CORRUPTION, ENVIRONMENT AND THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Papers from the special event "Impact of corruption on the environment and the United Nations Convention against Corruption as a tool to address it", fourth Conference of States Parties to the United Nations Convention against Corruption, Marrakesh, Morocco, 26 October 2011

UNODC
United Nations Office on Drugs and Crime

Group photo of all panelists. From left to right: Tatiana Terekhova, Donal Fariz, Trio Santoso, Ajit Joy, Thi Thuy Van Dinh, John Sandage, Marceil Yeater, Tina Søreide.

The special event on "Impact of Corruption on the Environment and the United Nations Convention against Corruption" was organized by UNODC Indonesia.

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Foreword

Secretary of the Conference of States Parties to the United Nations Convention against Corruption, Chief of the Corruption and Economic Crime Branch (CEB), United Nations Office on Drugs and Crime (UNODC)

This publication is a compilation of papers presented at the special event entitled "Impact of corruption on the environment and the United Nations Convention against Corruption as a tool to address it", organised by UNODC at the margins of the fourth session of the Conference of States Parties to the United Nations Convention against Corruption (Marrakesh, Morocco, 24–28 October 2011). The special event was conducted in line with resolution 16/1 of the Commission on Crime Prevention and Criminal Justice, which, inter alia, encouraged Member States to "prevent, combat and eradicate the illicit international trafficking in forest products including timber, wildlife and other forest biological resources through the use of international legal instruments such as the United Nations Convention against Transnational Organised Crime, and the United Nations Convention against Corruption". The special event assessed the state and risks of corruption in a few selected sectors; namely, wildlife species trafficking, hazardous waste management, petrol exploitation and forestry management. Furthermore, it offered to both panellists and participants a platform to explore ways for using the United Nations Convention against Corruption to address these problems.

The Convention, adopted by the General Assembly by its resolution 58/4 of 31 October 2003, is not a treaty that specifically relates to the environmental sector. Nevertheless, its universal nature and its comprehensive coverage mean that it may also be used to address challenges posed by corruption in the environmental field. Indeed, corruption as a tool for environmental crime—particularly used by organised criminal groups—has grown in recent years. Perpetrators are motivated by large profits that may be obtained from exploitation and illegal trade of natural resources.

The papers presented at the special event provide a preliminary assessment of corruption risks in areas covered by two key international environmental conventions—the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. At the national level, the example of corruption in the forestry sector in Indonesia is discussed by representatives of both the Government and civil society.

The usefulness of preventive and criminalization measures included in the United Nations Convention against Corruption, as well as those designed to promote international cooperation of law enforcement authorities, is also studied. For example, in countries where corruption in the environmental sector may be prevalent, it is important that an environmental strategy also contain anti-corruption aspects. An assessment, at an early stage, of corruption risks in different fields, may allow competent agencies and other relevant stakeholders to better tailor anti-corruption legislation, strategy and policy.

This publication is destined for use not only by policy-makers, prosecution and law enforcement authorities and practitioners, but also other stakeholders (civil society, non-governmental organizations, private sector and local populations) that have an important role to play in the protection of the environment. It is hoped that readers will find elements to deepen their interest in this area. It is intended that this publication will be followed by further research, leading to concrete actions to be taken at the international, regional, national and local levels.

UNODC expresses its gratitude to the Governments of Norway and Indonesia for their generous support to the organization of the event.

Dimitri Vlassis
Secretary of the Conference of States Parties to the United Nations Convention against Corruption
And Chief of the Corruption and Economic Crime Branch, UNODC

Message from the Government of Indonesia

The fight against corruption in all of its forms has been the focus and priority for President Susilo Bambang Yudhoyono's Cabinet. Since President Yudhoyono took office in 2004, major reform measures to support the fight against corruption in all sectors have been taken by the Government of Indonesia, such as the establishment of the Corruption Eradication Commission directly under the President's Office, issuance of a new law and regulations with the aim of strengthening domestic legislation and the legal framework on anti-corruption, as well as establishing good governance. One area in which the Government of Indonesia is undertaking major reform is forestry, with a view to curbing related crimes; in particular illegal logging.

Illegal logging is an economic crime that is transnational in nature and closely linked to corruption. It also has clear adverse environmental, social and economic impacts, not only for the Indonesian people but also for the international community, since the importance of maintaining forests as a carbon sink is currently a priority of the international community due to climate change.

According to the 2010 UNODC Transnational Organised Crime Threat Assessment (TOCTA) report, the operation of illegal logging involves many actors—including officials—and it has become difficult to disentangle legitimate and illegitimate commerce in this area. Imports of illicitly sourced wood-based products to the European Union from China and Southeast Asia in 2009 were estimated at some US$2.6 billion. High profits with no significant penalties, at the national and international levels, contribute to the rampant cases in the region.

In this regard, since the issue is transnational in nature, Indonesia is emphasizing that the fight against illegal logging as well as corruption cannot be done by one country alone, no matter how much appropriate domestic legislation or how many legal frameworks are already in place. Cooperation and assistance to prevent, combat and eradicate illegal logging and other forms of environmental crimes in the international community at all levels are crucial and needed.

Thus, Indonesia would like to commend the initiative of the UNODC in organizing the special event entitled "Impact of corruption on the environment and the United Nations Convention against Corruption as a tool to address it" during the fourth session of the Conference of States Parties to the United Nations Convention against Corruption, in Marrakesh, Morocco, in October 2011. We would also like to thank the Government of Norway for their collaboration in making the event a success.

It is my fervent hope that this publication will not be the end of our support to and cooperation with the UNODC, neither will it be the end of our fight against corruption, illegal logging and other forms of environmental crime. Instead, may it be the beginning of an extensive and fruitful collaboration.

Hasan Kleib
Director General for Multilateral Affairs
Ministry of Foreign Affairs, Republic of Indonesia

NORWEGIAN EMBASSY

Message from the Government of Norway

Let me congratulate UNODC for a very well organized and most fruitful special event in connection with the fourth session of the Conference of States Parties to the United Nations Convention against Corruption in Marrakesh in October 2011, and at the same time also express gratitude for this very useful compilation of papers from this event. We are most pleased to be close partners in this work with UNODC and the Government of Indonesia.

Corruption is a major challenge at a global, national and local level since it threatens development, peace and security, and undermines protection of the environment. Acceptance of corruption and corrupt practices undermines governments, the rule of law and our democratic system. No society, rich or poor, can afford such waste of resources.

Against this background, the fight against corruption must be intensified at all levels. Every country, every society must take their own measures to combat corruption. At the national level, governments have a responsibility to promote good governance, fight corruption and be accountable to their citizens. Development aid agencies can assist in building the necessary competence and capacity, but it takes political will and courage from national leaders to fight corruption. Free media, an engaged civil society, and a public sector with high demands for transparency and accountability can offer them strong support in these efforts. In Norway, our politicians have pledged zero tolerance for corruption at home and in our development assistance. At the international level, we must make sure that developed countries fulfil their part of the deal: stop the market for illegal trade; stop attracting and hiding illicit money; share information; and create systems, standards and regulations that prevent corrupt practices while not discriminating against developing countries.

The global nature of corruption and organized crime requires a collective response. International conventions like the United Nations Convention against Corruption (UNCAC) and the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES) were developed as such collective responses. The Marrakesh Conference demonstrates the importance of raising these issues, and in particular the value of focusing on how corruption has a negative influence on the environment. It remains a great challenge to fight corruption and illicit trade within this area. We need to know more about how the criminals operate, and we need to share knowledge on methods of stopping them and preventing corruption.

In order to turn international conventions into useful and effective instruments we must challenge each other to work more efficiently. Learning lessons from attempts to tackle corruption in one country can trigger effective responses in another. I hope Marrakesh brought us closer to a strong and well-educated international partnership on fighting corruption.

Eivind S. Homme
Ambassador
Royal Norwegian Embassy, Jakarta, Indonesia

Opening Remarks

Countering Corruption to Protect the Environment is not an Option but a Necessity

by John Sandage, Director, Division of Treaty Affairs, UNODC

It is my pleasure to open the special event on "Impact of corruption on the environment and UNCAC as a tool to address it", organised by UNODC with a view to raising awareness in this field. We are grateful for the financial support provided by the Governments of Norway and Indonesia. It is a privilege and an honour for us to be joined by experts from Member States, other United Nations entities, non-government organizations and research institutes. Your support and scientific contribution show that the topic under consideration is a major common concern, and should be addressed by collective actions at the international, regional, national and local levels.

It is appropriate that we give priority attention to the environment in the margins of the fourth session of the Conference of States Parties to the United Nations Convention against Corruption. As the world faces the threat of climate change and is constantly challenged to make development sustainable, integrity and accountability need to be placed at the centre of the debate. Corruption is an impediment to the protection of the environment and I am sure the experts gathered today will highlight this through example in different sectors.

It is acknowledged that environmental sectors—extractive industries, logging, trafficking in endangered species, fisheries, climate change, etc.—are prone to corruption. Either legally or illegally operated, these activities often generate huge financial benefits. Thus, companies might be tempted to bribe a procurement authority, or to abuse someone's influence, to obtain a mining concession. In addition to such cases of grand corruption, there are also many cases of petty corruption: individuals might for example be tempted to offer bribes to conservationists to get access to the forest. Both, grand corruption and petty bribery in environmental sectors have disastrous environmental, social and economic consequences. Illegal harvesting and over-exploitation of resources cause biodiversity loss and ecosystem degradation. As a consequence, food security and public health are at stake. Moreover, governments lose considerable revenues because there are no taxes collected on illegal trafficking of natural resources.

Because of its universal nature, the United Nations Convention against Corruption is a key tool to address corruption in the environment. Allow me to refer here to some provisions in the Convention which offer States Parties the required legal framework and practical tool UNCAC to tackle corruption in the environment:

- The Convention underlines the need for capacity building of law enforcement officers, and promotes the creation of independent oversight bodies that could be tasked, among others, to elaborate guidelines for officials working in vulnerable sectors relevant to the protection of the environment.
- The Convention promotes transparency and accountability in the management of public finances.
- The Convention recognizes the role of the private sector and civil society in preventing and combating corruption.
- With regard to international cooperation, the Convention provides a framework that facilitates judicial and law enforcement cooperation to ensure that corrupt behaviour does not go unpunished.

Distinguished colleagues,

Ladies and Gentlemen,

In conclusion, countering corruption to protect our environment and to ensure sustainable development is not an option, it is a necessity. The United Nations Convention against Corruption offers us an important legal tool to do so; it is our common responsibility to ensure that its use is maximized.

Thank you very much.

Paper I
Corruption in Petroleum – Within and Beyond the Sector

by Tina Søreide[1]

Abstract: *This paper addresses corruption in the governance of petroleum and underscores the importance of treating this problem as a result of factors that go far beyond sector regulation. Improving sector regulation within a country is only part of the solution – and not the most important one. Who obtains access to the proceeds and how they use them are far more decisive aspects. This paper argues that the United Nations Convention against Corruption is a decisive tool to bridge anti-corruption initiatives within the petroleum sector with efforts to fight illicit flow of capital and to secure transparency in the international financial sector.*

Petroleum-related corruption

While most court cases relating to corruption in the petroleum sector involve a firm and government representatives, this form of corruption is about much more than identifying who gained access to an oil field in exchange for a bribe. The oil industry is usually governed at the highest political levels, and corruption tends to involve representatives at this level. These actors have different opportunities to benefit from corruption as compared to, for example, civil servants. They will not necessarily bend rules in secret, but will rather alter the rules of the game quite openly, or decide on significant exemptions from written regulations. The benefits they obtain through some form of corruption may be far more than a personal bribe, and may be tied to development aid, macroeconomic loans, party contributions, various political and diplomatic quid pro quos, intricate arrangements to increase revenues controlled by incumbents, or support of industries where politicians have personal stakes. The proceeds from this form of corruption are used to bolster political power and undermine democracy. Legal definitions of corruption, as well as the simplified definitions in use for practical purposes—such as the "abuse of public power for private benefit"—fail to capture the dimensions of this form of crime. A possible way of defining petroleum-related corruption could be "the manipulation of framework conditions to attain exclusive benefits to individuals or groups at the cost of social benefits", as suggested by Al-Kasim et al. (2008).[2]

(a) Corruption within the petroleum sector

The actors involved in oil regulation and operations, and the relationships among them, present a complex picture. The most important categories of actors are: (i) the host government of the oil industry, within which key actors include the oil or petroleum ministry, other ministries, various directorates, the national oil companies, the judiciary and the office of the president; (ii) private sector companies, including licensees, joint ventures, consortia, operators, service-oriented contractors and consultants; and (iii) third-party actors, comprising home governments of oil companies (including their donor agencies and departments of trade), non-governmental organizations, development banks, commercial banks and international organizations.

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[1] Economist and Senior Researcher at Chr. Michelsen Institute (CMI) in Bergen, Norway

[2] Farouk Al-Kasim, an oil geologist from Iraq, was heavily involved in designing the regulatory structures for oil production in Norway. For details of how this corruption plays out at the different preparatory and operational phases of oil production, see Yates (1996), Shaxson (2007), McPherson and Searraigh (2007) and Al-Kasim et al. (2008), among many others (see References).

Regulations on oil operations vary across countries, as do the steps involved in exploration and production processes. Commonly, regulatory regimes cover a licensing phase, an exploration phase, a production or operational phase, and a post-production or decommissioning phase. Key milestones are the awarding of the licence or concession, approval of the field development plan (FDP), approval of a tail-end plan and approval of the decommissioning phase. Opportunities for corruption can exist at all stages in this process. The consequences depend on the decision in question, but generally, corrupt decision-making means a deliberate deviation from best-practice management.

Understanding corruption within the petroleum sector requires an analysis of how contacts between these various actors occur, whether they follow formal rules and procedures, and what motivations might underlie their actions. The risk of corruption will depend not only on the actors directly involved in corruption, but also on the propensity of other actors to condone corrupt or borderline practices. General tolerance towards discretionary decisions, limited transparency, and informal solutions will contribute towards a climate of acceptance of corrupt practice. Tables 1 and 2, borrowed from Al-Kasim, Søreide and Williams (2008), list important areas of risk within the petroleum sector.

Table 1
Corruption risks prior to operation

Activities		Corruption risks
Preliminary assessment of potential	Prior to the development of an oil industry and petroleum law	Usually low risk, although diplomatic pressure may already be placed on the host government by oil companies
Development of regulatory framework	The set of legal instruments and institutions needed to prepare for and monitor operations, including production	Important to secure adequate legislation and allocate regulatory functions to competent institutions, and thus avoid political interference in individual cases
Establishment or granting of role to national oil companies	National oil companies, often established or given important roles	Secret transactions and exemptions from ordinary rules in society; Home country support in international tenders may have adverse consequences in the market; Threat to undermine regulatory authority on the pretext of commercial interests; Often used as means of avoiding political accountability when favouring certain oil companies
Granting of rights	Pipelines, ports, public services, ownership of equipment, technology, data, etc.	Bribery may influence decisions in favour of certain parties

Table 2
Corruption risks in operational phases

Phases and Activities		Corruption risks
Pre-qualification	Mechanisms of approval decided	High risk of corruption, but pre-qualification can, conversely, be very important to ensure efficient operation and high recovery rates, and could be used more actively to secure professional business conduct
Tender, selection and award	Auction to award concessions; Negotiations and contracting; Decisions about local content; Awarding of concessions for exploration only or exploration and production combined	Procurement-related risk is usually high; Procedures are not sufficient to prevent corruption since serious risk is connected to criteria for awards, rules of exemption or violation of the procedures
Exploration	The search for oil deposits	Low risk of corruption; Risk of leniency in accepting insufficiency in meeting work commitment
Identification of reserves	Precise geological identification of oil reserves (oil production cannot begin until resources are proven)	Low risk of corruption connected to these geological analyses, although there may be a risk of fraud in the presentation of the results (these data form the basis for negotiations on the FDP)

Field development plan (FDP)	Decisions about production profile and cost recovery schemes	High risk of corruption, either related to its original contents (cost recovery and production profile) or to amendments of the original contents
Production	Extraction of oil deposits	Low risk of corruption; there is generally limited regulatory interference at this stage, though greater controls on production could be beneficial in some contexts, and there is a risk of leniency in accepting FDP changes without expert scrutiny
End phase	Winding up of production	Low risk of corruption, though there may be some risks associated with decisions about precisely when to stop production and the quality of decommissioning

The main message of these two tables is that corruption can take place at many different stages of petroleum production and involve very different players, while the direct consequences will depend on where—in the chain of events—the corruption takes place.

However, better sector-level governance has little impact in petroleum-rich countries with perceivably high levels of corruption if overall mechanisms of checks and balances and democracy are not functioning. The donor community may prefer addressing practices at the sector level, particularly when it seems too difficult to put pressure on the power structures. Indeed, better sector regulation matters for production-related issues, including profitability and reduced environmental damage. Nevertheless, the problem of petroleum-related grand corruption will never be solved from the sector-level alone; it requires interventions to take place outside the sector and internationally.

