

## **The Laundering of Tropical Timber on International Markets: Time to Investigate the Role of Forestry Officials**

*Professor Kristian Lasslett<sup>1</sup>*

Anti-money laundering (AML) frameworks constitute a critical tool for combating a range of serious economic crimes.

Whether it be fraud, bribery, misappropriation, or illegal logging, the criminal conspirators have to conceal the initial crime and disconnect the financial proceeds from any prior illegal activity. Then they have to incorporate the value back into the legitimate economy. For instance, by investing cleaned funds in Australian or Malaysian real estate.

When it comes to money laundering one of the most important stepping stones for economic criminals is to disguise the initial crime as a legitimate set of commercial transactions. This makes the proceeds of crime look like lawful remuneration or profit.

A simple example would be a bribe that is paid to a politician in order to obtain a valuable licence for mining or logging. In order to conceal the bribe, the illicit payment is made to an offshore company 'JS Advisory Services Limited' in the British Virgin Islands, which is owned by the Minister. The payment is masked as a 'consultancy service fee'.

In this case there are a number of actors who have engaged in criminal conduct. First is the resource company, which has paid the bribe - in AML speak this is known as the predicate crime. Then there is the Minister who received the bribe payment. Additionally, both are guilty of money laundering as a result of their joint effort to disguise the criminal payment as a lawful commercial transaction.

But it is also possible that money laundering charges could be laid against the corporate service provider which established the offshore company for the Minister. If the professionals involved in setting up the company were aware of the role that JS Advisory Services Limited would play in disguising the bribery scheme, they too would be guilty of money laundering.

This is a simplified example, of course. In reality the Minister would likely use a more complex legal structure to disguise the bribery scheme.

Which is why highly skilled professionals become an intricate part of money laundering activity. They have access to advanced knowledge and sophisticated tools that can help the criminal conspirators to disguise the proceeds of crime and layer the value back into the legitimate economy.

So, when it comes to money laundering, besides the immediate criminal parties, the most common actors singled out for prosecution are private sector 'enablers', such as the corporate service provider in our example above. Other potential enablers include lawyers,

---

<sup>1</sup> Kristian is Professor of Criminology at Ulster University. His research is focused on investigating grand corruption and money laundering operations taking place in the natural resource sectors.

banks, accountants, real estate agents, casino operators and crypto-currency exchanges, to name some prominent examples.

However, in research, policy and practice, much less attention is paid to the role that public officials play in enabling money laundering schemes. Like their private sector counterparts, public officials are gatekeepers to critical infrastructure that criminals can exploit. If public officials abuse their gatekeeping powers, this public infrastructure can become a critical part of schemes designed to disguise the proceeds of crime and integrate the criminal proceeds back into the legitimate economy.

In Papua New Guinea a notable example of this enabling activity within the public sector, centres on the crime of illegal logging. National Forest Board (NFB) and PNG Forest Authority (PNGFA) officials, in this regard, play a critical role helping primarily Malaysian owned companies conceal illegal logging. This is done by disguising these illicit logging operations as legitimate agro-forestry projects - not dissimilar to the manner in which the corporate service provider helps the Minister disguise the bribe as a consultancy payment.

It has been documented in commission of inquiries, court cases and independent research, for example, that public officials have helped logging companies obtain Special Agriculture Business Leases and Forest Clearance Authorities (FCAs), without following due process and in cases where there is no evidence that the corporate operator has the intention to fulfil the legal requirements for the FCA licence.

This most notably takes place in situations where the logging company proposes to undertake forest clearance activity in order to establish a large-scale agricultural project, which is a prerequisite for successfully obtaining an FCA (i.e. a *forest clearing* authority). But then the company simply harvests the most valuable logs and at best sets up a derisory agricultural project significantly out of kilter with what was promised.

This is a criminal offence under forestry legislation in PNG.

Concocting large-scale agro-forestry projects that the operator knows will never take place, in order to obtain access to the logs, is also fraud as defined by the Criminal Code (i.e. obtaining property by false pretence).

When forestry officials are aware of the false pretence and issue the FCA anyway, they have become party to a disguise and concealment process critical to laundering the illegal logs.

Indeed, these illegitimate and illegally issued FCAs then become the ultimate money laundering tool for the criminal conspirators.

