

# Licence to Sanction: Stopping Environmental Crimes through UK Magnitsky

## Legislation

### 1. Introduction

Wednesday, 1 May 2019: the UK declares an environment and climate emergency. That year, international environmental crimes are estimated to amass a monetary value of over 91 to 259 billion US Dollars.<sup>1</sup> This not only makes them extremely lucrative, coming fourth only after drug trafficking, counterfeiting, and human trafficking,<sup>2</sup> but also a unique threat to the fragile ecosystem on which all human life depends.

International environmental crimes range from illegal forestry to illegal mining. Actors involved in their commission include large transnational organised crime groups, multinational companies, and individuals, who rely on both financial and non-financial sectors.<sup>3</sup> At the core of 'transnational' or 'transboundary' environmental crimes is their inherent connection to financial profit. Arguably, they cause more harm than is caused by drug and human trafficking, and counterfeiting.

The underlying idea of the proposal is, therefore, relatively simple: without access to key financial networks, these environmental crimes stop being profitable. This essay will show that imposing *highly targeted sanctions* on individuals involved in committing environmental crimes is desirable, useful, and practical.

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<sup>1</sup> United Nations Environment Programme, *The State of Knowledge of Crimes that have Serious Impacts on the Environment* (2018), p VIII.

<sup>2</sup> UNEP and INTERPOL, *The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development and Security* (Rapid Response Assessment, United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses 2016, p 7.

<sup>3</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 3.

By making the disruption and deterrence of environmental crimes a discretionary purpose in s1(1) of the *Sanctions and Anti-Money Laundering Act 2018*, entities suspected of committing transboundary environmental crimes could be designated for sanctions. This would be a fast response to the climate emergency by hindering the commission of transboundary environmental crimes both ongoing and prospective.

## 2. UK sanctions regime and the nature of transboundary environmental crimes

### **(a) Sanctions**

The UK sanctions regime post-Brexit is made up by various instruments, some of which are of a general nature<sup>4</sup> or relate to a particular country or breach.<sup>5</sup> Of relevance is the *Sanctions and Anti-Money Laundering Act 2018*, which provides for the establishment of a wide range of sanctions by secondary legislation (financial, trade, immigration, and shipping sanctions). Notably, sanction regulations pursuant to it are targeted at individuals—not nation states—who are involved in grave human rights violations around the world.

These types of sanctions were first put in place after the death of Sergei Magnitsky in a Moscow prison. Magnitsky discovered the involvement of Russian Treasury officials in the theft of taxes paid by American investment fund firm Hermitage Capital Management, based in Moscow. When Bill Browder, Magnitsky's friend and founder of Hermitage Capital, realised that those responsible for Magnitsky's death were

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<sup>4</sup> Sanctions and Anti-Money Laundering Act 2018, Sanctions and Anti-Money Laundering Act 2018 (Commencement No. 1) Regulations 2018, Sanctions Review Procedure (EU Exit) Regulations 2018, SI 2018/1269, Sanctions (Amendment) (EU Exit) Regulations 2019, Civil Procedure (Amendment) (EU Exit) Rules 2019, Sanctions (Amendment) (EU Exit) (No 2) Regulations 2019, The Sanctions (EU Exit) (Miscellaneous Amendments) (No.3) Regulations 2020, The Sanctions (EU Exit) (Miscellaneous Amendments) (No. 4) Regulations 2020, The Immigration (Persons Designated under Sanctions Regulations) (EU Exit) Regulations 2020.

<sup>5</sup> For example, The Afghanistan (Sanctions) (EU Exit) Regulations 2020, The Chemical Weapons (Sanctions) (EU Exit) Regulations 2019, The Cyber (Sanctions) (EU Exit) Regulations 2020, Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019.

untouchable, he lobbied US politicians to table legislation which could sanction those who in some way benefitted *financially* from Magnitsky's death.<sup>6</sup>

The resulting US *Global Magnitsky Human Rights and Accountability Act* (2016) authorises "sanctions with respect to foreign persons responsible for gross violations of internationally recognized human rights".<sup>7</sup> This includes visa bans and asset freezes, and effectively prevents those sanctioned (both individuals and other entities) from entering the US and enjoying any property or assets they may hold there.