(b) Petroleum-related corruption beyond the sector

Political power, collaboration with governments in other countries, and weaknesses in the international financial system seem more important to explain why theft, corruption and weak sector regulation can take place, why revenues from the sector can be stolen, and why society fails to hold the political elite accountable for the many harmful consequences of petroleum-related theft and corruption. Research on "the resource curse" documents well how revenues from petroleum production can distort political decision-making not only in the petroleum sector but also in general, and cause severe damage to an economy.[3]

Increasingly, we hear about how the proceeds from petroleum-related corruption are laundered and hidden in tax havens and intricate chains of financial transactions. According to Global Financial Integrity (GFI), a Washington-based institute, illicit capital flows can be estimated using trade data from the International Monetary Fund (IMF). The table in the appendix, provided by GFI, lists the top six exporters of illicit capital that are also oil exporters (2000–2008). These countries are Russia, Saudi Arabia, United Arab Emirates, Kuwait, Venezuela and Nigeria. According to the GFI estimates, the illicit capital flows from Russia during the period 2000 to 2008 amounted to around US$427 billion, with a yearly average of $47.5 billion. From Saudi Arabia, in the same period, the figure was $301 billion, on average $33.5 billion per year. The yearly average of illicit capital flows from Venezuela and Nigeria were $17.5 billion and $14.5 billion, respectively. These financial flows are the amounts of money that we know cannot be accounted for in the trade statistics (see the appendix for comments on the methodology).

Despite the large amounts of money siphoned out of the countries by corrupt government representatives, international anti-corruption efforts have largely been directed at the firms potentially involved in bribery.[4] This

[3] Several studies explain the relationship between oil revenues, political incentive problems and consequences for development, including: Ross (1999); Sachs and Warner (1995); Bulte et al. (2005); Gylafson (2001), Gelb (1988) and (1999); Auty (1993); Karl (1997); Asher (1999); Sala-i-Martin and Subramanian (2003). Some overviews are provided by Humphreys, Sachs and Stiglitz (2007); Collier and Goderis (2007); Rosser (2006); Dunning (2009); and Kolstad and Søreide (2009). Corruption affecting the regulation may even reduce the amounts of oil that can be produced from a field, as discussed by Al-Kasim, Søreide and Williams (2008) (see References).

[4] A big share of the anti-corruption initiatives targeted at governments are awareness-raising initiatives (support to anti-corruption indices, pro-democracy initiatives/civil society, conferences) and training initiatives for government officials. Few international anti-corruption initiatives have a direct impact on the government representatives' risk of actually being prosecuted and sanctioned for the crime.

is understandable since these firms can be sanctioned more easily, i.e., they can be prosecuted "at home" and often by the United States as well, as shown in a number of prosecutions against big multinational corporations in the petroleum sector. However, as Susan Rose-Ackerman noted in a recent paper, the fight against corruption should be guided not based on who is the easiest to sanction but the damage caused to society.[5] There is little doubt that biased government decision-making across the board can be more harmful than sector-specific corruption in, for example, petroleum-related procurement, even if this too is an important part of the problem and prevents market mechanisms from delivering a welfare-enhancing result within the sector.

Addressing the corruption behind these figures can be very difficult if relying primarily on national anti-corruption legislation, pro-democracy movements, and best practice regulation of the petroleum sector. One reason is the lack of a clear legal definition for this form of high-level crime, which in some cases takes place with the (bought) support of a parliament. Moreover, an incumbent government may have developed a de facto monopoly on the jurisdiction. Quick solutions through pro-democracy efforts might be unlikely if the incumbent controls the recruitment of political candidates. Besides, restrictions on press freedom and access to information may prevent otherwise important civil society initiatives from bringing change (Buscaglia, 2011).[6]

The fight against corruption in the petroleum sector has to address a whole set of governance issues. In particular, it needs to address the government's decision-making processes and structures that permit government representatives to steal large sums of money and allow corruption in the sector to continue with impunity. More effort is needed to exploit synergies between the fight against corruption and the fight against illicit capital flows, as proposed in the UNCAC, article 52 chapter V, and as argued by the World Bank's Stolen Asset Recovery Initiative (StAR) and the OECD Financial Action Task Force (FATF) over the last year.[7] Basically, when it comes to petroleum, this is one and the same fight.

UNCAC and the fight against petroleum corruption

Much promise remains in exploiting the full potential of what the UNCAC offers in terms of strategies, aims and legal tools. Some areas stand out as most promising, however, particularly if those in the anti-corruption camp and those who work to improve transparency in the international financial system collaborate more closely.[8]

(a) Illicit enrichment and asset recovery

In response to the difficulty of providing proof of some forms of corruption, including petroleum-related "grand corruption", UNCAC article 20 (non-mandatory) allows for prosecution based on illicit enrichment, for example, in situations when a public official cannot reasonably explain a significant increase of his or her personal assets. The idea is to reverse the burden of proof in corruption cases, so that the official has to prove that his or her income is legitimate. Despite the benefit it poses to anti-corruption prosecution, concerns pertaining to the rights of the accused prevent a straightforward use of this concept. Still, it is an important improvement if the prosecution does not have to demonstrate that the assets are criminal in nature, but instead, can prosecute if he or she can demonstrate that the assets cannot be legal. For this to make a difference in the fight against petroleum-related grand corruption, the anti-corruption camp needs what those fighting money laundering address, namely, transparency about financial transactions and beneficial ownership (knowing the identity of the owner of the assets).

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[5] Rose-Ackerman (2011), in a paper that builds on discussions at the Anti-Corruption Policy Conference, Rockefeller Center in Bellagio, 13–16 June 2011.

[6] Edgardo Buscaglia (2011) has conducted a comprehensive assessment of the actual impacts of the UNCAC convention in 107 countries. He finds the effects of awareness-raising and support to civil society to have little impact unless combined with legal initiatives that actually reach higher level decision-makers.

[7] OECD's FATF arranged an Experts' Meeting on Corruption, in Mexico on 27 February 2011, with the specific purpose of bridging the fight against corruption and the fight against illicit capital flows and money laundering. More information available from www.fatf-gafi.org.

[8] An overview of anti-corruption conventions is available from the U4 Anti-Corruption Resource Centre, see www.u4.no.

Demonstrating ownership of assets and the size of assets is not uncomplicated, however. Those involved in corruption will seek to spread the assets and then hide and launder them in tax havens (Shaxson, 2011). Seizure of these funds, as discussed in UNCAC article 31, is possible only upon proof of crime. Nevertheless, some of the anti-corruption successes over recent years are the result of searching for illicit funds, instead of investigating individuals. Consider, for example, the DFID-financed investigations of illicit funds in London, as described by Alessandra Fontana (2011).[9] The efforts resulted in prosecution, a verdict and funds being returned, in this case to Nigeria, precisely because the investigators found illicit funds. This allowed them to prosecute the owner, instead of focusing on the nature of the assets, which has been more typical from the anti-corruption perspective. Undeniably though, once the illegal transfers of money have been identified, it has to be demonstrated that some form of corruption has taken place, or else—in the countries where prosecution based on illicit enrichment is possible—that the enrichment cannot be legal.

Again we find the fight against petroleum-related corruption to hinge on collaboration between anti-corruption experts and those who work to identify and fight illicit capital flows. Non-conviction based approaches to fighting petroleum-related corruption should be explored further from these different perspectives.

(b) Mapping the resistance

The most important synergies worth exploiting pertain to mapping de facto resistance against "best practices" proposals. The fight against corruption and the fight against illicit capital flows depend on better international structures for mutual collaboration on financial transparency, investigation and prosecution. Despite the obvious public good of reduced crime, nationally and internationally, significant resistance against these kinds of initiatives exists, a resistance that can be found in all categories of countries, as well as inter-governmental organizations. Commercial or pure monetary benefits accruing to big players, firms, lobby-groups and governments in the already richest countries prevent the introduction of initiatives that could make petroleum-related high-level corruption more difficult, as well as other forms of corruption and organized crime. The books by Shaxson (2011), Ndikumana and Boyce (2011) and Baker (2005) make it clear that countries in the OECD area can no longer deny having allowed the development of secrecy-jurisdictions and having refused transparency mechanisms in the finance sector. Condoning these developments has held back growth and delivery of essential social services in many developing countries.

The way we seek to map illicit capital flows, with all the intricate transactions and secrecy mechanisms, should inspire efforts to map also the reasons why transparency initiatives in finance are not being introduced or enforced. Who refuses to vote for such initiatives? From where do those who oppose the "best practice" initiatives get their benefits? What are the ownership shares of the politicians behind this resistance? What are the ambitions of those judges when they retire? Are their ambitions to work in a law firm that benefit from placing money in a tax haven? What are the most important lobby groups? What is the role of the Chamber of Commerce in the United States in terms of lobbying? Why is there resistance within an inter-governmental organization that supposedly is committed to fighting poverty? Why are some countries so concerned about their good dialogue with a specific government? Could it have to do with access to petroleum resources? More should be done to learn about the reasons and to systematically map why some governments refuse to introduce anti-transparency initiatives. This is another area where those who work on illicit capital flows and those who work in anti-corruption need to collaborate closely, and the collaboration should include governments, inter-governmental organizations, civil society organizations, as well as research groups—from the anti-corruption camp as well as those who already strive to fight illicit capital flows.[11]

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[9] Fontana (2011) presents The UK Department for International Development's aid-funded initiatives for identifying illicit capital transactions via London, which have led to several prosecutions of, for example, Nigerian governors.

[10] See the Open Society Foundations' report by Kennedy and Danielsen (2011), prepared in response to the attempt by the Chamber of Commerce to curtail the US Foreign Corrupt Practices Act (FCPA). Rose-Ackerman and Hunt (2011) discuss general misperceptions about the costs and benefits for American society if US firms operate in line with the FCPA (See References).

[11] Several non-governmental organizations have already made a big effort to act on this agenda, including Global Witness, Revenue Watch, Publish What You Pay, Transparency International, Christian Aid and CCFD-Terre Solidaire, just to mention some of the most active on this front.

Conclusion

Corruption-related challenges in petroleum can be classified as either "sector-specific" or "beyond the sector". Both categories have to be addressed for petroleum production to deliver higher welfare to society at large – and they have to be addressed in different ways. In principle, sector-level challenges can be dealt with domestically, but often a good solution will rely on political accountability; an accountability that is easily distorted by the political elite's access to petroleum revenues.

Petroleum-related corruption is an international problem, with players and money crossing borders. Whatever the consequences considered—economic, environmental or human rights—the problem is rooted in the way petroleum revenues are stolen and used to buy power and weaken democratic mechanisms. Although it might be tempting for international players not to "touch politics", a sector-level approach alone is unlikely to succeed in combating this problem. Moreover, the challenge of petroleum-related corruption is too big for a developing country with weak government structures to solve on its own. We have to realize that the political responsibility rests very much in capitals such as London and Washington, D.C., and countries like Switzerland and Luxembourg, where money can be hidden or where the governments condone illicit capital flows. As Shaxson (2011) describes so well, nobody would have placed billions of dollars in banks in small (supposedly autonomous) islands if they did not have the guarantees from a much bigger and more powerful government. Big players outside the petroleum-producing countries benefit from the corruption in petroleum-producing developing countries.

Combating petroleum-related corruption requires mapping the resistance against rules (and the enforcement of rules) that could make the hiding of money and assets more difficult, as well as non-disclosure of information about the true beneficiaries and sources. At GFI's Task Force Conference on Financial Integrity and Economic Development, held in Paris 5–7 October 2011, Raymond Baker said very clearly that "the technical solutions in this area are a no-brainer; the problem is political will."[12] Studies of political incentive problems behind petroleum sector governance should be expanded to the international level.[13]

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[12] Raymond Baker is the founder of Global Financial Integrity.

[13] For example, the World Bank initiatives on the political economy of non-renewable resources (Fritz, Kaiser and Levy, 2009). For an example of a political economy analysis at the country level, see Gboyega et al. (2011) on Nigeria (see References). These kinds of initiatives, where incentive problems and barriers to change are studied along the sector value chain (in line with the approach described by Fritz et al.), should include international players and structures as well.

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APPENDIX

Prepared by Global Financial Integrity (GFI), the table on the next page presents the top six exporters of illicit capital, which are also oil exporters, for the period 2000 to 2008 (in millions of US Dollars).

The methodology for estimating these figures on illicit financial flows is based on the World Bank Residual model (using the change in external debt, or CED) adjusted for trade mispricing (using the Gross Excluding Reversals method, or GER). All calculations are based on official data from the International Monetary Fund's Balance of Payments and Direction of Trade Statistics databases.

The estimates are based on gross outflows. This is in contrast to other estimates on capital flight, where illicit inflows are netted out from illicit outflows. The netting out of inflows from outflows not only understates the problem of capital flight, but the procedure is also misleading. Netting out implies that illicit inflows are somehow beneficial to a country, but this is not the case. In the World Bank residual model or the adjustment for trade mispricing, illicit inflows are unrecorded (as are outflows). Being unrecorded, the funds are not official and cannot be taxed, for example. Considering the cases of Greece, Portugal and Spain; there were massive illicit inflows in the decade leading up to their financial crisis. These inflows could help these countries avoid near-bankruptcy.

In the table of GFI data below, there are two figures given for illicit flows: non-normalized and normalized. Unlike traditional calculations, which usually give a single number estimate of illicit flows, GFI calculates a range of illicit flows. The non-normalized flows represent an upper bound, while the normalized flows represent a lower bound. The normalized flows represent a lower bound because they pass through two "filters" when they are calculated. First, a country must have illicit outflows (rather than inflows) in a majority of years during the time period analyzed. Second, illicit outflows must equal or exceed 10 per cent of exports f.o.b. (free on board). Since the normalized figure must be at least 10 per cent of exports f.o.b., there can be no doubt that these flows can be considered statistical errors in the data. Note that even this range of normalized to non-normalized flows is understated.

It should be noted also that "unrecorded" capital leakages through the balance of payments (CED component) capture the discrepancy between the source of funds and the use of funds. However, neither the CED nor the GER capture services, smuggling, illicit transactions conducted in cash (such as drug trafficking or human trafficking) or hawala-style swap transactions. For more information, see the GFI website at www.gfintegrity.org.

Year	Non-Normalized CED (Change in External Debt)	Non-Normalized GER (Gross Excluding Reversals)	Non-Normalized IFF (Illicit Financial Flows)	Normalized CED (Change in External Debt)	Normalized GER (Gross Excluding Reversals)	Normalized IFF (Illicit Financial Flows)	Percent of All Developing Country IFF
Rusia							
2000	15 607,00	0,00	15 607,00	15 607,00	0,00	15 607,00	0,04
2001	18 443,00	19 358,00	37 801,00	18 443,00	0,00	18 433,00	0,04
2002	15 546,00	0,00	12 546,00	12 546,00	0,00	12 546,00	0,03
2003	35 579,00	2 458	38 064,00	35 579,00	0,00	35 579,00	0,06
2004	37 046,00	14 518,00	51 564,00	37 046,00	0,00	37 046,00	0,05
2005	56 387,00	0,00	56 387,00	56 387,00	0,00	56 387,00	0,07
2006	14 606,00	0,00	14 606,00	0,00	0,00	0,00	0,00
2007	55 327,00	0,00	55 327,00	55 327,00	0,00	55 327,00	0,05
2008	196 367,00	0,00	196 367,00	196 367,00	0,00	196 367,00	0,16
Total (Positives Only)	**441 908,00**	**441 908,00**	**478 269,00**	**427 302,00**	**0,00**	**427 302,00**	**0,07**
Average	**49 100,89**	**4 040,11**	**53 141,00**	**47 478,00**	**0,00**	**47 478,00**	
Saudi Arabia							
2000	9 071,00	0,00	9 071,00	9 071,00	0,00	9 071,00	0,02
2001	8 812,00	0,00	8 182,00	8 182,00	0,00	8 182,00	0,02
2002	4 123,00	0,00	4 123,00	0,00	0,00	0,00	0,00
2003	34 905,00	0,00	34 905,00	34 905	0,00	34 905,00	0,06
2004	50 744,00	0,00	50 744,00	50 744,00	0,00	50 744,00	0,07
2005	47 390,00	1 469,00	48 859,00	47 390,00	0,00	47 390,00	0,06
2006	52 314,00	544,00	52 858,00	52 314,00	0,00	52 314,00	0,06
2007	59 027,00	593,00	59 620,00	59 027,00	0,00	59 027,00	0,05
2008	39 877,00	1 561,00	41 438,00	39 877,00	0,00	39 877,00	0,03
Total (Positives Only)	**305 633,00**	**4 167,00**	**309 800,00**	**301 510,00**	**0,00**	**301 510,00**	**0,05**
Average	**30 214,33**	**463,00**	**34 422,22**	**33 501,11**	**0,00**	**33 501,11**	
United Arab Emirates							
2000	10 206,00	0,00	10 206,00	10 206,00	0,00	12 847,00	0,03
2001	6 343,00	0,00	6 343,00	6 343,00	0,00	8 406,00	0,02
2002	4 351,00	0,00	4 351,00	0,00	0,00	6 183,00	0,02
2003	14 561,00	0,00	14 561,00	14 561,00	0,00	16 148,00	0,03
2004	27 041,00	560,00	27 601,00	27 041,00	560,00	15 530,00	0,02
2005	46 680,00	902,00	47 582,00	46 680,00	902,00	29 291,00	0,04
2006	70 993,00	1 168,00	72 161,00	70 993,00	1 168,00	44 312,00	0,05
2007	18 793,00	1 386,00	20179,00	18 793,00	1 386,00	55 988,00	0,05
2008	72 961,00	4 304,00	77 265,00	72 961,00	4 304,00	53 459,00	0,04
Total (Positives Only)	**271 929,00**	**8 320,00**	**280 249,00**	**267 578,00**	**8 320,00**	**242 164,00**	**0.04**
Average	**30 214,33**	**924,44**	**31 138,78**	**29 730,89**	**924,44**	**26 907,11**	

