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THE FOCUS OF THIS ISSUE: ILLEGAL LOGGING

Illegal logging has been highlighted as a major factor in forest destruction through both national and international NGO campaigns. However, the issue is not as simple as it might seem. Legal logging can in many cases be as bad as illegal logging and it is even possible to find some example showing that illegal logging can be more socially and environmentally friendly than legal logging!

The above certainly does not mean that WRM supports illegal logging. What it does mean is that the issue of legal versus illegal logging is a complex one and that simplistic approaches can be dangerous. The importance of illegal logging in forest destruction varies from country to country and so does the impact of legal logging. We believe that what matters most is not the legality issue, but whether logging –both legal and illegal- is socially and environmentally friendly or damaging.

Given the complexity of the issue, we have asked a number of people to share their knowledge and insights on different aspects of the problem. The following articles are the result of that effort and we hope that they will help us all to have a broader and more in-depth perspective about the issue.

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\* OUR VIEWPOINT  
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- Is forest law enforcement and governance the answer?

Companies and governments involved in the international tropical timber trade have a well deserved bad image. Most of their activities have resulted in widespread forest destruction and human rights abuses in numerous countries, while corruption has been at the core of many of their practices. Some of those same actors now appear to be willing –after having been targeted by strong NGO campaigns- to improve their performance in both logging and international timber trade.

This has led to Forest Law Enforcement and Governance (FLEG) processes to deal with the issue particularly in Asian and African forests, while the European Union has also launched a similar initiative to address imports of illegal timber in its member states.

As expressed in the name itself, the FLEG approach mostly focuses on two issues: law enforcement and good governance. The reasoning behind it thus appears to be that as long as forest legislation is complied with and governments play their role adequately, the outcome will be positive to forests. As a result, international trade will be able to continue in business –under the banner of legality- with a clean image.

This approach is based on the implicit assumption that laws are basically good and governments are legitimate, thereby simplifying the very complex issue of forests and forest peoples and leaving outside –or at best at the margins- the crucial topic of forest ownership.

In most tropical countries, the law establishes that forests are owned by the State, which thus has the right to award logging concessions to private corporations. As a result, companies logging in those concessions are operating within the law. If those companies act according to the rules (e.g. respecting annual allowable cuts, concession boundaries and other legal requirements) and if government officials also act according to law in monitoring logging companies, then the forestry sector will be considered to be operating “legally” and having achieved “good governance”.

However, from a community perspective the picture is entirely different. For forest and forest dependent peoples such laws are illegitimate and should not be enforced; they originated in the colonial past and were later adopted by the post-colonial governments to serve the interests of both local elites and foreign corporations -mostly based in the ex-colonial metropolis. For them, forest law enforcement and governance implies strengthening a situation that operates against their will and interests and that they have never accepted as righteous.

From their perspective, illegal logging and corporate-government corruption are not the main issues. Destructive logging of their forests by outsiders –and the human rights abuses involved- is the real problem, regardless of how legal or illegal the operation may be.

Legality is not necessarily synonymous to legitimacy. What needs to be done is precisely that: to make both coincide. For that to happen, laws need to be drastically changed. Governments and civil society need to acknowledge the legitimate right of forest communities through adequate legislation that recognizes community ownership of forests.

Recognizing those rights would be the first –though not the only- step in the right direction. Only then would law enforcement be considered to be positive by local communities and only then would good

governance make sense. Until that happens, we will continue to consider much of the “legal” tropical timber trade as illegitimate and the corporations involved as intruders in other peoples’ lands.

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\* IN SEARCH OF ANSWERS

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- Illegal logging or unsustainable logging?

Is the dichotomy legal logging – illegal logging the one that should prevail in a forest conservation policy? It is understood that illegal logging takes place when timber – converted into a profitable business to be exploited – is harvested, transported, purchased or sold in violation of national laws. However, laws can vary widely from one country to another, so there is no way of distinguishing between legal and illegal logging on a world scale insofar as there are no international standards in this respect. Perhaps in each case the questions to be asked are: What is legal? What should be legal? Is what is legal legitimate?

Although legal, how far are industrial logging concessions granted to European companies in Africa legitimate, where over 11 million hectares of forests are being exploited, very often taking away from local communities the places where they have the right to carry out community resource management? Is it legitimate to log mahogany trees in Brazil to make sumptuous furniture in the United States, the United Kingdom, the Netherlands or Germany? It affects thousands of hectares of forest per concession altering the water cycle, degrading the soil, increasing surface temperature and releasing into the atmosphere carbon dioxide stored in the trees, among other things. How legitimate is the Finnish State company Metsähallitus’ logging of primary forests, the ancestral territory of the Sami, who thus see their way of life and livelihood threatened, together with their culture and human rights? In this respect, the definition of what is legal should not be separated from the question of whether what is legal is really based on standards that most people feel in a certain way to be their own. It could be that what is illegal for indigenous communities is perfectly legal for the government and forest concessionaires. For this reason, although illegal logging is often presented as a question of what is involved is applying the law, legal provisions often strengthen unfair relationships or ignore consuetudinary rights.

In countries where forestry legislation is not considered to be legitimate by a large number of people, addressing the issue of illegality by centring on these laws could imply perpetuating social inequality. In Indonesia for example, the 1945 Constitution determined that the State has control over all the forests. The 1999 forestry legislation was drawn up on the basis of this concept and explicitly classifies the indigenous peoples’ forests as State forests and grants the Forestry Ministry legal jurisdiction to manage those forest resources. In the framework of an economic policy of exploiting natural resources for export, advised and financially supported by international organizations, the Government has granted logging companies, among others, rights over vast areas of forest lands that the local population considered were theirs. The result is a loss of forest and many conflicts regarding human rights.

Beyond the legitimacy of the logging companies, it is them and the chain of intermediaries which, by increasing their business with illegal activities, are the main components of illegal logging that, linked to international illegal trade, cause the destruction of forests, the introduction and promotion of corruption, making the governments lose billions of dollars through tax evasion and that fund armed conflicts, among other wrongdoings. Even so, in some cases the victims – displaced and impoverished communities - are usually made responsible for exploitation and illegal trade, in these cases, omitting the consideration of the deeper, underlying causes. In this respect, a simple policy against illegal practices that equals situations and does not aim at resolving the underlying causes of some of these special situations of illegal logging in which the actors are far from being agents of power, could do more harm than good. Even though the small communities are those that in the long run have more to lose when their forests are destroyed and their resources are stolen, there are cases, such as in Peru, of indigenous

peoples who, tired of poverty and watching others getting richer day by day with the timber leaving their forests, want to share some profit from their resources and very often enter the chain of illegal logging, knowing that they are exploited and robbed.

Perhaps then what should be discussed is sustainable logging. Legal logging can be unsustainable and sustainable logging can be illegal. If the main objective is sustainability, then the aim should be sustainable activities and this might well imply legalization of activities that today are illegal, and making other activities, now legal, illegal. In these terms it may well seem to be a merely legal issue. There are enough processes centred on the application of the law, as described in the FLEG-T articles (Forest Law Enforcement, Governance and Trade) as promoted by the European Union, that hardly provide true solutions.

Once again, the production, commercialisation and consumption pattern on which illegal logging is based, should be considered. We will see that it is dominated by large corporations that generate short-term profits with the indiscriminate exploitation of natural resources. Commercialization is done by a chain of giants that feed frantic and wasteful consumption. And those agents dominate the global scenario. As in other sectors, local processes and solutions should be encouraged, that could bring about changes from community decisions, either by curbing destruction or by encouraging the construction of other, non-destructive models.

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- Does legalising logging operations promote sustainability or shouldn't we be concerned about destructive logging?

Illegal logging has possibly been the most debated issue in the forestry sector at international level recently and has been attracting increasing attention in the last ten years. Governments, timber industries, donor agencies and NGOs seem to agree that it is one of the most important issues to be addressed. It also has been discussed in some high profile meetings.

