14TH INTERNATIONAL ANTI-CORRUPTION CONFERENCE 2010

Note to Rapporteur

When writing the long workshop report, please consider if the workshop responded to the below 14th IACC objectives and report on where you think appropriate.

Objectives:
a) Produce strategies to overcome the effects of corruption on human security, climate governance, natural resources and energy markets and in the corporate world
b) Propose strategies to overcome the stumbling blocks impeding effective multi stake holder engagement
c) Find solutions to implementation challenges of anti-corruption instruments from a global to local level
d) Showcase and facilitate effective partnership building and collective action
e) Incorporate new actors and innovative strategies in the fight against corruption
f) Map out and assess emerging trends and future scenarios in the fight against corruption
g) Enrich the global debate by showcasing the experiences of the host country and the region.

The long report should be sent in Word Format (indicating the title and workshop name in the name of the file) to the IACC Team via email to iacc@transparency.org no later than **26 November 2010**. Please remember that the moderator should sign off on the report before it is submitted to the IACC team.

Many thanks,

IACC team

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Long WORKSHOP REPORT FORM

Number and title of workshop: WS 2.2 # Follow the Money to Curb Forest Crime

Coordinators: Ms. Anna Christina Sinaga

Date and time: 11.11.2010 (9.00am – 11.00am)

Moderator: Dr.Andrew Wardell (Director of Forest Governance Program, CIFOR)

Rapporteur: Ms. Sofi Mardiah (Research Assistant, CIFOR)
Mr.Victor Soosai (Transparency International Malaysia)

Panellists (Name, institution, title)

Mr. Peter Larmour, Australian National University, Associate Professor

Mr. Ahmad Dermawan, CIFOR, Researcher

Mr. Mochammad Jasin, Corruption Eradication Commission of Indonesia , Vice Chairman

Mr. Dato' Sri Abu Kasim, Malaysia Anti Corruption Commission, Chief Commissioner

Ms. Julie Walters, Australian Institute of Criminology, Research Analyst

Mr. Ajit Joy, UN Office on Drugs and Crime, Country Manager, Indonesia

Mr. Manoj Nadkarni , Transparency International, Forest Governance Integrity Programme Manager

Summary (300 words)

Five perspectives were covered in the workshop: global analysis on how corruption contributes to deforestation, governance of public finance using the case of reforestation funds in Indonesia, corruption cases and law enforcement in Indonesia and Malaysia, the role of banks in combating corruption in the forestry sector, and the role of international actors and international cooperation.

There is considerable concern regarding the implementation of REDD+ and the possibility of REDD+ project funds being abused. The main concern is the diversion of funds from the actual purpose of allocation and the possibility of false reporting to qualify for REDD+ funding. Money allocated for REDD+ needs to be monitored to ensure it reaches the right agencies and agents of change and implementers, mainly the government, private sector and the civil society.

Cases from Indonesia and Malaysia show that most corruption cases, related to forestry, involve high level officials, often with support from Ministry of Forestry officials. The role of financial institutions is important in curbing the loss of state revenue and resources. Forestry corruption can be curbed through customer identification, enhanced due diligence for high risk customers and politically exposed persons. The financial institutions need to exercise more stringent controls of suspicious transactions when related to the forestry and environmental sectors. There should also be sufficient monitoring of the financial institutions by the central banks to ensure compliance.

Illegal logging is usually organised crime that can only be overcome by concerted effort and collaborative partnership. There is strong evidence showing that once money leaves the country through illegal trade, there is slim chance of tracing and recovering lost revenues. There is a need for strong International legal assistance that is mutually beneficial, particularly in recovering losses. Agencies should work together to provide information and share knowledge if they are to be successful in the fight to reduce organised crime in the forestry sector.

Summary of presentations (300 words per panellist)

- **Peter Larmour**
  There are similarities between anti corruption efforts and REDD+. The first is that the solutions are often broader in scope than the immediate problem ('transitions'). The second is they sit uneasily between developed and developing countries. The third similarity is problems of translation between international, national and local levels and the last is the very practical issues of diagnoses and cures.

