



2.4 Tackling forestry corruption in Asia-Pacific

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Introduction

Forestry is important for the development of many Asia-Pacific countries. Well-regulated, sustainable forestry — based on principles of sustainable yield, land zoning and species mix — can contribute to the preservation of biodiversity and support countries' development goals.

In many forest-rich countries, however, these goals are being undermined by illegal logging and by the illegal domestic and international timber trade. This trade does more than cause environmental damage; it deprives countries of millions of dollars in lost revenue, causes loss of livelihoods to forest-dwelling communities, and leads to other criminal activities, even armed conflict, as in Papua New Guinea and other parts of Indonesia. It also undermines the rule of law, causing people to have less faith in and willingness to support governments who fail to curb such activities.

Illegal logging in Asia-Pacific is also a regional issue. Some of the largest timber buying and processing countries are from the region and sooner or later, most illegal logs or timber will reach their shores. This cannot be addressed just on a national level, but requires regional and global action.

Recognizing this, in 2007 the Transparency International (TI) chapters¹ in the Asia-Pacific region decided that forestry and the timber trade was seriously affecting their countries' revenues.

Although many of these countries have good forestry laws, vested interests in the countries or abroad work to cancel out the rigorous application of these laws.

Given that raw or processed timber is not easily hidden, that sawmills and chainsaws need fuel and electricity, that the timber has to be transported by roads and across borders in ships, the illegal timber industry can operate only with the connivance of a large number of people, all of whom allow timber to be cut, transported and processed because of the personal profit they can make. Furthermore, an international timber trade that supports



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these illegal activities could not exist without corruption;² without corruption, there would be no illegal logging.

The TI Secretariat developed the Forest Governance Integrity (FGI) programme to examine and improve forestry and the timber trade by fighting corruption and building integrity in forestry governance at the national and international level. Integrity in this sense means behaviour consistent with a set of moral or ethical principles and standards that directly reduce the possibility of corruption.

The FGI TI is not concerned with the question of whether forestry laws are being followed, or if those laws are what's best for the country or its forest, or if recognized SFM practices are in place. All that is being asked is if laws are being circumvented, and if they are, how and why. The idea is that if ineffective laws are followed to the letter, their ineffectiveness will quickly become apparent, rather than being blamed on poor implementation of those laws.

The first stage of the FGI programme resulted in a set of recommendations. The next stage will be to use those recommendations as advocacy messages. The advocacy and the recommendations are very much country-specific. The full list of specific recommendations can be found in country reports available on the TI FGI website.³

The research on which this article is based was carried out in five Asia-Pacific countries: China, Indonesia, Malaysia, Papua New Guinea and the Solomon Islands. These countries boast nearly 17 per cent of global forest area. China was included in the programme because of its large processing industry, which buys much of the timber logged in the region.

The FGI programme

The Forest Governance Integrity Programme is a research and advocacy initiative that advocates strengthening of forest governance at the national, regional and global level by a series of activities:

- All the projects within the FGI programme start with a systemic analysis of the ability of a country's institutions, laws, regulations and enforcement agencies to combat corruption in the forest sector.
- The analysis is followed by specific and targeted advocacy work in the country to address the gaps in the system identified by the analysis.
- Both the analysis and advocacy are done by TI national chapters, in consultation with local and national stakeholders.
- National-level work is supported at the regional and global level by the team based in the TI Secretariat.

As noted above, the FGI programme starts off with a systemic analysis. The methodology used is derived from TI's Manual, *Analysing Corruption in the Forest Sector* (TI 2010), which provides a general methodology for prioritizing the corrupt practices that pose the greatest risk to forest governance; i.e., those practices that have the greatest impact and are the most likely to occur.