Year	Non-Normalized CED (Change in External Debt)	Non-Normalized GER (Gross Excluding Reversals)	Non-Normalized IFF (Illicit Financial Flows)	Normalized CED (Change in External Debt)	Normalized GER (Gross Excluding Reversals)	Normalized IFF (Illicit Financial Flows)	Percent of All Developing Country IFF
Kuwait							
2000	12 847,00	183,00	13 030,00	12 847,00	0.00	12 847,00	0,03
2001	8 406,00	132,00	8 538,00	8 406,00	0.00	8 406,00	0,02
2002	6 183,00	125,00	6 308,00	6 183,00	0.00	6 183,00	0,02
2003	16 148,00	140,00	16 288,00	16 148,00	0.00	16 148,00	0,03
2004	15 530,00	149,00	15 679,00	15 530,00	0.00	15 530,00	0,02
2005	29 291,00	193,00	29 484,00	29 291,00	0.00	29 291,00	0,04
2006	44 312,00	231,00	44 543,00	44 312,00	0.00	44 312,00	0,05
2007	55 988,00	273,00	56 261,00	55 988,00	0.00	55 988,00	0,05
2008	53 459,00	441,00	53 900,00	53 459,00	0.00	53 459,00	0,02
Total (Positives Only)	**242 164,00**	**1 867,00**	**244 031,00**	**242 164,00**	**0,00**	**242 164,00**	**0,04**
Average	**26 907,00**	**207,44**	**27 114,56**	**26 907,11**	**0,00**	**26 907,11**	
Venezuela							
2000	11 873,00	2 370,00	14 243,00	11 873,00	2 370.00	14 243,00	0,04
2001	4 300,00	2 336,00	6 636,00	4 300,00	2 336,00	6 636,00	0,02
2002	9 329,00	455,00	9 784,00	9 329,00	0.00	9 329,00	0,02
2003	8 527,00	0,00	8 527,00	8 527,00	0.00	8 527,00	0,01
2004	14 839,00	2 052,00	16 891,00	14 839,00	0.00	14 839,00	0,02
2005	27 219,00	425,00	27 644,00	27 219,00	0.00	27 219,00	0,03
2006	18 390,00	0,00	18 390,00	18 390,00	0.00	18 390,00	0,02
2007	26 504,00	0,00	26 504,00	26 504,00	0.00	26 504,00	0,02
2008	31 409,00	0,00	31 409,00	31 409,00	0.00	31 409,00	0,02
Total (Positives Only)	**152 390,00**	**7 638,00**	**160 028,00**	**152 390,00**	**4 706,00**	**157 096,00**	**0.02**
Average	**16 932,00**	**848,67**	**17 780,89**	**16 932,22**	**522,89**	**17 455,00**	
Nigeria							
2000	6 336,00	0,00	6 336,00	6 336,00	0.00	6 336,00	0,02
2001	2 846,00	2 916,00	5 762,00	2 846,00	2 916,00	5 762,00	0,01
2002	5 135,00	0,00	5 135,00	5 135,00	0.00	5 135,00	0,01
2003	9 751,00	0,00	9 751,00	9 751,00	0.00	9 751,00	0,02
2004	12 333,00	2 658,00	14 991,00	12 333,00	0.00	12 333,00	0,02
2005	15 164,00	3 373,00	18 537,00	15 164,00	0.00	15 164,00	0,02
2006	10 409,00	4 166,00	14 575,00	10 409,00	0.00	10 409,00	0,01
2007	28 497,00	5 392,00	33 889,00	28 497,00	0.00	28 497,00	0,03
2008	37 012,00	6 899,00	43 911,00	37 012,00	0.00	37 012,00	0,03
Total (Positives Only)	**127 483,00**	**25 404,00**	**152 887,00**	**127 483,00**	**2 916,00**	**130 399,00**	**0,02**

Paper II
Transboundary Movements of Hazardous Wastes and Corruption: The Special Case of E-waste in West Africa

by Tatiana Terekhova[1]

Abstract: *This paper highlights the uniqueness of the Basel Convention as the only legally binding agreement on the transboundary movement and disposal of hazardous waste, as well as one of the very few treaties in this domain requiring parties to consider a prohibited activity as a crime. The example of e-waste in Africa is analyzed in order to highlight the areas of concern in this field, such as the lack of clear, commonly agreed criteria on, for example, how to define electrical and electronic equipment (EEE). The author stresses that exactly these kinds of challenges leave loopholes for potential corruption. A set of recommendations is provided, which would facilitate the proper implementation of the Basel Convention.*

Introduction to the Basel Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal is the only global and legally binding agreement that regulates the generation, transboundary movement, and disposal of hazardous and other wastes. The Convention's primary aim is to protect human health and the environment from the harm posed by the generation and management of hazardous wastes as well as household wastes, or so called "other wastes".

Transboundary movements of wastes

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal is the only global and legally binding agreement that regulates the generation, transboundary movement, and disposal of hazardous and other wastes. The Convention's primary aim is to protect human health and the environment from the harm posed by the generation and management of hazardous wastes as well as household wastes, or so called "other wastes".

The Basel Convention lays down the conditions under which transboundary movements of hazardous and other wastes may take place, and establishes a series of mandatory procedures that need to be adhered to, with the aim of controlling the export, transit and import of specific wastes. This includes such day-to-day items as television monitors, metal cables insulated with plastics, lead-acid batteries, household wastes and used oils for disposal.

Parties to the Convention have the overall obligation to ensure that such transboundary movements are reduced to a minimum. They must not allow exports to non-Parties or to Parties that have either prohibited the import of such wastes or that do not appear to have the capacity to manage the wastes in an environmentally sound manner.

[1] Project Coordinator at the Secretariat of the Basel Convention. Presentation is a submission from the Secretariat of the Basel Convention.

Before any shipment of hazardous or other wastes leaves the country of export, the country that shall dispose of the wastes, and any countries of transit, must be informed of and agree to this shipment. In addition, the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question must be confirmed before the export can be allowed. Therefore, the will of all States concerned as well as the actual capacity within the State of import to manage hazardous wastes in an environmentally sound manner are fundamental elements of the Basel Convention regime.

Shipments that do not meet the "prior informed consent" requirements of the Basel Convention, or that result in deliberate disposal (e.g., dumping) of the wastes in contravention of the Convention, are illegal. Illegal traffic is to be considered a crime under the national legal framework.

Hazardous or other wastes leaving the country of origin illegally is considered a crime

Illegal traffic under the Basel Convention

The Basel Convention is one of the very few environmental treaties requiring Parties to define a prohibited activity as a crime in their national legal frameworks. The fact that illegal traffic is to be considered a crime that Parties undertake to prevent and punish shows the international community's commitment to the environmentally sound management of hazardous and other wastes.

Article 9 of the Basel Convention provides that any transboundary movement of hazardous or other wastes shall be deemed as illegal traffic when it meets any of the following criteria:

(a) Lack of notification pursuant to the provisions of this Convention to all States concerned
(b) Lack of the consent pursuant to the provisions of this Convention of a State concerned
(c) Consent was obtained from States concerned through falsification, misrepresentation or fraud
(d) Does not conform in a material way with the documents
(e) Results in deliberate disposal of hazardous wastes or other wastes in contravention of the Convention and of general principles of international law

Requirements for environmentally sound management of hazardous waste

The Basel Convention includes provisions on the environmentally sound management (ESM) of hazardous wastes. Under the Basel Convention, ESM means taking all practicable steps to ensure that hazardous wastes or other wastes are managed (i.e., collected, transported and disposed of) in a manner which will protect human health and the environment against the adverse effects which may result from such wastes. Guidance on how to achieve ESM of certain waste streams have been or are being developed by the Parties to the Convention. Some key principles for ESM of hazardous wastes include:

(a) A regulatory and enforcement infrastructure should ensure compliance with applicable regulations.
(b) Sites or facilities should be authorized and operate in accordance with an adequate standard of technology and pollution control in order to deal with hazardous wastes in the way proposed, in particular taking into account the level of technology and pollution control in the exporting country.
(c) Operators of sites or facilities at which hazardous wastes are managed are required, as appropriate, to monitor the effects of those activities.
(d) Appropriate action should be taken in cases where monitoring gives indications that the management of hazardous wastes has resulted in unacceptable releases.
(e) People involved in the management of hazardous wastes should be capable and adequately trained in their capacity.

Hazardous wastes, if improperly handled, can have adverse effects on human health and the environment. For example, persistent exposure to dioxins—unwanted by-products of incineration and manufacturing processes such as those involved in the bleaching of paper pulp—are known to result in skin lesions and altered liver function in the short-term, and impairment to the immune system and even cancer in the long-term.

Another grim example of the potential effects of improper disposal of hazardous wastes relates to the practice of cable recycling to recover copper. Once copper has been removed, the plastic coating is burnt, releasing polyvinyl chloride and brominated flame retardants into the environment. This process exposes workers to health risks, including respiratory and skin diseases, eye infections and cancer.

Frequently, illegal shipments of hazardous wastes are thoughtlessly dumped in rivers, seas and fields in proximity to settlements. In addition to the adverse impacts on human health, the contamination of land, air and waters can lead to irreparable damage to the environment.

Motives for corruption and elements necessary to prevent corruption

Corruption can affect the proper implementation and enforcement of the various obligations enshrined in the Basel Convention. With respect to ESM, corruption may take place in the process of licensing disposal facilities or authorizing persons to transport hazardous wastes. With regards to transboundary movements of wastes, corruption may occur at any given time; for instance:

- When the State of export authorizes that the prior informed consent (PIC) procedure be initiated (e.g., issuance of the notification document in contravention of the Convention's provisions)
- When the State of export authorizes the export to take place (e.g., issuance of the movement document in contravention of the Convention's provisions)
- When the State of import consents to the shipment (e.g., lack of compliance with an import restriction, lack of control of a contract specifying ESM)
- At each border control (e.g., lack of appropriate control of the documents or of the content of the shipment)

Corruption may potentially affect various stakeholders, including the Basel competent authorities, port authorities, police, customs, traders and brokers, shipping lines, importers and exporters.

There appear to be various motives that feed cases of corruption. As with many criminal activities, the quest for financial benefits (lowering costs or increasing income) can be a prime driver. However, preventing and combating corruption can be achieved through a variety of means. Having a set of elements supporting the proper implementation of the Convention's requirement pertaining to the transboundary movements may address the causes of corruption. Such elements may include the following:

(a) **Appropriate legal framework:** Competent authorities, customs, police and others who have a role in implementing and enforcing multilateral environmental agreements, including the Basel Convention, need legal certainty. This includes clarity about the content of the national legal framework (i.e., what is allowed, what is not, and what are the consequences of non-compliance) and clear mandates specifying their roles and responsibilities in enforcing relevant rules and regulations. Appropriate legal frameworks, including penalties that act as sufficient deterrents in cases of illegal traffic, will prevent criminal activities and enable these stakeholders to play an effective enforcement role.

(b) **Inter-agency coordination:** Well-defined competencies for different national agencies are necessary to provide a clear understanding of what can be expected from each and what kind of support can be provided when monitoring and enforcing legislation. It is important for stakeholders involved to know who they can and must rely on. Well-established close cooperation between agencies will also add a control mechanism contributing to the transparency of operations.

(c) **Awareness and capacity:** Relevant stakeholders need to have a sound knowledge of the Basel Convention. This is especially important for customs officers, and it requires that officers be trained and be given the necessary resources to play their role in enforcing the provisions of the Basel Convention. Customs officers are required to enforce numerous laws and regulations and they are often faced with competing demands.

(d) **Inclusive control of transboundary movements:** An effective control of transboundary movements of hazardous wastes requires that border control authorities focus on both imports and exports. While often customs focus on imports as a source of revenue, measures to effectively exercise control over exports are equally important.

(e) **Environmental protection:** Placing environmental protection high on the political agenda would help to ensure the development and effective implementation of environmental legislation. As for enforcement authorities, environmental protection must be placed as a priority alongside other more traditional roles entrusted to them.

(f) **Performance recognition:** Recognition for performance is another important factor in the flight against corruption. Regulatory authorities and customs need proper recognition within their hierarchy if they contribute to preventing and combating illegal traffic.

The special case of e-waste in West Africa

In recent years, Africa has been undergoing rapid transformation in information and communications technology (ICT), as countries attempt to bridge the so-called "digital divide" by importing second-hand or used computers, mobile phones and television sets from developed countries. The countries of the region, however, lack the infrastructure and resources for the ESM of electrical and electronic waste (e-waste) when these pieces of imported equipment reach their "end of life".

Following this transformation brought by ICT, sales of electrical and electronic equipment (EEE) have been steadily increasing in Africa, as in other regions, while used televisions, computers, refrigerators and many other types of used EEE have been exported from member countries of the Organisation for Economic Co-operation and Development (OECD)—such as members of the European Union and the United States—to non-OECD member countries. There are several factors contributing to the trade of used EEE. One important factor is the demand in the countries of import to have access to good quality second-hand equipment at an affordable price. A second factor is the intentional and unintentional leakages of used EEE and e-waste from the formal to the informal sector in developed countries, possibly spurred on by stringent environmental legislation in such countries.

The Secretariat of the Basel Convention has undertaken a project, known as the e-waste Africa project, to build local capacity to address the flow of e-wastes and electrical and electronic products destined for reuse in selected African countries and to augment the sustainable management of resources through the recovery of materials in e-wastes.[2] Lessons learned from this project are discussed in this section.

Countries in West Africa are experiencing increasing domestic consumption of EEE on one hand while receiving a steady stream of used EEE from developed countries on the other hand. Although the majority of this imported equipment is destined for re-use after testing and repair, there are significant volumes that prove unsuitable for re-use and further add to local e-waste generation. Statistical data and field research suggest that West Africa serves as the major trading route for used EEE into the African continent, with Ghana and Nigeria as the main import hubs.

Transboundary movements of e-waste are subject to the control mechanism under the Basel Convention. E-waste is listed in Annex VIII (as A1180, hazardous waste) and in Annex IX (as B1110, non-hazardous waste) of the Convention.

In the case of transboundary movements of used EEE and e-waste, there are several challenges related to the enforcement of the Basel Convention provisions. These relate to the distinction between used EEE and e-waste, and between hazardous and non-hazardous waste, as well as to the overall challenges of monitoring and enforcing the Basel Convention.

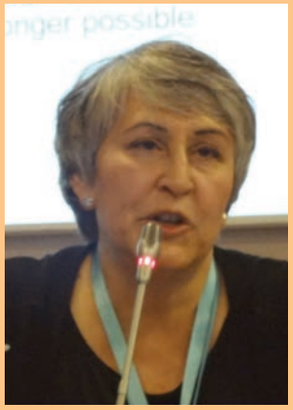
Currently, the lack of clear, commonly agreed and binding criteria – whether at the international or national level - to distinguish second-hand EEE from e-waste hampers the work of enforcement officers, especially at the stage of screening documents that accompany the shipments of EEE and during visual inspections. Establishing whether a piece of used EEE is a second-hand good or e-waste is a time-consuming process that requires consultations among various stakeholders.

[2] The following countries in West Africa participated in the project: Benin, Côte d'Ivoire, Ghana, Liberia and Nigeria. In addition, Egypt and Tunisia took part in the enforcement-related project activities. The time frame of the project is from November 2008 to March 2012. Financial support for the project was kindly provided by the European Commission, the governments of Norway, the United Kingdom, and the Dutch Recyclers Association (NVMP). For more information on project findings and recommendations, see the publication of the Secretariat of the Basel Convention "Where are WEEE in Africa", October 2011. Available from www.basel.int.

These challenges leave room for potential cases of corruption, for example when the documents accompanying a particular shipment indicate that it contains used EEE while in reality it is a shipment of non-functional EEE. In order to undertake an objective assessment of the situation and to properly identify and classify the shipment, customs need to cooperate with the environmental regulatory authorities to inspect the shipment in question and test the equipment. In West Africa, lack of cooperation between customs and the environmental regulatory authorities, for example by denying access to the port to perform a joint inspection of suspected shipments, has been witnessed in some instances.

