Corruption and integrity risks in climate solutions: an emerging global challenge

Tiffanie Chan, Laura Ford, Catherine Higham, Shirley Pouget and Joana Setzer

Policy report

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Summary

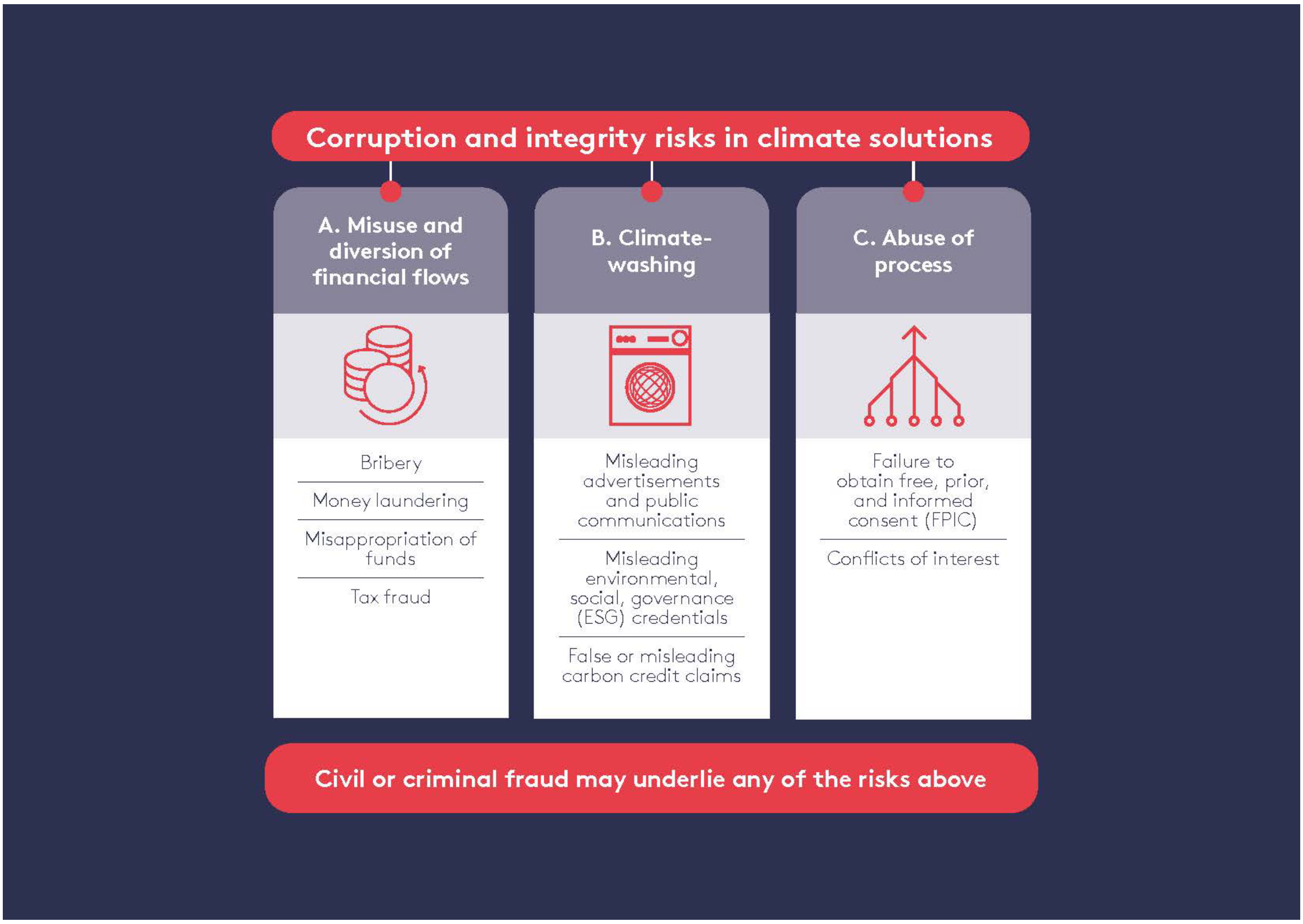
Corruption and poor integrity in the implementation of policies and projects that aim to combat climate change pose significant risk to the delivery of these 'climate solutions'. In the past year, awareness of such risks has greatly increased, fuelled by a spate of media reports – on corruption in carbon credit markets and the permitting of renewable energy projects, for example. These revelations have emerged against a backdrop of concern around the credibility of non-state actors' climate commitments, such as emission reduction pledges made by corporate entities.

Despite this increasing exposure and the fact that corruption and poor integrity have played a part in delaying climate action over the past few decades, conventional anti-corruption actors are yet to take significant action to ensure the integrity of climate solutions. To help redress this balance and avoid impeding the low-carbon transition, it is important to increase the knowledge base on the different types of corruption and integrity risk. Some of the emerging risks threatening the implementation of climate solutions today are distinct from those that came before, and are less well understood. This report aims to contribute to an improved understanding.

Corruption and integrity risks in climate solutions – categories and recommendations for reducing risk

Our research identifies three categories of corruption and integrity risk related to climate solutions, and further sub-risks within these, illustrated in Figure 1.

Figure 1. Corruption and integrity risks in climate solutions



Robust governance structures are needed to ensure that climate solutions continue to be delivered, and that this happens in a credible and efficient manner. As illustrated in the key recommendations across all three categories of risk below, this emerging challenge requires supportive engagement from and coordination between a broad range of actors.

A. Misuse and diversion of financial flows

Trillions of dollars in public and private investment are required for the transition to a sustainable economy. However, there is also a risk that this finance is channelled towards private pockets, high-emitting activities operating under the guise of 'green' initiatives, or criminal activity.

The misuse and diversion of financial flows encompasses:

- Bribery: the act of offering, promising, giving, accepting, agreeing to receive, or requesting any undue financial or other advantage to induce or reward improper conduct. Bribery may enable entities to subvert necessary procedures or result in the biased allocation of funding towards less effective or actively harmful climate projects.
- Money laundering: concealing the origins of illegally obtained proceeds to give the impression that they are from a legitimate source, or the spending of such illegally obtained proceeds. Money laundering is typically combined with, and follows on from, other illegal activities, such as bribery.
- Misappropriation of funds: unlawful or improper use of money, assets or resources for purposes other than originally intended, and without transparent disclosure of their use. This practice could take place when individuals entrusted with handling funds for climate projects divert them for personal gain or to activities that will not result in reduced emissions or increased protection for vulnerable communities.
- Tax fraud: the deliberate omission, concealment or misinterpretation of information, or the false or deceptive disclosure of information or circumstances to gain a tax advantage. Tax fraud poses a major risk to the efficacy of carbon pricing schemes, a common policy instrument to address the drivers of climate change.

The risks in this category typically constitute hard-edged criminal acts that are prohibited under domestic law and international anti-corruption conventions. However, even in jurisdictions where such laws are well enforced, there is little recognition at government level of how they apply to corruption risks in climate solutions. A further challenge is the lack of private sector compliance mechanisms to address these risks.

Key recommendations

Regulators and enforcement agencies should:

- Issue clear guidance on how existing criminal legislation on bribery, money laundering and other financial risks applies to climate solutions. International bodies such as the Financial Action Task Force (FATF), United Nations Office on Drugs and Crime (UNODC) and Organisation for Economic Co-operation and Development (OECD) should issue international guidelines to encourage domestic action. New guidance can be informed by other areas of environmental law, where existing legal standards have been applied through the creation of taskforces and working groups.
- Undertake a comprehensive analysis of fraud risks in carbon pricing schemes, including carbon taxes and emissions trading schemes. This is especially critical when new schemes are under development and as the cost of carbon increases over time.
- Accelerate efforts to clarify beneficial ownership. Effective enforcement should be taken against those who ultimately own or control the operations where corrupt practices may be occurring.

Legislators should:

- Include amendments that explicitly address climate-related corruption crimes. This could include finding synergies with ongoing efforts to amend environmental crime legislation.

Companies should:

- Take proactive steps to limit bribery and money laundering risks in the context of climate solutions by undertaking a structured anti-bribery and anti-money laundering risk assessment and implementing other appropriate compliance measures to cover climate-related activities and risks.
- Take lessons from the company's existing anti-bribery processes where related risk factors exist and corresponding compliance programmes are well established, avoiding the cost, confusion and compliance fatigue of adding a new and separate area of focus.
- Ensure appropriate whistleblowing mechanisms are in place. This will increase the chances that the company discovers risks early, enabling them to take appropriate steps.

B. Climate-washing

Climate-washing is defined in this report as acts that mislead investors, consumers or the general public regarding climate-related impacts or outcomes, or overstate an actor's climate performance. Climate-washing can create a false sense of confidence around the implementation of climate action, potentially leading to complacency and delaying effective solutions.

It is often difficult to demonstrate the degree of deceptive intention behind misleading climate communications. False statements about the impact of a company's business practices may be made without full knowledge of the facts, or vague or ambiguous language may be used. Although such forms of climate-washing may be negligent, rather than corrupt or fraudulent, they may still show poor integrity, a regulatory breach, and/or weak due diligence processes.

Key climate-washing risks include:

- **Misleading advertisements and public communications** that are likely to have the effect of deceiving the audience or receiver, and to affect their economic behaviour.
- **Misleading environmental, social, governance (ESG) credentials** based on deceptive or misleading certifications, ratings, or audits on ESG performance. This risk is exacerbated by a lack of unified standards ensuring accuracy and comparability of data and associated claims.
- **False or misleading carbon credit claims** referring to inaccurate disclosures on the use of carbon credits to meet net zero targets or other voluntary emission reduction pledges.

The behaviours underlying this category of risk are generally prohibited by existing legislation, albeit often relying on administrative or civil penalties rather than criminal sanctions. Existing consumer protection law and, in some cases, securities law can be invoked to tackle climate-washing, while new mandatory human rights and environmental due diligence laws could also be used to address these risks across supply chains.

Encouragingly, efforts are underway from regulators and enforcement agencies, and from legislators, to develop dedicated legislation and regulation to tackle climate-washing. However, such efforts are in early stages of development and must be scaled up.

Key recommendations

Regulators and enforcement agencies should:

- Enforce existing legal standards to take strict and proactive action against those repeatedly found guilty of climate-washing.
- Signpost clear processes for citizen complaints and provide adequate protection for whistleblowers.

Legislators should:

- Introduce specific legislation to prevent climate-washing through false or misleading advertisements and introduce regulation for voluntary carbon markets. Where appropriate or more efficient, guidelines on how existing general consumer protection legal regimes apply to climate-washing claims could be issued.
- Introduce mandatory climate and sustainability reporting and disclosure requirements, overseen by financial authorities, and regulate ESG ratings agencies.

Consultants, accountants, lawyers and other professional advisors to the private sector should:

- Encourage and support the use of widely recognised disclosure standards across capital markets globally, namely helping clients align with the International Sustainability Standards Board disclosure standards, to harmonise the industry.

Companies should:

- Remove barriers between internal departments or business units to encourage communication on climate-related topics. For example, requiring sales and marketing teams to consult with those responsible for sustainability and climate action before making green claims, and involve compliance teams where appropriate. All aspects of a company's operations must be considered before green claims are made about the business as a whole.
- Where net zero pledges are set by corporate entities, efforts should be made to ensure these align with the recent recommendations of the High-level Expert Group on Net Zero Emissions Commitments of Non-State Entities.
- Link compensation packages of executive staff to climate action to incentivise the alignment of companies' advocacy, governance and business strategies with climate commitments.
- Engage proactively with regulators and respond to public consultations and other calls for inputs led by regulators to emphasise the challenges companies face and how regulators can assist – for example through developing tailored practical guidance.

C. Abuse of process

'Abuse of process' takes place when actors dishonestly abuse legitimate processes as part of the implementation of climate solutions. Key risks that result include:

- Failure to obtain 'free prior and informed consent' (FPIC) from Indigenous and local communities that are impacted by projects. This principle is protected under international law but is often poorly or disingenuously implemented, or ignored in the development of climate projects, threatening the achievement of a 'just transition'.
- Conflicts of interest, whereby individuals involved in implementing climate solutions have actual or potential interests (professional, personal, monetary or otherwise) that are not aligned with what they are tasked with and responsible for. This can arise when individuals move between positions in public office and private organisations. Conflicts of interest carried by a powerful public or private actor can influence public debates around the priority given to different approaches in the implementation of a low-carbon transition.

FPIC principles have generally been well incorporated into international legal frameworks and international finance standards, and into some national laws. However, little effort has been made to ensure that FPIC is properly obtained and retained throughout the full life cycle of climate projects.

