

# Proposed Terms of Reference for Independent Monitoring of Forest Law Enforcement and Governance in Tanzania

## **1 Context**

The 1998 National Forest Policy in Tanzania is implemented through the activities in the National Forest Programme: The objectives of the programme are:

- (i) Sustainable supply of forest products and services ensured to meet the needs at the local and national levels; (ii) enhanced national capacity to manage and develop the forest sector in a collaborative manner; (iii) enabling legal and regulatory framework for the sector in place and (iv) increased economic contribution, employment and foreign exchange earnings through sustainable forest-based industry development and trade of forest products.<sup>1</sup>

The principal pieces of legislation governing the forests of Tanzania are The Forest Act (2002), also known as the Forest Act No. 14 OF 2002, and the supporting Regulations made under section 106 (1) of the Forest Act 2002, namely, the Forest Regulations 2003.

Other policies that have a significant bearing on the Forest Policy are the Environmental Policy and the Land Policy. The implementing legislation for these policies that should be considered are: The Environmental Management Act 2004, the Land Act of 1999 and the Village Land Act of 1999.

Implementation of IM-FLEG should consider other ongoing government and civil society programmes, including legislative reform, emerging information sources and in consideration of the range of institutions that are implicated in forest management. It should remain responsive to policy changes and changes in the operations of the private sector.

## **2 IM-FLEG Objectives**

### **General objective**

The general objective of IM-FLEG in Tanzania is to support increased governance within the government in the forest sector and improvement in forest and related law enforcement

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<sup>1</sup> MNRT, FBD National Forest Program 2001 – 2010, November 2001. Page xi

Analysis of information received is carried out in order to offer concrete proposals which do not aim to stigmatise the state, but rather to promote good governance in the forest sector. The IM-FLEG approach is therefore not confrontational but closer to an audit system. It proposes constructive solutions in order to institutionalise the progress realised in forest law enforcement at the level of governments and ministries in charge of forests. IM-FLEG published results can be interpreted and used by governments, international donors, timber buyers, local and international Non-Governmental Organisations (NGOs) and forest exploitation companies which are concerned with improving governance and practices related to forest exploitation and law enforcement.

### **Specific objectives**

- Tackling corruption within the administration, by making specific recommendations with regard to procedures and their application.

- Making more information available on forest sector activities, including charcoal, through the regular publication of reports detailing the operations of:

- I) The private sector and its operators respect for the forest related national laws and regulations and,
- II) The activities of government officials within diverse government departments and at all levels in relation to established procedure and laws relating to forest resource administration.

- Support the clarification of legislation and increase the accountability of administrative procedures

## **3 The Independent Monitor's Mandate**

The current ToR and the MOU of which it forms an annex, has been prepared under instruction from the Vice Presidents office and this is from where the Independent Monitor derives its mandate. The primary partner of the Monitor will be the FBD, within the MNRT, however the Monitor may be required to interact with numerous government departments to achieve its goals. The FBD will support the Monitor in obtaining additional signatories to the MOU from other departments or Ministries as required, for example the Government of Zanzibar, and the Prime Minister's Office – Regional and Local Government.

Financial resources for the implementation of the project will be provided by the international donor community.

In implementing the following activities the Independent Monitor, consistent with the objectives of the TORs, will focus on activities related to forest administration and exploitation. These activities will cover the natural forests, private and government owned plantations, charcoal production and trade (primarily around major trade centres), the application of participatory forest management guidelines and the environmental impact assessment guidelines where such projects affect forests.

The monitor will not be responsible for tackling issues related to wildlife and the trade in protected or endangered species, or the management, production and trade in honey. The Monitor will not monitor encroachment activities by communities but if information becomes available to the Independent Monitor during the course of implementation of the action, this information will be passed to government departments and organisations working on these issues.

## **4 Activities**

### **4.1 Access to information**

Collaboration with governmental agencies and the creation of an effective working relationship with individuals is essential. The exchange of information is a crucial factor in the functioning not only of Independent Monitoring systems but also of the government itself.

