Following the Money Trail: the Challenges in Illegal Logging Investigations

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The transnational nature of Forest Crimes especially illegal logging

The story of illegal logging and other forest crimes is a highly complex one. Complexity arising not only out of the involvement of powerful and well connected transnational groups but also due to the existence of widespread global market for forest produce. To add to the complexity there are local communities and small operators active along with huge corporates and transnational mafia syndicates all of whom feed to the large insatiable demand, largely ignorant or unconcerned about legality of the forest products involved.

The modus operandi varies. In the forests of Indonesia it is easy to find a small groups of youth with a chain saw chopping and sawing 3-4 trees a day. Hundreds and thousands of such groups operate on a daily basis. There are bigger players who use boats and tugs that tow rafts of illegally cut wood through rivers headed for saw mills that process illegal wood. There are bigger companies that own logging concession hauling tons of wood, but the extent of illegal wood mixed in it one can only be a guess. These big companies are also converting land into oil palm plantation by thousands of hectares. How do they obtain this land? How much more land do they encroach? are all the associated major complications.

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

In Guyana, in far away South America, the biggest companies involved in logging are from South Korea and Malaysia. South Korean and Chinese companies are active in the remote areas of Papua province in Indonesia and across the border in Papua New Guinea as well. Where does this wood reach? In the drawing rooms and hotels of Europe and America and all over the world.

EU and Asia are two of the worlds biggest markets for timber and wood products. WWF in a 2008 report estimates that 40% of wood-based products imported into the EU from south-East Asia are said to have originated from illegal logging. China is the biggest consumer within Asia apart from being a major re-exporter. China’s timber demand is

projected to rise to 350 million cubic meters in 2010, with a downfall of 150 million cubic meters from official imports.[1] Wood illegally flows into China from Lao PDR, Indonesia, Myanmar, Cambodia and Thailand. The second major importer in the region is Vietnam with its outdoor furniture industry booming and exports expected to reach US$ 3 billion by 2010. A lot of wood supply comes to Viet Nam from Lao PDR. It is estimated that 48% of the timber imports by Viet Nam is illegal. All the above shows the close interconnectedness globally of criminal operatives as well as a world wide market for forest products.

Pontianak, the capital of the West Kalimantan province in Indonesia has a 30 km road from airport to the city. The road is built over land bolstered by logs of wood. This government work has used illegally logged wood from the nearby forest. Not only this but every government and private building in Pontianak, whose foundation needs to be strengthened because of the soft soil, has used illegally logged wood. Why? Because that is the only wood available there. And mind you they are all from the Peat forests of Kalimantan which have four times more carbon than the other rain forests. This is another aspect of the crime where bad wood is driving out good wood.

Aceh was destroyed by the tsunami. When Aceh was reconstructed, the forests of Aceh which were preserved unlike the other forests of the island of Sumatra, faced the greatest threat. An insatiable thirst for wood arose to be used in the reconstruction with the billions of dollars flowing in for reconstruction.

The wood, massive, visible passes through roads and waterways and through ports and customs, across forest boundaries and police check posts how? How do they get the documents? Corruption all along the way which the wood passes is another added dimension to the problem.

From the above we can see that we are talking about a problem that involves complex issues right from the production stage, through the transit and trade stage and its final conversion use and sale stage. There is the involvement of law enforcers the police, military, prosecutors, judges. There are the accountants and lawyers and off shore companies, banks and governments that connive and collude or protect the ill-gotten wealth from illegal logging and forest crimes. In Sept 2009, the former vice chairman of Guangxi province in china was sentenced to 18 years in prison for corruption related in part to timber brokering. Several senior police officers and administrators have faced prison sentences in Indonesia fro illegal logging and corruption, demonstrating clearly the unholy nexus between corruption and forest crimes.

Times are changing now. The disappearing forests have awoken us. Climate change is an immediate threat and worry. Countries are more serious about good forest governance and improved law enforcement. Corruption in the forest sector is now being talked about.

[1] Global Report on Crime, UNODC 2010.

Recognition of forest crimes as a predicate offence for money laundering is gaining ground. REDD + schemes propose money in lieu of forests preserved and unreleased carbon. Lacey Act from the US, Voluntary Partnership agreements from Europe, similar measures from Australia and New Zealand is working on the demand side.

Detecting forest crimes

Detecting forest crimes like illegal logging is very simple – in cases like - a forest ranger stopping a truck of wood without documents. Wood is seized, confiscated, the truck driver and cleaner charged. Difficulties start when investigations proceed beyond that. Things start getting complex when investigations go beyond the truck driver. Who was he working for? For how long? How many such trucks before that? Can recoveries be made of earlier consignments that have passed through? Where is the timber sold? Where is it processed? What about the confiscation of the tuck? What about going back and investigating the logging operations from where this timber case? What is the nature of international trade involved? What about the profits?