Risks relating to conflicts of interest can be managed through existing codes of conduct or laws. However, there is little evidence of guidance, legislative safeguards, or action by key watchdogs to address these as they relate to climate solutions.

Key recommendations

International organisations, in particular the United Nations Framework Convention on Climate Change (UNFCCC), should:

- Establish robust definitions of 'conflict of interest' and 'undue influence' to ensure adequate controls on party delegations and engagement in negotiations.
- Ensure the global stocktake process secures inputs that contribute to a better understanding of the levels of private sector finance used for lobbying and influencing governments at national, regional and international levels.

Legislators should:

- Enact mandatory human rights due diligence legislation that includes clear channels for impacted communities to access relevant processes and remedies.
- Establish effective watchdogs to ensure that public officials comply with legislation and codes of practice related to conflicts of interest. Transparency requirements placed on corporate spending and lobbying activities on climate change can tackle conflicts of interest.

Companies should:

- Reform internal processes around FPIC, such as building internal capacity, establishing grievance mechanisms and protections for whistleblowers, and enforcing rigorous internal controls. In-house counsel and external lawyers are key to the FPIC process. Companies should equip staff to effectively engage and maintain ongoing dialogue with stakeholders, and conduct risk assessments to identify any potential adverse impacts on local communities.
- Implement transparency and disclosure processes for corporate spending and lobbying activities on climate change. These processes are also necessary to avoid climate-washing.

Part 1. Introduction

As the imperative to transition swiftly and decidedly to a low-carbon economy grows increasingly urgent, the issue of corruption in matters relating to climate change takes on greater importance. A range of societal actors are working to mitigate the climate crisis, and their efforts must receive ongoing support. However, without proper safeguards against corruption and practices characterised by poor integrity, there is a real risk that the resources required for the delivery of climate solutions will be diverted away from the pursuit of genuine progress.

To our knowledge, no recent scoping study has attempted to map the breadth of potential forms of corruption and integrity risk that may arise in the implementation of emerging climate solutions. Therefore, in this report, we build on the existing body of research to provide a novel framework to understand the spectrum of risks, identifying three main categories. After setting out the context and defining our key terms in this Introduction, we explore the nature of these risks, how they can be addressed by existing legal frameworks, and where there are gaps.

Definitions in a nutshell

Corruption: The abuse of entrusted power for private gain.

Public integrity: Adherence to shared principles and prioritising the public interest.

Private integrity: Responsible business conduct aligned with international standards.

For more details and further definitions see Table 1.1.

The scale of corruption and integrity risk

Understanding how corruption arises in climate solutions is important because of the scale of finance involved: experts have called for a significant scaling up of investment to raise US$1 trillion per year in external finance for climate and development (Independent High-Level Expert Group on Climate Finance, 2022). A low-carbon transition necessitates a redirection of financial flows on an unprecedented scale. The voluntary carbon market, a key financing vehicle for low-emission infrastructure and nature-based solutions to climate change, has quadrupled in value since 2020 and is now worth around US$2 billion (Forest Trends Ecosystem Marketplace, 2022). The potential impact of corruption and poor integrity practices on these financial flows is therefore significant. We explore finance-specific risks in further detail in Part 1 of this report.

In addition to the level of finance, the necessary scale and speed of transformation makes corruption in climate action a critical area for research. To limit global temperature rise to 1.5°C above pre-industrial levels, societies will need to undergo "wide-ranging, large-scale, rapid and systemic transformation" (UNEP, 2022). This mammoth task requires effective solutions to be implemented in many areas – including changes to the financial system to support such a transformation. During COP27, many world leaders signalled the need for structural changes to the financial system. The 2022 Bridgetown Agenda, led by Barbados's Prime Minister Mia Mottley, for example, called for "reform of the global financial architecture" to drive financial resources towards climate action and the Sustainable Development Goals (Barbados Ministry of Foreign Affairs and Foreign Trade, 2022).

Beyond the implications for progress on climate change mitigation and adaptation, corruption has much broader economic and social impacts. Abuse of power in all its forms harms trust in public and private institutions, worsens existing inequalities and impedes sustainable development. The focus of this report however is on how corruption and integrity risks impede progress on climate change mitigation and adaptation.

Focus of this study: corruption and poor integrity arising after the decision to act on climate

Research into risks to the success of climate action has typically focused mainly on risks that delay action overall: for example, research on climate obstructionist strategies like outright denial of the scientific evidence on anthropogenic climate change (Ekberg et al., 2022; Brulle and Downie, 2022; Brulle, 2014; Supran et al., 2023) or deliberate actions to hinder climate action due to the influence of vested interests (Speth, 2021; Supran and Oreskes, 2021; Franta 2021), one of these being spreading false information about the effectiveness of renewable energies (Simon, 2022). Action to address these risks remains absolutely critical today to remove persistent barriers to climate action.

However, it is also critical to identify corruption and poor integrity behaviours that arise after a decision has been made to take action to mitigate climate change or adapt to its impacts. This risk is under-explored and hence is the focus of this report. Some risks may manifest in both the 'decision to act' and the 'implementation of solutions' stage, but distinguishing between these two stages is important as there is a particular risk that there will be an illusion of progress on climate solutions if corruption and integrity risks are not identified and addressed during the implementation stage. Furthermore, if left unaddressed, these issues will multiply as the transition gains traction.

How we define corruption and poor integrity in the context of climate solutions is described in further detail in Table 1.1.

This report does not aim to identify all the ways in which acting in bad faith may derail climate progress, and some acts are beyond its scope, notably the serious violent crimes perpetrated against climate and environmental advocates. The nature and extent of such abuses have been well documented by several NGOs and community action groups, including Global Witness and the FrontLine Defenders, although critical policy action to address these risks remains lacking. Environmental crimes, such as illegal hunting, and destruction of protected wildlife and ecosystems are also outside the scope of this report where they do not relate primarily to climate solutions.

Box 1.1. Prior research that informed this study

- Corruption risks in climate finance (e.g. Transparency International, 2022; the *Climate and Corruption Case Atlas*, maintained by Transparency International)
- The relationship between corruption and environmental policy (e.g. Fredriksson et al., 2007; Fredriksson and Neumayer, 2016; Pellegrini, 2011; Harring, 2014)
- The impact of corruption on the environment (e.g. Tacconi and Williams, 2020) and on pollution (e.g. Cole, 2007)
- The relationship between corruption and deforestation (e.g. Transparency International, 2016; Koyuncu and Yilmaz, 2009; Galinato and Galinato, 2012)
- Challenges to maintaining integrity in environmental, social, governance (ESG) ratings (e.g. Yu et al., 2020) and, more broadly, greenwashing behaviours (e.g. He et al., 2022)
- A framework for understanding corruption across the renewable energy sector developed by Sovacool (2021). This framework identifies eight types of corruption: diverting public spending; artificially inflating costs; inefficiently allocating contracts; tender rigging; allowing bribery or mismanagement; theft of energy equipment; unlawful tactics or land grabbing; and tax evasion.

Table 1.1. Key concepts and definitions

Corruption	This report builds on Transparency International's definition of corruption: "the abuse of entrusted power for private gain" to adopt a broad understanding of corruption in the context of climate solutions. 'Abuse of entrusted power' includes activities that are considered illegal in most jurisdictions (e.g. bribery), and activities that private actors engage in from a position of power over consumers that lead to deception (e.g. false advertising). 'Private gains' may also take many different forms, including monetary and non-monetary benefits, and may accrue to an individual, an entity, a group of actors or an industry.
Integrity	The policy literature on integrity and climate tends to separate public and private integrity. In this report, public integrity is defined as "the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector" (OECD, 2017). Private integrity is responsible business conduct aligned with international standards, such as the OECD's Guidelines for Multinational Enterprises (2023) and the UN Guiding Principles on Business and Human Rights (UNGPs).
Anti-corruption actors	Due to the broad definition of corruption adopted in this report for the context of climate, we expand the traditional definition of 'anti-corruption actors' beyond criminal law enforcement agencies to include the range of stakeholders that can have a positive impact on anti-corruption and integrity measures, namely competition regulators, environmental regulators, consumer protection and other watchdogs, and in-house corporate ethics and compliance teams. The distinct mandates of each of these anti-corruption actors reflects the efforts needed by every sector of the economy in the low-carbon transition, the wide range of areas in which climate solutions will emerge, and therefore the broad group of actors that will be needed to tackle emerging climate-related corruption challenges.
Climate solutions	The implementation of climate policies or projects that aim to combat climate change and manage its impacts. This encompasses actions that reduce emissions, enhance carbon sinks, reduce the vulnerability of and increase the resilience of human and ecological systems to negative climate change impacts, and actions that support these aims (SCF, 2014; IPCC, 2022; Galvanizing the Groundswell of Climate Actions, n.d.).
Fraud	Fraud is central to many, if not all, of the risks listed in this report. In broad terms, fraud can be defined as the use of deception or dishonesty to secure an advantage. One way to view fraud is as an act of 'cheating', where someone "intentionally deceives another in order to gain an unfair or illegal advantage" (Transparency International, n.d.). This deceptive or dishonest behaviour may not always appear in its most severe form, namely as a criminal offence. The legal threshold for fraud varies across jurisdictions. In some cases, behaviour where the participants are reckless about the accuracy of information they are providing may constitute a form of civil fraud. Corruption and integrity risks therefore encompass a range of behaviours that can be sub-divided into outright breaches of criminal law, breaches of existing regulatory law, breaches of civil law, and conduct that is unethical or lacking in integrity. To identify the most egregious and impactful forms of corruption and integrity risk, we have limited this report to behaviours that may be underpinned by fraud. For example, Box 1.2 below describes some of the common characteristics of carbon credit fraud.

Box 1.2. The example of carbon credit fraud

One area of climate solutions in which several high-profile instances of fraud have been identified to date is the issuance of carbon credits. Concerns include:

- Cases of 'non-existent' carbon credits.: In the UK in 2021, two individuals were prosecuted for facilitating the sale of near-worthless carbon credits to the public. They were charged with fraudulent trading and money laundering and sentenced to prison terms of 13 and six years respectively (Peacock, 2021). Taiwan successfully prosecuted the owners of Rich Alliance Good Health Co. for financial fraud and illegally operating an investment business in contravention of the Taiwanese Banking Act in 2022, in connection with their operation of a carbon credit trading scam, which generated profits of US$3.31 million over two years (Pan, 2022).
- Dishonest implementation of carbon offset projects: A former head of the Australian Government's Emissions Reduction Assurance Committee, Professor Andrew Macintosh, revealed systemic issues with the pricing and distribution of carbon projects, which he claimed amounted to fraud. In 59 of 119 forest regeneration projects in New South Wales and Queensland, the amount of forest had actually reduced. Despite this, 8.2 million carbon credits, worth over $100 million, had been issued (Morton, 2022).

Structure of the report: three categories of climate-related corruption and integrity risks

In Part 2 we consider three different categories of climate-related corruption and integrity risks: (A) misuse or diversion of financial flows; (B) climate-washing; and (C) abuse of process. We examine each risk in turn, providing examples of how these risks manifest in practice and identifying gaps in current legislation. We make recommendations to a range of stakeholders on how they can take action against these risks to protect and facilitate the low-carbon transition. A brief conclusion summarises the importance of understanding the spectrum of corruption and integrity risks emerging across climate solutions.

More detail about our methodology, which included desk-based research and consultations, is provided in Appendix 1. High-level commentary on the landscape of relevant legal frameworks by lawyers from DLA Piper (in relation to United Kingdom, Germany, France, United States, Colombia, and Thailand) and Trilegal New Delhi (in relation to India), is provided in Appendix 2.