G8 discussion stimulated a series of Forest Law Enforcement and Governance (FLEG) conferences coordinated by the World Bank, among others in East Asia (Bali-Indonesia, September 2001) and Africa (Yaoundé, October 2003). Others are planned for Europe and North Asia (November 2005) and possibly Latin America. Among the European countries, FLEG-T (Forest Law Enforcement Governance and Trade) is being promoted by the European Commission. Currently, the East Asia FLEG has become an 'international umbrella agreement' for bilateral treaties between Indonesia (producer) and consumer countries such as the UK, China, and Norway.

Furthermore, a pilot project on legality standard is being operationally undertaken in Indonesia, with main support from DFID, despite many criticisms expressed by local NGOs, which say that it is being carried out in a rush (please see: <http://www.illegal-logging.info/news.php?newsId=914>).

The system was developed to enable producer countries to produce products independently verifiable for legality to meet new market demands, particularly the European market. This was conveyed to the logging companies in Indonesia and other producing countries as well. They were told that markets were demanding independently verifiable legal timber from suppliers and, if possible, certified sustainable timber.

To these ends, it was believed that auditing timber harvesting practice would be able to re-assure customers that the timber had been extracted in accordance with the forest laws. A new log tracking system was believed to provide further guarantees that timber exports were legal.

The question remains: is legality a tool to promote sustainability or a mere market-led mechanism to ensure continuous timber supply?

In reality, “illegal logging” is not new as forestry history records that the phenomenon might be as old as the commercial forest exploitation itself. It currently becomes a main issue, in particular, due to its massive scale and intensity in the last decade. In Bolivia, Brasil (Amazon), Cambodia, Cameroon, Colombia, Ghana, Indonesia, Myanmar, and Far Eastern Russia, it becomes the main issue as the amount of illegally-sourced timber far exceeds that of the legal one.

However, placing it out of context might lead to the simplification of the complex problems surrounding forestry sector. Besides, it might mislead us to a notion that it is THE only forestry problem and ensuring its legality should suffice to address the issue. In countries with unclear and corrupt legal system and framework, such as Indonesia, the terms ‘illegal logging’ and ‘law enforcement’ are not only unclear and confusing, but also potential to bring about adverse legal consequences to ordinary people, who are often subject to unjust laws.

In many countries ruled by authoritarian regimes, most of the forestry laws are unjust and unfavourable to indigenous and local peoples. Laws regulating national parks, for example, often ignore indigenous and local peoples’ rights and even unilaterally lay claim to customary land. In Indonesia, laws regulating forest and logging concessions are made in violation of human rights and indigenous peoples’ rights over land or their prior and informed consent. Should the law be upheld, it will surely bring about adverse consequences to these peoples.

In a more complicated legal context, action plans to combat illegal logging are problematic due to unclear definition of what legality and illegality are. The governmental officials might argue that some practices, mostly based on traditional customs, are illegal according to the existing law, but indigenous and local peoples would argue, in turn, that their customary rights did exist prior to national laws. In countries like Indonesia, the issue is further complicated by the fact that much forest land has not been officially gazetted as required by the law (for more information, please read: [http://www.eng.walhi.or.id/kedai/fsc2n3\\_book/](http://www.eng.walhi.or.id/kedai/fsc2n3_book/)).

Basically, illegal logging is inherent in legal logging. Illegal logging will only be possible when legal and industrial operations are in place. In many cases, legal logging operations advantageously make use of illegal logging to cover or legalise their illegally-sourced timber (i.e. timber laundering). It is therefore naïve to look into the phenomenon as a separate part of the overall forestry operations and system, claimed to be legal but, in fact, destructive.

Approaches to illegal logging eventually lead to solutions that are pragmatic or purely technical, such as timber tracking, labeling, chain custody, etc. Such approaches are not appropriate to address the structural or the fundamental problems rooted in many countries, such as over-capacity of timber processing, insecurity of land tenure, corruption and the logging concessionaires system. This is like a doctor trying to relieve the symptoms and not to cure the disease completely. The doctor just wants to show people that he can ‘cure’ a patient and say, *‘Look, he now can resume his work!’*

The industry sector, as well as the market, is not totally opposed to ‘illegal logging’ campaigns. Instead they seem to be in favour of such campaigns, which will give more legitimacy to their ‘legal’ logging operation. Thus, forestry issues are reduced only to the legality aspect. From the sustainability viewpoint, the term might raise debates as to which is more important: legality or sustainability.

In the context of Indonesia's forests, which have been being degraded and depleted rapidly, it is very doubtful that legalising a logging operation or its associated products can promote sustainability. Realistically, attention should be focused on destructive logging and sustainability issues. Similarly, to save the critical forests and millions of forest-dependent people, questions should be first asked concerning the existence of commercial logging itself. In brief, "illegal logging" might narrow down the issues on the overall commercial logging operations and might turn the public away from the debates over sustainability and over whether or not logging operation is destructive.

I am not saying that we should completely forget the legality or the legal aspects. I am saying that if we continue with the existing approaches, which see illegal logging as a separate part of the overall logging system, we will only end up legalising the destructive operations. Apart from the existing unjust laws, laws not only can (easily) but will be manipulated. In the end, customers' expectation of green products will not be met and forests just continue to be depleted – in a more 'legal' way.

Donor countries and International Financial Institutions (IFIs) often play a two-fold role in the forestry sector. On one hand, they encourage producer countries to combat illegal logging; on the other hand, they keep subsidising or financially supporting industries or companies, which clearly contribute to forest degradation, as can be seen in the cases of the pulp and paper industry, large oil palm and pulpwood plantations.

Lastly, FLEG and its on-going processes will and only will be effective if they can: (1) direct this 'law enforcement' processes to the recognition of indigenous and local peoples' rights to their resources; (2) initiate a debate over 'law enforcement' to curb corruption and downsize timber industry capacity; (3) formulate political action plans rather than technically-focussed ones; and (4) maintain policy and market interest consistency and coherence with social and environmental policies for Northern countries' investment.

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- The EU FLEG-T Action Plan, a step forward or backwards?

European NGOs estimate that more than 50% of all tropical timber imports into the EU are illegally sourced, as are over 20% of all imports from boreal forests. Furthermore in several European countries, notably in the Baltics and Eastern Europe, an estimated 50% of all logging is illegal. As the EU has no mechanisms in place to control the timber imports, the EU currently launders large volumes of illegally sourced timber each year. Following pressure from environmental and social NGOs to address this issue, the European Commission adopted in May 2003 an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT).

The central activity of the Action Plan is to develop voluntary bilateral or regional partnership agreements, with the aim of creating a caucus of the main wood-producing and importing countries. Timber exporting partner countries would then 'license' as 'legal' all timber exports to the EU (or other importing countries joining the caucus). The licensing scheme would initially cover a limited range of products (logs, sawn timber and plywood) and eventually be extended to other categories. In order to implement these voluntary partnership agreements the Commission must draft a regulation that will form the legal basis for a licensing scheme and would allow customs to seize non-licensed timber products.

Obviously this 'licensing scheme' begs a lot of questions such as: 'who decides what is legal?', 'who decides which timber will be licensed as legal or illegal?', 'who decides when and how to award a license for legality?', 'what control mechanisms need to be in place?', 'who will benefit from such a scheme?' Etc.

Furthermore, there is a clear danger that the EU's efforts to curb illegal logging with such a licensing scheme will unwittingly encourage national governments to water-down their existing environmental laws rather than strengthening them. This could lead to weakening existing forest laws, or even to legalising current illegal practices, in order to satisfy the EU and other international markets. All this would certainly undermine local struggles for forest law reform.

Nonetheless, most European NGOs have been cautiously positive about the FLEG-T Action Plan. Why?

