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**SCOPING STUDY**

**INDEPENDENT FOREST MONITORING (IFM)**

**IN GHANA**

**NOVEMBER 2005**

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## **Contents**

1	Context .....	4
	Background to this study .....	5
	Introduction .....	5
2	The relationship between the Voluntary Partnership Agreements, Verification of Legal Timber Programme initiative, and IFM .....	6
	Summary and Conclusions .....	8
3	The range of monitoring work .....	9
	Current weaknesses in the system of forest regulation and control .....	9
	Scope of IFM activities .....	9
	Summary and Conclusions .....	11
4	The frequency of monitoring work .....	12
	Summary and Conclusions .....	12
5	The relationship between an international monitor and local organisations .....	13
	Summary and Conclusions .....	13
6	The Host and Reporting Panel .....	14
	Separation of functions .....	14
	Single group .....	15
	Summary and Conclusions .....	15
7	Publishing protocols .....	16
	Summary and Conclusions .....	17
	References .....	18

## **Abbreviations**

AAC	Annual Allowable Cut
CHRAJ	Ghana Commission on Human Rights and Administrative Justice
DFO	District Forest Office, the field level extent of Forest Services Division offices
EC	European Community, the Delegation of which in Ghana will represent the EU in VPA negotiations
EPA	Ghana Environmental Protection Agency
EU	European Union
FC	Ghana Forestry Commission
FLEG(T)	Collectively, the Forest Law Enforcement and Governance (and Trade) initiatives in Asia, Africa and Europe
FSD	Forest Services Division of the FC, divided into Regional and District offices, and responsible for control of logging and collection and disbursement of stumpage fees at the local level.
GTA	Ghana Timber Association, an industry group mainly representing small and medium-sized companies involved in logging only.
GTMO	Ghana Timber Millers Organisation, an industry group mainly representing large companies with both logging and milling interests.
ICRC	International Committee of the Red Cross, responsible for international independent visits to prisoners, particularly in conflict areas.
IFM	Independent Forest Monitoring
IM	Independent Monitor
LI	Legal Instrument, the regulations issued in support of an Act of Parliament
LIC	Lumber Inspection Certificate issued by Timber Industry Development Division at the mill and required to obtain an export license. Variants include VIC – Veneer Inspection Certificate and OWIC – Other Wood Product Inspection Certificate.
LMCC	Log Measurement and Conveyance Certificate, the log transport document required to move logs out of the forest. Issued by FSD and inspected at roadside by TIDD.
MFA	Ghana Ministry of Foreign Affairs
MLFM	Ghana Ministry of Lands, Forestry and Mines
MoF	Ghana Ministry of Finance and Economic Planning
MTI	Ghana Ministry of Trade and Industry
NGO	Non-Governmental Organisation
OAG	Ghana Office of the Auditor-General
ODI	Overseas Development Institute, a UK-based policy research organisation
PSC	Ghana Parliamentary Select Committee on Lands and Forestry
RMSC	Resource Management Support Centre of the FC, responsible for management plan approval, inventory, yield data, and pre/post harvest inspection.
SFM	Sustainable forest management. In the Ghanaian context this is interpreted as stated in the 1994 Forest Policy objective: “Conservation and sustainable development of the nation’s forest and wildlife resources for the maintenance of environmental quality and perpetual flow of benefits to all segments of society.”
SGS	Société Générale de Surveillance, a Swiss-based consulting and quality auditing company
SIGIF	<i>Système Informatique de Gestion d’Informations Forestières</i> Cameroon; the official forest management database system. The <i>SIGIF Report</i> is an analysis of the SIGIF database, carried out by Global Witness in 2004, which identified 58 companies who, according to this official database, had cut beyond their yield allocation in the fiscal year 2002-3.
TIDD	Timber Industry Development Division of the FC, responsible for road-side inspections, control of milling operations, and export, including collection of levies.
TUC	Timber Utilisation Contract, since 1997 the only permit in Ghana for commercial timber rights
VLTP	Validation of Legal Timber Programme, and initiative of the FC, with technical assistance from SGS
VPA	Proposed Voluntary Partnership Agreement between the EU and a timber-producing country

## 1 Context

There is a growing consensus that tropical timber production in Ghana has peaked. As the resource reduces, the state comes under greater pressure from the international community, and its own citizens, to be more efficient and effective in both earning and spending state revenues. A cat-and-mouse game takes place between those who persist in short-term behaviour, rushing for the last few trees of value, and those support a more ‘soft-landing’ approach.

It is widely acknowledged that ‘rent-seeking’ and ‘official connivance’ are endemic.<sup>1</sup> Informal comments from either the head offices or the field level of the Forestry Commission (FC) and its Divisions typically apportion blame to each other. Without doubt therefore, whilst there are people at all levels trying to do a professional job, the FC’s mandate as a whole to enforce forest law is compromised. Vested interests, perhaps from industry but also perhaps from higher level officials and political associates, have the power to direct lower-level staff to do favours. Some say there is a peculiar culture in forestry which means it has never been managed by its rules.

Thus state capture, where policy formulation and implementation is subverted to the requirements of an unaccountable elite, is apparent in the sector. The law replacing the previous administrative system of allocating concessions (Timber Utilisation Contracts – TUCs) with a competitive system has been undermined by attempts to bypass these auctions, and by resistance to the re-letting of old concessions under the new system. The consequent loss of revenue is calculated as US\$100 million per year,<sup>2</sup> compared to the annual running costs of the FC, US\$20 million.<sup>3</sup>

Both the FC, supported by donors, and industry are making efforts to improve governance. The former emphasise technological solutions to eliminate fraud and inefficiencies, the latter are working towards certification. In particular, a log-tracking system – currently named the Validation of Legal Timber Programme (VLTP)<sup>\*</sup> – which will depend less on human judgement than the current paper system, has been promoted by the FC for a number of years. However, many people feel the VLTP itself will require some mechanism by which the public can judge its credibility, and this is recognised in the FC’s prospectus for the design contract: “*Best practice international experience requires that an independent third-party be appointed for the forest sector. Such a “Forestry Observer” will provide greater integrity and public confidence in the award and regulation of timber rights.*”<sup>6</sup>

The legislative and institutional reform process has had success in creating new government regulations and institutions, but has been relatively ineffective in supporting a policy process which stimulates the imagination, builds consensus and generates the political will to move forward. Over decades, policy has focused on ‘timberisation’ of the resource. Legislation to implement other aspects of the 1994 Forestry and Wildlife Policy, notably relating to community rights and domestic needs, has yet to be put in place.