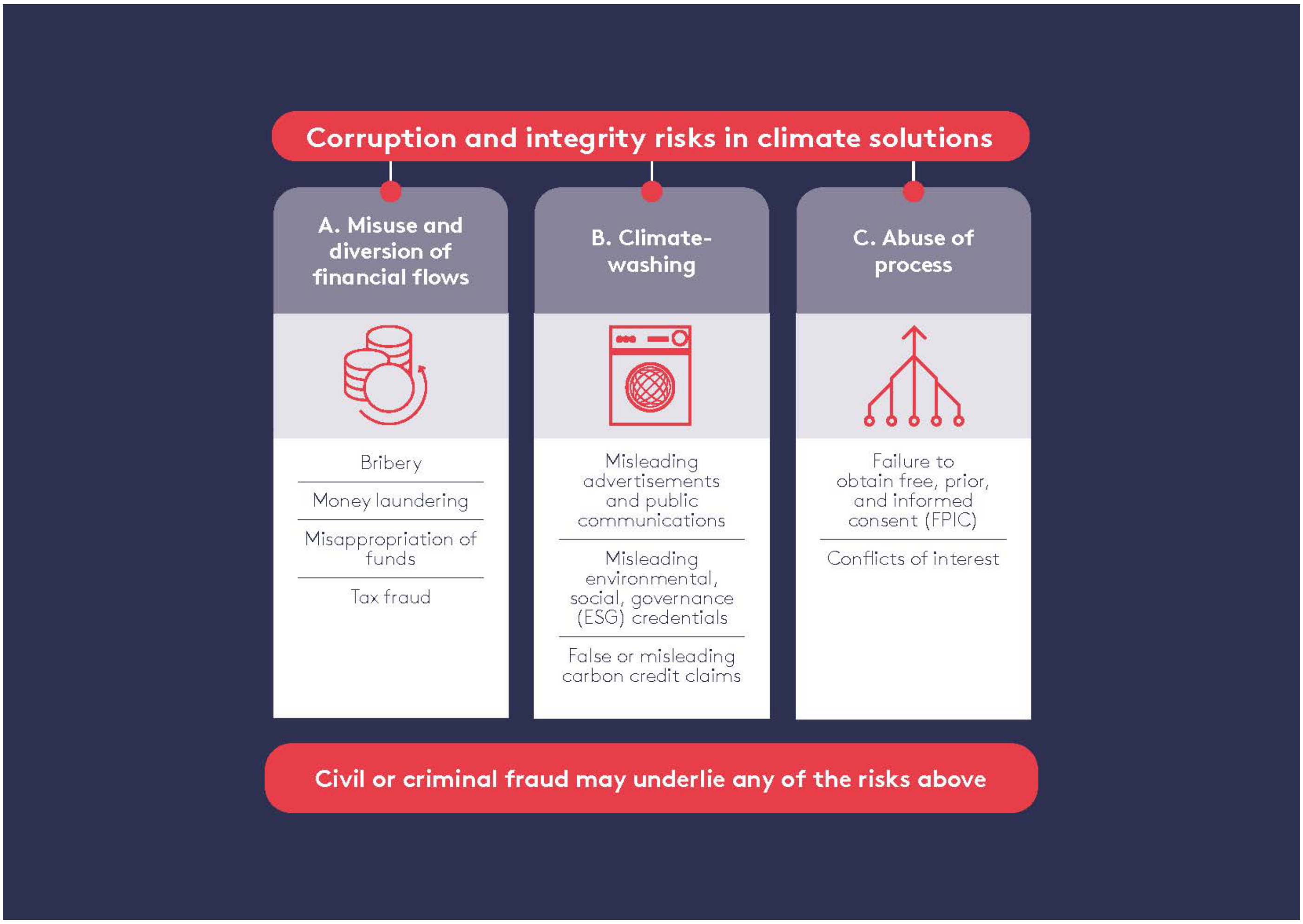
Part 2. Categories of corruption and integrity risks in climate solutions

To aid the understanding of how behaviours underpinned by corruption and poor integrity may pose threats to climate solutions in practice, we have identified and grouped these risks into three broad categories, which are further divided into sub-risks – see Figure 2.1.

While misuse and diversion of financial flows would clearly involve corrupt behaviour, actions related to climate-washing and abuse of process may not always be strictly defined as corruption. They do, however, always demonstrate poor integrity in practice.

The risks listed in these categories may overlap, and not all risks can be captured neatly in this formulation as they can manifest in different ways. But the groupings draw out similarities and differences, supporting an understanding of how different measures can address risks in each category. While we aim to be comprehensive, the list of risks is not exhaustive.

Figure 2.1. Categories of corruption and integrity risks in climate solutions



A. Misuse and diversion of financial flows

Understanding how scaling up finance for climate solutions can be impacted by corruption and integrity risks is important to being able to minimise these risks and ensure that effective solutions can be funded.

It is estimated that trillions of dollars in both public and private investment will be required for the transition to a sustainable economy. Progress in meeting global climate goals will be derailed if even a portion of that investment is channelled towards private pockets, 'dirty' industries under the guise of 'green investments', or criminal activities while being made to appear as legitimate action in support of the low-carbon transition.

The misuse and diversion of financial flows from climate action can materialise in four interrelated practices: bribery; money laundering; misappropriation of funds; and tax fraud.

Bribery

Bribery is characterised by the act of offering, promising, giving, accepting, agreeing to receive or requesting any undue financial (or other) advantage to induce or reward improper conduct. These practices may enable entities to subvert necessary procedures and/or result in the biased allocation of funding towards less effective or actively harmful climate projects.

Bribery in practice

Bribery can have major implications for the attainment of required permissions for renewable energy projects. For example, in March 2023, prosecutors in Taiwan investigated allegations that the speaker of Yunlin County Council and several other politicians had received bribes in exchange for approving a wind energy project by a German energy company. The company reportedly paid a total of NT$26 million to two politicians and two independent council members to assist them in acquiring licences (Strong, 2023).

An empirical study published in 2016 investigated the relationship between public subsidies for wind energy and the potential for corruption in Italy (Gennaioli and Tavoni, 2016). Scholars found that criminal activity, including bribery, increased more in high-wind provinces, especially after the introduction of generous policy regimes designed for the wind energy sector. For an average wind park installed after 1999 that receives approximately €1.5 million per year in public incentives, the number of offences by criminal associations increased by 6% in high-wind provinces, compared with less windy regions (ibid.). The findings suggest that publicly subsidised renewable energy may, in the presence of weak institutions, facilitate the formation of criminal associations between businesses and politicians that have influence over the licensing process. This underscores the importance of establishing robust institutions and governance processes alongside the rapid expansion of renewable energy projects.

Industries that are crucial to the low-energy transition, such as mineral mining, are also exposed to bribery risk. Critical minerals such as copper, lithium, nickel and cobalt are essential components in many of today's rapidly growing clean energy technologies, from wind turbines and electricity networks to electric vehicles. The increasing demand exposes countries with high mineral deposits and low governance indicators to corruption risk. For example, in 2017, a South American industrial chemicals company agreed to pay a criminal penalty of more than $15 million to resolve a legal case related to breaches of the United States Foreign Corrupt Practice Act, including payments made to foundations controlled by a Chilean official with influence over the Government's mining plans in Chile (The United States Department of Justice, 2017).

Money laundering

Money laundering is characterised by the concealment of the origins of illegally obtained proceeds to give the impression that they are from a legitimate source, or the spending of such illegally obtained proceeds. This practice helps to disguise the source of funds and the illegal activities from which they derive, enabling criminals to spend or otherwise integrate these assets into legitimate financial systems. Money laundering is typically combined with, and follows on from, other illegal activities, including bribery.

Money laundering in practice

Criminals may purchase carbon credits as a route to introducing illicit proceeds into the financial system, with subsequent trades being used to hide the illegal source (Interpol, 2013). A 2016 UNEP and Interpol report found that criminals have "become more advanced" in this respect, shifting from illegal wildlife trafficking to smuggling ozone-depleting chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HFCs), and more recently from VAT fraud to carbon credit fraud as the carbon credit market has developed (UNEP and Interpol, 2016, p.89). The lack of transparency in carbon markets heightens the latter risk.

Between 2008 and 2009, a group exploited differences in countries' carbon market pricing structures to buy carbon credits that were sold without VAT (as in most European countries) and sell them *with* VAT in France, without compensating the state. They then laundered proceeds through multiple routes including reinvesting the profits into shell companies and purchasing luxury goods (Transparency International, 2023).

Money laundering, as a crime that disguises funds, often crosses national boundaries and involves multiple jurisdictions and enforcement agencies. For example, in April 2021, a British citizen was extradited from Spain to the United States having been charged with wire fraud[1] and money laundering relating to his participation in a telemarketing scheme involving the fraudulent sale of carbon credits. The victims, who had wired funds to bank accounts in the US, were "falsely promised that the carbon-related investments they purchased could be easily sold, carried no risk, and would yield a significant, short-term return" (U.S. Attorney's Office, 2021).

Misappropriation of funds

Misappropriation of funds refers to the unlawful or improper use of money, assets or resources for purposes other than originally intended, and without transparent disclosure of their use. This practice could take place when individuals entrusted with handling funds for climate projects divert them for personal gain or to activities that will not result in reduced emissions or increased protection for vulnerable communities. As with money laundering, misappropriation of funds often follows on from other illegal and fraudulent activities.

Misappropriation of funds in practice

Reports emerged in April 2023 of senior staff at the Papua New Guinea Climate Change and Development Authority, a government body funded by local taxes, international grants, a rainforest preservation project and a carbon credit project, facing criminal proceedings after the alleged misappropriation of more than US$2 million (Gunga et al., 2023). It was separately reported in February 2023 that this same carbon credit project, New Ireland Hardwood Timber, acknowledged that some deforestation had occurred at its Topaiyo REDD [Reducing emissions from deforestation and forest degradation] project in Papua New Guinea in the previous year. The company noted that the logging, which would be reported to the standard-setting body, was likely to result in a loss of 300,000 credits (Quantum Commodity Intelligence, 2023).

The case of *United States v. Ruffatto* provides another example of how fraudulent behaviour can underlie climate-related misappropriation of funds crimes. In June 2018 the president and owner of a company

[1] Wire fraud is fraudulent activity conducted through a form of electronic communication.

that received federal funding for a carbon sequestration project was charged for misuse of funds, sentenced to prison, and also required to pay fines and damages in restitution.

Tax fraud

Tax fraud refers to the deliberate omission, concealment or misinterpretation of information, or the false or deceptive disclosure of information or circumstances, to gain a tax advantage.[2]

Tax fraud poses a major risk to the efficacy of carbon pricing schemes. Given the prevalence of carbon pricing as a policy instrument to address climate change, fraud has the ability to deprive governments of significant revenues that could be directed to other forms of climate action. Tax fraud occurs mainly in relation to the direct taxation of high carbon energy sources such as fossil fuels. However, this is very similar to fraud that may occur in compliance carbon markets, which, despite not strictly being taxes, are often significant sources of government revenue for climate action.

Tax fraud in practice

In some instances of tax fraud, individuals have subverted regulations designed to disincentivise the use of products that generate greenhouse gas emissions. For example, in June 2022 Spanish authorities arrested an organised crime group involved in **carbon tax fraud** worth millions of dollars. This related to the avoidance of import duties on greenhouse gas refrigerants (HFCs), which have a high global warming potential (Hughes, 2022). The criminal group tried to exploit an EU goods transit rule to avoid paying taxes applicable to the European market. They pretended that the refrigerated gas, which was imported from China to Spain, would be transported to non-EU countries, making it exempt from import taxes and the EU's carbon emissions tariff. Instead, it was sold on the Spanish black market, enabling the group to generate a significant profit. This kind of activity foreshadows the possible creation of a black market for fossil fuels in response to regulations and tax burdens designed to disincentivise and prevent their use.

Not all tax fraud associated with the implementation of climate solutions relates directly to carbon taxes. In 2019 the UK tax authority was still chasing carbon credits for a **carousel fraud** (a type of fraud that involves subverting rules for VAT on goods traded between EU member states) that had taken place 10 years earlier. A criminal group had imported carbon credits without paying VAT before selling them on to traders at a purportedly VAT-inclusive level with a 20% increase. In this particular case, a number of reputable financial institutions allegedly bought credits and claimed VAT (which had never been paid) from the UK tax authority (Davies et al., 2019). This example highlights the complicated and long-lasting impacts of financial crimes associated with due diligence.

Similarly, early in its operation, the EU Emissions Trading System (ETS) was victim to a large-scale **VAT fraud** scheme that resulted in losses of an estimated €5 billion in tax revenue (Venance, 2016). Criminal networks exploited the carbon trading system by creating fake companies with which to purchase emission allowances, or carbon credits, outside of the EU (therefore not subject to the EU's 19.6% VAT rate) and resell them within the EU. No money was given to the tax authorities and it was instead laundered through international banks.

Such tax fraud schemes are closely related to the broader issue of **fraud within compliance carbon markets**, i.e., those where trading in carbon credits enables companies to comply with caps on allowable emissions (see World Bank, 2023). In a compliance market such as the EU ETS, certain sectors and types of business are required to surrender an 'emissions allowance', in the form of a payment, to cover every unit of emissions created by particular activities. These allowances are initially either freely allocated to companies or auctioned off by governments to companies. In some cases, revenues from the auction of allowances are treated as roughly equivalent to a form of taxation (Office for Budgetary Responsibility, 2023). Revenues may be closely associated with or even allocated to funding complementary climate solutions, for example supporting innovation in low-carbon technologies (World Bank, 2023).