In July 2020, the UK imposed its own 'Magnitsky'-style sanctions under the 2018 Act for the first time.<sup>8</sup> The first targets were 49 individuals and organisations involved in the deaths of Sergei Magnitsky and journalist Jamal Khashoggi; in violence against the Rohingya people; and in human rights breaches taking place in North Korean gulags.<sup>9</sup>

A consolidated list of current targets is available online.<sup>10</sup> At present, the only references to "environment" relate to individuals from the Environment Ministries of Iran, Libya, and Syria, who are sought for human rights violations.<sup>11</sup>

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<sup>6</sup> Bill Browder, 'Sergei Magnitsky' (Bill Browder's personal website) <<https://www.billbrowder.com/sergei-magnitsky>> Last accessed 10/10/2021.

<sup>7</sup> Global Magnitsky Human Rights Accountability Act, 114<sup>th</sup> Congress, 2<sup>nd</sup> Session (House of Representatives, 18 April 2016).

<sup>8</sup> Global Human Rights Sanctions Regulations 2020.

<sup>9</sup> Foreign and Commonwealth Office and The Rt Hon Dominic Raab MP, 'UK announces first sanctions under new global human rights regime' (6 July 2020) <<https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>> Last accessed 10/10/2021.

<sup>10</sup> HM Treasury, Financial sanctions targets: list of all asset freeze targets (Updated 30 September 2021) <<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>> Last accessed 10/10/2021.

<sup>11</sup> HM Treasury, Consolidated List of Financial Sanctions Targets in the UK <<https://ofsistorage.blob.core.windows.net/publishlive/ConList.html>> Last accessed 10/10/2021.

### ***(b) Transboundary environmental crimes***

Transboundary environmental crimes encompass five broad types of conduct: illegal trade in wildlife; illegal trade in ozone-depleting substances; dumping and illegal transport of hazardous waste; illegal and unregulated fishing; and illegal logging and trade in timber.<sup>12</sup> They cause environmental degradation, habitat destruction, species endangerment, and contribute to climate change.

To illustrate, I will focus on illegal forestry crimes, as “one fifth of global greenhouse gas emissions are linked to forest loss”.<sup>13</sup> While the Home Office is unable to quantify the profits of organised domestic environmental crime (albeit aware of the damage caused by it),<sup>14</sup> forestry crimes abroad (such as illegal logging) generate an annual estimated 51 to 152 billion US Dollars.<sup>15</sup> Just recently, the G7 Ministers responsible for Climate and Environment jointly recognised the devastating impact of trafficking in timber and timber products (among other crimes) on the natural environment and livelihoods.<sup>16</sup>

‘Transboundary’ environmental crimes are profoundly different from other organised crimes or domestic environmental crimes, due to their *motive* and *actors*. These two factors also determine which frameworks could respond most effectively. While there

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<sup>12</sup> Gavin Hayman and Duncan Brack, ‘International Environmental Crime: The Nature and Control of Environmental Black Markets’ (Workshop Report, Royal Institute of International Affairs, 2002), p 5.

<sup>13</sup> Environmental Investigation Agency, *Environmental Crime: A Threat to Our Future* (October 2008), p 6.

<sup>14</sup> Hannah Mills, Sara Skodbo and Peter Blyth, ‘Understanding organised crime: estimating the scale and the social and economic costs’ (Home Office, Research Report 73, October 2013), pp 11, 35, 46-47.

<sup>15</sup> UNEP and INTERPOL, *The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development and Security* (Rapid Response Assessment, United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses 2016), p 7.

