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Rule of law and environmental justice in the forests: The challenge of 'strong law enforcement' in corrupt conditions

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Abstract

Widespread illegal forest activities have contributed to deforestation, forest degradation, economic losses to nations and injustices for forest communities in many countries. Promoting rule of law, particularly through 'strengthening law enforcement', is an important part of improving forest management and ensuring justice for forest dependent communities. This includes strengthening police and the courts to better detect and punish illegal forest activities. However, available evidence has shown that strong law enforcement activities often fail to address broader systems of illegal activities and can lead to further injustices. Corruption is one reason for these failures and is the focus of this U4 Issue Paper, which draws lessons from Cameroon and Indonesia. Efforts to strengthen law enforcement in the forests need to consider how corruption may interfere with successful detection and suppression of illegal activities. If they are to be successful, programmes promoting forest law enforcement in corrupt contexts also need to be sensitive to how they are implemented, with particular focus on the rights of forest dependent communities.

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About the author

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Introduction

Illegal forest activities, including corruption, have been widely reported to contribute to deforestation, forest degradation, economic losses to nations and injustices for forest communities in many countries.¹ Promoting rule of law and reducing illegal forest activities is considered vital to improve forest management in development contexts (World Bank: 2006a). One of the key approaches has been to strengthen law enforcement² (World Bank: 2006b; Contreras-Hermosilla: 2007; Goncalves et al: 2012). Strengthening law enforcement can include a variety of activities, but commonly involves empowering police and courts to better detect and punish illegal activities. Many countries, such as Indonesia, Bolivia, and Cameroon, have implemented programmes to strengthen law enforcement as a means of establishing rule of law. As global efforts to establish a framework for Reducing Emissions from Deforestation and Forest Degradation (REDD+) have progressed, there has been renewed attention to the problem of law enforcement and its importance for reducing global rates of deforestation.³

While there is considerable attention on strengthening law enforcement, factors such as lack of capacity, and particularly corruption, weaken such efforts. Corruption here is understood to be the 'abuse of entrusted power for private gain' and involves actions such as bribery, nepotism and fraud (Pope: 1996). While this is the most common definition, corruption is nonetheless a complex and multifaceted problem, and different types of corruption can have different impacts on law enforcement programmes. Efforts to strengthen law enforcement in corrupt contexts often struggle to address the broader systems of illegal activities and contribute to further injustices for communities in forest areas. This affects the success of these programmes in reducing illegal activities and can be potentially harmful, particularly for environmental justice.

Environmental justice refers to environmental equity, meaning the equitable distribution of environmental goods and risks. It also incorporates principles such as the right to recognition and genuine participation for all relevant actors, such as forest dependent people or other marginalised groups. Many donor programmes aimed at improving forest management include in their objectives principles associated with environmental justice, such as improved recognition and benefit sharing for local communities.⁴ As it is important to consider these broader goals of improving forest management when evaluating law enforcement programmes, this paper uses the principles of environmental justice to evaluate the practice of strengthening the detection and suppression of illegal forest activities in corrupt contexts. With this information, it is possible for donors and national government to design law enforcement programmes that are more resistant to the potential impacts of corruption. This is not to say that such efforts will not be met with political barriers. However, by being aware of such considerations there are policy steps that can be taken.

This paper analyses the mechanisms by which corruption may impact on current practices of law enforcement and on the success of programmes aimed at strengthening law enforcement. It is based on a review of the literature and, in the case of Indonesia, the experiences of the author. The first

¹ For example see: Jakarta Globe (24th May 2012), Global Witness (2007), Richards et al (2003a), Burgess et al (2011), EIA/Telepak (2007), Kolstad et al (2008).

² The focus of this paper is forest-related law enforcement, rather than law enforcement generally. This includes enforcing regulations outside specific forestry regulations, such as anti-corruption or money laundering regulations.

³ There is recognition that to establish REDD+ the problems of illegal forest activities will have to be addressed (see Dermawan et al: 2011).

⁴ Many governments and development organisations recognise the principles of environmental justice. For example, the World Bank's country strategy for Indonesia recognises the equitable distribution of benefits to improve people's welfare as one of the core objectives (World Bank: 2006c).

section of this paper develops the argument for how law enforcement often has unintended consequences for environmental justice. A description of the various mechanisms by which corruption causes these injustices is provided. The second section focuses on specific experiences and lessons from two case countries: Cameroon and Indonesia.

There are two broad conclusions from this paper:

- **First, efforts to strengthen law enforcement in corrupt contexts need to consider how corruption is likely to impact such programmes.** A challenge of corruption is that broader systems that concentrate power and wealth often emerge to support corrupt exchanges. This creates significant practical barriers to actually implementing strong law enforcement. It can also manipulate the outcomes – for example by focusing law enforcement on less-powerful actors. This means that there are only limited achievements as many of the underlying drivers of illegal activities are not addressed. Donor interventions must be both aware and considerate of the potential impacts of corruption on law enforcement and be designed accordingly.
- **Second, while law enforcement that is consistently applied and not subject to corrupt exchanges is an inherent quality of the rule of law, this does not necessarily equate with environmental justice.** In some countries strengthening law enforcement may not lead to environmental justice. In such cases, it will be beneficial to focus on promoting efforts to legalise certain activities of forest communities, such as legalising customary tenure as a means to promote environmental justice.⁵ Where this is not feasible, law enforcement efforts will need to be considerate of the weak legal status and livelihood needs of forest communities.

⁵ This has been a common strategy and global trend since 2005 (FAO: 2010).

1. Background

1.1 The problem of illegal forest activities

Poor management of the world's forest resources and the resulting deforestation and forest degradation has attracted high-level concern for decades (e.g. WCED: 1987). High rates of deforestation and forest degradation impact on the many environmental services that functioning forest ecosystems provide, such as biodiversity, soil management and watershed protection (Martínez et al: 2009). Forest dependent communities often experience injustices from deforestation and forest degradation, such as loss of livelihood and access to a healthy environment.⁶ While the definition of 'forest dependent peoples' is contested, it is commonly used to refer to people and communities who live within forest areas and/or rely on forest resources for daily subsistence (Fisher et al: 1997). Many factors contribute to deforestation and forest degradation. Depending on the country, these may include population growth, government planned commercial agricultural expansion, or road development.⁷ Illegal forest activities have also been widely reported to not only contribute to deforestation and forest degradation, but to the injustices experienced by forest dependent communities (Callister: 1999; Robertson and van Schaik: 2001; Richards et al: 2003a).

Illegal forest activities, most notably illegal logging, have attracted considerable attention in the development and donor literature (e.g. ITTO: 2004; World Bank: 2006b). Often quite narrowly defined, illegal logging refers to the specific act of harvesting a tree in breach of national (and sometimes international) regulations (Tacconi: 2007b). Other illegal activities that support illegal logging, such as the transport and sale of illegal timber, or activities associated with the laundering of proceeds from illegal logging, are referred to by the more general term of illegal forest activities (see Box 1). Illegal forest activities, such as illegal logging or wildlife theft occur in the forests themselves. Other illegal activities such as money laundering, occur outside the forest, but can also be responsible, indirectly, for environmental damage and social harms. While many countries have documented problems of illegality in the forest sector, the exact nature and prevalence of different illegal forest activities varies across countries (see case studies below). The many different types of illegal forest activities are driven by different and complex factors.