Free access to all information pertinent to forests and the achievement of the overall goals of the action should be provided to the Monitor by the government. Information should be provided without the need for agreement from the direct superior, but on presentation of a written request and copy of the MoU and action ToRs.

The Independent Monitor should work with those responsible for developing and implementing National Monitoring System and Database within the National Forest Programme to make this system operational.

### **4.2 Field investigations**

Carrying out effective field investigations is dependent on access to information from within the administration. Cooperation with the Ministry should be established in researching the existing forest resources and the various valid permissions that exist to exploit them.

The Independent Monitor will have the right to associate with any forest officer but should work closely with the Forest Surveillance Units of FBD in the first instance. The Monitor should accompany forest officers in the course of carrying out their duties and make observations, including during their administration or field investigations, but should not take over on any of the regalian law enforcement functions. Technical support may be provided in the documentation of findings, these documentary materials should be handed to the officers concerned and copies kept by the Monitor for their own records. Where such field missions are undertaken the Monitor will produce a field investigation report and document the investigation process as carried out by the government agents, comment on their respect for procedure, investigation findings and conclusions, and actions taken. Comparisons made will be in relation to established law and administrative procedure relating to forests at the time of the investigation.

The Monitor should be provided with sufficient notification of the deployment of Forest Officers from the divisional Forest Surveillance Units in order that the Monitor can join the investigation should it so wish.

The Independent Monitor will have the right to undertake field investigations with or without the presence of any representative of the government. Where such independent investigations are carried out, i.e. without a government officer, the information documented by the Monitor will be transmitted to the government in the form of a field investigation report. Independent investigations will be used to document illegal forest activities and rapidly report findings to government officials, however, no regalian function will be filled by the Monitor. Regalian functions include notifying companies of an infraction, confiscation of equipment, convocation to official hearing, requests to district courts to open a case etc. The Monitor will inform the office of the director of forests before undertaking an independent investigation to provide the government with an opportunity to make the investigation official should it wish to accompany the Monitor. In this case the forest officers will do so in their full official capacity.

Where field investigations are undertaken by forest officers without the Independent Monitor, the Monitor will have access to the records, correspondence and reports in the possession of the concerned Forest Officers after the investigation.

Forest inspection will be undertaken using GPS and GIS tools, photographic, video documentation, interviews and other methods that are useful in investigating forest exploitation activity.

#### **4.2.1 Forest inspections:**

**Plantations:** Inspection of forest plantation should be a priority in the first year of the action given the economic importance of this resource and the ongoing exploitation activities. Plantations covered will include those belonging to the government.

**Natural forest:** Given the dispersed nature of the forest resources in Tanzania and the small nature of the team of the Monitor should deploy its resources strategically monitoring transport bottlenecks and processing facilities and markets as well as undertaking field investigations based on information received about specific illegal activities.

#### **4.2.2 Transport checkpoints:**

The Independent Monitor should work with FBD/TFS staff at the checkpoints around the country to verify the records that are kept and crosscheck the information with other data sources. This may include inspection of vehicle papers outside of the normal checkpoint facilities. During this joint work, the Monitor will observe the checks. The Monitor may provide recommendations to the government where appropriate and help gather information and improve their effectiveness.

#### **4.2.3 Import and Export inspections:**

Verification missions of TRA and FBD inspections of shipments for export should be undertaken by the Independent Monitor. These missions should be undertaken in the presence of customs and FBD officials on an ad-hoc basis so as to act as an audit mechanism. Procedures for these missions should be established with the relevant authorities. The possibility for these verification missions to be realised should be communicated to all officers responsible for handling the export of forest products. Verification of the volumes and paperwork for imports of timber and other wood based products should also be carried out.

#### **4.2.4 Sawmill inspections:**

The Independent Monitor should accompany forest law enforcement services to carry out inventories and other facility inspections to verify that the timber held within the sawmill yards is of a legal origin. Other administrative procedures should also be verified. The Monitor will observe and support the documentation if illegalities and other checks, but will not undertake any regulatory function.

