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Letter

COP28: Superstition or Reform

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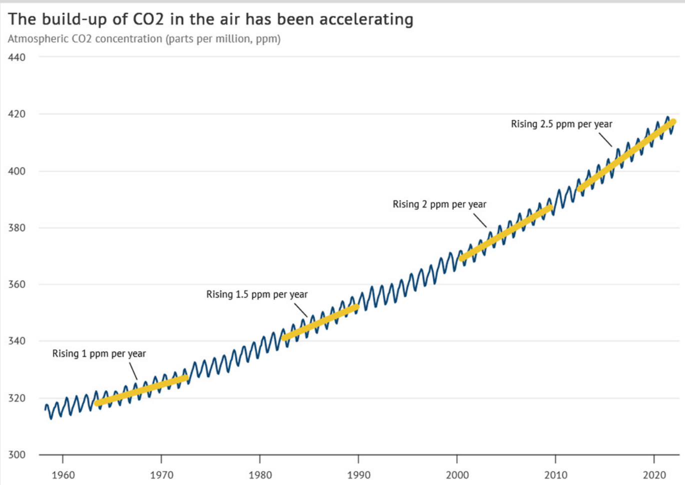
COP28 is over, and the participants finally managed to agree on a consensus document. But it is childish superstition to believe that the outcome will really reduce greenhouse emissions. What is needed is a focus on two important reforms.



The Keeling Curve: atmospheric CO2 concentrations measured at Mauna Loa, Hawaii from 1958 to 2021. Dark blue curve shows monthly data with the seasonal cycle, yellow lines illustrate trends at different times. Data from Scripps Institution of Oceanography at UC San Diego. Chart by Joe Goodman for Carbon Brief using Highcharts.

Keywords:

1. COP 28
2. Sustainable Development Goals
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4. Lobbying
5. Fossil-fuel subsidies
6. Patents
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After two weeks of wrangling over words at COP28, they finally adopted a consensus document recognizing the need for significant reductions in greenhouse gas emissions - down to zero by 2050 - with the for the COP apparently new insight that this requires a transition away from fossil fuels. Some see these sentences as a key historical event and landmark. Others regard them as trivial and meaningless because it remains completely open who should do what and by when to achieve the desired global target state.

For the most part, campaigners on both sides agree that the annual COP battles are important and that the words won or lost influence the course of history. This belief is not surprising. After all, these warriors - the fossils and the greens - are paid by their companies, governments, NGOs, and think tanks to fly to the COP meetings and also to adequately prepare for and follow up on these COPs. Their incomes and self-esteem depend on this endless series of verbal battles, and they feel privileged and important, especially when they gain entry to the blue conference zone.

Battlefield of words

Many outsiders smile at this pomposity, some with envy. They can point to the research station in Mauna Loa (Hawaii), whose measurements show that in the 28 COP years nothing at all has changed in the ever faster rise of greenhouse gas concentrations in the atmosphere.

I see things the same way. Hope that agreement on the phrase "need for significant reductions in greenhouse gas emissions" will cause significant reductions in greenhouse gas emissions is a childish superstition.

There is even evidence (in addition to the 160,000 flights to/from the COP) of a contrary causal effect. In September 2015, after much wrangling, countries agreed on the Sustainable Development Goals (SDGs). The most important of these goals - SDG1 and SDG2 - stipulate that poverty in all its forms, including hunger, will be eradicated everywhere by 2030. This agreement, celebrated by moral people worldwide, was immediately followed by a trend reversal: while the incidences of hunger and poverty had fallen steadily before 2015, they have risen just as steadily since then - the number of people suffering from food insecurity, for example, by 22% by 2019 (from 1,612 to 1,966 million) and by 46% by 2022 (to 2,357 million) (FAO, IFAD, UNICEF, WFP and WHO, 2023). This rapid rise in poverty was initially not even noticed in the slipstream of the grandiose paper triumph of 2015 and then, when it became too big to ignore, it could fortunately be linked to COVID-19 and the war in Ukraine. This experience suggests that - even in the fight for a healthy planet - all the wrangling over legally non-binding declarations hinders real progress by diverting creativity, political energy, funds, and public attention away from the real task of our generation. Even if the fossils often do not prevail in the verbal fights, they win by exhausting us on the battlefield of words.