  In theory, the diagnoses and cures for corruption can be achieved through three approaches: behaviour, structure and policy. In behavioural theory, corruption is the corrupt activities of 'bad' people therefore the cure should be through selection and training. Based on structural theory, corruption occurs because of bad systems, for that reason the cure should be through reform. In political theory, corruption might be due to the abuse of power; then checks and balances are the appropriate cure.

  With regard to REDD+ schemes, the behavioural cures could be through highly visible inspection and penalties, reduce inequalities in salaries, avoid long-established corrupt agencies, and formalize staff induction to agencies and community sanctions in local projects. Structural cures for REDD+ are preferred markets over fund based approaches to PES, rotate staff, insist leave is taken, and create 'espirit de corps' among field officers, separate authorization, verification and payment in PES and use the existing national payment system (Then, the political cures for REDD+ should include REDD+ in existing national systems of checks and balances, conduct checks and balances within REDD + organizations, open up REDD + recruitment and tendering, consult private loggers and ensure that REDD+ provides local employment and government revenue

- **Ahmad Dermawan**
  REDD+ offers an opportunity to create new revenue flows in Indonesia by protecting standing forests and rehabilitating degraded forests. However, many of the most likely recipients of REDD+ funds do not have a positive track record in the governance of public financial management. Lessons from the Reforestation Fund showed that there are many problems in financial management and revenue administration, accountability, corruption and transparency.

  CIFOR study on DR discovered that substantial funds amounting to millions of dollars, allocated to companies for forest plantation work in Indonesia from the year 1990 – 1999, were not used in the appropriate manner or for the intended use. These funds could not be recovered from some of the companies that were supposed to implement the projects. There is a possibility that these companies will also apply for funding for the REDD+ initiatives. The likelihood of funds being abused is very real. There is also a chance that the actual operational costs could be hiked up if there is any monitory commitment required by these companies to be involved in the project.

  Therefore, we need strong management capacity for the funds. If REDD+ funds are not

managed effectively, the ability to achieve carbon reduction targets will be undermined, and REDD+ payments will not flow. The need to keep track records of actors involved in REDD+ is necessary to avoid irresponsible actions. In relation to corruption and fraud, strengthening and mainstreaming anti-corruption initiatives is the key to making REDD+ work. REDD+ 'readiness' should strengthen Anti-corruption actions. The other requirement, to ensure that all funding provided for the forestry sector are well utilised, is the application of MRV principles. The principles should also be applied to financial management and governance, not just carbon emission reductions.

- M. Jasin
  In Indonesia, corruption cases in the forestry sector are mostly related to state loss of revenues. During 2005 to June 2010, KPK was able to recover more than USD 86.2 million of state losses and a big portion of it came from forestry cases. Most of the cases involved high level officials (governors, district heads etc) in permit issuance often with support from Ministry of Forestry Officials.

  In East Kalimantan, one case involved the Governor, the Provincial Forestry Office Head, the Regional Forestry Office Head and the General Director of Production Forest in the Ministry of Forestry Department. In this case an unlawful recommendation was provided for a Palm Oil Plantation for about 1 million hectares and the issuance of a Timber Utilization Permit (IPK) was provided by the Governor. The permit should be issued by the Minister of Forestry. The other misuses of authority were the provision of the principal approval for Land Clearing and Timber Utilization, as well as dispensation for the obligatory submission of a Bank Guarantee (PSDH-DR IPK) for companies of the Surya Dumai Group in 2008. The court then sentenced the Governor to 4 years in prison and fined him Rp250.000.000. Each of the Forestry officials was sentenced to 4 years in prison and fined Rp. 200 million. The total assets recovered from the case were Rp346.8 billion (USD 42 Million).

  Another case in the Indonesian province of Riau involved the Pelalawan District Head who unlawfully issued timber utilization licences for forest plantations for several companies which had already breached technical rules and regulations of the Ministry of Forestry Decree No. 10.1/Kpts-II/2000, 6 November 2000 on Guidance of IUPHHKHT and Ministry of Forestry Decree No. 21/Kpts-II/2001, 31 January 2001 on Criteria and Standards for Production Forests. The total state loss from the case was Rp 1,208.6 ***(USD 131 Million)*** . The district head was sentenced to 11 years in prison and fined Rp 500 million plus an addition fine of Rp 12,367 billion

  Close supervision of the government apparatus, especially the persons who have authority to issue permits, is strongly recommended. The need for good cooperation and the exchange of information regarding blacklisted and non-ecofriendly products/companies with the Department of Forestry are also recommended. We should also focus on the recovery of assets for deterrence, international environmental commitment and harmonization of regulations and law on forestry.