### **4.3 Checking administrative procedures.**

**The Process of land classification:** Checking applications documentation and processing of the applications. Including access to the applications documentation at all stages.

**Permit/License/Certificate Application and processing:** Checking applications documentation and processing of the applications at all levels including the village level and central Ministerial level. The Monitor may make an assessment of the validity of cutting permits including the administrative processes in their allocation and their form. Where procedure is unclear regarding the need for a permit there will be clarification with the relevant government services and analysis of the procedure detailed against existing regulations and perceived best practice. This aspect will be covered in all types of forest and plantations.

**Port Inspections:** Access to the port and inspections records within both the FBD and the TRA regarding the physical inspection and sealing of containers and for the collection of export revenue. The Independent Monitor should have access to the records to support the audit approach that can be taken to port inspections (see field investigations).

**Revenue Collection:** Verifying revenue collection and the payment of fees at all points in the forest exploitation chain. This starts from the registration as an operator in the sector through to the payment of export taxes where forest products are being exploited. This is essential to support the achievement of the objectives of the forest sector, where it is included in the MKUKUTA/PSRP for Tanzania.

**FSU and DFO operations records and data:** Including logbooks for work undertaken and any data resulting from their work.

**Court cases:** Following the procedures of different courts (district and other) where forest related cases are tried. Gathering information on judgements and respect for the procedure by both the courts themselves and the police services if they are implicated. Comment should be made on the judgements of individual forest related cases but also in the tracking and administration systems of the courts themselves. At no time should the actions of the Independent Monitor prejudice the outcome of any ongoing legal case.

### **4.4 Capacity Building and Working with Civil Society, NGOs and the Press**

Regular meetings and briefings for the purpose of training on methods of

investigation to ensure the transfer of knowledge of the functioning of the project information exchange should be undertaken.

The Monitor should commit to communicate first and foremost findings of field investigations to the reading committee members, to give the stakeholders a chance to address the observations and recommendations made. Where information comes from civil society however, the groups or individuals concerned should have the opportunity to collaborate with the project in pursuing an investigation and attending reading committees to contribute information and follow up on the results. Members of civil society participating in the field investigations and in reading committees should respect the others terms of the project regarding publication and dissemination of information recovered during official processes.

The Monitor should have the freedom to interact with other civil society capacity building projects that may be implemented during the period of project implementation. The Independent Monitor will also be free to work with local and international NGOs and the press on issues associated with the achievement of the overall action goals. This includes association on small projects of research into the activities of the private sector and other matters identified and agreed in accordance with the associated Memorandum of Understanding and the action's funding contract.

All reports based on information received by the Independent Monitor from the government or produced through its own research will pass through the publications/reporting process detailed below before publication.

#### **4.5 Working with the Private Sector**

A functioning private sector is crucial to the achievement of the stated forest policy. The PSI component of the Tanzania Forest Conservation and Management Project is undertaking a range of activities designed to support the operationalisation of the private sector. The Independent Monitor should cooperate with the PSI component and directly with representatives of the private sector in order to support the achievement of these policy objectives. An important task of the Monitor, together with the government and the donor community, is to present to the private sector the objectives of Independent Monitoring, how it functions and what the anticipated results are. In the longer term, this should lead to better forest management planning and a more sustainable industry.

The private sector forest industry is sometimes portrayed by civil society, NGOs as a homogenous group of actors that act as an obstacle on the road to sustainable forest management. The private sector is not uniform however and those companies that wish to operate in accordance with the law should be supported through the implementation of the Independent Monitoring action, penalising illegality and allowing those who have respected the rules to profit from their activities.

The Governance issues faced by the private sector in obtaining licenses and permissions in a timely manner, including for felling, transport, and export is not always easy. This can be due to a lack of resources and trained personnel in the MNRT and District Forest Offices. Other reasons such as petty corruption and the

lack of clarity over the procedures to be followed and the lines of responsibility are others. The appointed Monitor should, among others, examine these issues with its analysis reports which will include issues of concern to the private sector.

