



global witness

Independent Forest Monitoring Pilot
Project in Nicaragua

**First Summary Report of
Activities
August 2006 – March 2007**

Table of contents

Abbreviations	1
1. Foreword	2
2. Executive summary.....	2
3. Introduction	2
4. Project design	4
5. Institutional collaboration	4
6. Project implementation: field missions and reports.....	5
6.1 Weaknesses found in the Forest Management General Plans (FMGPs) monitored	7
6.1.1 <i>Marking of the perimeter of FMGPs/ Annual Operational Plans (AOPs)</i>	7
6.1.2 <i>Forest management maps</i>	10
6.1.3 <i>Outdated information in management permits</i>	10
6.1.4 <i>Technical specifications</i>	10
6.1.5 <i>Logging trees beyond the boundaries of the management permit</i>	11
6.1.6 <i>Logging in protection areas</i>	12
6.2 Abuse of small permits	14
6.4 INAFOR's weaknesses in task performance.....	15
7. Reports follow-up	16
8. Conclusions and recommendations	16

Abbreviations

AOP	– Annual Operational Plan
CONAFOR	– National Forest Commission (<i>Comisión Nacional Forestal</i>)
DFID	– UK Department for International Development
DGAP	– Department for Protected Areas of the Ministry of the Environment and Natural Resources (<i>Dirección de Áreas Protegidas del Ministerio del Ambiente y Recursos Naturales</i>)
FMGP	– Forest Management General Plan (<i>Plan General de Manejo Forestal</i>)
OTP	– On-farm Timber Permit (<i>Plan de Reposición Forestal</i>)
GPS	– Global Positioning System
INAFOR	– Nicaraguan Forest Authority (<i>Instituto Nacional Forestal</i>)
ITRP	– Infested Timber Removal Permit (<i>Plan de Saneamiento</i>)
MAGFOR	– Ministry of Agriculture and Forests (<i>Ministerio Agropecuario y Forestal</i>)
MARENA	– Ministry of the Environment and Natural Resources (<i>Ministerio del Ambiente y los Recursos Naturales</i>)
IFM	– Independent Forest Monitoring
MFMP	– Minimum Forest Management Permit (<i>Plan Mínimo de Manejo Forestal</i>)
NTON	– Nicaraguan Obligatory Technical Norms (<i>Norma Técnica Obligatoria Nicaragüense</i>)
RAAN	– North Atlantic Autonomous Region (<i>Región Autónoma Atlántico Norte</i>)
RAAS	– South Atlantic Autonomous Region (<i>Región Autónoma Atlántico Sur</i>)
UTM	– Universal Transversal Mercator

1. Foreword

Independent Forest Monitoring (IFM) seeks to work with governments, civil society and private sector by providing objective information on forest law enforcement, as well as an impartial assessment of the administrative and control mechanisms implemented by the forest authority. Within this framework, IFM also seeks to identify the mechanisms behind illegal logging and corruption, and suggest where the system needs changing and how to make such changes.

The 'official but independent' status is key to the monitor's work: on the one hand, its work is of public interest, and carried out independently; on the other hand, its official status allows access to information and all the forest state, thus promoting cooperation with forest administration and law enforcement authorities.

IFM therefore aims to make a direct contribution to the broader objectives of forest sector reform in Nicaragua. These objectives are related to the following issues:

1. The need to undertake a thorough review/amendment of the current sectoral legal framework and subsequent legal reforms.
2. The levels of political and institutional will from the forest authority and other key government authorities (Ministry of the Environment and Natural Resources - MARENA, Ministry of Agriculture and Forests - MAGFOR, State Attorney, Public Prosecutor) responsible for law enforcement.
3. The need to strengthen the technical capacity and build new skills, in order to improve the performance of the forest authority in law enforcement.
4. Civil society's ability to demand public accountability from the relevant state institutions.

2. Executive summary

This report presents the results of the IFM Pilot Project carried out in Nicaragua between August 2006 and March 2007. The project has been hosted by the Nicaraguan Forest Authority (INAFOR) and implemented by Global Witness¹.

The report is structured in ten sections, including the Foreword and Executive Summary. Section 3 presents an introduction to the project, including some background information about what led to its design and implementation, as well as the objectives it aims to achieve; Section 4 describes the way the project has been designed to meet the specific Nicaraguan needs as well as to maximise limited available resources; Section 5 discusses how institutional collaboration has had an impact on the monitor's work; Section 6 contains the main findings during the implementation of the project; Section 7 gives an update on the follow-up of mission reports to date; and, finally, Section 8 offers conclusions and recommendations resulting from the implementation of the project thus far.

In view of the promising results of this first Pilot Phase, the project is expected to continue into a second phase, supported by a different donor.

3. Introduction

Between 26 February and 3 March 2006, the 'First Regional Central American Workshop on Independent Forest Monitoring' took place in Honduras. Government and civil society representatives from six Central American countries attended this event, including a Nicaraguan delegation. Subsequently INAFOR invited Global Witness to assess the feasibility of an IFM Pilot Project in the country. In May 2006, Global Witness visited Nicaragua and held meetings with a broad range of stakeholders, including the government, civil society and the donor community.

¹ Global Witness is a British based non-governmental organisation which focuses on the links between environmental and human rights abuses, especially the impacts of natural resource exploitation upon countries and their people. Using pioneering investigative techniques, Global Witness compiles information and evidence to be used in lobbying and to raise awareness. Global Witness' information is used to brief governments, inter-governmental organisations, NGOs and the media. Global Witness has no political affiliation.

INAFOR was then identified as the appropriate host for IFM. In July 2006 Global Witness and INAFOR signed a Collaboration Agreement, with the following project objectives:

- To set the institutional basis for an IFM system in Nicaragua, through the development of working relations with INAFOR and other government institutions, as well as with civil society and the private sector.
- To generate reliable information about illegal logging and associated trade in specific regions of the country.
- To ensure the objectivity and transparency of the monitoring activities carried out by the relevant authorities, through the participation of an independent monitor with international credibility, whose reports and recommendations would be made public following their review by the forest authority.
- To strengthen the operational capacity of the relevant authorities, through the implementation of joint field missions where experience and skills are shared.