While there are some benefits to promoting legality itself, attempts to reduce illegal activities are primarily driven by concern over the many documented negative impacts of illegal forest activities. These impacts include economic losses, environmental degradation as well as social impacts. Illegal forest activities can cause considerable financial losses to the state through crimes such as non-payment of taxes. For example, indirect annual financial losses to the governments of Honduras and Nicaragua are estimated at USD 11-18 million and USD 4-8 million respectively (Richards et al: 2003b). State losses from illegal land clearing and corruption across three provinces of Indonesia were reported to be Rp 311.4 trillion (USD 36.4 billion) (JakartaGlobe: 2012, 24 May). Illegal activities also include the non-payment of royalties to communities and the failure to comply with social infrastructure commitments, with direct negative impacts for communities (Kaimowitz: 2007). Practices such as overharvesting within concessions and failure to comply with logging regulations can also harm residual timber supply, affecting the long-term sustainability of the timber industry. As well as impacting the timber industry, there are many environmental impacts from poor harvesting practices. Habitat loss from forest clearing and the illegal trade in wildlife has contributed to biodiversity loss, threatening the survival of several species (Robertson and van Schaik: 2001).

⁶ What constitutes a healthy environment is rarely explicitly defined. However it generally refers to characteristics such as the cleanliness of air, water and soil.

⁷ For example, see: Southgate et al. (1991), Ali et al. (2005), Dolisca et al. (2007).

BOX 1: CLASSIFICATION OF ILLEGAL FOREST ACTIVITIES

There is considerable variation in illegal forest activities that have been documented. The United Nations Food and Agriculture Organisation (FAO) has outlined and categorised common illegal forest activities. These include:

- Timber theft: harvest of trees without lawfully obtained permission from the owner;
- Forest injury: unlawful destruction of forest property or resources, including acts such as arson;
- Forest revenue crimes: evasion of forest-related taxes;
- Illegal forest use: trespass, illegal occupation of forestland, unauthorized harvest or land development;
- Unlawful forest commerce: fraud, embezzlement, wrongful possession and use of property, failure to honour contractual obligations, money laundering, transfer pricing, and other illegal acts involving commercial transactions;
- Forest environmental violations: violations of management or harvest laws intended to protect the forest resource or the environment generally;
- Illegal forest transport: violation of forest product transport controls;
- Illegal processing: violation of environmental, commercial or other laws in the processing of forest products;
- Illegal forest trade: trade in forest products in violation of national laws or international agreements.

Sources: FAO (2004) and Rosenbaum (2003)

Note: Corruption, most commonly associated with bribery and fraud, is itself illegal in many countries. Corruption can also facilitate other illegal activities, for example by allowing illegal harvested timber to be transported and sold. However, corruption and other illegal activities are not always linked. Bribes can be paid for legally harvested timber to pass through a checkpoint quickly (speed money). Also, illegal logging may not be monitored, so no corrupt payments need be made.

The impacts of different illegal forest activities are not uniform. Illegal activities committed by commercial operations can result in widespread deforestation and significant financial losses to the detriment of national governments and local peoples (Palmer: 2001; Cerutti et al: 2013). However, communities may also be complicit in, and therefore benefit from, types of illegal activities. The effective criminalisation of customary practices, though it occurs when regulations are formed, means that activities such as bush meat hunting, logging for local infrastructure and land clearing for shifting agriculture are illegal (Peluso: 1991). While there may be some benefits, it has been generally considered that high rates of illegality increase inequality (see FAO: 2005). In recognition of these complexities, programmes aimed at reducing illegal activities often stress that their goal is to improving forest management more broadly. For example, the European Union (EU) funded Forest Law Enforcement and Governance and Trade (FLEGT) programme recognises that a "...legal and sustainable forestry sector can provide a wide range of benefits to people in timber exporting countries, such as rural livelihoods, environmental services, and sustainable resources on which to build long-term economic development". Given that many donor-led programmes promote reducing illegal forest activities as part of a broader objective to improve forest management, it is important to understand the potential impacts of law enforcement on these broader principles, such as those of environmental justice.

1.2 Improving forest management: Rule of law and environmental justice

Addressing the problem of illegal forest activities requires approaches that promote rule of law, that is "ensuring legal certainty and predictability, so as to make it possible for members of the public to know and predict what is permitted, ordered and prohibited" (Ebbesson: 2010 p. 415). Rule of law is

seen as a key factor for good governance and improving rule of law is a key to improving forest management (Kaufmann et al: 2009; Interpol: 2012). Given the variety of illegal forest activities, there are many different approaches to promoting rule of law to improve forest management (see Box 2). These can be enacted at the local, national and international level by various stakeholders. To date, there has been a focus on preventative strategies (Goncalves et al: 2012). Sometimes referred to as 'soft enforcement' these approaches focus on promoting participatory processes and legal reforms to clarify regulations or build social norms around legal compliance (Buchy and Hoverman: 2000). Market mechanisms and certification schemes are designed to prevent illegal activities occurring by limiting market access for illegal products. It is no doubt important to try to prevent illegal activities from occurring. However, preventative approaches must be accompanied by activities to strengthen the enforcement of laws within countries so they can effectively detect and suppress illegal activities.

Table 1: Typology and examples of different approaches to strengthening law enforcement

Common approach*	Example countries/regions	Source
Prevention		
Policy reform		
Streamline complex regulations to reduce opportunities for discretion	Bolivia (1994 Forestry Act)	<i>FAO 2005; Contreras-Hermosilla and Vargas Rios 2002</i>
Reforming tenure laws and clarifying property rights	Phillipines	<i>See World Bank, 2006a</i>
Capacity building		
Educational programs about the content of laws	Mozambique	<i>FAO, 2005</i>
Market or demand-side interventions		
Certification schemes which reduce market access for illegally harvested timber	Cameroon and the European Union	<i>EU and MINFOR, 2010</i>
Detection		
Monitoring and transparency		
Develop and implement new technologies to monitor remote forest areas	Congo Basin Region	<i>FAO, 2012</i>
Transparent licensing systems to better monitor timber trading, particularly across international borders	Cameroon	<i>Global Witness, 2005</i>
Employ independent monitors	Papua New Guinea, SGS; Nicaragua, Global Witness	
Enforcing public reporting and freedom of information laws	Cameroon	<i>Global Witness, 2005</i>
Capacity building		
Includes financial and human capacity of police	Manaus, Brazil	<i>Interpol, 2012</i>
Empower non-government organisations to monitor and report activities	Indonesia	<i>UNODC, 2012</i>
Suppression		
Capacity building		
Education campaigns for judges and prosecutors about environmental regulations and the ecological implications	Mozambique	<i>FAO, 2005</i>

* Activities to reduce illegal forest activities are commonly divided into three, interrelated, categories: Prevention, detection and suppression.

While improving the capacity to detect and suppress illegal forest activities is important, there has been broad concern that these practices often have negative consequences for forest dependent communities. There have been several studies addressing the links between rural forest livelihoods and law enforcement (Colchester et al: 2006; Kaimowitz: 2007; Tacconi: 2007b). These studies have largely focused on the content of regulations themselves and how effective rule of law could jeopardise livelihoods of forest dependent communities. There has been less information about the actual practices associated with strengthening law enforcement. Further, while the concept of livelihood is one aspect of a community's, or individual's rights, a broader concept that includes the rights of a community to property, rights to customary practices, and rights to a healthy environment is needed. These broader concerns are better captured under principles of environmental justice. As both a movement and theory, environmental justice is concerned with the apparent skewed distribution of environmental goods and risks. Environmental justice, as used here, is partly a legalistic term, closely related to rule of law. It also incorporates more normative concepts of fairness, equity and rights. These concepts are no doubt difficult to apply in practice. Yet despite such difficulties, it is clear that the principles and processes of many donor organisations reflect these broader principles. It is therefore important to consider the potential impact and contribution of strong law enforcement to environmental justice.

