

## **Following the Money Trail: the Challenges in Illegal Logging Investigations<sup>1</sup>**

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### **| The transnational nature of Forest Crimes especially illegal logging**

The story of illegal logging and other forest crimes is a highly complex one. This complexity arises not only out of the involvement of powerful and well connected transnational groups but also due to the existence of widespread global markets for forest produce. Adding to this complexity there are local communities and small operators active along with huge corporations and transnational mafia syndicates – all of whom feed the insatiable world demand, ignorant or unconcerned about the legality of the forest products involved.

The modus operandi varies. In the forests of Indonesia it is easy to find small groups of youths with chainsaws chopping and sawing 3-4 trees a day. Hundreds and thousands of such groups operate on a daily basis. There are bigger players who use boats and tugs to tow rafts of illegally cut wood through rivers headed for saw mills that are dedicated to the processing of illegal wood. There are bigger companies that own logging concession hauling tons of wood, but the extent of illegal wood mixed in is anyone's guess. These big companies are also converting thousands of hectares of land into oil palm plantations each year. How do they obtain this land? How much more land than that which is legally allocated do they encroach upon? These are questions indicating further associated complications.

Recently an illegal wild life network was busted through an operation called RAMP by INTERPOL. This operation involved action against the illegal trade in reptiles and amphibians resulting in arrests worldwide and the seizure of thousands of animals as well as of products worth more than 25 million Euros. Criminals in 50 countries spread over all five continents were involved. This bust shows the reach and extent of illegal networks in this trade – and this is only scratching the surface of the problem

In Guyana, South America, the biggest companies involved in logging are from South Korea and Malaysia. South Korean, Chinese and Malaysian companies are active in the remote areas of Papua province in Indonesia and across the border in Papua New Guinea as well. But who are the end users of this wood? This wood reaches the drawing rooms

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and hotels of Europe and America and all over the world. Distant operators and distant markets signify the global dimensions of the timber trade.

EU and Asia are two of the world's biggest markets for timber and wood products. In a 2008 report WWF estimates that 40% of wood-based products imported into the EU from South-East Asia originated from illegal logging. China is the biggest consumer within Asia and is also a major re-exporter. China's timber demand was projected to rise to 350 million cubic meters in 2010, indicating a shortfall of 150 million cubic meters from official imports.<sup>2</sup> Illegally sourced timber flows into China from Lao PDR, Indonesia, Myanmar, Cambodia and Thailand. The second major importer in the region is Vietnam, with its outdoor furniture industry booming and exports expected to reach US\$ 3 billion by 2010. A lot of wood supply comes to Vietnam from Lao PDR. It is estimated that 48% of the timber imported by Vietnam is illegal. All of this shows the close interconnectedness of global criminal operatives as well as the worldwide market for illegal forest products.

Pontianak, the capital of the West Kalimantan province in Indonesia has a 30 km road from airport to the city. The road is built over land bolstered by logs of wood. This government work has used illegally logged wood from the nearby forest. Not only this but every government and private building in Pontianak, whose foundation needs to be strengthened because of the soft soil, has used illegally logged wood. Why? Because this is the only wood available here. And mind you this wood is from the Peat forests of Kalimantan which have up to four times more carbon storage capacity than the other rainforests. This is another aspect of the crime where illegally sourced wood is driving out legal wood and this is perceived as being government-sanctioned.

Aceh, in Indonesia, was destroyed by the tsunami. When Aceh was reconstructed, the forests of Aceh, which were well preserved unlike the other forests of the island of Sumatra, faced the greatest threat. A huge demand for wood arose, with billions of dollars flowing in for the reconstruction effort.

The obvious question arises – how did such massive quantities of illegally cut timber flow visibly through roads and waterways, ports and customs, across forest boundaries and police check points? How do they get the necessary documents? A trail of corruption along the route of the timber, crossing international boundaries, is a key ingredient to the success of illegal logging enterprises. Corruption facilitates and protects the illegal trade at every stage.

