

# U4 Expert Answer



## Environmental crime and corruption

### Query

*We are interested in the relationship between corruption and environmental crime. In particular, what are the vulnerabilities (people, policy, procedures) that could be exploited corruptly in this area? What recommendations would you make to developed countries to counter corruption in this area? Are there examples of international best practice that have been particularly effective? We are most interested in the Asia-Pacific region.*

### Purpose

We are currently conducting an assessment of corruption risks, including in the area of environmental crime, and are interested in your view of the threat posed by corruption and environmental crime. We are particularly interested in the areas of illegal trade in ozone depleting substances and illegal trade in hazardous waste.

### Caveat

There is little research on the relationship between environmental crime and corruption, particularly on crimes such as illegal trade in ozone depleting substances and hazardous waste. The vast majority of literature in the field of environmental crime and corruption focuses on the forestry sector, namely illegal logging activities.

### Content

1. Environmental crime and corruption
2. Dumping and illegal transport of hazardous waste
3. Illegal trade in ozone depleting substances
4. References
5. Additional resources

### Summary

Environmental crime covers activities ranging from illegal logging, illegal trade in ozone depleting substances, dumping and illegal transport of hazardous wastes, to unreported fishing. It often includes a transnational dimension, which makes it highly profitable. It poses serious threats to the environment, contributing to poverty and food insecurity. It can weaken the state due to organised crime activities and corruption.

**Author(s):** Maira Martini, Transparency International, [mmartini@hotmail.com](mailto:mmartini@hotmail.com)

**Reviewed by:** Marie Chêne, Transparency International, [mchene@transparency.org](mailto:mchene@transparency.org) and Robin Hodess Ph.D, Transparency International, [rhodess@transparency.org](mailto:rhodess@transparency.org)

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*U4 is a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work. Expert Answers are produced by the U4 Helpdesk – operated by Transparency International – as quick responses to operational and policy questions from U4 Partner Agency staff.*

Corruption can be considered a catalyst for environmental crime. In particular, corruption plays an important role in facilitating fraudulent trade, forging import/export certificates, clearing customs wrongly, ignoring illegal waste disposal, issuing licenses, among others. Corruption in this case may affect a variety of actors, including customs officials, landowners, organised crime groups, police, shipping firms, and exporters/importers.

Research on environmental crime and corruption tends to focus on illegal logging as opposed to other types of environmental crime such as illegal trafficking in ozone depleting substances and hazardous waste. At the request of the enquirer, this answer attempts to analyse the corruption vulnerabilities in these two under-researched areas. We also look at recommendations, and successful enforcement initiatives at the regional and global levels.

## 1 Environmental crime and corruption

### Types of environmental criminal offences

Environmental crime typically refers to any breach of a national or international environmental law or convention that exists to ensure the conservation and sustainability of the world's environment (Elliot, 2007).

More specifically, five broad areas of offences have been recognised as environmental crime by bodies such as the European Union, Interpol, and the United Nations Environment Programme as environmental crime, namely (Environmental Investigation Agency, 2008):

- Illegal trade in ozone-depleting substances (ODS) in contravention to the Montreal Protocol on Substances that Deplete the Ozone Layer;
- Dumping and illegal transport of hazardous waste in contravention to the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal;
- Illegal trade in wildlife in contravention of the Washington Convention on International Trade in Endangered Species of Fauna and Flora (CITES);

- Illegal, unregulated and unreported (IUU) fishing in contravention of controls imposed by various regional fisheries management organizations (RFMOs);
- Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws.

This answer focuses on the corruption vulnerabilities in illegal trade in ozone-depleting substances and dumping and illegal transport of hazardous waste.

### Linkages between environment crime and corruption

The vast majority of literature in the field of environmental crime and corruption focuses on the forestry sector. The relationship between corruption and crimes such as illegal trade in ozone depleting substances and hazardous waste is still under-researched.

Environmental crime often includes a transnational dimension and involves organised crime groups who engage in other crime types such as money laundering, corruption, and fraud, with a major influence on the global economy and security (Elliot, 2007).

'Traditional' organised groups which have been involved in illegal activities such as human, drugs, and arms trafficking are now increasingly getting involved in the most lucrative activities of environmental crime. There is also evidence that terrorist groups are involved in transnational environmental crime with the view to generate funds for other criminal activities (Elliott, 2009).