Firstly, the Action Plan clearly highlights some of the underlying causes of forest loss by mentioning the challenge to "ensure that actions to address illegal logging, particularly enhanced law enforcement, do not target weak groups, while leaving powerful players unscathed. This requires careful considerations in countries where corrupt elements within the police and judicial services operate in complicity with large-scale illegal business activities". It is therefore the first EU document that actively promotes policy reform. Furthermore the Action Plan states that "existing forest laws and policies frequently promote large-scale forest operations and may exclude local people from access to forest resources. This inequity breeds resentment and conflict. It also forces local people who depend on forest resources to operate illegally, since they have no choice in the way they meet their basic livelihood needs". It therefore states that forest dependent communities need to become key allies in the drive to reduce illegal logging. Hence, in terms of highlighting the underlying causes of illegal and unsustainable logging practices and hinting towards possible solutions, this Action Plan is the most progressive EU document on forests to date, thereby opening a door to discuss again issues such as forest law reform, tenure rights and corruption.

Secondly, the Council of the European Union, in its adoption of the Action Plan, showed that it is fully aware of the political nature of the issue, as it called on the European Community and its member states in implementing the Action Plan to:

- strengthen land tenure and access rights especially for marginalized, rural communities and indigenous peoples;
- strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- reduce corruption in association with the award of forest concessions and the harvesting and trade of timber;

The Council thereby paved the way for an implementation of the Action Plan, which could address the underlying causes leading to forest loss such as unclear and unjust tenure rights, corruption, lack of transparency and lack of participation in policy making.

Thirdly, the FLEG-T process has to date created some political space for NGOs from the South, notably Indonesia, Ghana, Brazil, to push for their agenda, including most of the issues listed above.

Fourthly, the Action Plan goes beyond just the FLEG-T licensing scheme and also calls for long overdue due diligence procedures for financial institutions, such as export credit agencies and private banks, as well as asking member states to look into implementing other measures such as money laundering legislation and stolen goods legislation. By doing so the Action Plan has opened a debate for reform of financial institutions and forced member states to look at their own legislation.

So, on the one hand, the FLEG-T Action Plan, including the FLEG-T licensing scheme, has the potential to create opportunities for civil society to push for solutions to highly political issues, such as land rights and tenure rights, transparency, corruption and often much needed forest law reform. On

the other hand, the FLEG-T Action Plan has the potential to undermine national and local campaigns for these same issues by e.g. allowing for the adoption of narrow definitions of legality, excluding social and environmental movements in defining legality, and not demanding minimum requirements before entering into a Voluntary Partnership Agreement (VPA).

It is therefore too early to say whether the FLEG-T Action Plan will have a positive or a negative impact. Not in the least because the final texts of the regulation and the negotiation mandate, which details the process of developing a partnership agreement, have not yet been agreed upon and negotiations for partnership agreements have not yet started. What is clear is that some elements of the timber industry are already using the FLEG-T licensing scheme to divert attention away from 'sustainable production' to only 'legal production'. What is also clear is that some NGO coalitions are with success using the opportunities created by the FLEG-T Action Plan to push for solutions to endemic corruption, lack of transparency, and conflicts over tenure rights. What is not clear is whether EU delegations, who will be leading the negotiations for VPAs, will be supportive of their demands. Too often, EU Delegations have used the argument of sovereignty to support the interests of the timber industry over those of local people.

NGOs from Europe and the South have in several joint NGO statements, spelled out in great detail the conditions they believe need to be in place for the FLEG-T licensing scheme to be effective. (see <http://www.fern.org>) It is now up to the EU Member States to see if they are brave enough to accept most of them. If not, NGOs in Europe and the South will rest nothing else than denouncing the FLEG-T licensing scheme and forcing their governments to focus on other measures, some of which highlighted in the FLEG-T Action Plan, to address the underlying causes of illegal and more importantly unsustainable logging.

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\* ILLEGAL LOGGING ON THE GROUND  
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#### - The Africa Forest Law Enforcement and Governance process: Promises and realities

The African Forest Law Enforcement and Governance (AFLEG) process quickly succeeded the Asia process - even though, at the time (and still) actual practical outcomes of the Asia FLEG have remained elusive.

AFLEG was proposed and driven forward by the US State Department, and supported financially by the World Bank, though it was never clear what the exact purpose or expected outcomes of the process would be. The only definite 'event' was to be an Inter-Ministerial AFLEG 'summit', but even the preparations for this were chaotic. The Ministerial summit was repeatedly postponed, evidently because the would-be host – the Cameroonian government – was 'not ready', as well as because of post-9/11 fears of possible terrorist attacks.

NGOs, and some governments, had pointed out before the meeting that it was very difficult to foresee how the conference could produce any meaningful outcomes unless they took account of the vast range of different circumstances experienced across a highly diverse African continent. NGOs, and some governments, argued that it would be necessary for any Ministerial declaration or action plan to distinguish, for example, the 'illegal' destruction of trees by goats or for firewood in the semi-deserts of, say, Niger, from the need to tackle the highly organised international crime in which is mired much of the timber industry in the rainforests of the Congo Basin.

As it was, this all fell on deaf ears. The 30-action-point Ministerial declaration issued by the summit – which eventually took place in Yaounde in October 2003, was extremely general, essentially impossible to implement, and condemned by African NGOs.

With the help of the Rainforest Foundation, Forests Monitor and CED from Cameroon, NGOs from the Congo Basin region prepared a series of detailed case studies setting out examples of the problems the region's governments needed to tackle. One of the key conclusions reached by the various authors of the report was that simply 'strengthening enforcement' of African forest laws would not be very useful, because the laws are largely anti-environment, anti-poor and anti-community. Despite this document being widely considered as the most substantive input to the meeting, it elicited no response – at the time or at any time subsequently – from either the governments or the international agencies supporting AFLEG [<http://www.rainforestfoundationuk.org/s-Congo%20Basin%20Forests%20and%20the%20Law>].

Of course, the Ministerial summit should have been the *start* of the process, rather than its effective conclusion. Ministerial declarations in any context usually have to be treated with much caution; in the Congo Basin, there has been a long and dismal history of worthy Ministerial statements on forestry management and conservation resulting in zero action. The AFLEG process appears to be no exception; very little has actually happened subsequent to the Ministerial meeting.

The UK government's Department for International Development has funded IUCN to lead a 'multi-stakeholder' follow-up process, but it is not clear what, if anything has yet been achieved. Meanwhile, the European Union has targeted some African countries, including Cameroon, for bilateral discussions on a 'voluntary partnership agreements' - though such agreements would require a consensus on a definition of 'legality', something which, in the African context, is likely to prove extremely problematic.

Setting aside doubts as to whether AFLEG can deliver any meaningful action even within its own narrow remit, such an approach completely neglects to deal with all of the serious and underlying problems of forest management in many parts of Africa; even *legal* industrial logging operations are environmentally, socially and economically unsustainable. The most urgent need is for reform of forest tenure systems that, at present, almost universally marginalise the poor and forest-dependent, in favour of large industrial logging interests.

Even assuming that AFLEG has some practical outcomes, there are serious concerns about the likely long term consequences. As the UK meeting with Cameroonian politicians recently noted, the companies responding to public and political pressure are "*overwhelmingly European- or internationally-owned rather than indigenous companies*". This points to another danger – that the 'legality debate' could be a way of larger companies further consolidating their holdings, in the same way that, historically, logging companies worldwide have snuffed out their smaller-scale competition through restrictive legislation concerning annual allowable cuts, levels of processing, and more recently, 'sustainability'. The problem has then been that, once vast areas of forest have been accumulated into the hands of a few companies, these companies tend to dominate all further policy processes, over-riding democracy, and effectively blocking any possibility of more diverse forest uses.

But a much greater short-term problem confronts the AFLEG process. Despite the lack of any substantive action on illegal logging as a result of AFLEG, there has been a tendency for international agencies to subsume the whole debate on forestry in Africa in terms of the 'FLEG' process. For example, at a recent EU meeting between the UK government and Cameroonian parliamentarians, it was stated that "the EU FLEG-T [Forest Law Enforcement, Governance and Trade, the European Union process linked to the FLEG processes] is now the main coordinated mechanism by which European member state governments will address forestry problems in timber producing developing countries" [Chatham House briefing on visit to UK by Cameroonian Parliamentary delegation]. Although it is

recognised that ‘consensus’ is still elusive, the assumption is that technical solutions can be found to deal with any problems.

