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Justice for Forests

Improving Criminal Justice Efforts to Combat Illegal Logging

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Acronyms and Abbreviations

ARINSA	Asset Recovery Inter-Agency Network
CARIN	Camden Asset Recovery Interagency Network
CCG	Center for Conservation and Government
CDD	Customer Due Diligence
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
FATF	Financial Action Task Force
FIUs	Financial intelligence units
FLEG	Forest Law Enforcement and Governance
IBAMA	Enforcement Agency of the Ministry of Environment of Brazil
KYC	Know Your Customer
NCB	Non-Conviction Based Asset Forfeiture
NGOs	Nongovernmental Organizations
PEPs	Politically Exposed Persons
StAR	Stolen Assets Recovery Initiative
STRs	Suspicious Transaction Reports
TFC	Task Force on Corruption
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	UN Convention against Transnational Organized Crime

Executive Summary

Every two seconds, across the world, an area of forest the size of a football field is clear-cut by illegal loggers.¹ In some countries, up to 90 percent of all the logging taking place is illegal.² Estimates suggest that this criminal activity generates approximately US\$10–15 billion annually worldwide—funds that are unregulated, untaxed, and often remain in the hands of organized criminal gangs. Thus far, domestic and international efforts to curb forest crimes have focused on preventative actions, but they have had little or no significant impact. While prevention is an essential part of enforcement efforts to tackle illegal logging, it has not halted the rapid disappearance of the world’s old-growth trees. New ideas and strategies are needed to preserve what is left of forests.

This paper suggests that current practice be combined with a more targeted, punitive approach, through more effective use of the criminal justice system. It argues that the criminal justice system should form an integral part of any balanced and organized strategy for fighting forest crime. This strategy should include initiatives to enhance the efficiency of criminal justice in combating illegal logging—that is, the investigation, prosecution, and conviction of cases, as well as the confiscation of the proceeds of criminal activity. These initiatives should be deployed in parallel with preventive programs, and the two approaches should complement and reinforce each other.

The criminal justice system has been used in the fight against illegal logging, but only in very sporadic instances and in limited and ineffective ways. Moreover, in those few cases, it has tended to target low-level criminals whose involvement in illegal logging is due to poverty. As such, it has created no real deterrent and has encouraged skeptics to further discount the relevance of criminal justice methods. Large-scale illegal operations are carried out by sophisticated criminal networks, and law enforcement actions need to be focused on the “masterminds” behind these networks—and the high-level corrupt officials who enable and protect them. Pursuing these important targets through the criminal justice system will require creativity and a clear focus on those criminal justice rules and procedures that prove most effective.

The objective of this paper is to inform policy makers and forestry and law enforcement actors how they can use the criminal justice system in fighting illegal logging. It seeks to mobilize them to take action and address the various criminal acts involved in illegal logging operations. The paper puts forward practical suggestions that can be implemented to achieve a tangible improvement in this fight. Rather than focusing on a single element of the criminal justice system, it provides a broad overview of the topic. Future papers may provide an opportunity to flesh out further detail.

Because the role of the criminal system in fighting illegal logging has thus far been minimal, there are few documented successes, and little data to explain why the criminal justice system has not been more widely used in this context. To find new ideas as to

1. Chatham House 2009, p. 7.

2. In 2004, Greenpeace estimated that 76-80 percent of logging carried out in Indonesia, and over 90 percent of logging carried out in Papua New Guinea was illegal: Stark and Cheung (2006), p. 4. More recent statistics suggest that illegal logging in Indonesia has fallen, but that it still represented 40-55 percent of all logging in that country in 2008: Chatham House 2009, p. 5.

how the criminal justice system can be used against illegal loggers, this paper therefore draws on experience gained from dealing with other types of crime (money laundering, corruption, and so forth).

The policy and operational recommendations made in this paper are based on legal and operational frameworks that are already in place in almost every country in the world. By making good use of these existing frameworks, we can take an important step towards ensuring the preservation and the sustainable management of the world's forests.

Policy recommendations:

- ***Develop an integrated criminal justice strategy for illegal logging that adopts and implements clear and comprehensive policies.*** To be effective, the strategy must target high-level corruption and the companies that pay bribes. It must aim for successful investigations, prosecutions, and the confiscation of the proceeds of crime. The strategy should include clear objectives and an assessment process for tracking progress. Policies should prioritize major illegal logging cases and should devote the necessary resources to ensure that competent practitioners with the required tools and expertise can take on these cases. Jurisdictions should implement their strategy, in part, by allocating increased resources for agencies, by organizing specialized training to give practitioners essential domestic expertise, and, if possible, by dedicating a number of investigators and prosecutors exclusively to illegal logging cases.
- ***Improve domestic cooperation.*** Domestic cooperation between agencies involved at different stages of the fight against illegal logging should be strengthened so as to coordinate action and maximize resources and expertise. An interagency policy committee can advise key decision makers on strategic policy changes and the allocation of resources. An interagency task force can foster collaboration on pressing and substantial operational cases.
- ***Enlist the private sector.*** When looking into the financial dimension of forest crimes, financial institutions and other entities obligated to report suspicious transactions to financial intelligence units need to be fully mobilized. This can be done through implementing due diligence measures and by monitoring transactions made by politically exposed persons (PEPs) and actors in the forestry sector.³
- ***Engage civil society actors.*** Nongovernmental organizations (NGOs) need to be engaged as powerful partners who can help governments, law enforcement, and the judiciary to combat illegal logging and related crimes. In many countries, civil society has already played an important role in detecting large-scale forest crimes, in increasing awareness of the extent and impact of illegal logging, and in conducting studies on the forest law enforcement system.

3. PEPs are those entrusted with public functions, their relatives and close associates. Enhanced due diligence applies to PEPs in recognition that by virtue of their position, there is an increased risk of money laundering.

- ***Include criminal justice as part of development assistance programs to combat illegal logging.*** Making criminal justice a component of development assistance strategies to combat illegal logging will help countries receive the support they need to address the challenges related to forest law enforcement. The implementation of anti-money laundering measures, as well as other steps suggested in this paper, should be included as part of country assistance strategies.

Operational recommendations:

- ***Work together.*** Actors in the forest sector should actively engage in the broader effort to increase the effectiveness of forest law enforcement through investigations, prosecutions, and the confiscation of criminal proceeds. Collaboration with colleagues in the criminal justice sector will help forestry officials ensure that their particular expertise and skills are better utilized, instead of ignored. Where multiple agencies are responsible for the same task, representatives from each agency should work together to determine who should be involved, what their individual responsibilities should be, and how they can best select their targets.
- ***Attack corruption.*** In combating corruption, law enforcement, investigators, and prosecutors should widen the scope of their activities. They will be more successful if both those who provide and those who receive the bribes—whether logging companies or high-level officials—are deterred by a real risk of punishment and the confiscation of the proceeds of their crimes.
- ***Proactively target vulnerabilities and significant offenders.*** Instead of using the criminal justice system to fine or to imprison low-level criminals for regulatory offenses, law enforcement, investigators, and prosecutors should target major crimes and offenders. At the same time, they should perform a realistic assessment of: (i) vulnerabilities (by individual, group, forest, or company); (ii) the resources needed to take advantage of those vulnerabilities; and (iii) the resources on which they can draw. They should use the results of that assessment to identify priority targets for a dedicated strike force.
- ***Consider all applicable offenses—not just regulatory environmental offenses.*** In addition to regulatory offenses, forest officials, investigators, and prosecutors should consider the many different crimes that may have been committed in cases of illegal logging. Identifying all offenses as early as possible in the investigation will provide more options for prosecutors in bringing the case forward.
- ***Follow the money.*** Illegal loggers can be convicted of money laundering related to many different predicate crimes. This can result in additional jail time and/or fines above those imposed for the underlying forest crime. Furthermore, asset confiscation deprives criminals of the fruits of their crimes and makes it more costly for them to continue their operation.
- ***Enforce anti-money laundering and due diligence requirements.*** Regulators should strictly enforce know your customer and due diligence requirements—particularly those for enhanced due diligence in the case of transactions of PEPs

and suspicious transactions within the forestry sector. Regulators should also enforce compliance with the Financial Action Task Force (FATF) Recommendations to prevent money laundering.⁴

- ***Employ all available criminal tools to address these complex crimes.*** Special investigative techniques like electronic surveillance, undercover operations, and witness protection measures are critical tools. In the future, they should play a far greater role in efforts to address the complex crime of illegal logging.
- ***Improve international cooperation.*** Law enforcement, investigators, and prosecutors should increase their efforts to cooperate with other jurisdictions. When necessary, they should make formal mutual legal assistance requests as established in treaties or international conventions like UN Convention against Corruption (UNCAC) or they may wish to make informal peer-to-peer requests for information and assistance. Informal contact often acts as a prelude to a formal mutual legal assistance request, and active participation and promotion of regional networks can result in valuable opportunities to exchange expertise, establish relationships, and build trust with practitioners in other countries.

4. The FATF 40 Recommendations are a set of anti-money laundering measures for law enforcement, criminal justice, the financial sector, and international cooperation. Found online at http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html.

Introduction

Forestry's criminal justice system is broken. Despite compelling data and evidence showing that illegal logging is a worldwide epidemic, most forest crimes go undetected, unreported, or are ignored. All too often, investigations—in the rare event that they do take place—are amateurish and inconclusive, and the few cases taken to court tend to be of trivial significance, prosecuting people whose involvement in crime is due to poverty and exploitation. Even fewer cases result in significant or serious penalties, and the public treasury virtually never recovers the economic value of stolen or destroyed forest assets. Considering that billions of dollars are reaped in illicit gains from forestry-related abuses every year, it is not surprising that the relatively light penalties that are exacted for these crimes form no deterrent at all.⁵

There are countless examples of the criminal justice system's failures in this area. In 2005, an initiative to combat illegal logging in Papua, Indonesia, identified 186 suspects and secured almost 400,000 cubic meters of illegally harvested timber. However, only 13 suspects were convicted, and the most significant punishment was a two-year prison sentence.⁶ Similarly, in April 2010, President Yudhoyono of Indonesia instructed the country's Anti-Mafia Task Force to review illegal logging court cases in which defendants received lenient sentences or were acquitted. It was found that, of 92 illegal logging defendants, 49 were acquitted, 24 received one-year jail terms, and 19 others received penalties of between one and two years.⁷ In Cambodia, the Agriculture Minister has blamed the failure to try approximately 70 percent of agriculture, forestry, and fisheries crimes in court because of a lack of cooperation between courts and prosecutors.⁸

It would be less disturbing if these were isolated or unusual incidents, which could be attributed to random error or to the eccentricities of individual prosecutors, courts, or judges. Unfortunately, they are typical, and represent a larger, persistent, and pervasive problem. With such weak penalties and so little likelihood of prosecution, the criminal justice system fails to provide any real deterrent to forest crime.

The consequences of the failure of forest law enforcement are enormous—and extend far beyond the damage to the trees themselves. According to recent estimates, illegal logging generates illicit earnings of approximately US\$10–15 billion annually worldwide, with underpayment of royalties and taxes on legally sanctioned logging amounting to an additional US\$5 billion.⁹ In some countries, illegally harvested logs

5. Contreras-Hermosilla 2001, p. 14.

6. Satriastanti 2010.

7. *Antara News* 2010.

8. Sophakchakrya 2010.

9. The World Bank 2006, pp. 2, 8-9; Seneca Creek Associates 2004.

reportedly account for as much as 90 percent of timber exports.¹⁰ These estimates do not capture the enormous environmental and societal costs of these crimes—how they threaten biodiversity, increase carbon emissions, cause landslides, and undermine the resource-based livelihoods of rural peoples, with ringleaders and organized crime profiting at the expense of the poor.¹¹ Illegal logging also has detrimental economic impacts. It stifles economic development and distorts the marketplace, discouraging legitimate forest enterprises from making socially and environmentally responsible investments in forestry, and undermining attempts to achieve successful and sustainable management of forest resources worldwide. Finally, the extensive corruption associated with illegal logging weakens broader structures of governance and the rule of law.

Despite some encouraging signs,¹² domestic and international efforts to curb illegal logging have had little impact on this growing threat. To date, the focus of such efforts has been on prevention—stimulating consumer market awareness of illegal logging and its effects, attempting to create demand for legally produced materials, and promoting forest tenure and industry reform.¹³ However, efforts have also been made to improve the detection of illegal logging. G8 countries and the World Bank have supported developing countries in working towards implementing forest certification and other ways of verifying chain of custody of timber—thereby making it easier to differentiate between legal and illegal timber.¹⁴ Other countries and nongovernmental organizations (NGOs) have been implementing forest monitoring technology using satellite images and the tracing of logs using bar codes.¹⁵

In contrast, the suppression of illegal logging through the criminal justice system has gotten little attention from policy makers, activists, and technical assistance providers.¹⁶ When the criminal justice system is discussed, the focus is generally on its failures, rather than its potential to help reduce and deter illegal logging.

10. Such estimates of illegal logging as a percentage of total timber exports include: Bolivia 80 percent; Cambodia 90 percent; Ecuador 70 percent; Gabon 70 percent; Indonesia 70 to 80 percent; Papua New Guinea 70 percent; and Peru 80 percent: World Bank 2006; Seneca Creek Associates 2004.