[2] This is adapted from the UK tax office's definition of tax fraud: "deliberate omission, concealment or misinterpretation of information, or the false or deceptive presentation of information or circumstances in order to gain a tax advantage" (HMRC, 2021).

Given that emissions trading systems rely on the accurate measurement, reporting and verification (MRV) of emissions from private entities, there is significant scope for **fraudulent behaviour in MRV** as companies seek to avoid paying the price associated with the full total of their emissions. Indeed, in February 2023, prosecutors in Bulgaria announced an investigation into a private company that had been falsifying emission certificates for thermal power plants, depriving EU and national authorities of millions of euros in revenues (European Public Prosecutors Office, 2023). Concerns about fraudulent or dishonest practices may also exist in relation to the secondary markets for emission allowances, which rely on allowances and derivatives being traded between private parties. This kind of offence shares similarities with both the more direct forms of tax fraud discussed above and with false or misleading carbon credit claims (a form of climate-washing), which are discussed further below in Part B.

Another example illustrates this potential for fraud in carbon trading schemes and the need for strong regulation to prevent it. In Canada, the Alberta government has taken legal action against a private company, Amberg Corp., along with its senior environmental regulatory coordinator, for manipulating emissions data required from companies for compliance with the carbon pricing scheme established under the province's Emissions Reduction and Climate Resilience Act. Amberg Corp. faces 25 criminal charges, including providing false and misleading information, assuming the role of a third-party assurance provider without the necessary qualifications, and failing to adhere to the government's 'Standard for validation, verification and audit'. The Standard establishes the requirements to act as a verifier for carbon credit projects. These charges have been filed under the Emissions Management and Climate Resilience Act and the Technology Innovation and Emissions Reduction (TIER) regulation, marking the first instance of such criminal charges being brought in the country (Polczer, 2023).

The legal landscape

Corruption risks within the category of misuse and diversion of financial flows are typically hard-edged criminal acts prohibited under international conventions and domestic law. However, climate-specific legislation remains rare.

International and domestic law

The United Nations Convention against Corruption imposes legally binding requirements on its signatory countries concerning bribery, trading in influence, money laundering and other forms of corruption. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions requires signatory countries to criminalise bribery of foreign public officials. These international frameworks do not expressly focus on corruption in a climate context, but they are applicable to that purpose.

Our scoping analysis of national laws addressing anti-bribery, money laundering, misappropriation of funds and tax fraud (see Appendix 2 for details) revealed that all four corruption risks related to misuse and diversion of financial flows are widely recognised as criminal offences in domestic legislation, but few provisions explicitly connect these offences to the implementation of climate solutions. One exception is the way in which certain carbon tax provisions are explicitly linked with legislation around tax fraud.

In some cases, national action has started to consider the application of existing domestic legislation aimed at the prevention of fraud and corruption in the climate context. For example, the United States Strategy on Countering Corruption includes a section on integrating anti-corruption activities and climate adaptation planning (see Appendix 2).

However, for the most part, governments are struggling to keep pace with the need to ensure that existing legal frameworks can be applied to prevent criminal offences in relation to climate solutions. This is evidenced in the approaches of the EU and its member states to establishing emission allocations under the EU ETS (European Court of Auditors, 2015). Following the early fraud scheme noted above, efforts were made to bolster the resilience of the ETS to these threats. In Germany, for example, carbon-related VAT fraud is now dealt with under the German Fiscal Code and qualifies as tax evasion. While this is an improvement, without continued efforts to stay ahead of the issue, there is a real risk that more creative fraudulent schemes will emerge. This may become prevalent with the extension of the ETS scheme under the new Carbon Border Adjustment Mechanism (CBAM), which came into force on 16

May 2023. The extension means that the ETS will cover more types of emissions under various sectors, placing the responsibility on exporters into the EU to first report the emissions embedded in products, and second to prove that a carbon price has been paid on them.

A recent empirical study of the differing enforcement regimes relating to the EU ETS applied by member states highlights further ways in which enforcement issues may hinder the effectiveness of the scheme as it expands, and as the price of carbon increases. The study found that while there are relatively high rates of compliance in the existing scheme, these have occurred alongside low rates of enforcement. For example, the study estimates that regulators could have collected at least €13 billion in fines for excess emissions, although public records show that only €2.1 billion have been collected (Calel et al., 2023).[3] The authors note: "As carbon markets grow in scope and in ambition, we should be prepared for the possibility that the challenges involved in policing carbon markets will grow as well." Efforts to learn from this history can inform the future introductions of emissions trading systems and other forms of carbon pricing in other jurisdictions.

Lessons from money laundering approaches to illegal wildlife trade

Our own analysis shows that even in jurisdictions where anti-corruption laws are well enforced, there is little recognition at the legislative or governmental level of how these apply in the context of climate solutions. Valuable lessons for how anti-corruption laws can be used in the context of misuse or diversion of funds for climate solutions can be drawn from the application of traditional money laundering approaches to environmental crimes, in particular the success that such efforts have had in addressing the illegal wildlife trade. One notable example is the United for Wildlife (UfW) Financial Taskforce, which brings together financial institutions, technical experts and law enforcement authorities to combat money laundering associated with the illegal wildlife trade. The UfW, through its Financial Taskforce and Transport Taskforce, has been instrumental in supporting over 280 criminal investigations of wildlife trafficking and has contributed to the arrests of 120 traffickers. It also played a key role in disrupting a major international ivory, rhino horn and heroin syndicate in East Africa (Royal Foundation of the Prince and Princess of Wales, n.d.). The success of these taskforces lies in the explicit recognition and consensus among key decision-makers about how a broader legal framework can be effectively applied to address a specific and prominent issue. This in turn motivates other stakeholders to take action and collaborate in combating environmental crimes.

Additional complexities with opaque corporate structures

Identifying who is ultimately responsible for the corruption risk remains a challenge when applying existing legal frameworks to climate-related solutions. Companies operating in multiple jurisdictions are often set up within complex corporate structures involving subsidiaries, joint ventures, formal and informal partnerships, and other arrangements. Misuse or diversion of financial flows can be facilitated by opaque corporate structures in shadow companies or off-balance sheet operations (Greenpeace, 2023). This adds a layer of complexity to determining where accountability lies and therefore against whom enforcement action should be taken. This must be taken into account not only in the course of tailored enforcement efforts, but also in the efforts of corporate compliance teams when conducting risk assessments and due diligence on their suppliers, business partners and other third parties.

Internal corporate compliance teams and risk management systems, particularly within multinational enterprises, can identify and mitigate the possibility of corruption risks derailing climate solutions. Private sector actors routinely face practical difficulties in implementing compliance measures across the entire value chain. They may only have contractual relationships with their first-tier suppliers, and increasingly limited visibility thereafter. In these circumstances, approaches such as those adopted for compliance with the UK Bribery Act 2010 or the UK Modern Slavery Act 2015 can be helpful. These include the 'flow down' of contractual requirements, whereby each tier of supplier must ensure that sustainability measures are required by the next supplier in the chain.

[3] The research suggests that many early instances of non-compliance were related to the challenges of administering a new and complex regulatory scheme, and it should not be assumed that all non-compliance is fraudulent or even intentional.

Misuse and diversion of financial flows – Recommendations

Regulators and enforcement agencies should:

- **Issue clear guidance on how existing criminal legislation on anti-bribery, money laundering and other financial risks applies to climate solutions.** This is an action that regulators can implement immediately. It would be prudent for international bodies such as the Financial Action Task Force (FATF), United Nations Office on Drugs and Crime (UNODC) and Organisation for Economic Co-operation and Development (OECD) to issue these guidelines first.
    - National regulators may follow and thus be able to align their guidance, avoiding potential inconsistencies and conflicts between jurisdictions.
- **Undertake a proactive and comprehensive analysis of fraud risks and other forms of non-compliance in carbon pricing schemes,** including both carbon taxes and emissions trading schemes. This is particularly critical when new schemes are under development and as the cost of carbon increases over time.
    - Such a review should consider the current balance between civil and criminal sanctions available for offences and non-compliance related to carbon pricing and whether they send a strong enough signal to discourage potential offenders. Outcomes of such a review may include guidance or recommendations for legislation.
- **Accelerate efforts to clarify beneficial ownership**. Effective enforcement should be taken against those who ultimately own or control the operations where corrupt practices may be occurring. Transparency around ownership is necessary to enhance sustainability due diligence, as well as procedures concerning finance and supply chains.
    - To achieve this, a well-defined methodology to investigate group membership and ensure effective regulatory oversight is required. To this end, Greenpeace (2023), in partnership with other organisations, developed a methodology for understanding where corporate control may be concealed or otherwise not publicly acknowledged.

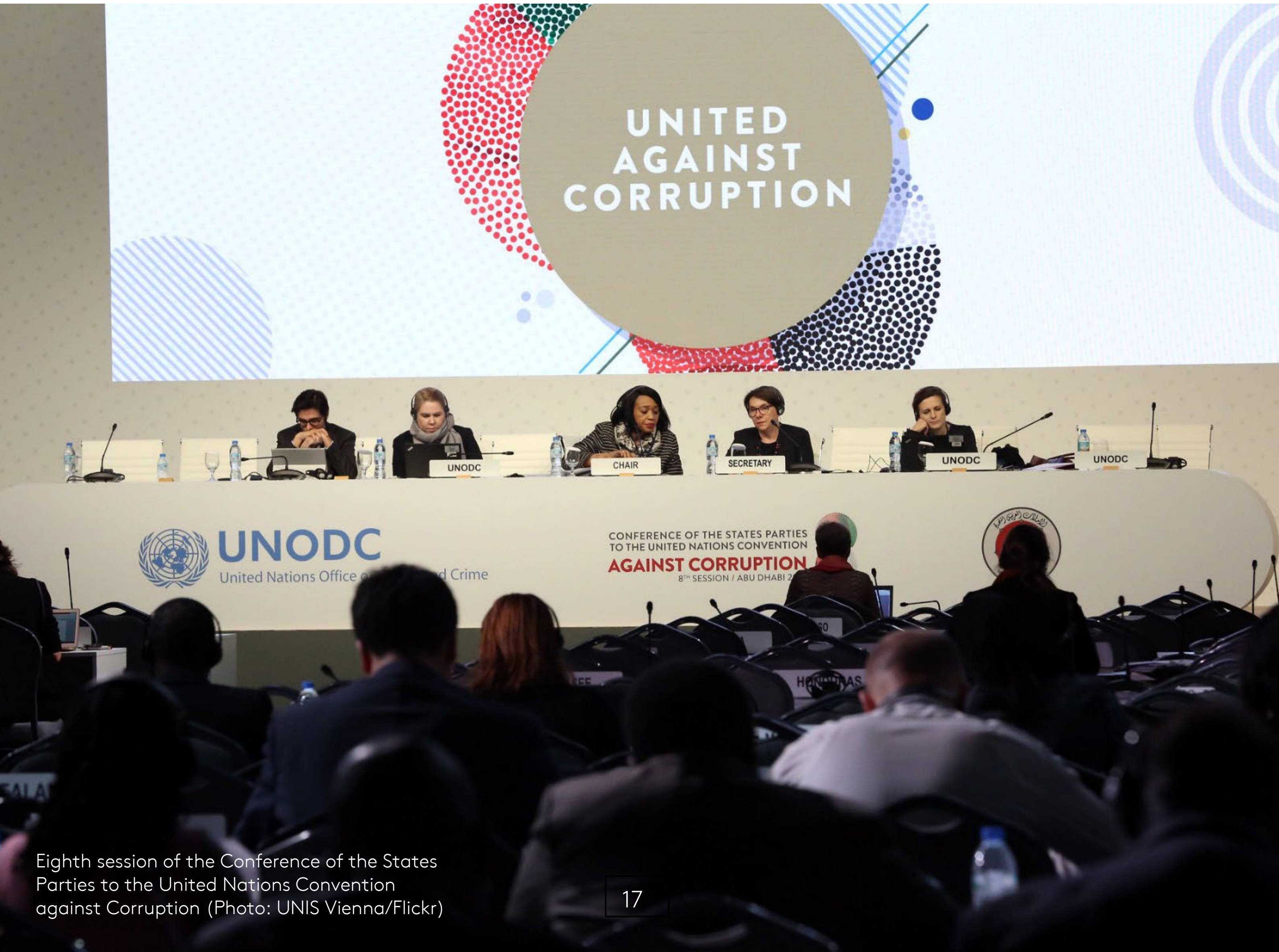
Legislators should:

- **Explicitly address climate-related corruption crimes**. This could include finding synergies with ongoing efforts to amend environmental crime legislation in various jurisdictions.
Examples include:
    - At the regional level, the European Commission is currently revising its Directive 2008/99/EC on the protection of the environment through criminal law (Cirlig, 2023). Current Commission proposals for this Directive do not include provisions connecting offences to compliance with EU climate legislation.[4]
    - German policymakers are discussing an expansion of environmental criminal regulations, with a focus on adding climate-specific rules and emphasising corporate responsibility. The Federal Ministry for the Environment and the Federal Environmental Agency have taken steps towards reforming sanctions for environmental misconduct by initiating a research project on this matter. These efforts demonstrate a commitment to strengthen environmental and climate-related laws and hold corporations accountable for their actions (Babucke and Schwerdtfeger, 2022).

