

Dette er den første av to artikler om temaet «grønn korrupsjon». I dette nummeret har Miljøkrim snakket med Basel Institute of Governance, og artikkelen tar for seg grønn korrupsjon internasjonalt. Intervjuet publiseres i sitt originalformat på engelsk. I neste nummer vil grønn korrupsjon i Norge bli et tema.

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Green corruption

The Basel Institute of Governance has a program called Green Corruption, which is an interesting term. Can you tell us about how you use it?

We chose this term to highlight a special kind of corruption: corruption that facilitates environmental crime or makes environmental crime lucrative. We are using the term quite broadly, as a social science notion and not a legal term. It is not limited to bribery, but includes all forms of corruption.

We also look at the link between weak governance and environmental crime. Money

Basel Institute of Governance

Established in 2003, the Basel Institute on Governance is a not-for-profit Swiss foundation dedicated to working with public and private partners around the world to prevent and combat corruption. The Institute works through different initiatives such as asset recovery through the International Centre for Asset Recovery (ICAR) and Collective Action. The institute's core funding comes from bilateral governmental (development aid) agencies including Norad, but also corporate funding such as the Siemens Integrity Initiative, which is a significant contributor to the Collective Action work.

laundering, which helps making environmental crime lucrative, is another important aspect. So green corruption covers those three elements: corruption in all its forms, weak governance and money laundering.





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Statement regarding the mentioning of the Governor of Sarawak

"The sitting Governor of Sarawak states that the allegations presented by representatives of the Basel Institute of Governance in the "Miljøkrim" article on "Green corruption" in edition 2/2021, concerning corruption and illegal logging in Borneo are false, unfounded and defamatory.

The Malaysian Anti-corruption commission (MACC) has investigated and rejected such allegations. A Canadian court has ruled that the allegations presented by the Bruno Manser Foundation were unfounded, according to a lawyer of the daughter of Mr Taib Mahmud.

Quotes given by third parties in our publications do not represent the official views of Økokrim."

Can you give some examples of cases of green corruption?

Yes, there are several.

One example was brought to light by the Bruno Manser Foundation, an NGO that strives for the conservation of the tropical rainforests and for the respect of the rights of the rainforest dwellers in Malaysia. The allegations were that the governor of Sarawak on Borneo allowed illegal logging on a vast scale. Half of Borneo was cut down to make room for palm oil plantations. At the same time, a lot of money was transferred to the governor's daughter in Canada, where she was able to create an empire of real estate in Toronto. The governor hit back at the NGO in a civil lawsuit for reparation payments. It is a difficult case, as the NGO has to prove where this governor got the money from. This is one example where you have – allegedly – a direct link between corruption and illegal logging.

Another example is from Suriname in South America. This is a forested country adjoining Guyana and Brazil. The former president, Dési Bouterse, was a convicted drug dealer. He had an eleven-year drug sentence from the Netherlands, but he was nevertheless president of the country. Under his regime, drug cartels were allowed to invest the money that they obtained from drugs into the gold-mining business. They were allowed to chop down tre-

es in national parks and to dispose of mercury into the rivers.

The third example is the beaching of ships and the problems related to where ships end their lifecycle. The risk of corruption is present when the shipping companies need to get a permit by authorities in India, Pakistan or Bangladesh in order to be allowed to dismantle the ships at the beaches there. Those permits may be acquired through corruption. There is a very strong corruption link to these situations and

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to shipyards that have next to no environmental or labour protections.

Another example is a money laundering case, the Bengis case. It relates to lobster farming outside Cape Town. Arnold Maurice Bengis, his son David Bengis, Noll, and their co-conspirators engaged in an elaborate scheme to, among other things, harvest illegally large quantities of South and West Coast rock lobster, far in excess of applicable quotas. They would then export the illegally harvested lobster from South Africa to the U.S. The fish harvested was underreported to South African authorities, and

South African fisheries inspectors were bribed in order to help them carry out their illegal harvesting scheme. They also submitted false export documents to South African authorities to conceal their overharvesting. A lot of money was laundered out of South Africa and into the U.S. and various offshore territories. It is one of the examples where you see both sophisticated money laundering and a very basic sort of corruption, i.e. bribing the fishery inspector whilst you are overfishing.

You mentioned that green corruption also addresses the link between weak governance and environmental crime. Can you elaborate on that?

