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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

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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.

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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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