[4] See: Proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC

Companies should:

- **Take proactive steps to limit bribery and money laundering risks in the context of climate solutions by undertaking a structured anti-bribery and anti-money laundering risk assessment** and implementing other appropriate compliance measures to cover climate action-related activities and risks. Specifically:
    - Have senior management regularly communicate the importance of the company's commitment to ethical business conduct in all areas, including climate solutions.
    - Have robust due diligence and controls at board level throughout the value chain. As the World Economic Forum notes in its most recent guidance for boards on addressing climate risks, this "should be safeguarded by quality standards and expectations of transparency, accountability, and integrity in evaluating solutions including building verification, reporting and anti-corruption assessment structures" (WEF, 2023).
    - Translate the company's commitment to ethical business conduct into actionable practices. This includes the following steps: build a comprehensive understanding of business relationships; conduct detailed risk assessments; employ due diligence measures; develop customised policies and procedures that are aligned with the specific risks and challenges of the business; establish mechanisms for ongoing monitoring and periodic audits.
- **Take lessons from the company's existing anti-bribery processes** where related risk factors exist and corresponding compliance programmes are already established, avoiding the cost, confusion and compliance fatigue of adding a new and separate area of focus.
- **Ensure appropriate whistleblowing mechanisms are in place**. This will increase the chances that the company discovers corruption risks early, enabling them to take the appropriate steps.



Eighth session of the Conference of the States Parties to the United Nations Convention against Corruption (Photo: UNIS Vienna/Flickr)

B. Climate-washing

B. Climate-washing

Misleading advertisements and public communications

Misleading environmental, social, governance (ESG) credentials

False or misleading carbon credit claims

Providing misleading or false information about climate solutions creates a façade of progress and delays effective implementation. If climate commitments are not followed up with credible implementation, no real progress will be made.

This section considers the practice of climate-washing, understood as acts that mislead investors, consumers or the general public on climate-related issues, or overstate a public or private actor's performance on climate issues. Such misleading information can create a false sense of confidence around the implementation of climate action, potentially leading to complacency and delaying effective solutions (Benjamin et al., 2022).

This category of behaviours is included as a corruption risk because it may be underpinned by criminal or civil fraud. However, demonstrating the degree of deceptive intent behind misleading climate communications can be difficult. In many cases, evidence of climate-washing points to unintentional acts that mislead investors, consumers or the public about an actor's climate performance, such as making a statement about the impact of a company's business practices without full knowledge of the facts (Watson and Nener, 2022), or using vague or ambiguous language around climate initiatives in the private sector. Although such unintentional or negligent climate-washing may not necessarily be criminally corrupt or fraudulent, it may be evidence of poor integrity, a regulatory breach or weak due diligence processes.

This section primarily focuses on fraudulent climate-washing, but the discussion of legal frameworks includes those concerned with ensuring probity and good integrity. The higher the standards of good governance applied in the context of climate solutions, the less likely that serious fraud and corruption will occur or go unnoticed.

There are three manifestations of climate-washing that involve corruption, fraud and poor integrity in providing climate and sustainability information: misleading advertisements and public communications; misleading ESG credentials; and disclosure of false or misleading carbon credit claims.

Misleading advertisements and public communications

Climate-washing is observed in advertising and communications that are likely to have the effect of deceiving the receiver, and to affect their economic behaviour. This risk arises when public or private actors make unverified climate-related claims in their advertisements to the public, and in communications to shareholders and investors. These claims may include statements that a product or a service is 'carbon neutral', 'zero carbon', 'fully offset' or 'deforestation-free'. It also includes the practice of a company selectively disclosing the positive environmental (and social) impacts of its operations without the complete disclosure of negative climate impacts. In some instances, this may involve a company knowingly making false or exaggerated claims about their climate efforts (Bhargava et al., 2022).

Misleading advertisement and public communication in practice

The recent growth of litigation and complaints challenging climate-washing in advertising and public communications manifests in multiple scenarios: corporate climate commitments; claims about product attributes; and overstated investments or support for climate action (Setzer and Higham, 2023). For example, in January 2020 the Italian Competition Authority fined an energy company for, among other offences, misleading consumers in their advertising of diesel (Autorità Garante della Concorrenza e del Mercato, 2020).

Misleading advertising can come from private or public actors, or a combination of the two. For example, in February 2023 the Australia Institute, a public policy think tank, filed a complaint with the Australian Competition and Consumer Commission over the federal government's carbon neutral certification scheme, claiming it to be "state-sponsored greenwashing". The Australia Institute requested authorities to investigate whether companies involved in the carbon neutral certification scheme had engaged in misleading or deceptive actions under Australian consumer law (Ruddock, 2023). While there was no allegation of corruption on the part of the scheme administrator or the regulator, the case does highlight the need for additional scrutiny and clarity regarding the information that actors are expected to provide to back up green claims.

Misleading environmental, social, governance (ESG) credentials

Communicating deceptive or misleading certifications, ratings or audits on ESG performance is a form of climate-washing that is made more likely by a lack of unified standards ensuring accuracy and comparability of data and associated claims.

Although ESG performance is often evaluated through third-party verification and certification, there remains a risk that these environmental service providers fail to adequately audit and assess what they claim to, resulting in the dissemination of misleading information. One issue is that the source of data assessed by external auditors is self-reported by the audited company. Many participants in the consultation process for this report noted that the risk of misleading ESG claims is exacerbated by the lack of a clear, unified standard for ESG reporting and accounting. There is no agreed set of regulatory guidelines to ensure the accuracy and comparability of data, although efforts are increasingly underway to address this – in particular, through the International Sustainability Standards Board (ISSB), which formed in 2021 and issued global sustainability disclosure standards in 2023. In this way, the current provision of ESG data not only potentially encourages climate-washing among companies but it also acts as an obstacle to the meaningful integration of ESG factors into investment decisions (Yu et al., 2020). This impedes effective allocation of capital towards climate solutions.

Misleading ESG credentials in practice

Climate-washing can be seen in the financial sector with the marketing of funds as 'sustainable' or 'fossil fuel restricted'. For example, an asset management company has been investigated by the German financial regulator BaFin for allegations that it wrongly labelled financial products as 'sustainable investments', thereby leading customers into buying these products on a false premise (Wehrmann, 2022).

False or misleading carbon credit claims

Inaccurate disclosures on the use of carbon credits to meet net zero targets or other voluntary emission reduction pledges is a form of climate-washing that is closely linked to other forms of misleading advertising and communications. We treat it separately here to highlight the specificities of how carbon markets work.

Carbon credits relating to forests and land use are on the rise, accounting for more than one-third of all credits issued in 2021 (World Bank, 2022). Ensuring that credits are put to the use advertised poses real challenges. There remains a legal risk for buyers, as certificates issued by carbon standard organisations (under a purchase agreement) often do not make clear what rights the buyer has over the credits. As noted in Part A, there are several documented instances of fraud in relation to the generation and sale of carbon credits, which increase the risk of incorrect claims and misleading communication by actors further along the value chain.

False or misleading carbon credit claims in practice

False or misleading carbon credit claims often flow into other forms of misleading advertising by the company. The carbon credit claims may become hard to identify as they are embedded in the methodology used to claim that a company is 'carbon neutral' or 'net zero'. A recently filed class-action lawsuit against a US-based international airline illustrates the overlapping nature of this climate-washing risk. The lawsuit was filed in May 2023 in California challenging the airline's statement that it is "the world's first carbon-neutral airline" (Greenfield, 2023b). The plaintiffs argue that this neutrality claim is false as it heavily relies on "junk" offsets. According to them, the airline sought to profit from misleading consumers, taking advantage of the market premium for climate-friendly products.

There is also an important distinction between credits issued in relation to carbon removals and carbon avoidance. The former removes existing carbon emissions by absorption, after the carbon has entered the atmosphere. The latter refers to preventing future carbon emissions ('avoided emissions') from being released into the atmosphere. The Science Based Targets initiative sets out widely recognised guidelines for companies aiming for net zero. The guidelines state that "avoided emissions occur outside of the product's life cycle and therefore do not count as a reduction of a company's Scope 1, 2 and 3 inventory" (SBTi, 2023, p.31). Despite this, a recent study based on publicly available information on offsetting projects of three energy companies found that 73% of such projects (85 out of 116) are "primarily avoidance-based" (Trencher et al., 2023, p.16). Company advertising is not always transparent on such use of offsets.

The legal landscape

While there are currently few dedicated laws aimed explicitly at addressing climate-washing, the behaviours underlying it are generally prohibited by existing legislation. However, in most cases, their application would result in administrative or civil penalties rather than criminal sanctions.

Domestic legislation addressing climate-washing

Our scoping analysis of national laws addressing climate-washing (see Appendix 2) found that general consumer protection laws often constitute an applicable legal ground for challenging misleading advertising and public communications. Other legal avenues include advertising standards, financial services laws and regulations in the case of misleading 'green' financial products, and laws against deceptive commercial practices and fraud. Penalties depend on the intentional or negligent character of the conduct and may range from regulatory action to tortious (civil) or criminal liability. Our analysis also highlights an increased and targeted regulatory focus on climate-washing in recent years, driven in part by the growing concerns of multiple stakeholders. In some jurisdictions, regulators have taken a 'command and control' approach to regulation on climate-washing, providing detailed and prescriptive standards of behaviour. For example, the French Climate and Resilience Law passed in 2022 requires the greenhouse gas emissions balance sheets for advertised products to be published.

Existing or currently planned legal frameworks accompanied by guidance on how they can be applied to the climate context are an effective tool to address unsubstantiated climate claims, at least in terms of misleading advertising and public communications. The EU Green Claims Directive, which sets out detailed regulations on the communication and verification of voluntary environmental claims used to market products to EU consumers, is currently awaiting committee decision.

Due diligence requirements and regulation

We also observe a shift in European jurisdictions towards mandatory due diligence and disclosure requirements. Mandatory due diligence laws broadly require large companies to identify, prevent or mitigate human rights and environmental risks across supply chains and account for their own negative impacts through non-judicial remedial mechanisms. This is one form of legal intervention that can help stakeholders maintain high integrity practices throughout the supply chain, thereby limiting the risk of climate-washing.

Short of legislation, consumer protection regulators are stepping up consumer research to understand and prevent misleading climate claims in advertising and public communications. For example, the UK Advertising Standards Authority (ASA) has conducted research on green claims used across the electric and hybrid motoring industry to enable better enforcement in this area (UK ASA, 2022). Others are taking similar actions, although this remains concentrated in the European context.

Weak safeguards around misleading ESG credentials

However, our legal analysis reveals that regulation is significantly weaker for misleading ESG credentials than for climate-washing and advertising standards. Although regulators have strengthened mandatory extra-financial reporting requirements (see e.g. the EU Non-Financial Reporting Directive and Sustainable Finance Disclosure Regulation), ESG rating agencies and ESG auditors are not regulated in any of the jurisdictions reviewed. The lack of oversight by such third party environmental service providers, the opacity of internal scoring methodologies and a lack of harmonisation and consistency around ESG assessments can create opportunities for misleading or unsubstantiated claims (as well as acts of bribery and fraud).

Early efforts to regulate this area are underway with a European Commission proposal in 2023 for a regulation on the transparency and integrity of ESG rating activities (see Proposal for a EU Regulation on the transparency and integrity of Environmental, Social and Governance rating activities). A similar proposal is also under consideration in the UK (see closed consultation on Future regulatory regime for Environmental, Social, and Governance ratings providers).