<sup>16</sup> G7 Climate and Environment: Ministers’ Communiqué, London (Policy Paper, 21 May 2021) available here: <<https://www.gov.uk/government/publications/g7-climate-and-environment-ministers-meeting-may-2021-communicue/g7-climate-and-environment-ministers-communicue-london-21-may-2021#environment>> Last accessed 10/10/2021.

are legal markets for logging and mining, these activities become illegal when undertaken without permission, when contracts are entered into through corruption, fraud is involved, or activities exceed agreed ranges.<sup>17</sup> These crimes may even attain a higher level of severity than domestic environmental offences. They are transboundary because both goods and, crucially, *money* cross borders.<sup>18</sup>

Aimed at benefitting small groups of people,<sup>19</sup> actors are “loosely organized networks of individuals with some specialist knowledge of the area in which they work”.<sup>20</sup> Without one single big player, several small competing enterprises often engage in a “cut-throat ‘tragedy of the commons’”.<sup>21</sup>

The principal motive is financial gain, which is aided by porous borders, corruption, the exploitation of disadvantaged communities, and the use of shell and front companies to launder gains.<sup>22</sup> The Financial Action Task Force, of which the UK is a member, recommends that all member countries—including those without domestic natural resources—should consider whether financial and non-financial sectors may be misused to conceal and launder profits from environmental crimes.<sup>23</sup> In advance of the G7 Summit held in the UK in May 2021, the Global Initiative Against Transnational

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<sup>17</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 9.

<sup>18</sup> Gavin Hayman and Duncan Brack, ‘International Environmental Crime: The Nature and Control of Environmental Black Markets’ (Workshop Report, Royal Institute of International Affairs, 2002), p 5.

<sup>19</sup> United Nations Environment Programme, *The State of Knowledge of Crimes that have Serious Impacts on the Environment* (2018), XIV; European Commission, ‘Combating Environmental Crime’ <<https://ec.europa.eu/environment/legal/crime/>> Last accessed 10/10/2021; Daniella Rabaiotti and Jonathan Wentworth, ‘Environmental Crime’ (UK Parliament, Research Briefing, 31 January 2017) <<https://post.parliament.uk/research-briefings/post-pn-0547/>> Last accessed 10/10/2021.

<sup>20</sup> Gavin Hayman and Duncan Brack, ‘International Environmental Crime: The Nature and Control of Environmental Black Markets’ (Workshop Report, Royal Institute of International Affairs, 2002), p 7.

<sup>21</sup> Ibid.

<sup>22</sup> Environmental Investigation Agency, *Environmental Crime: A Threat to Our Future* (October 2008), p 2; Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), pp 11, 28.

<sup>23</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 4.

Organized Crime recommended that the full leverage and potential of targeted sanctions be considered in relation to environmental crime.<sup>24</sup>

### 3. Criticism of current measures to curtail transboundary environmental crimes

Stopping environmental crimes is time sensitive. There is only one ozone layer. Biodiversity loss may be irrevocable. Felled forests cause flooding and landslides. Coastal areas are less protected.

The rationale for sanctions is prevention and disruption, by depriving actors of funding through denying access to financial markets access,<sup>25</sup> and by addressing “potential threats at an early stage”.<sup>26</sup> In the time that it takes to pursue criminal prosecutions, vast areas may already be deforested.

Furthermore, domestic criminal prosecution can only occur *after the fact*, and current frameworks fail to adequately address the financial aspects of environmental crimes.<sup>27</sup>

The Environmental Agency (EA), which is responsible for issuing permits and enforcing UK regulations, does not have sufficient resources to prosecute every suspect even of domestic offences,<sup>28</sup> and financial penalties are too low to be a deterrent.<sup>29</sup> Indeed, case law on environmental crimes in the UK is limited, as prosecution is used as a last

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<sup>24</sup> Global Initiative Against Transnational Organized Crime, *Expanding the Toolkit to Tackle Organized Environmental Crime: Recommendations for the G7 Ministers* (June 2021), p 10.

<sup>25</sup> Sue Eckert, ‘The Use of Financial Measures to Promote Security’ (2008) 61(1) *Journal of International Affairs*, p 103.

<sup>26</sup> European Parliament, Policy Department for External Relations, Directorate General for External Policies of the Union, ‘Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level’ (April 2018), p 10.

<sup>27</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 3.

<sup>28</sup> Michael Coxall and Elizabeth Hardacre, ‘Environmental law and practice in the UK (England and Wales): overview’ (Clifford Chance 2020).

<sup>29</sup> Anthony Ogus and Carolyn Abbot, ‘Sanctions for pollution: Do we have the right regime?’ (2002) 14(3) *Journal of Environmental Law* 283, p 286.

resort.<sup>30</sup> Due to jurisdictional principles, transnational environmental crimes per se—where conduct takes place *abroad*—are not grasped by UK environmental legislation.

