

LAUNDERING THE PROCEEDS OF ENVIRONMENTAL CRIME: **TIME FOR THE UK TO CLEAN UP ITS ACT?**

Climate change has the world's attention. A recent study highlights the calamitous effect of several disastrous tipping points in the event that global temperatures rise beyond 1.5°C above pre-industrial levels¹. The International Panel on Climate Change estimates that half the world's population could be exposed to life-threatening heat and humidity if temperatures rise to 1.8°C. Since COP26 last year, floods and storms in Africa and Pakistan have affected 33 million people and impacted 1.7 million homes, with wildfires causing havoc throughout Europe. It therefore comes as no surprise that the crucial discussions at COP27 dominate global news headlines.

What about the impact of organised crime?

The visible effects of climate change are indeed powerful. But the media has focused far less on the effect organised crime has on climate change and biodiversity. This issue has increased in severity over recent years without gaining anything more than a fraction of comparable column inches and air-time. The impact of organised environmental crime currently seems a relatively low priority for the UK Government despite Western Europe's status as a large trade centre and destination for the poisoned fruits of environmental offending. According to Interpol and the United Nations Environment Programme, environmental crime is now the fourth largest criminal activity in the world after drug trafficking, human trafficking and counterfeiting, growing at a rate between 5%-7% per year, two to three times the pace of global economic growth².

Ten years ago, the Colombian Government warned that illegal gold mining had overtaken drugs as the main source of funding for guerrilla rebels in the country³. In April 2022, Interpol reported on the devastating impact of illegal gold mining in Latin America, referring to it as "*one of the most lucrative crimes*" and identifying that illicit gold mining in Brazil, Bolivia, Colombia, Ecuador, Panama and Peru accounted for up to US\$48 billion in criminal proceeds in 2016⁴. The UK is alleged to be the third largest importer of Brazilian gold⁵ but the supply chains are so opaque that it is very difficult to know whether imported Brazilian gold was legally mined. Of the 174 tonnes of gold mined in Brazil from 2019-2020 at least 49 tonnes were illegal, of which 90 percent came from the Amazon and was linked to 21,000 hectares of deforestation.

¹ Science, vol.377, No.6611, "Exceeding 1.5°C Global Warming Could Trigger Multiple Climate Tipping Points", 9 September 2022, McKay et al.

² https://ec.europa.eu/commission/presscorner/detail/en/ganda_21_6745

³ <https://www.bbc.co.uk/news/world-latin-america-18396920>

⁴ <https://www.interpol.int/en/News-and-Events/News/2022/The-devastating-impact-of-illegal-gold-mining-in-Latin-America>

⁵ <https://unearthed.greenpeace.org/2021/09/01/amazon-blood-gold-likely-being-imported-by-uk-researchers-say/>

Quite apart from the risk to workers arising from the use of mercury in such mining⁶, illegal deforestation is a feature of this activity. The generation of funds from illegal gold mining operations is now so well-known that the UN Economic and Social Council (ECOSOC) adopted Resolution 2019/23 setting out measures to combat the proceeds from illegal resource mining⁷. The Environment Team at the United Nations Office on Drugs and Crime (UNODC) is currently in the process of finalising a diagnostic toolkit to assess Member States' needs with regards to illegal mining and trafficking in gold.

Global Initiative – an organisation working to highlight transnational organised crime – observed in October 2021 that “*Organised environmental crime intensifies climate change*”⁸. The UNODC declared “*Crimes that affect the environment are serious organised crime with far-reaching impacts for the economy, security, the environment, and human health, contributing to biodiversity loss and climate change.*”⁹ Europol, in a threat assessment report published in June 2022, identified the impact of organised environmental crime on climate change¹⁰:

“Extreme weather conditions, such as droughts and desertification, floods and inundations, as well as the spread of diseases and ultimately climate change, are consequences of harmful human activities, including environmental crimes. In some deeply affected regions of the world, environmental crimes also threaten people’s food safety and food security, with effects in terms of growing poverty, political instability, conflicts and forced migrations.”

