research, the VERIFOR research project will:

help combat illegal logging by assisting producer countries to build credible systems for forest verification suited to their own needs and realities, doing so in ways that are:

- equitable - socially just & serve the public interest
- developmentally sound - develop & strengthen national policy processes

The project has two complementary focal areas for its research. First, is an interest to understand the institutional dimensions of verification: the interplay of policies, institutions, and social issues (specifically the mechanisms of inclusion and participation). Second, is an interest in understanding producer countries perspectives, responding to national constituencies by integrating international concerns with national agendas and needs. The project has a strong knowledge sharing and lesson learning ethos that will lead to the delivery of demand-driven practical advice. Research activity is based on a wide range of case studies. The following have been completed to date:

<i>Forest sector case studies</i>	<i>Extra-sectoral case studies:</i>
Brazil	CITES
Cambodia	UNFCCC/ Kyoto and the CDM
Canada (British Columbia)	The Kimberley Process for Diamonds
Cameroon	Nuclear Safeguards and the role of the IAEA
Costa Rica	Food safety/ meat hygiene standards
Ecuador	
Ghana	
Indonesia	
Malaysia	
The Philippines	

The aim of the expert consultation meeting was to help identify principles for effective verification practice that are equitable (socially just/not damaging to the poor) and developmentally sound.

This aim was achieved through the sharing of VERIFOR research findings on verification systems and drawing on participants' experience of verification issues. Due to the limited time and the need for an effective meeting framework, discussion was focused around four key themes:

- Ownership
- Independence
- Legality Standards
- Impacts

The following conceptual matrix was presented to participants in order to introduce the four themes. In addition, it can be used to help clarify alternatives for future research activities, to support decision making, and to support verification systems design.

Figure 1. The VERIFOR conceptual matrix

POLITICAL MANDATE	LEGAL BASIS	DESIGN	RESULTS
<p>The object:</p> <p>The aims of verification</p> <ul style="list-style-type: none"> - Good governance - Conservation - Growth - Poverty reduction 	<p>The object:</p> <p>The 'rules of the game'</p> <ul style="list-style-type: none"> - Legal framework - Legal tradition - Standards of performance - Rights & responsibilities - Compliance regime - Access to information & justice 	<p>The object:</p> <p>The design of the verification system</p> <ul style="list-style-type: none"> - Building blocks - Organisational characteristics - Architecture 	<p>The object:</p> <p>The outcomes of verification</p> <ul style="list-style-type: none"> - Public support - Progressive governance - Effects on poor - Objectives met - Collateral factors
<p>Process:</p> <p>The drivers</p> <ul style="list-style-type: none"> - Individual and organisational drivers: local, national, international - Political culture 	<p>Process:</p> <p>Policy closure – actors and authority</p> <ul style="list-style-type: none"> - Supervision - Facilitation - Participation 	<p>Process:</p> <p>The delivery of verification</p> <ul style="list-style-type: none"> - Participation - Resolution of conflicts - Phasing 	<p>Process:</p> <p>Measurement and interpretation</p>
<p>Key theme:</p> <ul style="list-style-type: none"> - OWNERSHIP 	<p>Key theme:</p> <ul style="list-style-type: none"> - LEGALITY STANDARD 	<p>Key theme:</p> <ul style="list-style-type: none"> - INDEPENDENCE 	<p>Key theme:</p> <ul style="list-style-type: none"> - IMPACTS

2. Theme One: ownership in relation to the design of verification systems

Cecilia Luttrell gave a presentation describing the experiences and dilemmas faced in building broad-based national ownership of verification systems based on evidence collected from the VERIFOR case studies.

A working definition of ownership was stated as 'the active support of, and the ability to control, the design, process and outcomes of the verification system'.

This theme raises a number of important questions:

- Do the objectives of the verification system determine the degree of ownership?
- Is government ownership increased by engaging a broad section of public agencies and levels? And, does government ownership necessarily reflect broader public ownership?
- Is public ownership increased by strengthening accountability and transparency mechanisms?
- Is broad ownership of the process equally important during all stages?
- Can ownership be achieved when the impacts of the verification system are not perceived to be beneficial?

With regard to the first question - whether the objectives of the verification system determine the degree of ownership - a range of objectives and drivers can be observed from the VERIFOR case studies. In Malaysia, the verification system was introduced as a result of a strong desire from both industry and the state to increase market access; in Ecuador, it was the result of internal social pressures; whilst donor conditionalities were the main drivers in Cambodia & Cameroon.

Some objectives are complementary, whilst others are contradictory. The latter can undermine broad national ownership of the system. Verification systems based on access to the international market require approval by external stakeholders and so one question is whether ownership can be substituted by pressures such as conditionality or market access. The evidence from the case studies suggests that international monitoring can undermine ownership. However, in Ghana some degree of national ownership appears to be developing despite the agenda being set initially by the international community.

Possible strategies to strengthen national ownership of the verification system include:

- Strengthen complementarities with existing monitoring and auditing procedures (e.g. the use of national reporting systems in CITES)
- Harmonise with decentralised roles and responsibilities (e.g. in Indonesia, where there is a mismatch between deconcentrated timber administration powers and laws on administrative decentralisation)
- Match verification system design to capacity (e.g. Philippines, Kimberley Process, and the International Nuclear Safeguards all overestimated existing capacity)

A major issue emerging from the case studies is the need to engage beyond the forest sector ministry at the national level. For example, in Ecuador, the reform process was internal to the Ministry of the Environment. When internal resistance emerged within the Ministry there was no wider political support from other ministries or elsewhere in government to boost it. There is evidence that participation by other government agencies can increase ownership, such as in Brazil where there is broad cross-government participation in verification processes. However, the bigger question is whether government ownership reflects a broader 'public' ownership of the verification system. Much appears to depend on public legitimacy of state systems. One pressing concern is how to build ownership where trust of the government is low. Increasing participation and including diverse view points can increase public ownership, as in The Philippines. But this is not always the case, as consultations can merely give voice to a number of dominant interest groups.