- Dato' Sri Abu Kasim
  Before 2009, the anti corruption commission in Malaysia was under the anti corruption agency. Then in 2009 with the new law, the anti corruption commission was transformed from an anti corruption agency to a full commission - the Malaysian Anti Corruption Commission (MACC). In the past it was difficult to arrest perpetrators of forestry crimes due to an inefficient system. The commission had to wait for a member of the public to report illegal logging. As we know, in forestry cases, those who receive money are often the law enforcement officers and those who give money are often the loggers. Nobody wanted to report illegal logging because they were afraid. They didn't want to become a witness in such cases.

With the new law introduced in 2009, the MACC has more powerful authority and techniques to discover corruption related to illegal logging. We use an undercover anti corruption approach. Several joint-operations with the State Forestry Departments were carried out in 2010 which resulted in corruption, in connection with illegal logging, being exposed.

In Malaysia forest policies are made at the state level, i.e., the respective state governments have jurisdiction over land and forest, including the power of disposal. In theory, this means that forests are public lands administered by the states. Therefore the states define timber taken without official permission and without rent as illegal. This aspect forms the bulk of MACC operations which have resulted in the seizure of illegally logged timber and arrests of loggers attempting to bribe enforcement officials including MACC officers at the site. The MACC also has successfully arrested a Forestry Department Director using an undercover anti corruption approach.

The amount of money from corruption involved in Malaysia concerning illegal logging from the year 2005-2010 is approximately USD 216,465.

- Julie Walters
  Anti-money laundering and counter-terrorism financing (AML/CTF) regimes have become largely a universal phenomenon in the last decade and commercial banks are central components of those regimes. The systems are structured to require banks and other regulated businesses to capture financial intelligence and disseminate it to law enforcement and regulatory agencies. AML/CTF does not only offer an opportunity for banks to facilitate efforts to combat financially motivated crimes: banks are legally mandated to perform this function.

  Indonesia's AML/CTF system is an illustration of a South East Asian country with a legal structure that requires its commercial banks to assist law enforcement to stem forestry corruption. Money laundering is a criminal offence in Indonesia under the Law concerning the Crime of Money Laundering (as amended by Law Number 25 Year 2003) (Law 15/2002). There are three key aspects of the Indonesian AML/CTF regime that amplify the commercial banks' role in stemming forestry corruption. The first is the inclusion of bribery, corruption, and almost all of Indonesia's forestry offences as predicate crimes for money laundering. The second element is the commercial banks' integral role in tracking and freezing illicit assets tied to forestry corruption. The third element is the personal liability of executives of a company found to be engaged in money laundering offences. Indonesia's AML/CTF preventative regime outlines a complimentary set of mechanisms that involve commercial banks in the prevention, investigation, and prosecution of forestry corruption.

  The contribution of commercial banks to curbing forestry crimes and related corruption offences is a legal requirement established by Law 15/2002 and expanded by Bank Indonesia's enforceable instruments.The key elements that can curb forestry corruption are customer identification; enhanced due diligence for higher risks; politically exposed persons; ongoing transaction monitoring; and financial intelligence reporting. In addition, to improve performance and aiding compliance**,** the banks can be informed with some examples of higher risk customers and transactions, such as contact with high risk industries and unexplained wealth, red flag transactions in the forestry sector, pre-identified domestic PEPs list and education and feedback to improve their skills.

- Ajit Joy
  The story of illegal logging and other forest crimes is a highly complex one. It involves powerful and well connected transnational groups from local communities and small operators to huge corporates and transnational mafia syndicates. There is also the involvement of law enforcers the police, military, prosecutors and judges. There are the

accountants and lawyers and off shore companies, banks and governments that conspire and collude or protect the ill-gotten wealth from illegal logging and forest crimes.