What this overlooks is the underlying reason for the rampant ‘illegality’ in the African timber industry; that the industry is an integral and essential part of corrupt patron-client political systems, including at the highest levels of authority. For some African leaders and senior officials, logging concessions are at once a means of converting public goods into private wealth, of rewarding political cronies and buying-off political enemies, of pacifying rebels and military challenges, of funding ‘election’ campaigns, of quelling civil unrest, of provoking civil unrest, of capturing donor money...

In some countries, the highest levels of government are implicated. In Cameroon, for example, repeated reports by the official Independent Observer of the forest sector – Global Witness – have shown that the family of President Biya is involved in illegal logging operations – yet the international community has failed to take any meaningful action against the culprits. In Gabon, it was recently found not only that President Bongo, his family, and every single important government minister holds logging concessions, but also that they had all failed to pay the prescribed taxes and were therefore operating illegally.

Such problems cannot be tackled through EU FLEG-T ‘voluntary partnership agreements’ or indeed by any other ‘technical fix’. They can only be tackled through determined political action at the highest level, and a willingness to confront some of Africa’s most entrenched political elite. Unfortunately, at the moment, all Congo Basin regimes are the ‘darlings’ of Europe and, for different geo-political reasons, the USA, and there is little prospect that the likes of Presidents Biya or Bongo, or their dynastic successors, will be challenged.

In this context, the ‘AFLEG process’ could be seen as a cynical attempt to appear to be ‘doing something’, even though it is well understood by its backers that little or nothing could possibly result from it. At worst, by helping to legitimise large logging companies, it could serve to undermine the prospects of alternative, less destructive, and more developmentally beneficial ways of managing Africa’s forests. Rather than helping Africa’s bandit logging companies to market their timber, the international community should be looking now at how those forests can be managed for the direct benefit of the people living in and around them and depending on them for their livelihoods.

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#### - Costa Rica: Legalizing illegal logging and illegalizing legal logging

Much is being said about “illegal logging.” In Costa Rica, the present government’s forestry policy has been limited to establishing, with the generous support of FAO, a team to analyze and take action against illegal logging. According to the government this is the forestry sector’s fundamental problem. Based on dubious data, the estimate was that between 25 and 35 per cent of timber consumed comes from illegal sources.

However, from the ecological standpoint, we see the need to “clarify the picture” and identify in the first place the different versions of “illegal logging.”

Thus we have the expansion over the past few years of monoculture plantations, mainly of pineapple, generating extensive and destructive illegal logging. Of course, monoculture pineapple plantations do not accept any kind of shade and vis-à-vis the opulent profits shown by this crop, timber loses economic significance. So, as part of the task of preparing the land, all kinds of trees located in areas of pineapple expansion - be these secondary forest or isolated trees in fields – are felled and thrown

into enormous ditches dug during the night. It is easier than doing the paperwork to get the necessary permits.

Industrial logging companies are also carrying out illegal logging. Periodically cases are documented showing that with the help of heavy machinery, timber is stolen from private or public areas, causing severe damage. Or, the companies simply alter or do not comply with the logging permits and remove from the forest more trees than allowed, even taking trees that are protected as endangered species.

However, within the issue of illegal logging, together with these examples, characterized by abuse, greed, concentration and accumulation of wealth, another type of logging has been proposed, more environmentally sound and socially fair and equitable.

This is artisan logging, carried out by small indigenous or peasant communities to supply themselves with timber or to complement their austere rural economy. It benefits from the trees in their entirety, making use of the branches, smaller parts and non-wood products. It is illegal because it has never been given the opportunity to exist legally as the forestry laws, drawn up under the eye and supervision of the traditional industrial logging sector, have been designed for the exploitation of a large quantity of trees and their cost and bureaucratic difficulties are too steep for small forestry producers to be able to undertake the formalities.

It is “illegal logging” that the peasants in the Atlantic Zone and the North Zone of the country carry out, felling two or three trees per year on their properties. They process them non-industrially to produce square-sawn timber that they take out of the forest using draft power and sell on local markets at much higher prices than those offered by traditional loggers for felling standing trees “legally”. It is the families and communities’ artisan use of timber from the wood dragged down by rivers; it is the artisan use by the forest peasants of the Peninsula de Osa of timber from trees fallen naturally in their forests.

It is finally, a type of “illegal logging” that – because of its community nature, linked to local markets and respect for the forest and biodiversity – has great potential within strategies to achieve sustainable use of resources and the development of rural communities. It is precisely the type of “illegal logging” that has led a student of forest matters (Sylvia Lang) to conclude in her thesis on the impacts of logging in Costa Rican tropical forests, that it would be recommendable to “legalize illegal logging and illegalize legal logging.”

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- Destructive and illegal logging continues to ravage forests and communities in the Peruvian Amazon

Peru’s forests are under siege. Throughout the Peruvian Amazon, illegal and destructive ‘legal’ loggers are engaged in large-scale and destructive extraction of remaining high value caoba: “mahogany” (*Swietenia macrophylla*) and cedro: “tropical cedar” (*Cedrela odorata*). Recent estimates suggest that as much as 90% of timber extracted in the Peruvian Amazon is illegal. Official figures report that most Peruvian hardwood timber is exported to Mexico, the USA, Canada and Belgium. Much of this timber is imported in violation of international environmental agreements (like CITES). Extraction of Peruvian timber has also often involved the violation of indigenous peoples’ human rights, particularly their right to property, prior consultation and their right to livelihood and cultural integrity.

As more accessible areas have become logged out, the Peruvian logging mafia has pushed its illegal operations deep into the forest in search of prized timber species. Most of these remote areas form part of the traditional territories of indigenous peoples, including vulnerable uncontacted communities. In Ucayali, for example, illegal loggers have opened logging roads deep inside the *Reserva Murunahua*, which threatens the integrity of territories of indigenous peoples in voluntary isolation. In short, the

majority of illegal timber in Peru is now being extracted from the communal reserves of Native Communities, reserves for uncontacted indigenous peoples in voluntary isolation or from protected conservation areas.

#### Organisation of illegal extraction:

The organisation of illegal logging in Peru is based on a long-standing and exploitative regional Amazonian economy known as *habilitación*, which is financed and controlled by middlemen and a powerful timber mafia. Senior members of this mafia are often linked to local power structures, including regional government. Middlemen (*habilitadores*) advance credit to small logging gangs who are equipped (*habilitados*) to go to the forest to fell timber, transport it to “cleansing” sawmills to “legalise” it, and then send to timber yards in urban centres. Illegal logging gangs are mobile and well-armed and are proven to use firearms to resist any attempts to decommission their timber in the forest. Logging is undertaken by impoverished lumber workers, while the trade and commerce in the timber are facilitated by middlemen and large timber barons in towns and cities.

#### Conflicts between loggers and indigenous communities:

Uncontrolled logging has resulted in conflicts between indigenous communities (titled and untitled) and illegal loggers, who invade their ancestral territories to cut timber without permission. Since 2002, illegal logging bosses in Madre de Dios and elsewhere have promoted annual mass invasions of the territories of indigenous peoples in voluntary isolation with the explicit aim of forcibly displacing them in order to claim such peoples do not occupy forest areas rich in valuable timber. Clashes between indigenous communities and loggers are becoming common. Most recently, in May 2005, in Madre de Dios, two loggers were killed by arrows as they logged on the upper Rio Piedra. The deaths caused a national outcry, yet indigenous leaders stress that it is still not known how many indigenous people fell victim to the loggers’ bullets in the confrontation. There are real fears that loggers may be massacring remote indigenous communities, yet such atrocities are still unknown to the outside world.