With regard to the question of whether public ownership can be improved through increasing access to accountability mechanisms, there is some evidence that involving judicial review processes and other dispute mechanisms, such as Ombudsman Commissions (e.g. in Indonesia) may strengthen ownership of the system. However, evidence is as yet limited.

Ownership is not only achieved by the process but will be increased or decreased by the outcomes of the verification system. Consideration of the distribution of costs and benefits is needed. For example in Ecuador the verification system resulted in high transaction costs for small operators. There is also the question of who should bear the risks associated with the unknown outcomes of signing up to international market-based mechanisms.

Box 1. THE ECUADORIAN OUTSOURCED FOREST CONTROL SYSTEM (SNTCF)
Guillermo A. Navarro, Filippo del Gatto, Martin Schroeder

The historical and political origins of the SNTCF are recent. In 1999, a national strategy for Sustainable Forestry Development was prepared. Through a participatory process, it was agreed to delegate all State functions over the forest sector that were not strategic (e.g. policy and normative formulation) to non-state actors. This was followed by changes in the forest law (with mandatory criteria for sustainable forest management; recognition of other land tenure systems; and the creation of two new institutions: a professional foresters' body, the Forest Regency (FR), and Vigilancia Verde (VV), a multi-party group to monitor the transport of timber). 2002 saw the approval of secondary environmental legislation to give a solid basis for the SNTCF, by integrating the recently approved FR & VV with the outsourcing of administrative and supervising functions to the private sector company, SGS. One of the strengths of this verification system design were the checks and balances created by having multiple actors involved in different elements of the verification system.

In terms of **ownership of the verification system** three major drivers stood out: the political influence of NGO's; support from the donor community; and, committed high-level officials within the Ministry. However, some groups were not considered in policy design (e.g. land owners and indigenous communities) whilst others were not involved in the implementation of the system (e.g. some mid-level Ministry officials and some professional colleges associated with the timber industry).

The SNTCF lasted for only a short period in 2003, before the suspension of the outsourcing of the administrative and supervising functions. The logging industry's main arguments against SNTCF were threefold:

- Government delegated undelegable prerogatives such as issuing licenses, tax collection, and control activities.
- Tariff and taxes can only be collected by the State and established by the Congress, not through a contract.
- Forest users felt they were paying three times over for the same service (with payments to the Forest Regent, stumpage tax paid to government, and the SGS tariff).

Active discussions are ongoing to try to re-activate the system with better support from all parties in government.

The full report of the Ecuador case study can be found at:
http://www.verifor.org/case_studies/Ecuador.pdf

3. Theme Two: the principle of independence in verification practice

A presentation on how independence is ensured through the design of the verification system was given by David Brown.

Verification within the forest sector lies at the interface of some important tensions between global and local issues; between northern and southern interests; and between objectivity and influence. There are multiple and sometimes conflicting aims in verification systems, as acknowledged in the previous presentation on ownership.

Independence - defined as freedom from the influence of other parties and autonomy in decision-making - is required in the functioning of any public system to provide citizens a guarantee of trust, credibility, and transparency in the working of stable state institutions. There is a need to reconcile a number of forces:

- independence is required to ensure some objectivity, but the resource in question is under sovereign ownership
- however, there are severe governance problems in many producer countries
- yet, forests have global public goods values, which are not currently reflected in an international agreement on forests

Three different perspectives can offer complementary insights into how independence can be demonstrated in such systems:

- *System perspective* – this looks at the independence of the forest administration system and how it functions. Specifically, the dynamics of the administration, the operation of the system of sanctions and the extent of the legal framework.
- *Actor perspective* – this view focuses on the agents who guarantee independence in system functioning and oversight. From whom are they independent, and who decides in the decision-making process? There is the issue of the 'hidden hand', such as with independent monitoring being driven by the international community. This raises the issue of how to decide when governance levels are low enough to justify this approach, and who is mandated to make that decision.
- *Functional perspective* – this view examines how independence is defined in the delivery of verification, through routine and periodic audits, by recognising certification standards, validating other standards (e.g. ISO standards) and external but overlapping oversight mechanisms, such as ombudsmen.

It is necessary to determine from where independence is derived. This may be through the external origins of the verification actors; through the organisational types involved in verification (e.g. NGOs, private sector companies); through adherence to professional standards and 'codes of conduct'; or it may be generated by the institutional architecture.

Three working hypotheses require further study:

1. In defining independence, the credibility of a verification system is a function of the independence of verifiers from all interests in the forest estate.
2. With regards to the verification agency, three issues should be explored:
 - *National vs. international actors* – does independence in this sector require the intervention of international actors?
 - *Private sector vs. NGOs vs. alliances* – whether in the present context, environmental rights NGOs driven by strong advocacy agendas are better placed to act as verifiers than private sector organisations driven by profitability?
 - *Architecture vs. agency* – if greater democratic accountability is likely to come from architectural arrangements to deliver independence with public scrutiny rather than from the reliance on the operation of individual monitors?
3. In delivering independence, the nature of the mandate is important: the broader the mandate of verification the more difficult it will be to apply a concept of independence in seeking to assess its accomplishment. Financing independent verification is also key, with funding secured and allocated through the national legislature being more likely to safeguard the independence of the verifier than when funding is dependent on *ad-hoc* arrangements with the sector ministry, donors, or the private sector.