The principles of environmental justice are commonly separated along procedural and distributional lines. Procedural environmental justice refers to the right "...to equal concern and respect in the political decision about how these goods and opportunities are to be distributed" (Rechtschaffen et al: 2009, p. 9) . The actual outcome of a decision – in terms of who gets what – is not relevant to achieving justice, as long as the procedures for decision-making are just. Whilst procedural justice is a vital aspect of environmental justice, it is not the focus of this paper. This is because aspects of procedural justice are more closely related to preventative strategies – such as awareness campaigns, community engagement activities and legal reform. The focus of this paper, on the detection and suppression of illegal activities is more closely related to distributional justice. Distributional environmental justice is determined by "the right to equal treatment, that is to the same distribution of goods and opportunities as anyone else has or is given" (Rechtschaffen et al: 2009, p. 9). In the forests, the principles of distributive justice are evident in programmes aimed at reducing the risks of environmental harm, such as enforcing laws regarding harvesting techniques to protect the watercourses on which communities depend. Principles of distributive environmental justice also include retributive justice associated with the operation of courts. While efforts to strengthen law enforcement are often justified on the basis of improving rights of communities, in practice, efforts that seek to reduce illegal activities have often contributed to further injustices for communities and largely failed to address the more systematic crimes that are contributing to environment degradation.

2. The practice and problems of 'strong forest law enforcement'

There are many challenges in effectively detecting and suppressing illegal forest activities. In order to be able to reduce illegal forest activities and improve forest management there is a need to understand how law enforcement actually takes place. This section identifies evidence of what happens in law enforcement and the impact for forests and environmental justice.

2.1 Detection

Detection of illegal activities is vital to being able to enforce laws and improve forest management. Many forested countries have reported problems associated with ineffective systems to detect illegal forest activities. Typical challenges include lack of funding for officers in the field, or capacity to carry out duties due to lack of equipment or training (FAO: 2005). In response to such shortcomings, many domestic and international programmes have sought to support and strengthen activities to detect illegal forest activities. This can involve technical support for forested countries. In 2012, for instance, the FAO, in conjunction with the Central Africa Forest Commission, developed a regional initiative in 10 Central African countries to improve capacity to monitor forest areas (FAO: 2012). Demand-side interventions, such as FLEGT, also include efforts to strengthen systems to detect illegal activities by promoting more transparent information systems. International NGOs have also reportedly paid salaries and bought equipment to support forest police (Mongabay.com: 2012). Other donor programmes like Interpol's Law Enforcement Assistance for Forests Programme (LEAF), funded by the UN and Norad, is specifically designed to improve detection and policing of the international criminal networks that support illegal logging. Other programmes have supported governments to hire independent monitors, such as the NGO Global Witness in Cameroon, Cambodia and Honduras or SGS in Papua New Guinea.

Given the variety of conditions and contexts, it is difficult to get a general picture of how these programmes have operated. Few reports detail the actual practice of detection and how these interventions have operated. For example, while LEAF has organised some training programmes for law enforcement field officers, to date there has been little reported about the impact of this training or the other activities in international detection; a situation not unique to the LEAF project.

What evidence is available suggests that the success of these programmes has been mixed. Some projects have led to improvements such as encouraging greater transparency and increasing the rate of detection of some illegal activities (see the Cameroon case below). However, these limited successes are often not sustainable and generally fail to address the broader system of illegal forest activities. There are two main reasons for this.

First, it is generally argued that policing is an inefficient way of promoting compliance (FAO: 2005, ITTO: 2004). This is particularly the case for monitoring extremely remote forest areas, where funding the transport and subsistence of government officials, such as police, can be costly. Unable to sustain long-term increases in officer numbers, efforts to increase policing in forest areas are often established only for short periods of time, often referred to as 'crackdowns'. Alternatively, increased police efforts are focused on areas where transportation costs are not as high. This can lead to a shift as illegal activities simply move to areas not subject to increased police efforts. Indeed this problem, of illegal activities shifting to areas that are not policed also occurs on an international scale and is a main focus of the LEAF project (Interpol: 2012). Beyond this shifting, gains made during periods of heightened policing are often unsustainable and the environmental damage continues once political attention has been diverted elsewhere. The consequence is that the illegal activities and the associated environmental impacts are not reduced. Communities in forest areas will also continue to suffer any effects from environmental damage with little opportunity for retributive justice.

Second, in practice efforts to strengthen law enforcement are typically selective in the types of laws they enforce, for example by focusing on illegal activities that occur in the forests themselves, or in the immediate transport of forest products. While there are some exceptions where countries have successfully prosecuted more powerful actors, such as corrupt ministers or political aides (Telegraph: 10 October, 2012) few of these have directly related to forestry. Detection has mainly focused on activities in the forests and less-powerful actors, a trend which is widely acknowledged (Kaimowitz: 2007; Tacconi: 2007a). For example, a study of the judicial process and its prosecution of forest crimes in Brazil found that 48% of crimes identified were transport violations (Brito and Barreto: 2006). This selective enforcement may increase the operating costs of illegal activities. However, by selectively detecting some crimes and not others, law enforcement fails to address underlying problems behind illegal forest activities.

One consequence of this is increased injustices experienced by forest dependent communities and the rural poor. The kinds of activities that occur in the field involve lower-level employees of logging companies harvesting outside concession boundaries, communities collecting timber and non-timber forest products in state forests, or drivers trafficking timber without appropriate documentation. The actors who are therefore caught in efforts to strengthen detection are the chainsaw operator, the community member or the driver. Many reports have identified how law enforcement typically catches the people who only engage in illegal activities because of poverty or custom (Kaimowitz: 2007; Goncalves et al: 2012). By comparison, more powerful actors, such as those who fund the chainsaw operators, who buy and sell illegal timber and wildlife, and who traffic the illegal goods internationally, are less likely to be detected.

There are many types of illegal activities that involve community members directly, such as customary practices that are outlawed by state regulation. These sorts of activities may be condoned by police, often in exchange for small payments (McCarthy: 2000; Corbridge and Kumar: 2002). Strengthening policing of forest areas means that there are often more police and more pressure on these police to 'catch illegal loggers'. This has two potential impacts. First, it can increase payments that people must give police to allow them to continue, which can lead to increased financial burdens to communities.⁸ Second, since it is the poorest people who are unable to pay such 'fines', or who lack the political connections to avoid them, it is they who are charged with illegal logging.

There have also been reported examples in several countries where efforts to empower police have been directed towards communities themselves or where those who seek to expose illegal activities face prosecution. This has often been reported in areas where there are conflicts between communities and commercial operations and when police salaries or other benefits are supplemented by stakeholder companies. In such cases, efforts to empower police have resulted in police using their powers to crackdown on communities rather than the corporate players (e.g. Cerutti and Tacconi: 2008).⁹ In the most extreme cases, environmental activists have been killed by government officials or companies.¹⁰

⁸ For example, following the suspension of small-scale logging licenses in Cameroon, Cerutti and Tacconi (2013) argued this had negative impacts on the livelihoods of loggers because of the increased price of bribes and lower market returns.

⁹ Communities may also engage in illegal activities which may be the legitimate focus of policing. At the same time, there have been accusations that police have used their renewed powers or authority to hassle communities (e.g. CELCoR and ACF: 2006).

¹⁰ For example, the recent murder of Chut Wutty in Cambodia has been attributed to his role as an environmental activist campaigning against logging operations (The Guardian: 2012).

2.2 Suppression

The second component of law enforcement is the suppression of illegal forest activities. In order to successfully address these problems, the punishments handed out must create an incentive against further involvement (World Bank: 2006c; Goncalves et al: 2012). Despite being so important, in many countries the capacity of the departments and agencies tasked with this are weak. For example, following a crackdown on illegal forestry and fisheries activities in Cambodia, and despite 70 people being charged with crimes, not a single court case was pursued reportedly because of a lack of capacity (Sophakchakrya: 2010). In Brazil, procedures to ensure that those already convicted of crimes are unable to re-enter the industry are rarely enforced (Brito and Barreto: 2006).