In certain cases, the introduction of national legislation aimed at tackling the e-waste issue, for example by restricting the imports of non-functional EEE, can actually increase rather than mitigate corruption. New requirements are sometimes ignored and problematic shipments are released at the borders. The borderline between used EEE which is functional and used EEE which is non-functional but repairable, or non-functional and non-repairable, can be blurred. The large number of containers to be inspected, as well as the time and effort required, also weigh heavily in the balance.

Finally, it is important to ensure that when new legislation is adopted to implement the Basel Convention or to strengthen its provisions (for instance, through an import ban), special efforts are made to raise the awareness of all relevant enforcement stakeholders about its existence. Long-established relationships between some customs officials and importers who continue to bring non-functional EEE into a country even after the e-waste legislation is adopted may, in some instances, be an obstacle to efficient enforcement of the newly adopted legal framework.



Paper III
Corruption and Illegal Wildlife Trafficking

by Marceil Yeater[1]

Abstract: *This paper highlights the existence of corruption in the environment and natural resource sectors and reveals its impact, such as over-exploitation, pollution, loss of wildlife habitat and loss of revenues for many countries confronted by these "economic crimes". The Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) expresses with regret that often these crimes do not attract sufficient government resources and underlines the difficulty faced by government officials with regard to the management and control of trade documents. This paper elaborates on the positive efforts to regulate of the international wildlife trade under the banner of CITES. The creation of the International Consortium on Combating Wildlife Crime (ICCWC) in 2010 by several international organizations is considered a positive step in the battle against illegal cross-border trade in wildlife.*

Corruption is present in the environment and natural resource sectors, just as it is in other policy sectors and indeed in virtually any form of human activity. Examples include the following:

- Government licensing officials have been offered or sought bribes from private individuals or enterprises for the issuance of export permits for specimens of wild animals or plants.
- Government licensing officials have provided private individuals with blank export permits.
- Public officials have been found to maintain a personal or financial interest in commercial captive breeding or wildlife trade enterprises that they are responsible for regulating.
- Private individuals who have never hunted before (e.g., exotic dancers) have posed as sport hunters, obtained permission to hunt wild animals, had the wild animal killed for them by an experienced hunter and then obtained an export permit allowing them to take the trophies home.
- Captive breeding operations have been used to cover up the export of wildlife specimens or to "launder" the proceeds of a crime.
- Public officials have been involved in the theft and subsequent illegal sale of ivory or other high-value items previously held in government stockpiles.
- Border officials or transport companies have been offered or sought bribes from private individuals or enterprises for the endorsement or clearance of an export or import.
- Members of the diplomatic corps have used the diplomatic pouch to transport wildlife parts and derivatives from one region to another.
- United Nations peacekeepers have illegally purchased wildlife while they on mission in another country and illegally taken that wildlife home.

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The impacts of corruption are reflected in, inter alia: the over-exploitation of a country's living and non-living natural resources; pollution of ecosystems; loss of wildlife habitat; possible spread of diseases or of invasive alien species; significant losses in assets and revenues for many countries; and the deprivation of local people who depend on wild animals and plants for food, shelter, clothing, medicine and other subsistence needs.

On the positive side, efforts have been ongoing in the environment and natural resource sectors – as in other sectors—to prevent, identify and address corruption. These efforts include, for example, the promotion of good governance, the prosecution of corrupt officials and business people and the activities of non-governmental "watch-dog" organizations.

Regulation of the international wildlife trade

International trade in wildlife (wild animals and plants, including forests and fish) should not be considered as synonymous with illegal wildlife trafficking. It is possible to have legal, sustainable and traceable trade in wildlife, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) is a tool for ensuring this.

The Convention was adopted in 1973 in order to protect certain species of wild fauna and flora from over-exploitation through international trade. The Convention entered into force in 1975 and now has 175 States Parties. It covers about 34,000 wild animal and plant species (collectively referred to as "wildlife"), which are listed in three appendices, including some 200 tree species and nearly 100 fish or other aquatic species.

For 97 per cent of CITES-listed species (appendices II and III), international commercial trade is generally allowed if the specimens were legally obtained and their trade would not be detrimental to the survival of the species in the wild. For the other 3 per cent (appendix I), international commercial trade in wild-taken specimens is generally prohibited.

A system of permits and certificates, with related conditions and procedures, is used under the Convention to ensure that any international (commercial or non-commercial) trade (meaning movement across international borders) in live or dead animals and plants, or their parts and derivatives, is legal, sustainable and traceable. A global network of national CITES management, scientific and enforcement authorities provides for on-the-ground implementation of the Convention and related national laws.

Effective application of the Convention depends largely on control over the issuance, inspection and acceptance of CITES documentation. Each Party maintains records of its CITES trade and submits annual trade reports (as well as biennial implementation reports), which are publicly available and searchable through the CITES trade database and related tools (see www.cites.org).

Contrary to popular misconception, there is an enormous global business in wild fauna and flora that is perfectly legitimate. Human needs and desires motivate this trade, and also motivate the illegal trade. Contracting States to the Convention were conscious of the ever-increasing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic perspectives. Wildlife trade, like other trade, therefore requires an emphasis on trade security as well as trade facilitation.

Illegal wildlife trafficking

Under article II of CITES, Parties are not to allow trade in specimens of listed species except in accordance with the Convention. Under article VIII, Parties are to take appropriate measures to prohibit trade in violation of the Convention and to enforce its provisions. These domestic measures include measures to penalize illegal trade or possession and to provide for the confiscation (or return to the State of export) of illegally traded or possessed specimens.

Typical violations of the Convention, and of related national implementing legislation, include: trading without an appropriate and valid permit or certificate; trading in violation of the conditions set out in a permit or certificate; obtaining a permit or certificate through false statement; fraudulently altering a permit or certificate; tampering with an identification mark; and possessing a wild animal or plant or specimen that was illegally obtained. National legislation also often establishes an offence for obstruction of justice, participation in an offence, the attempt to commit an offence and other related crimes. Provision is also made for the liability of legal persons, the recovery of costs incurred due to the seizure and holding of live specimens, enhanced penalties for recidivists or aggravated offences and authorization for the court to prohibit a convicted individual from engaging in wildlife trade for a certain period of time.

National laws for the protection of fauna and flora are used to determine whether CITES specimens have been legally obtained. Harvesting of valuable fish, timber or other wildlife is illegal when it is done without—or in violation of—the necessary permit, in excess of a quota, outside the authorized harvesting season, in a protected area, through prohibited means or equipment (e.g., explosives) or by an unauthorized person. In one instance, the government of a particular country considered buying back certain trees that had been improperly added to a national export quota. When it sought to locate the trees, it learned that they did not exist. Actions were thereafter brought against those involved in the fraud.

Related wildlife crimes include the processing of, fraudulent trade in or smuggling of illegally harvested animals and plants. Increasingly, such crimes involve not just an individual poacher but organized, well-funded and well-equipped groups or networks of people operating across borders. In the 1980s, it was recognized that drug smugglers can also be smugglers of wildlife products. In some cases there were links between the two. In one case, powder that was sprinkled on caiman skins, to stop them adhering to each other during shipment, was mixed with cocaine. Reportedly, the modus operandi was to wash off the skins on arrival and then filter out the cocaine. It has been suggested more recently that some criminals have begun to "cross-over" from heroin trafficking to illegal trafficking in rhinoceros horns because the profits are equally high and the risk of being detected, prosecuted and penalized for a wildlife crime is lower.

Crimes involving wildlife and other components of the environment are generally categorized as economic crimes because they are frequently motivated by the desire to make money or to avoid regulatory costs (e.g., the time, effort and money needed to buy a permit). Such crimes are sometimes viewed as "technical" crimes (i.e., based solely on the absence of a permit) rather than as "serious" crimes. As a result, they often do not attract sufficient government resources. Wildlife crimes, however, are often found in combination with well-established general crimes such as fraud, counterfeiting, use of dangerous weapons, assault, conspiracy, bribery, money laundering and other forms of corruption. Moreover, the level of profit from wildlife crimes can be quite high and the species involved can be quite rare and precious. Government officials in one country have had so many difficulties with the management and control of trade documents for the export of wild birds, reptiles and mammals that it is no longer possible for their validity to be reliably confirmed.

Wildlife crime has yet to be viewed, and accordingly responded to, as "mainstream" crime, and is not yet recorded in the same ways that drug trafficking, murder or burglaries are. This makes it very difficult to assess the scale and impact of wildlife crime.

UNCAC, CITES and the risk of corruption

As recognized in the preamble to the United Nations Convention against Corruption (UNCAC), corruption is particularly linked to organized crime and economic crime, both of which occur in the context of wildlife crime. Moreover, wildlife crime often involves transnational organized crime, which is the subject of another, related convention.

Article 7 of UNCAC requires States Parties to endeavour to adopt, maintain and strengthen civil service systems that promote adequate remuneration and education and training programmes that would enable civil servants to meet the requirements for proper performance of their public functions. A number of national CITES authorities, like other civil servants, often lack this type of support.

Article 12 of UNCAC recognizes the need to prevent the misuse of procedures regulating private entities, including procedures regarding licences granted by public authorities for commercial activities. Such procedures, as well as other administrative services (such as the registration of captive breeding or artificial propagation or trading operations, compliance monitoring and export endorsement) can be vulnerable to bribery, trading in influence, abuse of functions, illicit enrichment, laundering the proceeds of crime and concealment.

UNCAC, CITES and the prevention of, or response to, corruption

In Resolution Conf. 11.3 (Rev. CoP15) of the Conference of the Parties to CITES, it is recommended that "Parties that are not yet signatories to, or have not yet ratified, the UN Convention on Transnational Organized Crime and the UN Convention against Corruption consider doing so". The text of CITES itself does not expressly mention corruption, but the Convention could nevertheless be seen as contributing to the prevention of, or response to, corruption through various means. For example, it establishes a clear and concrete regulatory framework.

Under articles III and IV, the national authority responsible for issuing CITES documents must obtain the advice of a scientific authority before any export or import permit is issued. In a resolution adopted by the Conference of the Parties, it is recommended that this scientific authority be independent of the permit-issuing authority (i.e., management authority). This recommendation, and the growing designation of enforcement authorities that are independent of the management authority, helps to create the checks and balances that can make corruption more difficult. Under article VII, exemptions or special provisions apply in certain cases (e.g., pre-Convention specimens, personal/household effects, scientific exchange or travelling exhibitions), which can reduce the administrative burden under the Convention.

Under article VIII, Parties are to report periodically on their implementation of the Convention. They are also to ensure that specimens pass through the formalities of trade with a minimum of delay. In practice, however, implementation of the Convention can be slow and burdensome (or perceived as such) and this appears to be a reason for trying to avoid the related administrative controls.

Under article XIII, international measures may be recommended if a species is being affected adversely by trade, or if the provisions of the Convention are not being effectively implemented. As indicated in the *Guide to CITES Compliance Procedures* (see the annex to Resolution Conf. 14.3 of the Conference of the Parties), such measures may include a recommendation by the Standing Committee of the Conference of the Parties to suspend commercial trade, or even all trade, with a Party in one or more CITES-listed species. Such recommendations have proven to be very effective in obtaining high political engagement and prompt corrective action by affected Parties.

Guidance provided to Parties under the CITES National Legislation Project encourages them to consider holding government officials responsible for violations of the Convention or relevant national law. In particular, it is suggested that Parties consider making it an offence for an enforcement officer to accept any unauthorized personal payment or other form of personal compensation. Parties are also encouraged to provide incentives in their legislation for individuals to come forward with information about suspected crimes. Overall, strengthened laws and regulations for combating corruption are essential if progress on this issue is to be made.

Parties and the CITES Secretariat have engaged with anti-corruption commissions and financial crime units in seeking to address suspected cases of wildlife crime. Overall, there is a growing commitment to multi-agency cooperation of this kind. More and more, an effort is being made to establish value chains for legal and illegal

trade, in order to "follow the money" involved in such trade. In its capacity building activities for law enforcement officials, the Convention has included a module on ethics, which draws, inter alia, on existing codes of conduct for public officials. CITES collaborated with INTERPOL in producing a manual on the use of controlled deliveries in detecting, investigating and prosecuting wildlife crimes and a case study handbook on wildlife smuggling concealment.

Earlier this year, the CITES Secretariat accepted an invitation to co-sponsor the World Congress on Justice, Governance and Law for Environmental Sustainability, being organized by the United Nations Environment Programme (UNEP) in Rio de Janeiro in June 2012, immediately before the United Nations Conference on Sustainable Development (UNCSD, or Rio+20). INTERPOL, the World Bank and others have accepted similar invitations. The World Congress will bring together attorneys general and chief prosecutors, auditors general (*Cour des comptes*), senior judges, and parliamentarians from around the world. The secretary general of CITES is a member of the Executive Steering Committee for the Congress.

The private sector has engaged with the Convention since its entry into force, but more effort has been made recently by Parties and the Secretariat to involve key trade sectors and industry associations as partners in ensuring effective implementation of the Convention. Academic institutions and non-governmental organizations concerned with wildlife conservation or animal welfare have long been active in the Convention's activities. The involvement of local and indigenous people in the work of the Convention has been limited, but activities related to CITES and livelihoods as well as community-based natural resource management are helping the Convention reach out more to associations of local governments and indigenous people. Contracting States to CITES and UNCAC recognize that international cooperation is essential for the aims of these conventions to be achieved.

The International Consortium on Combating Wildlife Crime

More recently, the increased globalization, organization and sophistication of wildlife criminals prompted a similarly globalized, organized and sophisticated response by law enforcement agencies. In November 2010, in the city of St Petersburg in the Russian Federation, five intergovernmental agencies—the CITES Secretariat, INTERPOL, UNODC, the World Bank and the World Customs Organization (WCO)—concluded a Letter of Understanding establishing the International Consortium on Combating Wildlife Crime (ICCWC).

As explained above, CITES has been working since 1975 to help countries combat illegal cross-border trade in wild animals and plants and related crimes. INTERPOL is the world's largest international police organization. Its mission is to prevent and combat international crime by facilitating cross-border police cooperation, and it supports and assists all organizations, authorities and services with aligned missions. UNODC is a global leader in the fight against illicit drugs and international crime, addressing both the supply and demand sides. The World Bank plays a leading role in international efforts to strengthen forest law enforcement and governance. WCO works in areas covering the facilitation of international trade, trade supply chain security, the enhancement of customs enforcement and compliance activities, anti-counterfeiting, piracy initiatives and public–private partnerships.

The organizations forming ICCWC have extensive experience in developing and delivering comprehensive training and capacity building packages for law enforcement officers at various levels. Several have communication channels that allow real-time dissemination of intelligence to help national enforcement bodies in their risk assessment, targeting and profiling activities and to facilitate investigations in different countries. ICCWC partners also have experience in coordinating multinational operations targeting wildlife crimes and associated crime, such as corruption.

Through an ICCWC Global Programme, ICCWC partners aim to build an international response to illegal harvesting and illegal trade in protected species of wild animals and plants. This will be achieved by:

- Facilitating multi-agency coordination and cooperation at national, regional and global levels
- Disseminating materials and tools to enhance the knowledge and skills of national agencies in combating wildlife crime and related offences
- Researching the drivers, scale and value of wildlife crime and related offences
- Supporting analytical reviews, particularly through its Wildlife and Forest Crime Analytic Toolkit developed to enable national assessments of the scope of illegal wildlife trafficking and associated responses

Conclusion

CITES, together with UNODC and other ICCWC partners, can support States Parties with their efforts to combat illegal wildlife trafficking and associated corruption. Similar cooperation at and between national and sub-national levels should be strengthened. Law enforcement authorities and the judiciary must set the example for the rule of law to be respected. In addition, judicial processes for the investigation and prosecution of corruption need to be expedited, so they offer credible deterrence. Supreme audit bodies, often independent bodies with the power to review government action (or inaction) and to "follow the money", might be used more often to uncover and address corrupt acts. Although corruption may be sufficiently prevalent in some places as to seem like a way of life, as an African proverb says, "Many little people in many small places undertaking modest actions can transform the world".

Law enforcement efforts alone, however, will not be sufficient. Continued work is needed to build and maintain properly paid, trained and equipped civil services. This is becoming more of a challenge as an increasingly large percentage of bilateral and multilateral funding is directed away from government entities (often because of fears of corruption). Efforts to ensure good regulation, rather than over-regulation or bad regulation, should also continue, as this can reduce the incentive to "buy" quick, positive government service through corrupt means. The growing use of electronic permitting and other information technologies (e.g., geo-referenced mapping of illegal trade sources and routes, and other modern assessment tools) should be used to make it more difficult to engage in corruption and easier to detect corrupt practices. Finally, additional thought might be given to providing an incentive (e.g., streamlined and quicker administrative service), or more recognition (e.g., certificates of commendation or merit), to those who refuse to engage in corrupt practices, and to ensuring that there is a prompt and heavy cost for those who participate in corruption.