Yes, going into the slightly more abstract connections between corruption and environmental crime, is the fact that corruption also directly undermines government efforts in enforcing environmental crime.

Corruption may undermine the detection, investigation and prosecution of environmental crime. The Basel Institute of Governance is just concluding research in Uganda, Malawi and Peru that looks at the corruption risks in the environmental criminal justice chain. The enforcement of environmental crime often takes place inside wildlife agencies. It means that the internal controls and corruption prevention measures are weaker than in non-wildlife prosecution and law enforcement agencies.

Very direct bribery may be involved already at the time of the seizures themselves and the arrest of the criminals. Bribery may result in intelligence leakages or evidence lockers getting raided or evidence otherwise disappearing. When the cases move into prosecution, we can see collusion between the prosecutors and defense lawyers. Similar risks persist at the sentencing stage: even where the verdict

corruption risks that are not being properly addressed. This is not unique to these three countries.

If we go to the even more abstract end of things, we may talk about policymaking and resource allocation to conservation agencies. We may see the influences of the criminal networks trying to weaken policies at that stage. Adding to this, there are conflicts of interest where, for example, those who benefit from environmental crime are the same politicians making the policies supposed to protect the environment.

// So, if we are wondering why there isn't more enforcement action against environmental criminals, it is really not all that surprising.

What sectors are more prone to green corruption?

It is a struggle to determine which sectors are more prone to corruption. How does one quantify this? In general, the sectors we are focusing on are the wildlife sector, mining, illegal logging and waste trafficking. Fishing is also very interesting.

Regarding fishing: the Basel Institute of Governance has recently started providing assistance looking into the ownership holding structures of trawlers in one of the countries in which we operate. Those ownership structures are quite complex, even for relatively small vessels. The owners offer bribes to law enforcement in order to stop the investigations. Not enough attention is paid yet to these risks.

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has been announced, we have heard of cases of court clerks then falsifying the court documents. You could reduce your sentence by paying the court clerk.

So, if we are wondering why there isn't more enforcement action against environmental criminals, it is really not all that surprising. The entire enforcement chain is riddled with

Mark Pieth, Chairman of the Board at the Basel Institute of Governance

Mark Pieth has been a Professor of Criminal Law and Criminology at the University of Basel, Switzerland since 1993 and is the founder of the Basel Institute of Governance. Pieth has extensive experience, both in the Swiss legal sector and internationally, and has chaired the OECD working group on bribery, facilitated the Wolfsburg AML banking initiative and been involved in international programmes within the UN and FATF (Financial Action Task Force on Money Laundering), to mention a few.

FATF and “Money Laundering from Environmental Crime” report

(from FATF-gafi.org)

The Financial Action Task Force (FATF) is the global standard-setting body for anti-money laundering and counter terrorist financing. Over 200 countries have committed at the highest levels to implementing the FATF Standards.

Strengthening the understanding of money laundering from environmental crimes has been a priority area for the FATF since 2019. In 2020, FATF published a report on the financial flows from the illegal wildlife trade. This new FATF study, “Money Laundering from Environmental Crime” published in 2021, builds on this work and identifies key money laundering risks across illegal logging, illegal mining, land clearing and waste trafficking. The report states that these industries generate tens of billions of dollars in proceeds that each year is laundered back into the global financial system. The key issue is often that law enforcement and environmental agencies, as well as banks, lenders and other financial institutions, do not understand their exposure to this type of financial crime.

What are the corruption issues in waste management?

The interesting aspect of waste trafficking is that the value chain is reversed. Normally, when we talk about environmental crime, the products – such as those resulting from illegal hunting of endangered species or timber resulting from illegal logging – are moving from poor countries with weak governance structures to countries with stronger economies that have reasonably good or even very solid governance. In contrast, waste is trafficked in the other direction, ending up being illegally disposed of in ways that harm human health and the environment in communities that are often already desperately poor.

Another interesting question that waste management raises is about the value of trafficked goods. Value is generally subjective for environmental goods, and some goods don't have a legal market value at all. Waste is particularly interesting because most forms of waste have a negative value; we have to pay to dispose of it safely and in accordance with our domestic regulations.

Therefore, there is a corruption risk related to waste management, for instance when containers are falsely declared at the borders as “recycling” or “second-hand goods” when in fact they contain hazardous waste that should not be shipped at all. Waste trafficking is a sophisticated and highly lucrative transnational criminal operation, but it relies on the most basic form of corruption: bribing inspectors at the borders to turn a blind eye.