It is important in any verification system that all stakeholders trust the outcome. Decisions have to be clear and convincing and delivered in a timely fashion. If there is low independence but high trust in the institution which is making the decisions then the system may have widespread legitimacy. If moves towards establishing independence cause a break of trust then this can be a major problem, which is very difficult to recover from.

Box 2. SYSTEMS FOR VERIFICATION OF LEGAL COMPLIANCE IN THE FOREST SECTOR, MALAYSIA
Adrian Wells

National ownership of the verification systems in Malaysia comes from policy set by the National Forestry Council. However, being a federal system, the States have full jurisdiction over management & licensing within the forest sector. Three verification systems exist:

- Peninsula Malaysia – where forest management is carried out by each State, using short-term licences under an annual coupe regime
- Sabah & Sarawak – both of these States achieve forest management through long-term licences awarded to concession holders.

Monitoring and audit systems have evolved in response to a desire for (a) continuous and stable revenue streams; (b) access to higher-value markets (achieved through certification); (c) stable supply of timber for local processing; and (d) tackling excessive opening and over-harvesting by the States.

In Peninsula Malaysia, independence of the verification system is achieved through a system of checks and balances involving public-sector audits (Federal) and external audits (Malaysian Timber Certification Council and ISO). ISO 9000 compliance enhances the auditability of administrative procedures by the Federal and MTCC audits. The MTCC is currently under the authority of Ministry of Plantations and Commodities, which has raised questions over its independence from government. Measures underway to enhance this independence include the establishment of a trust fund to cover the recurrent costs of the service, so that it does not continue to rely on government funding and to separate standard-setting from certification (through an accreditation scheme). In terms of compliance by licensees, the 2005 National Forestry Council provided guidance on which cases must go to Court, thus reducing the discretionary power of State Forestry Departments. In terms of compliance by the States through the Federal audits, emphasis is given on 'compliance management' by 'moral suasion' of the National Forestry Council. Disciplinary action against State Forestry staff under Federal line management can also be taken.

In Sabah, the verification system is set by the Sabah Forestry Department through its General Procedure for Audit of 100-year Sustainable Forest Management Licensing Agreements (SFMLAs). This system aims to progress licensees towards 3rd party certification, with an emphasis on compliance management (capacity building). The State Forestry Director issues a Certificate of Compliance. There is exceptional use of 3rd party auditors where the Forestry Department's audits of licensees are in potential dispute. Apparent weaknesses of this system are (a) a lack of clear guidance on public access to audit reports (cf. the MTCC website); (b) lack of 'routinisation' on when to bring in 3rd party auditors; (c) the decision to withdraw a license for non-performance lies with State Executive Committee; and (d) like Peninsula Malaysia there is no clear guidance on when a license should be withdrawn and on public access to this decision.

The overall impact of the verification systems in Malaysia is to ensure relatively efficient timber administration and revenue capture and a low incidence of illegality given high penalties. There have been limited pro-poor impacts, as such considerations are not within the scope of public-sector audits (except the 100-year SFMLAs in Sabah).

The full report of the Malaysia case study can be found at:
http://www.verifor.org/case_studies/Malaysia.html

4. Group discussion on the themes of ownership and independence

The following paragraphs are a synopsis of the working group discussions, and the ensuing plenary, on the first two themes of the workshop.

A. OWNERSHIP

Participants tended to the view that a process approach needs to be taken to define ownership. In most national settings, there are competing forest policy objectives such as growth and conservation, with different stakeholders intervening at the national and the international arena. Governments should conduct an inclusive, participatory process to define the best societal choice for resource use. Once this initial consensus is reached, often within a national planning

framework, an arrangement – or verification scheme – on how to achieve that goal should be agreed upon through the legal framework, institutions, and technicalities. This can be evaluated by conducting an impact assessment to define the costs, benefits and the distribution of these among different stakeholder groups and the technical feasibility implied. The government should then resume the participatory process to negotiate costs, benefits and compensation mechanisms with all stakeholders before implementing the verification scheme. International stakeholders should also negotiate responsibilities and sharing of costs of implementation. This will need effective participation, strong political will and time.

Lessons can be learned from other sectors (e.g. arms): states take charge of missions – they cannot be forced to take them on. It may be healthier to view ownership as an issue for the buyer countries, not the producer ones. Ownership cannot be generated by asking producer countries to sign up to something which is fundamentally unclear, and also – as in the case of the EU Voluntary Partnership Agreements – tailored to buyer needs. It may be more effective for the buyer countries to 'bear down on' the producer ones, than to demand the impossible. Furthermore, once ownership exists in the buyer countries, producer countries can decide whether they want to 'own the process' themselves. In practice, ownership often comes from a lack of alternatives. Thus, Ghana's heavy dependence on European markets suggests that it is the European markets which should define the agenda, not Ghana. If too much pressure is put on the producers then the danger is that their ownership will decrease. Ghana, again, is a case in point. There are plenty of loggers there who would prefer to export to undemanding markets like Nigeria. There is also the issue of liabilities. In practice, the financial liabilities are likely to be excessively weighted to the buyer end. Buyers in Europe who suffer a boycott by environmentalists because of inadequate documentation from the verifying state are more likely to sue than loggers, who will just search for alternative markets.

The meeting identified two ways that government ownership can be demonstrated:

- The level of government at which the decision on the verification system is taken. It needs to go to the highest level.
- Commitment of resources, both financial and human resources.