Such is the current impact of environmental crime that the 6th Money-Laundering Directive expressly identified for the first time such offending as a predicate offence in the definition of “criminal activity”. This year, the Basel AML Index added environmental crime to its indicators of money-laundering and terrorist financing risk.

The UK “wheezes” behind

From 1 January 2021, the EU’s Conflict Minerals Regulation requires supply-chain due diligence on EU importers of tin, tantalum, tungsten and gold from certain conflict-affected and high-risk areas. However, this does not include gold from areas which are conflict-free but known to be sources of illegally mined minerals, such as Brazil, Peru, Bolivia, Ecuador or Panama¹¹. It is therefore disappointing that the UK’s current money-laundering risk assessment, last produced in December 2020, apparently wheezes substantially behind¹². The assessment only specifically includes reference

⁶ <https://sway.office.com/ArXePFJvObTBCiLW?ref=Link>

⁷ “*Combatting transnational organised crime and its links to illicit trafficking in precious metals and illegal mining*”

⁸ <https://globalinitiative.net/analysis/environmental-crime-climate-change/>

⁹ <https://www.unodc.org/unodc/en/environment-climate/>

¹⁰ <https://www.europol.europa.eu/publications-events/publications/environmental-crime-in-age-of-climate-change-2022-threat-assessment>

¹¹ <https://www.cahraslist.net/cahras>

¹² The Treasury and Home Office are required to take appropriate steps to ensure the risk assessment is kept up to date: regulation 16(9) of the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*

to the proceeds from the illegal wildlife trade¹³ as opposed to the wider impact of organised environmental crime on UK money-laundering threats. Nor does the UK's Economic Crime Plan (2019-2022) specifically address the risks from environmental crime, despite referring to its ongoing commitment to combatting money-laundering¹⁴.

The Financial Action Task Force produced a devastating report in July 2021 entitled "*Money Laundering from Environmental Crime*"¹⁵; the statistics make concerning reading to any white-collar crime lawyer:

- Environmental crime generates between US\$110 billion – US\$281 billion per annum;
- The report examined money-laundering in four main areas of harm: illegal logging, illegal land clearance, illegal mining and waste trafficking;
- Criminals exploit weak regulatory oversight in environmental resource chains to facilitate their crimes, often using "comingling" to conceal illegal products with their legal counterparts;
- "Most" of the proceeds, particularly in the case of illegal mining and logging, make their way into the international financial systems;
- Illegally logged wood was noted to be transported to destinations including Western Europe;
- The London Gold Bullion Market Association identified a number of major centres responsible for bullion trading activities, including trading exchanges, storage facilities, processing, recycling and refining facilities and consumption;
- North America and Western Europe are the principle source and transit countries for illegal waste trafficking;
- Intermediaries such as lawyers, accountants and corporate service providers play an important role in enabling illicit financial flows in illegal mining and logging activity;
- Entities involved in illegally-mined gold refining may not be fully aware that the product was sourced illegally, and it is reasonable to assume that a similar trend exists in respect of other precious metals such as copper, coltan and cobalt;
- Shell companies are used to conceal beneficial ownership (an example is given of an Italian company that purportedly shipped transfrontier waste under the guise of invoices for processing their waste);
- Many countries do not have sufficient capabilities to detect financial flows associated with environmental crimes;

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf. The UK's *Ivory Act 2018* and prohibition on the use of "forest risk commodities" in Schedule 17 of the *Environment Act 2021* are notable exceptions.

¹⁴ <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022/economic-crime-plan-2019-to-2022-accessible-version>

¹⁵ <https://www.fatf-gafi.org/publications/methodsandtrends/documents/money-laundering-from-environmental-crime.html>

- The private sector must play a role in completing due diligence and record-keeping to reporting suspicious activity;
- Without such expert-led review and analysis forestry crime, illegal mining and waste crime may well “hide in plain sight” as legitimate economic activities.