11. For example, one study estimated that a local laborer gets less than 10 percent of the value of the timber harvested for a timber operator, with ringleaders taking most of the money: World Bank 2006, p. 2.

12. Lawson MacFaul 2010. The EU has also taken steps, including studying how anti-money laundering might be used against importation of illegal timber: see http://www.chathamhouse.org.uk/files/3266_dbjul05.pdf. In addition, the FATF has included environmental crime in its list of predicate crimes to money laundering.

13. For example, according to *The G8 Forest Experts' Report on Illegal Logging*, Canada's efforts to combat illegal logging have been focused on addressing the underlying cause of illegal logging, including lack of infrastructure and capacity or poor transparency in governance. Development assistance supports sustainable forest management in developing countries, capacity building and governance, particularly in forestry policy and administrative management: report online at http://www.canadainternational.gc.ca/g8/summit-sommet/2008/forest_illegal_logging-exploitation_illegale_forets.aspx?lang=eng. Also see The World Bank 2007; Center for International Policy 2005.

14. "The G8 Forest Experts' Report on Illegal Logging," online at http://www.canadainternational.gc.ca/g8/summit-sommet/2008/forest_illegal_logging-exploitation_illegale_forets.aspx?lang=eng.

15. Ibid.

16. See, however, Contreras-Hermosilla 2001 and Akella and Cannon 2004, which include improved enforcement and suppression of forest crime, along with efforts at detection and prevention, as part of their recommendations to improve compliance with the law by the forestry sector.

Objectives

The overall message of this paper is that law enforcement (investigation, prosecution, imprisonment, and the confiscation of illegal proceeds) can no longer be shunted into a corner. Rather, it needs to form part of an integrated and sustainable solution to the problem of illegal logging. Such a solution will require national forest law enforcement systems to be strengthened, and criminal justice remedies to be used in concert with necessary forest protection programs, such as forest tenure and industry reform, developing consumer market awareness, and supporting efforts to increase demand for legally produced materials. Rather than discussing such forest protection programs or the legislation criminalizing the possession of illegal timber, this paper therefore aims to draw attention to a tool that has been ignored for far too long: the criminal justice system.

Although the criminal justice system is woefully ineffective at the present time, it is a necessary and indispensable counterweight to illegal logging. It is the only available tool capable of deterring these crimes through the genuine threat of prosecution and meaningful punishment—particularly in the case of corrupt officials, of those who pay bribes, and of those involved in organized crime. Laws on forest maintenance, laws criminalizing environmental crimes, laws protecting property, laws against corruption, and laws prohibiting money laundering have all been adopted worldwide.¹⁷ A system of international conventions and treaties for combating corruption and transnational organized crime, as well as other mechanisms to facilitate international cooperation, are already in place. These laws, conventions, and treaties must be employed to stem the growing losses of large portions of the world's forests.

To be successful, forestry officials and advocates will require a better understanding of the positive impact that an integrated criminal justice strategy can have on combating illegal logging—and they will need to incorporate this dimension into their programs. At the same time, the criminal justice community needs to be made aware of the detrimental effects and significant losses resulting from illegal logging. They, too, will need to understand the importance of addressing illegal logging through the criminal justice system. If forest law enforcement becomes a higher priority, essential skills can be taught and learned, capacity can be established, and awareness can be raised. There is no substitute for honest, experienced, motivated, and creative investigators and prosecutors who have specialized knowledge of forest crime, and have available the time and resources required.

Another of this paper's objectives is to motivate concerned and committed policy-makers to assess the structure, function, and performance of the criminal justice system as a key component in the forest law enforcement and governance systems. In particular, this paper makes a number of recommendations for improving the criminal justice process in relation to illegal logging and other forest crimes. Specifically, these recommendations also suggest ways of bringing the financial aspect of illegal logging to light, and, through anti-money laundering measures and the confiscation of assets, helping to identify, freeze, and confiscate illegal proceeds. They also address ways to improve cooperation at three different levels within forest law enforcement: between the forestry

17. Among others the St. Petersburg Declaration (2005) and the World Bank's Forest Strategy (2007) identified the need to fight corruption in the forest sector and the importance of using, among other tools, anti-money laundering regimes.

and criminal justice sectors; between the public and private sectors; and, internationally, between “consumer” and “producer” countries of illegally harvested timber.

This paper is organized into three main sections. The first provides a working definition of illegal logging and provides some context, describing the common actors within criminal justice systems. It also reviews the present failures of forest law enforcement systems—and explains why they constitute an important tool, despite their ineffectiveness to date. The second section reviews a range of criminal laws that can be used to combat forest crime and its financial aspects. It then highlights the power of certain criminal tools to combat illegal logging and considers the importance of tracing, freezing, and confiscating the illegal proceeds of forest crime through the use of anti-money laundering laws and laws that permit confiscation of illegally obtained assets. Finally, the third section describes tactics and policies that will strengthen the law enforcement response to illegal logging. It focuses, in particular, on three points: (i) strengthening domestic cooperation to improve forest law enforcement; (ii) increasing the effectiveness of international cooperation; and (iii) mobilizing the private sector.

Where possible, this paper attempts to include examples drawn from actual cases. Unfortunately, there have been few significant convictions involving illegal logging, and we are unaware of any major cases in which money laundering and asset confiscation were used successfully. Likewise, there is no reliable information that shows accurately the extent of the illegal logging problem and its development over time—nor is there data available that can provide information on the flow of funds through money laundering of illegal timber. As a result, this paper relies on lessons learned in other criminal justice areas (that is, corruption, money laundering, and confiscation) to propose workable law enforcement policy responses for illegal logging. In short, although some of the challenges facing forest law enforcement may be unique, a number of practical solutions for bringing perpetrators of forest crimes to justice, already employed in other areas, remain to be tried.

Illegal Logging and the Criminal Justice System: An Overview

Although the criminal justice system is often referred to as though it were one monolithic entity, it is, in fact, more like an intricate machine, consisting of many parts, each of which must be properly aligned and connected to function properly. The efficacy of a country's system for detecting, apprehending, investigating, prosecuting, and punishing criminals is dependent on the ability of staff in various agencies to communicate, coordinate, share information, and work together towards a common goal. In this section, we will consider the state of play of forest law enforcement and outline the reasons for its failure to address illegal logging. We will then present a basic typology of illegal logging and review the roles and responsibilities of key forest law enforcement actors. This will set the stage for our analysis of various means of improving the efficiency of the criminal justice system in this area.

2.1. The State of Play

Forest law enforcement has been found to be highly ineffective in most countries at countering and deterring illegal logging. A four-year study conducted in four resource-rich countries (Brazil, Mexico, Indonesia, and the Philippines) found that the cumulative probability of an illegal logging crime being penalized is less than 0.082 percent. In one of the regions examined (Papua, Indonesia) the cumulative probability of being convicted of illegal timber shipping was only 0.006 percent. The study concluded that:

Enforcement of natural resource and biodiversity laws and regulations is abysmal in these biodiversity-rich countries. The existing enforcement regimes in the countries we studied are weak, and not one of them provides an adequate disincentive to offset the incentives that are driving illegal environmental activities.¹⁸

Lack of coordination among necessary actors, competing priorities, limited resources, lack of capacity, and both benign and malicious neglect are all to blame. One study has found that "most illegal logging cases brought to trial are dismissed because ... evidence has been lacking, cases have been poorly put together, insufficient evidence has been collected or the wrong type of evidence has been collected; or because judges, pros-

18. Akella and Cannon 2004.

ecutors and the police lack knowledge about important forest laws and regulations.”¹⁹ However, this lack of skill is only one part of the problem.

The major cause of failure of criminal justice in this area is the prevalence of corruption, especially at high levels. Whether in the form of grease payments and the bribing of local forest officials or the securing of protection from high-ranked political figures, large-scale illegal logging operations cannot occur without the explicit or implicit consent of those government officials in charge of protecting the forests.²⁰ Indeed, research has shown that forest crime is, in most countries, accompanied by corruption²¹ among regulatory and forest law enforcement officials, making it even more difficult to detect and prevent these crimes.²² Forestry officers generally have significant discretionary powers with comparatively little oversight, creating an environment in which corruption flourishes, particularly since government forest officers are paid relatively little, compared to the value of forest resources.²³

Illicit practices are often shielded by corrupt public officials, as well as their family members and close associates, making such practices difficult to combat. For example, in Honduras, an independent commission established in 2004²⁴ found evidence that investigations into illegal logging on the part of a number of the country’s largest timber companies were halted by the Assistant Attorney General just as prosecutors were reviewing relevant documents that were in the possession of the state forest administration agency. When the public prosecutors resumed their work the next day, the documents had mysteriously disappeared.²⁵

Studies led by non-profit organizations working in this sector have found that illegal logging is linked to corruption at the highest levels of government. This type of corruption (known as “state-capture corruption”) requires different enforcement methods than those used in combating other forms of corrupt activity.

In Brazil, top officials in the State Environmental Agency (responsible for the logging industry) and in the former and current state governor’s administrations have been implicated in a huge illegal logging operation that caused an estimated US\$500 million in damage to the Amazon rainforest. In May 2010, the following officials were arrested for alleged participation in the scheme:

- The chief of staff and former aide of the current governor of the state of Mato Grosso
- The former Environment Secretary under the previous governor
- The former Deputy Secretary of Environment and current Deputy Secretary of the State Rural Development Agency

19. WWF 2005.

20. Global Witness 2007. See also Center for International Policy 2005.

21. The term “corruption” is meant to include the offenses outlined in Articles 15 to 22 of the UNCAC: active and passive bribery of national public officials; active and passive bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation, or other diversion of property by a public official; trading in influence; bribery in the private sector; and embezzlement of property in the private sector.

22. While corrupt PEPs may constitute a small portion of the entire number of PEPs, a single corrupt PEP’s behavior can have a disproportionate impact on a country or region.

23. Contreras-Hermosilla 2001.

24. The commission was established by Executive Decree of the Honduran government in October 2004.

25. Center for International Policy and Environmental Investigation Agency 2005, p. 15.

- The State Environment Agency's GIS coordinator
- The Assistant Secretary for Climate Change in the State Environmental Agency
- The wife, son-in-law, and two advisors to the President of the Legislative Assembly.²⁶

Furthermore, corruption is not only a concern in timber-rich “producer” countries. Corrupt actors in “consumer” countries also play a role in the flow of illegal timber. For example, customs and other officials often take bribes in exchange for permitting the import of illegal timber without payment of customs or duties, and for helping it to reach its ultimate destination. In addition, companies that pay bribes to corrupt officials in producer countries may be based in consumer countries.

Another cause of the failures of the criminal justice system is a misplaced focus on low-level criminals engaged in illegal logging, rather than the criminal organizations or intermediaries ultimately responsible for these crimes. These criminal organizations are sophisticated, well-organized, and have access to an abundance of resources with which to fund their illegal activities. In many countries, illegal logging is controlled by powerful syndicates with high-level political connections;²⁷ while in other places, links can be seen between illegal logging and criminal organizations known to be involved in drug and human trafficking and other crimes. These organizations are known to demand protection money from those who buy the illegal logs, who, in turn, simply regard this as an additional cost of doing business—in the same vein as transportation costs and customs duties.²⁸

With such sophisticated criminal organizations in control of large-scale illegal logging, lower-level criminals should not be the target of criminal justice. Law enforcement is not the best way to address the problems posed by these lower-level criminals, who often resort to crime in response to extreme poverty and a lack of other options. Instead, a more effective way of addressing the root causes motivating actors at this level may be to put more energy into prevention and into combating poverty. Indiscriminate arrests or needless harassment of poor people—even of those who might, because of exploitation and manipulation, be involved in illegal activities—undermines the credibility of forest law enforcement by ignoring the organizations and “masterminds” in control of the illegal activity. It also misleads the public by suggesting that concrete action is taking place—while, in fact, the powerful masterminds behind illegal logging operations remain protected. In some of these cases, corrupt officials may intentionally be leading investigators away from more important targets; in others, the harvesting of low-level offenders is given priority because, lacking resources or “friends” in positions of power, they are easy to apprehend and prosecute.

It is important to note that there are many further explanations for the failure of forest law enforcement, including those specific to each jurisdiction. It should also be

26. Neme 2010.

27. In Cambodia, to avoid cutting and log transportation moratoria, these organizations have used plantation developments as a pretext to clear-cut forests and log outside of the plantation boundaries with impunity. In addition to the plantations themselves, they have sawmills, numerous factories in other locations to assemble plywood, and a nationwide timber transportation service, often involving military trucks bearing license plates from the Royal Cambodian Armed Forces. Global Witness 2007.

28. Khatchadourian 2008.

pointed out that development assistance directed at helping governments address illegal logging seldom includes strengthening of the criminal justice system. Although recognized since 2006 that a multifaceted approach is needed resources have remained insufficient to address the challenges encountered by law enforcement. Few involved are willing to wrestle with the difficulties of getting the state to mobilize the forest law enforcement system. As a result, the message sent to criminals is that forest resources are open for exploitation on whatever terms operators wish to pursue.²⁹ In pleasant contrast, the European Union-funded European Neighborhood Policy Instrument East Countries plus Russia FLEG Program, has undertaken some specific interventions to enhance forest law enforcement in several of the participating countries. Examples include assessing the efficacy of anti-corruption safeguards, providing in-service training for forestry officials, and preparing a study on the criminal liability of illegal logging.