One can object that much more happens at the COPs. Experiences are exchanged, new research and green technologies are presented, relationships are formed and deepened, alliances are initiated, projects are planned, and much more. Some of these activities certainly have a positive impact on our environment. But they promote the real elimination of greenhouse gas emissions only marginally at best.

Powerful lobbies

To do justice to this huge task, we need to understand why there has been hardly any progress so far, why yet another all-time record in the burning of oil, gas, and even coal is being reached this year.

The remaining fossil fuels have owners: states, companies, shareholders, individuals. And they have a market value that, after deducting extraction costs, amounts to ca. $300 trillion, about 100 times the annual social product of Africa. These potential future revenues provide extremely strong incentives for very powerful actors. People may realize that some of these fossil fuels need to stay in the ground - but not their own! Even the self-proclaimed "moral superpower" Norway, with the world's highest per capita income, continues to invest heavily in the development of new domestic oil and gas deposits.

These powerful fossil fuel owners are opposed by the politically impotent interests of poorer and tropical populations, future generations, and non-human beings, who are most affected by the effects of air pollution and climate change and cannot escape these harms. There is no realistic hope of forcing or convincing enough owners not to exploit their fossil fuel resources. If our problem can be solved at all, it will be not by reducing extraction to constrain consumption, but conversely by reducing demand to curb fossil fuel production.

Two reforms

An important step toward reducing demand is the elimination of government subsidies, which reached a new all-time record of USD 7 trillion in 2023 and have made global consumption of fossil fuels cheaper by around this amount (Black, Parry & Vernon, 2023). These subsidies are often justified on the grounds that poor people should also have access to a minimum of energy. But this purpose can be much better achieved through transfer payments, which can be restricted to poorer households and grant them the freedom to use this support as they see fit (also for food, housing, learning, clothing, medicine, or sanitary facilities). This would abolish the artificial cheapening of fossil fuels and make every consumer bear the full cost of their own consumption. The fact that we continue to spend 7% of gross world product on fossil fuel subsidies despite this rather obvious argument is testament to the enormous political power of the fossil fuel lobby.

The other important step is to curb the artificial inflation of the price of green technologies, whose deployments can greatly reduce the consumption of fossil fuels. This artificial price increase is caused by patents, which are heavily involved in modern green technologies. Each year, the U.S. alone grants some 15,000 green patents, whose owners hunger for rents. This makes the use of green technologies more expensive and hinders their dissemination - especially in the global South, where people are unable and unwilling to pay such monopoly rents, which mostly go to Northern patentees. An obvious solution is an Ecological Impact Fund (EIF), which would allow originators to exchange their monopoly privileges - at least in the global South - for impact rewards linked to emission reductions achieved with their invention (Pogge, 2023). Green technologies would be available at competitive prices, and originator companies would work hard to ensure the widespread and efficient use of their products. In addition, the EIF would incentivize the development of additional green technologies specially tailored to the needs and interests of the global South. How today's lower-income countries will develop is crucial for the ecology of our planet. The EIF would quickly and profoundly steer this development in a greener direction.

If we really want to do something for our planet, we should concentrate our efforts on these two reforms.

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Research Paper

Pork Knockers, Powder People, and a "Fully Criminalized State": The Dynamics of Illicit Financial Flows in the Surinamese Gold Sector

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Gold is Suriname's largest export, accounting for more than half of total exports in recent years. Suriname's modern history has been marked by widespread corruption, economic instability, and state collusion with transnational organized crime networks. In this context, IFFs have flourished, in particular in Suriname's gold sector. This paper demonstrates how gold has turned Suriname into a regional hub for money laundering and tax evasion operations. While otherwise a small regional power, Suriname's role in the illicit gold trade extends its influence throughout northern South America and the Caribbean. Estimates of the scale of IFFs in the Surinamese gold sector are provided, as is a detailed account of the various harms of unchecked financial corruption. The paper concludes with concrete policy proposals for limiting the scale of gold-related IFFs in Suriname.