What in the same case if the documents were the correct ones, issued through connivance of forest staff, or if documentation were forged. Or if protected species of wood is transported as some other species. Further the scenario becomes more complex 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. As was the case in the Indonesian province of Papua sometime back.

Following the wood trail has its challenges. Challenges that officers face to detect and investigate illegal logging cases. That prosecutors face to try them and finally the judges when they have to decide.

Following the money

After the conventional way of following the wood that we have discussed above lets move on to discussing the investigative strategy of “Following the Money”. Following the money is getting more and more recognized now as a means to get to the top guns. 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.

For instance trafficking of wood to China is often arranged by brokers based in Singapore, Taiwan, Province of China and Hong Kong. In South-East Asia, Chinese expatriates are important players in arranging cross-border deals. In China, the timber is controlled by a large number of trading firms who deal in import quotas. Off shore companies are major players in the illegal business. How do investigators from some country follow the wealth of these brokers or companies in other countries. How can they

prove the illegality of this wealth, linking it to the forests of their home country. Further how can they get banks in different locations to part with that money. How do they get different governments to cooperate with them. Further in their own home country how do they get to criminalize and convict a case, investigations of which have led them to follow the money trail to other countries. Delays in the legal proceedings of requesting contries, compounded by politics complicate cases as most often the accused big guns are also those with strong political connections and backing. Before some of the Marcos money could be recovered from the banks in Switzerland, a decision in the local court of Philippines was required. It took 12 years for a decision by the Supreme Court on Marcos Swiss dollar deposits.

Malaysia, Hong Kong and Singapore companies are major operators in Indonesian logging. Similarly money is normally in the banks of Singapore and Hong Kong. Hong Kong's banking sector is the 15th largest in the world (measured by external transactions) and has the sixth largest turnover of foreign exchange transactions. It is also an attractive destination due to the stability of its banking and its high sophistication in operations.

A report by Capgemini and Merrill Lynch indicated 19,000 Indonesian HNWIs (high net worth individuals) residing in Singapore holding US$93b in assets.

Money laundering is a lucrative and sought-after business, with several financial centres vying to attract this apart from tax havens. Following investigations of illegal logging to Hong Kong or the money from, lets assume illegal logging in Indonesia, such operations to banks in Hong Kong is tricky for the following reasons as concluded by a study. Hong Kong's lack of indictable forestry offences precludes any illegal logging activities in Indonesia from being considered foreign indictable offences in Hong Kong. As a result, Indonesian logging crimes are not predicate offences for money laundering charges in Hong Kong. Those dealing with the proceeds of illegal logging in Indonesia, such as offenders hiding or moving the proceeds from Indonesia to Hong Kong, cannot be charged with money laundering in Hong Kong.

Apart from the above discussed problems of different jurisdictions and legal systems and the necessity of dual criminality the human dimension is an equally important factor. Whether the law enforcement officers are trained to take action, whether they are inclined to take action, whether they are competent to take action, whether orders to take timely action is issued are important questions. Getting mutual legal assistance requests accepted and complied between countries is highly technical and takes years and often it is seen that countries from where forests are lost are not in a strong position to tap into such international criminal investigation cooperation measures.

Return of assets is possible only when there is close and effective cooperation between sates involved. Such cooperation must observe the rules governing international cooperation in criminal matters. Until the coming of the UN Convention against Corruption there was no global Convention covering this area. A lot more needs to be done before countries are able to work together under the aegis of this Convention and are able to repatriate lost assets. The Stolen Assets Recovery initiative launched by the

world Bank and UN Office on Drugs and Crimes has helped several states in the process. However, real recovery of wealth has been very small.

Several good things have happened. Corruption now is no more considered to be a national crime. Money laundering laws exist in all countries. Risks of funds being used for terrorist activities always exist and therefore countries and financial institutions are now much more diligent. Non conviction based asset recovery is now becoming more and more popular. This is the action taken against illegal wealth through civil action, whereby the property is seized without going through elaborate criminal proceedings and requirement of proof for such cases.

Asset tracing is the area where the most skills are required. Skills that are required to uncover the elaborate concealment that involves different jurisdictions, different overseas locations (havens) and the brain of the best accountants, bankers and lawyers. Skills required to analyse the STRs (Suspicious Transaction Reports) of FIUs (Financial Intelligence Units) and further investigate and prosecute cases that reveal a crime. This should be complemented by an active citizenry and whistle blowers and patriots who could help in exposing instances of such crimes perpetrated in secrecy and collusion.

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