Ensuring more substantial punishments for illegal forest activities has typically received less attention from donors than other types of law enforcement. Exceptions, however, include programmes such as that between the FAO and the Centre for Legal and Judicial Training in Mozambique. This programme sought to build the capacity of the judiciary to effectively prosecute environmental crimes by providing legal training for judges on the most relevant laws regulating lands, the environment, forestry and wildlife. Cross-country training programmes were also organised with the Brazilian Judiciary (from FAO and ITTO: 2005). Another is the pilot training programme run by the United Nations Office of Drugs and Crime in Indonesia¹¹ which has developed training modules about the environment and illegal logging for police and judges (UNODC: 2010).

There has also been less focus and discussion about the practice of strengthening court capacity to tackle illegal forest activities, and much of the information available in this area is anecdotal. Despite this, there is still some evidence to suggest that the actual practices of suppressing illegal activities can contribute to further injustices.

First, the focus of detection activities on, for example, activities in the forests or the immediate transport of timber means that higher-level crimes such as money laundering or corruption are less frequently targeted. Second, when cases of illegal logging or corruption are prosecuted, experience shows that the punishments handed out often do not match the severity of the crimes. For example, only an 18 month prison sentence was imposed for the illegal importation into the UK of three protected tropical forest bird species valued at GBP 150,000 when there exists a maximum potential sentence of seven years and the imposition of an unlimited fine (Lowther et al: 2002). This fails to create a disincentive, particularly for more powerful actors who have the most to gain from illegal activities.

Where higher level crimes are prosecuted and punishments are handed down, efforts to follow up on these punishments, to collect fines or otherwise confiscate the proceeds of illegal activities is low. For example, in Brazil, despite major successes in terms of increasing the number of fines – between 2001-2004 fines for breaches in environmental crime increased 103% from USD 103 to USD 290 million – a very small percentage (around 2.5 %) of this was ever collected (Brito and Barreto: 2006). The values lost due to illegal activities, such as the value of timber, is rarely recovered (Goncalves et al: 2012). The impacts on distributional justice are highest when the illegal activity has had significant environmental impacts: the community who suffer from the localised environmental damage often fail to receive any retribution.

Strengthening law enforcement is no doubt an important part of the strategy to improve forest management and promote rule of law. In practice, however, it is not always effective and can contribute to further injustices. That is, from the examples above, the success of law enforcement

¹¹ UNODC in Indonesia has programs to addresses the problems of corruption and illegal trafficking of timber and other natural resources, see: <http://www.unodc.org/eastasiaandpacific/en/topics/illicit-trafficking/natural-resources.html>

efforts has been underwhelming, as they are unable to address the underlying factors that drive illegal activities. They tend to focus on specific types of illegal activities, such as transport violations, and catching less powerful actors. The main actors who benefit from illegal logging are less frequently targeted. Selective enforcement of certain laws and weak institutions to punish breaches has also meant that the suppression of illegal activities often does not provide incentives against illegal activities and fails to contribute to retributive justice.

3. The role of corruption and biases in law enforcement

There are many reasons why efforts to strengthen law enforcement may contribute to environmental injustices and fail to effectively address the problem of illegal forest activities. Legal frameworks that fail to protect the rights of communities, lack of communication and coordination among different government departments, and legal ambiguity, have all been documented as causes of law enforcement failure (McElwee: 2004; Brito and Barreto: 2006; Tacconi: 2007b). One of the key factors widely thought to be contributing to the failure of law enforcement is the prevalence of corruption (e.g. Smith et al: 2006; World Bank: 2006a; Goncalves et al: 2012). However, corruption is not a single phenomenon and the interaction between different types of corruption and law enforcement is complex. This section analyses some of the mechanisms by which corruption may impact on the process of strong law enforcement.

As noted above, corruption here is understood to be the 'abuse of entrusted power for private gain' and involves actions such as bribery, nepotism and fraud (Pope: 1996, p. 12). Specific acts of corruption, such as bribery, are themselves generally illegal. Corruption also facilitates broader illegal forest activities, for example by allowing illegally harvested timber to be transported and exported. More generally, a challenge of corruption is that broader systems that concentrate power and wealth often emerge to support corrupt exchanges. For example, individual bribes to police or forestry officials are often distributed up the bureaucratic chain. For a forest officer, these payments work to keep favour with their bosses and those with more money are able to buy more favour. This means that officials who do not accept payments and distribute them accordingly, are quickly removed from their positions (for examples, see: Gellert: 2010; Cerutti et al: 2013). These broader systems have contributed to the entrenched nature of corruption (Dauvergne: 1994; Filer: 1997; Ross: 2001) and have been thought of as the key institutions of natural resource governance (Robbins: 2000). Indeed, widespread corruption and the broader systems that support it have become so prevalent in some countries as to create particular types of extractive regimes, where this pattern of concentration of power and wealth become dominant (Gellert: 2010). More specifically for forestry, the presence of these complex systems of corruption can also create barriers to successfully strengthening law enforcement and reducing other illegal forest activities.

3.1 Detection

One of the main factors to have led to injustices for communities has been the pattern of selective enforcement. This selective enforcement is directed towards enforcement of regulations that target less powerful actors and lower-order crimes. There are several ways in which corruption contributes to this bias.

First, focusing enforcement activities on lower-level crimes such as transportation breaches, as well as being relatively easy to detect, also provides more opportunities for police officers to extract payments. Several analyses have pointed to this as a problem (Smith et al: 2006; Cerutti et al: 2013). In countries where bribes are distributed up the bureaucratic chain, it creates specific interests within the bureaucracy. More powerful officers, who make decisions about the allocation of police resources, have an incentive to focus activities in ways that also maximise opportunities for payments. There is less incentive to target illegal activities where the opportunities for payments are fewer.

This also means that illegal actors who are able to pay can bypass formal prosecution. However, the ability to pay and bypass prosecution is not uniformly applied. Less powerful actors, who have less financial capacity to pay and fewer political connections are therefore subject to subsequent law enforcement. This is obviously not consistent with the principles of rule of law which require consistent application of the law.

The protection afforded by corrupt networks including high level political actors also contributes to this pattern of selective enforcement. That is, despite many agencies calling for monitoring that 'follows the money', there are often barriers to enforcing such regulations because they ultimately target higher level political and economic actors. Cases of ministerial or other high level political engagement in illegal activities has been widespread and well documented in many countries (Ross: 2001; Global Witness: 2007). Political figures are often also dependent on commercial activities for political campaign finance (Poffenberger: 1997; Burgess et al: 2011). Or ministers and politicians are more directly linked to commercial logging activities. For example, many of the commercial logging operations in Sarawak, Malaysia, were run by the family or close political associates of the Chief Minister of Sarawak (BMF: 2012).¹² In these conditions, the capacity or interests of forestry police to tackle these powerful actors by enforcing all forest related regulations will be limited. Indeed, police in Cameroon have also reported their fear of monitoring the illegal activities of some commercial operations because of their links to powerful political actors (Global Witness: 2003).

Third, many efforts to detect illegal activities rely on checking documentation. Efforts to crack down on illegal activities by focusing on transport violations can lead to increased falsification of documents. For example, a recent report from Peru highlights how falsification of documents in the early stages – at the point of forest inventory – is the key to understanding the system of illegal logging and trade from Peru to the United States (Urrunaga et al: 2012). Because of difficulties to obtain permits and their inability to pay, communities are often unable to get such paperwork and are therefore more likely to be identified as operating illegally.