Global regulatory environments will not always be consistent or are too complex.<sup>31</sup> The lack of unified international forestry controls also means that partners do not reciprocate or respect each other's national laws. Once illegal timber leaves one country, it is impossible to pursue this breach elsewhere as mechanisms or incentives to identify illegal timber shipments are lacking.<sup>32</sup>

#### 4. Proposal for reform

The *Sanctions and Anti-Money Laundering Act 2018* stipulates in section 1(1) that “[a]n appropriate Minister may make sanctions regulations [...] for a purpose within subsection (2)”.

At present, such discretionary purposes are limited to anthropocentric issues: the prevention of domestic or global terrorism; national security interests; breaches of human rights or humanitarian law; respect for democracy, the rule of law and good governance; or foreign policy objectives of the UK government. The Act was most recently used to make the *Global Human Rights Sanctions Regulations 2020* and the *Global Anti-Corruption Sanctions Regulations 2021*.

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<sup>30</sup> Mitchell Lennan, ‘Evaluating the Effectiveness of the EU Environmental Liability and Environmental Crime Directives as Implemented by Scotland and the Rest of the United Kingdom’ (2021) *Journal of International Wildlife Law & Policy* 26, p 33; Michael Watson, ‘Environmental Crime in the United Kingdom’ (2005) *European Environmental Law Review* 186.

<sup>31</sup> Gavin Hayman and Duncan Brack, ‘International Environmental Crime: The Nature and Control of Environmental Black Markets’ (Workshop Report, Royal Institute of International Affairs, 2002), p 7.

<sup>32</sup> *Ibid*, p 19.

Measures to protect the environment, on which all planetary life depends, should urgently be included in this provision. Therefore, I suggest including in section 1(2) sub-paragraph (j): “*to disrupt or be a deterrent to transboundary environmental crimes*”. This paves the way for a “Global Environmental Crime Sanctions Regulation”, to target—and, eventually, to impose sanctions on—actors involved specifically in transboundary environmental crimes.

## 5. Reasons for imposing sanctions on environmental crimes

There are three primary reasons why it is desirable, useful, and practical for the UK to impose targeted Magnitsky-style sanctions on individuals involved in transboundary environmental crimes:

1. As urgent action to rapidly reduce harmful conduct that aggravates climate change and biodiversity loss;
2. Because the nature of environmental crimes is linked to terrorism and corruption (which are areas already subject to sanctions); and
3. Because environmental crimes are often inseparable from human rights abuses.

### ***5.1. Disrupting actions that accelerate climate change quickly***

The UK has obligations to directly reduce its own emissions. For example, the UK’s Nationally Determined Contribution (NDC) under the Paris Agreement require the UK to reduce economy wide greenhouse gas (GHG) emissions by at least 68 percent by 2030, compared to 1990 levels.<sup>33</sup>

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<sup>33</sup> Department for Business, Energy & Industrial Strategy, ‘The UK’s Nationally Determined Contribution communication to the UNFCCC’ (12 December 2020) <<https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc>>.

The *Climate Change Act 2008*, passed with an overwhelming parliamentary majority, commits to reducing GHG emissions by 80 percent by 2050, compared to 1990 levels. The UK eventually committed to a ‘Net Zero’ target by 2050.<sup>34</sup> According to scientific analysis, if successful, this is ‘almost sufficient’.<sup>35</sup>

Yet in addition, the UK also has an opportunity—if not a duty—to indirectly mitigate emissions caused by other states. Recently, the Human Rights Council passed a resolution, supported by the UK, in which it recognised for the first time the right to a healthy and sustainable environment.<sup>36</sup> The 2030 Agenda for Sustainable Development, at the heart of which are the 17 Sustainable Development Goals (SDGs), also addresses the need for ‘climate action’.<sup>37</sup> Yet one of the main goals and obligations of the Paris Agreement—to keep temperature rise to below 1.5 degree Celsius—is still out of reach.

