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ILLEGALITY IN THE FORESTRY SECTOR: policy and economic aspects

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Outline of the work on illegality

- **Illegality: what it is?**
- **Illegal actors**
- **Direct and indirect effects**
- **International initiatives**
- **What to do? Government and governance instruments**

Difficulties to define illegality in forestry (different types of violations by different agents)

- | | |
|---|--|
| 1. Forest products thefts | 6. Violations of tax, financial and accounting regulations |
| 2. False reporting of amount, species, log-classes etc. | 7. Illegal transport /trade /processing |
| 3. Logging either protected species or in protected areas | 8. Corruption and bribery obtain access to the forest |
| 4. Logging outside concession | 9. Dubious privatisation in forestry |
| 5. Violating workers rights | 10. Violations of harvesting regulations |

Illegality: what it is?

“Forest products harvested, transported, processed, bought or sold in violation of national laws”

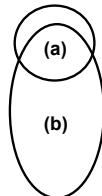
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Illegalities in the forestry sector (2)

Forest degradation and illegality =
2 interconnected but different problems:

(a) The un-sustainable management of forests (→ deforestation, forest degradation)

(b) Illegal practices along the wood chain (from forest management to retail)



Illegality: underlying causes

- **flawed policy & legal framework (unclear definitions and boundaries, inconsistency of articles; community rights denied);**
- **minimal enforcement capacity (inadequate capacity to monitor and sanction);**
- **insufficient information on resources;**
- **heavy regulatory burdens;**
- **corruption in private sector & government.**

Illegality: is it so easy to define what is law compliance?

- law is evolving over time;
- law is not only forest law;
- law is more or less legitimated and fair;
- law is different from a place to another one.

Illegality: what it is

In B&H there are two forest laws, even the definitions of forests in these two laws are different.

In RS, the law defines forest as: *“the ground covered with forest trees as an ecosystem consisting of the biotope (natural habitat or an area - forestland, water, air and climate) and the biocenosis (habitat - forest trees and other vegetable and animal forest organisms)”*

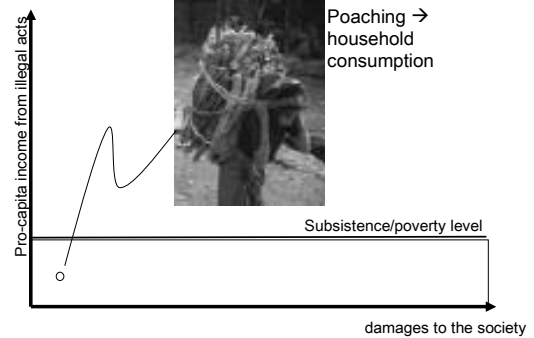
In F B&H, forest, in terms of the law, shall be *“any ground surface covered with forest trees or forest shrubs exceeding any contiguous area of 500 m² and having a width of at least 10 meters”*.

Illegality: what it is (6)

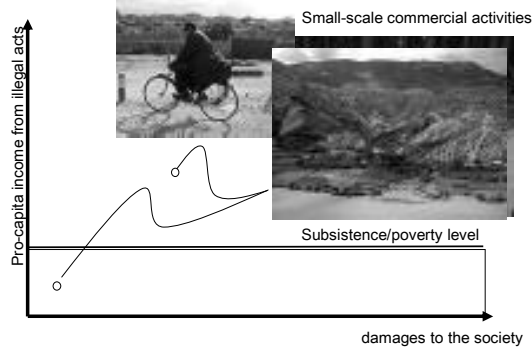
Difficult to have a concept internationally recognised:

- example of Serbia-Montenegro: «forest devastation» in the law; unauthorised logging that does not result in «forest devastation» is not a criminal act (source: MCPFE issues paper 2005, ENA-FLEG)