No matter how difficult it might be, the criminal justice system needs to be rehabilitated and incorporated into any strategy to combat illegal logging. Only substantial punishment and/or confiscation of the proceeds generated by criminal activity—including corruption—will clearly demonstrate to criminals and the public alike that these acts will not be tolerated. Likewise, strong and powerful criminal organizations cannot be taken on without the support of the state, as manifested in the criminal justice system. Without a genuine threat of prosecution and punishment, these criminal organizations will operate with a sense of impunity and will continue to develop their illegal activities for as long as they remain profitable. Significant penalties and prison time are required not only to punish the present offender, but also to deter potential future offenders—whether they be individuals who could face imprisonment or corporations that could not only be prosecuted but also be rejected by increasingly environmentally aware customers and consumers. In addition, to have any effect, criminal justice remedies (such as the confiscation of proceeds) must be regularly and forcefully applied against those responsible for forest crime—including government officials and the businesses that bribe them.

One important criminal justice remedy is for forestry officials, investigators, and prosecutors to investigate the financial aspects of the crime while simultaneously building a case relating to the specific forest crime. This may be particularly important where organized crime is involved. Conservative estimates indicate that approximately 130 million cubic meters of roundwood (both hardwood and softwood), valued at US\$12 billion annually, originates from sources that are either illegal or suspicious.³⁰ By concentrating on the financial aspects of criminal enterprises, law enforcement officials are not only better able to investigate and discover the full scope of the criminal activity—how much timber is being harvested and how much money is being generated—but also where the proceeds are hidden, and who has been involved in recycling those proceeds into the legitimate economy. This knowledge enables prosecutors to proceed with confiscating and actually recovering the ill-gotten gains. Stripping criminals of the proceeds of their crime raises the cost of conducting this illegal business and consequently helps to deter further criminal activity. Another important benefit of this approach is that, in

29. Interestingly, in contrast to the illegal logging issue, advocacy related to control of the endangered species trade is much more aggressive in its approach. See, for example, "Wildlife Trade: A Handbook for Enforcement Staff" (scanned PDF, 5.3 MB) Vivek Menon, Raj Panjwani, Pranav Capila, Aarti Sharma, Madhumita Ghosh (August 1994), 42pp.

30. Seneca Creek Associates 2004.

Box 2.1. Typical Failures of Criminal Justice

A case involving police commissioner Marthen Renouw of Indonesia demonstrates the failures of the criminal justice system. He was arrested in April 2005 during a crackdown on illegal logging and his case was transferred from Papua to Jakarta in an attempt to prevent the trial being affected by his substantial personal influence in the locality. Although a strike force identified suspicious transactions involving five different bank accounts, the police looked at only one of these. This account revealed 16 suspicious transfers totaling US\$160,000 from people linked to two companies involved in illegal logging. The police did not examine the other accounts or Renouw's other assets—including properties in Jakarta and Bali and other investments. Renouw was charged under anti-corruption and anti-money laundering laws. When brought to trial, the prosecution sought only a three-year jail sentence and a fine of US\$5,400. Renouw was acquitted. The judges blamed missing testimony from a witness, though some legal experts claimed that there was sufficient evidence for a conviction without the testimony. The prosecution's appeal against the verdict was then denied because it was late.^a If the criminal justice system had functioned properly in this case, all of Renouw's accounts and assets would have been examined to determine whether they were the proceeds of crime—that is, property obtained through the commission of illegal logging. If they were found to be so, the assets would then have been confiscated, and the prosecution may have identified additional transactions or evidence that would have resulted in a conviction and a more significant jail term.

a. Environmental Investigation Agency and Telepak 2007, p. 9.

certain circumstances, the state can apply these confiscated assets to fight illegal logging or for other law enforcement purposes.

There are important benefits to be gained from an efficient criminal justice system in the fight against illegal logging. Criminal justice is an indispensable pillar of any viable strategy to protect forest resources. Such an approach requires a full consideration of the scope of the criminal activities involved, and a clear understanding of the actors that need to be mobilized.

2.2. Illegal Logging: A Basic Typology

Illegal logging is by far the most widely recognized form of forest-related crime. Other crimes that could be addressed by the criminal justice methods discussed here include wildlife poaching and trade, wild-land arson, and encroachment onto forest land. Corruption involving public forest officials, as described above, is often intimately linked with all of these crimes.

Definitions of illegal logging vary widely. Some people use the term to refer to a relatively narrow set of activities relating to the harvesting of timber either without the required government permits or in violation of those permits. Others use it more broadly to cover a range of legal violations related to the harvesting, transport, processing, and trade of timber and the illicit evasion of taxes and fees on the logs and processed woodcuts generated.³¹ Even in its more narrow definition, illegal logging involves a range of activities that violate laws governing the harvesting of timber. If violations of these laws are prosecuted, they are often prosecuted by administrative agencies other

31. See Kishor and Damania 2007, Contreras-Hermosilla 2002, and Calister 1999.

Box 2.2. Illegal Logging in Indonesia

Indonesia has struggled with illegal logging for decades. During the Suharto New Order regime, capture of economic rents from forestry was institutionalized and essentially sanctioned among a small number of elites who were able to benefit from their privileged access. Since the collapse of the New Order only a very few successful prosecutions against Suharto cronies in the forestry sector have been brought forward and there has been little recovery of stolen assets.

In the post-Suharto period, forest policies in Indonesia have been in flux, including a period of marked decentralization of control over resources and a retrenchment from the decentralization. Throughout this period, illegal logging and various forms of forest corruption have taken on new priority and been the subject of much greater public debate and scrutiny. Policy makers from the president downward have instituted and endorsed a series of programs and policies addressing forest law enforcement and governance, and there has been strong donor support both for government and civil society efforts.

Unfortunately, data suggest that patterns of law enforcement efforts in Indonesia generally follow the global pattern suggested in this report: relatively few specific cases of illegal logging are detected; fewer are pursued with detailed and professional investigations; most cases that are pursued are against relatively low-level criminality as opposed to high-level offenders and corrupt officials; few of the cases that do proceed result in significant penalties, and seldom are public assets recovered. This is well illustrated by the table below which summarizes the results of cases pursued by the standard law enforcement system.

Year	No of Cases	Investigation	Prosecution	Conviction
2002	1,031	n.a.	0	0
2003	971	n.a.	0	0
2004	15 ships	n.a.	1	1
2007	574	n.a.	437	34
2008	404	154	24	14

Source: Laode M. Syarif, Partnership for Governance Reform Presentation for U4 Workshop November 2011.

More notably successful has been the work of the Indonesian Anti-Corruption Commission (KPK). As of May 31, 2010, the KPK has undertaken pre-investigation of 316 cases, has further investigated 171 of these cases, has prosecuted 139 of these cases, and has successfully executed 114 prosecutions. In the period 2004 to 2011, a series of corruption cases have been investigated by the KPK involving high-ranking officials. These include 43 members of parliament, 10 ministers or heads of a ministerial level, 10 provincial governors, 20 mayors and heads of districts, 3 ambassadors, and 1 judge. In terms of the recovery of state assets, US\$18 billion is estimated to have been gained from prevention activities, while US\$100 million is noted to have been gained through law enforcement activities. The marked differences in impact between KPK and routine prosecutions is suggestive of the potential of the approach advocated in this study.

than the prosecutor's office. This is because they are treated as "quasi-criminal" administrative offenses—resulting in low fines (or none) and minimal criminal sanctions, such as imprisonment. Although the specific offenses vary across jurisdictions, they can be grouped into three broad categories:

- **Illegal products.** Offenses relating to illegal products include the harvesting of protected tree species, such as mahogany (*meliaceae*) or ramin trees,³² as well as (in jurisdictions that employ a felling timber concession system) the felling of trees below allowable size classes. Product restrictions are also sometimes advanced on the basis of value added (logs, cants, sawn wood, and so forth).
- **Illegal locations.** Offenses relating to illegal locations typically include the harvesting of timber in locations where logging is prohibited or in locations without a valid permit, whether on private lands, community-owned forests, or state-controlled forests. It also includes felling trees from prohibited sites within concessions areas, such as areas with steep slopes or those located close to rivers or streambeds.
- **Illegal practices.** Offenses relating to illegal practices associated with commercial timber harvesting typically involve a failure to comply with a jurisdiction's laws and regulations governing the behavior of forestry concession-holders. Examples include failing to meet affirmative obligations to file forest management plans, failing to conduct social and environmental impact assessments, and failing to perform post-harvest reforestation activities. They may also include practices like operating or transporting logs without legal permits.

This basic categorization of illegal logging offenses into those relating to illegal products, illegal locations, and illegal practices provides a framework that can be used to inform an analysis of conduct in a particular case—whether in the course of detecting, investigating, or prosecuting illegal logging. For example, if there is evidence relating to a violation involving illegal locations, prosecutors, and investigators should consider whether there are any illegal products or illegal practices that are also involved. After this basic analysis, they should think about the particular crimes involved (including the elements of each of these crimes) to determine whether they can prove these offenses and obtain a conviction.

2.3. The Criminal Justice System: Relevant Actors

Criminal justice systems, whether in civil law or common law countries, revolve around the detection of a possible crime, its investigation, prosecution, and sentencing/confiscation. Each of these functions involves different professionals who need to work together so as to ensure the adequate and effective treatment of a case. Indeed, law enforcement is effective only when it is carried out as an *integrated* process—when intelligence about possible criminal activity is collected, analyzed, and disseminated to criminal investigators, who can then competently develop the evidence needed to prove that a crime has been committed and work collaboratively with prosecutors to obtain the conviction. Ideally, these prosecutors will be skilled in preparing the case for presentation to the court, and will be able to pursue those cases that, in their view, make the most effective use of resources in punishing past crime and in helping to prevent future crime. How well this is done depends, in large part, on how well the key stakeholders can coordinate their different functions into a continuous and single-minded process. With respect to forest

32. Both natural mahogany and ramin are CITES-controlled species, and international trade of these timbers is therefore prohibited. A far broader range of species will commonly be protected or restricted under national laws.

law enforcement, the key players involved will be forestry officials, financial intelligence units, investigators, prosecutors, and judges.

Forestry officials are instrumental in detecting illegal logging activities. Although they are often peripheral to the criminal justice process, foresters are in the best position to provide intelligence about crimes relating to the harvesting of timber because, after all, most of these crimes start in the forest. Most illegal logging activities go undiscovered—but when they are detected, it is commonly due to the actions of forest rangers engaged in routine monitoring and inspection. Other sources of detection include informants, industry studies showing wood input/output estimates, aerial surveillance, and satellite detection.³³ However, foresters rarely have specialized legal or police training, and they generally lack the skills or equipment for maintaining evidence and interviewing witnesses. Forestry officials also play an important role in the detection of forest crime through forest management systems. Such systems may include labeling methods that can be read electronically or through radio signals, as well as state-of-the-art methods for identifying species or geographic origin using genetics, such as DNA extraction or DNA bar-coding.³⁴

Foresters are often poorly paid compared to other enforcement positions, and they often lack some of the most basic equipment needed to properly detect crimes and detain suspects—including uniforms, vehicles, fuel, weapons, ammunition, field quarters, and radios. In some countries, forestry officials have no enforcement powers at all, and must refer all suspects and all enforcement actions to the police. In other countries, forestry officials have only limited power to enforce forestry laws. In addition, since such officials are often involved in reviewing and approving forest management plans and environmental impact assessments before logging begins (including operational plans and harvesting schedules), criminals may attempt to bribe, coerce, or corrupt them.

Police, border guards and customs officials also play an important role in preventing and detecting illegal logging. Customs officials, for instance, are in a position to prevent the movement of unauthorized shipments across borders with false documentation, while the police may encounter trucks transporting illegally harvested timber on the roads. Although the police are often stationed within the communities where illegal logging occurs, if management plans are too complex, they may lack the ability and evidence they need to determine whether raw timber on a truck was logged illegally—unless, of course, the timber itself is of a particular size or species that may not be logged. They may also be presented with forged transport permits. Finally, determining the guilty party—whether it be the harvester, driver, contract company, managing company, sourcing company, or individuals present within these companies—is often beyond the capability of forestry and police officers or local investigators. Faced with this problem, they often choose instead to take no action: they simply disengage and fail to investigate.

Criminal investigators usually take the lead in analyzing intelligence to identify criminal activity or targets, and in gathering evidence that can trigger the next phase of the process and ultimately prove the criminal offense. This is done through interviewing witnesses, collecting evidence (including forensic or other scientific evidence), and

33. FAO 2005, pp. 77–82.

34. Dykstra et al. 2002. See http://www.illegal-logging.info/uploads/Technologies_for_Wood_Tracking.pdf.

by gathering and analyzing documents, such as financial, public, or business records. In civil-law jurisdictions, the investigation phase is undertaken under the supervision of the investigating magistrate on the case.