The Independent Monitor, through independent and joint missions with the government central or district level forest law enforcement services, will document illegal activities by the private sector. It is important to note that the Monitor, whilst carrying out these investigations independently, may gather information on illegal activities (GPS data, pictures, testimonies, documents, etc.), however it will not undertake any forest law enforcement activity e.g. formal notification to companies that an infraction has been observed, convocation for official hearings with the administration etc, These actions can only be undertaken by sworn government agents during their own investigations, including those joint investigations where the Monitor is present. Information gathered by the Monitor will be provided to government officials for their own use and records. The private sector is therefore required by the government to cooperate with the Monitor to the fullest extent possible.

In all cases the objective of the Monitor should be to observe and report on respect for the regulations and procedures both by the private sector and Government officials with whom they deal in the execution of their operations.

## **4.6 Working Mechanisms for increasing transparency and publication**

In the first instance the Independent Monitor should work with the Government and Donors to raise awareness of the action, its function and workings, through the press, publication of articles and promotion of the web and paper based outputs listed in Section 4 and which include field investigation reports and analysis reports.

### **4.6.1 Reading Committee**

Concerning the action's outputs, the monitor should submit its field investigation reports and analysis reports to a **Reading Committee**. The reading committee should be situated within the MNRT and provide a forum to examine, review the findings of the Monitor's reports and approve their subsequent publication. To increase transparency among partners and maintain credibility of the reports the Reading Committee members should include representatives of the FBD (and TFS where appropriate), including the officers participating in the investigation or otherwise implicated (for example the DFOs), including the Legal Unit within the Ministry, the Independent Monitor, and concerned donors as well as other government departments implicated in the findings. The Prevention of Corruption Bureau should also be nominated as a member of the Committee. A representative of MNRT should chair the meeting. Civil society organisations should also be present at the meetings and agree to abide by the rules of the meeting. Once adopted the field mission reports will be published on the website of the FBD/MNRT or other government department website as well as that of the Independent Monitor.

Field investigation reports should be submitted to the members of the Reading Committee for consideration within three weeks of the field investigation having

taken place. Where the results of the investigation require additional information, this follow-up research should be considered to be part of the investigation.

Analysis reports should be produced half yearly. The content of the analysis reports should be thematic in their approach and document in detail selected major failings in forest governance and provide conclusions and recommendations for remedial action targeted at different stakeholders. The government would have a timeframe to provide comments, after which the report will be considered to have been approved by the government and be published. Content of analysis reports should be discussed in detail at Reading Committees and actions in response to the issues raised be devised and agreed as far as possible. These actions should be documented in the minutes of the Reading Committee.

#### **4.6.2 Steering Committee**

Steering committees should take place at least twice a year and provide oversight to the actions of various state and non-state actors in the forest sector. The agenda for the meeting will be informed by the debriefing notes to the Steering Committee mentioned in section 4.1.3.

The conclusions and recommendations of the meeting should be the object of minutes to be approved by the participants. The final minutes of the meeting should be distributed to all participants not more than two weeks after the date of the meeting.

To ensure that the issues raised at the Steering Committee are given due consideration, it is recommended participants include representatives of the VPO, PMO, concerned Ministries, Donors, the Monitor and civil society.

As a signatory to the MoU, the Vice President's Office should receive copies of all field investigation reports and analysis reports from the Independent Monitor.

#### **4.6.3 Information transfer notes**

The Monitor should inform, in writing, relevant government departments of specific information concerning potentially illegal activities. The content of these letters will be summarised in the Monitor's analysis reports together with a summary of actions taken by the government in response. Records of all such notes should be kept and referred to where appropriate in the analysis reports. Information transfer notes should be copied to all project partners to increase transparency and support action by the government in the short term.

#### **4.6.4 Radio/press**

The Independent Monitor should be able to give interviews and provide objective summaries of any published material resulting from the implementation of the action, including radio and communications with the press.