Transboundary environmental crimes do not feature in either the ‘Net Zero’ action plan or the NDCs. Of course, that is because stopping transboundary environmental crimes (i.e., where conduct takes place outside the UK) does not directly contribute to lowering the UK’s emissions.

What *is*, however, likely taking place in the UK is the financial component of these crimes. Sanctions are the only avenue whereby the UK can deter and disrupt harmful

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<sup>34</sup> Committee on Climate Change, *Net Zero: The UK’s contribution to stopping global warming* (May 2019).

<sup>35</sup> Climate Action Tracker, available here: <<https://climateactiontracker.org/countries/>> Last accessed 10/10/2021 (emphasis added).

<sup>36</sup> UN Human Rights Council Res 48/23 ‘The human right to a safe, clean, healthy and sustainable environment’ UN Doc A/HRC/48/L.23/Rev.1.

<sup>37</sup> United Nations, Department of Economic and Social Affairs, ‘Sustainable Development Goals’ Accessible here: <https://sdgs.un.org/goals>, Goal 13.

conduct, which is occurring *outside* its jurisdiction—but where the financial means or benefits that enable or motivate such conduct originate, cross through, or arrive inside UK jurisdiction. The UK can thus support countries which suffer the most from the illegal exploitation of their natural resources—and experience climate change the earliest and most severely—but do not have the opportunity to interrupt the flow of money.

Imposing sanctions is practical because it is feasible and likely to succeed in real circumstances. In the past, the US already sanctioned several individuals for their connection to environmental crimes: Dan Gertler, an Israeli billionaire involved in corrupt mining deals in the Congo and his associates;<sup>38</sup> and several Cambodian companies and individuals involved in land grabbing.<sup>39</sup> US legislators have also tabled a bill called “Targeting Environmental and Climate Recklessness Act of 2019”, seeking to introduce sanctions for climate crimes.<sup>40</sup> The bill is currently before the US House of Representatives.<sup>41</sup>

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<sup>38</sup> Tom Firestone and Kerry Contini, ‘The Global Magnitsky Act’ (2018) 29 Criminal Law Forum 617, p 621; Marc Limon and Mary Grace Carey, ‘Time for a ‘Universal Magnitsky Act’?’ (Universal Rights Group Geneva, 16 July 2018) <<https://www.universal-rights.org/blog/time-for-a-universal-magnitsky-act/>> Last accessed 10/10/2021; Keith Slack, ‘It’s Time to Use Sanctions to Stop Climate Destruction’ (EarthRights International, 2 June 2021) <<https://earthrights.org/blog/its-time-to-use-sanctions-to-stop-climate-destruction/>> Last accessed 10/10/2021.

<sup>39</sup> US Department of the Treasury, ‘Treasury Sanctions Corruption and Material Support Networks’ (Press Release, 9 December 2019) <<https://home.treasury.gov/news/press-releases/sm849>> Last accessed 10/10/2021.

<sup>40</sup> Justine Coleman, ‘Senate Democrat’s bill would allow sanctions for ‘egregious’ actions causing climate change’ (*The Hill*, 25 November 2019) <<https://thehill.com/policy/energy-environment/471951-dem-senators-bill-would-allow-more-sanctions-for-egregious>> Last accessed 10/10/2021.

<sup>41</sup> US Congress Tracker, Actions Overview, available here: <https://www.congress.gov/bill/116th-congress/house-bill/5625/actions>> Last accessed 10/10/2021.

## **5.2. Disrupting the link between environmental crimes and corruption and terrorism**

Because of their clandestine and illicit nature, ties between environmental crimes and corruption, terrorism, and money laundering are well-documented.<sup>42</sup> The Pound Sterling is a desired currency,<sup>43</sup> and the UK—and London in particular—is a leading financial and investment centre, as well as money-laundering, global transportation, and infrastructure hub.

Offenders of environmental crimes use other illicit networks to ‘launder’ their funds, linking environmental crimes to other criminal areas.<sup>44</sup> Networks can “vary in complexity and range from cash couriers to networks of front and shell companies to move funds”.<sup>45</sup> Imposing sanctions would be practical because measures to detect the flow of money are already in place in the context of anti-money-laundering efforts.