Government ownership of the process is a necessary but not sufficient element of the verification system, as the process will not go far if other stakeholders do not buy into it. Hence, there is the need to involve and encourage broad stakeholder ownership through involvement in system design and implementation. Different actors will have different expectations and objectives, but it is important that all of them have a sense of ownership. Getting the right balance is difficult and it is situation specific. There is the need to identify leaders and reformers, laggards and vested interests, so that consensus on identification of the problem can be reached. It is necessary to create confidence between stakeholders to reach an agreement, which seems an obvious point - but in reality is not always that obvious to the stakeholders concerned.

Government should be flexible enough after the decision is taken to give room for positions advocated by the public. As such, ownership is not set in stone – it evolves – but there needs to be participation by the people before government imposes change. The balance between government and public responsibilities has to worked out in each country. There also needs to be a structure put in place to ensure that verification staff can continue once external funding has ended. Verification systems are often perceived as being external to the forest control system, implying that they are only a short-term solution.

B. INDEPENDENCE

All the discussion groups concurred that verification delivered through one actor is not sufficient to guarantee independence. There must be mechanisms that ensure accountability, transparency, objectivity, competence, acceptability, cross-checks and balances. One problem is that, while independence should lead to trust, in reality trust and independence tend to be at odds

with one another. It is hard to find any entity that is truly independent; the underlying concern is more with 'how to achieve credibility', so that the work of the verification body is authoritative. Maintaining 'distance' from local interests matters and the verifier needs to be transparent with all actors within society. The verification process should be public, with everyone knowing how to provide information to the verifier and under what conditions. Hence, the importance of raising awareness as part of the system design. Everything written should be made public and if something is wrong, the verifier should be held accountable. Independence of public reporting is an important design feature of verification systems. This may perhaps be best achieved by the ability of the verification service to report directly to the public without having reports edited and without having to go through government for approval. However, this may be at the cost of accountability. In some situations there has been value in public validation through an authoritative 'reviewing mechanism' (in the Cameroon case, the '*comité de lecture*').

It is risky to mix mandates in the same organisation. Many participants felt that a distinction has to be maintained between commenting on policy and campaigning on policy. Audit type activities tend to be routinized, and they require methodical but limited approaches, which are ill-suited to campaigning stances. 'Whistle-blowing' demands quite different skills.

Box 3. FOREST PRACTICES BOARD, BRITISH COLUMBIA, CANADA

Kate Schreckenber

Forestry in Canada is predominantly a provincial affair. British Columbia (BC) is Canada's most forest-dependent province. Forestry in BC provides CAD1.2 billion revenue annually and employs 4.4% of the workforce. However, BC's strong environmental movement argues that the current forest legislation does not ensure sustainable forest management. The Forest Law has recently been revised, with the introduction of 'results-based' legislation (the Forest and Range Practices Act – FRPA) to replace what was a more prescriptive Act, the Forest Practices Code. Overall, timber companies achieve high (94%) compliance levels with the law.

The Forest Practices Board (FPB) "***serves the public interest as the independent watchdog for sound forest practices in BC***". It was established in 1995 and operates within a limited mandate: it cannot impose penalties. The tasks of the FPB include: (a) audits of government and industry forest practices on public lands; (b) audits of government enforcement of forest legislation; (c) investigation of complaints; and (d) special reports on issues of particular public concern. Other actors operating within the forest control system include the Provincial Government's Ministry of Forestry Compliance & Enforcement Branch; industry self-regulation (e.g. BC Forest Safety Council); and market regulation by Certification bodies (ISO, FSC, SFI, CSA). Professional regulation also plays a role, as does civil society oversight, particularly by environmental NGOs and First Nations groups.

There is strong local **ownership** of the verification system. The FPB was established alongside the previous Forest Practices Code in response to NGO and market/industry pressure to demonstrate good forest management. All stakeholders collaborate with the FPB and respect its outputs (reports). There is intense debate about whether **verification of legality** assures the achievement of sustainable forest management, which is the policy goal advocated by both government and civil society. Discussions are currently taking place about specific indicators to be used to assess compliance with the new results-based Forest Act. All large operators and many small operators are ISO certified, which requires compliance with legality. Many operators are also SFM certified. Information from certification inspections that are in public domain are used in FPB audits.

Independence of the FPB from government and industry is written into the legislation. The FPB reports to the public without interference or vetting and FPB members are appointed as individuals – they do not represent interest groups. The Chair of the Board is appointed by Cabinet (with some risk to its independence). Financial independence from the sector is assured, with FPB funding coming directly from the Treasury Board, although as a consequence is subject to overall government spending plans.

However, independence is not enough: FPB's impact is in part due to its constructive and professional tone. Many of its recommendations are implemented by both government and industry, though not always with acknowledgement. The FPB does not assure verification on its own. It operates within a system of interacting components including other less impartial actors such as government, private sector and a strong civil society.

The full report of the British Columbia case study can be found at:

http://www.verifor.org/case_studies/BritishColumbia.pdf

5. The social dimensions of verification in FLEGT processes

A presentation that focused on the underlying social issues was made by Marcus Colchester.

Although Forest Law Enforcement, Governance and Trade (FLEGT) is presented as a voluntary process (and is thus compared with previous voluntary timber certification initiatives), in fact this approach constitutes a significant shift to channelling forestry reform efforts through state regulation and control. The political challenge is therefore much greater in that the effort is to catch those operating outside the law rather than congratulating those who adopt 'best practice'. The forest sector in a number of countries is plagued by both public and private actors who behave in ways that are unlawful, criminal, corrupt, unaccountable and not transparent.

Initiatives to date have paid too little attention to the direct impacts of forest law enforcement activities on the rural poor. The 2003 CIFOR review¹ of forest-related laws and enforcement in Bolivia, Cameroon, Canada, Honduras, Indonesia and Nicaragua found that the rights of such people are often inadequately protected. Laws are selectively developed and applied in favour of large-scale forestry, with the result that rural livelihoods are often 'illegal' or precarious.