One of the most important tasks of a criminal investigator is interviewing suspects. The resulting confessions, or extraction of information and lead intelligence, can be vital in building a case. It is at the end of such interviews that investigators, in consultation with prosecutors, will often decide whether the person moves from the category of “suspect” to “witness” or “participating informant” or “accused.”

Financial intelligence units (FIUs) are also important players where anti-money laundering and asset confiscation is involved. These units are responsible for collecting, analyzing and disseminating suspicious transaction reports (STRs) coming from financial institutions (for example, banks or insurance companies) and designated non-financial businesses and professions (for example, company formation agents, lawyers, accountants, or notaries)³⁵ to law enforcement agencies. Often, these reports provide the first indication of money-laundering offenses involving the proceeds of underlying predicate crimes—which may constitute the profits obtained through illegal logging. Where appropriate, FIUs disseminate their analysis of STRs to law enforcement, who may then initiate a criminal investigation to determine if prosecution is warranted. In such a case, the investigator or prosecutor should be able to make an inquiry with the FIU to see if any large cash transactions or other suspicious transactions have been reported.

Prosecutors generally guide the investigation in consultation with the investigators. The best results are produced when these two parties cooperate and coordinate their efforts from the beginning of the criminal inquiry. This helps ensure that the evidence is admissible (for example, that it meets legal standards of reliability and relevance). In addition, through their work together, prosecutors and investigators can develop a coherent strategy for the investigation. This, in turn, helps determine the prosecution’s courtroom strategy and increases the chance of obtaining a conviction. Like the investigator, the prosecutor must determine which offenses apply, which crimes can be proven, and who is to be charged from among the potential defendants—whether they be the harvester, driver, contract company, managing company, sourcing company, or individuals present within these companies.

When presenting a case at trial, one of the prosecutor’s most important tasks is the synthesis of various strands of evidence into a coherent structure. He or she must methodically build the case for conviction through each new piece of evidence, presenting it in a manner that is clear and logical, and that falls within the applicable procedural rules. Often, the prosecutor must also educate the court about which laws apply. The prosecutor must therefore have sufficient expertise in the procedure that dictates how that evidence must be brought before the court, as well as a detailed understanding of the particular laws that apply and, where forest regulations are at issue, the overall regulatory scheme. It is the prosecutor who bears the burden of convincing the court that the accused committed the crime as charged—and the prosecutor must link that criminal

35. The glossary to the 40+9 FATF Recommendations on money laundering and terrorism financing include in the definition of “designated non-financial businesses and professions” the following entities: casinos (which also include internet casinos), real-estate agents, dealers in precious metals and precious stones, lawyers, notaries, other independent legal professionals and trust and company service providers.

activity to any proceeds to ensure confiscation. Of course, these tasks will be impossible if investigators, police, and foresters do not gather and preserve the evidence needed to prove the offense in court.

Prosecutors in this area also need experience with particular evidentiary problems that frequently arise in forestry cases. For example, to show that a tree was cut in an area where logging is not permitted, the prosecutor must prove that a confiscated log came from a particular stump located in the area in question. The prosecutor could use DNA matching, but that is often too expensive. If a piece of the log is to be matched to the stump, chain of custody for the piece must be proven in court, and witnesses must testify to establish that the piece came from that particular log and matches that particular stump. This is particularly challenging in countries that do not permit photographic evidence. In addition to such technical problems, prosecutors may also be faced with evidence that is not admissible in court because the forest rangers or other investigators taking the evidence did not have sufficient training to meet evidentiary requirements.

Judges ultimately decide whether the defendant is guilty or innocent, and whether any proceeds of the crime may be confiscated. In this process, they must also make a number of other decisions—for example, whether the evidence offered by the prosecutor or defense attorney is admissible (that is, meets certain legal standards making it eligible for consideration) and whether the prosecutor has presented sufficient evidence to convict the accused. Judges are also responsible for imposing punishments.

These major actors in forest law enforcement have not, traditionally, worked well together, and their lack of cooperation has often obstructed effective enforcement.³⁶ If each of these stakeholders was to have a more detailed appreciation of the role of the other players, cooperation would undoubtedly improve, helping to remove one of the key impediments to conviction—lack of communication between the various parts of the system.

36. For example, a study of four different countries found that one common challenge impeding effective enforcement was poor interagency cooperation. One of the main causes of ineffective enforcement in Mexico was “poor collaboration among environmental enforcement agencies”; in Brazil, it was “jurisdictional confusion”; in Indonesia, a “lack of coordination between agencies and between local, provincial, and central offices of single agencies; and, in Palawan, Philippines, a “lack of interagency coordination” was to blame: Akella and Cannon 2004.

Using the Law to Better Combat Forest Crime

In order for the quality of forest law enforcement to be improved, the actors involved—whether on the forestry side or in criminal justice—need to develop a better understanding of the wide range of laws that are available for prosecuting those responsible for illegal logging. If the actors involved in the system better understand the types of crimes committed in the course of forest crime, and if they also fully understand the benefits of certain criminal procedural tools, they will be better equipped to fulfill their role at each stage of the criminal justice process: the investigation and gathering of evidence, the prosecution and presenting of the case against the accused, the sentencing of the convicted criminal and the confiscation of the proceeds of the crime. It is important that prosecutors should consider all potential offenses as early as possible in the process—illegal harvesting or transportation of logs, conspiracy, or money laundering, and so on. This will provide them with more options in moving cases forward and a range of tools better suited to dealing with criminal organizations.

3.1. Targeting the Full Range of Forest-Related Crime

There are few international conventions that focus specifically on illegal logging. However, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) can be very useful in certain respects. This Convention subjects the trading of species to certain controls for import, export, re-export and the introduction of specific plants and animals. Unfortunately, it contains no international enforcement mechanism, and the 175 states party to CITES must adopt their own domestic legislation to ensure that CITES is implemented in their country, and can be enforced within that jurisdiction. Nonetheless, in the context of the fight against illegal logging, CITES is particularly valuable because it provides a legal basis for international cooperation and the creation of the same crime in multiple jurisdictions around the world.³⁷

Even if a country has not implemented CITES, it will have other domestic laws establishing offenses relevant to illegal logging. In general, the offenses that will be implicated in forest crime fall within one of three categories: (i) offenses related to actual timber harvesting operations; (ii) offenses that criminalize facilitating the illegal appropriation of timber; and (iii) offenses by which the offender benefits from the possession of illegal timber.

37. However, it should be noted that without a listing in the CITES Appendices, it may be impossible for law enforcement agencies in differing national jurisdictions to assist each other.

Actual timber harvesting offenses: There are a wide range of offenses relating to actual timber harvesting, including environmental offenses. Most, if not all, countries with significant forest assets have enacted some form of targeted forest protection law relating to unauthorized harvesting. Environmental offenses, and the penalties associated with them, are typically defined by regulatory or environmental statutes, which are tailored to precisely address the particularities of crimes affecting the forests. These environmental laws may involve illegal products, such as harvesting timber species protected by law;³⁸ illegal locations (including, for example, logging in protected areas like forest reserves);³⁹ or illegal practices, like logging without authorization.⁴⁰ Because these laws are specific, the definition of precisely what is illegal varies across jurisdictions and sometimes even across levels of government within a particular state.

Apart from these forest-specific laws, all countries have general laws that prohibit theft and embezzlement, and both categories may potentially be applied to forest crime, depending on the circumstances of the case. These general criminal laws against property theft, property damage, or embezzlement can and should be used in the forestry context to prosecute criminals carrying on these activities—whether or not environmental regulatory offenses also exist.

Offenses that criminalize the facilitation of access to and profiting from timber: Illegal loggers may also engage in a series of criminal acts apart from illegal logging that will make it easier for them to access and profit from timber. The link between illegal logging and corruption is widely recognized and documented. Corrupt regulatory and forest law officials accept bribes and grease payments in exchange for preferential treatment or protection from prosecution for forest crimes. They also sell forest law enforcement jobs to the highest bidder or accept payments in return for forged documents or permits.⁴¹ These actions may overlap with a number of different offenses prosecuted in the fight against corruption: active or passive bribery of national or foreign public officials; embezzlement of public funds or property; trading in influence (giving an undue advantage with a view to obtaining abuse of the official's influence); illicit enrichment (significant increase in the assets of a public official that cannot be explained by legitimate income); abuse of functions or position (an official takes action or fails to take action in discharging his or her function in exchange for undue influence); bribery or embezzlement in the private sector; concealment of an offense; or obstruction of justice.⁴²

Due to operational complexity and their international dimension, illegal logging operations often involve sophisticated criminal organizations and a whole chain of criminals and criminal activity. For this reason, criminal laws prohibiting aiding and

38. Or, for example, harvesting under- or over-sized trees.

39. Other examples of illegal locations offenses include logging outside of concession boundaries; buying logs that have been harvested outside the concession boundaries; and logging in prohibited areas, such as steep slopes, riverbanks, and catchment areas.

40. Illegal practices may involve extracting more timber than is authorized; logging while in breach of contract obligations; or obtaining concessions illegally.

41. FAO & ITTO, 2005, pp. 95-97.

42. Articles 15 to 25, UNCAC sets out this list of general corruption offenses.

abetting, criminal organizations, and conspiracy can be pivotal tools in any attempt to deal with illegal logging. Conspiracy is an agreement to undertake some illegal act or purpose. While the specifics of what is required to prove conspiracy may differ across jurisdictions, all judges recognize conspiracy as a serious crime, and may impose heavier penalties for related offenses.

Forest crime may also involve violent crimes such as extortion, kidnapping, or murder in the course of illegal harvesting or the transporting of timber. In Honduras, for example, three members of an anti-illegal logging group, the Environmental Movement of Olancho, have been killed since 1996. The group's current leaders have themselves received a number of death threats. In 2001, one of the leaders was forced to move off a road at gunpoint and had a hand grenade held against his chest.⁴³ Similarly, documented reports in Cambodia describe threats of violence against community foresters looking for illegal logging, including death threats and gunshots, and the apparent kidnapping of the managing director of a logging company.⁴⁴

Offenses by which the offender benefits from the possession of illegal timber: Additional offenses may be committed at a later stage in the production chain, once the illegal loggers have harvested the timber and are in a position to reap the profits of their illegal activities. These offenses typically occur during the transport and sale of illegal timber. They include trafficking in stolen goods, receiving or concealing stolen goods, tax evasion, smuggling and other customs violations, as well as money laundering. Money laundering involves, among other actions, the concealment of the source of illegally obtained funds or the manipulation of such funds, so that they appear to be of legal origin. Money laundering may involve placing the proceeds of crime into the financial system, moving illicit gains and transferring them into different assets (as a means of disguising their nature) and integrating the proceeds of crime with the proceeds of legal activities.⁴⁵

In the illegal logging context, smuggling consists of transporting logs (as opposed to other contraband) across borders in violation of the national law or international conventions (such as CITES). It will often involve species whose transport is banned under national law, or export without the appropriate permits. The movement of illegal timber across borders also means that the parties are guilty of avoiding payment of the applicable import or export duties. For example, in Honduras, recent undercover investigations revealed that top companies were exporting 50 percent more timber than they reported.⁴⁶ In addition, significant amounts of cash are often brought across borders undeclared, contrary to most countries' currency controls. Companies are often also guilty of tax evasion, having logged and profited from the timber, but having failed to declare profits and pay the applicable tax. In Indonesia, it is estimated that as much as US\$5 billion is generated through illegal logging; all of the tax revenue on that US\$5 billion is lost.⁴⁷

43. Center for International Policy and the Environmental Investigation Agency 2005, pp. 1–3.

44. Global Witness 2007.

45. Setiono and Husein 2005.

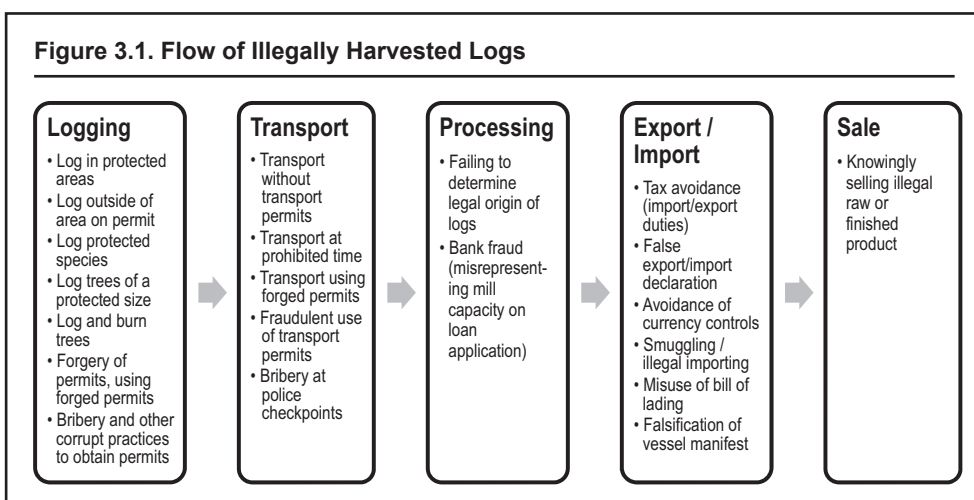
46. Center for International Policy and the Environmental Investigation Agency 2005, p. 19.