Box 1: Forest management in Nicaragua

Forest management in Nicaragua has long suffered from deep-rooted problems, some of which are documented in this report. It is important to note that, at the time Global Witness was invited to implement IFM in the country, the situation in regard to illegal logging was higher up in the political agenda than it had been for a long time.

Between March and May 2006, the Nicaraguan press uncovered illegal logging activities in broadleaf forests of the site known as Kung Kung River (RAAS – see IFM Report number 004) and in RAAN; cases of illegal logging were also reported in pine forests in the Department of Nueva Segovia. This was the first time illegal logging of such a scale was covered by the media, and fuelled uneasiness and complaints at a national level about the lack of control and monitoring that INAFOR is able to extend on the harvesting and trading of timber products (see Picture 5). This in turn led to the issuance by the country's President of the Economic Emergency Decree in May 2006, the main objective of which was to stop the uncontrolled exploitation of forests in specific regions of the country: Nueva Segovia, RAAN, RAAS and Río San Juan. This Decree suspended the approval of any new permits and ordered that all forest operations being implemented in those areas at the time be brought to a halt and inspected. This somehow endorsed the questions raised by the media and civil society about INAFOR's performance.

One of the consequences of this Decree was the issuance of a Logging Ban¹, which prohibits logging and trade of six tree species. Moreover, it bans any harvesting activity in all protected areas and establishes areas of restricted harvesting in a buffer strip of 10km from two Biosphere Reserves and a Natural Reserve, and 15km from the country's borders inwards. It also derogates OTPs and MFMPs for good, as it considers that these had turned into a legal way to cover for uncontrolled logging.

The Emergency Decree and the Logging Ban do not only increase insecurity and ambiguity of the legal framework, but they also have a broad approach. The measures established apply equally to all forest operators, regardless of their level of compliance with forest management regulations. This has generated significant discontent amongst numerous companies and timber producers, who consider that efforts being made by some to operate within the law are not being taken into account, and that the sector as a whole is being treated as harmful.

Such discontent has had two impacts on the IFM project. On the one hand, it has, to an extent, contributed to create broader acceptance of IFM, as it is a more objective tool, and one that bases its conclusions on soundly-documented evidence and tries to avoid easy generalisations. This is particularly important as it is widely recognised that a supervision or control mechanism is all the more effective when it is accepted by those who are being inspected (Lang, 1996*; Larson, 2001**). However, on the other hand it has also had a negative impact. If logging operators consider that they are being accused and controlled in excess – while other economic activities with an allegedly higher impact on forest resources, such as cattle ranching, go virtually unnoticed – it seems comprehensible that part of them develop some kind of rejection to any new initiative to supervise or control them, even if it is more impartial than previous ones. This negative attitude, even if partly understandable, is clearly not constructive for IFM and the change processes it is working to support.

¹ Law 585: Law for the Banning of Logging, Harvesting and Trading of Forest Resources, issued in June 2006 (*Ley de Veda para el Corte, Aprovechamiento y Comercialización del Recurso Forestal*).

* Lang, W. 1996. Compliance Control in International Environmental Law: Institutional Necessities. Heidelberg Journal of International Law, 45, pp. 685-695.

**Larson, A. 2001. Recursos forestales y gobiernos municipales en Nicaragua: Hacia una gestión efectiva. NITLAPAN-UCA y CIFOR, Managua, Nicaragua.

The implementation of this project was made effective as of August 2006, thanks to the support from the UK Department for International Development (DFID).

All the mission reports related to this project, which will be often referred to in this document, are available under <http://www.globalwitness.org/pages/en/nicaragua.html>.

4. Project design

The timeframe and work planning have had to be scaled to the limited financial and time resources available. In order to maximise the project's impact, a part-time approach was designed, as this allows covering a longer time span. This approach has also been considered appropriate given the political context: Nicaragua held elections in November 2006, as a result of which changes in key state authorities took place in January 2007. By extending the project beyond this change of government, the aim was to detach it from political changes and institutionalise IFM as a mechanism independent from politics.

This IFM Pilot Phase was carried out by two expert Nicaraguan foresters, with support from Global Witness' staff in Europe and specific support from independent consultants. Field missions have focused on three strategic areas: the North Atlantic Autonomous Region (RAAN), the South Atlantic Autonomous Region (RAAS) and the Department of Nueva Segovia.

During the eight months of work, a total of ten field missions have been carried out, each of which has resulted in the publication a mission report that documents the findings, presents conclusions and offers recommendations to the various relevant stakeholders.

The ultimate objective to which IFM contributes is a more equitable distribution of the revenues generated by the sustainable management of forest resources. The benefits of logging need to be shifted from the illegal operator to the State and communities.

In order to achieve the contribution IFM can make to this objective, the following main outputs of the IFM Pilot Project were expected:

- A substantial increase in the quantity, quality and credibility of information on the level of governance in the forest sector, and the dissemination of such information amongst key actors.
- An improvement in forest law enforcement, including increased operational capacity to detect and sanction illegal activities.
- An identification of legal and institutional weaknesses and limitations facing the forest sector.
- Presentation to the relevant institutions of appropriate solutions to overcome weaknesses detected.
- Provision to the relevant institutions of the evidence gathered in field missions carried out by the monitor.
- An improvement in inter-institutional coordination regarding forest law enforcement.

5. Institutional collaboration

On behalf of the Government of the Republic of Nicaragua, the authority in charge of forests, INAFOR, acts as host for the implementation of the IFM Pilot Project and as contractual project partner. The monitor conducts field missions jointly with INAFOR law enforcement officials and submits its reports to the Authority, but can also conduct independent missions. However, considering the nature of the Pilot Project, joint missions were prioritised, and no independent missions were carried out.