3.2 Suppression

The impacts of corruption are also felt in the suppression of illegal forest activities. Prosecutors and judges, in similar fashion to the police, are also subject to political interference, or can be motivated by corrupt interests. Corruption can impact upon suppression during the preparation of cases. For example, political interference was blamed for the 'loss' of documents that implicated a number of the largest timber firms in Honduras (Goncalves et al: 2012). In many cases, failure to collect and present significant evidence is also a result of a lack of capacity or of resources. However, in many cases, corruption and political interference is also present (see the Indonesia case example below). More directly, corruption, in the form of payments to judges has also been known to impact on charging and the level of punishments for different actors.

What this shows is that there are a variety of different ways in which corruption can and does impact upon the conduct of law enforcement and contribute to further environmental injustices. However, the specific conditions vary across countries and it is important to understand local context. The two case studies below, on Cameroon and Indonesia, provide more of this detailed analysis and highlight both differences and similarities in the patterns of law enforcement in tropically forested countries.

¹² Many of the families linked to logging in Sarawak no longer depend on logging operations directly as they have invested funds and earn incomes from other economic activities – including oil palm and property. More information about these families is available on the Sarawak report: www.sarawakreport.org.

4. Case study: Cameroon

4.1 Background: Illegal forest activities and forest law enforcement

Forests cover roughly 19.9 million ha of Cameroon's territory, accounting for 42% of land area (FAO: 2010). Since the 1994 Forestry Regulation, all forest lands are controlled by the state. Exploitation of these forests plays a fundamental role in the nation's economy; employing up to 70,000 people and contributing around 2% of the country's GDP in 2010 (World Bank: 2012). Many communities in Cameroon depend heavily on access to forest land and resources for their daily subsistence. This includes as an energy source (from wood) as well as bush meat and commercial products such as rattan. Indeed, apart from timber, over 500 plant and 280 animal species are reportedly used for household consumption in the southern regions of Cameroon (Amariei: 2005). Cameroon's forests are also considered to be biodiversity hotspots, and along with Gabon and Equatorial Guinea, host 26% of all African mammals and many other endemic species (Amariei: 2005).

Despite the importance of these forests, deforestation and forest degradation continues in Cameroon. Actual figures on the rate of deforestation and forest degradation vary. According to the FAO, roughly 2 million ha of forest lands have been cleared since 1990 – a loss of roughly 220 000 ha (between 0.6-1%) per year. However, recent research suggests that this figure is overstated, and calculates deforestation rates of approximately 0.2% per year (Duveiller et al: 2008). Exact drivers of deforestation are difficult to determine as there are many factors which contribute to deforestation and forest degradation. Population growth, agricultural expansion, and logging – including large scale commercial exploitation, small-scale artisanal activity and illegal logging – are broadly considered to be the main drivers of both deforestation and forest degradation in Cameroon (CARPE: 2005; Bellassen and Gitz: 2008).

Illegal forest activities, focused around illegal logging and corruption, have been a well-documented problem in the country. It is often quoted that up to 50% of round wood exports from Cameroon are illegal (for example Seneca Creek Associates and Wood Resources International: 2004; World Bank: 2006a). However, given the difficulty of measuring illegal activities, this number is uncertain. Some have argued that this is an overestimate and rates of illegal exports may have been as low as 23% in some years (Cerutti and Tacconi: 2008). However, these numbers hide the many complexities associated with illegal activities in Cameroon. There are many different types of activities reported in the country. These include payments to field officers to bypass monitoring (Cerutti and Assembe: 2005; Global Witness: 2005) and bribes to transport authorities to pass undetected (Cerutti and Tacconi: 2008). Corrupt transactions in awarding concessions has also been well-documented, with wide-ranging impacts for the contractual conditions of logging operations (Global Witness: 2005; Dkamela: 2011). There are also allegations of potential problems in the suppression of illegal activities. Illegally harvested timber that is confiscated by the government is meant to be auctioned. In practice, government officials often 'auction' this timber back to the logger in exchange for bribes (Cerutti et al: 2013). Communities also engage directly in illegal activities and this informal sector is vital for the livelihoods of many Cameroonian and supplies much of the domestic market (Cerutti and Tacconi: 2008).

4.2 Experience with law enforcement

Cameroon has attracted considerable attention internationally for high rates of illegal forest activities and several programmes have been implemented to promote rule of law and strengthen law enforcement. These have included strategies to promote prevention, detection and (to a lesser extent) suppression. In terms of prevention, the Cameroon government introduced a New Forestry Law in 1994, which aimed to open-up the licensing process and therefore reduce some potential for corruption. Cameroon has also engaged in other demand-side interventions. Cameroon was one of the

first countries in Africa to sign up to FLEGT. A FLEGT voluntary partnership agreement (VPA) was signed between the government of Cameroon and the EU in 2010. This VPA took three years from the start of negotiations until it was signed in 2010. Whilst the FLEGT process is targeting preventative law enforcement, building awareness and limiting market access for illegal timber, it has also been accompanied by strategies that detect illegal activities and verify timber legality within Cameroon.

4.2.1 Detection

In support of these efforts, there have also been domestic initiatives to promote detection and suppression of illegal forest activities. In 2001, Cameroon contracted UK-based NGO Global Witness to act as an independent observer and support forest law enforcement. Jointly funded by DFID, the World Bank and the EU, the project aimed to support government monitoring and to build credibility for the timber industry in Cameroon. Following the end of the contract with Global Witness in 2005, Resource Extractive Monitoring (REM) took over the contract for independent monitoring. The monitors were involved in capacity building with the police to better plan and implement monitoring of commercial logging activities. International observers were also involved in specific missions to monitor company activities. These were conducted both with government officials, and independently (Global Witness: 2005; REM: 2010). The results of this process are discussed below. Other programmes to improve detection of illegal forest activities include establishing satellite images of forest cover by Global Forest Watch, under the programme developed by the World Resources Institute (GFW: 2002). There have also been periods where domestic initiatives have led to the increased detection of illegal activities in the field. This particularly focused on the checkpoints on main transport routes; and targeted timber that is sold on the domestic market (Cerutti and Tacconi: 2008).

The experience from these programmes has been mixed. While there has been a great deal of support for FLEGT in Cameroon, the full impact has not yet been felt as the FLEGT system will not begin until 2013. The activities of the independent monitors have seen more noticeable achievements. Although there has always been some tension over the independent monitors – as they were a consequence of donor conditionality and some of their activities continue to be ignored by the host institutions (Luttrell: 2007; REM: 2010) – there have nonetheless been widely accepted improvements in the operation of commercial logging companies. Blatant illegalities by the commercial operators are no longer permitted (Cerutti and Assembe: 2005). However, the informal sector has remained dominant, particularly for the domestic market (Cerutti et al: 2013). Reports suggest that the presence of independent monitors has reduced the rate of corrupt payments between commercial operations and government officials. However, companies report that when the independent observers were not present, monitoring tended to focus on smaller operations, and often bribes were expected/paid (Cerutti and Assembe: 2005; Colchester et al: 2006). The focus on the illegal activities of small-scale operators has therefore dominated law enforcement efforts. Some have even argued that “higher level state officials use ‘law enforcement’ to cut small-scale loggers out of the mainstream legal forestry sector – officially, because they do not comply with the law, but in reality because such a legal framework gives forestry officials a means to extract bribes” (Cerutti et al: 2013). Furthermore, reports produced by REM continue to document many barriers to the effective monitoring of the independent observers such as the perceived failure of the MINFOF to fully accept the reports from monitoring missions that are conducted independently of the MINFOF (REM: 2010).