There have also been welcome improvements in transparency. From 2004 the FC has published figures on the distribution of stumpage fees to local beneficiaries, and this has been welcomed by communities who can now demand accountability of their local leaders who receive a share of these fees on their behalf. Local NGOs and the media have pushed for this, and improvements in the financial management systems of the FC should improve the quality and punctuality of data. The

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<sup>\*</sup> The VLTP Draft Inception Report describes the programme as “*a mandatory programme designed by SGS to achieve official validation of ‘legal timber’ i.e. validation that timber has been produced and sold legally across a producer country*”<sup>4</sup>. The objectives are:<sup>5</sup>

- To improving monitoring of forest resource utilisation
- To improve revenue flows
- To maintaining access to major export destinations
- To promote the merits of legality as a step towards sustainability

FC have also demonstrated a will to ‘name and shame’ companies in breach of regulations regarding payment of stumpage fees, but unfortunately political machinations have so far prevented them from doing so.<sup>7</sup>

### **Background to this study**

Global Witness has offered advice and assistance on Independent Forest Monitoring (IFM) to forest authorities in Ghana since their first visit in early 2004. (Individual Global Witness staff have a much longer association with the forest sector in Ghana, since 1987.) In September 2004 a feasibility study was undertaken in conjunction with participating in a Forest Governance Learning Group workshop. The feasibility study concluded that Ghana faces serious issues in forest law enforcement, and that IFM could make a useful contribution to addressing some of these. On the one hand the forest authority is evolving out of a typical civil service command and control structure, with a tradition of not providing information, and on the other hand civil society is too weak to effectively demand it. More comprehensive, detailed, and objective information such as that provided by IFM should help to create a ‘political space’ in which different stakeholders would benefit from engagement with each other.

The feasibility study recommended that parliament – through the Parliamentary Sub-Committee on Lands and Forestry – host an IFM pilot / demonstration as this approach could help further a broader good governance agenda in the country. Experience suggests this is a useful, pragmatic way forward: Global Witness first started an IFM project in Cameroon on the basis of two short missions such as proposed here, before agreement on a long-term project was reached. Unfortunately, over the last year, a number of related initiatives – the Voluntary Partnership Agreements (VPAs), the VLTP, resolution of the Timber Utilisation Contract (TUC) conversions issue – have progressed more slowly than expected. In such circumstances, where “*all the timber exported from Ghana in the last six years has been harvested under permits that do not conform to the legal standard,*”<sup>8</sup> any individual assessments of legality based on results from independent monitoring are a foregone conclusion.

At the same time, civil society in Ghana has become increasingly effective in building consensus and making clear demands of the FC, in particular through the NGO network Forest Watch Ghana. The network is committed to the 1994 Forest Policy aim of: “*conservation and sustainable development of the nation's forest and wildlife resources for maintenance of environmental quality and perpetual flow of optimum benefits to all segments of society*”,<sup>9</sup> and seeks to highlight where current practice is contrary to this objective. In particular, it has analysed FC data to draw attention to the failure of the authorities to realise the full market potential from those areas allocated for logging, and the consequences of this for rural livelihoods protection and the sector's contribution to overall national development. On October 8<sup>th</sup>, 2005 the network printed a full-page statement in the flagship national paper with detailed legal and financial analysis,<sup>10</sup> and has subsequently threatened to take the FC to court “*for its ineptitude in tackling issues of deforestation in the country*”.<sup>11</sup> It has also articulated clear civil society expectations for both the process and content of the VPA between the EU and Ghana.<sup>12</sup>

### **Introduction**

This Scoping Study does not demonstrate case studies but sets out options for IFM for the benefit of those responsible for designing and funding it. It seeks to answer questions laid out in a preliminary consultant's report: *Towards the Introduction of IFM in Ghana - A Discussion Paper Commissioned by Global Witness*, written by Hon. Nayon Bilijo.<sup>13</sup> It is based on a year of

following the forest sector in Ghana, culminating in three weeks fieldwork by Hon. Bilijo and Global Witness.<sup>†</sup>

In order to ensure local ownership and demonstrate the political readiness for IFM, the decision on the form IFM should take is the responsibility of Ghanaian stakeholders. Thus this study does not advocate for any particular approach. The document presents options and lays out the implications for these options on the following factors:

- The relationship between the VPA and VLTP initiatives and IFM
- The range of monitoring work
- The frequency of monitoring work
- The relationship between an international monitor and local organisations
- The Host and Reporting Panel
- Publishing protocols

At the end of each section, a summary and conclusions are presented.

## **2 The relationship between the Voluntary Partnership Agreements, Verification of Legal Timber Programme initiative, and IFM**

Both the VPA and VLTP are explicit in their inclusion of IFM (Figure 1, Figure 2). The VPAs anticipate independent monitoring which “*aims to ensure the effectiveness and credibility of the [legality] licensing scheme by introducing a third party to monitor and report on its implementation*”.<sup>14</sup> The documentation on the VLTP states: “*The effectiveness of the whole system... needs to be monitored on a regular basis. Periodic checks should be carried out by an Independent Observer who will be able to circulate information and keep up the pressure for systematic reform*”.<sup>15</sup>

It is clear that the VPA and VLTP initiatives are vehicles for IFM, but IFM is not dependent on either. IFM monitors a system, and the same principles of IFM apply irrespective of what that system is. IFM has been effective in other countries where these systems do not exist, and had it been implemented in Ghana some years ago, it could already be informing these processes.

It is possible that the VPA, the VLTP, or both, fail to materialise. There would still be a need for IFM – calls for improvements in transparency, accountability and good governance would still be strong. These calls are strongest domestically: Ghana’s people are demanding transparency and accountability in the forest sector.