Evidence suggests that illegal networks are intrinsically linked to large-scale corruption (Fagan, 2011), particularly to facilitate fraudulent trade, or forge import/export certificates (EIA, 2008). It is to be expected that the same holds true for environmental crime activities.

In 2011, the Australian National University launched the Transnational Environmental Crime Project<sup>1</sup>, which aims, among other things, at advancing understanding on the linkages between environmental crime and

<sup>1</sup> Please see: <http://ips.cap.anu.edu.au/ir/tec/about/>

corruption (Elliott, 2011). The project is still in its initial phase, but once concluded, its results are likely to be helpful in understanding the main corruption risks in these under-researched areas.

## Environmental crime and corruption in the Asia Pacific Region

In the Asia Pacific region, environmental crime is a serious problem with consequences not only for environmental degradation and sustainable development, but also for good governance, security, and the legitimacy of legal institutions (Elliott, 2007). Besides being a source of private gain for ruling elites, illegal environmental activities also create a shadow economy (Elliott, 2009). For instance, in Indonesia, studies have shown that all forms of environmental crime resulted in losses to the Indonesian treasury of more than eight billion USD a year in 2003. In the forestry sector, illegal logging has resulted in losses in revenue of about three billion USD (EIA, 2008).

As with other forms of transnational crime, such as narcotics and arms, bribery and other forms of corruption associated with environmental crime undermine good governance, corroding state institutions and the rule of law (Elliott, 2009). In addition, in the Asia Pacific region, local crime groups and/or legitimate companies often exercise control over local communities and end up constituting a parallel authority that 'takes advantage of corrupt officials and politicians, as well as weak government institutions and law enforcement agencies' (Elliott, 2009).

## 2 Dumping and illegal transport of hazardous waste

### Definition

Hazardous waste is the by-product of industrial and manufacturing processes and discarded products from commercial and industrial sectors, as well as household waste, such as unused cleaning products, television monitors, metal cables insulated with plastics, lead-acid batteries, and used oils for disposal. The monitoring and tracking of hazardous waste shipments is difficult, as countries often define hazardous waste differently (Environmental Compliance and Enforcement, 2009).

Globalisation and the worldwide production of millions of tonnes of waste gave rise to the illegal movement and dumping of waste particularly in developing countries, posing serious risks to the environment and human health. The Basel Convention on the "Control of Trans-boundary Movements of Hazardous Wastes and their Disposal" was adopted in 1989 to regulate the transboundary movements of hazardous wastes. It obligates its 170 Parties to ensure that such waste is managed and disposed of in an environmentally sound manner (The Basel Convention, website).

However, despite the existence of such a Convention and of a variety of bilateral agreements and national laws, the illegal trade in hazardous waste remains a significant problem throughout the world, posing significant human health, environmental and financial risks to the countries involved (Europol, 2011; International Network for Environmental Compliance and Enforcement, 2009). In this context, criminals and organised crime groups have been exploiting the high costs associated with legal waste management and making substantial profits from illegal trafficking and disposal activities (Europol, 2011).

Illicit waste trafficking has been facilitated through cooperation with legitimate businesses in the financial services, import and export, as well as metal recycling sectors. In addition, there is evidence of use of specialists engaged in document forgery to obtain permits and of corruption in the public and private sectors (Europol, 2011).

### *Hazardous waste in the Asia Pacific Region*

Studies suggest that European, Russian and Japanese crime groups have established an illegal market for hazardous waste in Asia, often in combination with money laundering and arms trade activities (Elliott, 2009). According to Europol (2011), toxic waste is trafficked from North West Europe to non-EU countries, especially in West Africa and Asia. Italy has also become a transit point for e-waste (second-hand electrical and electronic equipment) *en route* to Africa and Asia (Europol, 2011).

In the 1990s, problems with the illegal disposal of hazardous waste were particularly prominent in the Pacific islands, leading to the adoption of the 1995 Waigani Convention (*Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes*

within the South Pacific Region) which have similar provisions to the Basel Convention with modifications to suit the region. The Waigani Convention not only provides a basis for preventing imports of hazardous wastes into the region, it also provides a legal mechanism for movement of wastes where this is agreed between Parties (Secretariat of the Pacific Regional Environment Programme, website).

### Corruption risks

While studies analysing the relationship between illegal waste activities and corruption are scarce, Terekhova has recently discussed how such activities may offer corruption opportunities. According to Terekhova, there are various factors fuelling corruption in the waste sector. The quest for financial benefits is a prime driver of environmental crime, as industries may make substantial profits by illegally disposing of waste (Terekhova, 2012).