Lack of regulation, transparency, and oversight of voluntary carbon markets

Similarly, existing legal frameworks to prevent false or misleading carbon credit claims are underdeveloped. Codes of practice have been produced by voluntary corporate action, such as the recently published VCMI Claims Code of Practice, (VCMI, 2023) which recommends that companies only use carbon credits to contribute to the financing of additional climate mitigation beyond their targets (as opposed to the credits being counted as internal emission reductions that a company undertakes to meet mitigation targets). However, there remains a lack of regulation, transparency and oversight of carbon markets from public regulators. As one consultee from our analysis phrased it, the use of carbon credits and offsetting is "ripe for regulation". They pointed out the difficulty in knowing what climate mitigation impact a carbon credit purchase has in an often distant location. Legislation is urgently required to ensure that carbon credits lead to effective and verifiable reductions in global emissions.

The increased regulatory burden on those involved in the trade in carbon credits and in the provision of ESG ratings may lead to higher transaction costs in these industries. Such costs are justified, however, given the growing reliance placed on such solutions by the private sector.

Climate-washing – Recommendations

Regulators and enforcement agencies should:

- **Implement strict and proactive enforcement action for repeat offenders of climate-washing.** For example, plot or map where severe violations occur and understand where enforcement agencies can set the strongest precedents for the industry.
    - This exercise also requires understanding the scope and mandate of other anti-corruption actors. Constant communication and alignment between regulators will help to minimise the risk of duplicating efforts.
- **Signpost clear processes for citizen complaints and provide adequate protection for whistleblowers.** In some circumstances, complaints may be based on the personal knowledge of whistleblowers, so mechanisms should be designed to protect these individuals from any personal repercussions as a result of raising issues.

Legislators should:

- **Introduce specific regulation to prevent climate-washing through false or misleading advertisements.** Where appropriate or more efficient, issue guidelines on how existing general consumer protection legal regimes apply to climate-washing claims could be issued.
- **Introduce specific regulation on voluntary carbon markets to ensure that carbon credits result in tangible and verifiable reductions in global emissions.**
- **Introduce mandatory climate and sustainability reporting and disclosure requirements, overseen by financial authorities.**
    - A common standard and single approach on ESG-related disclosure and assessment is urgently needed to replace the current landscape, which is crowded with a proliferation of overlapping initiatives.

- The inaugural ISSB global sustainability disclosure standards published in June 2023 could be used as a basis to ensure consistency across jurisdictions.

- **Introduce regulations for ESG ratings agencies.** These should encourage comparability, transparency and effective monitoring of their operations. The proposed EU Regulation discussed above is one example of this.
    - SMEs should be permitted to provide less detailed information to rating providers and auditors, and to use different standards or benefit from additional technical support.

Consultants, accountants, lawyers and other professional advisors to private sector should:

- **Encourage and support the use of widely recognised disclosure standards across capital markets globally,** namely helping clients align with the ISSB global sustainability disclosure standards, to harmonise the industry.

Companies should:

- **Remove barriers between internal departments or business units** and encourage communication on climate-related topics. For example, requiring sales and marketing teams to consult with those responsible for sustainability and climate action before making green claims, and involve compliance teams where appropriate. All aspects of a company's operations must be considered before green claims are made about the business as a whole.
- **Where net zero pledges are set by corporate entities, make efforts to ensure these align with the recent recommendations of the UN High-level Expert Group on Net Zero Emissions Commitments of Non-State Entities** (HLEG on Net Zero, 2022).
- **Link compensation packages of executive staff to climate action** to incentivise the alignment of companies' advocacy, governance and business strategies with climate commitments (see HLEG on Net Zero, 2022).
- **Engage proactively with regulators and respond to public consultations** and other calls for inputs led by regulators to emphasise the challenges companies face and how regulators can assist – for example, through developing tailored practical guidance.

C. Abuse of process

C. Abuse of process
Failure to obtain free, prior, and informed consent (FPIC)
Conflicts of interest

Minimising corruption and integrity risks helps to protect good governance. This is critical to enabling a transition that delivers climate solutions that are also just and inclusive. Part of this must include mitigating the abuse of process.

Abuse of process[5] refers to the dishonest abuse of legitimate processes by actors when implementing climate solution. As in other industries, the development of climate projects and initiatives often involves a combination of public and private actors. Abuse of process can lead to compromised objectivity, distorted markets and increased risks of corruption. In these circumstances, the act of allocating project funding may be motivated by personal relationships and interests rather than solely by the anticipated efficacy of a project in achieving climate goals. Processes to protect the interests of local communities may also be subverted or ignored.

In this section we consider two ways in which corruption risks relating to the abuse of process might materialise in climate solutions: failure to obtain free, prior and informed consent (FPIC); and conflicts of interest.

Failure to obtain free, prior and informed consent (FPIC)

FPIC is the principle that local communities impacted by projects must be an integral part of the development of a project: they should be fully informed about it and freely consent to it. This principle is protected under international law. In this context, the following definitions apply (according to the Institute for Human Rights and Business [2022]:

- Free means that the consent cannot be obtained under coercion or intimidation.
- Prior emphasises that consent must be sought well in advance of the commencement of the activity.
- Informed underscores the importance of providing information that is accessible, clear, accurate and presented in a language and format that community members can understand.
- Consent refers to the collective decision made by rights holders after thorough consultation.

Corruption and poor integrity behaviours may arise when bribery or coercion are used to obtain FPIC or subvert the need for it. Alternatively, inadequate FPIC can be obtained when only a subset of the community is consulted, or if comprehensive information was not provided. Such poor integrity or corrupt behaviour to secure comprehensive FPIC amounts to an abuse of process.

Failure to obtain FPIC in practice

Failure to obtain FPIC can be seen in rights-based or 'just transition litigation' cases, i.e. litigation that raises questions over the justice and fairness of policies or projects adopted to deliver climate action (Savaresi and Setzer, 2022). Examples include the alleged violation of communities' rights to be adequately consulted on planning permission granted to renewable energy projects (Armeni and Anker, 2020) and the construction of hydroelectric dams. The latter is illustrated in the case of the Site C Dam in British Columbia, Canada, which failed to consult three First Nations communities impacted by it (see e.g. Dubrule et al., 2018).

In Mexico, a relevant case was filed by representatives of the indigenous Zapotec community of Unión Hidalgo and two NGOs against a French energy company (BHRRC, 2020). The lawsuit claims that the company and its local subsidiaries began plans to install a wind farm on Zapotec lands without consulting or informing the Zapotec community. This case was brought under the French Duty of Vigilance Law, which requires large French companies to implement reasonable vigilance measures to

[5] Note that we use the term 'abuse of process' in its natural language meaning, not exclusively using its legal connotation of judicial procedure rules.

identify and prevent impacts on human rights and the environment in their business operations. This case therefore involves weighing up the need for climate solutions on the one hand, and the state's duty to protect Indigenous Peoples' rights on the other (Brémond, 2023).

Another case was filed by the Pirá Paraná Indigenous Council and the Association of Indigenous Traditional Authorities of river Pirá Paraná (ACAIPI) in Colombia.[6] The plaintiffs alleged that a REDD+ project (implemented by private companies) violated their fundamental human rights due to the lack of due diligence and the failure of the Colombian Government to include Indigenous authorities. In April 2023, the Colombian Constitutional Court selected this case for review.

In a separate Colombian case, a judge ordered the suspension of a carbon credit project, the REDD+ Pachamama Cumbal project, after a protection suit was filed by 12 Indigenous Persons (Centro Latinoamericano de Investigación Periodística, 2023). In addition to only being informed about the project after it had already sold its first round of credits, the plaintiffs alleged that they were denied access to documents on how the profits from the sale of credits had been invested (ibid.).

Conflicts of interest

Conflicts of interest may arise when individuals involved in implementing climate solutions have actual or potential interests (professional, personal, monetary or otherwise) that are not aligned with those that they are tasked with and responsible for. Such conflicts of interests can emerge as a result of 'revolving doors', whereby individuals move between positions in public office and private organisations (Sanchez Nicolas, 2021). Conflicts of interest can cause corporate interest groups to have an outsized influence in public debates relative to other voices about the priority that should be given to different approaches to the low-carbon transition. There is a pressing need to address conflicts of interest and undue influence to ensure fair and effective climate solutions (Transparency International, 2021).

Conflicts of interest in practice

The influence of conflicts of interest on climate policy extends to both national and international levels. In some instances, these conflicts have been found to cause delays or weaken the implementation of climate policies.

In June 2023, South Korean President Yoon Suk Yeol called for the investigation of a mayor who was allegedly involved in corruption related to solar power projects approved during the previous government's efforts to promote renewable energy (Lee, 2023). The Board of Audit and Inspection is reportedly conducting an inquiry into 250 employees from public institutions who were suspected of engaging in solar energy businesses without disclosing their personal interests in these ventures.

The Revolving Door Project published a report in September 2023 examining how industry players in the US are working to influence regulation of the rapidly growing hydrogen industry (Revolving Door Project, 2023). The industry will benefit from significant subsidies and tax credits under the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022. However, not all forms of hydrogen production are clean: it is "as emissions-free as the way in which it is produced, and the process in which it is used" (Brown and Marsano, 2023, p.4). The report highlights that major hydrogen industry coalitions often include fossil fuel companies. The effectiveness of hydrogen as a clean and safe solution depends on executive agencies maintaining oversight and stringency over regulations on hydrogen tax credits, the distribution of funding, and adherence to safety regulations (ibid.).

The NGO Influence Map tracks the lobbying activities of the world's most influential companies through its LobbyMap, which includes corporate and industry association lobbying on climate policies. While lobbying efforts focus on delaying climate action, there remains a risk that even once a policy decision to act in a certain way has been taken, lobbyists will continue to try to influence how climate solutions are prioritised, for example, pushing for carbon capture, utilisation and storage over immediate and necessary emission reductions.

[6] See: *Pirá Paraná Indigenous Council and Association of Indigenous Traditional Authorities of river Pirá Paraná "ACAIPI" v. Ministry of Environment and Sustainable Development and others*.

Conflicts of interest also arise in the context of international climate conferences. Over 600 fossil fuel lobbyists attended COP27, the 2022 United Nations climate change conference held in Egypt, raising concerns about the influence of vested interests on global climate policy (Global Witness, 2022). One such concern related to corporate lobbying to increase the recognition of gas as a 'transition fuel' in the context of the low-carbon transition (Michaelson, 2022). In response to such criticism and demand for greater transparency in the COP (Conference of the Parties to the United Nations Framework Convention on Climate Change) process, the UNFCCC Secretariat revised its registration system to require conference attendees to disclose their affiliations, including any paid or unpaid relationships with the delegation that provided the attendee's badge. While this aims to increase transparency, challenges related to conflicts of interest persist in how climate solutions are agreed upon at international climate conferences.

The legal landscape

Our scoping analysis found that 'free, prior and informed consent' (FPIC) principles have in general been well incorporated into international legal frameworks and finance standards, and in some national laws. Businesses are expected to take action to prevent and mitigate risks relating to the abuse of process. In doing so, they should ensure FPIC is obtained before acquiring land and is maintained throughout the life cycle of all projects. However, the ongoing monitoring, review and verification of such procedures (and the enforcement of sanctions for non-compliance) is inadequately guaranteed through legislation and practice.

The risk of conflicts of interest may, in theory, be managed through existing codes of conduct and by law in some jurisdictions (see Appendix 2). Within the EU, for instance, several procedures have been established to prevent conflicts of interest and demonstrate the impartiality of political representatives, civil servants and external contractors (European Data Protection Supervisor, 2023). However, there is little evidence of guidance or legislative safeguards aimed at addressing actual or potential conflicts of interest arising in climate solutions specifically, or of action by key watchdogs.

Despite efforts to improve transparency and accountability, such as the UNFCCC COP example discussed above, addressing conflicts of interest in climate projects remains a significant challenge. Transparency and clear guidelines in decision-making processes are essential to ensuring that climate policies and projects are not shaped by competing or conflicting interests.

Abuse of process – Recommendations

International organisations

- The UNFCCC should establish robust definitions of 'conflict of interest' and 'undue influence' to ensure there are adequate controls on party delegations and engagement in negotiations (Transparency International, 2021).
- The Paris Agreement Global Stocktake process should secure inputs – including from civil society – to better understand the levels of private sector finance used for lobbying and influencing governments at national, regional and international levels, and the role this has had to date in undermining climate policy (ibid.).

Legislators should:

- Enact mandatory human rights due diligence legislation to help ensure rules and standards regarding FPIC are fully respected in practice. This includes legislation that creates clear channels for impacted communities to access relevant processes and remedies (such as the EU's proposed Corporate Sustainability Due Diligence Directive).
- Establish effective watchdogs to ensure public officials comply with legislation and codes of practice related to conflicts of interest. Transparency requirements placed on corporate spending and lobbying activities on climate change can tackle conflicts of interest.