47. Kishor and Damania 2007, p. 92.

Most of the above offenses relate to direct involvement in the actual harvesting, processing, or transport of the timber itself. However, law enforcement and prosecutors should not overlook the possibility of filing charges against other parties involved at different stages in the processing and sale of illegal timber. For example, the smuggling and transportation of logs are generally handled by parties distinct from those involved in the actual logging, and the whole process may be overseen by the heads of organized syndicates. All these parties (whether individuals or other criminal organizations) should not be ignored by law enforcement, because eliminating these actors can help to cut off the flow of logs to the market. Moreover, as will be discussed below, these people may be willing to identify other individuals and groups involved in the illegal logging operation in exchange for more lenient sentences. In the money laundering context, the professionals who assist criminals with laundering their money—often bankers, lawyers, accountants, or real-estate brokers—may also be guilty of money laundering.

Finally, in the United States, legislation enables the prosecution of anyone knowingly in possession of illegal timber.⁴⁸ The aim is to impose a penalty on the possession or importation of illegal timber and to curb demand—thereby eliminating (or at least reducing) some of the profits garnered from illegal logging. Other countries should pass similar domestic legislation, criminalizing the importation of illegal timber and plugging an important gap in international law.

A move toward the prosecution of all of these offenses, as well as any others committed to facilitate access to timber and to profit from illegal logging, may begin to ease the burden on prosecutors in this field. It may also provide more “ammunition” for prosecutors negotiating plea agreements with low-level and intermediate-level criminals, (as will be discussed later in this section). In every case, and as early as possible in the investigation, all potential offenses should be considered for prosecution, either in lieu of or in addition to “illegal harvesting” offenses. Practitioners can also review the flow of the logs from harvesting, processing, transport, export, import, and sale (see figure 3.1), to help to quickly identify all possible offenses that may have been committed (see box 3.1).



48. Amendments to the Lacey Act make it illegal to import illegally logged timber: 16 U.S.C. §§3371-3378.

Box 3.1. Classifying Criminal Conduct

Offenses relating to actual timber harvesting operations

- Environmental offenses and unauthorized harvesting
 - Harvesting protected species
 - Harvesting over- or under-sized trees
 - Logging in protected areas
 - Logging outside of concession boundaries
 - Logging in prohibited areas
 - Logging without authorization
- General criminal property offenses
 - Theft
 - Embezzlement

Offenses that criminalize the facilitation of, access to and profiting from illegal logging

- Corruption—giving and receiving bribes and gratuities
- Theft and embezzlement of public property
- Intangible right of citizens to honest services of employees
- Laws against criminal organizations
- Conspiracy
- Violent crimes
 - Kidnappings
 - Death threats
 - Murders

Offenses by which the offender benefits from the possession of illegal timber

- Smuggling
- Trafficking in stolen goods
- Receiving or concealing stolen goods
- Money laundering^a

a. The G20 has urged FATF to include tax evasion as a predicate crime to money laundering.

3.2. Tackling the Financial Dimension

Two of the most powerful tools that can and should be used to combat the financial dimension of illegal logging and predicate offenses are money laundering and asset confiscation regimes.⁴⁹ These two regimes offer a key advantage in that they simultaneously prevent criminals from enjoying the proceeds generated by their involvement in illegal activities and deny them the funds to carry on those activities. Forestry legislation alone does not permit authorities to freeze the accounts of financial backers of illegal logging or of those who profit from it.⁵⁰ Although a detailed review of these systems is not possible within the scope of this paper, the following section highlights some of the advantages of using money laundering and asset confiscation in combating illegal logging.

In general, anti-money laundering laws establish a category of offense that criminalizes the movement or transfer of any funds that constitute the proceeds of a criminal offense.⁵¹ Anti-money laundering laws have a much wider reach than forestry laws because they allow for the prosecution of individuals who manipulate the proceeds derived from the illegal harvesting of forests (or other related crimes as described above, known as “predicate offenses”).⁵² The money laundering offense criminalizes participation in schemes designed to legitimize the illicit origin of funds where someone knows—or should have known—the illegal origin of those funds, even if they do not necessarily know which specific predicate offense generated them. This would include, for example, a banker, financial advisor, lawyer, or any other individual who performs a financial transaction with the intention of concealing the illegal origin of their client’s funds. When proceeds of illegal logging activities are invested in real estate, the offense also extends to notaries, real-estate agents and brokers, or other professionals, provided that these professionals know that the proceeds are of illegal origin.

Applying money laundering laws in the context of prosecuting large-scale illegal logging is beneficial in several other respects.⁵³ Money laundering is a separate offense that carries additional jail time and serves as a legal basis for freezing and confiscating

49. Whether criminal or non-conviction based.

50. Setiono 2005.

51. The UNCAC in its art. 23 defines money laundering as (i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. Subject to the basic concepts of domestic legal systems, UNCAC calls for including in the definition of money laundering (i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and (ii) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offence [...]. This definition was retained by the FATF Recommendations, now adopted by about 170 countries and jurisdictions.

52. The predicate offense for money laundering is constituted by the underlying activities that generate proceeds, which when laundered, lead to the offense of money laundering. Environmental crime is included as a predicate offense by FATF.

53. See World Bank, 2006; See also Setiono and Husein 2005.

the proceeds of the crime. Also, in many cases, the scope for legal action and the applicable penalties are greater and more severe than those associated with environmental laws. Furthermore, anti-money laundering laws create greater access to financial records and information, which can then help to lay the groundwork for asset confiscation.⁵⁴ The prosecution of money laundering offenses necessarily unites the efforts of financial institutions in detecting suspicious transactions and results in the creation of specialized FIUs.

Anti-money laundering laws and regulations require banks and other financial institutions, as well as designated non-financial entities, to adopt “know your customer” (KYC) policies. These policies are designed to prevent criminals from placing the proceeds of crime into the banking system, and the legitimate economy. This is done through the implementation of customer due diligence (CDD) whereby banks and other entities (called “reporting entities”), require customers to provide identification and verify the information provided by the customers. These reporting entities are also required to develop a customer profile which can subsequently be used to monitor accounts (so as to identify any abnormal transactions, for example)—and to report any suspicious transactions to the country’s FIU. So, in cases involving illegal logging, a bank is required to submit a STR to the FIU whenever it suspects that a customer is involved in a transaction using assets that may be the proceeds of illegal logging. The bank’s suspicion will have been based on the profile of the legal timber customer.⁵⁵

In addition, anti-money laundering laws are particularly relevant to illegal logging cases because they require banks to proceed to enhanced due diligence measures for high-risk customers. These are customers who are more likely to be involved in crime—forestry businesses operating in countries where forest crime is prevalent, or PEPs.⁵⁶ In the context of illegal logging, PEPs are those government officials and other individuals who are in a position to become involved in illegal logging, whether by virtue of their position in a government agency, or because of their involvement in a seemingly legitimate business associated with logging.⁵⁷ Banks should always conduct enhanced due diligence on any customers related to the timber or furniture industry before agreeing to provide financial and banking facilities or services. It should certainly be done on the occasion of any large cash withdrawals (which may be used to pay suppliers, loggers, or bribes) or on receipt of transfer payments from abroad (which may originate from the buyers of the illegal logs).⁵⁸

Governments and other bodies can take a number of actions to facilitate the use of anti-money laundering legislation in the forestry sector. If they have not already done so, countries can criminalize the financial backers of illegal logging and require their banking supervisory authorities to monitor the implementation of these principles spe-

54. World Bank 2006, p. 11.

55. Setiono and Husein 2005.

56. PEPs are more likely than others to be involved in money laundering, so enhanced due diligence is necessary in their case (see Recommendation 6 FATF). See also Greenberg et al. 2010 for further information on PEPs regimes.

57. In addition, the relatives and close associates of such individuals are also considered PEPs since they may be used to launder the proceeds of crime.

58. Setiono and Husein 2005.

cifically by banks that have clients in the logging, plywood, timber, and pulp and paper industries.⁵⁹ Another measure would be for a country to go beyond the international standards and expand the implementation of KYC and reporting obligations to any business or profession that is at risk to being misused for the laundering of the proceeds of illegal logging in its jurisdiction.

The prosecution of money-laundering offenses also allows the scarce law enforcement resources to be targeted on those areas where they will have the strongest effect. Because of their international aspect, these prosecutions facilitate cross-border cooperation—a key component in investigating and prosecuting illegal logging offenders. Timber illegally harvested in one country will often be processed in another, and moneys earned from its sale will often be invested abroad as well. The FATF urges countries to recognize crimes committed in another country as predicate crimes if they would have been such under their own money-laundering laws.⁶⁰ Thus, the fact that the predicate crime of timber theft may have occurred in Country A would not prevent Country B from prosecuting any laundering of the proceeds of the theft occurring within its jurisdiction.

Finally, confiscation laws allow the state to dispossess criminals of the illegal proceeds (property generated from the commission of the illegal activity)⁶¹ and instrumentalities (assets that have facilitated the commission of the criminal activity) of their crime. Confiscation, unlike a penalty or a fine, is a measure that can be pursued before, during, or after criminal prosecution. Generally, the proceeds in question will first be frozen to prevent dissipation during the investigation and prosecution of the case. At the appropriate time, the court determines whether there is sufficient evidence that the assets in question constitute the proceeds of a crime. If so, it orders their confiscation. If not, the assets are returned to the defendant along with (depending on the country and the system in place) legal costs incurred in the course of the confiscation proceeding. In the illegal logging context, confiscation laws allow the state to obtain possession of the illegally harvested timber itself, as well as any other property linked directly or indirectly to the criminal activity.

In cases where the actual proceeds or instrumentalities of a crime are no longer available or cannot be located, confiscation laws may also have the advantage of permitting seizure of assets of equivalent value held by the criminal—even if they are of legal origin. This is called “value confiscation.” Value confiscation is particularly useful where the proceeds and instrumentalities of crime are commingled with legitimate assets.

In addition, some countries have implemented measures enabling the state to confiscate assets outside of a criminal conviction. This is called “non-conviction based asset forfeiture” (NCB). NCB allows for assets to be frozen and confiscated not only before, during, or after a criminal proceeding, but also if there is no criminal proceeding or even if the defendant is acquitted. NCB is a proceeding against the property (*in rem*) and not against the person.⁶²

59. Setiono 2005.

60. FATF 40+9 Recommendations, Recommendation 1.

61. Article 2 of UNCAC defines proceeds as “any property derived from or obtained, directly or indirectly, through the commission of an offence.” Property is defined as “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.”

62. Refer to Greenberg et al. 2009 for further information about NCB.

Box 3.2. Benefits of Using Money Laundering and Confiscation Laws

- As an autonomous offense, money laundering carries additional jail time
- Foreign jurisdictions can investigate the predicate offense
- Proceeds of the crime can be frozen, seized, and confiscated
- Law enforcement has access to bank and other financial institution records
- Financial institutions are required to report suspicious transfers and abnormal cash transactions and to identify the beneficial owners of legal entities
- Requires the establishment of FIUs, which receive reports from financial institutions and can provide new channels for international exchange of information
- Facilitates international cooperation
- Where there is an appropriate predicate offense, the use of anti-money laundering laws permits the state to seize and then confiscate the illegally harvested timber and proceeds related to illegal logging
- May allow for equivalent value confiscation
- May allow for confiscation of criminal proceeds outside of a criminal conviction (NCB asset forfeiture)

3.3. Making Effective Use of Law Enforcement Procedures

Criminal codes and rules of evidence and procedure set out the procedures for enforcement, prosecution, and sentencing, specifying the ways in which actors in the criminal justice system may or may not proceed. Criminal procedure law covers, for example, plea agreements, witness testimony, rules for evidence collection, and investigation procedures. These codes also contain rules for the use of special investigative techniques, plea agreements, and witness protection programs.

Decisions made at every stage of the criminal justice process will affect whether a conviction and significant penalty will be imposed and, further, whether it will be possible to target the “kingpins” ultimately responsible for the crime. Because decisions on the ground at the early stages of the case are so important, key personnel—not just the prosecutors—should be well acquainted with the criminal procedural tools that they may find useful.

Although each country has its own particular procedures and rules, there are several relevant international conventions that address procedural law. At least 144 countries are party to the UN Convention against Transnational Organized Crime (UNTOC), which requires member states to enact anti-money laundering laws, including the means to identify, trace, freeze, and seize the proceeds and instrumentalities of crime for the purpose of confiscation.⁶³ It also provides for special investigative techniques of particular interest in tackling grand criminality, such as illegal logging. These techniques, included as important tools in the 40 Recommendations on Money Laundering issued by FATF, include electronic or other forms of surveillance (interception of telephone communications or access to computer systems), undercover operations, and controlled delivery of the proceeds of crime. UNTOC encourages states to conclude agreements or arrangements with other jurisdictions to cooperate in the use of these techniques where crimes cross national boundaries—as is often the case with illegal logging.⁶⁴ Similarly,

63. UNTOC, Articles 6 and 7.

64. UNTOC, Article 20.

the UNCAC, to which 147 states are party, specifically provides for the investigation of corruption offenses through the use of such techniques.⁶⁵

These techniques are essential for detecting and building evidence against criminal organizations, especially where those organizations span several countries. They are particularly valuable in helping provide important information about the financial aspects of the crime. Few forest or wildlife laws contain specific provisions permitting electronic surveillance, covert operations or controlled delivery operations. However, more general criminal laws—whether common law or set out in criminal statutes—invariably do permit such operations and tend to incorporate the provisions required by the UN Convention against Corruption (UNCAC) and UNTOC.