Corruption may take place at several stages in the management, transboundary movement, and disposal of hazardous waste. For instance, it may take place (Terekhova, 2012):

- (i) In the process of licensing disposal facilities or authorising persons to transport hazardous wastes;
- (ii) In the process of issuing the export notification document in contravention of domestic legislation or the Convention's provisions;
- (iii) In the process of authorising the export to take place (e.g., issuance of the movement document in contravention of the Convention's provisions);
- (iv) In the process of accepting or authorising the exported shipment (e.g., lack of compliance with an import restriction, lack of control of a contract);
- (v) At each border control (e.g., lack of appropriate control of the documents or of the content of the shipment) (Terekhova, 2012)
- (vi) In the process of detecting illegally dumped waste (e.g. regulators can be offered inducements to ignore the illegal disposal).

Corruption can potentially affect a variety of actors, including harbour officials, police, customs, traders and brokers, shipping lines, importers and exporters (Terekhova, T., 2012), among others.

### Domestic initiatives

Recent recommendations to prevent and combat corruption in illegal trade of hazardous waste are

connected to the effective implementation of the Basel Conventions' requirements. According to Terekhova, such elements may include:

- (i) an appropriate **legal framework** and **appropriate sanctions**. A complex legal framework for waste management and a policy landscape which includes different law enforcement and administrative authorities might create corruption opportunities. Public officials must have clarity to exercise their mandates and responsibilities. Sanctions must be proportionate to act as sufficient deterrents in cases of illegal traffic.
- (ii) **coordination among national agencies**. Besides clear mandates, different national and regional agencies responsible for waste management and environmental protection should work together. Information exchange should be done in a transparent and accountable manner.
- (iii) **awareness raising and capacity building**. Public officials and other relevant stakeholders must have a good understanding of national regulations on waste management, as well as of the Basel Convention.
- (iv) **inclusive control of transboundary movements**. While it is common for custom officials to focus on imports – which generate revenues – more than on exports, an effective control requires focus on both imports and exports, avoiding, for instance, that illegal waste leaves developed countries to developing countries where enforcement is often weaker.
- (v) **performance recognition**. Regulatory authorities and customs need proper recognition if they contribute to preventing and combating illegal traffic.

Other efforts include training for police and customs officials on ethics and corruption, and the establishment of whistleblower mechanisms, among others.

### Cross-border initiatives

Besides national regulations and enforcements efforts, regional and global initiatives are key to control and avoid the illegal transboundary movement of hazardous waste. Several international and regional organisations have developed programmes aimed at enhancing national governments' enforcement capacity which

could also have a positive effect in reducing corruption risks.

For instance, The Swedish International Development Cooperation Agency in partnership with the United National Environmental Programme launched in 2012 the **Project REN** - Regional Enforcement Network for Chemicals and Waste – to combat illegal trade in harmful chemicals and hazardous waste in Asia. The project aims at enabling customs to monitor and control transboundary movements of chemicals and waste more efficiently, drawing on regional and global enforcement cooperation and targeted problem-solving capacity at the domestic level<sup>2</sup>.

Interpol has also established a **working group on pollution crime** which leads a number of projects to combat the transport, trading and disposal of hazardous wastes or resources in contravention of national and international laws. The group has helped enforcement agencies throughout the world in identifying and punishing individuals involved in environmental crime<sup>3</sup>.

As part of **Operation Demeter**, launched by the World Customs Organisation in 2009, customs administrations from 64 countries monitored the illicit cross-border shipment of hazardous and other waste en route from Europe to countries in the Asia-Pacific region and Africa. The operation lasted fifty days and aimed at increasing information exchange among customs officials. More than 30,000 tons of illegal hazardous waste was arrested, and the majority of seizures took place in European countries, such as the Netherlands, Belgium, and Italy before the waste was shipped to developing countries (World Customs Organisation, 2009)

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<sup>2</sup> Please see:

[http://www.unep.org/ozonaction/News/Features/2012/UNEP\\_SIDAlaunchRegionalEnforcementNetwork/tabid/79390/Default.aspx](http://www.unep.org/ozonaction/News/Features/2012/UNEP_SIDAlaunchRegionalEnforcementNetwork/tabid/79390/Default.aspx)

<sup>3</sup> Please see: <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-Crime-Committee/Pollution-Crime-Working-Group>

### 3 Illegal trade in ozone depleting substances

#### Overview

Ozone depleting substances (ODSs) are those substances which deplete the ozone layer (e.g. chlorofluorocarbons (CFCs), halons, hydrochlorofluorocarbons (HCFCs), etc), and are widely used in refrigerators, air-conditioners, fire extinguishers, dry cleaning, as solvents for cleaning, among others.