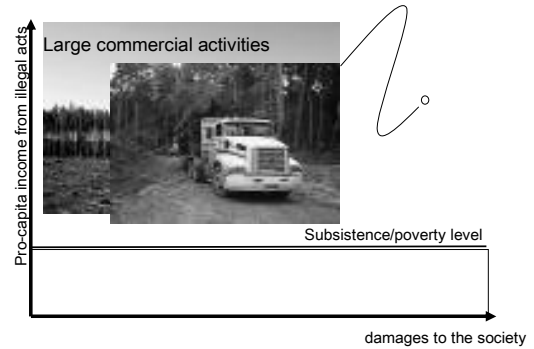
Illegal actors: who are they? (1)

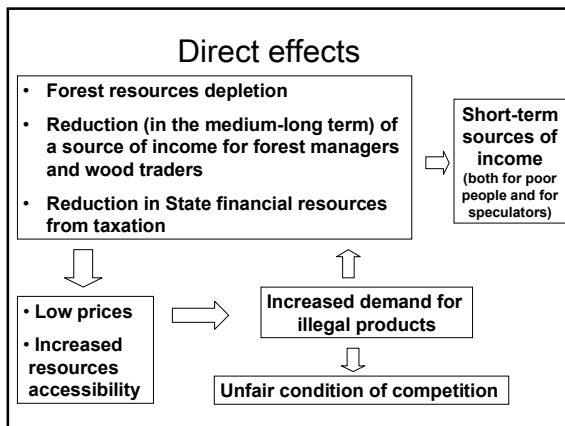


Illegal actors: who are they? (2)



Illegal actors: who are they? (3)





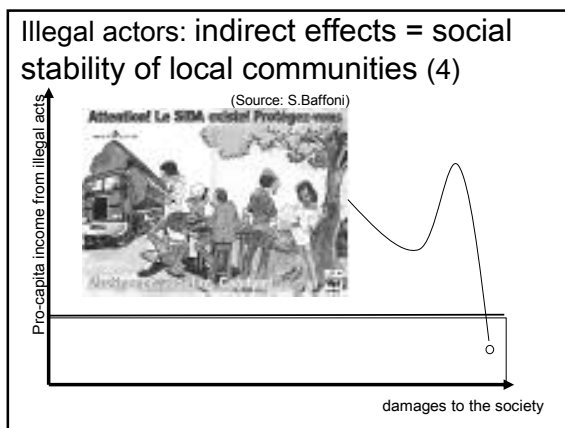
Indirect effects

- social stability of local communities
- capitals for illegal investments
- corruptive culture in state-citizens relationships
- ...

	2002
Total sample	835
Public works/construction	46%
Arms and defence	38%
Oil and gas	21%
Banking and finance	15%
Real estate/property	11%
Pharmaceuticals/medical care	10%
Power generation/transmission	10%
Telecoms	9%
IT	6%
Forestry	5%
Mining	5%
Transportation/storage	5%
Heavy manufacturing	4%
Agriculture	3%
Fishery	3%
Civilian aerospace	2%
Light manufacturing	1%

⇒

<http://www.transparency.org>



- ### International initiatives (1)
- Some examples:*
- **FSC:** a criteria (law existing and applied)
 - **European Union (FLEGTrade Action Plan):** prohibition of European imports (if FLEGTrade Action Plan is oriented mainly towards prohibition of European imports then it ignores illegal logging in SE Europe)
 - **The World Bank forest strategy** (example of PROFOR in Albania & Bosnia-Herzegovina): support fight against corruption
 - **Transparency International:** publicity, corruption index and ethics code

- ### International initiatives (2)
- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora):**
- worldwide legally binding mechanism, signed by 166 countries;
 - different levels of protection; transparent system of reporting and control;
 - limited to «endangered» species, no enforcement procedure, ...