From the above we can see that we are talking about a problem that involves complex issues from the production stage, through the transit and trade stages and finally to the conversion and sale stage. Law enforcers such as the police, military, prosecutors, judges are all involved. There are also the accountants and lawyers and off shore companies, banks and governments that collude to protect the ill-gotten wealth from illegal logging

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<sup>2</sup> Global Report on Crime, UNODC 2010.

and forest crimes. In Sept 2009, the former vice chairman of Guangxi province in China was sentenced to 18 years in prison for corruption related in part to timber brokering. Several senior police officers and administrators have faced prison sentences in Indonesia for illegal logging and corruption, demonstrating clearly the unholy nexus between corruption and forest crimes.

Times are changing now. The disappearing forests of the developing world have awoken us. Climate change is an immediate threat and worry to Governments around the world. Countries are becoming more serious about good forest governance and improved law enforcement. Corruption in the forest sector is now being discussed openly. Recognition of forest crimes as a predicate offence for money laundering is gaining ground. REDD + schemes propose monetary payment to countries in lieu of forests preservation and unreleased carbon. The USA's Lacey Act, Voluntary Partnership agreements in Europe, and similar measures from Australia and New Zealand is now working on the demand side to curb import of illegally sourced timber products.

### **Detecting forest crimes**

Detecting forest crimes like illegal logging is theoretically very simple – in cases such as a forest ranger stopping a truck of wood without documents. Wood is seized, confiscated, the truck driver and his assistant charged. Things start getting complex when investigators go beyond the truck driver in establishing criminal conduct. Who was he working for and for how long? Was he even aware of the criminal nature of his cargo? How many such truckloads had he delivered before he was caught? Can recoveries be made of earlier consignments that have already been delivered? Where is the timber sold? Where is it processed? What about the confiscation of the truck? What about investigating the logging operations at the source of the timber? What is the intended market and nature of international trade involved? What about the profits – where do they go?

Were the documents the correct ones, issued through connivance of forest staff, or were they forged? Were protected species of wood transported in the place of some other species? These kinds of questions complicate matters for investigators. The scenario also becomes much more complex when illegal wood is mixed with legal ones.

The situation is further aggravated when big illegal operations are launched with the protection (or even the blessing) of the military, political actors or other law enforcement agencies, and when there is systematic corruption down the line. This was the case in the Indonesian province of Papua sometime back.

Following the illegal wood trail has its challenges. These are challenges that officers face in detecting and investigating illegal logging cases and also that prosecutors and judges face in trying them and deciding their punishments.

### **Following the money**

Continuing on from the conventional way of following the wood that we have discussed above, let us move on to discussing the investigative strategy of ‘following the money’. Following the money is increasingly being recognized as the means to reach the ‘top guns’ that are the destination of illegal profits and also to recover stolen assets. This strategy is, however, a much more difficult and complex task for investigators, with few success stories to draw upon.

For instance trafficking of wood to China is often arranged by brokers based in Singapore, Taiwan, provinces of China and Hong Kong. In South-East Asia, Chinese expatriates are important players in arranging cross-border deals. In China, the timber is controlled by a large number of trading firms who deal in import quotas. Off shore companies are major players in the illegal business. How do investigators from some country follow the wealth of these brokers or companies in other countries? How can they prove the illegality of this wealth, linking it to the forests of their home country? How can they get banks in different locations to part with that money? How do they get different governments to cooperate with them? Further, in their own home country, how do they get the justice system to criminalize and convict illegal loggers when investigations have led them to follow the money trail into other countries? Delays in the legal proceedings of requesting countries, compounded by politics, complicate cases. This is compounded by the fact that most of the accused ‘big guns’ are also those with strong political connections and backing. Before some of the Marcos money (the former President of the Philippines) could be recovered from the banks in Switzerland, a decision in the local court of Philippines was required. It took 12 years for a decision to be made by the Supreme Court on the Marcos Swiss dollar deposits.

Companies from Malaysia, Hong Kong and Singapore<sup>3</sup> are major operators in Indonesian logging. Similarly, money is normally held in the banks of Singapore and Hong Kong. Hong Kong’s banking sector is the 15th largest in the world (measured by external transactions) and has the 6th largest turnover of foreign exchange transactions. It is also an attractive destination due to the stability of its banking and its highly sophisticated operations.