In 1987 governments adopted the Montreal Protocol to reduce and eventually eliminate emissions of several ODS. While the Protocol is considered to be one of the success stories of international environmental agreements, the complete phase-out of ODS is now challenged by a growing black market of CFCs, halons, and more recently HCFCs, despite a licensing system created in 1997 to tackle such illegal trade (EIA, 2006).

As with any other illegal activity, the magnitude of the global illegal trade in ODS is difficult to determine precisely. In the mid-1990s, the size of the CFC black market in developed countries was estimated at around 10-20,000 tonnes with a commercial value of USD 150-300 million (EIA, 2005). However, due to less demand as well as improved enforcement of regulations, illegal trade in ODS into developed countries has declined significantly. Nevertheless, recent seizures show that ODS has increased sharply in developing countries, as the phase-out of ODS commences (UNEP, website).

Illegal trade in ODS has a negative impact on good governance, depriving governments and legitimate industry of revenue, and opening up opportunities for corrupt behaviour. Moreover, the involvement of organised crime groups in such activities poses a threat to security and increases violence in transit countries.

#### ODS in the Asia Pacific Region

Based on reports and recent seizures, the illegal trade in the Asia Pacific region is widespread and substantial, and has increased dramatically as the phase-out takes hold (UNEP, 2007). China is a major source of counterfeit CFCs, followed by India and the Republic of Korea, which together account for approximately 70% of global CFC production (EIA, 2006; Elliot, 2009; UNEP, 2007). Southeast Asia is one of the most important routes (EIA, 2006; Elliot, 2009). Bangladesh, China, Korea, India, Indonesia, Iran, Malaysia, Pakistan, Philippines, Sri Lanka, North Korea, Thailand, and Vietnam are among the countries in the region

which still have high consumption of CFCs (UNEP, 2007), making such a market a highly profitable one.

As with other forms of transnational environmental crime it seems likely that organised criminal groups are involved in pollutant smuggling in the region (Elliot, 2009).

### *Corruption risks*

As with the illegal trade in hazardous waste, the relationship between trade in ozone depleting substances (in contravention to domestic laws and international conventions) and corruption is still under-researched.

In this specific area, the literature tends to discuss the variety of methods used by criminals to smuggle such substances. Corruption is not the only means by which smugglers illegally trade ODS. Due to the complexities surrounding the movement of illegal ODS, as well as the nature of ODS chemicals, the identification of illegal material is extremely difficult, particularly because the majority of customs are still lacking appropriate testing equipment to check the substances at the border. This makes it much easier for smugglers to deceive a customs officer or ozone agent who is not well informed - without having to rely on corrupt practices (Toepfer, 2001).

As previously mentioned, the illegal trade in ODS relies heavily on customs' (lack of) capacity of assessing whether the material traded is legal or illegal. In many circumstances, smugglers need not resort to corruption, and may use other techniques, such as mislabelling or concealment, to illegally enter a country. Yet, such illegal activity offer several corruption opportunities, such as:

(i) **Licensing system:** Corruption may occur when an exporter or importer issues a license to exit/enter a country without the required document. Detailed analysis of official customs import and export data for CFCs highlights huge discrepancies in declared trade between countries. For example, while China and Indonesia have both import and export licensing systems in place, reported exports of CFCs from China to Indonesia from 2001 to 2004 were more than 1000 tonnes higher each year than Indonesia's reported imports of CFCs from China (EIA, 2006). Flaws in the licensing system and corruption – i.e. bribery of custom

officials in the country of import – facilitate such irregular trade (EIA, 2006).

(ii) **Smuggling Methods:** Usually involve disguising virgin ODS to appear recycled, mislabelling containers and false declarations, transshipment fraud, and evasion, where ODS may be transported along traditional smuggling routes used for arms or narcotics, for example. Corruption may also be used by different groups to facilitate such illegal trade (UNEP, 2001; Elliott, 2009). ODS may also be moved openly through border crossing points if customs officials are bribed to ignore it. (Elliott, 2009).