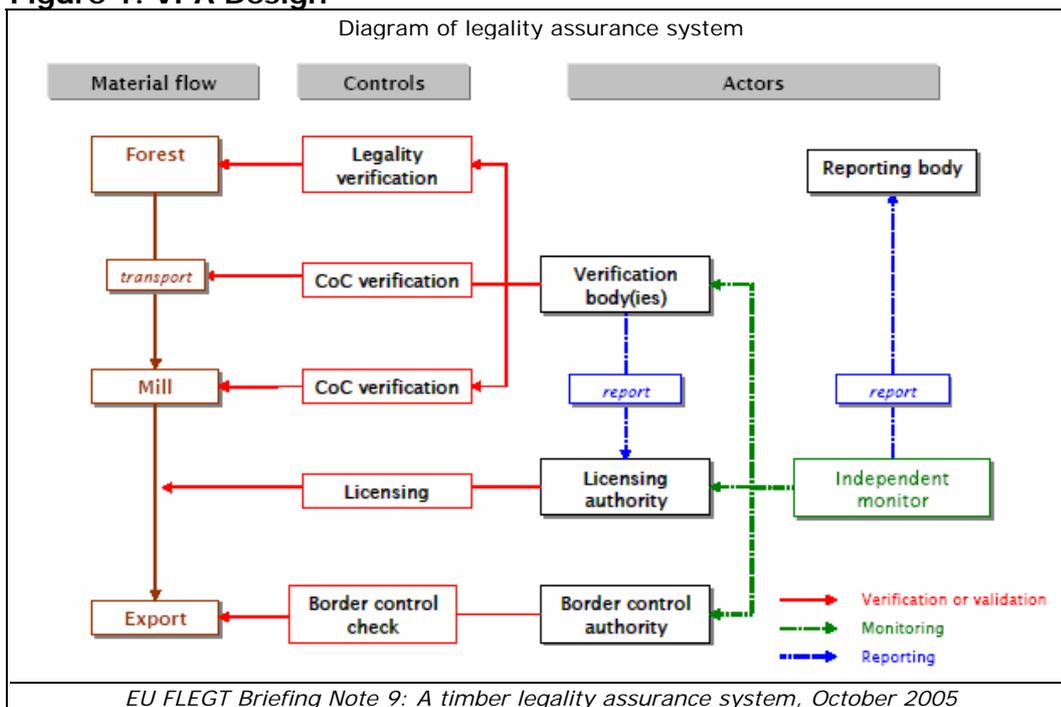
The VLTP is regarded by different interest groups as ‘expensive electronics for its own sake’ or ‘the only way to minimise the (human) contact between industry and regulator’. Some within industry, and the FSD, remain sceptical that the VLTP is necessary to meet the requirements of the VPA. The former express fears that it will be an additional financial burden, and the latter that it will fail to significantly improve law enforcement as any system is only as good as its operators. A leading industry representative suggested supporting (even funding, through the 3% export levy) IFM as a

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<sup>†</sup> In Accra the Study Team met the Minister for Lands and Forestry, two technical staff in the ministry, the Chief Executive and two senior staff at FC, the Executive Director and two senior staff of FSD. In Kumasi the team met the Regional Manager and his deputy, the Director and three senior staff of RMSC. They also met the senior staff of GTA and GTMO. In Takoradi they met one senior staff and three other staff of TIDD, including in the headquarters, the port, and a road checkpoint. In three Districts the team met the District Manager and his staff, Range Supervisors, LMCC kiosk staff, two logging crews and the management of two mills. They also met an RMSC field team leader. The team met eight NGO representatives and four donor officials. In total 51 people were interviewed.

way of demonstrating the veracity of the current paper-based system and therefore undermining those promoting the VLTP. Such comments display an expectation – and a need – that IFM, perhaps more than other initiatives, will be truly objective and produce independent data on the state of forest governance. Where the methodology for data collection and analysis is transparent and open to scrutiny by all, vested interests will have difficulty in contesting its findings. (The disagreement over the extent of the loss to the FC from uncollected stumpage and timber rights fees is a good case in point where an independent arbiter of the methodology and calculations used could play a useful role).<sup>16</sup>

**Figure 1: VPA Design**

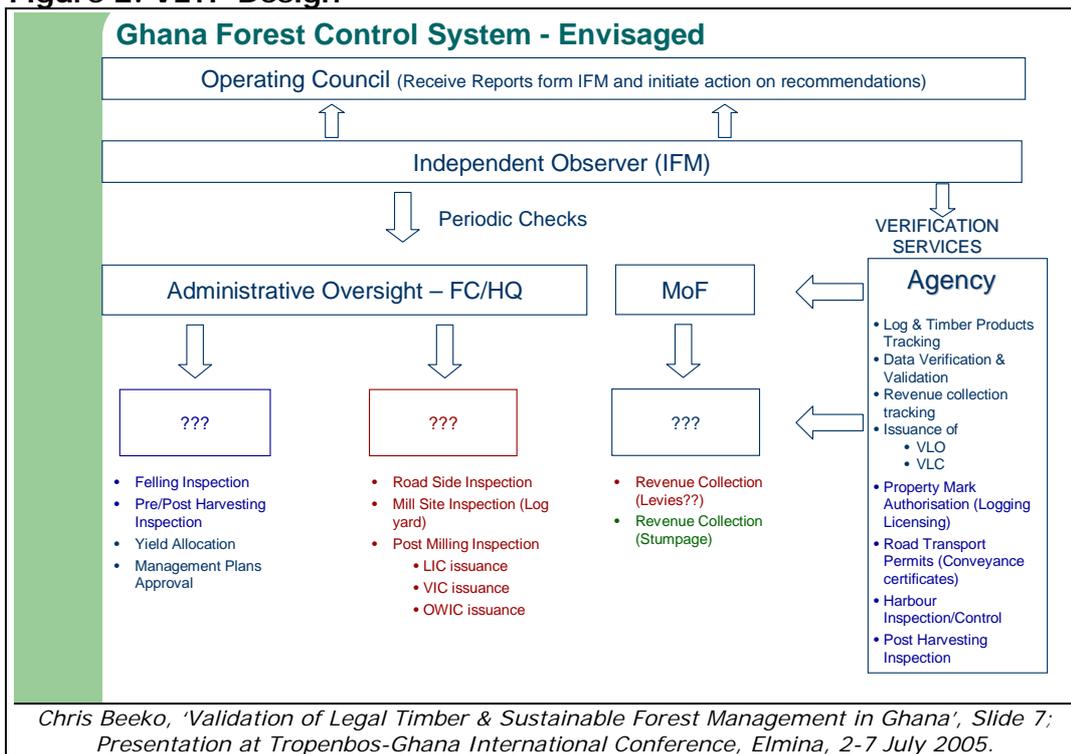


In Cameroon and Honduras, where neither VPAs nor VLTPs have been introduced, monitors (either through investigations, or through regular participation in stakeholder dialogue) have contributed to:

- The dissemination of accurate but easy-to-follow information on the law and its relevant regulations.
- A transparent, official assessment of the level of legality, based on ongoing field-level experience, and the loss to the state in both uncollected fines and taxes foregone.
- Agreement on the legal process following indictments by the forest law enforcement officials against perpetrators in the forest sector, leading to development of a legal case-tracking system.
- Enhanced technical, planning and management skills of forest law enforcement officials.
- Regular, independent and objective commentary on regulations and procedures governing forest law enforcement and the performance of the forest authority, together with recommendations for improvements, in particular to day-to-day procedures.

Given how clearly the proponents of the VPA and VLTP include IFM, it is a concern that attention has not so far been paid to this element. The EC Delegation did not recognise the term ‘IFM’ in the Ministry of Lands, Forestry and Mines’ (MLFM) list of actions towards a VPA. And industry stated that the FC had told them a single organisation – SGS – would be both verification agency and independent monitor, whereas the VLTP design clearly separates them (Figure 2).

Figure 2: VLTP Design



The MLFM's list of actions towards a VPA, published in mid-2005, appears to include the full cost of implementing the VLTP (€6.4m).<sup>‡</sup> In contrast it provides only €6,000 for *Piloting* IFM. If the VPA is a vehicle for IFM, it needs to be fully costed.

## Summary and Conclusions

- The VPA and VLTP initiatives are vehicles for IFM, but IFM is not dependent on either. As in other countries, it would have a positive impact in advance of, part of, or in the absence of these initiatives.
- In Ghana, there is significant and growing domestic demand for transparency in the forest sector – IFM would go some way to meet this domestic agenda and is in no way limited to delivering on expectations of consumer countries.
- Current disagreements over data and analysis related to forest governance indicate both a need for IFM and an expectation that it will be independent of all vested interests. Some of these debates fall outside the remit of the VLTP, so will not be addressed by the increased objectivity the system is anticipated to bring.
- Given the expectation that the VPA will provide a vehicle, including finance, for IFM, it needs to be properly costed and then included in any package of development assistance associated with the VPA.

<sup>‡</sup> MLFM (c. July 2005) 'List of VPA Activities v3'. The document was prepared at the request of donors who require considerable lead-in time to allocate funds. Whilst indicative of thinking at the time, it was not intended to be the final word on VPA-related activities and costs. It is anticipated that future action-plans will be developed following consultation with a Multi-Stakeholder Advisory Group on the VPA. It itemises the following:

- Development of Timber Licensing Scheme (VLTP) - Procurement & installation of tracking system: €1,700,000
- Implementation of Timber Licensing Scheme (Capacity Building) - Roll out and Training of Staff & Industry: €4,700,000
- Piloting of an IFM Scheme - Field Test & Fora: €6,000

### **3 The range of monitoring work**

Different stakeholders expressed to the study team expectations that IFM would have a mandate to examine the whole product stream, from allocation of timber rights, through forest operations to export, revenue capture and benefit sharing.

#### **Current weaknesses in the system of forest regulation and control**

Current weaknesses in all these stages were reported, and are openly acknowledged. Recent work on the VLTP, for example, provides an analysis of the current system of control and recognises some of the problems with it.<sup>17</sup> However, its scope does not appear to start from timber rights allocation, nor end at benefit sharing; it concentrates on forest operations, wood tracking and revenue capture. The VLTP may therefore fail to address the following issues:

- Abuse of Timber Rights Permits, designated for non-commercial use, but since 2001 extensively provided for commercial use, may continue to take place and be regarded as ‘legal’ if the FC has issued the permits.<sup>18</sup>
- Laundering illegal logs from elsewhere into the legitimate forest reserve concessions may not be captured by the log-tracking system.
- Supply of logs from illegal or unknown sources in neighbouring / third countries could be ‘legalised’ unnoticed when they are ‘substantially transformed’ in Ghanaian mills.
- Social Responsibility Agreements, whereby a company is obliged to consult with forest fringe communities and agree a level of service or infrastructure provision with them valued at 5% of the stumpage fee,<sup>19</sup> are not currently subject to effective control or monitoring.
- There is no functioning mechanism for the Service Charter of the FC as a whole, or the Performance Contracts of individual senior executives, to come under formal public review. There are targets, but the ability to meet them is not scrutinised nor the results acted upon.
- The publication of benefit distribution figures by the FC is seen as a response to ‘rabble-raising’, and not as part of a system of monitoring, and publication is currently over one year in arrears.<sup>20</sup> It is also incomplete. In contrast to the commitment the FC has made in its Service Charter to total transparency and being financially accountable,<sup>21</sup> these reports lack detailed figures on calculated expected income, amounts requested, the actual amounts collected, the amounts disbursed, and to whom.
- The retrospective studies by RMSC (reconciliation between yield allocated and cut) and TIDD (sawmill input-output analyses) were valued by stakeholders, but it was felt that this work could be supported and expanded by IFM. Some wanted more analysis; others wanted an independent check on the methodologies used.

#### **Scope of IFM activities**

In discussing the scope for a monitor, one-off studies, systematic sampling and intelligence-led activities were all suggested.

1. Ideas for **one-off studies** focusing on particular issues included:

- Checking for systematic bias in the Stock Survey and Yield Allocation processes. The law of averages suggests inventory errors should balance; the converse might indicate collusion between regulator and contractor.
- The long term implications of compartment opening/closing and swapping on the health of the forest, the sustainable supply of products to the market, and the revenue streams to the State and local communities.

- Examining and publishing the law in straightforward language on areas which appear to be unclear to field-level staff and communities. Minimum diameters, the right of the contractor to retain logs cut illegally on his concession, and the location and purpose of LMCC kiosks are examples. The monitor in Cameroon did this in 2003.
- Critical analysis of input-output studies, to test methodology and inform TIDD and FSD where controls need to be tightened. Over time this would provide evidence of improved milling technology and recovery rates.
- Analytical studies aimed at identifying flaws in the system of control, understanding the mechanisms of timber laundering, and examining trends in cross-border trade, for example.