Illegal forest use, including by communities, tends to be enmeshed in wider political economies. Major players tend to be politically protected while local communities are politically vulnerable. Enforcement therefore tends to focus narrowly on forestry. Crude enforcement measures have reinforced social exclusion and tended to target poor people, while avoiding those who are well connected. Rather than helping alleviate poverty, crude enforcement can thus exacerbate it.

Forest reform processes would do well to engage indigenous peoples and local communities in the formulation and implementation of forest laws and policies. Effort needs to be directed at ensuring coherence between forestry and land tenure laws, with legal reform and strengthened land tenure and access rights specifically for rural communities and indigenous peoples. There is also the need to take into account customary laws and traditional knowledge, and to strengthen effective participation of all stakeholders (notably non-state actors and indigenous peoples) in policy making and implementation.

Questions remain as to whether legality can ever be comprehensively defined to satisfy the need to audit under the Voluntary Partnership Agreements of the EU. The experience in Indonesia is salutary. A three year process has highlighted tensions between local and central government and between communities and the Ministry of Forestry. It has involved the examination of over 900 laws and regulations and yet a comprehensive definition has still to be agreed by the Ministry. The main problem is lack of gazettelement and delineation requirements. However, this is not just a technicality as it is almost the only way that communities can assert their rights.

Under such circumstances civil society organisations propose that legality definitions must take into account laws on human rights, land tenure, customary rights and indigenous peoples, including in national constitutions and ratified international treaties. National committees that are convened to develop legality definitions and associated action plans should work in a transparent and fully participatory manner, engaging with civil society and indigenous peoples' organisations, as well as other stakeholders. For participation to be adequate there needs to be fair representation, proper reporting, balanced leadership and outputs. The subsequent monitoring of compliance also needs to be transparent, and involve local communities and civil society groups directly.

¹ Marcus Colchester et al., 2006, *Justice in the forest: rural livelihoods and forest law enforcement*. CIFOR, Bogor.

DAY TWO

6. Theme Three: setting standards for legality compliance

Adrian Wells gave a presentation on the theme of legality standards.

Verification requires a clear and unambiguous set of rules for determining compliance. However, legal and regulatory frameworks affecting the forest sector are often highly complex (leaving many operators illegal) and do not provide a clear enough basis for audit. In the short term this situation requires (a) **prioritisation** of existing laws and regulations depending on the objective and mandate of the verification system; and (b) **augmenting** regulatory frameworks with clear standards of performance (SOPs).

The VERIFOR case studies highlight some national standard setting: (a) in Ecuador and Costa Rica where verification of legal compliance includes mandatory Criteria & Indicators (C&I) for Sustainable Forest Management (providing clarity for audit); (b) Malaysia, with SOPs in the Federal audits of State forest administrations (Peninsula); and (c) Indonesia, which has C&I for mandatory audits of concessions by independent evaluation institutions.

However, standard-setting is also driven by bilateral agreements responding to international processes. The processes initiated in Cameroon and Ghana are examples of producer-country standard-setting within the framework of EU Voluntary Partnership Agreements. A similar approach is being undertaken within the UK – Indonesia *Memorandum of Understanding on Cooperation to Improve Forest Law Enforcement and Governance*.

Although experience remains limited, these examples suggest some operating principles when setting standards for legal compliance. The first principle to consider is the **legitimacy** of the content and process. National standard-setting inevitably creates space to contest norms, more so with the explicit focus on 'definition of the law', which creates strong pressure for inclusion. It is hard to place boundaries around such debate, but it needs to be anticipated. Secondly, is the principle of **applicability** – how implementable is the standard?

There is a clear dilemma between these two principles, as the 'prioritisation' of laws and regulations can be highly contentious in terms of what should be left out; whose rights are subordinated; and who bears the transaction costs. There will always be competing pressures to expand or reduce the scope of a standard. Ensuring state agencies are also in compliance may be one way of resolving this dilemma, through the phased or step-wise introduction of standards and focusing on the different types of compliance measure (e.g. sanctions and incentives). However, this assumes that state agencies can be held to account and that sufficient trust can be built to trade off short-term interests for long-term gain.

Perhaps a bigger question that remains unresolved is whether it is possible to set standards without further legal reform. There are clear challenges to be faced when existing laws and regulations appear to 'criminalise' the poor. This raises the question of whether it is appropriate to develop standards for the purposes of verification where legal frameworks remain highly contested. It is as yet unclear whether such standard setting will act as a catalyst for broader legal reform or have a perverse impact in undermining national efforts of reform. More understanding is needed of how law works and is transformed in different national contexts, including what are the key drivers and what political supervision is required to reach 'policy closure'.

Finally, any legality standard needs to be defined in terms of the law. The legal or policy instrument by which a standard is endorsed has to be defined. Issues such as who has the legitimacy to issue certificates of legality and whether such certificates vouch for 'compliance with a standard' rather than 'legality' have yet to be tested.

Box 4. GHANA'S EXPERIENCE IN TIMBER VERIFICATION SYSTEM DESIGN
Neil Bird, Timotheé Fometé and Gene Birikorang

Despite an exemplary national forest policy, Ghana's traditional timber resources are depleting rapidly; the forest sector is becoming increasingly contested; and industry is not compliant with the law. Overall, the forest sector is characterised by poor levels of governance. There is widespread illegality, with many small-scale operators ignoring the prohibition on chainsaw conversion. In addition, state agencies are not in compliance with the law. Although Parliament enacted new legislation in 1997, the state's regulatory agency, the Forestry Commission, has not overseen the full implementation of this legislation. The reasons for this have much to do with the political economy of the country, which dwarf the technicalities that are often cited.