- ### International initiatives (3)
- The FLEG mechanism:**
- "Forest Law Enforcement and Governance Initiative": a multinational effort involving all governments, stakeholders and donors in organising correcting actions at both national and international levels;
 - The Saint-Petersburg ministerial declaration for Europe North Asia (ENA) in Nov. 2005; implementation facilitated by the World Bank

International initiatives (4)

- *ITTA-International Tropical Timber Agreement*
- *The FAO-ITTO partnership: promote best practices for improving law compliance in forest sector; guidelines, workshops for mediatisation;*
- *the Aarhus Convention (but Serbia & Bosnia-Herzegovina have not signed yet): citizens' access to justice on environmental issues*
- *OECD Guidelines for trans-national corporations*

International initiatives (5)

But globally a discursive issue:

- Ministerial Conference for the Protection of Forests in Europe (MCPFE);
- 1997 G8 Summit;
- United Nations Forum on Forests (UNFF);
- Collaborative Partnership on Forests (CPF) since 2003;
- etc.

Ongoing political actions to fight illegality: a taxonomy (1)

- By **political actors:**
 - Public institutions: UN, WB, G8, MCFPE, EU, governments, local authorities
 - Private sector
 - companies
 - (organised) civil society: people and NGOs
 - Partnership

WB For.Strategy, MCPFE Resolutions
FSC, social reporting, external auditing
EU FLEGT

Political actions going on to fight illegality: a taxonomy (2)

- By **type of instruments:**
 - Normative (hard and soft laws): focus on command and control tools
 - Voluntary
 - Informative/networking (see next slide)

CITES, ITTA, the Aarhus Convention, OECD Guidelines on TNC,...

FSC, social reporting, ...

Informative tools & networking

EFERN
Environmental investigation Agency
Forest Research Network
Forest Stewardship Council
Friends of the Earth Forest campaign
Controlle wood www.controlledwood.org
Global Witness
Greenpeace Forest campaign
Illegal Logging www.illegal-logging.info
Rainforest Action Network
Rainforest Alliance
Royal Institute of International Affairs Programme for the Endorsement of Forest Certification schemes
Taiga Rescue Network
WWF Forest campaign

Policy Means: between Government and ("Good") Governance

Possible strategies in order to increase law compliance:

- to enforce the law: creating conditions to control illegal logging (through government rules); repression;**
- to use economic, social & policy mechanisms: creating incentives to reduce illegal logging (through new modes of governance); prevention.**

Questions (policy)

- What is your view on illegal logging? What do you consider as such? Types, agents, motivations and causes
- What is done in order to fight against illegal logging? (examples). Are they effective and why?
- Why is it a hot spot? Who put the issue on the table and why?

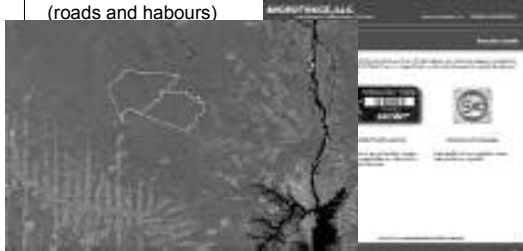
Questions (economics)

- Who are the gainers and who are the losers? How much they earn/lose?
- Do you think CSR instruments (like external auditing, reporting, certification) can be effective instruments to stop i.l.?

What to do?

Illegality control: it is not a technical problem

- Visibility of traded wood
- Modern and chip *tracking and satellite monitoring*
- Physical concentration along few trade channels (roads and harbours)



Policy Means: between Government and (“Good”) Governance

The underlying motivations:

- poverty, satisfaction of subsistence needs (costs of fossil energy, individually low volume but large number of individuals);
- financial profits (linked with bureaucracy and corruption; big volumes with small number of individuals; timber mafias).

Policy Means: between Government and (“Good”) Governance

Country governance, as a general context:

- political stability, voice & accountability (process to select and monitor governments);
- regulatory quality & institutional capacity (the capacity of public authority to formulate sound policies);
- rule of law & control of corruption (both citizens' and state's respect for rules).

Policy Means: between Government and (“Good”) Governance

The forest sector governance modalities; what are we dealing with:

- forest institutional capacity
- forest regulatory soundness
- corruption in forestry
- participation
- transparency

Policy Means: between Government and ("Good") Governance

How to integrate both strategies in a transparent comprehensive policy:

- Linking the forest sector to the broader context of good governance;
- Linking economic and market mechanisms to the enforcement of rules;
- Linking participation to forest policy & to management practices reform.