Throughout the region informal illegal loggers and so-called “legal” timber companies use devious and manipulative strategies to gain access to Native Community resources. Loggers and timber firms often fabricate informal written agreements or make formal contracts with community leaders without the knowledge or consent of the wider community. In many communities, effective collective decision-making structures are absent and loggers take advantage of these weaknesses to make deals with individuals or small groups.

#### Failed government initiatives:

Under pressure from regional indigenous peoples’ organisations like the *Federación Nativa del Rio Madre de Dios y Afluentes (FENAMAD)* in alliance with NGOs and civil society organisations, the Peruvian Government has launched a series of initiatives to tackle illegal logging. They have also taken measures to establish protections for uncontacted indigenous peoples. In April 2002, Ministerial Resolution established a Reserve for Indigenous Peoples in Voluntary Isolation in headwaters of the Rio Piedra in Madre de Dios. In August, FENAMAD signed an agreement with the government to establish vigilance and control posts on the Southern boundary of the reserve (known as line 343).

In October the same year, the government set up the *Comisión Multisectorial de Lucha Contra la Tala Ilegal en el Perú*, which later drew up an action plan to combat illegal logging. The government has also invited proposals on how to combat illegal logging as part of its national and regional roundtables on forest policy. Numerous governmental decrees and resolutions have been passed to regulate logging activities, sanction illegal loggers and investigate corruption.

Despite all the commitments on paper and all the decrees, resolutions, laws and action plans, there is little action on the ground. The government has over 50 *Puestos de vigilancia*: “vigilance posts” in the Amazon region, but these are largely ineffective due to corrupt staff that allow the traffic of stolen logs and sawn timber in return for bribes (*coimas*). Even where government staff are not corrupt, the posts are unable to operate due to a severe lack of resources. Where decommissioning of illegal logs has

taken place, such official confiscation of logs cut by timber companies has so far been limited in scale and infrequent.

The police and forest authorities have not supported the vigilance posts manned by FENAMAD on Line 343 and as a result illegal loggers continually invade the protected area. In May 2005, it was estimated that no less than 150 logging camps were located inside line 343, yet the government has taken no effective action to remove the loggers. Some of the vigilance posts have been sacked or burnt down by illegal logging teams.

At the local and regional levels, the timber mafia and big business are major obstacles to progressive reforms. For this reason, numerous proposed reserves for uncontacted indigenous peoples, including *Napo Tigre*, *Yavari Tapiche* and *Cashibo Cacataibo*, have yet to be legally established.

Delays in designation of these areas are partly due to lobbying by powerful commercial and industrial interests that strongly oppose all protected forest areas, including reserves for uncontacted indigenous peoples and further extensions to existing Native Community Land titles.

Flawed timber concession system:

A central part of the government response to illegal logging has been the introduction of a new Forestry Law since 2001. This law was supposed to promote sustainable timber harvesting in Peru's forests. Regrettably, implementation of the law has been rushed, safeguards for indigenous peoples' rights have been flouted, and destructive logging and illegal logging have continued unabated. Indigenous peoples' organisations like the *Asociación Interétnica de Desarrollo de la Selva Peruana* (AIDSESP) point out that the government agency charged with overseeing the demarcation and sale of concessions, known as the Natural Resources Institute (INRENA), has violated numerous requirements under the forest law. They complain that the government agency has designated concessions without prior consultation and without prior social and ecological zonification in contravention of State obligations under ILO Convention 169 and several environmental laws and legal protections for Native Communities. As a result, timber concessions have been imposed on indigenous lands in many parts of the Amazon region.

At the same time, concession holders are using the concession system to launder illegal timber stolen from adjacent indigenous lands and protected areas. Legal and illegal timber are mixed together using the transport permits from legal timber concessions to avoid detection. An increasing number of timber companies now proactively and eagerly offer to support Native Communities to obtain a Timber Extraction Permits in order to 'legalise' and launder (*blanquear*) their own illegal timber extracted from outside the permit area. As the late Kruger Pacaya, former President of ORAU, explained in 2004:

“It is tragic! The new concession holders are using their contracts with the government to cover up illegal logging. They continue to enter into indigenous territories and protected areas adjacent to their concessions in order to harvest mahogany and cedar. They are doing the same with Native Community timber permits and tax codes which they use to launder illegal timber taken illegally from other areas. All they leave behind is an impoverished forest and huge tax liabilities that the community has no way of paying...”

The companies pay the communities desperately low prices for their timber and discount the greater part of the company's costs as “credit” extended to the community, which the communities must repay in labour or timber. The degree of gross exploitation and abuse is demonstrated by recent reports from the Alto Purus region that reveal how indigenous communities are paid \$30 US for a mature mahogany tree, while the same tree is traded for \$11,000 US in Pucallpa. As Arlen Ribeira, a Huitoto leader and member of AIDSESP explains:

“The scale of illegal logging and the theft of timber through fraudulent transactions is massive in the Alto Purus. Each day our brothers become poorer. They are suffering severe damage to their lands, leaving them worse off. It is a terrible situation of exploitation that must be stopped...”

Indigenous reports from the Alto Purus confirm that the government agency IRENA and the military are involved in the illegal timber trade. Government officials are accused of being complicit with the logging mafia extracting mahogany and exploiting the Native Communities.

Grassroots struggle to combat illegal logging:

Faced with the widespread corruption of government authorities and their reluctance to confront powerful and dangerous logging mafias, indigenous forest communities have taken direct action to decommission logs stolen from their lands and adjacent protected areas. In the Selva Central, for example, Ashaninka communities have formed their own *Comites de Vigilancia, Control y Defensa Forestal*. These territorial defence groups have confronted armed loggers and expelled them from indigenous forest lands. Similar local actions have taken place in Loreto, Ucayali and Madre de Dios, yet too often the government has not rewarded the community and has in some cases even taken the timber away and sold it as government property!

Native Communities and support NGOs have also established their own independent local monitoring initiatives. One example is the work of the NGOs CEDIA and Shinai who have used independent vigilance posts and GPS field monitoring to prevent illegal loggers entering the Kugapakori-Nahua Reserve. Shinai has worked directly with indigenous communities to help them collect their own GPS field data to present evidence of illegal incursions to the government authorities. In a few cases, this grassroots evidence taken to authorities in Lima has pressed the government to take action to decommission timber and expel illegal loggers.

Despite these successes, most grassroots initiatives still lack resources and do not enjoy official recognition. Indigenous organisations and local civil society groups are becoming increasingly frustrated with numerous government decrees and plans that promise action, but do little or nothing to stop illegal logging on the ground.

“We are fed up with all the policy dialogues and forest roundtables. The government wants to keep talking about ways to combat illegal logging, but is not prepared to take serious action. Even the new concession system has promoted the laundering of timber. What we need now are real measures to enforce the law and uphold legal protections for indigenous peoples’ forest lands. It is time all the Decrees, Resolutions and agreements were actually implemented.” [Jorge Payaba, President, FENAMAD, September 2005]

In their long struggle to tackle the illegal logging and forest crisis in Peru, indigenous organisations and support NGOs continue to call for:

- Immediate removal of illegal loggers from State Reserves for Indigenous Peoples in Voluntary Isolation
- Urgent action to establish effective control and monitoring on the borders of reserves for indigenous peoples in voluntary isolation
- Investigation and sanction of illegal logging operators active within indigenous territories and protected areas
- New mechanisms and resources to ensure existing laws and protections for indigenous peoples and forests are properly enforced
- Importing countries should stop buying Peruvian hardwoods until illegal logging and violation of indigenous peoples rights is stopped
- Reform of the Forest Law and changes in its implementation to ensure proper respect for indigenous customary territorial, land and resource rights

- Greater recognition and legal and technical support for the territorial defence and local monitoring initiatives of indigenous and local communities
- Comprehensive capacity-building and institutional strengthening programmes for Native Communities and their organisations affected by the forest crisis

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#### - Illegal Timber in Indonesia: Experiments with Legal Verification

*Jakarta, we have a problem!*

Indonesia has a major problem with illegal logging. New Minister for Forests, Malam Sambat Kaban, calls illegal logging a 'wild cancer'. 'If this 'virus' is not eradicated soon...' he says, the country's forests would only survive another 15 years. He cites statistics that 60 million of the country's 120 million hectares of forests have already been degraded or destroyed, most in the last 20 years. Some 2.8 million hectares are still being ruined each year. His answer is law enforcement and reforestation, but local NGOs say the main solution would be to close the excessive pulp factories, sawmills and plywood plants, which have the capacity to chomp through about 80 million cubic metres of timber a year.