In addition to the official project partnership between INAFOR and Global Witness, the monitor sought the maximum cooperation possible with other law enforcement institutions, local authorities and civil society groups when conducting monitoring and follow-up activities.

Throughout the implementation of the project, working relationships with INAFOR have been very positive. The IFM team has received full collaboration both at a central level in Managua and from the various District and Municipal Delegations. At all times the monitor has been provided with the

information required to carry out fieldwork, and both mission planning and implementation have been undertaken jointly in all cases. In no missions were attempts to obstruct the monitor's work reported.

Notwithstanding the above, the review and follow up of mission reports produced by the monitor has not received the expected response from INAFOR, as this report discusses in more detail below. In order for forest law enforcement to contribute to improvements in the sustainable use of forest resources in Nicaragua, it is essential that INAFOR has a more thorough and active commitment to following up on reported and suspected infractions through full investigations, convictions and penalties as applicable.

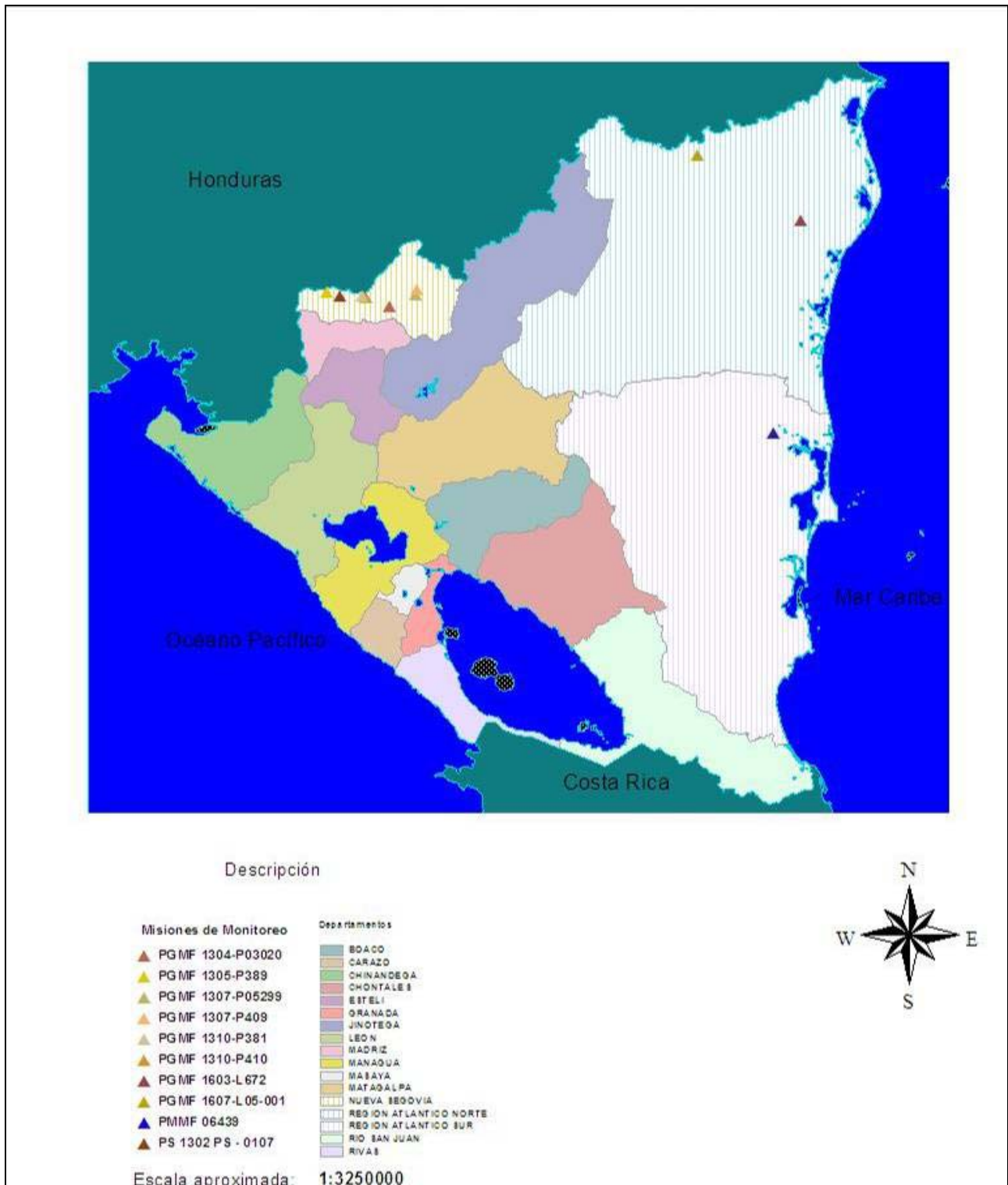
6. Project implementation: field missions and reports

Between August 2006 and March 2007, the IFM team has produced a total of ten mission reports, all of which are available in Spanish and English on Global Witness' website (<http://www.globalwitness.org/pages/en/nicaragua.html>). Table 1 lists the mission reports produced, the permits inspected and the area where they are located. Map 1 shows the geographical spread of missions.

Table 1. Summary of field mission reports

Report number	Mission date	Forest Permit	Municipality, Department
001	5 and 7 August 06	FMGP 1310-P410	San Fernando, Nueva Segovia
002	7 and 9 August 06	FMGP 1310-P381	San Fernando, Nueva Segovia
003	21 - 23 September 06	FMGP 1603-L672	Puerto Cabezas, RAAN
004	14 - 16 October 06	MFMP 06439 MFMP 06441 MFMP 06448	La Cruz de Río Grande, RAAS
005	15 - 19 November 06	FMGP 1607-L05-001	Waspán, RAAN
006	8 December 06	FMGP 1304-P03020	El Júcaro, Nueva Segovia
007	8 and 9 December 06	FMGP 1307-P05299	Murra, Nueva Segovia
008	29 and 30 January 07	FMGP 1307-P409	Murra, Nueva Segovia
009	16, 18 and 19 February 07	FMGP 1305-P389	Macuelizo, Nueva Segovia
010	17 February 07	ITRP 1302 ITRP 0107	Dipilto, Nueva Segovia

Map 1: location of the IFM missions in Nicaragua, August 2006 – March 2007



The work carried out by the independent monitor provides some firm indications about the problems facing the forest sector in Nicaragua, particularly in some very specific aspects that have become apparent during fieldwork. After carrying out ten field missions and writing the respective reports, the independent monitor has identified a series of weaknesses in the enforcement of the

Nicaraguan Obligatory Technical Norms (NTON) and the Administrative Procedures² for forest management. These are discussed in detail in the relevant individual mission reports.