Opening Remarks of Session II

by Ajit Joy, Country Manager, UNODC Indonesia, Chair of Session II

Until now we have been listening to the presentations relating to the problem of corruption in sectors like oil, wildlife trade and movement of hazardous waste. In this session, we shall concentrate on what countries are doing to counter corruption in the environment, critically look at the responses, and also understand the role that the United Nations Convention against Corruption (UNCAC) can play in this regard. Before calling upon the distinguished speakers to present their papers, I would like to make brief opening remarks.

The three circles below have linked destinies. Let me explain. What we all want and aspire to achieve are progress, peace, happiness and prosperity. This is denoted by the circle in the centre and we could call it generally "development". This development or happiness circle is affected by the "security and stability" circle, which is dependent on the rule of law, crime prevention, etc. Conflicts, crime and violence affect development. Development is further skewed by lack of sustainability. In other words, absence of justice, human rights or environmental protection, or the presence of corruption, makes development unsustainable and diminishes its value. Similarly, poor performances of the elements in the "sustainability" circle have a negative impact on security and stability.

Given this broad interconnectedness, we also can observe a close relationship among elements within the circles. For instance, poor justice undermines equality and human rights, and similarly corruption and lack of transparency negatively impact the environment.

Let me now briefly elaborate on the links between environment and corruption. Often violations in the natural resources sector cannot take place without the connivance or complicity of public officials. Land conversion, deforestation and illegal mining mostly happen due to huge bribes changing hands from business to government officials. This happens at different levels too, ranging from forest rangers or policemen, to customs officials and local civil servants, all the way up to politicians and senior government officials. Countries suffer because, firstly,

law enforcement in the natural resources sector is weak. Added to this, enforcement against corruption linked to environmental crimes is even more poorly understood and rarely acted upon. In the presentations in this session, especially those from Indonesia, I am sure these aspects will be highlighted.

So, what can be done? Investing in improving governance in the natural resources sector, especially working with and improving law enforcement and prosecution capabilities; having better standards of monitoring, reporting and verification; more effective regulation; bringing in more transparency at various stages of allocation of concessions, permits and licenses, and later on during the production and processing stages—all of these would be very effective measures. Use of the UNCAC as a tool to fight corruption in the environment, combined with the integration of anti-corruption measures into environmental laws and policies, will go a long way. And why is this important? Fighting corruption in the environment is ultimately linked to our happiness and development.

Paper IV
Indonesia's National Strategy to Combat Illegal Logging and Corruption

by Trio Santoso[1]

Abstract: *This paper highlights the progress and challenges faced by Indonesia in the field of illegal logging during recent years. The Ministry of Forestry is identified as one of the key players in mediating cooperation among local non-governmental organizations, law enforcement agencies and international organizations such as UNODC with regard to transnational crime, involving several (international) stakeholders. Indonesia's National Strategy to combat illegal logging is the main focus of this work.*

Background

It is estimated that 70 per cent of Indonesia's territory consists of forest, in total covering 132,397,729 ha. The Ministry of Forestry identifies different categories of forest lands based on their functions:

(a) **Production forest**, which covers 82,844,000 ha. These forests are managed by the concession policy, mostly outside Java Island, while in Java these are state-owned. In this type of forest, activities of logging, restoration and plantation take place.
(b) **Protection forest**, which covers 29,885,000 ha of the country. This is managed by the provincial and district governments. It is permitted to harvest non-timber forest products and ecological commodities such as water and carbon in these forests.
(c) **Conservation forest**, covering 19,699,000 ha, are managed directly by the Ministry of Forestry and are divided into two types: national parks and forest reserves.

In recent decades, Indonesia has faced illegal logging, which can doubtless be considered as one of the most prominent crimes in the forestry field. Illegal logging and the associated trade in illegally harvested forest products threathen Indonesia's forests because they undermine good forest governance and the rule of law, while also resulting in deforestation, lost of government revenues and conflict. According to a survey conducted by the UK's Department for International Development (DFID) in 1999, 57 million m3 out of 78 million m3 of Indonesia's timber production is from illegal logging. Moreover, the Ministry of Forestry conducted a survey in 2001 indicating that the deficit in the industry is 50.7 million m3 due to illegal logging. The associated revenue lost annually by the Indonesian government is estimated at IDR 30.4 trillion.

This paper aims to present Indonesia's National Strategy to combat illegal logging, presenting first the background issues (the condition of illegal logging and the linkages with corruption), second, the efforts and results of combating illegal logging, including preventive measures, enforcement measures, human capacity and international cooperation as described in the United Nations Convention against Corruption (UNCAC), and finally, challenges encountered and plans for the future.

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[1] Deputy Director of the Directorate of Investigation and Forest Protection, Ministry of Forestry of Indonesia.

Illegal logging in Indonesia

According to Law No. 41/1999 on Forestry and Law No. 5/1990 on Biodiversity Conservation, illegal logging is defined as:

- Cutting, processing and transporting timber or wood products irregularly
- Harvesting illegally in national parks and forest reserves

Illegal logging occurs in Indonesia for several reasons:

(a) **Excessive capacity for wood processing:** The supply of logs does not meet the demand because there are many illegal sawmill industries.
(b) **Weak law enforcement:** In most cases, illegal loggers get short prison sentences, even though the law includes a maximum penalty of five years and fines of IDR 100 million.
(c) **Black markets:** On the black market, in Indonesia and abroad, the price of illegal timber is cheaper than that of legal timber.
(d) **Poverty:** The poverty of local people living near the forests is exploited by the illegal loggers to supply labour for the illegal harvesting.
(e) **Revenue:** Timber is the main source of revenue in certain regions, such as Borneo and Papua.
(f) **Corruption and rent-seeking behaviour.**

The perpetrators of illegal logging are mostly the financiers (backers). These financiers are trans-nationally organized and include locals and foreigners. Undeniably, certain officers—including forestry and enforcement officers—are involved in transporting illegal timber and thus "allow" illegal timber to be harvested. Besides that, local people also harvest illegal timber in small quantities for their personal use. The financiers and the officers use many devices in their illegal timber trafficking, including bribery, abuse of power in giving authority, creation of false documents of log transportation, smuggling, illegal cutting and illegal transportation.

As mentioned earlier, bribery is one of the modus operandi of illegal logging. The financiers take advantage of the poverty of local people by paying them to harvest timber illegally. These financiers also bribe forestry officers at the district level, especially to get illegal permits for harvesting or fake transportation documents. Furthermore, they maintain good relations with the local government and decision-makers so that they can operate their illegal timber businesses without major constraints. Once the illegal permits for harvesting timber and operating timber businesses are in place, the financiers usually also bribe the police, customs and forestry officials to smooth the passage of the illegal logs as they are transported to the buyers. Whenever troubles or problems occur, in several cases those actors also bribe the prosecutors and judges to secure favourable decisions. The cash that local people or officers receive is usually used for buying goods, such as televisions. It has come to our attention that some officers used the cash in legal businesses, such as property or transportation, while some others use the money to build other illegal mills. Other actors involved in illegal logging place their assets in banks, locally or abroad.

The illegal timber is not intended for the local market, but is trafficked into Malaysia, Singapore, Japan, China and Europe. One case which exemplifies this phenomenon is timber from Borneo that is harvested illegally and sold to China seemingly as legal timber, eventually being legally marketed to the consumers in Europe or America.

Poverty is indicated as one of the prime causes of illegal logging

Efforts to combat illegal logging

Since illegal logging is related to corruption but is not addressed in the Forestry Law No. 41/1999, the National Strategy to combat illegal logging is divided into prevention, enforcement and international cooperation.

In the area of prevention, the efforts are focused on amending laws and regulations to strengthen law enforcement efforts. Since 2005, the Ministry of Forestry of the Republic of Indonesia has put its efforts to combat illegal logging as the first priority in its National Strategy. Illegal logging became a national issue since a Presidential Instruction was declared on this subject in 2005. In the Presidential Instruction No. 4/2005, the leaders of 18 government bodies are directed to cooperate to combat illegal logging under the Coordinating Ministry for Political, Legal and Security Affairs. The enforcement bodies, such as the police, the army and the Attorney General's office, are included among these 18 government bodies.

Furthermore, in order to improve good governance, transparancy and accountability, the Ministry of Forestry established the so-called Anti-Corruption Pact aimed at officers, especially those who issue the permits in forest production, and also requiring the decision-makers to submit annual reports of assets. To promote legal timber production, the establishment of legal timber verification standards and mandatory certification for sustainable forest management seems a decisive step. Other efforts employed by the Ministry of Forestry include the promotion of the established timber tracking database system to efficiently track the sources of harvested logs. From the enforcement side, a case tracking database system has also been developed by the Ministry of Forestry. This database system is to monitor the judicial process of illegal logging cases. Besides this case tracking database system, the local people are also encouraged to report, by sending a text message to a specified SMS center, whenever they are confronted with illegal logging cases. In order to control and monitor the transportation or the trafficking of timber, Indonesia has already implemented a national single window for wildlife export and import.

As it is already known that bribery is related to money laundering. As mentioned earlier, the cash received is put into other legal or illegal businesses. Therefore, there is an urgent need to develop a mechanism to implement anti-money laundering legislation. The inclusion of forestry crimes in the anti-money laundering legislation is expected to support and assist law enforcement in the forestry sector. The use of the Anti-Money Laundering Law is aimed at investigating, prosecuting and punishing criminals in the forestry sector who commit crimes of money laundering, by implementing new paradigms of "follow the money". The asset-tracing approach will facilitate identification of the financial backers involved in illegal logging.

In 2005, the Ministry of Forestry, in cooperation with the Indonesia Financial Transaction Report and Analysis Centre (PPATK) established a Memorandum of Understanding on cooperation in tracking financial transactions related to illegal logging. One of the actions under this cooperative agreement is to publish guidelines on the submission of information on the crime of money laundering in forestry and natural resources conservation.

The Ministry of Forestry also conducted training to enhance the capacity of forest rangers and civil investigators to carry out law enforcement and intelligence gathering. Unfortunately, there are only 8,167 forest rangers and 1,565 civil investigators posted across Indonesia, giving a ratio of just 1 forest ranger for every 17,468 ha of forest area. This indicates a severe lack of enforcement personnel, since a suitable ratio is considered to be 1:5,000 ha. In general, the competence of the enforcement officers also needs to be enhanced. The types of enforcement measures implemented include:

(a) **Preventive measures:** Including regular patrols by forest rangers, public extension on forestry regulation, establishing cooperation with INTERPOL, and an SMS center.
(b) **Repressive measures:** Periodic joint operations by the forest rangers and the national police, monitoring the enforcement against violators until final prosecution.
(c) **Judiciary process:** Civil investigators in the Ministry of Forestry have the authority to investigate those involved in illegal logging and prosecute them, in cooperation with Indonesia's Corruption Eradication Commission (Komisi Pemberantasan Korupsi, or KPK) as needed in cases involving bribery.

To deter involvement of local people in illegal logging activities, the Ministry of Forestry has conducted several activites to improve community welfare through social forestry and collaborative management initiatives. These activities include "One Billion Trees Plantation", community forests and forest nursery programmes involving the local people. Other activities include involving members of the local communities as "barefoot investigators", particularly in the national parks and forest reserve areas.

Indonesia on its own cannot combat illegal logging since it is a transnational organized crime. This situation makes Indonesia dependent on international cooperation, especially in combating the international illegal timber trade and in enhancing law enforcement in the forestry sector. This cooperation should be focused on capacity building and technical assistance. International cooperation has been developed with the key timber trading countries such as the United States, Australia, Finland, Japan, Korea, the Netherlands, the United Kingdom and China. Some cooperation has also been built with international bodies and NGOs, including ASEAN-WEN, ASEAN FLEG (Forest Law Enforcement and Governance), European Commission–Indonesia FLEGT Support Project, UNODC, WWF and WCS (Wildlife Conservation Society).

The UNODC project, "Countering Illegal logging and the linkage between forest crimes and corruption in Indonesia", started in 2010 and the strategies for fighting forest crimes include capacity building for law enforcement (to detect harvesting crimes, processing crimes and transportation crimes), addressing corruption and community involvement.

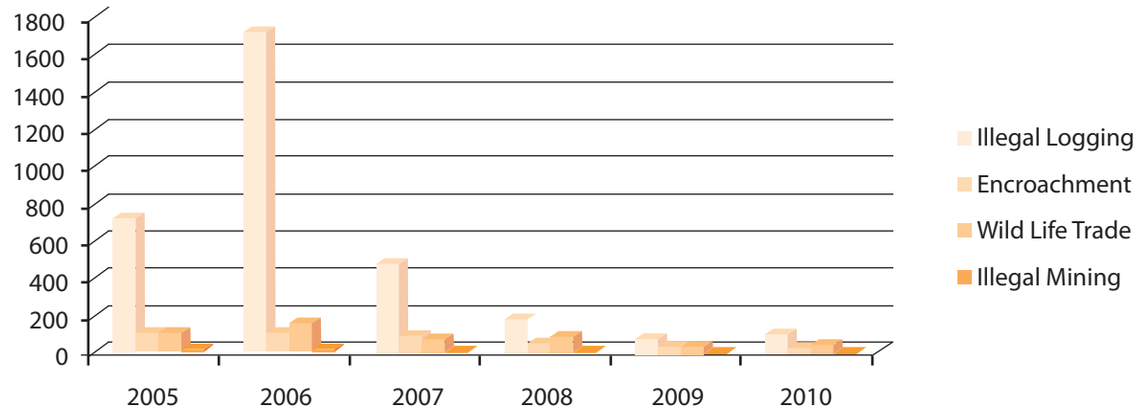
Results of combating illegal logging

Records show that cases of illegal logging during the period 2005–2010 have decreased significantly, by 81.77 per cent. It can be seen in Figure 1 below that cases of illegal logging reached a peak in 2006, followed in subsequent years by a steady decrease.

Based on the information in Table 1 below, detailing suspects and evidence of illegal logging cases from 2005 to 2009, it can be said that suspects and evidence were at the highest point in 2006. Therafter, the trend shows a decrease, from 2007 to 2009.

According to case records in 2009, there were 69 illegal logging cases (timber seized) and only 59 cases were brought to court, resulting in 30 cases without judgment, 21 cases with sentences of less than 1 year, and 8 cases with sentences of approximately 1 to 2 years. In this regard, sentencing of the perpetrators had no deterrent effect, and the Government of Indonesia is establishing a draft Combating Forest Crime Law with a minimum penalty of four years.

Figure 1
Forest crime cases including illegal logging, 2005–2010



	2005	2006	2007	2008	2009	2010
Illegal Logging	720	1714	478	171	69	94
Encroachment	109	107	79	45	25	18
Wild Life Trade	112	157	70	79	30	37
Illegal Mining	8	17	0	2	1	8

Table 1
Suspects and evidence of illegal logging cases, 2005–2009

	2005		2006		2007		2008		2009	
SUSPECTS (persons)	1,327		2,226		872		674		255	
EVIDENCE										
Timber	35,428	log	690,903	log	37,105	log	5,126	log	4,816	log
	475,659.42	m3	462,982.57	m3	5,488.06	m3	6,539.34	m3	893.58	m3
	5,495	pcs	21,084	pcs	19,716	pcs	6,376	pcs	1,790	pcs
Heavy equipment	845	unit	148	unit	8	unit	7	unit	6	unit
- Boat	35	unit	165	unit	7	unit	10	unit	9	unit
- Truck	257	unit	288	unit	16	unit	28	unit	19	unit
- Car	57	unit	41	unit	3	unit	8	unit	2	unit

Source: Ministry of Forestry case-tracking database

Constraints and future plans

Based on the data above, it can be said that Indonesia has successfully decreased illegal logging activities. This success was achieved due to support from all stakeholders, including enforcement agencies, public and NGOs. From the UNCAC point of view, it can be said that this success was due to the implementation of the UNCAC as a tool to address illegal logging.

On the other hand, Indonesia still faces some constraints and challenges. First, even though illegal logging on a large scale is decreasing, small scale illegal logging is still common, especially in Borneo and Papua. Second, the deterrent effect for perpetrators of illegal logging is not there yet, since the sentences are mostly short. Plausible reasons for this include the low capacity of enforcement personnel but also the fact that there is no minimum sentence in the regulations concerning forestry. Lastly, encroachment is rampant as another modus operandi of illegal logging in forest areas.

In the coming years, further actions will be established to combat illegal logging. Repressive measures are still a main area of focus. In terms of prevention efforts, the issuance of a National Law on Combating Forest Crime, setting a minimum sentence, is expected to have a deterrent effect. Furthermore, capacity building and technical assistance for enforcement officers is needed. Training programmes for forest rangers and civil investigators to combat illegal logging related to corruption and money laundering need to be strengthened. Judiciary training for other enforcement officers in the forestry sector is also important.

Other cooperation needs to be built with regard to financial investigation with the Financial Intelligence Unit (FIU). Mutual legal assistance with other countries' central authorities strengthens cooperation nationally and internationally with other enforcement officers, such as Indonesia's Corruption Eradication Commission, the ASEAN-WEN and UNODC.