Each of the TI chapters participating in the programme adapted the manual to the local context by discussing it with a broad array of stakeholders: government, private sector and civil society. The research was then conducted, using the same consultative approach (through workshops or smaller-scale meetings), as well as desk-based research of existing legislation and practice to assess levels of corruption and specific risks. It is worthwhile emphasizing this point: the views expressed here are not just those of TI. They are the views of forestry stakeholders in the country, who have daily, on-the-ground experience of what is destroying their forests.⁴

Corruption risks

The risks listed below are considered by local stakeholders as major areas where corruption might occur. The research was related only to corruption as it affects forests and forestry in a country; there was no cross-country analysis or comparison.

Laws and regulations lacking or in need of reform

Gaps in laws or regulations, either at the national or provincial level, can increase the risk of corruption. For example, the *Forestry Act 1991* in Papua New Guinea has been weakened by amendments introduced since it came into force. Not only do these amendments threaten the sustainability of forest operations, they also hint at weaknesses in the country's legislative process. The lack of public consultation in the drafting of the amendments and the fact that the 2007 amendment evaded the issue of a proper National Forest Inventory are signs of the risk of undue influence by interested parties and a signal that the amendments did not result from a democratic consensus based on scientific or long-term development policies.

Sometimes, corruption risks arise not from the content of the laws, but from the lack of harmonization between different pieces of legislation or regulations. Forestry laws may conflict with laws covering other fields, such as spatial planning or local autonomy. Differences between the regulations of neighbouring provinces can also be a driver of corruption. For example, forest zoning in Indonesia is covered by spatial and land-use plans at national, provincial and district levels; the lack of synergy between these three levels makes them very difficult to monitor and runs the risk of some actors unduly influencing the development of these plans.

Although there may be inadequacies in the legislation itself, often the solution lies in reforms rather than a complete overhaul. Such reforms should bring about stronger anti-corruption measures to complement regulations promoting sustainability and legality, as well as better coordination between different institutions and different levels of authority.

Weaknesses in the licensing process

In order to be able to legally operate in a given area, a logging company needs to obtain a permit. The systems put in place to ensure that licenses are fairly awarded vary, but licensing processes have been pointed out by stakeholders as a high-risk area in all five countries where the assessments were made.

Although the decision-making process should itself be transparent, local stakeholders mentioned that discretionary powers still exist in places such as the Solomon Islands and Malaysia. Thus, vested interests may come into play. Such forms of undue influence can also affect political decisions. The power that politicians have can be exploited by companies looking to operate without following the rules that ensure sustainable forestry. In Indonesia in 2008, Members of Parliament were sentenced to eight years imprisonment and a fine of IDR 250 million (approximately US\$ 25,000) for corruption in the licensing process.⁵

Stakeholders consulted by TI chapters in Asia and the Pacific have brought up several barriers to integrity in licensing:

- Companies that want to exploit forests need to show that they will respect the legislation and follow the rules. Most governments demand that studies be carried out to assess how operations will be managed and how they will affect the environment. In Indonesia, this system was found to be compromised, as these studies — which are the basis for decisions on licensing — may be subject to manipulation (e.g., through bribery) if controls are not tightened. Similarly, stakeholders in China suggested that there were risks of false declarations on how the land would be used in order to obtain the concession. Once the concessions were given it was far more difficult to control how they were actually used.
- Another issue is the monitoring of the licence-awarding process. The licensing process in the Indonesian province of Aceh is coordinated by a one-stop service. This is a useful tool, but no institution is in charge of overseeing the work of the service and it was found that there is little supervision.
- This is reinforced by the lack of access to information on licensing. Indeed, monitoring of the process by civil society is impossible if information is not available. When information was requested in Aceh, officials refused to disclose it on the grounds that it was confidential and that only the company could disclose it.
- Last, investigations do not always lead to prosecutions and sanctions. This is partly linked to the limited capacity of relevant actors (civil society, government) to detect corruption in the licensing process. Also, even if evidence of corruption is available, authorities have limited capacity to prosecute or apply sanctions.

For these reasons, laws and institutions that have the potential to prevent corruption in licensing cannot be fully efficient.