The principal observations with regard to forest management and the performance of the forest administration in Nicaragua during the IFM Pilot Phase are presented below. The findings related to the weaknesses found in the Forest Management General Plans (FMGPs) monitored, the abuse of small permits and INAFOR's weaknesses in task performance, are particularly important because they constitute some of the core causes behind the management problems facing the forest sector in the country. They are therefore described in detail in the next subsections. Table 2 presents the occurrence of detected weaknesses in the sites monitored.

6.1 Weaknesses found in the Forest Management General Plans (FMGPs) monitored

6.1.1 Marking of the perimeter of FMGPs/ Annual Operational Plans (AOPs)

According to Article 4.1.2 of the NTON, the boundaries of areas under management permits have to be georeferenced either using geographical or Universal Transversal Mercator (UTM) coordinates. The hydrographical network and topography should be taken from cartographical maps, which are produced at scales of 1:2,000, 1:5,000, 1:10,000, 1:20,000 and 1:50,000 depending on the size of the FMGP area.

During the field missions, the failure to mark boundaries of the permitted area was reported in as many as eight cases. This omission not only makes monitoring activities more difficult, but also increases the risk of unintentionally logging outside of the authorised area. Moreover, failure to mark the boundaries of a forest management permit constitutes a breach of the law, and as such is punishable. The fact that logging operations are done in unmarked areas demonstrates, at least, a weakness in either the capacity or the will of the competent authorities to control permit holders' compliance with this legal provision. Before harvesting can start, preparatory operations as required by the law have to be controlled and compliance confirmed by a forest administration official. However, in practice this is often not properly implemented.

Analogous problems were reported in the areas within the boundaries of a management permit that need marking, such as internal compartments or protection areas.



Picture 1: Logging on steep slopes



Picture 2: an area of infested forest

² Administrative Resolution No. 35-2004: Administrative Procedures for the Sustainable Management of Broadleaf Tropical Forests, Conifer Forests and Forest Plantations (*Disposiciones Administrativas para el Manejo Sostenible de los Bosques Tropicales Latifoliados, Coníferas y Plantaciones Forestales*), which came into force in 2004.

Table 2. Weaknesses found in the FMGPs monitored*

Missions	Forest Authorisation	Weaknesses regarding:						
		Marking of the boundaries FMGP / AOP	Forest maps	Building of roads	Log ponds	Logging trees beyond boundaries	Logging trees in protection areas	Calculation of the FMGP area
1	FMGP 1310-P410	X	X					X
2	FMGP 1310-P381			X		X	X	
3	FMGP 1603-L672	X		X	X			
4	MFMP 06439, etc	X	X	X	X	X	X	X
5	FMGP 1607-L05-001	X	X	X	X			X
6	FMGP 1304-P03020						X	
7	FMGP 1307-P05299	X	X			X		X
8	FMGP 1307-P409		X	X	X		X	X
9	FMGP 1305-P389	X	X		X	X	X	X
10	ITRP 1302 ITRP – 0107	X		X		X		

*map 1 presents the geographical location of the monitored sites

6.1.2 Forest management maps

Monitoring missions carried out in areas under forest management detected and documented various points of concern related to the cartography of the area. These include:

- Maps produced with inappropriate scales in relation to the size of the area.
- Geographical or UTM coordinates of reference points in maps do not coincide with the ones corroborated in the field.
- The hectareage defined in the authorised documents often does not correspond with the hectareage determined in the field by using the coordinates included in such documents.

The main reasons for such inadequacies seem to stem from the fact that these maps were produced 10-12 years ago prior to the availability of technology that would have made them accurate and with defined coordinates. After INAFOR was created in 1998 and Forest Law 462³ was passed, many of the documents were reviewed and updated, but maps remained unchanged.

Regardless of the date of approval of the management permits, forest management maps, which form the basis of management permits, continue to be produced inappropriately and without taking into consideration the relevant administrative procedures.

6.1.3 Outdated information in management permits

In parallel to the limitations of forest management maps, the independent monitor also detected problems related to obsolete information contained in the management permits. Some of the permits monitored were approved between 1995 and 1997, but, for various reasons, were not implemented. After the Forest Law came into force, these permits were updated and resubmitted to INAFOR. However, the cases the monitor investigated revealed that the update had not been done appropriately, especially in those aspects related to the planning and construction of logging roads, the location of log ponds and forest management compartments, and the forest stratification⁴.

The observed absent or outdated information reveals a serious lack of diligent forest management by the authorities, which results in inadequate implementation of management activities by forest operators. Furthermore, it also provides an opportunity for logging companies to reduce their operating costs, to the detriment of the environment. The monitor observed significant impacts on soil erosion and serious loss of ground vegetation in the areas under management.

6.1.4 Technical specifications

The NTON define the technical specifications for constructing adequate timber extraction roads. These are determined according to the frequency of use and the nature of timber products to be dragged or transported with the appropriate machinery. However, the independent monitor frequently found that technical specifications were not followed on the ground.