Based on comparisons of the country's 'annual allowable cut' with the amount of timber actually entering mills, NGOs and researchers monitoring logging in Indonesia estimate that at least 60-80% of Indonesia's timber is 'illegal'. But that is just in terms of one legal requirement – acquiring a permit to cut the timber. Once you trawl through all of the nearly 900 laws that relate to forests in Indonesia and check if they are applied, you realise that the amount of 'legal' logging going on is much less.

Research by the World Agroforestry Centre (ICRAF) shows that, for a start, the legal status of forest zones under the jurisdiction of the Forestry Department is extremely uncertain. Only some 12% of the forest zone has yet been gazetted – the process by which forest areas are classified, their boundaries surveyed and agreed by interdepartmental teams and then officially registered as State Forests. ICRAF research also shows that, even where gazettement has occurred, the legal status of the 'forests' may be disputed – many of the required procedures for setting the boundaries have been rushed through without due consultation with local village leaders, to check that the designated forests do not overlap areas where people have rights.

Notwithstanding the fact that the Forestry Department has never bothered to run through the legal process which gives it the authority to issue concessions, the great majority of the country's forests have been handed over to companies for logging and plantations. It is estimated that about 600 logging concessions (HPH) have to date been issued in Indonesia, with the most extant licenses active at any one time being about 450, in the late 1980s. Since the 1990s, there has been a steep decline in the numbers of active HPH. There are about 270 today. The main reason for the decline is that many parts of Indonesia have already been logged out. Most concessionaires have also not bothered to go through the legal process of 'delineation', a procedure aimed to further clarify that their concessions do not

overlap lands of other users. ICRAF data show that only some 8% of forest concessions have been properly delineated by the companies that have been given logging licences, meaning most concessions should be forfeit.

Faced with global criticism of the prevalence of destructive logging and illegality, the Government of Indonesia has embarked on a number of initiatives to curb these illegalities. These include signing a Memorandum of Understanding (MoU) in 2003 on *Cooperation to Improve Forest Law Enforcement and Governance and to Combat Illegal Logging and the International Trade in Illegally Logged Timber and Wood Products* signed between the UK Government, represented by the Department of Environment, Forestry and Rural Affairs and the Department for International Development (DfID), and by the Indonesian Ministry of Forestry.

Under the MoU, British customs officials and procurement officers would be allowed to refuse any Indonesian timbers or wood products that could not prove they were legal. DfID is funding efforts in Indonesia to meet this requirement. But which laws would suppliers have to comply with and how would they prove it? Two years on, the search for a manageable system for 'verifying legality' still shows no results, not so much because people haven't been trying but because no one can find a logging concession that can pass the test.

#### *Conscious Pilot:*

Ask which laws are most important in deciding what constitutes 'legal' logging and you get different replies from different people. Foresters are more concerned that regulations on technical management and cutting permits are in order. Conservationists focus on logging that violates laws on protected areas and threatened and endangered species. Those trying to curb forestry corruption highlight the laws controlling hectareage, bidding procedures, tax payments and stumpage fees. Regional governments insist that forestry laws (which remain highly centralised) be brought into conformity with other laws, which entrust natural resources to local authorities. Those who champion indigenous peoples and sustainable development emphasise laws that protect communities' rights, amongst which the laws requiring forest gazettement and concession delineation are critical, mainly because the Indonesian government has never developed any other process for registering and protecting customary rights.

In 2004, The Nature Conservancy (TNC), with funds from DfID and USAID, announced it was testing a draft 'Legality Standard', which incorporates the most important of these laws. TNC has also piloted a way of bar coding timber so it can be tracked from cutting block, down river and through mills and plywood plants to export shipments. A local consortium of forest activists, Pokja Hutan, has alleged that timbers from outside these concessions get mixed up with those from the concession areas. Meanwhile experimental audits have shown that even collaborating companies, keen to be cleared as 'legal', have not been able to show they are complying with the law. Auditors also note that ascertaining whether communities within concessions have agreed to forest zoning and concession boundaries is very difficult. In fact, many independent certification bodies admit that probably no concessions in Indonesia have been established with the consent of local communities, even though this is now legally required.

#### *Another BRIK in the wall:*

One response from the Indonesian Government has been to set up the *Badan Revitalisasi Industri Kayu* (BRIK - Indonesian Institute for the Revitalisation of the Timber Industry), which was established in 2002 as a para-statal agency charged with monitoring and verifying the legality of timber. To qualify for a legality certificate (ETPIK) issued by BRIK, companies must show: that all timbers coming into their mills are accompanied by transportation permits (SKSHH); how much timber the mill used; and how much processed timber it produced. Using these figures BRIK claims it is able to show that a mill is using only authorised timber and can issue a certificate accordingly. BRIK has claimed that Indonesian mills produce 50-60 million cubic metres of legal roundwood equivalent, even though the current Annual Allowable Cut from active concessions is only 5.5 million m<sup>3</sup>. BRIK

explains the difference by stating that the other 45-55 million m<sup>3</sup> come from legal sources such as forest conversion, clearance of old oil palm plantations, rubber wood and from home gardens. No one else believes this.

The government claims that ETPIK certificates provide a guarantee of the legality of processed timbers. Development agencies and timber traders have different views. They characterise BRIK as: 'untransparent', 'questionable' and 'not credible'. It is notorious that the crucial SKSHH certificates, on which the whole BRIK system relies, are readily available on the black market. Although the BRIK system has some merits – it is highly computerised and so, in the right hands, could offer a useful tool for tracking timbers – it is unlikely to reassure discerning buyers.

*Don't be Phased:*

In May 2005, the World Bank-WWF 'Forest Alliance' announced its new targets for forests. By 2015 they hope to secure: 25 million hectares of new forest protected areas; 75 million hectares of improved management in forest protected areas; 100 million hectares of forests under certification; 100 million hectares of community forest management and; 100 million hectares of forests in a step-wise process of certification.

One of the WWF's main vehicles for achieving this last target is the Global Forest and Trade Network, the local chapter of which in Indonesia is called Nusa Hijau, a project of WWF-Indonesia. Like other parts of GFTN, Nusa Hijau aims to help Indonesian concessionaires link to buyers while they gradually but progressively improve their forest management through a 'step wise approach' from mere legality through improved forest management to full certification. The Nusa Hijau process, which uses a simplified version of the TNC/DfID Legality Standard in its initial check list, has, so far, not managed to recruit a single company to become a member. It's the same problem: no concessionaires can prove they are legal. WWF is however keen to work with local communities to help them resolve their differences with loggers.

*LOV is just a three letter word:*

An alternative approach is being tried by the Lembaga Ekolabel Indonesia (LEI) which has also developed a national timber certification scheme somewhat similar to, but less rigorous than, the FSC. Under its pilot 'Legal Origin Verification' (LOV) system, auditors licensed by LEI identify the sources of timber entering a mill and classify it according to whether it comes from forestry concessions, areas subject to clear-felling licences, district level clear-felling licences or from unknown sources. The exercise has been piloted with two major mills, Asia Pulp and Paper and Indo-Kiat. LEI does not consider LOV to be 'legal certification', merely a mechanism that provides partial information about wood origin, and it leaves it to buyers to decide if timber from such sources is acceptable or not.