TIDD or RMSC, or independent Ghanaian groups should be encouraged to carry out some of these studies before an international monitor is tasked with them. They might also be undertaken jointly with such groups. The monitor's contribution might be an independent check on methodology, interpretation and publication of the results in a popular format, and presenting the implications of such studies to decision-makers. The *SIGIF Report* in Cameroon is a good example<sup>22</sup>, as is the reader-friendly legal guide for Cameroon.

Some of these studies could be carried out prior to the contracting of a long-term monitor. They would inform the design of long term IFM (as well as the VPA and VLTP) and bring immediate transparency to the issues examined.

2. **Systematic work** might include:

- Reverse timber-tracking, by taking a sample of the 500,000m<sup>3</sup> exported each year and testing the system by tracking it back to the forest.
- Spot-check visits to a sample of concession areas and sawmills.

The sampling mechanism needs to be justified and transparent, to counter accusations of bias.

The risk with systematic activities alone, like audit processes generally, is that you are only 'checking for what you expect', and forgetting to 'look for what you don't expect'. For example, reverse timber-tracking may be blind to the possibility that timber laundering is effective.

3. **Intelligence-led activities** would complement these two approaches. These would follow up on the three main areas of concern in any system:

- Bad data input, such that from the start, the system is using inaccurate data (e.g. the possibility that fraudulent permit allocation or timber laundering might be too good to be caught out by electronic tracking).
- Breaks in the chain of custody (e.g. documents are being used more than once, or timber is reaching mills without appropriate checks at all required checkpoints).
- Due diligence in corrective actions: examining the way in which inevitable anomalies detected by the system are rectified.

In doing so, the monitor's role is to seek to uncover systemic problems which allow flaws and irregularities to happen (Box 1). Individual cases will need to be investigated in order to demonstrate systemic weaknesses, but to counter accusations of bias the monitor must provide a justification for singling out particular cases. Particular attention might be paid to high profile cases which would have a deterrent effect on the sector as a whole.

### Box 1: Tree measurement irregularities

Anecdotal evidence on off-reserve stumpage fees is a good case in point for an investigation.<sup>§</sup> Off-reserve, tree diameters are often less than the minimum acceptable diameter.<sup>\*\*</sup> So officials, when undertaking yield allocation work, have been reported as mis-recording the trees they agree to be cut as being over the minimum diameter. There are a number of potential outcomes from this:

- Trees are cut which are deemed ‘undersize’, with consequences for the sustainability of the forest. (Whilst this may be less of an issue in the long term as SFM is explicitly not a policy objective off-reserve, it mitigates against those landowners wishing to extend the period of timber production on their off-reserve areas).
- Stumpage fee forecasts, necessary for FC financial planning and management, are overestimated. This leads to disputes between different vested interests on the stumpage fee owed to the FC at any one time.
- As the trees are cut, officials responsible for controlling the log flow to the mill and for export either have to maintain the pretence, or challenge their predecessors.
- There are calls for revision to the rules governing minimum diameters, although one rule for minimum diameters on-reserve and another for off-reserve may result in a further set of loopholes.

Under the objectives of IFM, clearly an investigation is required to look into the extent of the problem and the ways in which it operates. This would require gathering primary evidence in the field, and presenting individual cases to demonstrate the overall findings from the investigation. Any subsequent action by the concerned authorities could address all these issues: correcting anomalies in the law and control procedures; differentiating between infractions of the law by loggers and non-compliance with the regulations by officials; and developing initiatives to encourage landowners to increase active management of off-reserve areas for medium- and long-term timber production and environmental services.

### Summary and Conclusions

- To provide public credibility to Ghana’s efforts to meet FLEG(T), and domestic objectives on legality and governance in the sector, any IFM project design needs to provide the monitor with the scope to investigate the full range of activities. These start from permit allocation, and encompass harvesting operations and benefit distribution. The monitor must have the mandate and flexibility to investigate systemic weaknesses wherever they appear, and not be overly bound by a set list of annual felling operations or wood tracking anomalies, for example.
- A narrower scope may meet one set of objectives (for example, trade with the EU, through monitoring legality licenses) but this is not sufficient to meet the broader objectives of the FLEG(T) initiatives, and in particular the VPA.
- Similarly, monitoring investigations must be of sufficient detail and depth to introduce genuine transparency to case studies. This is essential in order to demonstrate objectivity and independence in findings and recommendations: *“The IM should be required to publish and disseminate validated findings systematically”* in order that *“the relevant national and international publics have faith in the credibility of the verification decisions delivered”*.<sup>26</sup>

<sup>§</sup> In Ghana, the forest estate is divided into Forest Reserves and off-reserve areas. Establishment of Reserves – with a largely protective function – was the original purpose of the Forest Department when it was established in 1909. However, post-war demand for timber in Europe led to a switch to ‘maximum productivity on the basis of sustainable yield’ in the 1948 Gold Coast Forest Policy. In the same policy, the off-reserve area, whilst still well-stocked, would gradually shift to non-forest use ‘utilising its supplies to the utmost prior to their destruction by farming’.<sup>23</sup>

<sup>\*\*</sup> There are “varying minimum diameter limits of (50), 70, 90 or 110 cm depending on the species”<sup>24</sup> and “the same diameter restrictions apply off-reserve as for on-reserve.”<sup>25</sup>

## 4 The frequency of monitoring work

### Box 2: Smooth operations

*"[The FC Service Charter] is a genuine way of making the needs and interests of the stakeholders we serve our priority and of working towards a truly accountable and responsive Forestry Commission."<sup>27</sup>*

The Study Team visited three Districts, and at all times carried a letter of introduction from the Chief Executive of the FC. For each visit, the team first obtained agreement with the Regional Office, who were to inform the District Manager that the team would be visiting. This actually happened only once. One of the other District Managers was particularly resistant to the team. On arrival in each District, the team expressed their desire to see the whole process from forest through checkpoints to mill. In two Districts the team were helped to do this. In one District they were told this would not be possible, but the reasons were not substantiated. Such a lack of openness inevitably raises suspicions.