In five of the ten management permit areas visited, the following breaches of the law regarding technical specifications were reported:

- Maps included in the forest permits do not show forest management relevant infrastructures appropriately, such as logging roads, log ponds, culverts and bridges.
- Existing logging roads are built without complying with norms regarding the maximum allowed slope gradient, technical specifications and the minimum distance to water courses. In addition, lack of adequate routing of the water courses crossed by logging roads was frequently observed.
- Log ponds are generally not shown in the documents, and their location is often determined by the closeness to the area to be harvested, which allows forest operators discretion as to where

³ Law 462: Law for the Conservation, Promotion and Sustainable Development of the Forest Sector (*Ley de Conservación, Fomento y Desarrollo Sostenible del Sector Forestal*), which came into force in September 2003.

⁴ Forest stratification refers to the way in which different tree age-groups in a forest, as well as the herb and shrub layers, are grouped for management purposes.

to place them, regardless of the damage that is done to pine forests' fragile ecosystems. The monitor also documented cases where the number of log ponds was clearly above that needed, seemingly dictated by an aim to reduce the cost of dragging logs.

All observed acts of non-compliance with the required technical specifications increase the negative impact on the forest when extracting timber, causing soil erosion, and blockage or destruction of water courses, as well as wildlife habitat destruction.



Picture 3: A faulty culvert causes water stagnation



Picture 4: lack of engineering works in road building

6.1.5 Logging trees beyond the boundaries of the management permit

Logging trees beyond the boundaries of the forest areas under management constitutes a serious breach of the law, as not only is timber being extracted without authorisation, but often the permit holder can also avoid paying any kind of taxes to the owner of the forest and to the Treasury.

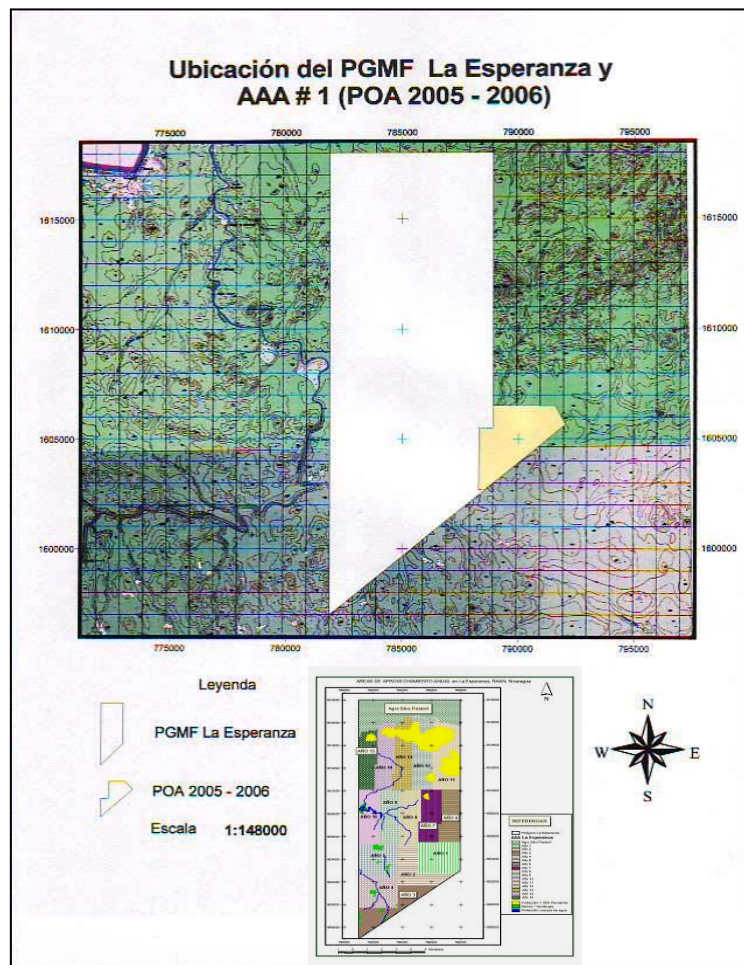
The independent monitor detected logging beyond boundaries in five of the ten management permits visited, with a total of 113 trees illegally logged.

The case documented in Mission Report 005 proved particularly grave, as it was detected that all harvesting activities were carried out almost entirely outside the FMGP (see Map 2).



Picture 5: a river of timber. Kung Kung river (source: RAAS Inter-Institutional Commission)

Map 2: Location of La Esperanza FMGP and Annual Harvesting Area no. 1, Buffer Zone for the Bosawás Biosphere Reserve, RAAN.



The figure in white, which corresponds with the smaller map below, is the FMGP as approved. The figure in yellow is the actual harvested area.
 Source: produced by the monitor with first hand field data and official information provided by INAFOR, for Mission Report No. 005.

Logging beyond boundaries is a serious infraction under the Nicaraguan law. However, follow up of the cases reported by the monitor revealed that sanctions established in the forest legislation are not being applied by the forest administration and the judiciary. An underlying reason for this is that the competent authorities often do not document or verify these illegal activities, which hinders identifying those responsible in order to take the necessary administrative and judiciary actions where relevant.

6.1.6 Logging in protection areas

According to article 4.1.6 of the NTON, it is unlawful to log trees using machinery on slopes steeper than 35%, and on slopes exceeding a gradient of 75% any kind of logging is prohibited.

With a view to protecting water bodies in forest management areas, Article 27 of the Forest Law declares as protection areas under municipal responsibility the following: areas of 200m measured horizontally from lakes, natural and artificial reservoirs and water sources; areas of 50m measured horizontally from river margins; and areas in slopes steeper than 75%.



Picture 6: stump within a protection area

In Nicaragua, Forest Regents (see Box 2) and forest owners often define protection areas at discretion, as some interpret that a protection area should only be established for permanent water bodies, that is, those that have water all year round.

These discretionary powers undermine the competent authority, INAFOR, in effectively controlling compliance of logging operations with environmental protection regulations and consequently in preventing the undeniable damages that result from logging trees within areas which should by law be protected.