In this unfavourable context, a major government initiative began in January 2005 to design and put in place a timber verification system for demonstrating the legal origin of timber, and subsequently, legal compliance of forest management. The Government of Ghana is investing US\$4 million of its own resources to develop the new system. The objectives of the verification system are fourfold, to (a) improve the monitoring of forest resource utilization; (b) improve revenue flows from timber harvests; (c) maintain access to a major export destination; and (d) establish the first step towards sustainability of timber utilization.

Major changes are proposed to the institutional structure within the forest sector. The present forest control system operates as a traditional state regulatory system, displaying a simple 'command and control' structure. The Ministry of Lands and Forestry is responsible for policy development, while the executive agency is the Forestry Commission (FC). However, under the new system design, the Forestry Commission will separate its role as a regulator from that of validation and verification, focusing on its core responsibilities of the granting of timber rights and law enforcement. **Verification** will become the responsibility of a new institution, the Timber Validation Agency (TVA), which will issue the certificate of legality to timber exporters. An **Independent Observer** is also planned, to increase the creditability and transparency of the system (aimed particularly at the international community). A third new element of the control system is a proposed **Operating Council**, which would act as the sector 'watchdog' with representatives of the main institutions and stakeholder groups involved. It is expected to play an important conflict resolution role (between the regulator and industry).

At the start of the reform process there seemed little national ownership of the planned verification process. Rather, it was driven by donor interest to confront governance failings in the sector. However, ownership seems to be developing over time by some national stakeholders: government and civil society, much less so with industry.

As full compliance with the law is not possible at the present time, agreement has to be reached over a sub-set: 'the legal standard' for auditing purposes. However, there is little international precedent on several aspects of this 'legal standard': who should determine the standard; how should it be determined; and what should its legal status be? A related issue is that establishing the legal basis for the new elements of the verification system (e.g. the Timber Validation Agency) will likely require Parliamentary time.

The full report of the Ghana case study can be found at: http://www.verifor.org/case_studies/Ghana.pdf

7. Theme Four: the developmental impacts of verification

The development impacts of verification systems were explored in a presentation made by Kate Schreckenber.

To date, there is very little experience (if any) of formal impact assessments of forest sector verification systems. This can be explained by the fact that many systems are recent, impact assessment is complex and requires resources, the attribution of impacts to the verification system is often not clear and, in cases of low ownership of the system, there may be little interest to assess impact. What little information exists is available in research reports, project reports or in anecdotal form. Developmental impacts are particularly poorly understood.

The impacts of verification systems are determined, to a large degree, by the system objectives. Most systems have multiple, sometimes conflicting objectives, including retaining market access, increasing capture of revenue by government, and improving governance and the Rule of Law within the forest sector. Developmental objectives are not a key driver of verification systems. There is debate about whether verification systems should be poverty-neutral (e.g. the EU FLEGT Action Plan 'No adverse impacts on poor people') or actively designed to have positive impacts on the poor. This highlights the need for a clear and unambiguous statement of the objectives of all stakeholders during verification design, and agreement on trade-offs as necessary.

Several additional factors help determine the impacts of verification systems. The policy/legislative framework within which the system operates is crucial, as even effective verification cannot achieve more than is required by law. The overall design of the verification system and how it is implemented are also important.

Some positive impacts of verification systems can already be discerned from the VERIFOR case studies. In terms of general impact, higher levels of legal compliance of large- and small-scale operators, improved government revenue, improved information flows within and about the forest sector, and increased public debate on forest sector reform have all been recorded. In terms of specific developmental impacts, the following are noted:

- Recognition of indigenous community rights (Sabah)
- Recognition of uncertain land tenure status of many small-scale producers (Brazil, Ecuador, Costa Rica)
- Easier physical access to legality, through the use of mobile state regulatory units (Ecuador, Costa Rica, Brazil)
- Improved information to communities on their share of tax revenues (Cameroon)

However, what is often presented as 'positive impacts' may just be the belated recognition of stakeholder interests – and a willingness to acknowledge them in a control strategy. Negative impacts have also been noted. The increased cost of compliance associated with the verification system has acted as a disincentive to plant trees in Ecuador. Timber now involves higher costs to bring produce to market compared to agricultural produce. In terms of specific impacts on the poor, the high costs of accessing legality have 'pushed' some poor producers into illegality.

However, negative impacts are usually unintended and unexpected. They result from insufficient understanding and recognition of the interests of different stakeholders, their power to impose their interests, and how the different elements of the verification system interact. Impact assessment studies are typically not used by governments before establishing verification systems. In addition, there is weak commitment among system designers to poverty reduction and more broadly, a limited role of evidence in national policy-making and reform.

Several steps can be made to minimize potential negative impacts on the poor. Firstly, governments can carry out poverty impact assessments or cost/benefit analyses during system design specifically to avoid, mitigate or compensate for expected negative impacts. Secondly, there is often the need to implement a parallel process of legal reform to ensure that the rights and livelihoods of forest-dependent communities are not further compromised by more rigorous law enforcement. A third aspect is to consider having separate and more easily accessible permit systems for poor producers. Fourthly, improved transparency over forest revenue flows may allow increased benefits to be directed at the poor. Finally, dispute resolution mechanisms can be established to enable people to complain about the impacts of the system.

Box 5. TIMBER VERIFICATION IN CAMEROON
Timotheé Fometé

Cameroon's innovative Forest Law of 1994 made provision for a system of competitive bidding for concession allocation; requirements for sustainable forest management plans; provisions for community forests; and fiscal reforms and tax revenue sharing with the following allocation: State (50%), Councils (40%) and local communities (10%). However, inadequate implementation of laws and regulations has led to a high level of illegal logging.

