

IFM & Law : challenges and constraints in enforceability

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Presentation outline



Accès à l'information

Accès à l'information

DEFIS

La façon de collecter l'information limite les possibilités d'utilisation:

- Un mandat pour l'OI facilite l'accès et limite l'utilisation de l'information (OI mandaté, OI dans audits)
- Collecte légale?
- Partagé en confiance?

Type d'information limite les possibilités d'utilisation:

- Information partagé (par communautés) peut-être affectée par propriété intellectuelle
- Information partie des investigations criminelles en cours (Secret de l'instruction)

Exemple: OIF au Congo conduite par une ONG nationale (CAGDF)

- Mandat national – Tout le territoire congolais + toutes les compagnies forestières
- Informations compilées dans un rapport,
- Validé par un Comité de relecture avec le Ministère,
- Publication
 - ⇒ CAGDF agit en tant qu'observateur neutre et ne fait pas de lobbying
 - ⇒ CAGDF = fournisseur d'information (possibilité de réponse)

OUTILS

Une variété d'outils soutenant l'accès à l'information existent

- Les annexes aux APV, et autres instruments internationaux (ex. ITIE)
- Le droit d'accès à l'information dans la Constitution, les lois et règlements
- Décision de justice
- Partage informelle

⇒ **L'observation indépendante forestière génère l'information et l'utilise**

Available options for complaints and enforcement

Which way?

What can CS-IFM do when monitoring reveals a violation of timber and related rules?

- Share information? Mandated VPA IM
- Advocacy? Most CS IFM
- Protest and direct action? Community based monitoring

Can CS-IFM play a role in enforcing forest laws?

- Litigate? Some public interest law CSO
- File a complaint? Most CS IFM

Judicial enforcement

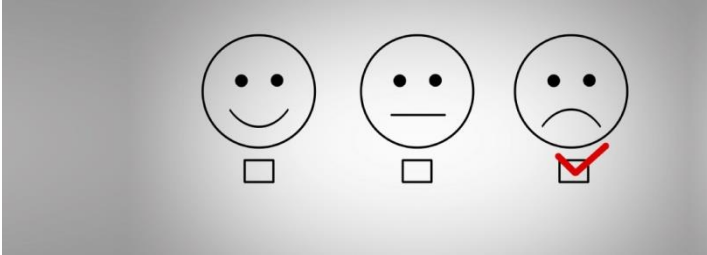
⇒ The Judiciary or Court system applies the law in the name of the state and is a mechanism for the resolution of disputes



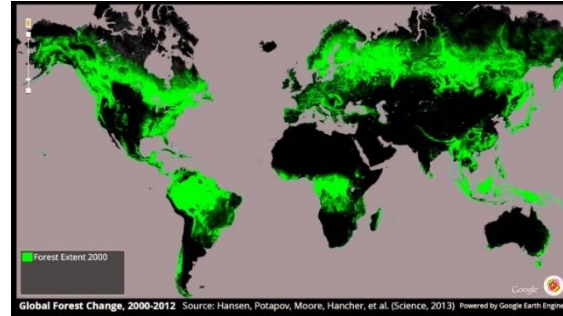
Judicial enforcement

- Supreme/Constitutional Court
- Appeal Courts
- Higher Courts
- Lower Courts
- Specialised Courts

Complaints procedures



⇒ National/local complaints procedures range widely in form, shape and strength from an informal call to the superior, to administrative procedures, to quasi-judicial arbitration



⇒ A wide range of international procedures exist but are (almost always) voluntary for states and companies choosing to become part of them

Not necessarily violation of law

International treaties and agreements:

- States have signed up to a large variety of international instruments
 - ⇒ *Charter – Declaration – Convention – Agreement - ...*
- With an even larger variety of enforcement, monitoring and complaint mechanisms
 - ⇒ *Court – Commission – COP – Committee – JMRRM/JIC – ...*

Other options?

- Complaints mechanisms linked to voluntary certification – FSC, ISO, PEFC, RSPO
- Complaints available to investors (stock markets)
- WTO, WB, IMF
- EUTR, Lacey Act, ILPA

IFM legal status and recognition

CS-IFM legal status and recognition

See you in court!

Requirements for legal standing

- Capacity to sue and be sued
- Representation by a lawyer
- Affected / Party

Citizen suits
and civil
enforcement

I want to see the manager!

Criteria for submitting complaints

- Affected / Mandated
- State / Party only
- Exhaustion of other (local) remedies?

VPA
complaints
mechanism

Evidence and relevant information

Evidence and relevant information

Different procedures – different information requirements

Judicial enforcement:

- Incomplete, unverifiable or inadmissible evidence will weaken your case

Complaints procedures:

- Incomplete, unreliable or irrelevant information will weaken your complaint
- ⇒ The procedure you choose determines the information you need to collect

Thank you

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