The examples you have mentioned of green corruption are mainly from Africa, Asia and South America. Do you know of cases from European countries?

We work mostly in these regions because their rich biodiversity and constrained resources make them highly vulnerable to environmental crime. Moreover, many people living in these regions are directly and greatly affected by the impacts of corruption-fueled environmental degradation.

Pointing to evidence of green corruption in Europe is difficult. Of course it must be present – think of the allegations of corruption of public officials to facilitate waste trafficking in Italy, for example – but there do not seem to be many convictions for corruption in Europe related to environmental crime.

There are of course many cases of environmental crime and environmental degradation in Europe, including many examples where there has been a significant economic gain. In terms of laundering of such assets, the techni-

Juhani Grossman, team leader for the Green Corruption Programme

Juhani Grossman leads the Basel Institute's Green Corruption Programme, which targets environmental degradation through an anti-corruption, asset recovery and governance approach. He joined the Basel Institute in April 2020 with 20 years' experience developing and implementing field-based governance and anti-corruption programmes in Russia, Ukraine, the Philippines and most recently Indonesia.



ques may be the same as are used all over the world. It can be done by way of setting up complex structures of offshore companies, often assisted by law firms, accountants or banks in Europe or elsewhere.

To what extent are European countries also responsible for green corruption taking place in other parts of the world?

Green corruption is certainly not a “developing world” issue: environmental crime, such as illegal mining and illegal logging, is almost always driven by demand in rich countries, including China. When companies are using bribes in order to illegally extract resources such as minerals or oil and gas, or in order to get rid of waste, we see that the drivers behind such environmental crime are very much to be found in the rich world. The companies encouraging or tolerating such activities are often located in rich countries and not in the country where the environmental damage is occurring.

One example is the illegal trade of live animals. Pet shops are notorious for taking animals illegally caught in the wild and mixing them with animals bred at home, or misdeclaring them at the borders. That happens quite frequently. The biggest fair for exotic animals in Northern Germany is a display of, among other things, the illegal mingling of legally bred and illicitly acquired wild animals.

When talking about responsibility for green corruption, we also have to point to the role of

intermediaries, especially financial intermediaries. If wildlife is poached in Africa and ends up in China, ultimately it could very well be that the financial path leads through offshore centers. And that is why financial institutions and financial centers in Europe – and their regula-

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tors – have such great power and such great responsibility in tackling environmental crimes. The intermediary that helps an environmental criminal to create an offshore company in the British Virgin Islands could well be based in Switzerland, for example. Bank accounts through which money is laundered could be in Cyprus or Malta.

Following up on what you just said: If green corruption causes environmental damage for instance in Africa, can these cases be detected and prosecuted without the involvement of countries that host such intermediators?

That is an interesting topic. At the World Economic Forum in Davos, Prince William was invited to a meeting of the heads of around 30 large banks like Citibank, Deutsche Bank and so on. He said something like: “Look – you guys

can detect terrorist funding and drug dealers – so why can you not detect poachers or organized crime groups involved in wildlife trafficking? That is your task”. And the bankers, they of course couldn't say no, but they said it's difficult.

As we pointed out, banks are actively – even if unwittingly – facilitating environmental crimes. We know the environmental criminals are using financial systems to pay for their crimes and launder their profits. And not only straightforward banking, but also more informal structures such as hawala networks or trade-based money laundering schemes.

Some banks are being highly proactive and leading the way in trying to address their risks of facilitating environmental crime. Many of those at the forefront are members of Prince William's United for Wildlife initiative, which aims to engage the private sector in efforts to stop wildlife traffickers from using commercial transport and financial systems. The Basel Institute of Governance is a member of the initiative.

But perhaps more banks aren't doing more because the penalties are very low. Their compliance systems are built to address terrorism financing and bribery, because the penalties in this area are huge. In environmental crime, the penalties are still very manageable, if anything at all.

We are trying to remind companies that there are reputational risks, as also highlighted by their keen attention to CSR (Corporate Social Responsibility) efforts. We are highlighting that there is negative reputational value in not engaging in this issue, but a positive reputational value in actively being at the forefront in the fight against environmental crime.

However, until it becomes a real financial challenge for banks, we are probably not going to see engagement at the level in which we see engagement with regards to terrorist financing, anti-money laundering and bribery issues.