Another implication of this approach to enforcement is that the nature of illegal activities has largely shifted. Rather than improving forest management more generally, it has been reported by the independent observers and other NGOs that influential individuals have instead targeted community forest areas and continued illegal logging (Cerutti and Assembe: 2005). This claim is largely supported in more recent analysis of the shifting nature of illegal activities in the forests of Cameroon (REM: 2010; Cerutti et al: 2013). The result is that efforts to strengthen the detection of illegal forest

activities has led to illegal activities shifting to different areas, or different types of illegal activities, arguably failing to reduce the negative environmental impacts associated with illegal logging.

4.2.2 Suppression

There have also been some programmes aimed at improving the suppression of illegal forest activities in Cameroon. This has involved improvements in government procedures for documenting and distributing information about illegal acts. The government are required to publish lists of companies that have committed illegal acts and that have been fined; a practice which has been supported by donors and the independent observers (Global Witness: 2005). While this has promoted some transparency, in general the actual practice of suppression continues to be impacted by corrupt interests, with implications for justice.

First, as discussed above, the selective detection of certain crimes and the ability to evade monitoring by paying bribes has implications for who is prosecuted. More powerful actors and commercial operations are less likely to be pursued by forest officials because of fears of reprisal from political interests. Where companies have been charged with illegal activities, there are several mechanisms of the court process that create risks of corruption. The system allows alleged offenders to negotiate with the ministry over the amount of fines to be paid (Amarie: 2005). These out-of-court negotiations are not transparent and there is considerable concern that the ministry appeared to settle for amounts lower than the value of the illegal timber (Topa et al: 2009). In response to these criticisms, the ministry sought to establish rules about the minimum standard. Furthermore, even when fines are awarded, only a small proportion was actually paid. Between 2001 and 2007, despite fines of USD 30 million, only USD 4.4 million was ever collected (Topa et al: 2009). There is little information about why this may be the case, although in some instances it is due to the companies in question dissolving with no remaining assets. This is particularly important as there have been documented problems where people charged with crimes have been able to bypass payments and continue operating under new names (Global Witness: 2005). This is not necessarily a consequence of corruption; however failure to collect fines does have implications for justice and economic implications for the national economy.

4.3 Lessons learnt in Cameroon

There have, no doubt, been some improvements to the process of law enforcement, particularly the promotion of transparency in operations in the forest sector in Cameroon. However, the sustainability of these reforms is not yet clear. Corruption, including direct bribery and captured political interests has several impacts on the actual activities of law enforcement officers. Detection has largely focused on small-scale activities and the activities of actors such as local chainsaw operators. This has contributed to injustices as more powerful actors are not subject to these laws. Insufficient punishment, particularly for commercial actors engaging in illegal activities, have failed to create incentives against illegal activities and have failed to recover lost state revenue. This means the communities who suffer from the environmental impacts, such as the loss of a healthy environment, as a result of illegal activities fail to receive retribution. This is not to say that communities do not engage in illegal forest activities, corruption or cause environmental harm. Rather, the current system of promoting strong law enforcement is manipulated for corrupt interests and arguably unjustly implemented, with particular negative consequences for communities.

There are two main lessons to be learnt from the experiences in Cameroon:

- First, efforts to strengthen detection of illegal activities need to be considerate of the potential for the shifting of illegal activities. This includes shifts into other forest areas – specifically into the community forest areas that were not as closely monitored. It also included shifts to different types of illegal activities – from illegal activities in the field to illegal activities on paper.

- The activities of the independent monitors and other programmes to strengthen the detection of illegal activities could be more successful if they have some degree of flexibility to adapt to such changes. Procedures should also be in place to support the administrative processes of the government departments as a means to form barriers to shifting illegalities.
- Second, while there have been some improvements regarding detection, these have not been accompanied by efforts to strengthen the suppression of illegal activities.
 - Efforts to strengthen law enforcement could be more successful if support is also provided for the legal arms of the forestry department and the judiciary, particularly to enforce the publication of information.
 - Efforts to work with the forestry department to build internal will and support for the successful prosecution of illegal forest activities are important. Building political will is a difficult and slow process, particularly when there are strong corrupt interests supporting the status-quo. Efforts to identify individuals who may become champions within national institutions, or who continue to push for disclosure, are likely to be long-term strategies to improve suppression of illegal forest activities.

5. Case study: Indonesia

5.1 Background: Illegal forest activities and forest law enforcement

Indonesia's forests cover approximately 94 million ha (FAO: 2010). Since Dutch occupation, customary forest lands, particularly in Java and Bali, have been almost exclusively held under colonial (then state) authority. It is now the Ministry of Forestry that regulates all commercial and non-commercial activities in this vast forest estate. The contribution of the forest industry, including forestry, wood manufacturing, and the pulp and paper industry is vital to the Indonesian economy, contributing USD 21 billion to GDP, or roughly 3.5% of the national economy (ITS Global: 2011). Indonesia is also classified as one of Conservation International's mega-diverse countries. Its forests provide vital resources for millions of Indonesians, including timber and non-timber forest products. Yet despite their importance, they continue to be cleared and converted at one of the highest rates in the world.

Similar to Cameroon, figures on the rate of deforestation and forest degradation in Indonesia are complex and contested.¹³ Between 1990 and 2010, approximately 24 million ha of forest has been converted to alternative uses (FAO: 2010). Drivers of deforestation and forest degradation have changed over the last several decades. Initially, large scale logging was considered a major factor. In the late 1980s and 1990s there was also a focus on the establishment of pulp, paper and plywood industries, which was marked by increased commitment to plantations (Barr: 2000). However, the plantations have not to date been sufficient for pulp and paper needs and timber extraction from natural forests continues. Current national policy to expand the oil palm industry has also been responsible for widespread land use change. However, exact figures on the contribution of oil palm expansion to deforestation remain contested, particularly because of a lack of data (Wicke et al: 2011). High rates of deforestation and forest degradation have attracted international concern, particularly because much of this deforestation and forest degradation has been the result of illegal forest activities (Palmer: 2001).

Illegal forest activities have been a well-documented problem in Indonesia (Brown: 1999; Casson and Obidzinski: 2007; Luttrell et al: 2011). Whilst figures on the amount of illegal timber are difficult to establish with any certainty, it is estimated that between 73-76% of annual timber production is illegal (Luttrell et al: 2011). Corruption and illegal forest activities during the 32 year rule of Suharto are today infamous (Poffenberger: 1997; Ross: 2001; Casson and Obidzinski: 2007). Since the fall of Suharto in 1998 and the subsequent reforms – including the decentralisation of many government functions to the level of district (*Kabupaten*), the nature and types of illegal activities has arguably changed. Illegal logging by large scale concessionaires has become less prevalent, initially replaced by small-scale licenses in the early period after Suharto (McCarthy: 2002; Casson and Obidzinski: 2007). Fraudulent permits and licenses has become a prevalent problem in Indonesia. The Ministry of Forestry has reported to the national media that, in Kalimantan alone, 1,236 mining firms and 537 oil palm plantation operations were illegal, operating without full or legal permits (JakartaGlobe: April 28, 2011). This is happening at a cost of USD 36 billion to the national economy (JakartaGlobe: 2012, 24 May). Illegal trade in protected species, particularly from Kalimantan and Papua, are also well-documented (EIA/Telapak: 2007). The problems of illegal forest activities and poor conditions for forest dependent peoples have attracted high level concern and considerable efforts to reduce illegal activities.

¹³ For an older review of these issues see: Sunderlin and Resosudarmo (1996).