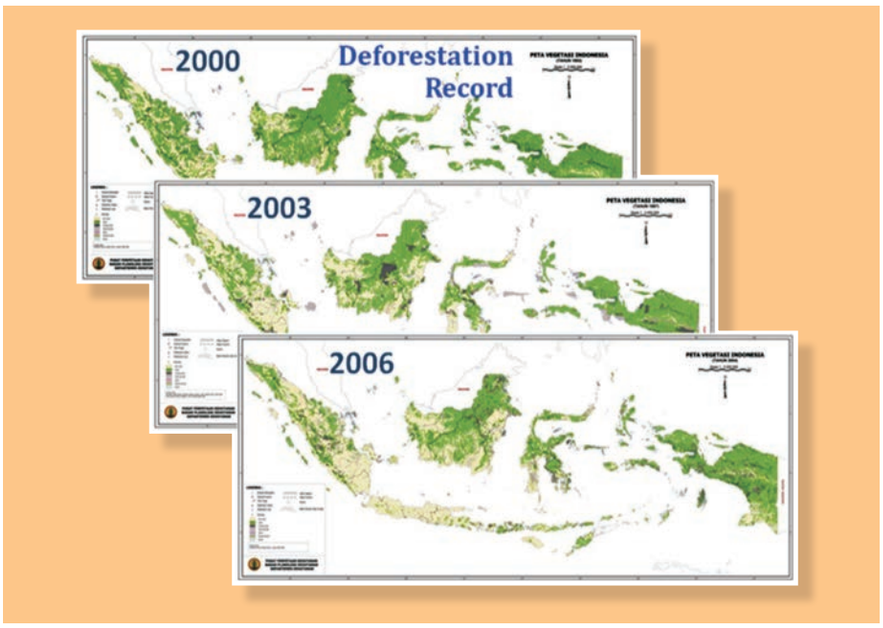
Paper V
Corruption in Forest Crimes

by Donal Fariz [1]

Abstract: *This paper highlights that corruption in the forestry sector must be considered a transnational crime due to the involvement of international criminal syndicates in this lucrative business. In addition, this paper underlines that Indonesia needs international support in order to combat illegal logging. One suggestion is that criminals involved in forest crimes should be judged under anti-corruption laws.*

Indonesia has the most extensive forest cover in Southeast Asia, which also has the most unique and high biodiversity values (FAO, 2000). This is why Indonesia's forests are often referred to as "the lungs of the world". However, Indonesia's forests are also the world's most rapidly disappearing forests. According to a Greenpeace report, between 2004 and 2009 Indonesia annually lost 2.31 million ha of forest cover; a high deforestation rate (cited in Diansyah and Sari, 2010).

Figure 1
Indonesia deforestation record: 2000, 2003, 2006



Source: Ministry of Forestry case-tracking database

[1] Legal researcher at Indonesia Corruption Watch (ICW).

Illegal logging activities have been prevalent in all regions in Indonesia. In particular, provinces with rich forests, such as those in Kalimantan and Papua, are becoming the target of local and international cukongs (financiers or intellectual actors). In contrast, millions of people face ecological disasters caused by these illegal logging activities.

Besides ecological risks, forest crimes have also led to a huge loss of revenue for the state. In 2011, Indonesia Corruption Watch (ICW) conducted a comprehensive study of the potential revenue loss caused by corruption in the forestry sector, such as illegal logging and illegal forest conversion in West Kalimantan and East Kalimantan. The study revealed that such corruption led to potential revenue loss of IDR 9.146 trillion annually.[2]

There are at least four factors underlying the high rates of deforestation and revenue loss:

(a) **Corruption in the forestry sector:** One of the root causes of illegal logging and related illegal trade is corruption. In many provinces and districts, illegal logging leading to rapid deforestation has not only been carried out by illegal companies, but also by legitimate businesses that acquired legal concessions. Legal companies, including mining and palm oil companies, have obtained concession permits from governors and regents to clear the state forestlands and then convert them illegally to mining sites and palm oil plantations. Mining and plantations are the dominant sectors involved in forest crimes in state forestlands.

(b) **The creation of new administrative regions:** A recent study from the London School of Economics entitled "The Political Economy of Deforestation in the Tropics" demonstrates a close relationship between the political economy and the deforestation rate in Indonesia. The study shows that, under the decentralization policy, the increase in the number of administrative regions (e.g., districts) in several provinces with extensive forests has triggered the acceleration of deforestation. The analysis of satellite imagery proves that illegal logging in conservation areas and protected forests increased dramatically in the two years leading up to local elections. Meanwhile in forest conservation areas, logging went up sharply in the year before and after these elections.

(c) **Weak regulations in the forestry sector:** Sectoral laws relating to forestry and plantations are not effective for indicting illegal loggers. The laws have also failed to reduce the deforestation rate. The laws are more useful for settling administrative issues.

(d) **Poor law enforcement:** The involvement of law enforcement officers in backing the "forest mafia" is one of the fundamental problems in poor law enforcement. Based on monitoring conducted by ICW during the period 2005 to 2008, of 205 main perpetrators of illegal logging, only 19.51 per cent faced justice. The remaining 80.48 per cent were field operators, such as truck drivers and peasants. Of the main perpetrators who went to trial, 82 per cent were acquitted. Among field operators, 66 per cent were acquitted, 21 per cent were sentenced to imprisonment for less than 1 year, 7 per cent were sentenced for 1 to 2 years, and 5 per cent for over 2 years.

Indicting "forest mafia" with anti-corruption law

One of the main reasons why the government has failed to enforce the law is because they charged the perpetrators of illegal logging using Forestry Law No. 41/1999, which has proven to be a weak approach, allowing most perpetrators to be acquitted. As an alternative to indict illegal loggers, in addition to use of the Forestry Law, illegal loggers could be indicted under the anti-corruption law No. 31/1999, as long as law enforcement officers can prove the connection to losses in state revenue (Diansyah and Sari, 2010).

[2] Joint research conducted with Save Our Borneo and Kontak Rakyat Borneo in four districts, namely Sambas, Ketapang, Bengkayan and Seruyan. Research methods to estimate state losses include calculations of revenue associated with disappearing forest, forestry taxes and reforestation funds.

Applying the anti-corruption law in the forestry sector is not new for law enforcers in Indonesia. Some forest crimes have been indicted under this law. The use of the anti-corruption law has proven effective in catching members of the "forest mafia". In the forest crime cases involving businessman Adelin Lis, Governor Suwarna Abdul Fatah (of East Kalimantan) and former regent Tengku Azirwan Jaafar (of Palalawan), all three were found guilty of corruption in the forestry sector.

Since forests are state assets, illegally harvested forests will create losses to the state revenue and have serious negative ecological and economic impacts. Therefore, it is very important to enforce the law and to handle forest crime cases using the anti-corruption law.

Joint responsibility

Combating illegal logging cannot be done by a single country alone. Since forest crimes involve criminal syndicates based in many countries, these crimes must be regarded as transnational crimes. For example, the criminals behind the illegal logging in Indonesia control their activities from abroad, through companies located overseas.

Indonesia needs international support to curb these illegal activities. Timber-consuming countries should have a strong commitment to banning imports of illegal timber products, as well as palm oil obtained from illegal sources, thus placing limits on the business environment in which the "forest mafia" operate.

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APPENDIX

No.	Name	Position	Description	State Losses (IDR)	Judicial Process
1	Suwarna Abdul Fatah	Governor of East Kalimantan	Issued permits for the Wood Utilization Permit (Izin Pemanfaatan Kayu, or IPK) to clear-cut the forest and set up plantations; main goal was only to harvest the forest illegally	346.82 billion	**Investigated by KPK** sentenced to 4 years imprisonment (Supreme Court Cassation)
2	Martias alias Pung Kian Hwa	Owner of Surya Dumai Group	IPK holder and the beneficiary of Suwarna's policy	346.82 billion	**Investigated by KPK** sentenced to 4 years imprisonment (Supreme Court Cassation), payment of IDR 346.82 billion in restitution to the state
3	Waskito Suryodibroto	Directorate General of Forest Production, Ministry of Forestry	With Suwarna issued principle permits for companies	346.82 billion	**Investigated by KPK** sentenced to 2.5 years imprisonment
4	UU Aliyuddin	Head of Forestry and Plantation Office of East Kalimantan	With Suwarna issued principle permits for companies (licensing phase)	346.82 billion	**Investigated by KPK** sentenced to 4 years imprisonment
5	Robian	Head of Forestry Office of East Kalimantan	With Suwarna issued principle permits for companies (extension phase); no collection of forest taxes	346.82 billion	**Investigated by KPK** sentenced to 4 years imprisonment

6	H. Tengku Azmun Jaafar	Regent of Pelalawan, Riau	Issued permits for 15 logging companies from December 2002 to January 2003; in fact, the companies have no competence in managing forest	12.3 billion	**Investigated by KPK** sentenced to 11 years imprisonment (Supreme Court Cassation), payment of IDR 500 million in fine, payment of IDR 12.3 billion in restitution to the state
7	Burhanuddin Husin	Head of Forestry Office of Riau Province in 2005-2006; Regent of Kampar, Riau	Issued forest concession for some companies in Kampar District		**Investigated by KPK** Determined as suspect Note: unknown progress
8	Arwin AS	Siak Regent	Issued forest concession to several companies in Siak between 2001 and 2003		**Investigated by KPK** determined as suspect since August 2009 Note: unknown progress
9	Asral Rachman	Head of Forestry Office of Riau Province in 2004-2005	Case related to Mr H. Tengku Azmun Jaafar		**Investigated by KPK** Determined as suspect; arrested on 10 February 2010
10	Syuhada Tasman	Head of Forestry Office of Riau Province in 2003-2004	Case related to Mr H. Tengku Azmun Jaafar		**Investigated by KPK** Determined as suspect Note: unknown progress
11	Adelin Lis	General and Financial Director of Keang Nam Development Indonesia, Inc.	Harvested forest illegally, not based on Annual Work Plan (Rencana Kerja Tahunan, or RKT)	119.802 billion	**Investigated by police** sentenced to 10 years imprisonment (Supreme Court Cassation), payment of IDR 119,802 billion in restitution to the state, payment of IDR 1 billion fine Note: fled abroad to escape prosecution
12	GR	Staff in Forestry Office of Kotim	Issued fake timber transportation documents	2.12 billion	**Investigated by police**

Paper VI

Addressing Corruption in the Environmental Sector: How the United Nations Convention against Corruption Provides a Basis for Action

by Thi Thuy Van Dinh[1]

Abstract: *Corruption in the environmental sector can have a devastating impact on the environment, state economy, and the society. Corrupt practices are recognised in many sectors, such as illicit trafficking in protected wildlife, extractive industries, forestry management, land tenure, hazardous and other waste management, and illegal fisheries. The United Nations Convention against Corruption (UNCAC) can be an effective tool to prevent and combat corruption in the environmental sector at the national, regional and international levels. This paper examines the possible use of its most relevant provisions in the environmental sector, stressing the need to assess corruption risks in all environmental programmes in order to develop adequate anti-corruption policies and measures.*

Introduction: General assessment of corruption risks in the environmental sector

The environmental sector is highly vulnerable to corruption risks. The potential for high profits from illegal trafficking in natural resources and related activities provides strong motivation for engaging in bribery. For example, in the illegal market of endangered species, an endangered green sea turtle costs about US$50 to $100 in local markets in Asia, but may reach US$20,000 elsewhere. The price of raw ivory increased considerably from US$100 per kilogram in the late 1990s to US$1,800 in 2010 (Straziuso, Casey and Foreman, 2010), making illegal poaching and trafficking increasingly profitable. Illegal dumping of waste can save the money to be spent recycling material or outsourcing waste management; it is estimated that the savings from illegal waste management can be up to 400 per cent (Massari and Monzini, 2004). Corruption among national leaders or senior administrative officials can result in their agreement to terms in international agreements that enrich these individuals but which are disadvantageous to the country as a whole (Chêne, 2007). In many developing countries, because of the limited capacity of national technology and funding, mining concessions may be given to foreign consortia, creating a risk of high corruption among senior politicians and officials. Mining activities led by national companies are also prone to corruption.

Several characteristics of corruption can be observed in the environmental sector. With regard to applicable laws, corrupt behaviours in this sector often imply a violation of both the anti-corruption and environmental laws. A violation of domestic environmental law occurs in cases of illegal exploitation or exploitation exceeding the quota granted. In common with corruption in other sectors, both the bribers and the acceptors of bribes are motivated by expectations of personal benefit, which may not necessarily be money. Common offences include passive and

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Selected literature on the subject (see References): Rajivan, ed., 2008; Welsch, 2003; Winbourne, 2002.

[3] Order of 23 September 2011 of the Supreme Court of India stated: "The Report of CEC (Central Empowered Committee) shows that serious illegalities have taken place in respect of mining lease No. 2434 of M/s. Associated Mining Company ('M/s. AMC' for short). The Report shows serious illegalities having taken place in respect of said mining lease by way of illegal grant of renewal of mining lease; the existing locations of the boundary pillars being completely different from the sanctioned lease sketch and quantity of iron ore shown to have been produced and dispatched from the mining lease being far in excess of the quantity that could have been physically produced and dispatched from the mining lease area." Available from http://supremecourtofindia.nic.in/outtoday/sc736610_23092011.pdf.

active bribery, fraud, and embezzlement of public property, trading in influence, abuse of functions, conflicts of interests, favouritism, money laundering and illicit enrichment. Corruption can occur at all stages of a process of exploitation of natural and other resources—before, during and after—as follows:

(a) Corruption risks prior to an operation: This type of corruption is often committed before the licensing stage. For example, in a simple process like determining land tenure, officials may be bribed so that certain entitlement is given to the landowner. When an operation requires a public procurement, there is a real risk of corruption (bribery, grand corruption, abuse of functions, traffic of influence, etc.) to influence the choice of contractor. Individuals who apply for licences of exploitation of natural or other resources may bribe officials in order to obtain the licences unlawfully. Petty corruption may also occur when individuals are asked to bribe public officials to obtain permits to use water resources or forest products.

(b) Corruption risks during an operation: This type of corruption mainly occurs during an environmental inspection or certification process. For instance, a law enforcement officer (e.g., police, inspectors, forest rangers) can be bribed or may seek a bribe so that he or she will not report a violation of environmental rules. Similar examples can be found in the fields of illegal logging, IUU (illegal, unreported and unregulated) fishing, illegal mining, installations that produce dangerous substances threatening public health (for example, classified installations under the framework of European Union Seveso Directives), and hazardous and other waste management. In many countries, relevant sites are often in remote locations where government structures are weak, undermining respect for the rule of law.

(c) Corruption risks after an operation: Once the resources are extracted from the site, the perpetrator has to organize their storage or transport to the place where they will be processed or consumed, as in the case of illegal exportation or importation of animals or plants protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or goods made of parts or derivatives of protected animals or plants (e.g., elephant ivory, rhinoceros horn). Corruption during this phase can happen in the source country, the transit country, or the destination country, and often involves law enforcement officers and high-ranking officials.

In general, in the context of the exploitation of natural and other resources, corruption risks are high in resource-rich countries. However, resource scarcity can also stimulate corruption because the value of the resources tends to be boosted in the black market.

Corruption in the environmental sector can have a devastating social, environmental, cultural and economic impact.[4] For example, illegal exploitation and over-harvesting cause loss of biodiversity and mineral resources as well as ecosystem degradation, and threaten food security of local communities. Waste dumping causes soil, water and air pollution, potentially harming the environment and human health. In addition to the loss of assets, governments may also lose considerable revenue because taxes were not collected on illegally harvested resources. According to the World Bank, lost revenue through illegal logging alone costs governments between US$10 and $15 billion annually (Contreras-Hermosilla, 2002). Such economic costs always run in parallel with social and environmental costs, which are presumably immense. In sum, corruption jeopardizes the fair distribution of wealth arising from natural resources of the country, and the equitable use of resources among individuals. Furthermore, state security might be threatened when illegal activities are linked to organized crime and corruption. For instance, the illegal trafficking of protected wildlife and forest products, such as ivory, causes huge challenges related to border controls in many parts of the world.[5]

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[4] Examples of sectoral research (see References): Campos and Pradhan, eds., 2007; Contreras-Hermosilla, 2000; Gillies, 2010; Transparency International, 2008; Stürmer, 2010; Standing, 2008; Dorn, Van Daele and van der Beken, 2007.

[5] Illegal ivory has been seized everywhere in the world, as demonstrated by recent seizures: In mid-August 2011, Tanzanian police intercepted 1,041 tusks hidden in sacks of dried sardines at Zanzibar port. On 29 August 2011, Hong Kong Customs staff seized 794 tusks from a shipping container arriving by way of Malaysia, and said to be worth $13 million. Malaysia seized in total 1,764 tusks over three incidents in September 2011, including one en route to China from Tanzania and one from the United Arab Emirates.