## **5.3. Disrupting human rights violations which are a consequence of environmental crimes**

The illegal logging of forests and timber also leads to the eradication of livelihoods. This leads to environmental refugees, causing further expenses and conflicts over natural resources. More immediately, human rights abuses, violence and even murder

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<sup>42</sup> Peter Stoett, Delon Alain Omrow (eds), *Spheres of Transnational Ecoviolence: Environmental Crime, Human Security, and Justice* (Palgrave Macmillan 2021), pp 5, 65, 131-132, 141; Cathy Haenlein, Thomas Maguire, and Keith Somerville, ‘Poaching, Wildlife Trafficking and Terrorism’ (2016) 86(1) *Whitehall Papers* 58; TB van Solinge, ‘Eco-Crime: The Tropical Timber Trade’ in D. Siegel and H. Nelen, (eds) *Organized Crime: Culture, Markets and Policies* (2008), pp 97– 111.

<sup>43</sup> cf Daniel McDowell, ‘Financial sanctions and political risk in the international currency system’ (2021) 28(3) *Review of International Political Economy* 635, p 649.

<sup>44</sup> Environmental Investigation Agency, *Environmental Crime: A Threat to Our Future* (October 2008), p 3; Daan P van Uhm and Rick CC Nijman, ‘The convergence of environmental crime with other serious crimes: Subtypes within the environmental crime continuum’ (2020) *European Journal of Criminology* 1; Lorraine Elliott, ‘Fighting Transnational Environmental Crime’ (2012) 66(1) *Journal of International Affairs* 87, p 92-95.

<sup>45</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 11.

are associated with the illegal trade of timber.<sup>46</sup> Persons responsible for environmental crimes, which have an adverse impact on human rights, may already be subject to sanctions on those grounds.

Some natural resources which are threatened by environmental crimes are also used to fund conflicts. This in turn poses risks to human rights and international security and may lead to international trade sanctions on nations to the detriment of local populations.<sup>47</sup> Such conventional sanctions imposed on states have been criticised for their effect on vulnerable populations, and for failing to cause change in the behaviour of those who are accused of committing human rights violations.<sup>48</sup>

Magnitsky sanctions avoid the pitfalls of conventional sanctions because, by definition, they cannot be passed on to populations.<sup>49</sup> In this context, targeted financial sanctions interrupt the flow of money which is required to keep the structures of organised crime afloat. Indeed, imposing targeted financial sanctions for environmental crimes would follow 'a global trend towards individualisation' where individuals responsible for abuses can be identified and targeted.<sup>50</sup>

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<sup>46</sup> Environmental Investigation Agency, *Environmental Crime: A Threat to Our Future* (October 2008), p 6.

<sup>47</sup> Gavin Hayman and Duncan Brack, 'International Environmental Crime: The Nature and Control of Environmental Black Markets' (Workshop Report, Royal Institute of International Affairs, 2002), p 30.

<sup>48</sup> Maya Lester QC in 'Do global sanctions work?' (Spectator TV, 23 March 2021, 6:00pm) <[https://tv.spectator.co.uk/event/do-global-sanctions-work->](https://tv.spectator.co.uk/event/do-global-sanctions-work-) Last accessed 10/10/2021.

<sup>49</sup> cf Daniel W. Drezner, 'Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice' (2011) 13(1) *International Studies Review* 96.

<sup>50</sup> European Parliament, Policy Department for External Relations, Directorate General for External Policies of the Union, 'Targeted sanctions against individuals on grounds of grave human rights violations – impact, trends and prospects at EU level' (April 2018), p 10; see Emanuele Ottolenghi, 'Good Climate Policy Should Fight Corruption and Organized Crime' (*The Dispatch*, March 2019) <<https://thedispatch.com/p/good-climate-policy-should-fight> last accessed 9/10/21> Last accessed 10/10/2021.