5.2 Experience with law enforcement

The effort to reduce illegal activities includes international, national and local programmes. For example, Indonesia is working within the FLEGT process and an interim agreement was reached for the VPA 2011. There have also been attempts to promote timber certification and to build awareness of the problems of illegal logging in countries that buy timber from Indonesia (see Tacconi: 2007c). As a preventative strategy there have been several attempts to reform regulations to restrict illegal activities. For example, the right of district governments to issue small-scale forest licenses was withdrawn by the ministry, purportedly in response to the widespread abuses and illegal logging associated with these licenses (Ribot et al: 2006). Other relevant reforms include a 2003 change to money laundering regulations to specifically include illegal logging. The establishment of the Anti-Corruption Commission (KPK) in 2002 has also been crucial to efforts to reduce illegal forest activities. Indeed forestry is one of the four sectors that the KPK has focused on.

5.2.1 Detection

Given the large forest cover and complex jurisdictions between levels and departments of government in Indonesia, there have been many challenges to detecting illegal forest activities. In response to widespread illegal logging, the president released Presidential Instruction (Inpres) No. 4/2006 to combat illegal logging. The Inpres was addressed to 18 ministries and political actors, including the finance ministry and provincial and district politicians. Whilst the Inpres have no legal teeth, this Inpres aimed to promote a more holistic agenda against illegal logging and sought to empower agencies to tackle the many facets of illegal forest activities. This was accompanied by national initiatives including the joint security sweeps (*Operasi Hutan Lestari* or OHL, sustainable forest operation). The government of Indonesia reportedly spent USD 1 million to increase the policing of forestry operations (Luttrell et al: 2011). In addition to government responses, many NGOs have also led campaigns to investigate and improve detection of illegal forest activities. Some of these have involved efforts to release more information, such as the work of Forest Watch Indonesia.¹⁴ Another NGO is Telapak who undertake investigations and publish evidence and reports of illegal activities by commercial operations (EIA/Telapak: 2007; EIA/Telapak: 2012).

While these programmes have achieved some successes there have been significant practical difficulties in implementing these programmes and effectively strengthening the detection of illegal activities. Despite trying to include many ministries, the focus of presidential instruction was in practice focused on the enforcement of the Forestry Act (UU 41/1999). Illegal activities, according to the Forest Act are largely restricted to activities within the forests themselves. The consequence of this is that the crimes (and actors) detected were predominantly less powerful actors (Colchester et al: 2006; Luttrell et al: 2011). Of the 205 people charged with crimes, 156 (76%) were less powerful actors, including chainsaw operators, farmers and drivers (ICW: 2009). There were some improvements during OHL II, where some military officials and commercial interests were also charged. To date, however, there has been some hesitance towards using money laundering or corruption regulations. Despite many reforms to the money laundering regulation, there have yet to be any cases brought to court. Part of this may be because such reforms are relatively new and there is a hesitance, particularly with money laundering regulation, to focus on the more powerful actors (Dermawan et al: 2011).

Part of this perceived hesitance to tackle more powerful actors is driven by apprehension of reprisals. KPK investigators have been arrested following attempts to investigate the activities of police. Even the heads of the KPK were targeted by police who allegedly created false evidence in order to charge the KPK officials. This charge was reportedly in retaliation for the KPK's attempts to instigate

¹⁴ See the many publications of Forest Watch Indonesia at: www.fwi.or.id

investigations into corruption in the police force. Such cases provide evidence of potential barriers to the successful investigation and prosecution of more powerful actors.

Furthermore, despite efforts by other organisations, such as NGOs, to investigate and expose corruption and other illegal forest activities, there has been a general lack of capacity or will among police to pursue these cases (EIA/Telapak: 2007). This highlights some of the barriers to effectively using corruption regulations, particularly in efforts to address the operations of other law enforcement agencies.

Corruption and political interests have contributed to the selective enforcement of the forestry law over other regulations, such as money laundering or corruption. There is also evidence of corruption affecting the detection of crimes within the forestry regulations. For example, commercial operations engaged in illegal activities are able to bypass formal procedures by making payments to monitors (EIA/Telapak: 2007). Communities or less-powerful actors cannot afford to do so and they often suffer from the environmental degradation caused by illegal activities. The implications are that detection targets less powerful actors and fails to effectively address the incentives that drive some illegal activities.

5.2.2 Suppression

As the cases above highlight, there are also challenges to suppressing illegal forest activities in Indonesia. Again, there has been less explicit donor attention to support the suppression of illegal activities. However, there have been several initiatives, both domestic and international, that have sought to improve the suppression of illegal forest activities. First, establishing the KPK itself has been crucial to Indonesia's anti-corruption efforts. This is because the KPK has been successful in prosecuting several high-level corruption cases (for example see Rayda: 2009, January 28). There have also been several donor programmes aimed at strengthening the operation of the KPK, for example by GIZ (GTZ: n.d.). However, this has arguably been focused on preventative approaches to anti-corruption. In response to the failure of the first OHL to lead to any successful prosecutions, the president of Indonesia instigated a Presidential Anti Judicial-Mafia Taskforce with specific focus on the forest sector. Whilst these programmes demonstrate commitment to strengthening the suppression of illegal forest activities, the experiences of efforts to suppress crimes highlight the potential impacts of corruption.

The suppression of illegal forest activities has typically focused on less-powerful actors, and punishments for higher-level crimes have been weak. For example, the judicial mafia taskforce was in part a response to the failure of strong detection operations, like the OHL, in bringing prosecutions (Luttrell et al: 2011). In the initial sweep under the OHL, of the 35 more powerful actors charged only five received sentences above two years (ICW: 2009). In general the punishments for higher-level crimes have also been weak. For example, a provincial forestry official who accepted over USD 62,000 for his part in issuing plantation permits to several companies received only two and a half years in prison and only USD 8,000 in fines (Satriastanti: May 19, 2011). This is not to say that punishments are always low, and there are a growing number of examples where punishments have been significant. Another defendant in the case above received an 11 year prison sentence, was fined IDR 500 million and had to pay restitution costs of over IDR 12 billion (ILEA: 2009). Whilst there are no-doubt cases where sufficient punishments have been awarded, such conditions need to be consistent if they are to create sufficient incentives and address the problems of illegal activities. Weak punishments for more powerful actors means that state losses are not recovered as described above. Furthermore, in these situations there is little documented evidence about the retribution for communities who are affected by these illegal activities.

In other cases, corruption has arguably more directly resulted in the failure to effectively suppress illegal activities. For example, an investigation into illegal logging by 14 pulp and paper companies operating in Sumatera, all subsidiaries of large corporations, was dropped before prosecution. While it

is very difficult to prove corruption, it has been alleged by NGOs and journalists that political interference led to the case being dropped. This interference included replacing the lead policeman in the district, who had been responsible for the initial investigation into the companies. There was also apparent interference from the Minister of Forests who classified the activities of these companies as 'administrative violations' and reportedly ordered the provincial police to drop the case (Satriastanti: May 19, 2011). Judges have also described how they are frequently offered bribes in exchange for favourable verdicts (JakartaPost: 26 March, 2012). This again demonstrates that those who are able to pay are better able to resist law enforcement activities, with implications for justice.

5.3 Lessons learnt in Indonesia

The story in Indonesia reflects many of the examples already discussed in this paper. Efforts to strengthen law enforcement in the country have typically focused on illegal activities in the forests themselves with the potential to increase the burden on forest dependent communities who are more likely to be engaged in informal activities in the forests. There has also been considerable difficulty in suppressing illegal forest activities. This has also been the consequence of lack of capacity and other governance challenges not related to corruption. This is the consequence of corruption where potentially corrupt interests encourage interference in the judicial process.