Forest control and verification come under the authority of the Forestry and Environment Administration, which has a national control unit of ten staff and six provincial control units, with less than five staff in each. Staff resources are therefore a significant constraint to implementing forest control over a huge forest estate. The Finance Ministry also plays a role in the forest sector, with road and mill entry check-points and port export control by customs authorities. In addition, the police and military forces play a role in law enforcement.

A number of initiatives have been taken to introduce third-party monitoring of the forest control system:

- Private sector observers have been appointed to monitor the issuance of forest titles
- an international independent forest monitor (IFM) has been contracted by government, with donor support (Global Witness 2001-2005, REM 2005-2008)
- A forest concessions monitor (WRI/Global Forest Watch)
- SGS verification and issuance of certificates of legal origin of timber

There has been a FLEGT national action plan in progress since 2005 with German assistance. This support has involved a consultancy to help determine a definition of legality and support for a civil society platform. However, it seems that private sector and civil society positions are more advanced in their understanding of the FLEGT process, and the Voluntary Partnership Agreement in particular, than Government.

The verification system was introduced through donor conditionalities (the World Bank SAC III and HIPC processes). The independent forest monitor, established with external funding (DFID, EU), was seen by many national stakeholders as a donor agent, which raised questions over its legitimacy. In particular, the campaigning activities of the IFM have been a source of tension with Government. There have been recurrent difficulties between the IFM and the forest administration personnel, with the result that few joint missions have been undertaken. There has been some indirect collaboration of civil society organisations and communities, although no formal recognition of their role.

Noticeable impacts of the verification system have included a reduced level of illegal activities among the big concessions, through fear of the IFM's internet publications; the publication of forest infractions in national newspapers; the development of a computerised system for sanctions monitoring and case tracking (SIGICOF); tax revenue collection has increased due to the application of the area tax and new concessions; and rural councils have improved knowledge on their share of tax revenues.

However, negative impacts have also appeared. The non-systematic coverage of all forest titles by the IFM suggests some groups are being unfairly targeted. There has also been a failure to monitor the implementation of forest management plans and no provision has been made to monitor the impact on rural peoples' livelihoods. In addition, clear and massive revenue evasion has occurred through the deliberate application of low fines despite compliance with donors' conditionalities. Specific negative developmental impacts include reduced opportunities for community forests and increased social conflicts and divisions in communities.

The full report of the Cameroon case study can be found at: http://www.verifor.org/case_studies/index.html

8. Group discussion on the themes of legality standards and developmental impacts

Issues concerning the third and fourth themes of the workshop were the subject of group discussions, and were subsequently reported upon in plenary. A synthesis of the main points arising from this debate follows.

A. LEGALITY STANDARDS

In terms of the scope of a legal standard there is a wide range of options from a minimalist approach (e.g. restricting attention to consider only timber harvest rules) to one that has a much broader agenda (that includes developmental aims). As legality is a sovereign issue, a range of approaches should be expected. To define the scope of a standard you need to be very clear about the objective of the verification system, which in turn depends on the policy and legal framework concerning forest management in the country. Any definition of the standard should evolve along consultative lines, with the views of different interest groups taken into account. Legality standards for the forest sector may be set for the purpose of accessing an external market or to service internal constituencies (many countries are not complying with their own social and labour standards).

There are three possible ways of going about defining the scope:

1. Proceed with what you have in terms of the existing legal framework (if there is consensus)
2. Start from defining criteria and indicators, which can be set higher or lower than the existing legislation according to the national interest
3. Reduce the objective of verification to something narrow (e.g. the chain of custody)

Another important issue raised during the group discussion is whether such standards will operate as codes of practice or be enacted under law. In the latter case, when it comes to resolving conflict, the courts should ultimately decide.

B. DEVELOPMENTAL IMPACTS

The meeting agreed that national forest use has developmental impacts. This is a strongly held public perception in Brazil, and elsewhere. If there are developmental objectives in an international agreement or national law/policy, these should be considered when designing the verification system. If the system contains clear development objectives they can be monitored and evaluated. Even if such objectives are missing, such impacts can be still be noted.

Participants felt that the forest laws in many producer countries are strongly influenced by the industrial lobby. Industry/companies are not moral entities – their aim is to operate legally, not to contribute to development. They already pay taxes so that a government can take pro-poor action if it wishes. Nevertheless, at the highest political level, many countries state equitable forest management as a policy goal, meaning there should be a cascade of policies and laws ensuring some developmental impact of forest use. By increasing legality (compliance), verification should therefore support the achievement of sustainable and equitable forest management.

National verification schemes aim to build trust over the societal legitimacy of national resource utilization. Increasing information is required by all stakeholders and this can be delivered through a verification system. Greater trust is then developed, but how can it be measured? Such issues should form part of the monitoring and evaluation approach of any verification system (which is a very technical process).

The verification system is not what will determine the outcomes – rather it is the agreement or the law that will deliver these outcomes, and hence make the developmental impact. The law brings about social change; the aim of verification is to demonstrate that observable behaviour on the ground is compatible with the 'rules of the game'. The products of verification can be used for further legal reform – to change the norm that is being verified.

9. Regional perspectives on verification systems

A panel discussion concluded the workshop, with regional perspectives on verification offered by Tasso Azevedo, Samuel Nguiffo, Thang Hooi Chew and Ngadiono.