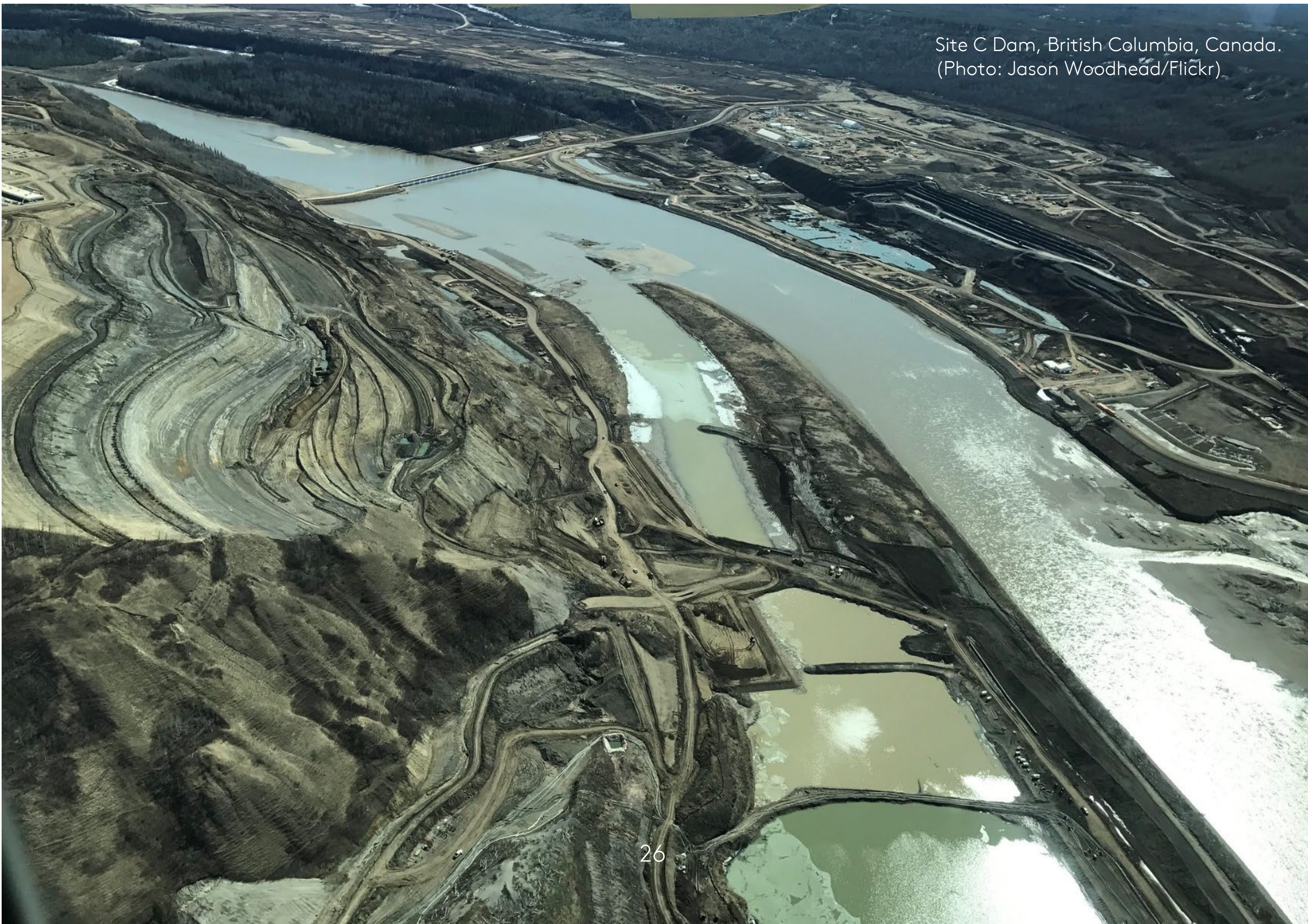
Companies

To ensure they obtain sufficient FPIC from relevant communities, companies should adopt a rights-based approach to climate solutions that goes beyond a mere 'tick-box' approach. This means actively respecting the rights of communities, seeking genuine consent and avoiding unethical practices. This approach helps to minimise risks of divestment, litigation, reputational damage and loss of social licence to operate. Recommended actions include:

- Investing in capacity-building for personnel, including training on FPIC principles and practices and corruption risks associated with the consent process. Staff should be equipped to effectively engage and maintain ongoing dialogue with stakeholders, particularly local communities, and conducting risk assessments to identify any potential adverse impacts on these communities.
- Setting up formal grievance mechanisms to enable members of affected local communities and the wider public to voice concerns, complaints and grievances related to the FPIC process. Whistleblower mechanisms should also be implemented within companies to encourage employees to report any attempts at corruption or unethical practices related to obtaining consent.
- Establishing robust compliance safeguards and internal controls to prevent facilitation payments or any form of bribery used to secure consent from local actors. These internal controls should be regularly audited by third parties and monitored to ensure compliance.
- Engaging in-house counsel and external lawyers to add credibility to the FPIC process in locations where lawyers hold a special status in society. Their presence can deter attempts at corruption by public officials or other parties.

In relation to conflicts of interest, companies should:

- Implement transparency and disclosure processes for corporate spending and lobbying activities on climate change. These processes are also necessary to avoid climate-washing.



Site C Dam, British Columbia, Canada.
(Photo: Jason Woodhead/Flickr)

Conclusion

This report has presented a novel categorisation of corruption and integrity risks that are emerging in the area of climate solutions, spanning the misuse and diversion of financial flows, climate-washing, and abuse of process. Summarising some of the detailed recommendations for key stakeholders provided in this report, below are three takeaways for approaching climate-related corruption and integrity risks.

Corruption in climate solutions needs more regulatory action
Despite the prevalence of anti-corruption laws, enforcement efforts do not yet adequately target the manifestations of corruption in the context of climate solutions. Fortunately, many of the risks identified in this report can be addressed through existing legal frameworks, such as criminal and civil law. Raising awareness of practices that illegally or dishonestly weaken the implementation of climate solutions, such as through issuing more targeted guidance, is one key step towards identifying and tackling these issues at an earlier stage.

The European Union is paving the way for tackling many of the risks addressed in this report. However, in most jurisdictions reviewed there remains a lack of specific legislation on climate-washing, ESG rating agencies, and mandatory due diligence in global supply chains. Furthermore, the lack of transparency and oversight in the voluntary carbon markets opens the door for misleading or false disclosure, or simply no disclosure at all. Legislation is urgently required to ensure carbon credits lead to effective and verifiable reductions in global emissions.

Due diligence legislation is beginning to address climate impacts along the supply chain, but it is still too early to judge how effective these mandatory regimes will be. The EU Corporate Sustainability Due Diligence Directive could have significant transformative potential, but negotiations have not yet settled on the final text (Higham et al., 2023). Moreover, there are many jurisdictions in which such rules have either not yet been proposed or not yet been enforced.

Proactive engagement from the private sector is critical
Private sector actors can look to the broader anti-bribery arena, where similar risk factors to those that affect climate solutions exist, and where corresponding compliance programmes are comparatively well established, particularly in larger companies. Companies should take positive action to limit bribery risks by undertaking a structured anti-bribery risk assessment to cover climate action-related activities. This additional compliance burden can be minimised by absorbing it into existing risk assessment measures.

For integrity risks, enforcement action may not always be the optimal solution or most appropriate first approach. Our research revealed that a soft 'guidelines first' approach is gaining momentum across jurisdictions and sectors, such as with the UK Green Claims Code. Although such guidance does not carry the full force of law, or impose the stigma of a criminal conviction, it can encourage greater buy-in from those subject to it, and therefore greater compliance. Under this approach, it is crucial for regulators and industry participants to engage with each other, facilitating the issuance of more practical guidance with scenario-based examples. To enhance accountability and subsequent compliance, regulators may call for industry leaders to publicly commit to the published guidance.

Anti-corruption institutions need to crack down on climate-related risks
At the national level, it is fundamentally the role of public authorities to monitor corruption and integrity risks, respond to complaints, provide guidance on managing risks and, if necessary, take robust enforcement action against those that continue to engage in corrupt behaviours. Adequately fulfilling their mandates requires addressing emerging ways in which corruption risks are now manifesting in the climate context. Anti-corruption actors must be sufficiently trained and adequately resourced to identify these risks and tackle them quickly and effectively. There is a risk that corruption and integrity risks are exacerbated when relevant regulators are purposefully dismantled, defunded or weakened.

Our research highlights that while the acceleration of climate solutions in its many forms must continue, equally crucial are robust governance structures to ensure those solutions are delivered credibly and efficiently. This requires supportive engagement from a range of actors.

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Appendix 1. Methodological note

Desk-based research

In the preliminary stages of work on this report, we carried out a comprehensive literature review to identify research gaps and inform our scope for ‘corruption and integrity risks’. This analysis was then complemented by extensive legal research, undertaken by lawyers at DLA Piper, on international, regional and national legal frameworks for managing such risks. Commentary on national frameworks was provided from DLA Piper lawyers qualified in France, Germany, Thailand, the United Kingdom, and the United States. Lawyers at Trilegal, New Delhi, provided input on legal frameworks in India. The criteria for choosing these jurisdictions includes that they are situated in different regions and hemispheres; that they include states with civil and common law legal traditions; and that they have varied performance across issues such as corruption perceptions and climate change (as assessed on the Transparency International Corruption Perception Index; Climate Action Tracker and the Climate Change Performance Index).

COP27 roundtable consultations

Our researchers held two closed-door roundtable discussions at COP27 in November 2022 with policymakers, researchers, academics, private sector and civil society representatives. The objective was to test our categories of corruption and integrity risks and understand how such risks may manifest in practice. The roundtables gathered input on our initial risk mapping exercise, highlighted gaps, explored drivers of such risks, and discussed potential solutions. Inputs from the discussions have been anonymised and incorporated into this report.

Consultations with key experts

Between January 2023 and April 2023, we conducted additional one-on-one consultations with practitioners working in both the climate and anti-corruption sectors. Consultees were selected to cover a range of perspectives. These included: regulators, sustainability and ESG executives, in-house counsel in private sector companies, intergovernmental organisations, environmental consultancies, and ESG and compliance lawyers. Our analysis of these consultations looked at the perceptions of corruption and integrity risks in climate action expressed by the consultees, and the experiences they recounted of both successful and unsuccessful ways of addressing such risks.

Appendix 2. Legal frameworks

This Appendix provides an overview and high-level commentary on a selection of international standards and national laws that can be actively applied to manage the risks identified in this report. The commentary is derived from research provided by lawyers at DLA Piper on the current legal landscapes of the United Kingdom, Germany, France, United States, Colombia, and Thailand. Lawyers at Trilegal, New Delhi, provided input on legal frameworks in India. This is not an attempt to provide a fully comprehensive overview of each jurisdiction, but rather to bolster information to support the sections on the legal landscape in Part 2.

Bribery

Bribery has long been prohibited by domestic legislation in many countries, including those reviewed for this report. The offence manifests and has been prosecuted in climate contexts. However, recorded instances to date have focused on the way in which corruption has enabled climate harm rather than on instances of corruption manifesting in climate solutions. For example, Surya Darmadi, the Chief Executive Officer of Indonesian palm oil company Duta Palma, was sentenced in March 2023 to 15 years in prison and ordered to repay the equivalent of US$2.6 billion for his role in the bribery of Indonesian officials to allow Duta Palma subsidiaries to convert 90,000 acres of state-protected forest into palm oil estates (Llewellyn, 2023). The Indonesian anti-corruption legislation proved to be capable of responding to this climate-impacting issue, and we would anticipate that this would also be the case in other climate contexts. Our review of national legal frameworks suggests that other national-level legislation – particularly the UK Bribery Act 2010, the United States Foreign Corrupt Practice Act 1977 and the French Sapin II legislation – would be equally applicable to climate-related bribery.

The US is also actively moving towards integrating anti-corruption safeguards into its climate efforts. In June 2021, the Biden-Harris Administration announced that the fight against corruption was a national security priority, and released the United States Strategy on Countering Corruption. One of the objectives of the Strategy is the integration of anti-corruption programming and safeguards into its climate adaptation efforts, which includes providing $11 billion in climate finance to support climate action in developing nations. Anti-bribery safeguards will no doubt be a key element of this.