While corruption cases have been recorded in the environmental sector,[6] prosecutions seem to be either scarce or not in proportion to the number of allegations and the multi-faceted consequences of the corrupt practices.[7] For example, according to the Last Great Ape Association (LAGA) in Cameroon—the first law enforcement non-governmental organization in Africa that works closely with governments to bring cases for investigation and prosecution—attempted bribery is documented in 85 per cent of its field arrest operations, and 80 per cent of all court cases within the legal system.[8]

To address corruption in the environmental sector, it is crucial that states ensure implementation and monitoring of both environmental and anti-corruption laws. From the perspective of anti-corruption measures, the UNCAC—the principal international instrument to combat corruption—has broad applicability. Signed and entered into force since 2005, UNCAC has worldwide influence: it has 155 States Parties as of November 2011.[9] Several regional anti-corruption instruments also aim to strengthen state capacity, thus constituting useful tools to prevent and combat corruption in the environmental sector.[10] However, this paper only examines the usefulness of UNCAC provisions for the environmental sector.

Because of its universal nature and comprehensive coverage, UNCAC can play a key role in this field with regard to its four pillars: prevention (chapter II), criminalization and law enforcement (chapter III), international cooperation (chapter IV) and asset recovery (chapter V). States Parties to UNCAC have the obligation to implement the Convention. States that have not yet ratified or accepted UNCAC may also make use of its provisions.[11]

Implementing chapter II of UNCAC in the environmental sector: The need to integrate anti-corruption preventive measures into environmental legislation

This section examines the usefulness of specific provisions of chapter II of UNCAC on prevention when applied in the context of corruption in the environmental sector. Several innovative approaches will be highlighted below with a view to integrating preventive measures into environmental legislation.

Provisions of chapter II of UNCAC can be used to prevent corruption in the environment. One of the most relevant provisions is article 5, in particular paragraph 1, which requires states to "develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability." Applied to the environmental sector, a general assessment of corruption risks in the sector may be necessary in order to develop, with all stakeholders, an adequate anti-corruption policy. Specific assessment might be conducted in sectors known to be vulnerable to corruption when policy-makers target sectoral enforcement officers and stakeholders. Legislation, procedures and law enforcement can be assessed with a view to reforming the legal framework to better prevent misconduct.

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[6] For example, in the oil sector, in the famous case known as "Elf-Aquitaine", which was brought to French courts during 2002–2004, 37 defendants were tried for illegally siphoning off US$350 million in company funds between 1989 and 1993. Much of this money was paid out in royalties to politicians in Angola, Cameroon, Congo-Brazzaville and Gabon. Eleven people were convicted of bribery, embezzlement, diversion of property, and participation in corruption offences. In particular, three key executives of the company were jailed for up to five years.

[7] In Indonesia, in 2007, the Environmental Investigation Agency (EIA) reported that timber barons and their protectors in the police and military remain unpunished despite overwhelming evidence of corruption and timber smuggling. See EIA (2007). The thousand headed snake, 28 March. Available from http://www.eia-international.org/thousand-headed-snake.

[8] See LAGA (2007). LAGA and the fight against corruption. Available from http://www.laga-enforcement.org/Corruption/tabid/180/Default.aspx.

[9] UNCAC was adopted by the General Assembly of the United Nations Organization (resolution 57/169 of 18 December 2002). For information on the Convention, visit its website: http://www.unodc.org/unodc/en/treaties/CAC/index.html.

[10] Such as the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD); the 2003 African Union Convention on Preventing and Combating Corruption; the 2001 Southern African Development Community Protocol against Corruption; the 1996 Inter-American Convention against Corruption of the Organization of American States; the 1999 Criminal Law Convention on Corruption and the 1999 Civil Law Convention on Corruption of the Council of Europe; and the 1998 Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union.

[11] For a comprehensive guide to UNCAC implementation, see UNODC (2006). Legislative Guide for the Implementation of the United Nations Convention against Corruption. United Nations, New York. See also the TRACK (Tools and Resources of Anti-Corruption Knowledge) portal: http://www.track.unodc.org/Pages/home.aspx.

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 9 on public procurement and management of public finances is particularly important for sectors where the bidding process is used, such as in the case of the natural resources management sector, the extractive industries or the forestry sector. Preventive measures can be envisaged to enhance transparency of the public procurement rules and procedures, as well as the oversight and monitoring by both the administration and civil society. This may include simplification and publishing of information at all stages from planning and procurement to implementation, exploring the use of e-procurement, encouraging and facilitating the work of watchdog stakeholders, etc. In combination with article 12, which recognises the role of the private sector, preconditions might be required for companies participating in bidding, such as the existence and respect of an internal code of conduct against corruption or anti-corruption training regularly offered to staff members. A state might wish to go further by blacklisting a company that was convicted of, or involved in, corruption. When a foreign company intends to participate in a bidding process, the host country might also wish to ensure that the state in which the company is registered has effective anti-corruption legislation criminalizing corruption offences committed abroad.

Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:
   (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
   (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
   (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
   (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

   (a) Procedures for the adoption of the national budget;

   (b) Timely reporting on revenue and expenditure;

   (c) A system of accounting and auditing standards and related oversight;

   (d) Effective and efficient systems of risk management and internal control; and

   (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

Article 12. Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

   (a) Promoting cooperation between law enforcement agencies and relevant private entities;

   (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

   (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

   (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

   (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

   (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

[12] Principle 10 of the Declaration of Rio (1992). The participation of civil society in environmental management and decision-making is considered a key principle of environmental law. The Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, adopted in Aarhus on 25 June 1998, generalizes this principle in international environmental law. Many environmental conventions, as well as domestic legislation, are thus enshrined this principle, making it a general principle of environmental law.

The principle of public participation is recognised not only by UNCAC (art. 13) and many environmental conventions, but also in domestic legislation.[12] In environmental law, this principle includes three pillars: access to information, public participation in decision-making, and access to justice in environmental matters. Although there is little information on how article 13 of UNCAC is implemented in the environmental sector, if one takes into account the existence of this principle in environmental law, article 13 may imply, inter alia, that local communities should be involved in all stages of an extractive project or a forest management project, from its environmental impact assessment to its monitoring and evaluation. The consent of local communities should be clearly expressed in favour of the project before it starts.[13] The participation of civil society should be strengthened with regard to the concession allocation and monitoring process. Enhancing public participation would reduce corruption risks in the management of environmental projects, and may also reduce the risks of pollution and other negative consequences. Indeed, many environmental projects have been known to leave behind disastrous consequences for local communities, including air, soil and water pollution, and contamination of the site by dangerous chemicals at the end of the concession.[14] In extreme situations, when the polluted site was not rehabilitated by the company, local communities may be obliged to relocate. Such situations could be avoided or better managed with the early involvement of local communities. Some countries (e.g., Brazil and India) allow for class action mechanisms, by which communities can challenge government decisions by bringing lawsuits concerning environmental damage that has had a negative impact on them. Similar measures could be envisaged when there is suspicion of corrupt behaviour. For example, a project in which managers do not respect transparency and accountability rules at the beginning could be suspended by a judge or a relevant anti-corruption authority.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:
   (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
   (b) Ensuring that the public has effective access to information;
   (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
   (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
      (i) For respect of the rights or reputations of others;
      (ii) For the protection of national security or ordre public or of public health or morals.

[13] Some countries, including Australia, Canada, the Philippines and South Africa, have accorded increasing recognition to the historical land or territorial claims of local or indigenous communities. In this situation, the communities should be able to approve or reject a project, and they should receive an equitable share of benefits.

[14] For example, according to Greenpeace, an active environmental NGO, the uranium mines in Niger—exploited by the French state-owned company Areva—are still contaminated after rehabilitation operations, affecting some 80,000 people (see http://ipsnews.net/news.asp?idnews=50999). To address this problem, at the World Social Forum held in Nairobi in January 2007, environmental NGOs called on governments to guarantee the participation of local communities at all stages of extractive projects, including granting licenses with their consent, allowing for the renegotiation of contracts that were not in the best interest of affected communities, and stopping the harassment of individuals advocating against corruption, human rights violations and the environmental destruction associated with natural resources exploitation. They also recommended mandatory independent monitoring of mining projects by civil society. See CIDSE (2007). Prospecting for solutions—Recommendations by members of civil society organisations to governments, companies, international financial institutions and the United Nations concerning the impacts of oil, mining and logging on development, 23 January. Available from http://www.cidse.org/uploadedFiles/Publications/Publication_repository/cidse_WSF_recommendations_extractives_jan07_EN.pdf.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

An effective preventive policy must ensure transparency and accountability (art. 9 of UNCAC) in the decision-making process of environmental projects, as well as in their management. For example, there should be clear requirements for politicians, leaders and decision-makers to make a declaration of their interests at the beginning of their mandate, or spontaneously when they are to be involved in a project with possible conflicts of interest.

In accordance with article 6 of UNCAC, anti-corruption oversight bodies should be established. These institutions should contribute to the development or review of policy guidelines, in cooperation with environmental agencies and civil society. They may be tasked to conduct, routinely or as needed, investigations in vulnerable environmental sectors to prevent and detect corruption. For example, in Ghana, the Serious Fraud Office and Bureau of National Investigation have occasionally investigated suspected cases of corruption within the Forestry Commission (Lawson and MacFaul, 2010). In the same vein, faced with repetitive corruption allegations in several mining operations, in 2010, the Government of India appointed a Commission of Inquiry to investigate large-scale mining of iron ore and manganese ore in several states. A report was expected to be submitted to the Government by the Commission within 18 months (Government of India, 2011). When both a corruption oversight agency and an environmental protection body exist, they should cooperate closely in assessing corruption risks and in developing codes of conduct for public officials in vulnerable sectors (art. 8 of UNCAC), or even develop a common strategy to prevent and combat corruption in the environmental sector.

An effective prevention policy should include activities aimed at raising awareness of the consequences of corrupt practices in the environmental sector among the general public as well as other stakeholders, non-governmental organizations, law enforcement officers, investigators, prosecutors, judges, consumers and the private sector.

Implementing chapter III of UNCAC in the environmental sector: Criminalizing corruption offences and enforcing the laws

The law enforcement pillar is no less important than the prevention one. A comprehensive and severe criminal justice system has not only a deterrent but also a preventive effect. Implementing chapter III of UNCAC on criminalization and law enforcement in the environmental sector is crucial to eradicating corruption. This chapter has two sets of provisions: the first set is related to criminalization (arts. 15 to 27), and the second to law enforcement (arts. 28 to 44). All of these provisions are important because they comprehensively address all aspects of the investigation, prosecution and adjudication of corruption cases.

Offences established in accordance with UNCAC are likely to be committed in the environmental sector: passive and active bribery of national public officials (art. 15), passive and active bribery of foreign public officials and officials of international organizations (art. 16), embezzlement, misappropriation or other diversion of property by a public official (art. 17), trading in influence (art. 18), abuse of functions (art. 19), illicit enrichment (art. 20), bribery in the private sector (art. 21), embezzlement of property in the private sector (art. 22), laundering of proceeds of crime (art. 23), concealment (art. 24), obstruction of justice (art. 25), participation and attempt (art. 27). Such offences can involve the liability of legal persons (art. 26). Since detailed analysis of these provisions can be found elsewhere (UNODC, 2006), only a few provisions will be highlighted below.

Criminalizing bribery of national public officials and of foreign public officials and officials of public international organizations is fundamental in any sector. Relevant provisions of UNCAC allow for punishment of both the briber

(active bribery) and the bribe solicitor (passive bribery) for promising, giving, receiving, soliciting or accepting an undue advantage. Their scope is broad, covering passive and active bribery, directly or indirectly through intermediaries, for the official or another person or entity, in order that the official "act or refrain from acting in the exercise of his official duties" (art. 15), or, in the context of international business, referring to acts "in order to obtain or retain business or another undue advantage in relation to the conduct of international business" (art. 16). Article 2 of UNCAC contains a broad definition of public officials, foreign public officials, and officials of public international organizations to ensure that the entire range of persons is adequately covered under national legislation and measures.

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The anti-corruption legislation may also establish as criminal offences trading in influence and abuse of functions, as provided by articles 18 and 19 of UNCAC. Although these provisions are not mandatory, criminalizing such behaviours would allow the judge, in particular cases involving political corruption, to draw from the available types of offences. These offences are likely to occur in the environmental sector, especially in relation to land tenure, natural resource exploitation permits and concessions. Similarly, embezzlement or misappropriation of any property entrusted to a public official (art. 17) may happen not only in illegal harvesting, but also in the context of seizure or confiscation of illegal products. The disappearance of 6000 kg of ivory seized by customs officials in the Philippines in 2006 is a sad example (Reeve, 2007).[15] In 2005, the Solomon Islands Minister for Fisheries and Marine Resources admitted that a number of permanent secretaries were dismissed by the

[15] In September 2005, the Philippines seized 6000 kg of ivory shipped from Tanzania but believed to have originated from Zambia. When officers of Tanzania and Zambia arrived in Manila to start their investigation, the ivory had been stolen from the custody of the Bureau of Customs (see http://allafrica.com/stories/200607140812.html). The Department of Environment and Natural Resources filed criminal charges against 21 people, including 13 customs agents. The outcome of the case is not known, but the ivory was not recovered. More details of the case are in Reeve, 2007 (see References).

government because of "the siphoning of licence fees to pay individuals", a practice that caused the country a loss of US$4 million due to misappropriation, diversion of money, offsetting licence fee income and understatement of reported actuals (Tsamenyi and Hanich, 2008).

Given that companies have been key stakeholders in the management of natural resources, an effective anti-corruption law must provide for the liability of legal persons with such dissuasive penalties, including administrative, civil or criminal penalties, in accordance with article 26 of UNCAC. Indeed, the 2005 report of the Solomon Islands Minister for Fisheries and Marine Resources also highlighted a systemic corruption in licensing of fishing activities, particularly by locally-based foreign fishing companies (Tsamenyi and Hanich, 2008). Implementation of article 26 will help to address such problems.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 26. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Revenues obtained through corruption are often laundered in the country or abroad by the perpetrator. Articles 14 and 23 of UNCAC aim to address this issue through a comprehensive range of measures and mechanisms. Article 14 describes measures that can be taken by states to prevent money laundering by, inter alia, enhancing scrutiny of actions of banks and other financial agencies (know-your-customer principle, suspicious transaction report). Laundering proceeds of crime shall be made a criminal offence in accordance with article 23.

Illicit enrichment (art. 20 of UNCAC) might be a useful offence to pursue in certain resource-rich states. There have been cases where high-ranking officials and politicians have been found to have considerable assets obtained through corrupt practices in extractive industries (gold, gems, petroleum, etc.). Article 20 allows for reversal of the burden of proof, facilitating the confiscation of illegal assets or their recovery (Muzila et al., 2011).

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Other provisions of UNCAC may also be useful in the environmental sector; for example, article 25 on obstruction of justice, and articles 32 and 33 on the protection of witnesses, experts, victims, and reporting persons. It is acknowledged that corruption is difficult to detect, prove and bring to court. Thus, individuals who cooperate with relevant authorities should be protected against potential intimidation or retaliation. This is particularly true in the environmental sector, where the word "baron" is often used by the media and the population to designate a person who, because of his power and his often-illegal assets, tends to rule the system.[16]

In many places, anticipating corruption offences and instituting severe penalties is not sufficient to tackle corruption because the real problem is within enforcement. According to Lawson and MacFaul (2010), in the context of illegal logging, in many countries anti-corruption laws lack enforcement. Few cases are brought to court, and even the judges sometimes are not familiar with relevant regulations (Lawson and MacFaul, 2010). UNCAC contains provisions that aim to strengthen the capacity of specialized authorities (art. 36), the cooperation between individuals and law enforcement authorities (art. 37), the cooperation between national authorities (art. 38), and the cooperation between national authorities and the private sector (art. 39). Given the multi-faceted impact of corruption in the environmental sector, awareness-raising activities for the judiciary may be necessary to ensure that dissuasive and proportionate penalties are ordered. Furthermore, enforcement officers need to have sufficient powers to apprehend, detain and prosecute alleged offenders. In countries where illegal deforestation and trafficking is endemic, forestry officers even risk their lives in daily operations, being attacked by poachers, traffickers and illegal loggers. Their capacity is also weakened when small teams must cover large areas of difficult terrain, and they lack surveillance technology and other specialized equipment.

[16] Several pertinent titles can be found in the news, for example: "Timber Baron Cleared of Illegal Logging Charge" about an Indonesian industrial man, Mr Adelin Lis, who was cleared of charges following intervention by the Forestry Minister in 2007 (see ITTO Tropical Timber, 2007, in References); and "India Charges Mining Baron With Fraud", about Mr Janardhana Reddy, who was arrested in September 2011 for fraud (see Kuma and Yardley, 2011, in References).

Strengthening law enforcement cooperation in the environmental sector

UNCAC provides a framework that facilitates international cooperation among States Parties with regard to extradition, mutual legal assistance, and law enforcement. Given that extradition (art. 44) and mutual legal assistance (art. 46) are part of the traditional content of international law, this section will focus on the importance of cooperation in law enforcement. Indeed, law enforcement cooperation is likely of great use in tackling corruption in the environmental sector. Products illegally exploited or processed can be seized and confiscated if there is a clear timeline and effective cooperation between police forces and customs offices.