Following investigations of illegal logging in Indonesia to financial transactions in Hong Kong is tricky for the following reasons, as concluded by a study. Hong Kong’s lack of indictable forestry offences precludes any illegal logging activities in Indonesia from being considered foreign indictable offences in Hong Kong. As a result, Indonesian logging crimes are not predicate offences for money laundering charges in Hong Kong. In other words, those dealing with the proceeds of illegal logging in Indonesia, such as offenders hiding or moving the proceeds from Indonesia to Hong Kong, cannot be charged with money laundering in Hong Kong.

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<sup>3</sup> A report by Capgemini and Merrill Lynch indicated 19,000 Indonesian HNWI (high net worth individuals) residing in Singapore holding US\$93b in assets.

Apart from the above, discussing the problems of different jurisdictions and legal systems and the necessity of dual criminality, the human dimension is an equally important factor. Whether the law enforcement officers are trained to take action, whether they are inclined to take action, whether they are competent to take action, whether orders to take timely action is issued, are all important factors. Getting mutual legal assistance requests accepted and complied between countries is highly technical and can take years. It is also often the case that countries from where forests are lost are in a weak position to tap into such international criminal investigations and cooperative measures.

### **Solutions**

Return of assets is possible only when there is close and effective cooperation between states involved. Such cooperation must observe the rules governing international cooperation in criminal matters. Until the coming of the UN Convention against Corruption, there was no global Convention covering this field. Although a lot more needs to be done before countries are able to work together under the aegis of this Convention, and are able to repatriate lost assets, at least we now have a common framework. The Stolen Assets Recovery Initiative (StAR) launched by the World Bank and UN Office on Drugs and Crimes has helped several states in the process. However, to date, the real recovery of wealth has been very small.

Several good things have happened. Corruption now is no longer considered to be a purely national crime. The international ramifications of corruption, and its key presence in all transnational crime, are now well recognized. Anti-money laundering laws exist in most countries and corruption is a predicate offence for money laundering in most jurisdictions. The risk of funds being used for terrorist activities always exist and therefore countries and financial institutions are now much more diligent.

Investing in improving forest governance, especially working with and improving law enforcement and prosecution capabilities, having better standards of monitoring, reporting and verification of wood, bringing in more transparency in various stages allotment of concessions and later on during production and processing of timber, would all be very effective measures. In the long run, however, we should work for complete logging moratoriums and bans - especially in the old growth forests.

Non-conviction based asset recovery regimes are now becoming more and more popular. These are the actions taken against illegal wealth through civil mechanisms, whereby the property is seized without going through elaborate criminal proceedings and requiring the corresponding high level of proof for such cases to succeed.

Asset tracing is the area in which the most technical skills are required to uncover the elaborate concealment involving different jurisdictions, different overseas locations (havens) and the intellectual effort of the world's best accountants, bankers and lawyers. It also includes skills required to analyze the STRs (Suspicious Transaction Reports) of FIUs (Financial Intelligence Units) and further investigate and prosecute cases that reveal a crime. These can and are being addressed through specialized training programmes to build capacity of law enforcement personnel. It is said that it takes a network to defeat a

network. Initiatives like FATF (Financial Action Task Force and the Asia Pacific Group against money laundering are important in this regard. The global law enforcement environment needs more of such networks.

Often it is seen that the costs of prosecuting cases in foreign jurisdictions is too expensive for poor countries to bear. Foreign Law Firms should come forward to offer their services pro bono in assisting such countries for asset recovery cases.

The role of an active citizenry, whistle blowers and patriots who could help in exposing instances of transnational crimes perpetrated in secrecy and collusion. Following the money is important, however what is more important is to prevent the money from leaving in the first place by stopping offences at their source.

In the future, to deal with the problems of climate change and in order to reduce emissions from deforestation and forest degradation (REDD+), anti-corruption agencies, audit agencies and financial intelligence units will play a key role – especially in following the money trail. Investment in the proper training of the staff of relevant agencies and investment in technology to aid them would be money well spent.