The experiences from these efforts provide three main lessons for future efforts to strengthen law enforcement and promote environmental justice:

- First, as with Cameroon, there is a need to promote detection of a broader range of illegal activities, including those that occur outside the forests. Indonesia has made some progress with reforms to the money laundering regulation and the operation of the KPK and future efforts to support law enforcement can be better targeted towards supporting these national institutions. This could enable more consistent enforcement of all the laws of the country.
- Second, Indonesia has a strong civil society engaged in monitoring and reporting on illegal activities. However, there is an apparent disconnect between these activities and the processes of police and the judiciary. Donor activities that engage with these organisations and help them to detect and publicise breaches could support long-term political will.
- Third, as with Cameroon, there has been far less focus on the just suppression of illegal activities. The UNODC is running a trial programme which includes efforts to educate judges about the cost of environmental crimes. Efforts to support initiatives or identify capacity problems of the judicial system could also be beneficial.
- Finally, until legal reforms create space for forest dependent communities so they are able to get legal recognition and protection for important livelihood activities, future efforts to push for the increased detection of illegal activities will need to be considerate of the potential impacts on these communities.

6. Summary and lessons learnt

Some domestic and international donor supported programmes have seen successes in strengthening enforcement of laws relevant for the forest sector, even in corrupt contexts. Independent monitoring in Cameroon, for example, has contributed to reducing some illegal forest activities. The work of the KPK in Indonesia to better tackle corruption in forest sector licensing could also prove successful in reducing broader illegal forest activities. Programmes aimed at strengthening law enforcement will continue to be a vital component of efforts to improve forest management and reduce illegal forest activities. This is particularly the case for the future operation of REDD+, the success of which will be highly dependent on the ability of countries to reduce illegal forest activities (Dermawan et al: 2011). Law enforcement programmes are therefore worthy of attention and support from the donor community. However, efforts to strengthen the detection and suppression of illegal forest activities often fail to address the systematic drivers of illegal forest activities and can result in further injustices for communities. Donors must be considerate of the many potential impacts of corruption and design forest law enforcement programmes accordingly.

- **First, given that conditions vary in different countries, appropriate responses should be built on in-depth knowledge of the local context.** In-depth analysis can help donor agencies to plan and support law enforcement programmes that are based on detailed understanding of what illegal activities are happening and what the current practices of enforcement involve. Law enforcement efforts could also benefit from donor and national government agencies conducting detailed examination of the types of corruption that are occurring and analysis of how this may impact on law enforcement activities. This particularly includes examining the potential of a wider range of regulations that exist in a country, a strategy which was advocated in CIFOR's Integrated Law Enforcement Approach (ILEA).¹⁵

With this information, donors can better tailor their support to law enforcement programmes that address particular types of illegal forest activities. The evidence shows that in corrupt conditions, law enforcement typically focuses on less powerful actors and contributes to further environmental injustices. Supporting law enforcement that addresses a broader range of illegal forest activities, such as the creation of fraudulent documents or money laundering, can lead to broader improvements. For donors, efforts to address particular types of illegal forest activities may involve identifying broader national institutions that are mandated with such tasks and target donor operations to support those institutions. Efforts to link civil society groups with formal state agencies, such as the police, could also lead to better detection of a wider type of illegal forest activities. This is no doubt a difficult task, particularly in highly corrupt contexts, as it means addressing the crimes that are committed by more powerful actors and will therefore face considerable political barriers. The types of programmes chosen for support will need to build political support for targeting such illegal forest activities – which can involve civil society pressure. Despite the potential barriers, targeting the most harmful or a broader range of illegal activities will be vital to long-term improvements for forests and people.

- **Second, donors have to be considerate of potential secondary impacts of any particular programme aimed at strengthening law enforcement, specifically the problem of shifting illegal activities.** Experience has shown that in corrupt conditions, efforts to strengthen detection of some types of illegal activities can lead to increases in others, including shifting illegal activities to other physical areas, or to other types of illegal forest activities. For

¹⁵ The Integrated Law Enforcement Approach (ILEA) project ended in 2009. It advocated a 'follow the money' approach, incorporating a wide range of regulations and the inclusion of agencies in the banking and financing sector as a means to target illegal forest activities. See: http://www.cifor.org/ilea_ref/instruments/index.htm.

example, a focus on checking legal transport documents can lead to increased corruption to falsify documentation. There are already efforts to address this shift in different contexts, such as project LEAF's work to address regional leakage of illegal forest activities. Within countries there is also a need to consider the potential for a shift in illegal forest activities. Donor programmes and national governments should try to identify the potential of these shifts prior to conducting any activity. This could involve examination of the regulations to identify regulatory loopholes, or consultation with countries in similar situations to learn from others' experiences. With such information, it will be possible to plan interventions to mitigate such shifts. Given the difficulties of planning for these shifts, donor and national government programmes should also aim to be flexible to adapt to any changes in the type or location of illegal forest activities. This flexibility will come from a broad mandate and the involvement of a wide range of agencies.

- **Third, to date, the majority of reported programmes to strengthen law enforcement have focused on the detection of illegal forest activities. There has been less focus and evidence about the suppression of illegal activities.** What evidence there is suggests that corrupt interests contribute to a failure to effectively suppress illegal forest activities. This includes a general failure to prosecute illegal activities, or where prosecution does occur, there is an unjust focus on less-powerful actors and punishments are often an insufficient deterrence for more powerful actors. There is a need for more information about how the process of suppression actually happens and what the key barriers to suppression in different contexts are. Barriers may include a lack of capacity in the judicial system or a lack of understanding of environmental crimes. Programmes such as the UNODC's efforts to educate the judiciary about the costs of environmental crime may provide an example to address these types of problems. Corrupt interests also form a barrier to effective and just suppression. This includes corruption in the detection of different types of illegal activities. Approaches, such as those advocated by the ILEA, which argue for the use of a variety of regulations – including money laundering rules – will be important to ensure that more powerful actors are also targeted. Addressing corruption in the court systems may also be important to ensure that losses are recovered and justice achieved. There is also a need to support dissemination of information related to the outcomes of such programmes as a means to build a broader information base.

Under very corrupt conditions, it is difficult to bring about reform in one sector alone (Contreras-Hermosella: 2002). Ultimately efforts to address the many different types of corruption that occur in countries will be necessary. However, these sorts of approaches require significant political will and long term engagement and will be out of reach of programmes mandated to address specific environmental problems.

- **Finally, while clean and consistent law enforcement is an inherent quality of the rule of law, this does not necessarily equate with environmental justice.** In some countries, it will be more beneficial to focus efforts on legalising certain activities of forest communities, and ensure that the principles of environmental justice are reflected in legislation, rather than focusing on strengthening policing of illegal activities. This may involve supporting local-level organisations that campaign for legal reform as a means to achieve justice for communities.

Where it is not feasible to reform legislation to protect the rights of communities, law enforcement efforts will need to be considerate of the legal status of communities. Efforts to strengthen law enforcement in such a context will benefit from participatory approaches, particularly involving community-based civil society organisations, to design the enforcement framework. Along with support from government, such participatory approaches to designing interventions can contribute to ensuring strong law enforcement does not lead to further injustices for forest dependent communities or other marginalised forest peoples.

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Widespread illegal forest activities have contributed to deforestation, forest degradation, economic losses to nations and injustices for forest communities in many countries. Promoting rule of law, particularly through 'strengthening law enforcement' is an important part of improving forest management and ensuring justice for forest dependent communities. This includes strengthening police and the courts to better detect and punish illegal forest activities. However, available evidence has shown that strong law enforcement activities often fail to address broader systems of illegal activities and can lead to further injustices. Corruption is one reason for these failures and is the focus of this U4 Issue Paper, which draws lessons from Cameroon and Indonesia. Efforts to strengthen law enforcement in the forests need to consider how corruption may interfere with successful detection and suppression of illegal activities. If they are to be successful, programmes promoting forest law enforcement in corrupt contexts also need to be sensitive to how they are implemented, with particular focus on the rights of forest dependent communities.