Witness protection measures are also important tools in dealing with the criminal organizations involved in illegal logging. Often in these cases, some of the most valuable testimony comes from people within the criminal organization who would face serious threats if their cooperation with the authorities became known. Testimony can also come from regular citizens who, unless they had access to witness protection, would rarely come forward. UNTOC therefore calls on parties to protect witnesses in criminal cases from intimidation, threats, corruption, or injury. Similarly, UNCAC requires member states to take appropriate measures to “provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony” concerning offenses covered by the Convention. This may also extend to their relatives and other persons close to them. These measures might include anything from allowing witnesses to testify from a remote location through video-conferencing technology to physically relocating them to an undisclosed location. The United Nations Office on Drugs and Crime (UNODC) has developed a good practices guide describing the available witness protection measures for witnesses in organized crime cases.⁶⁶

To address this adequately, however, the mere passage of a law is insufficient. Witness protection, if done effectively, can be resource-intensive—involving 24-hour protection and, in some cases, permanent relocation. In countries where the population is relatively small, witnesses may even have to be moved to other countries to ensure their safety. Acknowledging this, some countries have entered into agreements to cooperate with one another in helping to relocate witnesses who face serious threats as a result of their testimony in a case. Countries need to devote significant resources to witness protection programs (including funding) and to provide personnel with the necessary training to protect witnesses who are at risk.

Witness protection measures are often required to protect witnesses who provide information as part of a negotiated plea agreement. In cases involving organized crime and corruption offenses, obtaining information from a cooperating defendant through a plea agreement can assist in the very difficult—if not impossible—task of marshalling evidence against those in control. In countries where negotiated plea agreements are permitted,⁶⁷ the accused agrees to admit guilt to a particular charge, often in conjunction with an agreement to cooperate with law enforcement officials and in exchange for possible leniency in the punishment. Negotiated plea agreements may also include an

65. UNCAC, Article 50.

66. For a copy of this guide, see <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

67. Many civil law jurisdictions do not permit plea agreements.

agreement that the individual will not be prosecuted for certain crimes or for a number of counts in exchange for cooperation. The cooperation offered by the accused typically includes the provision of information that may lead to the arrest of other criminals involved in the same transaction, or information that enables authorities to locate and confiscate the proceeds of the crime. Additional benefits for the state include savings on trial costs and avoiding the need to expose security sources, such as informants, in court.

The laws, procedures, and features described in this section can and should be used to fight illegal logging. However, it is evident that resorting to these measures and tools alone will not solve our forest law enforcement problems. If there is to be real progress, new approaches need to be envisaged that improve the efficacy of efforts to combat illegal logging. Drawing from experiences in other areas of crime (such as the fight against drug trafficking, corruption, and money laundering), in the following section we explore policy responses to improve forest law enforcement.

Strengthening Stakeholder Engagement in Forest Law Enforcement

As mentioned above, when dealing with illegal logging, most domestic law enforcement regimes have directed their efforts at low-level criminal activity, involving individuals acting in isolation, rather than addressing the complex and organized criminal enterprises at play. When facing smaller, lower-level crime, a reactive law enforcement system may be sufficient: investigators wait for reports of crime to come to them, and they then contact the prosecutor. However, to address more complex, pervasive, and organized criminal activity, the law enforcement community must act proactively. Investigators and prosecutors cannot sit back and wait for a case to be reported—the obvious fact that large swathes of trees in protected forests are being cut down is a sign that proactive investigation needs to begin. Forestry officials and other key actors (tax and customs authorities, FIUs, and so forth) must actively engage with investigators and prosecutors to discover who is stealing the timber, how they are doing it, and where the offenders are putting the proceeds of their crime. A coordinated response addressing the many features of illegal logging will require strong political will. It will require the backing of high-level officials who will support a shift in policy, priorities, and resources and who will prevent corruption from derailing their efforts.

Although the particular reforms required will vary from country to country, there are certain areas that all jurisdictions recognize need improvement. In this section, we recommend a number of general strategies for remedying the problems in forest law enforcement. We also recommend some specific reforms that can be implemented to further those goals.

4.1. Building Political Will

Raising awareness at the ministerial level: To tackle a crime with as many tentacles as illegal logging, it must be made a priority—and this must be clearly communicated to the public at large and to the officials responsible for investigating and prosecuting these crimes. However, because the attention of leaders and policy makers is taken up by so many other pressing issues, real change is possible only if there is a champion who can ensure that illegal logging makes it onto the agenda and who can ensure continuity of effort and resources.

Because of the nature of this crime, the minister responsible for forestry (whether as head of a separate ministry or as part of, say, a ministry of the environment) should be-

come this champion, stepping forward to carry the issue and mobilize other partners.⁶⁸ In particular, this minister should engage the minister of justice to ensure that illegal logging becomes a real criminal justice priority and is appropriately integrated into the national criminal justice strategy. The champion must also work to secure buy-in from other key stakeholders and interested parties, including:

- The ministry of home affairs, justice, or the Interior (which often oversees law enforcement agencies and investigatory forces)
- The ministry of finance
- The agency responsible for registering and/or regulating companies and other legal entities
- The central bank (because of its involvement in the regulation and supervision of the financial sector)
- Customs agencies (due to the prevalence of smuggling of illegal forest products)
- FIUs (because of their important role in anti-money laundering efforts)
- Law enforcement agencies
- Prosecutors
- Anti-corruption bodies
- Military and intelligence services
- Tax authorities
- Any other body that would directly or indirectly have a stake in tackling illegal logging.

A high-level policy group should then develop an overall strategy based on its particular assets and vulnerabilities—including the type, location, and magnitude of forestry crimes being committed and the availability of resources for combating them. Then, the relevant operational agencies should establish a proactive rank-ordered targeting list. This can be based, for example, on the conservation requirements of the most valuable forests, or on the activities of known criminals, organized crime groups, and/or logging companies (including sawmills).

Designing an adequate criminal justice strategy for illegal logging: To ensure effective integration of illegal logging into the criminal justice system, an analysis and review of each country's existing system is needed. Despite the diversity of different jurisdictions in terms of legal and forestry frameworks, all countries should consider taking steps to revise legislation, allocate resources for training purposes, and develop incentives for practitioners, with the aim of specifically targeting the weaknesses and circumstances that exist in the country. A detailed review of the laws and shortcomings should be made (potentially with the help of the CITES Secretariat, NGOs, or development assistance bodies) to identify those changes that should be made immediately, those that should be made in the short term, and those that can wait until the long term.

Adequate resources must be allocated to relevant authorities and agents: Strategy alone is not enough. Officials must also be given the tools and resources they need to do their job. A country's true priorities are demonstrated not by the rhetoric of its politicians, but by its national budget. The present level of funding in most countries is not enough to allow existing agencies to tackle a crime as complex and multifaceted as

68. However, it is worth mentioning that the lead in carrying the illegal logging issue forward can also be taken on by the Prosecutor General, or the Ministries of Justice or Interior.

illegal logging. Large-scale illegal logging enterprises rely on a vast network of participants. Consequently, to combat them successfully requires a higher level of resources. An inadequately funded forest service, investigative unit, or prosecutor's office cannot be expected to produce significant results.

In many countries, forest law enforcement officials lack the equipment they need to undertake effective enforcement action in the field. In Indonesia, World Bank staff learned that, although police and forestry service officials were sometimes given GPS coordinates identifying the exact location of illegal logging activities, they were unable to take appropriate law enforcement action because they had no helicopters or planes to provide rapid transportation to the area. Failure to provide sufficient resources also leads to a lack of dedicated and specialized personnel. For example, in Honduras, only six State Forestry Administration officials are assigned to monitor logging activity for the entire Rio Plátano Reserve, which spans 800,000 hectares. As of 2005, the Environmental Investigation Agency observed widespread clear-cutting and burning in certain areas of the reserve, including the core zone.⁶⁹

Such failure to devote sufficient resources to forest law enforcement agencies encourages corruption and renders even basic law enforcement tasks impossible. In many countries, forest law enforcement officers earn less than other law enforcement employees. This lack of resources also means a lack of essential equipment. Forest law enforcement personnel often have only poor-quality or partial uniforms. They lack vehicles for transportation through the forest, or if they have vehicles, they lack fuel. They often rely on antiquated weapons and have limited ammunition. They lack adequate field quarters and have no capacity to put up roadblocks or give chase—and they sometimes even lack radio communications.

Agencies require greater financial resources if they are to implement new strategies to overhaul and remedy the problems currently crippling the enforcement system.⁷⁰ At the practitioner level, salaries for prosecutors, investigators, and forestry personnel must be improved to help fight corruption. Other important incentives, such as the prospect of merit promotion (replacing the need to buy a job or promotion) and the appropriate recognition of successes, will be created only if illegal logging takes on greater status as a priority.

Resources should also be allocated to specialized training for forestry and criminal justice personnel. Studies have shown that officials at every stage of the process lack sufficient training to develop the skills and knowledge they need to help prosecute these crimes. They also show that investment in the training of existing staff members could have an impressive effect on the quality of detection.⁷¹ In particular, prosecutors need to be trained specifically to deal with environmental cases. A four-year study by the Center for Conservation and Government, related to illegal wildlife hunting and trade, found that those prosecutors in Selva Maya, Mexico who were responsible for environmental crimes required training to understand the nuances of these cases, including the type of evidence required, the details of the applicable legislation, and the concept of environmental damage. The study found that many cases were returned without approval because the arguments were not well-founded in legislation, the cases were not well drawn

69. Center for International Policy and the Environmental Investigation Agency 2005, p. 2.

70. Akella and Cannon 2004, p. 22.

71. Akella and Cannon 2004, p. 24.

up, or the sanctions were inadequate.⁷² Anti-money laundering and asset confiscation law is likewise a specialized field. As with environmental crime, targeted allocation of resources and training will be required to establish a network of practitioners with the necessary knowledge and skills.

Further specialized training is also required for forestry personnel dealing with forest crime. This is because important evidence may often be exposed to the elements, and crime scenes in the forest may be seriously disturbed. They also face special problems of species identification or the handling of evidence, which demand an understanding of specific techniques. Forest law enforcement differs from general law enforcement in that forestry agencies are responsible both for law enforcement on the ground and operational management functions, such as compliance monitoring.⁷³ Forestry officials are also responsible for monitoring concessions and compliance with land and forest management plans, as well as for implementing tracing mechanisms that help to identify species and the geographical location of timber and wood.

As they fulfill these functions, forestry officials need to better understand the role that evidence may play in a future prosecution. They should therefore receive training covering lawful evidence-gathering tactics and the types of evidence that are valuable to prosecutors. Without such guidance, experience has shown that officials on the ground do not provide important supporting information, like witness statements and photographic evidence. This renders prosecution more difficult—with the result that many cases never move forward because of a lack of evidence.⁷⁴

Box 4.1. Funding Success

Even a small increase in funding can make a significant difference. World Bank staff observed that, in 2006, Cambodian forest rangers were not provided with the basic equipment necessary for minimal enforcement actions. The rangers did not have transportation, or if they were lucky enough to have a motorcycle, they often had no money for fuel and were forced to pay for it out of their own funds. They were equipped only with outdated weapons and a limited quantity of bullets. In comparison, illegal loggers usually had access to modern weaponry, including automatic weapons. It was not until an NGO provided funding of US\$100 per person per month for a specialized unit to deal with illegal logging that they acquired better uniforms, weapons, and vehicles. This specialized unit later caught members of the prime minister's security force transporting illegal logs, who offloaded them and fled.

Tracking successes in the criminal justice response: Strengthening criminal justice requires important resources (including staff, time, and financing) while winning cases is never guaranteed. The political economy of resource allocation in this area necessitates that countries consider designing and implementing a strategy with clear and reasonable objectives and timelines for completion, as well as creating appropriate assessment tools to track the success of the reforms in the criminal justice system. These tools would allow following up on the status and resolution of forest-related cases, establishing accountability lines, and obtaining objective data to determine future allocation of resources. Simple monitoring of cases—to obtain data on the number of prosecutions

72. Akella and Cannon 2004, p. 25.

73. The World Bank 2006, p. 15.

74. Akella and Cannon 2004, p. 21.

and convictions or on the amounts confiscated—is an essential first step. Without some measurement of success, the actors in the system will lack motivation. As reforms are implemented, statistics tracking the number of complaints, prosecutions, convictions, fines, and confiscations will help to determine what efforts are working and which areas require continued improvement.

