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EDITORIAL



Welcome to the SEPTEMBER 2021 issue of ANZSIL *Perspective*.

As we continue to battle with lockdown and the spread of the Delta Variant to COVID-19, I am delighted to present two excellent *Perspectives* on international frameworks for structural change in North Korea and a potential solution to global deforestation.

The recent 20th anniversary of the 11 September 2001 attacks in the United States once again brings a spotlight on the importance of international law - not only in relation to responding to the attacks themselves but also to the myriad of events to which those attacks gave rise over the ensuing two decades. In that regard, the events of the last few weeks are not a cause for optimism in relation to the application of human rights to the people of Afghanistan, particularly those of women.

As always, we at ANZSIL *Perspective* are keen to encourage articles and book reviews on international law issues from a diverse range of authors at every level of post graduate experience.

As our readers know, we have a small editorial team but we pride ourselves on the conscientious and encouraging approach we try to take on the submissions we receive. To read about our editorial team click [here](#).

Felicity Gerry QC (Editor)

The deadline for the next ANZSIL *Perspective* is 8 October 2021. The current call for *Perspectives* and submission details and guidelines are on the [ANZSIL *Perspective* webpage](#).

The views expressed in contributions to ANZSIL *Perspective* are those of the authors. Those views are not necessarily shared by ANZSIL or the Editors of *Perspective*.

PERSPECTIVES

What International Frameworks Would Effect Structural Change in North Korea?

By Daye Gang

Introduction

How is it that the Democratic People's Republic of Korea, a fairly isolationist State under some of the world's harshest sanctions, having experienced two transitions of power, one extreme drought and famine, and one global pandemic, still exists? The answer, necessarily broad within a very complex setting, lies in the resourcefulness and adaptability required by the extortionate demands of central leadership.

International and Domestic Sanctions

North Korea is subject to some of the most restrictive sanctions in the world: United Nations Security Council sanctions have been in place since 2006, progressively covering many of the goods North Korea trades internationally. Among other countries, the USA and Australia have imposed autonomous sanctions under domestic legislation. Magnitsky Act type legislation around the world lists North Korean institutions and individuals. Despite the sanctions imposed, and the many highly qualified experts dedicated to enforcing compliance, concerns persist that they are not effective against a State determined to survive.

Beyond Systemic Human Rights Abuses

It is common to derive profit from mass incarceration and associated prison industries, including in developed countries. North Korea is particularly well-known for its political prison camps, which also force detainees to carry out labour. North Korean prisons are

particularly brutal, according to the findings of the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, which concluded that labour conditions often reach the legal threshold of slavery. The Citizens' Alliance for North Korean Human Rights recently released a research report, titled "Blood Coal Export from North Korea: Pyramid scheme of earnings maintaining structures of power". This report lays bare how the North Korean government draws on prison labour and all its other resources to generate funds which are funnelled up to the top of the leadership pyramid.

Political prison camps are only one site of labour exploitation and human rights abuses: less well known are the overlapping structures of everyday oppression that affect every layer of *songbun*, or class, a system established through extensive planning in the 1960s to consolidate new power. In detention camps, detainee labour is uncompensated and associated operating costs are low, allowing goods produced to be sold at prices capable of undercutting similar goods on the international markets. On the other hand, free citizens are placed under comparably unrelenting burdens to meet quotas of goods, labour, or money imposed by their employer and by the political organisations to which they must subscribe. Depending on labour conditions, these are not as readily characterised as forced labour or slavery.

The Blood Coal report gives the following example: an average married woman with children, without State employment and working in the private markets to feed her family, is required to submit quotas of goods to her children's school. She pays a stall fee and bribes to the officials in the private markets. Given that men must attend their assigned government jobs every day but are not paid enough money to support the family, the double burden of homemaker and breadwinner falls on many women. It is ironic that a State implementing those practices also has enacted legislation said to be for the advancement of women.

This average married woman also is a member of the Women's League who impose large quotas of goods or money to be submitted at all costs. Such political organisations also receive orders from central government to draw on their membership for unpaid labour to build infrastructure projects. All interviewees reported that these obligations existed for citizens in all classes in some way.

In contrast to political prison camp labour, these are practices of labour and financial exploitation to which established international norms on forced labour and slavery do not apply so neatly. Whilst there is broad acceptance of frameworks for human rights conventions in international law, the fundamental question of structural liberation requires a different legal lens.

The Resilience of the State

Underlying the well-known human rights abuses is the usual machinery of money and power that drives them. It is within the financial model of the North Korean government, with its reliance on exploitation, that we must locate the human rights abuses and international crimes which have occupied the attention of international organisations.