You point to the penalty level as an important incentive for the banks to have a decent compliance system in order to prevent money laundering from environmental crime. Is the legislation clear enough?

There might also be straightforward legal reasons why money laundering related to

environmental crime is not prioritized. It may depend on how the money laundering law is written, that is to say whether the predicate offence can be any crime, or whether it is a series of crimes or even a specific crime. In many cases, countries have this specific crime approach, and rely on the list developed by the Financial Action Task Force (FATF).

For example, illegal logging is in many countries not a predicate offence, thus it wouldn't be a money laundering case. There is one case in Switzerland which is interesting in this respect: gold was clearly taken illegally during a civil war in Congo and was airlifted into Uganda, then onto the Channel Islands and then into Switzerland. The possession of this gold was linked to genocide, which is a predicate offence to money laundering. The Swiss federal attorney's office had a case against the gold refinery. The CEO of the gold refinery was charged with money laundering related to genocide, a quite remarkable case. The case was closed however, as the state could not prove that the person knew the origin related to genocide.

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FATF recently published a report on “Money Laundering from Environmental Crime”. There it states that “Illegal logging, land-clearing, mining and waste dumping generates tens of billions of dollars in proceeds, which are laundered each year into the global financial system. Law enforcement and environmental agencies, as well as banks, lenders and other financial institutions, often do not understand their exposure to this type of financial crime.” Is that an impression that you share?

Yes, the FATF report and its ongoing efforts to draw attention to the enormity of the problems are important. Illegal logging should be made a predicate offence, at the very least. This report is preparing the ground for a political move for that. It would be really powerful if the FATF were to check on whether environmental

crimes were part of national risk assessments as part of the mutual evaluation process.

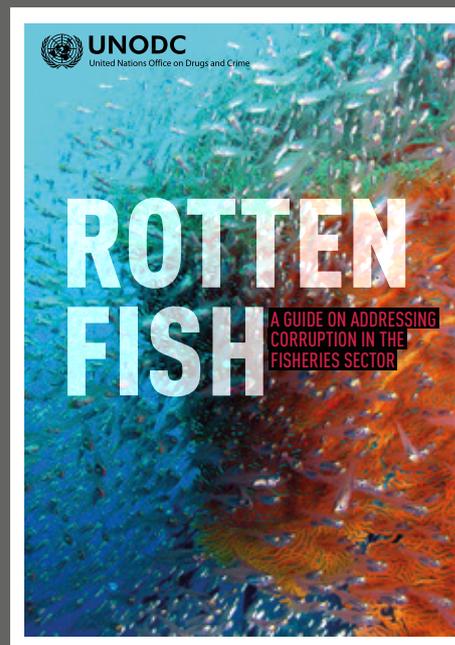
You have made us aware of a money laundering case in Malawi – the Lin network. Can you tell us about this?

Yes, that case is a perfect illustration of the money laundering issue. In Malawi, the authorities are able to apply money laundering charges against environmental trafficking organizations. Recently, in September this year, the kingpin of a major criminal network, Lin himself, was sentenced to six years in jail for money laundering (of a sentence of a total of 14 years). This is an important judgement and very unusual in our world.

Lin's sentencing brings the total of Lin-Zhang gang members sent to prison to 14: 10 Chinese and four Malawian nationals received

UNODC (United Nations Office on Drugs and Crime) report “Rotten Fish – a guide on addressing corruption in the fisheries sector” from 2019

“The global fishing industry is made up of a complex net of activities, actors and authorities spread across multiple countries and jurisdictions. The sheer complexity brings with it regulatory and enforcement challenges, and provides numerous opportunities for criminals to break the law. Corruption strikes at the core of the fight against fisheries crime. It threatens effective regulation and crime prevention at every stage of the fisheries value chain, exposing it to a wide range of risks, from the preparation of forged licences and the underreporting of quantities of caught fish at landing, through to the sale of mislabeled fish, among others. Corruption also undercuts the efforts of law enforcement to investigate and prosecute fisheries crime when it does occur. All other efforts to regulate the fisheries sector and combat fisheries crime will fail unless the disease of corruption is addressed.”



jail sentences for a variety of offences, including related to the possession of protected or listed species such as pangolins, rhino horns, hippo teeth and elephant ivory. (More info at: <https://eia-international.org/news/yunhua-lin-notorious-kingpin-of-wildlife-crime-syndicate-is-jailed-for-14-years-in-malawi/>).