There are two further, subsidiary, reasons. First, sanctions can incentivise stakeholders to divest from businesses associated with activities related to such crimes.<sup>51</sup> While environmental crimes are ‘low risk, high reward’,<sup>52</sup> the threat of sanctions turns low risk into high risk since any interaction with funds belonging to a designated person is an offence under respective sanctions regulations.<sup>53</sup>

The UK Office of Financial Sanctions Implementation (OFSI) will enforce breaches of financial sanctions if there is a nexus to the UK, to be determined on a case-by-case basis (including actions abroad directed from within the UK).<sup>54</sup> Investors and stakeholders will be deterred from doing business with any entity on which financial sanctions have been imposed due to the repercussions which such involvement would entail.

Second, individualised sanctions do not necessarily conflict with broader foreign policy priorities that may otherwise preclude effective countermeasures. For example, the US imposed sanctions on certain Saudi and Israeli nationals—both strategic allies of the US, where state sanctions would be unlikely.<sup>55</sup>

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<sup>51</sup> cf Samuel Rubinfeld, ‘U.S. Warns Banks About Human Rights Abusers, Imposes Sanctions’ (Wall Street Journal, 12 June 2018) <<https://www.wsj.com/articles/u-s-warns-banks-about-human-rights-abusers-imposes-sanctions-1528839851>> Last accessed 10/10/2021; see also methodology of Climate Counsel (<https://www.climatecounsel.org/approach>) and Center for Climate Crime Analysis (<http://www.climatecrimeanalysis.org/approach.html>). See also Climate Advisers, *Legal Risks to Investors from Forest Crime: A Legal Analysis Beyond Environmental Laws* (December 2018).

<sup>52</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), p 3.

<sup>53</sup> Sanctions and Anti-Money Laundering Act 2018, s 17; see Rachel Barnes, Saba Naqshbandi, Patrick Hill, and Genevieve Woods, ‘UK Sanctions Enforcement’ in Rachel Barnes (ed), *The Guide to Sanctions* (Law Business Research 2020), p 84.

<sup>54</sup> OFSI, ‘Monetary penalties for breaches of financial sanctions: Guidance’ (April 2021), section 3.7.

<sup>55</sup> Global Witness, ‘It’s the end of the year, the Global Magnitsky sanctions are here’ (31 December 2019) <<https://www.globalwitness.org/en/blog/its-the-end-of-the-year-the-global-magnitsky-sanctions-are-here/>> Last accessed 10/10/2021.

## 6. Safeguards of sanction regimes

The UK government already considers sanctions an appropriate method to address globally harmful conduct occurring outside the UK (e.g., human rights violations) by removing access to its market.<sup>56</sup> But certain safeguard thresholds must be met for transboundary environmental crimes.

### **6.1. Proportionality**

Individualised financial sanctions should only apply to suspects involved in transboundary environmental crimes, which are regarded as sufficiently serious, with ties to UK financial networks. They are not applicable to breaches of domestic environmental regulations relating to air pollution control, waste on land, contamination, clean air, litter, genetically modified organisms, and nature conservation.<sup>57</sup> This would be disproportionate as domestic criminal and civil remedies apply, with legal safeguards. The proposed sanctions for transboundary environmental crimes should clearly not apply to someone fly-tipping in the UK countryside, or to a person committing this offence abroad.

### **6.2. Evidence threshold**

It remains important to base any decision to sanction an individual not only on the gravity of their conduct but also on the existence of compelling evidence. This avoids opening 'floodgates' of submissions and designating excessive numbers of persons.

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<sup>56</sup> Written evidence from the Foreign and Commonwealth Office (FSP0015), paras. 1, 4-11, 44 <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/global-britain-the-future-of-uk-sanctions-policy/written/94581.html>> Last accessed 10/10/2021.

<sup>57</sup> Environmental Protection Act 1990.

There must at least be ‘reasonable grounds to suspect’ that an entity falls within the description of an ‘involved person’.<sup>58</sup> This is a broad definition, and means that “the person is involved in, or connected to, an activity set out in the regulations for a particular sanctions regime”.<sup>59</sup> Interpol and other agencies and NGOs are often able to gather sufficient evidence to depict a clear picture of environment crimes.<sup>60</sup> The deciding minister must also consider it appropriate to designate an entity,<sup>61</sup> although this does not reach the criminal standard of proof.<sup>62</sup>

### **6.3. Review of sanction list**

Although the imperative in imposing sanctions rests on acting quickly, designated persons can submit evidence that sanctions are not justified. A lack of evidence and evidence disclosure, violations of due process and defence rights, vague reasons, and errors in the assessment can lead to de-listing.<sup>63</sup>

There are risks that by targeting illicit activities, legal finance activities will also be damaged, since actors frequently ‘comingle’ legal and illegal goods “early in the resource supply chains to conceal their illicit source”.<sup>64</sup> This hinders detection of illicit

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<sup>58</sup> Sanctions and Anti-Money Laundering Act 2018, ss 11(2)(a), 12(5).