The description in Box 2 fits with previous experience that at the introduction of IFM, the monitor needs to 'show its face', through the dissemination of publicity material and direct meetings. Awareness of the existence of a monitor alone is likely to have a positive impact on governance (this was seen in Honduras). Only after the monitor's mandate is made public and clear can it assert its right to arrive unexpectedly, and visit any part of the forest/mills. (The International Committee of the Red Cross / Red Crescent operates in this way in undertaking prison inspections).<sup>28</sup>

Once established, the monitor needs to have the time to pursue open-ended cases. In addition to the scope of work (discussed above), there are multiple processes requiring monitoring as the regulator comprises a number of different actors – FC (auctions), DFO (control in the forest), RMSC (systems), TIDD (control in the processing and trade), and proposed Timber Validation Agency – with implications for the workload and particular coordination and collaboration needs of all actors.<sup>††</sup> In addition, there is likely to be initial confusion as the roles of these different agencies change, especially amongst external stakeholders such as industry and civil society. Such circumstances often provide opportunities for irregular transactions.

Even the short period the study team spent in the field demonstrated that it is extremely hard to tell if someone is providing real practical reasons why a monitor cannot fulfil its mandate, or is making excuses. The presumption of guilt must be avoided, but this requires patience, time to triangulate information (not all of which is held in the same place), and determination.

Finally, an important aspect of IFM is in providing a confidential conduit to act on reports from field-level staff and local communities. This is an incremental process, requiring both awareness of the existence of IFM, and time to build trust and confidence.

### Summary and Conclusions

- Under current circumstances, the monitor needs a permanent presence in-country, but the intensity of monitoring can be linked to the level of governance: after an initial full-time period, improvements in the effectiveness of control would lead to a monitor reducing its services gradually. The VPA and VLTP have yet to prove themselves, so after a trial period and assessment of their effectiveness, intensity of monitoring could probably be reduced to 50% of time (i.e. 6 one-month missions in a year). Ultimately it could be reduced to 25%, always allowing flexibility to increase the rate again if needed.

<sup>††</sup> In Honduras, the forest authority expressed concern about the work of the monitor resulting in an increase in the pressure on the already overstretched resources they have. The monitor discussed with them a mechanism by which, if after an agreed number of missions nothing had happened in terms of follow up, the monitor would prioritise the resolution of cases already documented over the investigation of additional cases.

- It is not easy to see how IFM which relies only on intermittent ‘spot-checks’ will be effective. It will limit the establishment of trust and confidence, will restrict the scope of investigations, undermine the notion of unpredictability of visits and responsiveness, and ultimately will call into question the monitor’s assessment of the reliability of the system it is monitoring.
- There are also severe practical difficulties with operating in this way. The monitoring team typically consists of only one expatriate and five local staff (including support staff). For the local IFM staff, discontinuity of job security would undermine morale and motivation if monitoring work was not continuous. For local and international staff, arbitrary deadlines such as the end of a ‘spot-check’ time slot, short-term consultants’ contracts and/or a flight home will be a significant impediment.
- In assessing the intensity of monitoring, it is important to consider the establishment of strong and effective local civil society watchdogs groups: IFM is likely to be required for as long as such groups value it.

## **5 The relationship between an international monitor and local organisations**

The Study Team made efforts, through the NGO umbrella group Forest Watch Ghana, to identify local NGOs who might be potentially interested in delivering IFM. They observed little interest amongst local NGOs to have a formal monitoring contract with a state institution. Contracts local NGOs have with the government in other sectors tend to cover joint service delivery, whereas the role of the monitor is to critically examine the effectiveness of state agencies in law enforcement.

There is also a feeling shared by many stakeholders that local NGOs are often ‘too political’ to accept the objectivity and integrity required of IFM. This feeling was communicated in a number of ways: local NGOs are too easy to buy off; they are too dependent on the vagaries of their funders to remain committed; they are private businesses in disguise; their approach may not be the same as an experienced monitor; and international-local partnerships may be artificially created in order to meet the requirements of competitive tendering, and therefore fragile.

These sentiments concur with experience in Cameroon, namely that the monitor needs to remain irreproachable, is bounded by its contract, and by-and-large should leave interpretation of the reports to others. In all previous monitoring projects, the monitor’s only *raison d’être* in a country is to monitor. By definition, any pre-existing local NGOs exist for a different purpose, which does not necessarily fit well with a monitoring function. In Honduras, although the monitoring function is increasingly led by a local organisation (the Human Rights Commission), the forest authority has asked Global Witness to continue a back-stopping function in order to ensure the credibility of IFM there.

In the tendering process in 2004 for the IM contract in Cameroon, 11 organisations were invited to tender (all non-profit), two of which were local (both universities). Overall one organisation actually submitted a tender at all, and five wrote to give reasons why they did not tender.

### **Summary and Conclusions**

- In the current circumstances, there is nothing to be gained by explicitly insisting in the invitation to tender that only combined local / international consortia are eligible.
- Potential local NGOs see their role as distinct and synergistic with IFM. However, it would be a mistake to extrapolate from the Study to conclude that no local organisation would be interested, and certainly local organisations should not be excluded from bidding in any competitive tendering process. However expectations of a response should be realistic.

- In line with the different functions, any capacity building of local NGOs to enable them to hold the government to account should be facilitated independently of any formal monitoring contract.
- Experience of the only competitive tendering process on IFM held to date suggests that eligible, interested, and competent monitoring organisations are few in number, and thus competition may be contrived. A derogation from the norms of international competitive tendering may be appropriate. Furthermore, in support of the conclusions in Section 1 and 2, IFM is likely to be most effective where it is established gradually, through pilot / demonstration missions and negotiation, rather than a blue-print approach.

## 6 The Host and Reporting Panel

There are three potentially separate targets for the reports of the monitor: Reporting Panel (for technical / legal validation of mission reports); Host (for administration of the contract); and Actors (those who are expected to act on the reports).

The Ministry of Finance and Economic Planning (MoF) is an important actor in the forest sector, and one which has not been considered relevant by the EU in other producer-consumer Partnership Agreements (such as in fisheries and food hygiene). This exposes a clear risk of a mis-match of objectives between the EU and Partner Countries in respect of VPAs: The VLTP is seen as *primarily* a ‘domestic initiative’, in which Ghana tends to prioritise development objectives of SFM and revenue capture, whereas the VPA is perceived as an ‘external initiative’, in which the EU tends to prioritise trade objectives.