A new Law on Environmental Crimes, Law 559⁵ has recently come into force. New and more severe sanctions to breaches of the law regarding water bodies have been introduced⁶. This could provide a clear opportunity to improve forest management in the country. However,

Box 2: Forest Regents

In order to support the control and surveillance duties of INAFOR, the Forest Law establishes the role of Forest Regents. Article 9 of this law defines a Forest Regent as *'the Professional or Forester accredited by the National Forest Authority (INAFOR) to, in compliance with the law and related regulations, guarantees the implementation of a forest management permit as approved by the competent authority, in any given harvesting unit. The Forest Regent is hired directly by the person or company responsible for the management'*.

The main responsibilities of the Forest Regents are:

1. To verify that that the forest management plan or the AOPs have been rightly produced.
2. To act as a technical counterpart in inspection visits that the Municipal Delegate (or the Forest Auditor) undertakes to follow up and control harvesting activities.
3. To control the use of permits to transport the raw material from the harvesting site to the sawmill, by filling in, signing and stamping each permit when the timber is loaded onto the relevant means of transport.
4. To produce and submit monthly reports to INAFOR, which follow up on the harvesting activities and include details about the transport permits used.
5. To immediately inform INAFOR about any violation of the legal framework.

The production of management plans and AOPs are the responsibility of the forest owner or the permit owner. However, in practice this is delegated to the Regent, in compliance with their functions as established in Article 26 of the Regulations of the Forest Law.

This role is not unique to Nicaragua. Countries such as Costa Rica and Guatemala also have Forest Regents.

⁵ Law 559: Special Law for Crimes against the Environment and Natural Resources (*Ley Especial de Delitos contra el Medio Ambiente y los Recursos Naturales*), which came into force in June 2006.

⁶ Article 31 of this law reads: *'those people – owners included – who log or destroys trees or shrubs that are destined to protect water basins, water sources or water recharge areas, will be sanctioned with 2-4 years imprisonment and a fine equivalent in córdobas from US\$200 to US\$5,000. They will also be obliged to plant five trees of the same species for each tree logged'*.

while Article 27 of the Forest Law establishes ‘a distance of 50m measured horizontally from river margins’, Article 57 of this new Law on Environmental Crimes establishes ‘a distance of 200m measured from the river margin throughout its course’. This discrepancy creates confusion and uncertainty in both forest officials and in logging operators, as it implies that forest management must be considered illegal - even when it follows permits INAFOR has authorised - if the permit has taken into account the area of 50m established in the Forest Law.

The results of monitoring missions showed that in five of the ten management permits visited, logging had occurred within protection areas established in the documents, thus breaching the permits approved by the authorities. In all, a total of 119 trees were logged within protection areas.

6.2 Abuse of small permits

Until the Logging Ban was issued in June 2006, the Regulations of the Forest Law established three kinds of permits, with an aim to facilitate legal management of natural forests as well as of small forest areas located in agro-forestry estates. These permits were produced based on the size of the managed area and the condition and type of forest. They are presented in Table 3.

Table 3. Characteristics of the permits

Type of Permit	Size of the area and forest characteristics	Type of forests
On-farm Timber Permit (OTPs)	Estates with forest areas smaller than 10ha.	Fragmented forests
Minimum Forest Management Permits (MFMPs)	Estates with forest areas between 10 and 50ha.	Fragmented forests
Forest Management General Plans (FMGPs)	Natural non-fragmented forests bigger than 50ha.	Non-fragmented forests

Taking into account their aim, the procedures established for the first two types (OTPs and MFMPs) was simpler and quicker than for FMGPs. This generated a high demand for the approval of OTPs and, particularly, MFMPs. However, such demand did not come from small-scale forest owners, but mainly from logging companies and timber traders, who, in an attempt to reduce costs and bureaucratic hindrances, used these simpler plans on a massive scale, mainly in the Autonomous Regions and Río San Juan Department. This mechanism worked through small-scale owners, who were used as front men to obtain harvesting rights.

A number of cases were reported where some big logging companies, instead of producing and implementing a FMGP for, say, harvesting 500ha, would buy the rights for ten MFMPs that added up to the same area, but which approval procedures were easier and which taxes were lower. This approach was never rejected by INAFOR, as illustrated by the fact that even where Municipal Delegations knew that this was happening, MFMPs requested by different people acting in the name of a same company would nevertheless be approved.

This institutional failing of the forest administration in circumventing legal provisions for forest management is aggravated by the disrespect of the legal provisions for OTPs and MFMPs to be granted only for areas of fragmented forests located in estates with agro-forestry systems – these were also used for non-fragmented natural forests. Moreover, these were also approved for conifer forests, despite Article 46 of the Regulations of the Forest Law states that the harvesting of such forests can only be done through a FMGP, regardless of the forest area or its condition.

Brief, these two administrative tools, which were originally established to support small-scale forest owners, have been abused for years by companies and timber traders, even with INAFOR’s consent and support. Besides this going against the essence of the Regulations of the Forest Law, issuing OTPs and MFMPs in these circumstances led to uncontrolled and unmonitored forest exploitation, as it obviously takes substantially more resources to supervise ten MFMPs than one FMGP.

6.4 INAFOR's weaknesses in task performance

According to the Forest Law, INAFOR's first responsibility is to '*supervise the sustainable management of the nation's forest resources, by inspecting, acting and punishing according to this Law and related Regulation*'⁷. Its third responsibility is related to forest management permits (the basis of the work the monitor has focused on) and makes INAFOR responsible for '*approving harvesting permits and to know, evaluate and control forest management permits*'⁸.

The monitoring missions carried out in ten areas under forest management revealed weaknesses in the administrative procedures to approve and control management permits. These relate to:

- Lack of rigor in following the guide to the assessment of forest management permits (both at desk level and in the field).
- Weak competence in applying procedures to evaluate technical aspects of forest management plans such as cartography and forest management related infrastructures.