Keywords:
1. Corruption
2. Financial Flows
3. Organized crime
4. Suriname
5. Sustainable development

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1. Introduction

1.1. What are illicit financial flows?

Illicit financial flows (IFFs) "are illegal movements of money or capital from one country to another," encompassing a range of activities from money laundering and trade mis-invoicing to terrorist financing (GFI, 2023). IFFs are often enabled by, and add fuel to, official corruption. According to the World Bank (2017), IFFs are of particular concern in developing countries because they "reduce domestic resources and tax revenue needed to fund poverty-reducing programs and infrastructure." Beyond the immediate financial challenges exacerbated by the illegal flight of capital, IFFs are "symptomatic of other issues that constrain poverty reduction and shared prosperity, such as vested interests and weak transparency and accountability" (World Bank, 2017). Thus, IFFs link many disparate risks to development. IFFs are specifically listed as a danger to Sustainable Development Goal 16, which calls for, "peaceful and inclusive societies for sustainable development…access to justice for all and…accountable and inclusive institutions at all levels" (UN, 2023).

This paper examines the role of the gold sector – both its production and trade – in enabling IFFs in Suriname. Suriname is a largely underdeveloped yet resource rich country. IFFs related to gold, its largest export by far, are a major concern in its economy and governance. In recent years, Suriname has experienced an expansion of its gold sector as well as development of unexploited oil reserves. These potential riches are not without risks; Suriname’s reliance on commodity exports makes its economy “extremely vulnerable to external shocks” (World Bank, 2023). As this paper will demonstrate, reliance on commodities also exposes Suriname to internal corruption, including state support for extensive money laundering [ML] operations on behalf of regional gold producers and transnational organized crime (TOC) groups. For the Surinamese people to benefit from their resource wealth, it is important to assess the extent of IFFs in Suriname’s extractive sector and to identify policies for combating them.

1.2. A Brief Modern History of Suriname: From Independence to a “Fully Criminalized State”

Suriname is one of the most culturally and geographically isolated countries in the western hemisphere. The country sits on the northeastern coast of South America and is the continent’s smallest country in area and population, with approximately 600,000 inhabitants (NB: Suriname’s neighbor French Guiana, an overseas department of France, is smaller in both respects). Suriname’s geography is characterized by largely undeveloped rainforest, covering more than 90% of the country’s area (ACT, 2015). The rainforest limits land access to its neighbors in Brazil, Guyana, and French Guiana. Additionally, dense forest restricts the government’s ability to interdict the illegal flow of goods and people across its borders. Suriname’s isolation is linguistic and cultural as well. As a former Dutch colony from 1667 to 1975, Dutch serves as its official language and is spoken alongside a local creole lingua franca, Sranan Tongo. The country’s population – largely of Indian, West African, and Javanese extraction – little resembles the ethnic makeup of other South American states.

Suriname is classified as an upper-middle income economy by the World Bank (2023), with a GDP of approximately US$3.5 billion (per capita US$5,560). Suriname is highly reliant on the extractive sector. It has emerging oil reserves and mature bauxite reserves, both overwhelmingly controlled by foreign enterprises. But gold predominates, representing approximately 80% of export value in 2022 (OEC, 2023).