All State agencies are responsible for their own operating costs. They must also meet a financial quota of foreign currency set by central government using waku, annual exclusive trading licences, granted only to those agencies who met their financial quotas in the last year. The more elite the agency, the higher the class of employees allowed to work there, and the higher the financial quota imposed. Employees must meet financial quotas at all costs or be purged. The foreign currency earned disappears into the dark rooms of the highest leaders. It is this higher class of employees, which enjoys many fruits associated with its labour and therefore are not easily seen to be victims of human rights violations, which allows structural exploitation to continue by holding the dual role of exploiter and exploited.

The negative incentive on elite classes to avoid purges and maintain their standard of living is a key factor in North Korea's continued survival. The government's response to the private markets springing up during the Arduous March was to install officials and impose stall fees. More recently, it has turned to hacking cryptocurrency and digital currency accounts. Any more favourable international trade conditions will only increase the burden of quotas on all citizens.

Conclusion

Advocacy on human rights violations in North Korea is now capable of supporting the more rigorous requirements of sanctions enforcement, corporate due diligence, civil litigation, and eventually criminal prosecutions for the most responsible. Elite employees will do whatever it takes to earn the foreign currency so coveted by the central leadership: for lasting change, it is worth considering how these extortionate relationships may be disrupted. For immediate consideration is the law reform under consideration in Australia to refresh its autonomous sanctions regime under the global push for the Magnitsky Act type legislation. Now, the question is: how to incentivise disruption by elite classes over maintenance of the status quo?



About the Author: Daye Gang is a Korean barrister at the Victorian Bar in Australia. She is also a PhD candidate at the Michael Kirby Centre for Public Health and Human Rights at Monash University, where she is researching restorative justice for sexual and family violence, and a consultant with the Citizens' Alliance for North Korean Human Rights based in South Korea.

She was a member of the bilingual research and global advocacy team for the Citizens' Alliance reports discussed in this article. During the pandemic, she started a project to translate all North Korean laws into English at www.lawandnorthkorea.com. For her work, she won the International Bar Association Outstanding Young Lawyer Award in 2020.

Global Deforestation is an issue of International Concern, and a Transnational Law Response could be the Solution

By Dr Hannah Harris, Isabella Knowles, Monica Pedro and Madison Toohey

Forests are essential to our planet's ability to sustain life. Deforestation results in loss of vital ecosystems and biodiversity, and increased carbon dioxide in the atmosphere, accelerating climate change and undermining our planet's resilience. Illegal logging is a significant barrier to ending global deforestation and protecting vital forest ecosystems. As international consensus is reached on the need to protect global forest resources, agreements will be forged to do so. However, these agreements will only be as effective as the laws in place to implement and enforce them. The path to ending deforestation is paved with laws, and with laws, comes the risk of illegality.

The international importance of tackling illegal logging and global deforestation is enhanced by its relationship to COVID-19 and pandemic risk. Recent research warns that anthropogenic activities such as deforestation pose risks of zoonotic disease outbreaks. This is because activities like deforestation increase disruptive interaction between humans and wildlife. Furthermore, research has demonstrated that the COVID-19 pandemic is driving increases in illegal logging and harmful deforestation.

Illegal logging refers to the harvest of timber in contravention of laws in place in the country where that timber originated. It can include harvesting timber without a license for the purpose of selling that timber on the global market, or logging in protected areas to clear land for other activities, such as crop farming or livestock production. Illegal logging costs the global community up to \$206 billion each year, but the cost is more than just financial. Our own academic research and that of others shows that illegal logging has significant environmental, social, and political implications. Impacts are felt

on both a local and global scale, from traditional landowners and communities to governments and corporations along a complex transnational supply chain.

Law and policy makers encounter a range of challenges when trying to combat illegal logging. Transnational law could present a solution to many of these challenges. Transnational law is a unique theoretical approach to law that can also be used as a tool for reshaping legal responses to global challenges. Transnational law moves beyond the traditional International Law focus on treaty and custom. Transnational law seeks to link up distinct legal frameworks at the international, regional, and domestic levels and find innovative ways to connect the law across jurisdictional boundaries.

Illegal logging transcends jurisdictional boundaries and is driven by context specific motivations. These motivations include efforts to generate economic wealth in source countries, the demographic shift towards urbanisation, increasing demand for exotic timber, and expanding global markets for agricultural products that require arable land. Furthermore, illegal logging has been linked to bribery and corruption, which further complicates law enforcement efforts.

In the Pacific, the cultural, social, and physical value of forestry resources is undermined by corruption and prioritisation of the economic value of timber, which is driven by demand in developed western economies. In Papua New Guinea, Special Agricultural Business Leases have been found to lack accountability and consistent implementation, resulting in perpetuation of illegal logging practices with harmful impacts for customary landowners. In the Solomon Islands, the nation's heavy reliance on revenue generated by logging complicates efforts to overcome illegal activity, despite ongoing issues around customary ownership, corruption, and lack of transparency. Further afield, Brazil continues to struggle with enforcement of laws to protect the Amazon rainforest. Efforts are undermined by lack of political will, and by fraudulent and corrupt schemes driven

by strong economic incentives for deforestation to make way for agriculture and livestock operations.