*'Ten Steps to Heaven':*

Meanwhile, the World Bank has its own 'Systemic 10 Step Program to curb illegal logging', known affectionately by NGOs as '10 Steps to Heaven'. Step 2 of the plan is to 'identify legal sources of timber' through agreement on a definition of legal timber. Taking into account ICRAF's findings, the Bank rightly requires the Forestry Department to proceed with the delineation, demarcation and gazettement of forests to 'legitimate and establish certainty for recognized legal sources'. The trouble is, at current rates, the Forestry Department is unlikely to complete this task until 2045!

*Dr. Who?*

WALHI, the Indonesian Environment Forum and local chapter of Friends of the Earth, which has been calling for a moratorium on industrial logging since 2001, is sceptical of the whole approach. Industrial logging moratoriums (currently in place in Aceh and Papua) are needed throughout the country, WALHI argues, to allow space for the development of a transparent and accountable forest management system that respects community rights. Destructive logging, they point out, is happening inside and outside concessions. Most of the forest loss of the past 20 years has been in concessions. The challenge is not to make logging legal but to make it sustainable. WALHI is concerned that

focusing on identifying 'legal logging' merely legitimates the current system, and will perpetuate the deals going on under the table, by which concessions are handed out as perks to political cronies in exchange for handsome payments to forestry officials and political parties' election campaign funds. The real political economy of logging – for which all the legal cover is mere papering the cracks – can only be tackled by stopping the concession system itself. According to this analysis, Kaban's 'virus' infects the whole forestry regime and only major surgery holds out any hope. So long as the doctors all disagree on the nature of the disease and its cure, the prognosis for the patient looks bleak.

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#### - APP's illegal logging in China

Asia Pulp & Paper (APP), one of the world's largest paper and pulp producer, was accused by Greenpeace for conducting illegal logging of forests in southwestern China's Yunnan province, the most biologically diverse area in China.

A memorandum of understanding (MOU) was signed in August, 2002 between APP and the Yunnan provincial government regarding the company's eucalyptus forest-pulp-paper integration project. While the project was waiting for approval by the central government, APP started immediately to fell trees without any permits, to clear land for its 1.83 million hectares forest-pulp plantation.

The State Forestry Administration (SFA), China's forestry sector watchdog, released two separate reports last year stating that APP, by felling without any permits, had violated Articles 23, 29, 32, and 37 of China's Forest Law and Article 15 of the Regulation for the Implementation of the law.

SFA said in those investigation reports that the APP project was "problematic", to which APP responded that it was only 'planting forest on barren lands'.

In November, 2004, after half a year of field researches and investigation, Greenpeace, an international environment protection organization, launched its first APP report - the Investigative Report on APP's Forest Destruction in Yunnan.

In the report, Greenpeace exposed the paper company's practices of clearing forests for plantations in Yunnan and the same wrongs it had previously been, for many years, conducting in Indonesia.

Evidence gathered in the Greenpeace report showed that APP's proposed plantation of 1.83 million hectares had included 738,733 hectares, or 42% of the total enclosed area, of forest land. If the project was to carry out, APP would have to clear huge area of forest land.

One case study by Greenpeace recorded that APP had said that it was expecting to set up an eucalyptus pulp base over an area of 800,000 hectares on the 'barren land' of Simao in Yunnan province, but in fact the town only had 186,666 hectares of non-forest land in total, far smaller than its planned size.

Apparently, APP had already planned to clear out 613,333 hectares of Simao's forest to plant fast-growing high-yielding eucalyptus trees for its expanding pulp production, despite international and Chinese scientists have warned large-scale plantations of eucalyptus would bring irreversible devastation to the local ecological systems.

One month later, in December, 2004, Greenpeace released video evidence of APP's forest destruction practices in Yunnan. Greenpeace demanded APP to halt illegal logging in Yunnan and to carry out independent review of the sustainability of its plantation project.

The scandal attracted wide international and national media coverage. Environmental NGOs, student groups and other civil society associations rallied to support Greenpeace's demands. Zhejiang Hotels Association, a representative of over 400 hotels in eastern China's fast developing Zhejiang province, urged its members to boycott all APP paper products.

APP filed a lawsuit against Zhejiang Hotel Association at the local provincial court, which aroused severe irritation among the public and environmentalists from both China and overseas. Twenty two international NGOs, twelve domestic NGOs, including eight students organizations, all sent letters of support to the hotel association, demanding APP to stop all its forest destruction operations.

Just one day before Zhejiang Hotel Association had to appear for an open hearing at the court, the China Environmental Protection Union, an NGO backed by the State Environmental Protection Administration (SEPA), openly expressed its support to Zhejiang Hotel Association.

Under pressure, APP withdrew the lawsuit the same day.

The SFA, which launched a thorough probe into APP's operations in Yunnan in December, 2004, pointed out, in an interview with China's state-owned China Central Television (CCTV) in February, 2005, that it had found problems with the company's deforestation in Yunnan.

"Without any permission from SFA, APP had illegally logged around 24,709 cubic metres of trees, covering 640 hectares of the local forest," SFA told the TV station, adding that it would take legal actions against APP once it finished the whole investigation.

In a response letter to SFA this May, APP said that it will "operate legally according to Chinese regulations and policies."

Currently, APP is running more than 6 paper mills and millions of hectares of land in China's Yunnan, Hainan, Guangxi and Guangdong provinces, and is still planning further acquisition. It is also constantly importing wood chips from Australia and the Southeast Asia. The real victory will only come when APP stops all illegal logging in China, Indonesia and other parts of the world where it has started operations.

Indonesia, where APP and its parent company Sinar Mas Group are based, has one of the world's poorest-managed forest industries, as a result of irrationally booming ply and pulp demand, mushrooming saw mills and flooding illegal exports. Around 90% of its industrial wood extraction is illegal. The Forestry Department of Indonesia set the ceiling of allowable forest cut for 2003 at 6.9 million cubic metres; later statistics showed, nevertheless, that 80 million cubic metres of wood had been logged for that year.

Companies, including Japan's Ricoh, Germany's Metro and Office Depot of the US have also boycotted APP products.

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- Legal and illegal logging behind deforestation in India

According to the most recent official estimates (Forest Survey of India, 2003 State of Forests Report), India continues to lose its forest cover. The 2003 estimates record a net minus change of nearly three

million hectares of 'dense forests', which means serious and continued deforestation in forests with canopy density of 40 percent and above. Because satellite imageries acting as source of these data are still treated as 'classified' in the country, and 'ground-truthing' (if any) exercises are carried in a similar clandestine manner, one never knows exactly how much forest vanishes each year, and where. From the State of Forests Report, it can be seen that degradation of forests is not confined to any particular province/region, but it is happening, almost uniformly, everywhere. For instance, while the province of Uttar Pradesh in the North records a loss of 2969 sq. kms of dense forests, Assam in North East, and Andhra Pradesh in the South record 2788 and 1788 sq.kms.

Huge foreign investments and technological strategies of past decades have had relatively little impact on stemming deforestation. After spending several billion dollars on forestry projects in Asia between 1979 and 2004, the World Bank's investments have had a negligible impact on borrowers' forestry sectors as a whole. Even in the well-funded, best-protected 'Project Tiger' parks in India, amount of forest land classified as degraded reportedly increased by nearly 200 %.

Official agencies in charge of environmental information in India seldom use the term 'deforestation', a harsh, taboo word. Usually it is 'degradation', a much softer term that hides endless stretches of lost forests, hacked, plundered, looted, mined, built upon, submerged. Factors that cause deforestation are hidden in layers of vague terms like 'anthropogenic interventions' and 'biotic factors', and 'illegal logging' is something for which no coherent, centralized records have ever been kept, as if it does not exist.