## **5 Outputs**

This section deals with the types of outputs that the action will generate. The working



mechanisms concerning timing of their review and publication are presented above in section 4.6

## **5.1 Technical outputs**

### **5.1.1 Field investigation reports**

Following each investigation, the Monitor should produce a field investigation report including the details of the investigation's itinerary, infractions observed, an analysis of applicable legislation, recommendations for the follow-up of infractions, an analysis of the respect of procedures by government officials and supporting documentation, photographs, videos and GIS data.

Field investigation reports may be thematic or not, according to the needs identified during the action.

### **5.1.2 Analysis reports**

Bi-annual analysis reports will be produced by the Monitor. They will summarise key issues related to forest sector activities and forest law enforcement, including: trends of infractions with illustrations, issues faced by the private sector, application of forest law enforcement procedures by government services, progress identified and problems found, analysis of forest law enforcement systems and recommendations. The government will have a timeframe to provide comments, after which the report will be adopted.

### **5.1.3 Briefing notes to the Steering Committee**

The Monitor will produce briefing notes before Steering Committee meetings summarising main issues concerning progress made in forest law enforcement, problems found, as well as cooperation received or difficulties encountered in the implementation of the action (access to information, collaboration with stakeholders, etc). Where there is serious disagreement by either party concerning the content of a field investigation report or an analysis report, the **Steering Committee** would act as a conflict resolution and mediation forum.

A review of the overall progress in tackling weak governance and illegality in the sector will be included in the briefing notes which will be circulated not less than one week before the scheduled date of the meeting.

Administrative issues relating to the contract of the Monitor will not be addressed in these notes.

### **5.1.4 Data management outputs**

- Tables including information on forest infractions detected and their follow-up will be produced by the Monitor.
- GIS database including data gathered by the Monitor

## **5.2 Website**

The Monitor will support the creation of web pages hosted within the government's website and the Monitor's website, including the Monitor's reports

### **5.3 Press releases**

Press releases will be made summarising issues and findings raised in reports published and information about the Monitor's objectives and mandate

### **5.4 Administrative reports**

Project management, administrative and financial reports will be produced in accordance with the project funders' requirements.

## **6 Expected IM-FLEG results**

### **Forest Law Enforcement**

- Forest law enforcement mechanisms and procedures are analysed by the Monitor, their conformity with regulations assessed and implementation improved following the Monitor's recommendations
- The number of court cases against illegal forest operators has increased due to: an increase in information on illegal forest activities (see below); the Monitor's recommendations; and input received (see section 8)
- The follow-up of court cases and recovery of taxes has improved following field reports and the implementation of the Monitor's recommendations

### **Information on illegal forest activities**

- Information on illegal activities known to various organisations or press is harnessed by the Monitor and consolidated by its independent investigations<sup>2</sup>
- Information available to the government and other stakeholders on illegal forest activities by the private sector has increased following the Monitor's independent and joint field investigations
- The diffusion of information related to forest exploitation has improved
- Information on permits and district forest plans is compiled and made available for public consultation to support the detection of infractions.
- Lost opportunities for revenue capture from forest sector activity related to cases of illegal forest activities are identified in the Monitor's reports

### **Sustainability of the action**

- The gains realised by the action are sustainable and continue after its completion.

## **7 Deontology**

The Monitor should respect the confidentiality of all information received during the action, and not communicate or diffuse any document outside regulations in force or the publications procedure for reports and other action outputs.

The Monitor should be neutral and objective in carrying it duties.

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<sup>2</sup> Investigation means the documentation of illegalities including GPS data, photographs, video, testimonies, etc. Investigations by the Monitor do not include any regalian function (seizing equipment, etc.)

It should communicate with all stakeholders involved in the forest sector, not just government bodies and Donors. The Monitor should also communicate with non-government stakeholders for information and feedback on forest infractions and communicate the function and objective of the Monitor. It should also engage in a regular dialogue with the private sector and other stakeholders in the forest sector, for similar purposes but also to obtain clarification and receive information on problems experienced in administrative systems, other constraints, and allegations of illegalities.

