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„Illegal trade in natural resources. What can Brussels do?“

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Thank you for the opportunity to make a brief presentation about the nature of the problem and the (lack of) adequate solutions with experience from forestry sector in Cameroon and mining sector in DRC. I would like to start with a small anecdote to illustrate the need for better understanding and defining illegality. It is not mine but was passed on by a former colleague working on illegal logging in Cameroon.

Going through the literature on the topic, there seemed to be a rather strong consensus of the rate of illegal trade in the country. Publications kept repeating a figure of 50 %: a figure that has been interpreted in various ways and ultimately derived from one source. The figure was for instance quoted in a 2006 WWF report, as the **rate of illegal exports**. This figure was drawn from another WWF news article in 2005, which talks about the **share of illegally harvested timber as part of total production**. A same interpretation of volume of timber was made in a Finnish Indufor publication of 2004. Both the 2004 and 2005 publications refer to a WWF source in 2002 that says that **50 % of logging in Cameroon is illegal**, which is taken from an estimation (no research) by a local NGO (Cerutti 2006). (Slide)

What has happened is that an estimate of logging operations that are illegal – for instance the number of companies that cut outside legal concession – is interpreted as the volume of illegally harvested timber. This is a first error. A second error is to interpret the percentage of production of timber as the percentage of illegal exports. In my interpretation illegal exports refers to either volumes smuggled across the border, or to under declaring of legally exported timber.

This example of misinterpretation, I think points to the need to distinguish between three categories or aspects of illegality in the international trade in natural resources:

1. Illegal extraction (for instance extraction outside legal limits, on unallocated land, by unauthorized players, or by not observing regulations),
2. Illegal exports (smuggling and under-declaring),
3. Other illegalities associated with (otherwise legal) trade such as illegal taxation and bribe payments for instance to obtain legal documents. (Slide)

The second category is probably most suited to quantification; that is by comparing registered or estimated production, recorded exports, and recorded imports in consumer countries. The last category not quantifiable in volumes traded subject to illegal transactions. The first category, which is perhaps the most important because of its negative impacts, is sometimes quantifiable but this demands careful grassroots research, which is simply not available at all times. The danger is to go by any figure available and use it for something else.

To the question: what is the share of illegal trade in natural resources in comparison with global trade, there are no easy answers, not even per country. First one must define which of the above categories, and further which aspect, is examined. In Cameroon for example, research showed that logging outside industrial concessions has significantly reduced as a result of better delimitation and mapping techniques and stricter controls. At the same time, a government suspension of all small scale logging outside the permanent forest estate – and subsequent widespread ignorance of this measure – offset this reduction. So changes have occurred but are hidden behind a stable figure of illegal timber trade.

Being specific is not only important for analytical purposes but also in terms of designing interventions to curb illegal trade. What do you try to address? If the key problem is that governments are deprived of export revenues, it makes sense to shore up export controls. If the

security aspect were the main concern, one would for instance need to address illicit taxation by military actors. To address environmental impacts of illegal extraction domestic law enforcement and field monitoring is important.

In my view, any trade intervention must go beyond verifying whether export documents are in order and taxes are paid. In this sense the Kimberley process for diamonds has many shortcomings in that it does not trace minerals to mine of origin, let alone verify governance standards at the production level. Unfortunately very few initiatives – like current codes of conduct in some countries and CSR policies of banks and trading companies – go further. EU-FLEGT is the exception. It emphasizes the legality of domestic timber production and trade in partner countries, based on national forestry and fiscal laws and regulations, before it is ultimately licensed and exported to the EU. However, implementation requires certain governance capacity which takes long to develop, and even where this is established the system is vulnerable to fraud and corruption and potentially biased against forest or mining dependent communities and small-scale domestic producers that are unable to comply with standards. For instance those in Cameroon exploiting community forests whose operations were suspended.

Here we come to a critical question that concerns the quality of domestic law enforcement that follows on is part of an international law or market based compliance mechanism. As much as illegal trade can negatively affect rural people lives, so can law enforcement against it. Forest and mining laws often legitimise the more powerful and wealthy group's monopoly over resources, while rendering informal production and trading activities of local communities and poorer households that usually have no legal to land and resources, illegal. Furthermore, complete and partial bans of production are often evaded by the power brokers bans were initially targeted against. These risks are particularly great in conflict and post conflict contexts, where rule of law is absent.

DRC illustrates these difficulties. the government in the beginning of the month suddenly announced a complete ban on all artisanal mining activity in the east in order to help stop the violence, some of which has evolved around the control of critical mines. The ban came a few weeks after the US senate passed a law obliging processors and end users sourcing minerals in the Great Lakes region to practice due diligence on the conflict free origin of their minerals. While there may be several other reasons, the government has probably wanted to demonstrate to the International community that is taking firm domestic action in response to stricter import laws in consumer countries. The ban seems a rather ad-hoc and unintended consequence of legal action in US, we are not sure we should be happy with, considering the quality of enforcement (Slide).

Miners and small-scale traders are complaining that that authorities misuse the law to confiscate their minerals. And while diggers are chased out of the mines some military commanders keep having teams working for them. Due to difficult implementation of the ban, smuggling networks will flourish, in turn, offering better opportunities for non-authorized actors to engage. Cleaning up the sector with a ban alone wont have much effect it is not accompanied by efforts that radically change governance in the mines and prosecute main violators in military and administration involved in illegal taxation and trading activities.

To Summarise from the above accounts:

- Commodity chains of natural resources from developing countries to consumer countries typically encompass both legal and illegal activities and transactions.
- Legal trade can have same negative implications as illegal trade
- Trade interventions at export level only, fail to address real problems down the commodity chain
- Invigorated domestic law enforcement, which can be motivated by international/consumer country laws and regulations, risks threatening the livelihoods and even security of populations. (Slide)

The consequences are that international action against illegal resource trade does not stop at border of producing country but should ideally:

- Involve forest/mining law reform to establish low cost and accessible mechanism to formally recognise rights of local communities and smallholders over resources they already manage.
- Empower local communities and civil society to monitor compliance of forestry/mining laws with support from government authorities, as well as performance of state mining, forestry and law enforcement agencies.
- Establish clear and accessible mechanism to allow people to seek redress for government decisions and actions that may have harmed them.
- Concentrate enforcement efforts on largest violators in the industry, military and government administration, for instance through improving anti-money laundering laws, supporting domestic litigation procedures, and stimulating internal screening processes within government agencies. (Slide)

Considerable progress has been achieved on above points in many countries' forestry sectors. I think for instance about Independent Forest Monitoring in Cameroon and Cambodia; Community forestry all over the world but most successfully in several Latin American countries; and Multi-stakeholder forest law enforcement initiatives in Philippines and Costa Rica. Similar progress in artisanal mining sector is scarce. While millions of lives depend on it, governments fail to develop adequate policies, favouring investment in industrial mining instead as this brings greater revenue is easier to legalise and control. This is understandable, but industrial development is not feasible in many areas because of negative investment climate. The challenge here is to allow for a smoother transition, with involvement of artisanal miners, starting by bringing them within the rule of law. In my view this meeting could compare and learn from good and bad practices of management models – whether or not tied to international policy mechanisms – in different sectors.