(iii) **Customs and public authorities:** Investigations carried out by the Environmental Investigation Agency in China revealed the importance of having contacts with customs officials to facilitate the export/import of restricted chemicals (EIA, 2006), particularly when the exporter does not have the required licences issued by the government. Moreover, exporters tend to favour one harbour over others, according to the level of scrutiny employed by officials. In the case of China, the port of Shanghai is preferred over the Ningbo port, as the checking of commodities is much more likely to occur at the latter (EIA, 2006). As to factory inspections, exporters have also revealed having well-placed informants within the local authorities who frequent reveal when inspections are going to take place (EIA, 2006).

In considering the actors involved, research has shown that organised criminal groups are often engaged in such activities. The close connections between exporters and importers with government officials, such as ODS and custom officers - who in developing countries are usually not well trained and receive low salaries - might also increase the opportunities for corruption (UNEP, 2001). Other bureaucrats involved in monitoring compliance with environmental regulations may also engage in corrupt behaviour.

### *Domestic initiatives*

While the literature does not highlight a specific initiative which has been effective in reducing corruption risks in ODS illegal trade, it makes several recommendations on how to best counter illegal trade in this area, which in turn also helps to curb corruption (EIA, 2006).

In this context, countries should work on:

- Enhancing Cooperation. Greater cooperation between customs and ozone units of these countries is key for controlling and avoiding illegal trade in ozone depleting substances;
- Establishing an effective licensing system, which reduces bureaucracy levels (for example, the European Union has an electronic licensing system, EIA, 2006:19) and creates deterrents for illegal trade;
- Establishing **effective and proportionate sanctions**, such as increased penalties for illegal trade activities, and a ban all firms proven to have illegally shipped ODS from further exports, and revoke licenses where appropriate
- **Capacity building initiatives**: various investigative, training, and other capacity building initiatives to improve identification of illegal ODS by authorities.
- Enhancing **human and material resources**, including salary adjustments to mitigate the incentive for civil servants to accept bribes, and equipments which help to identify ozone depleting substances.
- The establishment of **whistleblower mechanisms and protections**.
- Setting up a **central reporting and information agency** to improve the collection and exchange of information, such as the required notifications of trade, and enforcement information on material flows, companies, and processing capacities in the individual countries (Boekel, no year).

### *Cross-border initiatives*

Effective law enforcement measures for transnational environmental crimes require extensive cooperation among countries. Several international and regional organisations related to environmental protection have launched campaigns and projects aiming at addressing illegal trade in ODS which could also prevent corrupt practices.

The US **Operation Cool Breeze** was a multi-agency operation launched in the United States in the mid-1990s with the aim of tracking down CFC smugglers and securing convictions. The operation was a powerful deterrent, significantly reducing the amount of CFC illegally entering the country (EIA, 2009).

The **OzonAction Compliance Assistance Programme** carried out by the United Nations Environment Programme's Division of Technology, Industry and Economics (UNEP DTIE) has supported since 2005 governments and industries in developing countries to elaborate and enforce the policies required to implement the Protocol and make informed decisions about alternative technologies. In addition, capacity building projects have helped customs officers in their work to enforce national licensing systems, fight illegal trade in ODS, and to facilitate legal trade in replacement chemicals (UNEP, no year).

The **Green Customs Initiative**<sup>4</sup>, launched in 2003, focused on the black market of ODS and other chemicals. It aims at improving training, coordination and identifying high risk importers/exporters, and shipping agents suspected to be involved in smuggling activities.

The project **Sky-Hole patching** was launched in 2006 by the World Customs Organisation to tackle the smuggling of both ozone-depleting substances and hazardous waste in Asia. The project sought to use the intelligence gathering capacity and information sharing networks of the World Customs Organisation's Regional Office in Asia to intercept shipments of illegal ODS and waste. The first phase of the project focused on ODS, and the second phase, which started in 2007, covered also hazardous waste (UNEP, 2007). Besides the seizure of more than 1,000 tonnes of illicit waste and of more than 100 tonnes of smuggled ODS, the project has successfully raised awareness of such environmental crimes among customs agencies across the region (Environmental Investigation Agency, 2008:)

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<sup>4</sup> Please see: <http://www.greencustoms.org/background/>

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## 5 Additional Resources

This answer focused on the corruption risks which can be identified in the illegal trade of ozone depleting substances and hazardous waste. More information on other environmental crimes can be accessed at:

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