The observed shortcomings often stem from the lack of human and financial resources both in central INAFOR and the municipal level to adequately follow the procedures to approve and monitor forest management permits. More specifically, the following limitations have been identified:

- Insufficiencies in field equipment such as compasses, Global Positioning System (GPS) devices, tape measures, and dial callipers, which enable the effective control and supervision of the management permits.
- Lack of other crucial technical equipment, such as laptops, information systems, maps, stationary and fuel.
- Insufficient consolidation and/or strengthening processes for technical staff from the District and Municipal Delegations.
- Work overload of forest officials, some of whom are at times in charge of up to two municipalities, with the number of management permits outdoing their capacity to control them.
- Weak support and follow up of the decentralised offices from the INAFOR headquarters, which results in a lack of feedback that would highlight the existing problems.

However, in addition to the clear lack of resources, the actions of some officials in some Municipal Delegations in completely delegating their duties to supervise and control forest management plans to Forest Regents are a clear underlying cause. In recognition of the limited availability of human and financial resources of the state, the Forest Law created the role of the Forest Regent as a private party who would be responsible for complementing some of the public sector's administrative and control functions. However, completely delegating control functions to Forest Regents clearly goes beyond what the Forest Law stipulates.

It is the view of many that Forest Regents have not met expectations, notably because their independence has been compromised by the fact that they are paid by the person or company carrying out harvesting activities in the forest. One limitation is the lack of capacity-building provided for Forest Regents to give them a more thorough understanding of the technical and legal aspects of their work. The Regents' qualifying exams do not appear to ensure that candidates are ready to produce and implement a forest management plan properly.

Moreover, when a management permit is presented to INAFOR for approval, the Municipal Delegate assumes that the technical and legal information contained in such permit is genuine, trustworthy and based on the state of the forest to be managed and the overall area. Documents are accepted without the required scrutiny, often resulting in breaches of the NTON and the Administrative Dispositions that must be observed when approving a forest management permit.

Another aspect noted by the monitor that negatively affects INAFOR's performance on the ground is the lack of Forest Auditors, who are those professionals, technicians or specialised independent

⁷ Article 7.1 of Law 462.

⁸ Article 7.3 of Law 462.

companies to be accredited and contracted by INAFOR in order to evaluate the implementation of the forest management permits and the harvesting permits. If Forest Audits were implemented (as stated in the Forest Law), Municipal Delegates could devote more time and resources to comply with their immediate responsibilities.

7. Reports follow-up

The follow up of mission reports is primarily dependent on INAFOR's will to consider the findings and recommendations contained in such reports. In this respect, the monitor's experience is that INAFOR has lacked sufficient will to provide preliminary comments prior to the publication of reports and, most importantly, it has failed to undertake administrative and legal follow up of the cases documented.

In an important change, the new INAFOR authorities have agreed, in February 2007, to establish a review committee for the mission reports. Such a committee is considered best practice in IFM projects, and in establishing one INAFOR is formalising the process of providing comments from an institutional point of view, as well as to follow up on the recommendations made in such reports. However, it is too early to assess the performance of this committee.

It is also worth noting that at a local level, both the owners of management titles and Forest Regents have shown a constructive attitude, demonstrated by their will to make improvements following weaknesses documented in the reports. Such is the case reported in Mission Report no. 3, where recommendations provided by the monitor were followed, thus allowing the lawful approval of AOP 2006-2007 by INAFOR.

8. Conclusions and recommendations

For this first eight months Pilot Phase of IFM implementation in Nicaragua, the monitor has focused the project activities on presenting its field mission reports with results and appropriate recommendations to the competent authorities and the public, and by analysing systemic problems encountered. By accompanying forest administration officials in the field, skills and expertise have been shared, with an aim to contribute to improving their operational capacity to detect illegal and irregular activities. At this stage it is possible to draw some preliminary conclusions and recommendations about progress against objectives. These are presented below.

Conclusions of the IFM Pilot Project implementation	Recommendations for a long-term IFM project
<i>Objective 1: Set the institutional basis for an IFM system in Nicaragua, through the development of working relations with INAFOR and other government institutions, as well as with civil society and the private sector</i>	
<p>INAFOR officials at all levels closely cooperated with the independent monitor by planning and jointly conducting inspection missions in selected target regions. There are also good prospects to give continuity to the Agreement with INAFOR.</p>	<ul style="list-style-type: none"> • In order to systematically cover all forest permits efficiently and monitor forest management activities in the entire country, regular joint planning meetings should be scheduled between INAFOR and the independent monitor. Where relevant, these should include the participation of other law enforcement agencies. • Systematic planning should be done without prejudice to respond to urgent cases that may arise. Public awareness raising and confidence building with civil society groups is instrumental to this end, as the monitor could take on investigations instigated by their specific concerns and grass-root knowledge of the situation in the country.
<p>The judiciary and other Nicaraguan law enforcement agencies (such as the Environmental Public Prosecutor and the Attorney General's Office for the Environment) have expressed an interest to closely cooperate with the independent monitor. No concrete mechanisms of collaboration have yet been agreed; on the ground, however, members of the Armed</p>	<ul style="list-style-type: none"> • Further discussions with law enforcement agencies should be held to agree on specific cooperation protocols so as to create synergies amongst the various actors and maximise the resources available. These should involve the monitor and INAFOR, so as not to jeopardise the existing