A set of reasonably achievable goals, with benchmarked tasks and milestones, should be defined. The key is not the *quantity* but the *quality* of targeting, investigation, prosecution, conviction, sentencing, and confiscation. For example, in law enforcement, a common indicator is the percentage of solved and unsolved crimes and the number of crimes resulting in charges. In some situations, indicators for prosecutors might include the number of cases per prosecutor, the number of appellate cases per prosecutor, and the number of cases resulting in a guilty plea, trial, or conviction.⁷⁵ When it comes to illegal logging, the investigation, prosecution, or sentencing of one or two significant cases per year may be a sufficient indication of proper use of the criminal justice system in this area. This is because—provided that these cases target high-level corrupt officials or those truly in control of criminal organizations—they may become a key deterrent to rampant illegal logging.

Agency case-tracking systems that focus on forest-related cases are also very helpful, because they permit tracking of a case from its first entry into the system. They also help to identify interplay with other cases, and enable a broader analysis of the evolution of cases and problems within the system—identifying, for example, where cases may stall or ultimately fail. These case-tracking systems also help move cases along by tracking deadlines required for legal procedures.

4.2. Improving Domestic Cooperation

As we have established, the multifaceted nature of illegal logging operations demands strong coordination and cooperation between the institutions or agencies that intervene at different stages of the process. Adequate enforcement requires that the agents in charge of detection make information available to other players so as to build successful cases. The example in Box 4.2 illustrates how this challenge affects the forestry sector and demonstrates the need to develop and implement procedures that guarantee a flow of information for effective law enforcement.

Box 4.2. Failure to Coordinate

A satellite mapping program in Indonesia, funded by the European Union, successfully gathered information and satellite images of Indonesia's remote forests. This information was intended to help improve detection of illegal logging over large areas which were difficult to patrol on a regular basis. However, although the images and information were available, they were not being acted upon and laws were not being enforced. World Bank staff learned that no legal cases were initiated because there were no procedures in place to ensure that the satellite images (or analysis of the images) were disseminated to forest law enforcement agents or the prosecutor's office. Without this information, illegal logging cases detected could not be further investigated and prosecuted. Formalizing procedures for the exchange of information obtained from tools already in place would have been a simple and cost-effective step that could have led to significant results.

75. International Consortium on Combating Wildlife Crime, *Wildlife & Forest Crime Assessment Toolkit*.

Box 4.3. Prosecution of Illegal Logging in Virachey National Park, Cambodia

Virachey National Park—"The Dragon's Tail"—is one of the top-priority areas for conservation in Southeast Asia. It covers 3,325 kilometers and protects flora and fauna that are a major focus of international conservation efforts. Its vegetation, dominated by evergreen forest, is more or less undisturbed. However, in November 2004, government officials working with the World Bank and NGOs discovered a massive illegal logging operation in the park. It is estimated that the deforestation cost Cambodia over US\$15 million.

The successful prosecutions of 11 police officers and government officials in the Phnom Penh Municipal Court resulted in sentences of five years imprisonment for illegal logging and bribery. Seven officials tried in absentia were sentenced to six to seven years' imprisonment. These officials included those at the highest levels of government, including the governor of one of the largest provinces in Cambodia.

These results were achieved through unprecedented cooperation at all levels of government—including provincial and military authorities—and both formal and informal international cooperation with officials in Laos and Vietnam. At the ministry level, the Ministry of Forestry and the Ministry of Environment collaborated with the Ministries of Interior, Defense, Justice, and the Prime Minister's office to ensure prosecution of those involved.

One critical tool for strengthening capacity and coordination in identifying, investigating, and prosecuting illegal logging cases is the use of interagency and interdisciplinary groups. This enables participants to combine different skills, competencies, and resources and focus them on a common objective. Some jurisdictions create a high-level policy counsel and then an operational group to target, investigate, and prosecute cases. The operational group may be called many things: a "Special Unit," "Task Force," or "Strike Force." The name is not important, but the authority and resources that the unit has at its disposal are.

Formalizing interagency cooperation at the policy level: As we have previously discussed, forestry officials, law enforcement, prosecutors, and FIUs are all important players in tackling illegal logging. Customs authorities and the commerce ministry are also key partners. As the authority responsible for controlling the flow of goods in and out of the country, customs agencies are uniquely situated to detect smuggling and transport offenses, as well as trafficking in prohibited species. A multidisciplinary approach is therefore necessary to mobilize each relevant agency and to maximize domestic cooperation—both at a policy and an operational level. Only a multidisciplinary response will ensure that these crimes are detected in forests, at borders, and at financial institutions, and that the ensuing investigations and prosecutions are successful.

In certain cases, interagency cooperation can be formalized by the creation of a body to advise the stakeholder ministries in drawing up and implementing an integrated criminal justice and forest protection strategy. Such an interagency policy group may be useful in a number of ways: for example, in identifying key partners, in establishing guidelines for the integrated strategy, and in recommending the allocation of resources to immediate, short-term, and long-term goals. Where appropriate, such groups should have the ability to report quickly to their political counterparts to maintain momentum, legitimacy, and guidance. Members of such a group might include officials from law enforcement, forestry, the prosecutor's office, tax, customs, immigration and commerce offices, the central bank, FIUs, and any anti-corruption agencies. The ultimate goal is

that these policy discussions lead to operational case work, investigation, prosecution, and confiscation involving significant cases.

Such groups have been used with success to improve domestic cooperation in other areas involving sophisticated and multifaceted crime, such as money laundering and international organized crime. One such interagency task force was created in Albania in 2000 with the help of a World Bank forestry project. Its mission was to protect forests at the national level. The task force was chaired by the Ministry of Forestry, but involved many others—including the Ministry of Public Economy and Privatization, the Ministry of Local Government, the Tourism Development Committee, the Ministry of Environment, the Directorate for State Police within the Ministry for Public Order, the Directorates of Taxes and General Customs within the Ministry of Finance, and the Ministry of Justice.⁷⁶ Over time, its activities resulted in increased local collaboration in addressing illegal logging in the field (box 4.3).

Cooperation between the forestry sector and FIUs to improve detection: Domestic cooperation is also important at the operational level, where it can be used both to improve detection and to suppress illegal logging. When tackling criminal organizations and large-scale illegal logging, investigators and prosecutors must act proactively in the detection phase of the law enforcement process—particularly where money laundering of the illegal proceeds is taking place. Interagency domestic collaboration will facilitate access to the knowledge necessary to develop typologies of transactions involving the laundering of the proceeds of illegal logging. Banks need to understand the profile of timber customers to discern whether or not these customers are, in fact, involved in illegal logging. Cooperation between FIUs and the forestry sector is therefore necessary to create a profile of the “red flags” or “warning signs” that a customer’s transactions may be related to illegal logging and other environmental crimes. For example, the profile of timber customers engaged in illegal activity would likely involve large cash withdrawals to provide funds to pay loggers and suppliers, and transfers from foreign jurisdictions in payment for illegal timber.⁷⁷

Given the links between corruption and illegal logging, forestry officials can also contribute to an effective PEPs regime to help in the fight against corruption by officials in the forestry sector. PEPs are those individuals who are or have been entrusted with prominent public functions, their family members, and close associates. They represent a greater money laundering risk because of the possibility that they may abuse their position and influence to carry out corrupt acts, such as extorting bribes and misappropriating state assets, and may then use domestic and international systems to launder the proceeds.⁷⁸ Forestry officials can participate in the drafting of guidelines to banks and other reporting entities on filing STRs concerning PEPs and the beneficial owners of accounts related to individuals or businesses involved in the forestry sector.

Forest protection joint investigation strike and task forces: Operational investigative cooperation can also be accomplished through a “logging strike force.” Such a strike force can facilitate interagency, interdisciplinary, and international cooperation and coordination. This is particularly useful because complex, organized crime can only be defeated through a coordinated, organized approach. The creation of strike forces also

76. World Bank 2006, p. 51.

77. Setiono and Husein 2005, p. 16.

78. Greenberg et al. 2010.

demonstrates to the public and those involved in forest law enforcement that there is political will to wrestle with illegal logging. Because these strike forces bring together multiple agencies and work towards a common goal, they contribute to building trust, cooperation, and interagency access to and sharing of law enforcement information.

Such mechanisms need to be based on terms of reference agreed upon by the necessary ministers or president, but do not require the creation of a new agency. To be efficient, strike forces must be provided with adequate authority to undertake investigations and prosecutions and confiscation, and should be endowed with the necessary funding. Such forces should target important cases involving high-level corruption and money laundering, and should focus on investigation, prosecution, and the freezing and forfeiture of the proceeds of illegal logging, corruption, and other crime. Depending on what is required, strike forces can be national, regional, target- or case-focused, temporary, or permanent.

In other sectors, task forces have proven to be useful and effective at depriving criminals of the illicit proceeds of their crime. This is illustrated in Box 4.4. In the case of forest crimes, task force members should include investigators, prosecutors, forestry experts, FIU officials, and, potentially, those from local government, commerce, and the ministries responsible for customs, taxes, and the environment. The personnel in this unit should be thoroughly vetted and free from political influence. They should also be experienced and have the expertise needed to investigate and prosecute the full range of illegal logging and money-laundering crimes. In addition, they should be knowledgeable about seeking evidence from foreign countries.

Task forces that bring together officials from differing backgrounds and agencies also have the advantage of encouraging the individual officers to refrain from some of the negative institutional aspects of their home agency—such as corruption or unethical investigation practices. This occurs naturally as a result of the move to new surroundings and interaction with new colleagues. Entering into a new environment, officers no longer know what type of behavior is acceptable and what is not. Task forces therefore provide an opportunity to establish high standards from the beginning. It is essential, in such settings, to have carefully chosen leaders or managers who can set a good example and establish institutional good practices.

Box 4.4. Use of Task Forces

Zambia established a Task Force on Corruption, which included support from the Bank of Zambia. In 2001, the newly elected President Mwanawasa asked parliament to lift the immunity of former president Frederick Chiluba to facilitate the investigation and prosecution of cases arising during Chiluba's time as head of state (1991–2001). Parliament voted 140 votes to zero to do so. With President Mwanawasa's support, a special Task Force on Corruption (TFC) was set up outside the Anti-Corruption Commission to try Chiluba and his accomplices. This special Task Force was composed of people working for the Zambia Police, the Anti-Corruption Commission, the Drug Enforcement Agency, the Zambia Intelligence Service, the Bank of Zambia, the Zambia Revenue Authority, the Director of Public Prosecutions, and the Auditor General. The Task Force was supported financially by the donor community, as the Zambian government indicated that it had no financial resources to support the task force. The work of the Task Force led to the prosecution of 27 cases and resulted in 23 convictions. The total proceeds confiscated were: US\$14 million in real estate property, US\$1 million in movable property, US\$300,000 in cash, US\$17 million in cash remitted to the Ministry of Home Affairs, and US\$3 million in contested property.

Cross-fertilization of experiences and expertise: Domestic cooperation can also be improved using cross-fertilization between the experiences of staff involved in forest law enforcement on the ground and those in the prosecution office, as well as other parts of the criminal justice process. The sharing of experience and expertise will reinforce training provided in these areas by providing actual case experience with a level of detail that is difficult to replicate in training alone. It may also be useful for officials from other agencies in the enforcement chain to take part in the training initiatives of each agency. This will help develop programs that clearly place each part of the system within the broader context. In addition, staff exchange initiatives help develop contacts in other agencies, build relationships, and generally create good paths for communication—hence reinforcing domestic cooperation.

4.3. Improving International Cooperation

Illegal logging is an international crime. The players are typically located either within a “producer” country—often developing countries whose forest resources are rapidly being depleted as a result of forest crime—or a “consumer” country, where timber is transformed into goods. Strong demand for timber encourages illegal logging activities in producer countries. The division between producer and consumer countries is exacerbated by the limits on logging placed by producer countries on their own forest resources—such as the moratorium placed on logging by China in the late 1990s. That moratorium created an unprecedented demand for wood from other countries, and China began to buy huge quantities of wood from abroad, including significant amounts from Russia, Indonesia, and other parts of the world.⁷⁹

The financial aspects of forest crime are likewise international. Because of the advances in technology that permit large sums of money to be transferred across borders with the stroke of a key on a computer—and because of the increasing sophistication of criminals engaged in trans-border crime—countries must learn to cooperate more quickly and closely with one another. When the investigation trail leads to assets held in foreign jurisdictions, investigators and prosecutors must request assistance from that foreign country to help identify the assets and obtain evidence. They must also request assistance in imposing provisional measures to seize or restrain the assets while waiting for a court decision on the request for confiscation. These requests are made through official channels, pursuant to obligations under treaties, regional or international conventions, or mutual legal assistance agreements. Even if a country is not party to the international conventions and has no other treaty in place for seeking legal assistance, assistance may still be obtained through what is known as “letters rogatory.” This is a formal request from a judicial officer in one country to a judicial officer in another country.

