



Resource Extraction Monitoring

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Resource Extraction Monitoring (REM) Developing an Independent Monitoring of Fisheries Law Enforcement and Governance (IM-FiLEG) pilot programme November 2009

Introduction

Resource Extraction monitoring (REM) was established in 2003 to tackle illegal and destructive natural resource extraction. We do this by working with local government law enforcement agents and civil society to undertake field investigations into illegal operations and support action based on the findings. We also report on the strengths and weaknesses of law enforcement systems and procedures. Investigation reports are publicised and a committee composed of relevant ministries, concerned international donors, civil society and the diplomatic community is formed to review the field reports before publication and identify solutions for governance reform. To date, REM has focused on Independent Monitoring of Forest Law Enforcement and Governance (IM-FLEG) in sub-Saharan Africa. These projects are funded primarily by the European Commission, World Bank and UK DFID. The independent monitoring model we have developed in the forestry sector has great potential to help address some of the similar problems of illegality in the fisheries sector.

Our projects provide concrete evidence that the REM model of independent monitoring leads to improved governance and law enforcement. In Cameroon, for example, rates for fine recovery doubled from 2006 to 2007 as a direct result of joint REM-government field investigations, and a number of major illegalities were eradicated from the sector. There are many similarities in regards to governance and law enforcement between forest and fisheries resource management. **The objective of this concept note** is to spark discussion between REM and potential partners and donors on the development of an independent monitoring of *fisheries* law enforcement and governance (IM-FiLEG) pilot program. More specifically, we hope to initiate discussions on:

1. Identifying the exact points of intervention of an IM-FiLEG programme
2. Where IM-FiLEG pilot projects could be best located
3. Suitable donors and implementing partners to support IM-FiLEG pilot projects

Elements of an IM-FiLEG programme

The five main components of an independent monitoring program are:

1. Establishment of a Terms of Reference, between REM and the host government, which grants access to entities essential to investigations (i.e. ports, vessels, official documentation) and establishes an official platform for the government to respond to REM recommendations.

2. Field investigations (preferably jointly with government and/or civil society) into major infractions, law enforcement practices and governance strategies
3. Discussion, validation and publication of the field data in reports and an on-line database Case tracking through the administrative and judicial processes using established procedures and legislation as standards against which progress can be measured.
4. Monitoring of government reaction to specific recommendations with continued encouragement for governance reform
5. Establishment of a platform to engage concerned actors – primarily government, donors and civil society – in a process of governance reform

Possible points of intervention of an IM-FiLEG programme

REM believes an approach based on these six elements could help fill gaps in current law enforcement and governance strategies in the fisheries sector, particularly in terms of:

1. Administrative stages from vessel registration to fishing permit allocation
2. Application of required port state measures and other national port procedures

These preliminary ‘targets’ were selected to best complement and actively support existing monitoring, control and surveillance (MCS) efforts rather than replicate them. The following provides a sample of the sort of investigations IM-FiLEG could carry out in these target areas:

Administrative stages from vessel registration to fishing permit allocation

- What are the legal procedures for granting licenses and permits and are they pragmatic considering the political context?
- Who is involved at each stage and what are their specific responsibilities?
- How do actual allocation practices differ from those in the legal text?
- Are violators of the process prosecuted in any way?
- To what degree is the license allocation process transparent? Are there public registries?

Application of required port state measures and national port procedures

- *Port State Measures (PSM)*: Are regulations outlined in FAO’s model scheme for PSM respected – i.e. are vessels not a part of the RFMO or known to engage in IUU allowed to use ports?
- *Cross checking data*: How do observations (catch data, distance travelled, fishing equipment, vessel ID and authorisation) at the port compare to those made by on-board observers and/or vessel records and/or port authority records? Does VMS data match vessel records?
- *Document inspection*: Do vessels maintain the required documents? Are foreign documents scrutinized sufficiently by port authorities?
- *Enforcement capacity*: Do port authorities understand the law and their responsibilities? How many authorities are on duty in relation to the workload? What resources are at their disposal? Are officers paid regularly?
- *Enforcement action*: Do port authorities detect and penalise infractions? Are administrative penalties applied according to law? Are fines and taxes paid/collected?

Thematic investigations can be conducted as well:

- Overall fisheries law enforcement capacity: number of agents, equipment, responsibilities, resources, degree of influence, level and consistency of payment of agents, etc.
- Fines and taxes: What is the process for collecting fines and taxes? To what degree (legal versus actual) are they collected? Identification of points of failures in the system.
- Judicial process to prosecute offenders and case tracking
- Artisanal sector: proportion of fishing sector, degree of illegal activities, etc.
- Flags of convenience

A note on political will and IM-FiLEG

The main benefit to the REM independent monitoring model is that it not only produces and publicises credible data on specific enforcement and governance problems, but it also provides a political framework to take action in response to findings. However, this depends largely on the establishment of the Terms of Reference – the first component of the REM independent monitoring model as discussed above. In the context of IM-FLEG such political will is often fostered through economic incentives within the European Union’s IM-FLEGT (T is for trade) initiative. One thing worth investigating further is whether or not the European Commission Regulation 1005 could provide similar incentives to generate the political will for a full blown IM-FiLEG programme.

IM-FiLEG and international governance instruments

An IM-FiLEG program could contribute significantly to the effective implementation of recent international measures, namely EC Council Regulation 1005/2008 and the FAO’s Port State Measures (PSM) to combat illegal, unreported and unregulated (IUU) fishing. In regards to the EC council regulation, one fundamental weakness is that a certification has little credibility when awarded to a government where little is known about its law enforcement and governance structures. An IM-FiLEG program will provide information needed to address this knowledge gap. Similarly, regarding FAO’s Model Scheme on Port State Measures (PSM) to Combat IUU, an IM-FiLEG program will provide credible and detailed information necessary to evaluate the government practices at ports in relation to PSM regulations. An independent monitor could also work at the regional level with the RFMOs, supporting effective action by coordination through the monitoring and reporting of governance problems to the compliance committees of these organizations, following up specific cases and receiving direction from them.

Next steps – discussions with potential partners and donors

REM currently has two proposals pending for IM-FiLEG programme development – one through the DFID Civil Society Challenge Fund in Sri Lanka and another through Lot 8 of the EU’s ENRTP program in Sri Lanka and the South Pacific RFMO. However, we would like to explore further opportunities with other organizations with expertise in the fisheries governance sector and donors to identify potential partners and explore opportunities to develop this new approach to improving fisheries governance.