Further collaboration between these institutions and civil society would be a way of better controlling corruption. In addition, the awarding of concessions needs to be subject to open tenders and there need to be clear criteria for choosing the best applicant. The whole licensing process needs to be subject to strong monitoring through adequately resourced agencies and civil society.

Participation of local communities in decision-making processes

Corruption risks in licensing and in the zoning of forested land obviously have a great effect on local communities. If decisions are skewed by poor governance or by vested

interests that exploit poorly governed institutions, people living in the forests will not truly have a say in how forests are used. Similarly, in Indonesia, unsustainable logging often result in communities being alienated from their forest lands, due to unclear tenure. Logging companies exploit this situation by “buying” the right to operate on historical indigenous lands.

Such issues are particularly acute in Papua New Guinea and the Solomon Islands. In both countries, forested land is largely under customary ownership. Therefore, the question of how local communities are involved in decisions is especially significant. How can their views be treated on a par with those of industry and government? In the Solomon Islands, timber rights hearings have been organized by the government, but there is a history of logging companies providing funds for these hearings because of the limited financial capacity of the government. This obviously has implications for the fairness of the process.

The low capacity of communities was identified as a major reason for this situation. Communities’ lack of understanding of laws and of the contracts they negotiate results in an imbalance of power between them and the companies.

Capacity building and support to local communities is a clear necessity. Access to information is a key tool that would allow communities to be in a better position to monitor the use of their land.

Control of logging operations

Within the timber supply chain, corruption risks have been identified that can directly fuel illegal logging. Usually occurring in the form of bribes or undue influence, such corruption circumvents the very legislation that is supposed to ensure the sustainable use of forests and the protection of local communities’ rights. Standards do exist, such as the Code of Logging Practice in Papua New Guinea and the Solomon Islands, but according to stakeholders, bribery was used as a way of getting officials to ignore the breaches of these standards.

For example, there are limits to the annual allowable cut by a given company, but timber inventories on which those quotas are based may be falsified, leading to forests being over-exploited. Another example: the guidelines for the use of ministerial discretionary powers in the Solomon Islands when determining timber logging and sales schedules, duties and exemptions were not comprehensive and not always adhered to (Solomon Islands Government 2005). For instance, the management and monitoring of roundwood exemptions are not covered by the procedure.

Monitoring forestry activities is a crucial way of reducing corruption risks. In Indonesia, however, the responsibilities for the oversight of forest management were sometimes found to be unclear or difficult to fit within the provincial or district context, since forests do not conform to administrative boundaries. Without responsible agencies that have clear mandates for the implementation of forestry laws and regulations, it is obviously

difficult for citizens to hold them to account. In Papua New Guinea, independent studies have pointed out the low efficiency of bodies in charge of enforcing and monitoring the Code of Logging Practice (ODI 2007). A possibility to monitor forest governance more effectively would be to do it through a forum of stakeholders involved in forest management.

Operational problems also need to be solved. In China, timber inspection stations are not empowered to impose sanctions. The separation between inspection and sanctions increases the risk of corruption in the provision of legal documents. For example, agencies that check the legality of transport documents may not have the power to seize timber or confiscate trucks, but can merely demand better or up-to-date documentation. A reliable assessment of forest resources is important as a basis for effective monitoring of the timber harvesting and trade (see also article 2.3).

Challenges in enforcing laws

Strong enforcement is a major deterrent to corruption; however, law enforcement is often still a weak point in forest governance. In several of the countries where the research was carried out, stakeholders mentioned high risks in this area, such as bribes to law enforcers to not investigate cases or to provide weak sanctions.

In Indonesia, China and Peninsular Malaysia, the inadequate monitoring of the enforcement as well as the low capacity of law enforcers have been identified as major causes of illegal logging.