## **8 Logistics**

The Monitor will maintain its own office and information technology infrastructure for the duration of the contract. The office should be accessible or close to MNRT but independent from it to facilitate information exchange between the Monitor and non-government actors including civil society and the private sector.

The Monitor will provide its own transport and own documentary equipment for use during field investigations and in carrying out its own administration.

The government agents undertaking field investigations will be responsible for their own costs including the provision of vehicles, fuel and other field equipment. The effective and timely deployment of forest officers to realise effective implementation of the action will have financial implications for departments concerned. These costs are to be met from the budgets at the disposal of the relevant government departments.

## **9 Inputs required**

Supporting administrative arrangements.

- **Establishment of a Reading Committee**

Reading committees will take place not less than every three months to review the Monitor's investigation reports and compare them with the government's own reports and findings. The committees should also review the Monitor's analysis reports. The committees should include representatives of the MNRT, FBD, TFS (preferably the officers that participated in the investigations or other associated work), DFOs, Donors, the prevention of corruption bureau and the Monitor.

The reading should be convened by the government and held at least every three months during the functioning of the project. The government should produce minutes of the meeting, including the conclusions and actions to be taken by different government departments/agencies

- **Establishment of a Steering Committee**

The steering Committee will have to be prepared and brought together by the Government at least twice a year. The staff time for meeting participants and costs of the venue will have to be met by each respective institutions' budget. The meeting should be hosted by the MNRT but should implicate other

government departments notably the Ministry of Finance.

Other administrative inputs that will be required from the Government of Tanzania to support the effective implementation of the action:

**MNRT, FBD, TFS, DFOs**

- Provide in useful time copies of documents or information related to forest law enforcement investigations
- Provide the Monitor with free access to information on permits, transport data, and action on court cases without need for prior authorisation
- Involve the Monitor in planning sessions for forest law enforcement investigations
- Provide the Monitor with information on all steps of administrative and judiciary procedures and their application in the follow-up of forest related infractions
- Inform the Monitor of official hearings in forest related cases to enable the Monitor to observe them
- Grant systematic access to information relating to forest administration.
- Cooperate with the Monitor in the implementation of the action's activities
- Provide input on the Monitor's investigation and analysis reports during the action committee meetings

**VPO, PMO, Regional administrations, local government, Tanzanian Revenue Authority, Ministry of Justice, Prevention of Corruption Bureau, Ministry of Home Affairs and other Ministries**

- Support the action's objectives
- Collaborate with the Monitor and share information
- Actively participate (where required) in the action's Steering Committee and Reading Committee meetings and follow-up of recommendations

**Civil society**

- Be open to information exchange and prepared to receive capacity building in the methods and operations of an IM-FLEG program.
- Provide specific information known to national and international NGOs related to issues of forest law enforcement or governance, confidentially or not and with supporting documentation where possible.
- Provide information on broader issues such as community ownership, use of wood products by populations etc, to support the Monitor in focusing its activities
- Inform the Monitor about their programme activities or findings that may affect or support IM-FLEG activities and findings
- Provide feedback on the Monitor's findings and engage in regular dialogue with the Monitor
- Actively participate in the action's Steering Committee meetings

**Donor agencies**

- Participate in the action's Steering Committee and Reading committee meetings and provide an ongoing broad base of support to the action

- Follow-up the implementation of the Monitor's recommendations by reading its report and supporting their implementation by the Government either through discussion and or funding identified and agreed for ancillary activities
- Participate, as a group or separately according to issues at stake, in regular exchanges with the Monitor to exchange information including regarding ongoing programmes that may affect or support IM-FLEG activities and findings

### **Financial and Human resources**

The donor community will provide the financial resources required to realise the activities detailed above. In order to safeguard its independence, the Monitor should not be dependent on financing from the government for either personnel or logistical means.