Illegal trafficking of wildlife and timber has been increasingly operated by criminal and organized groups (Liddick, 2007; Zimmerman, 2003). An effective cooperation mechanism and comprehensive laws would facilitate seizure of the criminal products, securing the evidence for potential prosecutions, and possibly identifying the perpetrators or the criminal networks. It is therefore necessary that states reinforce their confiscation legislation. In fact, in some cases, the lack of a cooperation framework, the weakness of national enforcement officers, and the lack of a legal framework may result in regrettable outcomes. For example, in August 2003, following a request from Indonesian counterparts, Viet Nam customs seized a barge of illegally exported Indonesian logs—precisely 2,034 m3 of bengkirai (yellow balau) worth at least half a million dollars—at Hai Phong Port, but then had to release it to the owner without charge because there was no legal basis for seizure (Lawson, 2005).

There are several mechanisms aimed at strengthening law enforcement cooperation mainly in the field of natural resources. In the forestry sector, Forest Law Enforcement, Governance and Trade (FLEGT), a programme initiated first by the European Union, was quickly adapted to other parts of the world in the form of regional initiatives.[17] The CITES and INTERPOL also have a joint initiative to train officers involved in the monitoring of wildlife trafficking. Training for forest and wildlife guards and customs officers has been regularly organized within a multilateral or bilateral cooperation framework. Under the framework of the project called ARREST (Asia's Regional Response to Endangered Species Trafficking), in September 2011, 50 rangers from Bhutan, India, Indonesia, Lao PDR and Thailand received joint training in navigation, patrolling, first aid, reconnaissance, raids, takedowns, arrest, search, crime scene processing and other skills necessary for forest rangers.[18] The anti-corruption portfolio should be integral to such mechanisms and initiatives.

Experience has shown that special investigative techniques (art. 50 of UNCAC), such as surveillance, wiretapping and undercover operations, can reveal the actual contents of a container, in particular in the context of illegal trafficking and trading of species protected under CITES (such as ivory, tiger bones, rhinoceros horn, etc.). Similarly, joint investigations (art. 49 of UNCAC) between countries, whether they are source, transit or destination countries for international wildlife trafficking have proved effective. For example, the ASEAN-WEN (ASEAN Wildlife Enforcement Network)—a network launched in 2005 involving police, customs and environmental agencies of 10 ASEAN countries (Association of Southeast Asian Nations)—reported that from April to June 2010, law enforcement authorities of the region seized and recovered over 7.1 metric tons of wildlife (live animals, dead animals, animal parts and derivatives), valued at US$4 million, and also made 45 arrests across six countries.[19] A similar network in South Asia—SAWEN—was formally launched in early 2011 to fight wildlife trafficking.[20]

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[17] For the programme of the European Union, see http://www.euflegt.efi.int/portal/. Other regional initiatives do not cover timber trade, but only enforcement and governance (FLEG): there are FLEG initiatives supported by the World Bank in East Asia, Asia and the Pacific, Africa, Europe and North Asia, and Western Europe and Russia.

[18] See PhuketIndex (2011). Asia's forest rangers trained to boost defenses against poaching and illegal logging, 24 August. Available from http://www.illegal-logging.info/item_single.php?it_id=5799&it=news.

[19] See ASEAN-WEN (2010). Action update, April-June 2010: Law enforcement actions in Southeast Asia to protect threatened flora and fauna. This report and other information available from the ASEAN-WEN website: http://www.asean-wen.org/.

[20] SAWEN involves law enforcement authorities of eight countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The Secretariat is based in Nepal.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50. Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

In this regard, upcoming activities of the ICCWC (International Consortium on Combating Wildlife Crime)—established in St Petersburg in November 2010 among five agencies: the World Bank, INTERPOL, the World Customs Organization, CITES, and UNODC—will be fundamental. The Consortium is expected to better coordinate law enforcement among states affected by illegal wildlife trafficking, notably by establishing controlled delivery units in countries affected by trafficking in wildlife, especially illegal logging.[21]

The establishment of similar cooperation mechanisms at the regional and international levels should be explored in sectors that may be highly prone to corruption. For instance, awareness has been raised on corruption risks in the climate change sector, in particular with regard to the UN-REDD+ programme (United Nations Collaborative Initiative on Reducing Emissions from Deforestation and Forest Degradation).[22] The programme was launched in September 2008 to assist developing countries in preparing and implementing national REDD+ strategies, building on the expertise of three agencies, FAO (Food and Agriculture Organization), UNEP (United Nations

[21] See a recent web-story on the CITES website: CITES (2011). ICCWC begins its work. Available from http://www.cites.org/eng/news/sundry/2011/20110301_ICCWC.shtml.

[22] See http://www.un-redd.org/.

Environmental Programme), and UNDP (United Nations Development Programme). The programme currently has 35 partner countries in Asia and the Pacific, Africa and Latin America. As of October 2011, a budget of US$59.3 million was approved for 14 national programmes. Funding is expected to be granted in national REDD+ programmes, but also through other climate change mitigation and adaptation mechanisms relating to agriculture and fisheries, given the exponential cost of this factor (UNDP, 2007; World Bank, 2010).[23] Cooperation and coordination of actions of states in the climate change sector will be crucial to ensure transparency, accountability and the effective use of climate adaptation funding.

Enhancing cooperation in the context of asset recovery

Chapter V of UNCAC requires states to cooperate effectively to confiscate the proceeds of crime and return such assets to the source country, and thus it can be effectively used in the environmental sector. This section focuses on the innovative nature of a few relevant provisions that require states to cooperate effectively to freeze the proceeds and return assets to the owner/victim state. Other provisions of chapter V aim at enhancing cooperation in the detection of proceeds of crime, and also in investigation and confiscation.

Grand corruption cases in the environmental sector have been revealed, involving huge amounts obtained by embezzlement of revenue from natural resources, minerals, gold, diamonds, petroleum, etc. Examples include: the case of Charles Taylor, former president of Liberia, who obtained assets from diamonds; the case of Nigerian kleptocrats whose assets were estimated up to US$100 billion; the case of Jean-Claude Duvalier, former president of Haiti, with US$500 million; and the case of Mobutu Sese Seko, former president of the Democratic Republic of Congo, with US$5 billion. The World Bank estimated that up to US$1.6 trillion of criminal proceeds cross borders every year (World Bank, 2007). Of this amount, much, if not all, is likely to have come directly from natural and other resources. It is thus only fair that assets should be returned to the victim country to benefit its population.

With the innovative content of chapter V, UNCAC sets the course for effective confiscation and asset recovery. Articles 53 requires States Parties to take necessary measures to recover the proceeds by, inter alia, accepting civil action of a victim state to establish title to or ownership of the criminal property, allowing domestic courts to pay compensation or damages to the victim state, and enabling domestic courts to recognize another state's claim as a legitimate owner in the context of confiscation of criminal proceeds.

Article 53. Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

[23] In its Human Development Report 2007/2008, UNDP estimated that US$86 billion would be needed in 2015 to adapt to climate change. In 2010, the World Bank estimated the cost of adaptation would be yearly in the range of US$70 to $100 billion during the period 2010–2050.

Articles 54 requires States Parties to take necessary measures to support a confiscation order issued by a foreign court, to enable confiscation of assets of foreign origin by adjudication of an offence of money laundering, to consider allowing non-conviction based forfeiture, but also to enable the seizure of criminal assets which would likely be ordered to be confiscated by a foreign court.

Article 57 requires States Parties to facilitate the return of confiscated assets in the case of embezzlement of public funds or laundering of embezzled public funds, and in other cases when the victim state can reasonably establish its prior ownership of confiscated assets.

Article 57. Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.
2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.
3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:
   (a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
   (b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;
   (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.
4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.
5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

These measures likely require states to reform their confiscation legislation, criminal procedure codes, and mutual legal assistance legislation. For example, Switzerland adopted the Return of Illicit Assets Act in October 2010 to have a legal framework to act when the mutual legal assistance proceedings failed due to the origin country being unable or unwilling to take legal action against a politically exposed person or his associates. This law creates a subsidiary solution to legal assistance: seizure of assets in the context of mutual legal assistance

instigated at the request of the country of origin. A freezing order decided by the Swiss Council is transmitted to the judge for execution, and the holder of frozen assets has to demonstrate their legal origin or else assets will be confiscated and returned to the origin state. This law was expected to be used in the Duvalier case where mutual legal assistance failed (Gossin, 2010).

Conclusion

The causes of corruption in the environmental sector include typical causes of corruption: insufficient legislation, weak enforcement, weak democracy, lack of transparency and accountability, wide authority given to public officials, absence of effective checks and balances, and perverse incentives.

To address corruption effectively, general assessment of corruption risks should be conducted to identify the causes, the drivers and the perpetrators, as well as the effect of corruption on the economy, society and environment. Such documentation will contribute to building anti-corruption policies and measures with involvement of all stakeholders, including civil society and the private sector. Depending on their needs, some countries may wish to develop anti-corruption action plans to address vulnerabilities in the environmental sector. In other words, to prevent and fight corruption in the environmental sector, anti-corruption policies and measures should be integrated into the environmental sector. Those drafting environmental legislation should take into account the reality of corruption in the country so that the law does not obstruct efforts to reduce illegal activities. Several approaches have been explored in this paper, particularly with regard to the implementation of anti-corruption preventive measures in the environmental sector, and the need to strengthen law enforcement capacity at the domestic, regional and international levels.

At the same time, given that the integration principle has been recognised as a key to sustainable development, environmental protection should be integrated into corruption policy and legislation. This approach might be unusual because environmental lawyers have been focused on the integration of environmental protection in the economic and social sectors. However, there seem to be ways to consider applying this principle in corruption policy. For instance, anti-corruption bodies should cooperate with environmental authorities in policy development and monitoring activities. When a perpetrator, by his corrupt acts, causes environmental damage, penalties should be sufficiently severe to dissuade others from causing similar harm.

Corruption in the environmental sector is difficult to combat because of the cross-cutting nature of the issues. This requires strong commitment, effective cooperation and innovative solutions on the part of all stakeholders to put in place effective prevention, enforcement, and international cooperation measures. UNCAC provides a strong basis for states that wish to stop corruption in the environmental sector.

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Conclusion

The main conclusions that could be drawn from the various papers presented and the subsequent discussions are as follows:

1. Corruption facilitates environmental crimes in areas related to oil exploration, forestry, mining, fisheries, hazardous waste management and wildlife trade.

2. Corruption is due to specific sectoral governance weaknesses or, in other words, weak regulations and enforcement relating to sectors including oil, forestry, mining, etc. In addition there is also evidence of general weakness in the criminal justice system—including the police, prosecution and the judiciary—which is an impediment to breaking the nexus between corruption and environmental crime.

3. There is a need for an "integrated approach" with enhanced cooperation among non-governmental organizations, the private sector and the public sector, in order to tackle the negative effects of corruption on the environment. The solution is not with governments alone. Governments needs to work closely with all other stakeholders.

4. The United Nations Convention against Corruption, with its comprehensive focus on prevention of corruption, effective law enforcement, international cooperation and asset recovery provisions, could supplement treaties in this field of work, such as the Basel Convention on hazardous wastes, the Bamako Convention hazardous wastes, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

5. There is a need for states to integrate anti-corruption strategies, including transparency and accountability, into environment-related policies and legislation. Currently we see very limited inclusion of anti-corruption provisions in the legal and policy architecture relating to the environment.

ANNEX I

Programme Schedule

Session I: Sectoral Views on Corruption and Environment (3 p.m.–4.30 p.m.)

Welcome and Introduction: **John Sandage, Director, Division of Treaty Affairs, UNODC**

Chair: John Sandage, Director, Division of Treaty Affairs, UNODC

- Grand corruption in the regulation of oil and the UNCAC. **Tina Søreide,** *CMI expert, Norway*
- Transboundary movements of hazardous wastes and corruption: the special case of e-waste in West Africa. **Tatiana Terekhova**, *Programme Officer, UNEP Geneva Secretariat of the Basel Convention*
- Corruption, illegal wildlife trafficking and ICCWC. **Marceil Yeater**, *Chief, Legal Affairs & Trade Policy, CITES, Geneva*

Discussion

Tea Break 4.30–4.45 p.m.

Session II: Countering Corruption in the Environment Sector (4.45–6 p.m.)

Chair: Ajit Joy, Country Manager, UNODC Indonesia

- Indonesia's national strategy to combat illegal logging. **Trio Santoso**, *Directorate of Investigation and Forest Protection, Ministry of Forestry, Indonesia*
- Corruption and forest crimes—Indonesia's case study. **Donal Fariz**, *Researcher, Indonesia Corruption Watch, Indonesia*
- Addressing corruption in the environment: How the United Nations Convention against Corruption could be an effective tool. **Thi Thuy Van Dinh**, *Associate Crime Prevention and Criminal Justice Officer, UNODC Headquarters, Vienna*

Discussion

Conclusion by Chair

ANNEX II

Biographies of Speakers

Thi Thuy Van Dinh

Thi Thuy Van Dinh *holds a PhD in law from the University of Limoges, France. Before joining UNODC Corruption and Economic Crime Branch, she was a researcher at the Interdisciplinary Research Centre on Environmental and Planning Law (CRIDEAU) of the University of Limoges. She has published in international environmental law and contributed to several international conferences in the same field.*

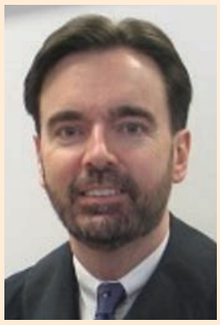
Donal Fariz

Donal Fariz *is an alumnus of the Faculty of Law of the University of Andalas, Padang, Indonesia. He is currently working as a researcher at Indonesia Corruption Watch (ICW), where his scope of work covers the ways of monitoring the performance of law enforcement agencies, such as the Corruption Eradication Commission, the National Police and Attorney General, in the eradication of corruption. Recently, he has also focused on the various problems associated with illegal logging, such as the existence of criminal syndicates in this field and the massive losses of tropical forest.*

Ajit Joy

Ajit Joy *is the Country Manager of the United Nations Office on Drugs and Crime, Indonesia. He has been instrumental in developing the environmental crime work for UNODC and has been closely associated with work relating to REDD and forest law enforcement and governance in Indonesia and in the ASEAN region. Ajit has earlier worked in the Indian Police Service and has extensive experience in criminal investigations and anti-corruption. He is also a lawyer by background.*

John Sandage



John B. Sandage *is Director of the Division for Treaty Affairs, UNODC. In January 2008 he joined the division as Deputy Director, as well as Chief of the Organized Crime and Illicit Trafficking Branch. Previously Mr Sandage served in the U.S. Department of State in a variety of legal and policy roles for over 15 years, serving in positions focused on Middle Eastern Affairs, Western Hemisphere Affairs, United Nations Affairs, Law Enforcement and Counter-Narcotics Affairs, and Counter-Terrorism and Sanctions Policy. Before his service with the U.S. Department of State, Mr Sandage was in private practice for six years. Mr Sandage holds a J.D. degree from Yale Law School.*

Trio Santoso

***Trio Santoso** is the Deputy Director of the Program and Evaluation Directorate of Investigation and Forest Protection, Ministry of Forestry of the Republic of Indonesia. He holds a master's degree in Environmental Management and Development from the Australian National University (1994) and a bachelor's degree in Forestry, from Bogor Agriculture University, Indonesia (1983).*

Tina Søreide

***Tina Søreide** is a Senior Researcher at Chr. Michelsen Institute (CMI) in Bergen, Norway. She holds a PhD in economics from the Norwegian School of Economics and Business Administration (NHH). Her research interests include various challenges associated with corruption as well as the political economy of sector governance. She teaches Political Economy in the Department of Economics, at the University of Bergen. From 2008 to 2010, she was on leave from CMI to work on the Governance and Anti-Corruption (GAC) agenda at the World Bank, Washington, D.C. Quite recently she has been co-editing with Susan Rose-Ackerman the International Handbook on the Economics of Corruption, Volume 2, released in October 2011.*

Tatiana Terekhova

***Tatiana Terekhova** has a background in international environmental law. She has been working in UNITAR and UNEP on capacity building in developing countries and countries with economies in transition, focusing on chemicals and waste management, for over eight years. More recently, she joined the Secretariat of the Basel Convention to coordinate the e-waste (electronic and electrical waste) Africa project.*

Marceil Yeater

***Marceil Yeater** is Chief of Legal Affairs and Trade Policy for the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. She has worked for the Secretariat since February 2000. From 1991 to 2000, she worked for UNEP chemicals programme in Geneva, and thereafter for UNEP environmental law programme in Nairobi. Prior to joining the United Nations, she was a trial attorney with the Environmental Crimes Section of the U.S. Department of Justice and, previously, a Deputy Attorney General for the U.S. Territory of Guam.*