Monitoring is critical to make sure that the institutions in charge of providing sanctions are held accountable. It is also essential to increase their capacity. Indeed, forestry and timber trade are rather technically complicated areas, and law enforcers are not always trained to deal with them. Forestry officials may have technical expertise, but may not have the infrastructure or enforcement capacities. Gathering evidence through inter-agency collaboration is an additional challenge that makes it even more difficult to identify corruption. Malaysian stakeholders have suggested that the recent whistle-blower system used be also in forestry as a means to gather evidence and prevent corruption.



Overseeing financial flows and revenues

Corruption has a tremendous impact on the revenues that forestry and the timber trade generate for the state and citizens. It allows logging operators to avoid the payment of taxes, fees or royalties, thereby undermining opportunities for development. According to the Environmental Investigation Agency and Telapak, for instance, government losses due to the illegal trade of merbau wood in the Indonesian province of Papua amounted to trillions of Indonesian rupiahs.⁶

Flaws in the system of declaration of logging harvest are partly responsible for distorting revenues, as identified in Papua New Guinea. The Forest Authority requests that logging companies fill in a form, and then calculates the amount of royalties owed to resource owners. This process is rarely audited by any independent body, however, which can lead to land-owners being paid a lower amount than what is owed.⁷ Royalties are also an issue in the Solomon Islands, where the income is usually split between land-owners and logging companies. This practice is not always complied with: royalties are sometimes not paid, and problems in the account of royalty payments weakened the process.⁸

Another element that hampers controls over the revenue chain has been reported by stakeholders in the Solomon Islands and China: unclear responsibilities for overseeing the revenues generated by the forest sector. In the Solomon Islands, there are four types of fees owed by logging operators. They are collected at different points of the process, leading to a fragmentation of the system and difficulty in holding institutions to account. Human resources shortages within the Ministry of Finance and low monitoring capacity worsen the problem.

Audits and inspections by independent bodies are necessary to effectively address such problems. The responsibilities for overseeing taxes and royalties should be clear. Again, some institutions may need capacity building to be able to monitor financial flows.

Next steps for the FGI

The purpose of this work was to identify, at the national and local level, major issues in forest governance and suggest possible ways to tackle them. The recommendations coming out of the analysis, some of which have been mentioned above, will form the basis of advocacy work by the TI national chapters with other local stakeholders. This work will promote concrete solutions and achieve long-term positive impacts on forest governance.

An interesting aspect of the advocacy work is the development of what is called “Islands of Forest Integrity.” These are an innovative way of reducing corruption. They are forest-sector “entities” where all forest-related activities are transparent, covered by integrity pacts, where civil servants have taken integrity pledges, and where civil society monitors forestry and timber-related activities. Entities can be a concession, a government department or an area where specific measures and tools are applied to reduce corruption. They will be practical examples of best practice in a positive, solution-oriented way and show that corruption-free forestry is possible. Much of the advocacy work is subject to funding, but the advocacy and the development of these “islands of integrity” has started in Indonesia and Papua New Guinea, supported by the FAO and BMZ.

Endnotes

1. Transparency International is a global civil society organization that works through a network of local NGOs in more than 90 different countries. The locally registered NGOs are known as National Chapters and they work on a range of corruption issues in their own countries. The TI secretariat plays a coordinating role and produces some of the advocacy tools used by the chapters, such as the Corruption Perception Index.
2. This is defined as the abuse of entrusted power for private gain.
3. See www.transparency.org/regional_pages/asia_pacific/forest_governance_integrity/resources_and_publications.
4. This first stage of the FGI was funded by the EU.
5. See <http://nasional.kompas.com/read/2008/10/08/07082522/Al.Amin.Nur.Nasution.Kembali.Disidang>.
6. IDR 1 trillion = US\$ 100 million; <http://m.antikorupsi.org/?q=node/4085>, accessed on March 18, 2011.
7. [1994] PNGLR 1 N920 PNG National Court of Justice *Mussau Timber Development Pty Ltd v (Mussau islanders)*.
8. Solomon Islands Government. 2005. Special audit report.

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