As hundreds of thousands of illegally harvested PNG logs saturate the global market netting foreign criminal networks tens of millions of dollars in revenues, these criminals will inevitably face scrutiny given the well-known risk of illegal logging in PNG.

But when they are asked, for instance, by banks to confirm that their source of timber wealth is legitimate, they simply present the FCA issued by the NFB. All is above board! And off

whooshes the proceeds of crime into a real estate investment or a new hotel development abroad.

Or when the forest communities and civil society in PNG call out the illegal logging, the conspirators can parade their FCA licences to any concerned clients or overseas government officials that may ask questions about the forestry activity.

When it comes to forestry crimes in PNG, public officials arguably constitute the most egregious link in the money laundering chain. This is because their improper assistance disguises the proceeds of crime from other frontline actors who have a significant role to play in anti-money laundering enforcement, such as banks and lawyers.

These regulated frontline actors see the logging licence issued to their client, but they have no idea it was improperly procured. So, unless diligent members of civil society, for instance, provide these professional actors with persuasive evidence that the FCA may be illegitimate, they have no specific basis for inferring that their client is potentially a criminal looking to launder illicit property.

Accordingly, these financial and business service providers do not file a suspicious activity report with their financial intelligence unit, nor do they deboard the customer.

Here it should be noted by way of clarification, while the crime is called money laundering, the criminal offence in PNG applies to a person who helps conceal, disguise, convert, or transfer *property* 'in circumstances where it is reasonable to suspect that the property is criminal property'. Property here would include illegally acquired logs.

So, in situations where public officials are aware that a logging company is conspiring to illegally log large tracts of forest, and they then help that logging company conceal this illicit activity by improperly issuing them with a FCA licence, this would appear to fall within the definition of helping to disguise criminal property.

This potentially means that forestry officials could be held criminally liable for their role in laundering criminal property.

Of course, when it comes to a criminal offence such as money laundering the public official must not only carry out the criminal act, they must also possess the mental intent to commit the improper act.

Because it is difficult to get inside the mind of criminal actors, courts have to sometimes infer intent using logic. If a seasoned forestry official who understands the approval process back to front, has enabled a clearly deficient operator to get an FCA licence, it is possible to infer they did so with the intent of enabling the company to disguise the illegal harvesting of logs under the cover of an authorised agroforestry project.

It should be made absolutely clear here, no finger is being pointed directly or indirectly at specific forestry officials past or present. But the role government officials have played in enabling loggers to disguise their illegal activity by improperly issuing FCA licences is well

documented in PNG at an institutional level. Determining the particular individuals who might incur criminal responsibility would need to be ascertained by a forensic investigation.

When it comes to the possibility of enforcement activity, the public has a right to feel pessimistic, given how often elite actors get away with resource theft.

But on a positive note, over the last decade the Bank of PNG's Financial Analysis and Supervision Unit (FASU) has been one of the country's most effective law enforcement institutions, which is widely respected internationally.

Their anti-money laundering inspections of commercial banks, for instance, have been critical in getting financial institutions to up their game when it comes to disrupting economic crime.

However, to tackle the chain of enablement in the forestry sector they will need help.

Regulated private sector actors such as banks and law firms can play a key role by closely scrutinising the activity of forestry officials, given the high potential they are in receipt of bribes in return for assisting criminal networks involved in illegal logging (unfortunately such bribes will often be carefully concealed with assistance from professionals to minimise the risk of detection).

The police also have a critical role to play in prosecuting forestry officials who abuse their public powers in a way that helps to disguise the illegally acquired logs and convert the criminal proceeds into cleaned assets abroad. They have multiple ways under the Criminal Code to send this message, if there is the will within senior command to see a message sent.

FASU's own work in recent years demonstrates vividly the way in which strategic action against errant individual actors can have a wider deterrent effect.

Today there is rightly heightened scrutiny of private sector organisations due to the role they play in enabling forestry crime. The rule of law demands that the same level of scrutiny should be placed on public officials for the documented role they play in laundering logs stolen from PNG.

\* This work is licensed under a [Creative Commons Attribution-NoDerivatives 4.0](https://creativecommons.org/licenses/by-nd/4.0/) International License.