The above examples demonstrate the different motivations for illegal logging and the diversity of contexts in which illegal logging occurs. They also reveal the challenge of enforcement presented by activities that occur as part of complex global supply chains. Because of these challenges, a single legal approach is unlikely to be effective. Thus, a transnational law framework is required.

The foundations of a transnational law framework can be seen in the evolution of destination country laws that prohibit the importation of illegally harvested timber. However, these laws are only the beginning. Destination countries (importers of timber) have sought to implement laws to prevent the importation of illegally harvested timber into domestic markets. Examples include Australia's *Illegal Logging Prohibition Act 2012* (Cth) and the *Illegal Logging Prohibition Regulation 2012* (Cth). Similar laws exist in Europe, the United Kingdom, and the United States. However, the effectiveness of these legal tools are limited by two major shortcomings: they rely on source country definitions of legality (which are open to corruption and co-optation and are difficult to validate); and they focus exclusively on the importation of timber without acknowledging industries where illegal logging occurs as a by-product of other activities.

The United Kingdom is taking steps towards recognising the transnational nature of illegal logging and integrating this into their legal approach. The UK Environment Bill 2020 will require corporate due-diligence for importation of all "forest risk commodities". Other destination countries, including Australia, should follow the United Kingdom's lead. However, additional steps will also be necessary.

Early findings suggest some important opportunities to improve the existing legal framework: developing a minimum standard of legality that is robust to corruption risk and includes a requirement to consult with forest communities in jurisdictions where harvest occurs; expanding due-diligence requirements to include financial institutions who may inadvertently fund projects that create incentives for illegal logging; and finally, supporting the negotiation of a universally agreed definition of ‘harmful deforestation’, moving beyond source country definitions of legality. Developing laws to support these objectives will require the joining up of efforts at the national, regional and international levels.

A successful transnational law framework will require interaction between destination country laws and efforts to create more robust and consistent legal frameworks in source countries. Other components of the response include effective regulation of global supply chains through enhanced corporate governance and accountability, consumer awareness and deployment of technologies to support enforcement efforts. The benefit of a transnational law approach is that laws can be designed with these multi-jurisdictional dimensions in mind. The legal response does not have to be limited to the international sphere and treaty law on the one hand, and domestic legislation constrained by jurisdictional boundaries on the other.

The challenge of illegal logging is transnational, and the legal solution must also be transnational. The solution will require international negotiation, destination and source country cooperation, and enhanced corporate governance practices. These efforts must be pursued collectively, only then, will it be possible to combat illegal logging and contribute to the protection of our vital forest ecosystems and the communities that rely on them for their health, wealth, and happiness.



About the Author: Dr Hannah Harris is a Lecturer at Macquarie Law School and Deputy Director of the Centre for Environmental Law (CEL). Her research area is transnational law and corporate regulation. Her current work includes analysis of legislative responses to transnational challenges, including illegal logging, modern slavery, and foreign bribery. Please contact Dr Harris with comments or questions: Hannah.harris@mq.edu.au

This Perspectives piece is based on continuing research by Dr Hannah Harris on the importance of enhancing transnational law and regulation to end illegal logging and protect vital forest ecosystems. Her published research findings on this topic can be accessed [here](#) and [here](#).

This Perspective piece was co-authored by three Macquarie Law students and volunteers with the Centre for Environmental Law (CEL).

Isabella Knowles

CEL Volunteer



Isabella Knowles is studying a Bachelor of Environment Majoring in Biology and a Bachelor of Laws.

Isabella is excited to work with CEL, as Monica wants to pursue her growing passion for realising a sustainable future and protecting a part of our world without a voice of its own – the environment - through a legal and scientific perspective.

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CEL (est. 1983) is one of the oldest continuously active environmental law centres in the southern hemisphere. CEL's mission is to drive transformative change through future-focused interdisciplinary legal research that provides cutting edge solutions to the global challenges of biodiversity loss and extinction risk.

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Monica joined CEL as a way to learn more about environmental law and to be a part of and be able to contribute to the great work that the Centre for Environmental Law is doing.

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Madison Toohey

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Madison Toohey is in her final year of a Bachelor of Laws majoring in Public Policy, Law, and Governance.

Madison has long had a passion for social issues, with a particular focus on the plight of asylum seekers and refugees, women, and the elderly.

Always conscious of the environment and the need for sustainable lifestyle choices, Madison hopes to learn more about the environmental threats facing humankind and how we can best address these through research and advocacy. Madison hopes to use her law degree in a policy-making context when she graduates.

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