The Study Team spent some time in interviews considering various combinations, and present two general alternative designs for consideration.

### Separation of functions

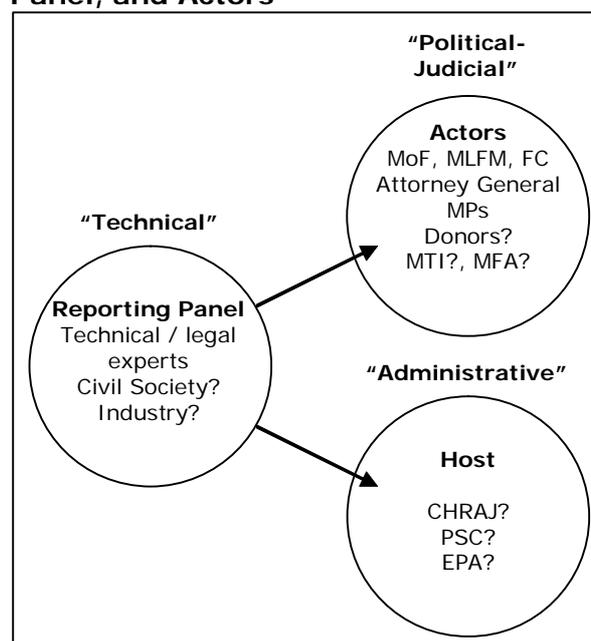
One arrangement could be to separate the three functions (Figure 3). The Host Organisation would be as dispassionate an organisation as possible (e.g. the human rights commission CHRAJ, the environment agency EPA, the audit office OAG, or the parliamentarians’ PSC). The Reporting Panel would prioritise technical and legal over political qualities and contain **individuals** who are well informed about, and genuinely committed to SFM and equitable benefit sharing. The Actors would be the main ministries responsible for ensuring the recommendations in reports are acted upon.

Such an arrangement could make it politically easier to also include representation from industry and civil society, as they would have a clear role in minimising the risk that the efforts of IFM remain obscure (non-transparent) within state institutions.

The multi-stakeholder committee envisaged for the VPA could be a model. However, like the VPA committee, the Panel is advisory, and has a limited role beyond technical validation and little real power in the political process of agreeing action.

The role of the PSC as host presents a number of dilemmas: there is concern that such committees

Figure 3: Separate Host, Reporting Panel, and Actors



may lack sufficient independence from the Executive. Also, such a committee may be reluctant to enter into a contractual relationship potentially lasting longer than a parliamentary term, even though the Study Team understand it is legally entitled to do so.

The EU briefing on the subject supports the view that MLFM should not be host: *“To ensure independence, the government agency to engage the IM should not be directly involved in management or regulation of the forest resource or industry.”*<sup>29</sup> However, the EU may not have considered the separation of functions described above. As a modification to Figure 3 consideration should be given to a formula where the MLFM is administrative host but does not chair the Reporting Panel, in which case CHRAJ, EPA and the PSC could be represented in the Reporting Panel.

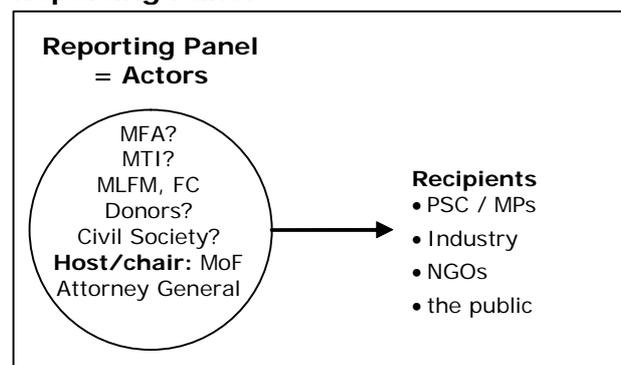
### Single group

A more traditional arrangement is to have the key Actor as the Host, and to have the Host chairing the Reporting Panel (Figure 4).

There are good arguments against having the forest authorities (MLFM or FC) as the chair of the Reporting Panel, in order to avoid conflicts of interest, and having instead a different ministry. In particular it is essential that the funding for IFM is channelled independently of the focus institutions. However it is also recognised that some form of Memorandum of Understanding is required between the monitor and the FC in order to obtain access to information and to the forest.

Whilst the legislature, represented by the PSC, may appear to be an important party in the Reporting Panel, it is impractical to have the whole committee take part in meetings. But some representative or rapporteur might be appropriate.

**Figure 4: Host and Actors within Reporting Panel**



This arrangement puts ownership of the reports right where it should be – with those responsible for taking subsequent action. This group is understood to be similar to the Operating Council described in the VLTP. However, the make-up of this group is not defined in the most recent VLTP document.<sup>30</sup> It is important to consider the role other relevant institutions, including the Ministries of Trade, Foreign Affairs, Finance, the Attorney General’s office and the Office of the Administrator of Stool Lands might have in governance of the sector and therefore should be represented in the Operating Council. However, broad representation needs to be balanced against the need for a workable group who will meet regularly and validate IFM reports efficiently. It may be appropriate that a technical / legal sub-committee of the Operating Council is given this task by the broader Council.

### Summary and Conclusions

- The monitor should report to a multi-stakeholder Reporting Panel which meets regularly and automatically (not at the discretion of the chair or Host). There are various options for the make-up of this Reporting Panel, and the final arrangement may be a pragmatic one related to the final nature of the VPA and VLTP.
- The mandate under which the monitor operates is linked to these options. A welcome innovation over IFM in the past would be to base the IFM mandate in a law, decree or Legal

Instrument (LI), probably in conjunction with any LI required for the VLTP or VPA.<sup>‡‡</sup> This option has clear advantages over a straightforward monitoring contract. It would formalise the Reporting Panel, and give it, as a group, the legal identity required to enter into contracts. It is similar to the ‘consumer panels’ statutorily required following divestiture of public utilities in other parts of the world.

- A clear legal framework for IFM would also place it properly as one element in a system of accountability – a set of checks and balances – rather than being seen as a single agency. This would also represent a clear exit strategy for an international monitor, by institutionalising the IFM function and therefore requiring replacement by a local group.