Money laundering

Like bribery, money laundering is a widely recognised criminal offence, including under national legislation such as the Anti-Money Laundering Act 1999 of Thailand, a.323 of the Colombian Criminal Code and s.261 of the German Criminal Code. At the international level, the European Anti-Money Laundering Directives mandate minimum standards across the EU Member States, and the Financial Action Task Force sets international standards and operates as the global money laundering (and terrorism finance) watchdog. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) was the first international convention to deal with money laundering – here in the context of drug trafficking – and the United Nations Convention against Transnational Organized Crime (2000) extended its reach to money laundering committed by transnational organised crime groups in relation to "the widest range of predicate offences" (see Article 6, paragraph 2 of the Convention). There is clear scope for relevant international bodies to provide guidance and support to national level actors on applying existing domestic safeguards to the climate solutions context.

Misappropriation of funds

Domestic approaches to criminalising misappropriation of funds vary between the jurisdictions reviewed. In Germany, misappropriation of funds of funds might be pursued as embezzlement (s.261, German Criminal Code). In the UK, misappropriation may be prosecuted as theft or fraud (Theft Act 1968, Fraud Act 2006). In Thailand, on the other hand, S.352, Thai Penal Code creates a specific offence of misappropriation and in Colombia, S.397 of the Criminal Code deals specifically with misappropriation of funds by public officials. However, while the degree of specificity varies, it is clear that in each of the countries reviewed, enforcement agencies can rely on existing criminal offences to investigate and prosecute the occurrence of misappropriation of funds by those purporting to pursue climate solutions.

Tax fraud

Definitions of tax fraud are typically wide-ranging. It is regulated internationally via a variety of legal frameworks. Penalties are generally dependent on the level of intentional wrongdoing and deception, and will result in regulatory action, or tortious or criminal liability. Existing legal frameworks on tax fraud tend to rely on general tax provisions to address climate-relevant risks. For example, in India, tax fraud is regulated under the Customs Act 1962 and Central Goods and Services Tax (Compensation to States) Act 2017 ('GST Act'). Under the GST Act, the government introduced a new levy, the GST Compensation Cess, which abolished the original carbon tax used to finance clean energy initiatives and taxes the supply of coal. The general tax fraud provisions as set out in the GST Act clearly also apply to the GST Compensation Cess and any carbon related fraud.

There are certain exceptions where specific provisions have been introduced in cases of tax fraud related to climate solutions: we note that there is a specific provision set out in paragraph 92 of Schedule 6 of the UK Finance Act 2000 which governs the fraudulent evasion of the Climate Change Levy, which is an environmental tax charged on the supply of gas and electricity to business users.

In Germany, while tax fraud is not regulated in the German Criminal Code, it is regulated under section 370 of the German Fiscal Code (Abgabenordnung) and, in relation to VAT fraud that occurs with carbon trading certificates, under the German VAT Act (*Umsatzsteuergesetz*). Consequences include penalties and up to 10 years' imprisonment. These provisions were introduced to address VAT fraud risks relating to the operation of the ETS after high profile prosecutions in the early operation of the scheme.

As in other European member states, German authorities are also tasked with implementing the broader enforcement provisions within the European Emissions Trading System Directive. In Germany this is governed through the Greenhouse Gas Emission Allowance Trading Act (*Treibhausgas-Emissionshandelsgesetz*). Where a firm is found to be underreporting emissions in order to avoid surrendering emission allowances, the Federal Environmental Agency (*Umweltbundesamt*) would be responsible for investigating this (pursuant to section 19 paragraph 1 number 3 Greenhouse Gas Emission Allowance Act). If the firm is found to have breached the regulations, civil consequences would be imposed and the firm could be liable to: (i) pay a levy corresponding to the amount of emission allowances which were not surrendered in time; (ii) be named and shamed in the Federal Gazette (*Bundesanzeiger*); (iii) pay up to €500,000 in fines; (iv) be blocked from obtaining any emission allowances in their account; and (v) receive a notification in the central business register.

Climate-washing

Consumer protection laws in multiple jurisdictions can be used by existing enforcement agencies to address climate-washing. For example, in the UK, the Consumer Protection from Unfair Trading Regulations 2008 are enforced by Trading Standards or the Competition and Markets Authority. Certain breaches can amount to a criminal offence punishable by fines or imprisonment. Alternatively, enforcement orders may be made through the court (a civil action) requiring the organisation to compensate those harmed as a result of violations of this legislation.

In Thailand, unfair advertisement is subject to a maximum sentence of six months' imprisonment and a fine of up to THB 100,000, while fraud offenders may be sentenced to a maximum of three years' imprisonment and up to a THB 60,000 fine (see Sections 22 and 47 of the Thai Consumer Protection Act B.E. 2522). In France, the offence of deceptive commercial practices mentioned in articles L. 121-2 to L. 121-4 of the Consumer Code are punishable by two years' imprisonment and a fine of €300,000.

While the majority of jurisdictions make some provisions for egregious violations of consumer protection laws to be punished with criminal sanctions, this is not always the case. In the United States, at least at the federal level, breaches of the US Federal Trade Commission Act (15 U.S. Code § 41 et seq) can result in administrative action, preliminary or permanent injunctive relief through the courts, and civil penalties for violations of trade regulation rules or prior cease and desist orders or consumer redress.

Our legal research also collected examples of climate-washing-specific legislation. In March 2022, the European Commission (EC) tabled a proposal for a new directive that aims to enable consumers to take informed purchasing decisions and "targets unfair commercial practices that mislead consumers away from sustainable consumption choices" (Proposal for a Directive amending Directives 2005/29/EC and 2011/83/EU). A year later, the EC proposed a Green Claims Directive. Member States would be expected to ensure that traders substantiate explicit environmental claims with scientific evidence and "separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate" (see Article 3.1(h)). Proposed penalties include fines, confiscation of revenues and temporary exclusion (12 months maximum) from public procurement and funding. The EC proposals, if adopted, could have significant implications not only for EU enterprises but also for non-EU companies doing business within the bloc.

While the EU is one of the most active jurisdictions on this issue, it is not the only one considering specific legislation. In Colombia, Draft Bill No. 015, 2022 on greenwashing is currently with the Chamber of Representatives. The bill aims to tackle greenwashing by imposing new obligations on advertisers and uphold consumers' rights to obtain accurate, clear, and transparent information about the products they purchase.

Another example of 'command and control' regulation on climate-washing, with monetary fines for non-compliance, is the French Climate and Resilience Law passed in 2022. The Law imposes strict conditions for making claims of carbon neutrality. Advertisers must prepare, update and publish a greenhouse gas emissions balance sheet that includes the direct and indirect emissions of the product; the process by which the product's emissions are first avoided, then reduced and finally offset using quantified annual progress targets; and the methods for offsetting residual emissions, with methods that comply with minimum standards defined by decree. Violators may receive a fine of €20,000 for a natural person and €100,000 for a legal entity, with potential increases up to the full amount spent on the illegal operation.

Another new area of legislative activity that may provide avenues to prevent greenwashing is offered by mandatory human rights and environmental due diligence legislation, which typically requires companies to undertake human rights and environmental due diligence, with the view to identify, prevent and mitigate human rights risks and establish grievance mechanisms where a violation has occurred. The concept of due diligence is firmly established in international standards such as the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, as well as sector-specific guidance such as the OECD-FAO Guidance for Responsible Agricultural Supply Chains. It is also increasingly being incorporated into national laws, such as the French Duty of Vigilance Law and the German Supply Chain Act.

The EU in particular has taken significant steps to implement mandatory due diligence rules on companies, for example through the new Regulation on Deforestation-free Supply Chains. This Regulation aims to reduce deforestation by setting mandatory due diligence rules for high risks commodities linked to deforestation, including meat, soy, palm oil and coffee. Companies need to ensure that their products have not been produced on deforested land and the import, export or making available of such goods will be prohibited. This should, in part, address the risk of climate-washing in relation to products that use such materials. In Colombia, sector-level guidance also exists. The Ministry of Agriculture and Rural Development has recently issued specific guidelines on sustainable cattle ranching (Resolution No 126 of 2022).

In February 2022, the EC also published a proposal for a Corporate Sustainability Due Diligence Directive (CSDDD), which aims to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations, and those of their supply chains. In-scope companies may be required to adopt a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy, including limiting global warming to 1.5°C, in line with the Paris Agreement. This Directive will complement the above-mentioned Regulation on deforestation-free products. The proposed CSDDD creates pathways for civil liability for harms caused as a result of breaches of due diligence obligations. Once agreed and adopted, this will be legally binding on all EU Member States and, according to the current draft, will apply to certain EU and non-EU companies with significant turnovers. This extra-territorial reach will likely create significant impacts beyond the EU.

Short of 'hard' legislation, regulators are also increasingly adopting principles-based guidance and voluntary codes on green and climate washing – for example, the Green Claims Code in the UK and the 16 CFR 260 Guides for the Use of Environmental Marketing Claims in the US.

Failure to obtain FPIC

Relevant international legal frameworks include the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organization's Convention no.169, the updated version of International Finance Corporation (IFC) Performance Standard 7 (PS7) and the associated Guidance Note 7 (GN7), and the UN Guiding Principles on Business and Human Rights (UNGPs).

The inclusion of FPIC into the International Finance Corporation Performance Standards is of particular interest in that these standards form the basis of the Equator Principles, a set of voluntary standards adopted by financial institutions to manage environmental and social risks in project financing. GN7 states that "FPIC will be established through good faith negotiations between the client and the Affected Communities of Indigenous Peoples. The client will document (i) the mutually accepted process between the client and the Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree". These standards apply to all financial institutions that have signed up to the Equator Principles.

In general, FPIC requirements are not climate-project-specific. In Colombia, there is a legal obligation to carry out a prior consultation process known as 'Proceso de Consulta Previa'. This requires local communities to be consulted and informed of any projects, work or activities which are to be carried out within their territories, and/or any legislative or administrative measures, which may have a direct impact on them. This prior consultation process applies not only to climate projects, but also to projects that may affect the community. Various jurisdictions, including Australia, Peru and the Philippines, have also adopted legislation requiring FPIC where the lands of Indigenous Peoples may be negatively impacted. Similarly, these processes are not exclusive to climate projects.

At the national level, mandatory human rights due diligence legislation (outlined above under 'climate-washing') will also cover FPIC breaches, as these laws require companies to identify and prevent adverse impacts on affected stakeholders, including Indigenous communities.

Conflicts of interest

In the UK, under the Business Appointment Rules for Civil Servants, government ministers, special advisors and other senior civil servants are expected to apply to the Advisory Committee on Business Appointments (ACOBA) before moving to the private sector. However, as identified by a 2021 report by the Independent Committee on Standards in Public Life, there is a lack of any meaningful sanctions for a breach of the lobbying rules, noting that "ACOBA is not a regulator nor a watchdog". By way of example and contrast, French revolving door laws are included in parts of the Penal Code (Art. 432-13) which require public office holders to wait three years before they may act in any way on behalf of companies operating within the framework of the functions previously exercised by the office holder. Breach of the same is punished by three years' imprisonment and a fine of €20,000.

Similarly, in the US, Title 18 of the U.S. Code contains various restrictions on former officials who have transitioned into the private sector. These include cooling-off periods and outright bans on some kinds of lobbying (18 U.S. Code § 207). Engaging in the prohibited conduct is punishable by imprisonment of up to a year (or up to five years for wilfully engaging in the conduct) and a fine of up to US$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. Despite this, issues with the revolving door and undue influence in politics are still prevalent in the US.

For the first two years after taking office in the US, executive branch officials are subject to bans preventing them from working on matters relating to their former employers or clients. The US Code of Federal Regulations also now sets out that public officials must not participate in matters relating to "any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee" (5 CFR § 2635.502).

In India, the majority of government contracts issued are required to have an Integrity Pact – an agreement that there will be no corruption, with specified sanctions for breaches. The Integrity Pacts, which were first implemented in 2006 by the Indian Oil and Natural Gas Corporation, have become more widely required in India in recent years. Additionally, holders of public office are subject to the All-India Service Conduct Rules, 1968 which require that every member of the services shall maintain high ethical standards of integrity and honesty and take decisions solely in public interest and use or cause to use public resources efficiently, effectively, and economically.

At the international level, the United Nations Convention Against Corruption contains legally binding provisions for its 140 signatories on tackling corruption, which extends to conflicts of interest. It sets out obligations for both the public and private sector and requires state parties to implement codes of conduct for the correct performance of public functions. It further requires states to establish systems under which public officials must make declarations regarding their interests outside of their employment that may result in a conflict of interest. As previously noted, while this framework is not specific to corruption in a climate context, it is applicable to that purpose.

Additionally, the OECD has published a number of standards concerning conflicts of interest, namely the OECD Conflicts of Interest Guidelines 2003, the OECD Recommendation of the Council on Public Integrity 2017 and the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises 2019, which provide benchmarks for best practice in this area.