However, logging—both legal and illegal—exists, and is the most tangible and definite causative factor behind deforestation events in India. It has been so since colonial days, when the British first came and usurped people's forests to log them for railroads, shipyards, and profit. Forest legislation like Indian Forest Acts (1865, 1927) later legitimized what was pure plunder to begin with, and introduction of the so-called scientific forest management in British-held forests, ensured that most of Indian forests would be lost forever. After Independence, contrary to popular belief, plunder of the country's forests not only continued, but with even more aggressiveness than before, as urban markets expanded. Independent India was quick to assert the continuity of the colonial structures in forestry. The Forest Policy Resolution, 1952, asserted that the fundamental concepts underlying the colonial policy were sound; these just needed to be reoriented. Thus in the new policy, 'public good' was replaced by 'national interest'. The reorientation was to accommodate the demands of industry for raw material. Extraction of industrial wood jumped from 4.46 million cubic metres in 1956-57, to 9.28 mcm in 1966-67 and fuelwood [extraction was already significant] to 10.19 mcm in 1956-57. Paper mills had a dramatic increase during 1966-77. The consumption of printing and writing paper increased from 100,000 tons in 1948 to 405,000 tons in 1970, and paper board from 46,000 tons to 158,000 tons.

The expanding urban centres also required large quantities of timber and fuelwood. The Forest Department responded to the increasing demands in various ways: acquiring more land through merger of princely states and reservation of new areas, by which the area under the Forest Department increased from 71.80 million hectares in 1950-51 to 74.60 in 1979-80, despite a loss of 4.3 million hectares for various purposes, stepping up extraction of forest products, by which revenue of the Forest Department multiplied 5 times from 1951-52 to 1970-71, creating markets for less commonly known species that were earlier left alone. The revenue generated from forests increased manifold. However, the production of timber and firewood reached a plateau after 1966-67. Tree felling since the Second World War had affected the sustainability of the stock and there are natural constraints beyond which extraction cannot be increased. The plateau signified that the forests could not meet any further growth in demand. This was 'officially' admitted when the new forest policy of 1988 declared a ban on logging of remaining forests.

Organised illegal logging has become commonplace in many forest areas, including protected areas. Forest legislations in the country have not been able to make even a dent in the activities of the mafia-

political groups-forest staff nexus. Instead, this nexus —the most pressing danger to Indian forests— gets stronger everyday. During the last 5-6 years, several major timber scams have been unearthed in various parts of the country. Buxa Tiger Reserve, demarcated a biodiversity hotspot in the extreme North-Eastern corner of West Bengal, lost about 10 sq. kms. of forest cover in 1998-1999 alone, as a result of a scam. Protected Area authorities issued false transit passes for illegally felled trees. Timber coming from the Tiger Reserve was shown as timber from private forests. In another important Protected Area, Jaldapara Wildlife Sanctuary, adjoining Buxa Tiger Reserve, senior forest and police officers were found to be directly involved in illegal trade. In Madhya Pradesh, the forest minister and senior forest officers' involvement in large- scale illegal timber trade came to light in 1999; when it was found that prime Sal forests were being illegally felled under the guise of pest control. Many important Protected Areas like Rajaji National Park in Uttar Pradesh, Nagarhole National Park in Karnataka, Palamou or Betla Tiger Reserve in Bihar and many other forest areas of the country report similar incidents. In Rajaji National Park, it is on record that the local forest mafia killed about 8 forest Guards between 1996 -1999. What is off the record but common knowledge in the area is that the killings were the result of disputes over share of profits between the mafia and guards.

Declining productivity of forests and the lull in forestry activities gradually destroyed livelihoods of millions of economically deprived families living in forest areas and in many cases starving, impoverished people are forced into aiding the very forces that are destroying forests for commercial profits. Hence the myth that forest people are responsible for deforestation, and governmental remedies like harsher and more stringent forest laws that limit people's access to forests. The major argument that the state, environmentalists and the mainstream media use over and over again is that increase in human population, cattle population and so-called 'biotic pressure' is chiefly responsible for destruction of the country's forests and biodiversity. What is forgotten is that forest people have shared a strong cultural and spiritual bond with forests that never allows them to exploit and degrade out of choice. Non-sustainable and commercial use of forests is something that the urban elite and the state force upon the forest people, by denying them basic, subsistence-level access to their traditional resource-base on the one hand, and continuing with intensive commercial exploitation on the other.

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#### - Contradictions in European Governments' Timber Procurement Policies

Many European NGOs believe that government procurement has a great potential to contribute to responsible forest management globally. According to WWF figures, governmental purchase of timber and timber products is estimated to account for 18 percent of total timber imports into G8 countries. Worth \$20 billion annually, this constitutes a formidable economic force in the international timber market.

This force was clearly recognised at the G8 meeting in 1998 when the United States, Italy, France, Germany and the UK, together with the other G8 countries, agreed to a range of actions to control illegal logging and the international trade in illegally harvested timber. These actions were to include an assessment of each nation's internal measures – including their procurement policies. Seven years later, governments of the UK, France, Germany and Japan have, or are in process of, developing timber procurement policies, as well as the non-G8 countries the Netherlands, Denmark and Belgium. The UK and Denmark are ahead of the pack as they have already adopted a timber procurement policy.

All above mentioned countries aim at procurement policies, which would encourage governmental bodies to only buy 'sustainably' produced timber and exclude illegally sourced timber. So far, so good. The difficulty comes –of course- with the implementation. How does one define 'sustainable' and 'legal' and how does a procurement officer know whether the timber he or she wants to buy is legally

sourced and coming from sustainably managed forests? This is where the procurement policies of the different countries start to be very different.

The Danish policy only focuses on tropical timber, thereby –wrongly- assuming that there are less problems in non-tropical countries; the UK policy claims that it cannot include ‘social criteria’ in defining what is ‘sustainable’ as that would violate the EU Procurement Directive. However, the draft Dutch and Belgian policies- which have to adhere to the EU Directive as well - do include all timber from all forests and include social criteria. Green procurement is clearly not as easy as some thought.

What is clear is that any government procurement policy in relation to timber must include all timber. The Danish government agrees and will revise its policy. It is also clear that sustainable forest management must include social issues, such -as workers’ rights and land rights and user rights. The UK government does not yet agree but hopefully will change its mind. A coalition of UK-based NGOs has formally challenged the UK policy. (See [www.fern.org](http://www.fern.org) for the submission to UK Environmental Audit Committee).

The NGOs argue that there is no legal basis in the EU Procurement Directive to exclude social criteria. A first success was booked last month, when the NGOs ensured a commitment from UK Minister Elliot Morley to revisit the UK position and start a discussion with EU officials. This discussion is now under way. FERN and other NGOs hope to convince the Commission and the UK government that sustainably produced timber without including the social issues does not exist and furthermore that there is no basis for exclusion in the EU Procurement Directives. A first legal study looking into this seems to prove us right.

Adding to the confusion, the European Commission has published ‘Buying Green’ (see web address below), its handbook on environmental public procurement. But the handbook, co-produced by DG environment and DG Internal Market, creates some confusion when it comes to advising on ‘sustainably and legally logged timber’. It is widely agreed, and acknowledged in the handbook, that ‘sustainable forest management’ explicitly takes into account both environmental and “social aspects, such as the interests of forest dependent people”. In complete contradiction to this, however, the handbook goes on to advise that governments are not able to employ specifications that address ‘the protection of forest dependent people’ when putting out tenders for any public timber purchases. Not only is the handbook itself muddled on this, but it is also in conflict with the original Directive on this issue (2). FERN’s 2004 analysis of the Directive (3) shows that governments clearly can specify ‘sustainability’ as a technical specification in their procurement policies, and that the definition of ‘sustainability’ includes social aspects. Only by Member States pushing to promote socially responsible forest management can this conflict be resolved. This will require some Member States writing social requirements into their technical specifications and a subsequent Court Ruling in favour of those States when they are challenged for doing so.

(1) “Buying Green” [http://europa.eu.int/comm/internal\\_market/publicprocurement/key-docs\\_en.htm](http://europa.eu.int/comm/internal_market/publicprocurement/key-docs_en.htm)

(2) 2004/18/EC

(3) FERN (2004) To Buy or Not to Buy. Available at:[www.fern.org](http://www.fern.org)

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