According to the latest Intergovernmental Panel on Climate Change (IPCC) Report which was approved in the UN in August this year, unprecedented changes in the Earth's climate are observed in every region and across the whole climate system. Such climate changes may lead to sea level rise, scarcity of water, reduction of productive land etc. Will these changes be risk factors in terms of green corruption?

From a wider perspective, it seems logical that these big changes have consequences. Climate change leads to strife, conflict and competition for essential resources. Water is one area, but you can also talk about production of batteries and the essential, but rare, minerals that are needed for that. It is a paradox that one is fighting over minerals that you need to build alternative energy sources, and that the scarcity of these leads to conflict ultimately.

It happens frequently that even if there is not outright conflict over these resources, there is corruption involved. We could talk at length about the company Glencore and how they accessed copper mines in Congo by allegedly bribing the president. And what about when a multinational company such as Nestlé taps water from ancient reservoirs in arid landscapes – how do they get the licenses to do that? How do they get hold of the land? When there are disputes, it is easy enough to bribe the judiciary.

“Collective action” is often mentioned when it comes to fighting corruption. Can you explain what it means?

Collective Action in the context of fighting corruption is basically about getting corporations, usually with the help of a neutral facilitator such as an NGO and sometimes with other stakeholders such as the government, to sit together around the table. Working jointly and in an atmosphere of trust, they can analyze their challenges and their risks, going beyond the intra-company perspective of compliance in order to find pragmatic and

United Nations Convention against Corruption (UNCAC)

<https://www.unodc.org/unodc/en/corruption/uncac.html>

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The vast majority of United Nations Member States are parties to the Convention. The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.

business-friendly solutions to address their corruption challenges.

A common type of Collective Action initiative involves setting voluntary standards and then working to get them implemented across an industry or country. To give an example, at the Basel Institute on Governance we helped to launch a very early Collective Action initiative called the Wolfsberg Group. It is an association of 13 global banks which aims to develop frameworks and guidance for the management of financial crime risks.

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Another example of Collective Action relates to the global platform for sustainable natural rubber, GPSNR. This is an interesting sector because 70% of global natural rubber production goes into tyres. The commodity is retrieved from plantations, and it supplies relatively few companies whose tyres are very well known. This creates a unique, interesting opportunity for Collective Action, as historically they have been focused very much on the sustainable sourcing of the rubber and the environmental conditions. Recently we, together with WWF, worked with this platform to help introduce governance and anti-bribery standards into the same Collective Action process.

While our focus at the Basel Institute has been on Collective Action against corruption, rather than to promote environmental sustain-



nability, the methodology is basically the same. For more on Collective Action, please see the B20 Collective Action Hub (<https://collective-action.com/>), which we developed and maintain as a global go-to resource center on anti-corruption Collective Action.

What is the importance of prosecutors in fighting green corruption?

Prosecutors are essential. Without prosecutors, there are no cases and the criminals can act with even more impunity than they already do.

But prosecutors alone are far from sufficient. Green corruption is an enormous problem that we can only address by working together across sectors and skillsets.

The role of the media and civil society is also very important, including to law enforcement. Look at the Pandora Papers, which were crucial in triggering investigations, even if the information might not be usable in court. Prosecutors and investigators should feel that public opinion is behind them, even if they face hurdles from politicians or legal systems unaccustomed to seeing cases of green corruption.

The ability to enforce is crucial – and not just to catch environmental criminals, but to confiscate and recover their illicit assets. While it is often difficult to do this as part of traditional criminal proceedings, we are currently seeing a breakthrough in many coun-

tries in the form of non-conviction based forfeiture proceedings. In Thailand for example, where the government has not been able to prosecute a leading trafficker with a criminal offence, the Thai anti-money laundering office (AMLO) is able to go after the criminal assets through a non-conviction based forfeiture mechanism. This is pathbreaking and worth watching carefully (on the Basel Institute website, for example!).

The Organisation for Economic Co-operation and Development (OECD)-Anti-Bribery Convention

<https://www.oecd.org/corruption-integrity/explore/oecd-standards/anti-bribery-convention/>
The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention) is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction – the person or entity offering, promising or giving a bribe. As a legally binding international agreement, parties to the Convention agree to establish the bribery of foreign public officials as a criminal offence under their laws and to investigate, prosecute and sanction this offence.