Mutual Legal Assistance: One particularly valuable international convention is the UNCAC. With 147 state parties, UNCAC creates common ground for cooperation among countries that are serious about addressing corruption-related crime. It obliges parties to provide one another with “the widest measure of mutual legal assistance” in relation to covered offenses. The UNTOC, the main international convention aimed at curbing international organized crime, similarly requires member states to provide each other with the “widest measure of mutual legal assistance” in investigations, prosecu-

79. Khatchadourian 2008.

tions, and judicial proceedings for covered offenses.⁸⁰ Generally, the types of mutual legal assistance available include requests to take evidence, execute searches and seizures and other measures for identifying, tracing, freezing or seizing the proceeds of crimes. Countries that are party to UNTOC and UNCAC have thus committed themselves to enacting laws that make it easier to prosecute by requiring international cooperation in obtaining evidence and pursuing asset recovery.

A request for mutual legal assistance is made after the investigation has led to a foreign jurisdiction. This procedure is very formal and, unfortunately, it may take a long time for requests to be processed. Nevertheless, they do work and must be pursued to obtain evidence that will be admissible at trial. These formal channels for requesting assistance also apply in enforcing confiscation judgments to repatriate confiscated assets from one country to another.

Apart from formal international mutual legal assistance, informal assistance is a valuable way to secure international cooperation. International cooperation among police forces has long been established through Interpol (created in 1923). The Interpol National Central Bureau provides a vital link between countries and is useful in helping enforcement officials overcome language barriers with their counterparts around the world. More recently however, an informal mechanism for obtaining information and assistance with tracing and freezing assets has been created through the FIU network.⁸¹ Depending on the laws of a particular country, FIUs may be authorized to share information and to take provisional measures (such as a temporary seizure) more quickly than if the action had taken place through the formal process of a treaty or letters rogatory request. In addition, in 2009, the StAR Initiative and Interpol established a database listing focal points and officials in countries that can respond to emergency requests at any time of day or night in cases when failing to take immediate action would result in losing the money trail. To date, 74 jurisdictions are part of the database. These informal channels should be used in the first instance, before a mutual legal assistance request. Informal assistance can provide valuable information needed to make formal requests for mutual legal assistance under UNCAC or the provisions of treaties, and may also help to identify particular requirements of the foreign jurisdiction unknown in the requesting country.

Regional networks: International cooperation can also be improved by participation in and promotion of regional networks. Such groups facilitate the exchange of information and ideas on good practices in prosecuting illegal logging, money laundering, and confiscation efforts. They provide a forum in which forest law enforcement professionals can exchange knowledge and expertise in techniques to defeat the criminal organizations operating with ease across national borders. For example, in the area of confiscation, the Camden Asset Recovery Interagency Network (CARIN) is an informal network of mostly European members whose aim is to increase the effectiveness of efforts to deprive criminals of their illicit gains. The Asset Recovery Inter-Agency Network (ARINSA) for Southern Africa, launched in 2009, is a similar network. In addition, informal peer-to-peer networks foster better cooperation and build trust between jurisdictions for future mutual legal assistance requests or requests for informal assistance. The FATF-Style Re-

80. UNTOC, Article 18.

81. Cooperation among FIUs has been facilitated by the creation, in 2001, of the Egmont Group, which unites more than 117 FIUs around the world. For further information about the Egmont group, please refer to <http://www.egmontgroup.org/>.

gional Bodies,⁸² which are international organizations with a regional focus mandated to foster the implementation of international standards within their regional coverage, should also play an important role in undertaking studies of money laundering patterns and typologies related to forest crimes.

4.4. Mobilizing the Private Sector, NGOs, and the Public

Due diligence by the private sector: States need not be solely responsible for efforts to combat illegal logging. With scant resources at their disposal (both financial and human), policy makers need to develop strategies that will mobilize and engage the private sector into addressing this issue. As mentioned earlier, through anti-money laundering and other prudential measures, banks, as well as other financial and non-financial private sector entities have implemented due diligence procedures that could be useful in targeting the financial dimension of forest crimes. Proper CDD measures will allow entities doing business with clients that in the forestry sector to be fully aware of the general dimensions of their clients' legitimate operations and to be properly suspicious when transactions are conducted in a way that is inconsistent with the clients' normal, customary, and legitimate business. Thus, a logging enterprise depositing revenues from wood sales that are far in excess of what would seem consistent with its licensed harvest volume should generate suspicion. Similarly, large foreign transactions made by the relative of a poorly paid public forestry official could properly generate suspicion.

UNCAC mandates adequate procedures to ensure that financial institutions pay particular attention to suspicious activity involving the private banking accounts of prominent public officials and their family members and close associates.⁸³ Similarly, PEPs provisions in domestic anti-money laundering legislation require enhanced due diligence by banks and financial institutions opening accounts for and conducting transactions on behalf of such PEPs—including forestry officials. Banks should also be required to report any customers who engage in transactions with those known to be involved in illegal logging. In the absence of domestic legislation, countries should encourage banks to follow best practices recommendations by the FATF for preventive measures to better monitor suspicious transactions.⁸⁴

NGOs interested in illegal logging: Within the private sector, NGOs are important partners who are willing to assist states with this problem. In the past, they have played a major role in detecting large-scale forest crimes, in increasing awareness of the extent

82. There are eight FATF-Style Regional Bodies worldwide gathering 180 jurisdictions working to achieve the shared objectives against money laundering and terrorist financing. These bodies are as follow: the Asia Pacific Group Against Money Laundering—APG (<http://www.apgml.org>); the Caribbean Financial Action Task Force—CFATF (<http://www.cfatf-gafic.org>); the Eurasian Group—EAG (<http://www.eurasiangroup.org>); the Eastern and Southern Africa Anti-Money Laundering Group—ESAAMLG (<http://www.esaamlg.org>); the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism—MON-EYVAL (<http://www.coe.int/inter/moneyval>); the Financial Action Task Force on Money Laundering in South America—GAFISUD (<http://www.gafisud.info>); the Inter-Governmental Action Group against Money Laundering in West Africa—GIABA (<http://www.giaba.org>); and the Middle East and North Africa Financial Action Task Force—MENAFATF (<http://www.menafatf.org>).

83. UNCAC, Article 52.

84. See Recommendation 6 of the FATF 40+9 Recommendations, with the related requirements of customer due diligence in Recommendation 5.

and impacts of illegal logging, and in conducting research and analysis about the causes of and potential solutions to this problem. For example, the organization Global Witness has been very active in investigating illegal logging activity—and recently published a report detailing the alleged involvement of one country’s ruling elite in ongoing illegal logging.⁸⁵ Similarly, the Environmental Investigation Agency has conducted investigations of suspected illegal logging.⁸⁶ Organizations such as Greenpeace, Chatham House, and the Center for International Forestry Research also conduct research that points to ongoing illegal logging activity, and the World Resources Institute has established the Global Forest Watch Initiative to monitor forest developments in several countries.⁸⁷ This publicly available information, as well as news reports in the media, can provide investigators and prosecutors with good sources of information to help target their detection efforts. Governments should therefore engage NGOs and welcome their assistance with detecting forest crimes and publicizing illegal acts and their consequences.

Box 4.5. Partnering with NGOs

In 2000, Greenpeace and the Brazilian Ministry of the Environment’s Enforcement Agency (IBAMA) partnered to address the illegal logging of mahogany in the Amazon. Using information from Greenpeace investigations showing significant illegalities, IBAMA and Greenpeace performed inspections over a five-day period that resulted in the seizure of the largest volume of mahogany logs in Brazil at that time—with a value of US\$7 million.^a

a. FAO and ITTO 2005, p. 61.

Public awareness: Finally, countries should also concentrate on mobilizing the public to become involved in the fight against illegal logging. True success in combating large-scale illegal logging cannot be achieved with the support of only a few law enforcement professionals. It must have the backing of the public at large. Countries should begin by promoting public awareness that forest crimes are not victimless crimes. Rather, everyone suffers from them. Deforestation affects everyone by increasing greenhouse gases and by contributing to soil erosion—erosion that leads to flooding and the destruction of entire communities. Even setting aside the depletion of this valuable public resource, we find that millions of dollars, owed to governments for taxes and customs duties, are diverted from government coffers by illegal logging. A widespread understanding of these issues is urgently needed to build the political will that is so essential for bringing a halt to illegal logging. NGOs can be useful in mobilizing change and promoting public awareness. In the past, they have been instrumental in putting pressure on large retailers to exclude illegally harvested timber. As a result, several large retailers—including IKEA, Home Depot, Lowe’s, and Carrefour—have announced policies under which they will not purchase illegally harvested timber.⁸⁸

The public could also play a more direct role in the detection and prevention of illegal logging. Private citizens could be encouraged to report suspicious activity to law enforcement authorities or forestry officials. Illegal logging can displace whole commu-

85. Global Witness 2007.

86. FAO and ITTO 2005, p. 71. See, for example, Center for International Policy and the Environmental Investigation Agency (2005).

87. Contreras-Hermosilla 2001, p. 26.

88. FAO and ITTO 2005, p. 71.

nities and result in the exploitation of local people, who become involved in different aspects of these crimes—whether they perform the actual harvesting, transport the timber, or help to construct logging camps deep in the forests. Some individuals may be encouraged to speak out and help with detection of these illegal operations.

Box 4.6. Maintain the Momentum to Combat Illegal Logging

In 2008, police in Riau province in Indonesia issued a case closing letter ending an ongoing investigation of thirteen companies suspected of being involved in illegal logging. Another case closing letter was issued in relation to a fourteenth company in 2009. The termination of these major illegal logging cases resulted in outcry from some politicians, NGOs, and other groups. They claimed that the abandonment of these investigations was part of a conspiracy. Three years later, the Judicial Mafia Eradication Task Force was looking into allegations that high-level officials in Riau province—including a governor, four district heads, two police officers, and a Forestry Ministry official—were involved in illegal logging. Although corruption within forest law enforcement may have played a role in ending the investigations in 2008, continuing public pressure, the existence of a specialized task force, and ongoing efforts to combat corruption and illegal logging have ensured that the matter will nonetheless be investigated.^a

a. Satriastanti 2011.

Conclusion

There are no quick fixes to the many problems plaguing law enforcement efforts to combat large-scale illegal logging. Clearly, concerted action is urgently needed to halt this destructive practice before it is too late. Experience has shown that strategies already in place to tackle the root causes of illegal logging are not, in and of themselves, sufficient to curb the loss of the world's forests. Without an effective criminal justice system, efforts at prevention and deterrence will have no effect on organized crime or on corrupt officials looking to capitalize on a poorly designed system. Without the full support of the criminal justice system, the silo approach to addressing illegal logging will fail.

However, provided that they are properly followed through, even small policy and operational changes can have a significant impact on this problem. As an initial step, countries should formulate a strategy at the policy level to help steer and resource the necessary operational changes. The main components of a strategy might include fostering international and domestic cooperation among policy makers and law enforcement authorities. It might also include the implementing of operational changes to help investigators and prosecutors systematically consider and apply a wide range of criminal laws and procedures in illegal logging cases. Most importantly, money-laundering legislation and asset confiscation laws should be employed wherever possible to recover the criminal proceeds of these crimes.

This paper recommends that policy makers implement the following actions:

- Develop an integrated criminal justice strategy that adopts and implements clear and comprehensive policies targeting illegal logging's features of corruption and organized crime, as well as its financial aspects.
- Improve domestic cooperation between agencies in the forest law enforcement and criminal justice sectors, using such tools as interagency committees or task forces.
- Adopt measures that will lead entities subject to anti-money laundering rules (for example, banks and financial institutions) to exercise enhanced due diligence for high-risk customers in the forestry sector.
- Adopt policies that will support and encourage NGOs' efforts to raise awareness about illegal logging and to help detect these crimes.
- Call for criminal justice to be integrated as part of development assistance programs to combat illegal logging.

This paper also makes several recommendations for operational changes by law enforcement, investigators, and prosecutors:

- Forest law enforcement actors should proactively approach those in the criminal sector and request assistance and cooperation in investigations, prosecutions, and the confiscation of the proceeds of these crimes.
- Law enforcement, investigators, and prosecutors should attack high-level corruption by targeting both those who provide and those who receive the bribes.
- All law enforcement practitioners should focus their resources on high-value vulnerabilities (whether forest, group, or company) and high-level criminals—not low-level offenders.
- Investigators and prosecutors should consider all applicable offenses—not simply regulatory environmental offenses—as early as possible in the investigation.
- All practitioners should “follow the money” and use anti-money laundering measures and asset confiscation to deter future crime.
- Regulators should strictly enforce anti-money laundering measures. This should include scrupulous compliance with the FATF Recommendations and due diligence requirements—particularly when it comes to enhanced due diligence for PEPs and suspicious transactions within the forestry sector.
- Law enforcement, investigators, and prosecutors should employ all available criminal tools to address these complex crimes, such as electronic surveillance, undercover operations, and witness protection measures.
- All practitioners should improve international cooperation by using mutual legal assistance requests and informal peer-to-peer requests for information and assistance, as well as by participating in regional networks.

For many countries around the world with significant forest resources, these reforms will be difficult to implement. These countries will need help in improving the capacity of the actors within their criminal justice and forestry systems. Technical assistance providers, including the World Bank and other developmental assistance groups, have a responsibility to become involved. They can play a major role in bringing the forestry and criminal justice sectors together. With their help, the criminal justice response to illegal logging can be improved—before even more of the world’s forest resources are destroyed.

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