<sup>59</sup> Paul Feldberg and Robert Dalling, ‘UK Sanctions’ in Rachel Barns (ed), *The Guide to Sanctions* (Law Business Research 2020), p 64; Sanctions and Anti-Money Laundering Act 2018, s 11(3).

<sup>60</sup> Rob White, ‘Building NESTs to combat environmental crime networks’ (2016) 19 Trends in Organized Crime 88, p 95; see also Global Witness, ‘Hostile Takeover: The corporate empire of Cambodia’s ruling family’ (July 2016) <<https://www.globalwitness.org/en/reports/hostile-takeover/>> Last accessed 10/10/2021.

<sup>61</sup> Sanctions and Anti-Money Laundering Act 2018, s 11(2)(b).

<sup>62</sup> Paul Feldberg and Robert Dalling, ‘UK Sanctions’ in Rachel Barns (ed), *The Guide to Sanctions* (Law Business Research 2020), p 69.

<sup>63</sup> Maya Lester QC and Michael O’Kane, ‘De-listing’ (European Sanctions 2021) <<https://www.europeansanctions.com/de-listing-uk/>> Last accessed 10/10/2021.

<sup>64</sup> Financial Action Task Force, *Money Laundering from Environmental Crime Report* (July 2021), pp 3, 11.

financial flows. However, the war on terror has provided stricter controls in money transfers, which may mitigate this danger.<sup>65</sup>

Designations under the *Sanctions and Anti-Money Laundering Act 2018* can be challenged through administrative and judicial review. To act for a sanctioned entity, legal representatives must have a license from the UK OFSI. The government provides freely available information and guidelines in how to seek revocation of a designation.<sup>66</sup> Time limits to bring a challenge apply. There may be claims for damages for a wrongful sanction designation.<sup>67</sup> The government is also required to periodically review all sanctions regulations.<sup>68</sup>

## 7. Conclusion

The proposal of reforming the *Sanctions and Anti-Money Laundering Act 2018* only requires the simple addition of another discretionary purpose for imposing sanctions. The rationale for imposing sanctions on transboundary environmental crimes is disruption, prevention, and deterrence of conduct causing immediate, critical, and *avoidable* global harm.

Imposing financial sanctions on individuals suspected of committing transboundary environmental crimes is desirable, because—due to their connections to money-

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<sup>65</sup> Gavin Hayman and Duncan Brack, 'International Environmental Crime: The Nature and Control of Environmental Black Markets' (Workshop Report, Royal Institute of International Affairs, 2002), p 29.

<sup>66</sup> Foreign, Commonwealth & Development Office, 'How to request variation or revocation of a sanctions designation or review of a UN listing' (Guidance, Updated 8 July 2021) <<https://www.gov.uk/government/publications/making-a-sanctions-challenge-how-to-see-variation-or-revocation-of-a-sanctions-designation/making-a-sanctions-challenge-how-to-see-a-variation-or-revocation-of-a-sanctions-designation>> Last accessed 10/10/2021.

<sup>67</sup> Maya Lester QC and Michael O'Kane, 'De-listing' (European Sanctions 2021) <<https://www.europeansanctions.com/de-listing-uk/>> Last accessed 10/10/2021.

<sup>68</sup> *Sanctions and Anti-Money Laundering Act 2018*, s 24.

laundering and corruption—this is the most effective means to curtail further exploitation of natural resources and to support the inhibition of climate change.

Severing the flow of money is practical because anti-money laundering facilities are already in place, and lack of money impedes illegal trade.

Imposing targeted financial sanctions is also useful because they inhibit the serious socio-economic impacts of environmental crimes on human rights, the environment, and public health.

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