## 7 Publishing protocols

The Study Team heard many examples of different stakeholders presenting information quite inconsistently. For example the Annual Allowable Cut (AAC) ranged from 1.2m m<sup>3</sup> to 3m m<sup>3</sup>; the trigger for concern about input-output discrepancies was 50% to 80%; and comments on the level of stumpage fee indebtedness ranged from ‘irreconcilably high’ (i.e. unpayable) to ‘quite normal’.

In contrast to this variety of interpretations, **independent** studies would present critical, impartial analysis of the state of the forest sector, all the evidence irrespective of nature and responsible actors of the reported infraction, minimise the ‘spin’ or bias, and provide decision-makers with objective information. IFM takes a lead from public interest processes such as judicial reviews and parliamentary enquiries. In these, the full evidence and unrestricted results of enquiries and investigations is published. Thus the focus of IFM reporting should be seen in the context of a range of audit-monitoring approaches (Table 1).

**Table 1: Auditing and Monitoring**

x = ‘no’ ✓ = ‘yes’	Audit ‘Box Ticking’	<i>Somewhere in the middle</i>	IFM = Legal Reporting	Public Interest Litigation
Reporting on...	A summary of the system	A summary on individual license-holders	Full Evidence	Full Evidence
Naming names	x	license-holders ✓	✓	✓
Detailing infractions	x	x	✓	✓
Take legal action	x	x	x	✓
Impact (domestic)	weak	medium, higher with VPA	high	high
Impact (international)	weak	medium, higher with VPA	high	high
Risks	<i>nothing changes</i>		<i>obfuscation, delay, ownership ambiguous, libel threat</i>	

The EU FLEGT Briefing No. 9 suggests that “*IM is limited to assurance that the verification and licensing meet agreed criteria, and, and does not include reporting on forest crime*”.<sup>31</sup> In reality, it is difficult to separate the two functions: the monitor needs to be able to document individual cases in order to provide objective evidence of the existence of systemic problems. The question then arises about whether all the evidence needs to be published. The notion that evidence of illegality might be retained within the Reporting Panel and only Summary Reports be placed in the public domain has some clear disadvantages:

- It would risk the entire VPA licensing system being suspended when only one contractor (‘legality license holder’) was in breach, and without disclosing to other operators what the reason is.

<sup>‡‡</sup> In Honduras, the new draft forest law has included some aspects of monitoring. Early discussions in Liberia also indicate a desire on the part of the Liberia Forest Initiative (LFI) to do this.

- It would mitigate against investigations into potential systemic corruption through the structure of the industry (cartels, misrepresentation of company ownership), and the organised structure of apparently independent and anarchic chainsaw operators, for example.
- It would make the position of the monitor untenable. Any leak of information would lead to the monitor being used as a scapegoat, as they are the least permanent and most readily replaceable Panel member.
- It would promote impunity and resistance against transparency, by ‘turning a blind eye’ instead of assuring deterrents by ‘shining the spot-light’.
- The delay in publications implied by publishing only summary reports would carry the risk that evidence disappears. This has been observed in Cambodia as monitoring reports are published only quarterly.

These risks would be ameliorated to some extent if (as shown in the ‘somewhere in the middle’ column in Table 1) the license-holders were named in Summary Reports. These public reports might be formatted as in Table 2. A reporting protocol like this would enable the FC to suspend the licenses of individual companies where they were in breach of the licensing requirements, without having to suspend the whole trade. However, if the reports of the monitor demonstrated that the FC (or other agencies with responsibility for legality licensing) had proven themselves repeatedly incapable of dealing with such cases, the EU has a whole would lose faith in the system, and would be advised to suspend all imports.

**Table 2: Progressive reporting for legality licensing**

<i>First inspection</i>		
<b>System Summary</b>	✓	No concerns identified at the system level
License Holder A	✓	No concerns identified with 1 <sup>st</sup> contractor
License Holder B	○	Insufficient data for assessment of 2 <sup>nd</sup> contractor
License Holder C	✘	Minor concerns identified with 3 <sup>rd</sup> contractor
License Holder D	✘✘	Significant concerns identified with 4 <sup>th</sup> contractor – license should be suspended
License Holder E	✘✘✘	Serious concerns identified with 5 <sup>th</sup> contractor – license should be suspended
<i>After many inspection rounds</i>		
<b>System Summary</b>	✘	<b>System unable to rectify failures:</b> EU stops accepting any timber
License Holder Z	✓	No concerns identified
License Holder Y	✘✘	Significant concerns identified – license should be suspended
License Holder X	✘	Minor concerns identified
License Holder D	✓	Significant concerns previously identified have been rectified
License Holder E	✘✘✘	Serious concerns previously identified are <b>not been rectified</b>



**Summary and Conclusions**

- Comparisons with financial audit systems, whilst useful, underestimate the political and low-governance environment in which IFM operates. A monitoring initiative which does not take account of this will risk becoming an exercise in ‘green-wash’. Evidence from other countries suggests that monitors may simply strengthen the politically expedient position that illegality is carried out by poor people with few livelihood alternatives, when in fact it is a well organised commercial operation sanctioned by the highest state authorities.
- A distinction needs to be made between information gathering and reporting:
  - Without doubt, the information gathering stage needs to be carried out with thoroughness and integrity, and this will involve identifying individuals and individual cases. It is for the responsible authorities and judiciary to deal with these individuals, not the monitor.

- In respect of the reporting function of IFM, publication of all the monitor’s findings and the full evidence base is the most effective way to provide the transparency necessary for decision making. IFM will report weaknesses to the relevant authority for corrective measures to be taken, and in facilitating full transparency, empower civil society to hold to account those involved in obstructing the system. Ultimately, the success of monitoring will be judged more by the corrective measures taken than by the number of cases reported.
- With reference to VPA legality licensing, a mechanism is required which operates at two levels: first, to allow the authorities to suspend some licenses without disrupting others; and second to facilitate the EU in making an informed judgement on the efficacy of the system as a whole.
- Immaterial of the negotiation of a VPA or creation of a well implemented VLTP, publishing acts of illegality, those responsible and the full evidence allows fair and transparent calculation of the fines; i.e. that the punishment fits the crime. It is on this basis that public credibility in the system will be established and maintained. Indeed, successful prosecution of infractors could be regarded as an indicator that the system is functioning as it should.

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