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<p>Forces and the Nicaraguan National Police played an important part in some missions.</p>	<p>effective relationship between these two.</p> <ul style="list-style-type: none"> Follow-up mechanisms of detected and reported cases of illegality should be established between law enforcement agencies and the independent monitor. This should work both ways: the prosecutors should be regularly informed about the situation of the forest sector and any cases of illegality detected, whereas the independent monitor should get regular updates about progress on legal cases reported to the authorities.
<p>Time and budget provisions available for the implementation of the project did not allow extending the IFM work to include establishing close working relationships with relevant civil society groups.</p>	<ul style="list-style-type: none"> Long-term IFM should seek to engage with civil society groups in the various target regions and establish strong communication channels. Local organisations, be it NGOs or other relevant ones (such as an ombudsman-type organisation), that could take on the monitoring role should be identified, and their needs for support and strengthening identified. Legal and technical competencies as well as an understanding of the 'official yet independent' status of a monitor should be priorities in building their capacity.
<p><i>Objective 2: Generate reliable information about illegal logging and trade activities in specific regions of the country</i></p>	
<p>Ten mission reports and this Summary Report have been produced, with a view to providing factual, objective and evidence-based information to the forest authorities and general public about problems facing sustainable forest management in Nicaragua. Reports about specific cases illustrate the nature and extent of logging activities in breach of the Forest Law and related Regulations in some of the most important forest regions of the country.</p>	<ul style="list-style-type: none"> Illegal activities in the country need to be addressed as a matter of urgency. Lack of control and sanctions has led to a climate of impunity that illegal operators take advantage of. Some of the main legal instruments are obsolete and should be reviewed. In particular, the NTON should urgently be brought up to date and become more specific⁹, as many of the faults committed during the implementation of the management permits are due to the NTON not indicating clearly the procedure to follow. Improvements in the legal framework should be capitalised on. The new Special Law for Crimes against the Environment and Natural Resources provides a clear opportunity to improve forest management and punish those who breach the law. A long-term IFM project should analyse the legal framework of the forest sector, especially regarding access rights of small-scale forest users and owners. Simplified procedures for these actors are essential, but they should be protected by mechanisms that minimise the risk of them being abused by logging companies and influential individuals. This has direct implications on good governance in the sector: even if a good and independent surveillance and control system is in place, the sector as a whole will have little credibility if the public administration is vulnerable to abuses of the legal framework. The new Special Law for Crimes against the Environment and Natural Resources and the

⁹ The NTON are the responsibility of MAGFOR

Conclusions of the IFM Pilot Project implementation	Recommendations for a long-term IFM project
	<p>Logging Ban have contributed to creating more uncertainty in the legal framework in the sector. This hinders the control work of the forest officials and the monitor's work. It also generates insecurity to forest companies and communities, and creates a space to interpret the law at discretion and to undertake corrupt practices. Long-term IFM could support efforts to reform and harmonise these and other laws that regulate sustainable forest management in the country.</p>
<p>Irregularities reported in mission reports reveal a lack of both technical competence and, in some cases, lack of will to enforce the law. Significant staffing shortages were also clear.</p>	<ul style="list-style-type: none"> • INAFOR should develop and implement an extensive capacity-building programme for its staff at all levels. This should include training on administrative aspects (such as permit processing and approval), and control activities on the ground (these should include the control of logging activities and the respect of all technical aspects related to forest management). • Appropriate staffing, funds and materials must be provided by the Government to enable efficient operational performance of duties by the forest administrations.
<p><i>Objective 3: Ensure the objectivity and transparency of the monitoring activities carried out by the relevant authorities, through the participation of an independent monitor with international credibility, whose reports and recommendations will be made public following a review of the forest authority</i></p>	
<p>The joint implementation of ten field missions with INAFOR officials illustrated their commitment to control the selected forest management titles.</p>	<ul style="list-style-type: none"> • Despite acknowledging the budgetary difficulties the Nicaraguan state and institutions suffer, the provision of a higher number of provincial and local forest officials should be a priority. These should be supported from the headquarters, and their performance assessed regularly.
<p>For each mission, the independent monitor produced a report which was submitted to INAFOR and subsequently published on the monitor's (Global Witness') website.</p>	<ul style="list-style-type: none"> • It should be a normal part of the work of forest officials and other participating law enforcement agencies to undertake inspections and produce reports, as the first steps towards applying the rule of law. These might then be forwarded to the review committee for comparison with those of the monitor and final validation. This would allow the monitor to focus more on the performance of officials and procedures, and less on primary evidence-gathering – a role for law enforcers.
<p>A review committee was set up in February 2007 to examine and validate the independent monitor's reports.</p>	<ul style="list-style-type: none"> • In order to ensure that all viewpoints are represented, the committee should include representatives from ministries concerned with forest sector related activities, civil society, the private sector and the donor community. Ample representation should in any case not hinder the effectiveness of the committee. Other possibilities should also be explored, such as using already established structures, like the National Forest Commission (CONAFOR) of the Departmental and Municipal Commissions. • Due to its novelty, the performance of the committee has yet to be assessed. Its main role should in any case be to corroborate that the evidence is presented objectively and the conclusions and recommendations logically follow

Conclusions of the IFM Pilot Project implementation	Recommendations for a long-term IFM project
	<p>from it. It should subsequently validate the examined report, and publish reports on an appropriate official website.</p>
<p><i>Objective 4: Strengthen the operational capacity of the relevant authorities, through the implementation of joint field missions where experience and skills are shared</i></p>	
<p>The short implementation period of the project did not allow to conclusively assert that there has been significant improvement on the operational capacity of the relevant authorities. In all missions, however, the opportunity has presented itself to share skills and experience, which is a first step towards this goal.</p>	<ul style="list-style-type: none"> • Long-term IFM should identify specific needs that forest officials have in the field, and support them in improving their capacity to perform their duties. Priorities should be made about what skills should be built first, and the relevant financial resources should be sought to address them.
<p>Sharing skills and experience with Forest Regents who participated in missions has also had a positive effect. Those who did take part acknowledged their weaknesses and expressed a will to improve in future supervisions.</p>	<ul style="list-style-type: none"> • The role of the Forest Regent should be reviewed and improved. In order to provide them with the independence they need to perform their job adequately, it is necessary to search for alternative means of financing or to establish an innovative mechanism to transparently channel payments from timber companies that contract them. For example, a basket fund could be set up to this end, so as to avoid direct payment between the two parties. • Funds should be secured to allow for the implementation of Forest Audits established in the Forest Law. Long-term IFM could support in building and strengthening this new mechanism, ensuring its robustness, effectiveness and transparency. To this end, it is essential to have renewed commitment from the donor community to continue to support improvements in forest governance.