Government: improving law compliance (1)

1. Clearly define what is illegal:

- Define clear standards of legality;
- Define precise control procedures and means for implementation;
- Promote independence and transparency of judiciary.

Government: improving law compliance (2)

2. Rationalising policy & legal environment

- more clarity, transparency & consistency of law (simple, unambiguous, tested approach, minimal discretionary powers);
- consistency and coherence (no contradiction between forest law articles, and with other laws, domestic and transboundary).

Government: improving law compliance (3)

3. Adapt means to reality:

- decrease bureaucracy (de-concentration, simplify regulations for facilitating implementation);
- differentiate types, levels and objectives of enforcement, depending on various infringements, for increasing social legitimacy of prosecution.

Government: improving law compliance (4)

4. Define limitations to central administration's power:

- participatory design of law (enabling people to scrutinise implementation, better equity by minimising influence of privileged groups);
- devolve powers relevant to forest resource management to representative institutions and to local people.

Government: improving law compliance (5)

5. Fight against corruption:

- fix definition (WB: "misuse of entrusted power for private gains", according to- or against-rule corruption, public/private authority);
- repression: inspectorate with public reports, index lists, etc;
- prevention: education, publicity, public stakeholder panel, etc;
- *question: effective on a sector-specific basis?*

Governance: set up new mechanisms (1)

1. Building institutional capacity:

- define policy concept and forest strategy focusing on law enforcement as a priority (implementation, increase forest service focus);
- promote institutional reform with increase of staff performance and operational capacity (forest administration reform, re-organisation of services with control, auditing procedures, motivation system, awards, index).

Governance: set up new mechanisms (2)

2. Promote transparency through deliberation:

- enhance civil society participation (recognise that education & negotiation are more appropriate than force in addressing illegal behaviour);
- define participatory mechanisms & processes enabling citizens to assist and detect forest crime, public-private partnership in law enforcement (with NGOs to chase forest infringements, multistakeholder governance structures).

Governance: set up new mechanisms (3)

3. Link sector mechanisms to a broader perspective:

- increase cross-sectoral linkages (example of NFPs, improve inter-agency linkages, example of Finances for taxation);
- develop external audits and evaluations on the use of forest resources.

Governance: set up new mechanisms (4)

4. Consolidate harvesting/trade contracts:

- engage in bilateral agreements with selected trading partners with clauses prohibiting illegal felling and control;
- Clarify and secure land ownership rights;
- Monitor industrial in-country capacity;
- Establish trade agreements with trade partners (including cross-border).

Governance: set up new mechanisms (5)

5. Promote market mechanisms encouraging legal activities:

- taxation system increasing competitiveness of legal harvesting;
- taxation system decreasing competitiveness of illegal activities;
- promote independent certification and voluntary codes of conduct;
- promote re-investments of forest harvesting benefits into local community development.

Voluntary instruments of private actors

- Compensatory investments
- Codes of Good Practices :
 - In forest management
 - In providing financial services (see the experience of ABN-AMRO)
 - In the insurance sector (transport)
- External auditing (EIA in Cameroon)
- Environmental and Social Reporting
- SFM and CoC certification

Governance: set up new mechanisms (6)

6. Improving data and knowledge for a better transparency:

- forest resources assessments, focusing on changes over time and full value of forest;
- comparisons of log exports and production;
- system of information of all actors (public awareness building, document and share best practices).

Conclusions (1)

Without comprehensive political will of improving law compliance, any measures will have limited chances of success

but don't take this as an alibi for doing nothing; let's sweep in front of our own door first

Conclusions (2)

4 elements for a successful strategy:

- addressing the under-laying causes of illegality;
- prioritising remedial actions;
- assessing the economic feasibility and social acceptability of reforms;
- ensuring stakeholders' & public participation.

Conclusion (3)

Be careful.

- most of the proposed actions have side effects;
- ... *and even worst,*
- some of them may generate new more sophisticated illegal practices (mastering information, creation of new stronger networks, etc.).