Building judicial integrity to combat illegal logging

Corruption of the judiciary undermines the fundamental institutions of justice. It compromises the accountability of law enforcement institutions and prevents the prosecution of violations of law. Such corruption ranges from political interference in judicial processes to small-scale bribery of court clerks. According to Transparency International’s Global Corruption Barometer 2010 report, a public opinion survey on corruption, 14 per cent of respondents from countries in Asia Pacific reported having paid a bribe to the judiciary in the previous 12 months, making it the sector with the highest reported rate of bribery in the region.¹

Corruption in the judiciary has particular implications for the forestry sector and the fight against illegal logging. Although there has been an increase in legislation to regulate the sector, it is ineffective without robust enforcement by judicial institutions. Yet corruption in the judiciary has turned law enforcement bodies into institutions that are unable to fulfil their obligations of upholding the law, investigating cases and prosecuting illegal logging.
1. Issue at stake

Although there have been reports of a reduction in illegal logging in some countries,² it remains a significant problem in Asia Pacific and across other regions. Corruption along the timber supply chain (including in the issuance of timber concessions and licenses), in customs agencies and among forestry companies are all major drivers of illegal logging.³ While the sources of the problem must be combated, fundamentally weak law enforcement institutions mean that once these corrupt activities are uncovered, prosecutions and sanctions are rare.⁴

When a country’s law enforcement institutions are corrupt, it removes a key deterrent for different actors — from logging companies’ owners to government officials — not to use corruption to undermine forestry rules and regulation.

2. Manifestations

Corruption in law enforcement can manifest itself in different forms and includes bribery, conflicts of interest, and nepotism. In the case of bribery, it can occur at all levels and throughout the judicial process.

**Bribery of the police to suspend investigations of forest crime:** In 2008 the police in Riau Province, Indonesia suspended the investigation of 13 companies accused of illegal logging.⁷ Watchdog groups alleged that 12 public officials, including two high-ranking policy officers, were part of a ‘forestry mafia’ used to halt the investigation. This included ‘experts’ from the ministry of forestry who testified that the companies were not guilty of illegal logging in the province.⁸

**Bribery of prosecutors to avoid cases going to court:** There are a number of methods prosecutors can use to protect those from whom they have taken bribes. They may ignore violations of forest laws, prolong the preparation of cases, use ‘proxies’ to face the charges so as to protect the identity of the real culprits, or deliberately fail to prepare strong cases against the accused. Given the subtle nature of these actions, it is often very difficult to prove that prosecutors have been bribed without actual evidence of money being promised or exchanged.

**Bribery of judges or prosecutors for favourable verdicts in court:** Once cases get to court, judges can be influenced to ensure that companies are provided with favourable verdicts. As with prosecutors, it is hard to allege the bribing of judges without documentation. In countries like Indonesia which does not have a jury system to try crimes, the importance of the choice of judge and his/her personal integrity is even more important.

**Bribery of elected officials to use their political influence on courts:** Members of the executive can be bribed to exert their political power to influence the judiciary. This is particularly challenging when there is not a separation between the different branches of government and their independence is weak. Where political elites exercise unchallenged power, as is often the case in rural areas, they may also be in a strong position to control the appointments and postings of law enforcement agents (judges, prosecutors and police).

There are different reasons why corruption can develop in a country’s forestry sector. It may be blamed on inadequate government policies, ill-conceived or mismanaged programmes, ineffective institutions, and insufficient checks and balances that contribute to an overall low level of transparency and accountability.⁹
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The problem of bad government policies, both in design and implementation, is one that plagues forestry as well as many other sectors. Either the right policy does not exist or is not well suited to address the challenges posed by illegal logging and forest-related crimes. Even where appropriate legislation is on the books, weak law enforcement bodies have allowed corruption to be used to circumvent justice. Judicial corruption can take root due to weak capacities stemming from resource constraints (i.e., technical know-how, adequate finances and sufficient staff). Furthermore, the police, prosecutors and judges may lack knowledge of forest crimes. For example, according to the World Bank, investigators have an insufficient understanding of recent forest laws and sanctions, court procedures and forest crimes.

There also may be low levels of cooperation and collaboration between agencies when it comes to investigations. These problems are further exacerbated by fractured operational responsibilities across law enforcement agencies due to decentralisation. Institutional gaps in existing organisational structures also undermine the possibility for inter-agency work.

Moreover, the implementation and enforcement capacity of agencies may not even be up to the challenges posed by illegal logging, particularly since it often involves vested interests, illicit networks and multiple governments (i.e., supply, transit and demand countries). Law enforcement agents may be reluctant to investigate or prosecute forest crimes as they are often carried out by powerful actors such as government officials, military personnel and timber barons. There have been cases where forest police, park rangers and workers from non-governmental organisations (NGOs) have been subjected to intimidation, threats of violence or have been injured or killed in their attempts to shut down illegal logging operations.

Finally, the police, military, and forest police may be reluctant to capture or prosecute forest criminals because these officers are directly involved in, or otherwise supporting and benefiting from, illegal forest activities. These individuals have very little incentive to ensure effective enforcement operations are carried out.