Latin America

In Brazil, verification is assisted technology, through the use of satellite imagery. However, there is a need to link this information with forest management plans and logging authorisations. Much of the international debate is around the product: timber, and its legality. In Brazil this is not the issue, the issue is the future of the forest and whether to conserve to convert it. Even if all the problems of the logging industry were solved you would only resolve 10 % of the problems related to loss of forest cover. There is no longer a strong correlation between deforestation and logging.

Hence the verification of forests should encompass:

- Land tenure, land-use planning
- Monitoring, compliance
- Promotion of sustainable activities
- Infrastructure planning

Institutional arrangements are very important in verification system design. However, there is also a need for efficient tools for verification.

Africa

Central African perspective – all countries in the Congo Basin experience similar problems in the forest sector. Poor compliance with forest laws reflects low levels of governance. Forest administrations show very weak capacity. Yet forestry is an important sector in all the economies of the region, with exports often carried out by international companies. Two countries are currently in negotiation with the EU over VPAs, although progress has been very slow over the past year in both countries. In Cameroon discussions have stalled on the definition of legality, while discussions remain at an earlier stage in Congo-Brazzaville.

Yet, there is scope for verification. There is increasing awareness in the private sector. There is also growing interest in certification, with two or three companies already certified. Other companies will soon want some form of certification in response. COMIFAC may be the appropriate institution to share information.

Risks include:

- Donors adopt a confrontational approach
- Donors may provide no support, with resulting low standards
- Speed of reform may undermine broad public participation
- Other policy objectives (e.g. attainment of MDGs) dominate. How can the forest sector respond to this policy imperative?

West African perspective – there is the need to clearly identify the roles of the two parties in the VPA. The goals of the EU need to be de-mystified. Assistance is also required in managing the process to define legality standards. Still more questions remain on the design of the system.

Asia

Two countries, Indonesia and Malaysia are the major wood exporters in the region, with China being an important importer and hence influence on the market. Both producer countries have committed to enter a VPA with the EU.

ASEAN has an on-going initiative for a phased approach to SFM, which includes a discussion on what is meant by legality. Regional C & I for SFM are under review. Hopefully this review will be finished in 2006, which will include a framework for monitoring at the regional level. ASEAN countries have also adopted result-based management systems and have accepted the forestry sector as one to explore for achieving the MDGs 1 and 7, embracing peer review. Two countries have been suggested for peer review (e.g. Vietnam and one other). ASEAN concerns include:

- Establishing a government mandate
- Adequacy of stakeholder participation
- Regarding the EU VPA, what is the role of the independent monitor within the verification system?
- Also regarding the EU VPA, what are the costs? What is the minimum requirement – there needs to be a level playing field and a de-mystification of the process.
- Adequacy of legality standards and how to put such standards into practice.

Decentralisation raises additional questions of capacity, hence there is value in harmonising regulations. Indonesia is now in a transition period. In Federal systems (e.g. Malaysia) the Federal level can play a verification (or auditing) role.

10. Closing remarks of the workshop

Hans Thiel made the closing remarks of the workshop. He highlighted a number of issues which had emerged from the meeting:

- It is critical to be clear as to the objectives of a verification scheme. These vary greatly from one place to the next (as do many other factors such as policy processes and legal settings). The scope of the objectives must also be clear.
- A central aim of the VERIFOR project is to share knowledge and experiences among countries. The project arose out of a setting where producer country politicians and professionals are quite isolated from the experiences of other countries. Hence, an important aim of the project is to create a learning community. The field is moving fast. Illegal logging remains a major global issue.

Annex. Participants List

Daru Asycarya	Ecolabelling Institute, Indonesia
Tasso Azevedo	Ministry of Environment, Brazil
Chris Beeko	Forestry Commission, Ghana
Gene Birikorang	Consultant, Ghana
Alan Bojanic	FAO, Costa Rica
Paolo Cerutti	CIFOR, Cameroon
Marcus Colchester	Forest People's Programme, UK
Antoine de la Rochefordiere	SGS, Switzerland
Filippo del Gatto	Consultant, Global Witness, Honduras
Bruce Fraser	Forest Practices Board, British Columbia, Canada
Ian Gray	Proforest, UK
Jose Maria Solano Lopez	Government of Spain
Frank Miller	Track Record, UK
Eva Müller	FAO, Rome, Italy
Ngadiono	Consultant, Indonesia
Samuel Nguiffo	Centre for Environment and Development, Cameroon
Andreas Persbo	VERTIC, UK
Herman Savenije	Government of the Netherlands
Aiysah Sileuw	Translator and ex-auditor for Smartwood
Ian Smillie	Partnership Africa Canada
Hugh Speechly	DFID, UK
Thang Hooi Chew	Independent Forest Economist, Malaysia
David Young	Global Witness, UK

VERIFOR Project Team

David Brown	ODI Researcher, UK (<i>Verifor Director</i>)
Neil Bird	ODI Researcher, UK
Cecilia Luttrell	ODI Researcher, UK
Adrian Wells	ODI Researcher, UK
Kate Schreckenber	ODI Researcher, USA
Robert Oberndorf	RECOFTC Regional Co-ordinator (<i>Verifor Focal Point for Asia</i>)



Minutes of the Experts' Meeting on Verification in the Forest Sector
Hotel Barcelo Albatros, Palma de Mallorca, Spain. April 27 – 28, 2006

Guillermo Navarro	CATIE Researcher, Costa Rica
Hans Thiel	Independent Consultant, Ecuador (<i>Verifor Focal Point for Latin America</i>)
Chimere Diaw	CIFOR Researcher, Cameroon
Tim Fometé	CIFOR Research Associate (<i>Verifor Focal Point for Africa</i>)
Josephine Tucker	ODI (<i>Verifor Administrator</i>)