Detecting forest crimes like illegal logging is very simple if we are following the wood. Wood is seized, confiscated, the truck driver and cleaner charged. Different story when illegal wood is mixed with legal ones. The situation is further aggravated when big illegal operations are launched with protection of military or the law enforcement machinery and when there is corruption down the line combined with political involvement and blessing. Rather than follow the wood, "follow the money" is getting more and more recognized now as a means to get to the master mind. As a means to get to the illegal profits, as a means to recover the stolen assets. This is a much more difficult and complex task for investigators, with not many success stores to draw as example.

Conviction of anti money laundering related to forestry crimes have not yet happened. However, several good things have happened. We have the REDD+ framework as opportunities for better policy to prevent illegal logging. With the AML regime, the strong FIU is very important to give early warning to prevent the money from being stolen and also the banks by conducting the due diligence. The other important things are good cooperation among agencies national and international. The last is the role of NGO's and civil society as agents of Whistle Blowers and monitors

- Manoj Nadkarni
  Corruption in the forest sector is globally pervasive and has many forms:
  - Criminal: illegal logging, smuggling, extortion
  - Legal but corrupt: state capture, institutional erosion, rent seizing

  Why does corruption in forestry exist? Some possible answers are demand exceeds *sustainable* supply, profits from unsustainable logging are greater than profits from sustainable logging, costs of unsustainable logging are *public* and benefits are *private* or regulation backfires because of economics.

  TI's global network of chapters bring together important actors from government, civil society, business and the media to promote transparency in elections, in public administration, in procurement and in business. TI develops tools that target all stakeholders. Policy makers : Staff of international development agencies, central and local government (both urban and rural), professional staff such as those maintaining roads or ports, private sector, NGOs, who are involved with conservation, environmental governance and concerned about accountability. TI's approach is advocated in constructively critical manner; develop expert solutions; and provide technical assistance. TI chapters also use advocacy campaigns to lobby governments to implement anti-corruption reforms.

  The National Integrity System (NIS) concept was developed by Transparency International to describe the set of formal and informal sectors, institutions, laws, and practices (known as pillars) that generally contribute to integrity, transparency and accountability in a country. The NIS is a useful framework to assess quality and effectiveness of the systems and structures in place to prevent corruption in a given country. As the names indicates, it is a **system** that necessitates to understand its systemic qualities:
  1. The whole is greater than the sum of the parts
  2. The behaviour of each actor and institutions is as important as the structures of these institutions themselves
  3. The interactions between institutions is as important as within institutions

  When the NIS functions effectively, the NIS combats and reduces opportunities for corruption to take place.

Main Outputs (200 words, narrative form)

The workshop report contains a summary of the workshop the main aim of which was to promote anti corruption and anti money laundering in the forestry sector. There was also an emphasis on enhancing collective understanding of the need for cooperation among law enforcement agencies, forestry agencies, financial intelligence units, financial institutions, civil society including commercial banks and other related actors. The report also includes a summary of the presentations from the panellists and then concludes with recommendations and follow-up actions.

Recommendations, Follow-up Actions (200 words narrative form)

With regards to REDD+ funds, it is important for governments to track the companies with poor records to ensure they do not receive REDD+ funds. In relation to corruption and fraud, the donors and investors need to pay particular attention to the management of the funds. It needed strong support and coordination from the ministry of forestry and other agencies for law enforcement measures to work in the forestry sector.

The role of financial institutions is also crucial. By conducting due diligence they play a very important role in monitoring suspicious forest related transactions. The role of civil society with their whistleblowers is also important in law enforcement and to combat forestry crimes.

The problem of illegal logging is complex. Although the use of anti corruption and anti money laundering to tackle this problem has potential, combating illegal logging using "follow the money" approach is not an easy task. Following the money requires cooperation among various agencies and actors, both at the national and international level. Therefore, there is an urgent need to build solid cooperation among law enforcement agencies, forestry agencies, financial intelligence units, and financial institutions including commercial banks, civil society and other related actors.

Highlights (200 words please include interesting quotes)

The enemies, as far as illegal logging is concern, are a network. It will take a network to deal with a network. A network has to be created by the Law Enforcement agencies, the Financial Action Task Force (FATF), the Asia Pacific Group on Anti Money Laundering and several more networks of prosecutors, and police officers to beat illegal logging networks

To tackle organized crime we need to have organized enforcement and collaboration

Signed and date submitted

Sofi Mardiah, CIFOR
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