3. Recommendations

There are a number of recommendations on how to reduce judicial corruption and improve enforcement in order to combat illegal logging. Foremost, a strategy to reduce illegal activities and corruption in the forest sector requires improved compliance with the law. Moreover, it is essential to promote the independence of the judiciary and the transparency of judicial processes.

The first step for reducing judicial corruption is to identify the legislative gaps in current regulations and to assess other risks in order to correct them. A risk mapping activity for the forestry sector, such as the one devised by Transparency International, would be useful in this respect. Such an assessment would help to identify the areas that must be addressed to build a stronger legal system and a supportive, effective judicial system.

Once the weaknesses in the sector are identified, there are different practical measures which can be taken to combat judicial corruption. These include making the process of judicial appointments merit-based and transparent, setting clear terms and conditions for hiring judges, and ensuring the overall justice system works with integrity.
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Judicial appointments: An impartial and transparent process for the appointment of judges will help ensure that only candidates of the highest quality are selected. It will also allow them to not feel obligated or indebted to the particular politician or senior judge who has appointed them. There should be an appointments body set up which is able to act independently of the executive and the legislature. This body’s members should also be selected in an objective and transparent process.

Merit-based judicial appointments: To truly have a merit-based system, transparency is essential. Selection criteria should be clear, well publicised and respected. This will allow candidates, selectors and others to know what the standard is for being appointed to the bench. Successful candidates should demonstrate a record of competence and integrity. It is often worthwhile to ask civil society groups, such as professional associations linked to judicial activities, about the merits of the proposed candidates.

Judicial salaries: Salaries should be set at a level which is in line with judges’ positions, experience, performance and professional development during their tenure. Fair pensions should be provided upon reaching retirement so that judges are not looking for future appointments while in office or are persuaded to engage in corrupt activities.

Security of tenure: In addition to fair salaries, judicial appointments should be guaranteed for a set period of time, typically around 10 years. Appointments should not be subject to renewal in order to prevent judges from tailoring their judgments in anticipation of renewal.

Judicial conflicts of interest and asset disclosure: Judges should be required to make asset disclosures and to declare conflicts of interest, particularly in countries where other public officials are required to do so.

Judicial protections: It is important to have laws that safeguard judicial salaries and working conditions. This will help to discourage the executive or the legislature from manipulating them as a way to punish independent judges and/or reward those who rule in favour of government.

Judicial transfers: Transfers to remote jurisdictions should not be used as a form of punishment, and all transfers should be based on transparent, objective reasons. To prevent conflicts of interest, court assignments should not place judges in an area where they have close ties or loyalties with local politicians.

Case assignment and judicial management: Assignment of cases should be based on clear and objective criteria and the process regularly assessed. This approach can help to protect against cases being allocated to judges that are pro-government or pro-business.

Access to information and training: Unfettered access to legislation, cases and court procedures must be assured for judges. For example, the Food and Agriculture Organization (FAO) of the UN has suggested that the capacity of the
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Judiciary would be improved by increasing disclosure of how fines in forestry are calculated. This way, the forest authority which assesses the fines would have less discretionary powers in cases of infractions. Judges should also receive initial training prior to or upon appointment, as well as continual training throughout their career. Training should cover legal analysis, laws governing the forestry sector, the explanation of decisions, judgment writing, case management, ethics, and anti-corruption.

**Disciplinary procedures:** Clear sanctions are needed to ensure that judges are disciplined when they do not carry out an initial and rigorous investigation of all allegations. In cases of reported violations of judicial duties, there should be an independent body able to investigate complaints and substantiate the judges’ decisions.

**Transparent prosecution service:** To ensure the accountability of their actions, public prosecutors must conduct judicial proceedings in public (with limited exceptions); publish reasons for decisions; and provide clear and publicly accessible guidelines for their work.

**Freedom of expression:** Journalists provide an important oversight mechanism to ensure legal proceedings are fair and to report suspected or actual corruption or bias. Journalists should not be subject to punitive laws that criminalise the reporting of judges’ decisions on the grounds of defamation.

**Civil society monitoring:** Civil society organisations are able to provide insight into judicial corruption by monitoring its occurrence, as well as signalling potential indicators or red flags of corruption, such as judicial delays and the quality of decisions.
The FGI tackles corruption as a primary driver of illegal logging and poor forest management. It looks at corruption at all stages in the timber production and processing chain and examines how it facilitates the unsustainable harvesting, production, conversion, export, import and procurement of timber and wood products.

To learn about TI’s efforts on timber and wood products, import and procurement of production, conversion, export, and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption, and works with partners in government, business and civil society to develop and implement effective measures to tackle it. For more information go to: www.transparency.org

References

3 For more on the linkages between corruption and illegal logging, see: www.transparency.org/regional_page/asia_pacific/forest_governance_integrity
6 Interview with Bambang Hero Saharjo, Head of the Forest Fires Laboratory at Bogor Institute of Agriculture, Indonesia, Tempo Magazine, November 2005.
11 Other weaknesses that are driving illegal logging include: flawed policy and legal frameworks; insufficient data and information about forests and illegal operations; corruption in the private sector and in government; and high demand for cheap timber.