Recognising the proceeds of crime

Weak regulatory oversight or not, it is becoming essential that companies and their staff, banks and legal advisors are able to recognise issues relating to money-laundering the global proceeds of environmental crime. The Court of Appeal confirmed in **R v Rogers (2015)** that offences contained in ss.327-329 of the *Proceeds of Crime Act 2002* are extraterritorial, so viewing such risks through a “Nelsonian eye” would be foolish. Whilst conduct may or may not be designated as “criminal” overseas according to local laws, the *Proceeds of Crime Act (Exceptions from Overseas Conduct Defence) Order 2006* provides exceptions to the defence in ss.327-329 of the *Proceeds of Crime Act 2002* where overseas conduct is legal under local law, if the overseas conduct would amount to an offence if committed in the UK and would attract a sentence of more than 12 months.

For example, operating a mine without an environmental permit is an offence contrary to regulation 12 of the *Environmental Permitting (England and Wales) Regulations 2016*, which is punishable by up to 5 years’ imprisonment. Possessing, converting or transferring the proceeds of suspected unlicensed gold mining could therefore amount to a money-laundering offence in the UK, regardless of whether a permit was required in the country of the gold’s origin.

The UK Government introduced a plan in 2018 to eradicate waste crime by 2043. The Environment Agency reported that waste crime costs the UK economy approximately £900 million per year. A National Audit Office report in April 2022 recognised the implementation of the Joint Unit on Waste Crime¹⁶ and strengthened Environment Agency powers through the implementation of the Environment Act 2021, but criticised the UK’s overall efforts to combat waste crime¹⁷, with Gareth Davies stating:

“Defra and the Environment Agency agree that their data significantly understates the scale of some types of waste crime. The evidence available shows that waste crime is increasing, and organised criminals are becoming more involved. Government needs to target resources effectively and understand what progress it is making towards its aim of eliminating waste

¹⁶ This taskforce was launched in January 2020 and brings together law enforcement agencies, environmental regulators, HMRC and the NCA.

¹⁷ <https://www.nao.org.uk/wp-content/uploads/2022/01/Investigation-into-governments-actions-to-combat-waste-crime-in-England.pdf>

crime by 2043. To do so, it will need a robust set of performance measures to identify when actions are off-track.”

Of the 60 organised crime groups that are monitored across the UK, 41 of those groups operate in England and 70% are involved in money-laundering. The NAO report disagreed with DEFRA's view that the government is on track to achieve its target of zero illegal waste sites by 2043, referring to the fact it found there were “*serious gaps*” in the government's approach to monitoring progress against its long-term environmental goals. It further noted that the Environment Agency intends to revise its metrics to “*more reliably reflect its performance combatting all types of waste crime*” and that DEFRA planned to reform the existing environmental permit regime to prevent illegal activity being concealed through waste exemptions.

The National Crime Agency also has a role to play, recognising that environmental offending can be difficult to identify simply from the movement of money as legitimate companies are often used to conceal underlying illegality. However, SARs are used as a valuable source of intelligence in relation to environmental crime, rather than identifying environmental offending itself¹⁸. But SARs won't be made unless underlying criminality is suspected – increased awareness of the issues will improve the detection of offending and identification of its proceeds.

Conclusions – next steps?

A number of international organisations are justifiably concerned about the ease with which the proceeds of environmental crime can be laundered and illegal products placed on international markets. Western Europe, including the UK, is identified as a destination for such products and proceeds. The Law Commission's Options Paper on reforming Corporate Criminal Liability¹⁹ identified a number of potential contenders for new “failure to prevent” offences (including human rights breaches, neglect and ill-treatment of vulnerable persons and Computer Misuse Act 1990 offences) but reference to environmental crime was notably absent.

Given the international concerns being voiced about the financial and environmental consequences of such offending, this was a missed opportunity. It is about time the UK Government took genuine steps to demonstrate its intention to combat organised activity that impacts on the environment and generates billions of dollars in criminal proceeds every year. Otherwise it is not just government intransigence on emissions targets that is contributing towards climate change, but also its ineffectual position on the devastating consequences of organised environmental crime.

¹⁸ <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/391-sars-in-action-november-2019/file>

¹⁹ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/06/Corporate-Criminal-Liability-Options-Paper_LC.pdf