As with many resource-rich countries with historically weak civic institutions and widespread corruption, mineral wealth has not resulted in widespread prosperity for Suriname. Much of the wealth generated by gold and other extractive industries tends to be siphoned by corrupt elites, TOC networks, and foreign companies. Additionally, Surinamese monetary policy has for years been tethered to the vicissitudes of the resource trade and burdened by unsustainable foreign debts. Inflation reached 52.4% in 2022 and 59.1% in 2021, respectively (World Bank, 2023). As a result, US dollars (USD) are sometimes preferred to Surinamese dollars (SRD) as a medium of exchange and, in isolated interior regions, bartering with gold is the norm. Financial instability is felt by Surinamese citizens in the form of constrained government services, power outages, medical supply shortages, and runaway inflation.

Since gaining independence in 1975, Suriname has weathered coups, civil wars, and multiple economic crises. In 1980, during the so-called “Sergeants’ Coup,” Suriname’s first prime minister, Henck Arron was violently overthrown by a group of military officers headed by Dési Bouterse, then a Surinamese Army sergeant. Bouterse would go on to exert control over Surinamese political life for the next forty years, as military dictator (1980-1987), uninterrupted leader of the National Democratic Party (1987-present), and later as democratically-elected president (2010-2020) (BBC, 2012). Internationally, Bouterse is most noted for his role in the

1982 "December Murders," when fifteen prominent members of civil society were tortured and murdered by Bouterse's regime, with multiple sources alleging his personal involvement in the slayings. The Surinamese government under his rule has been found liable (IACHR, 2005), in international court, for the 1986 Moiwana massacre, during which nearly forty non-combatant villagers from the country's Maroon community (descendants of escaped slaves) were murdered in a government reprisal during the Surinamese Interior War (1986-1992).

Bouterse has leveraged his preeminent position in Suriname to subvert the mechanisms of civil society for the purposes of self-enrichment. This extends beyond garden variety corruption and entails overt alliances with TOC enterprises. As one report (Farah & Babineau, 2017) describes Bouterse's criminal involvement:

> Bouterse spent much of the 1990s building a major international trafficking empire, sometimes called the Suri Cartel, whose operations centered on exchanging weapons for cocaine with the FARC, using Brazilian gangs as intermediaries. In 1999 Bouterse was convicted in absentia in Amsterdam of trafficking 474 kilos of cocaine to Holland and sentenced to 16 years in prison. By then he had converted drug trafficking into something of a family business. His eldest son Dino was given a diplomatic post in Brazil in the late 1990s but was expelled by the Brazilian government for using the diplomatic pouch for cocaine trafficking.

The report's authors conclude that, because of the incorporation of criminal elements into the government apparatus, Suriname represents a new "paradigm of a fully criminalized state…the state has become a vertically integrated criminal enterprise, operating in equal partnership with TOC groups."

Under Bouterse, Suriname's model of state criminality is enabled by its ready access to gold and the gold trade, which makes the country a hub of IFFs. Per Farah and Babineau (2017), "the use of gold to accommodate the flow of illicit funds and to launder money has become an attractive vehicle for transnational organized crime groups and some terrorist organizations. The nature of the gold market readily allows actors to convert bullion into exchangeable assets." Moreover, as gold prices increased after 2010, organizations such as the FARC benefited from moving from "high risk/high reward business of cocaine production" to lower risk activities such as illegal gold mining, with Suriname under Bouterse facilitating the laundering of extracted bullion (Farah & Babineau, 2017).

Despite its small size and relative isolation, Suriname's close ties with the Netherlands and a historic permissiveness to organized criminal activity make it a key hub for the transshipment of drugs and illicit funds. Gold, owing to its fungibility and universal value, is a critical medium for enabling IFFs. As one observer remarked, "there is no better mechanism in the world for laundering money than gold" (Gurney, 2020). And Suriname, though small in area and population, possesses gold in abundance.

2. The Scope of Gold-Related IFFs and Conditions Enabling their Persistence

2.1. Scale of Challenges

Gold's near-universal value and fungibility make it ideal for corrupt state actors and transnational criminal organizations to covertly move money. Additionally, in some cases, simply the idea gold is sufficient to provide cover for illicit flows: "Gold does not have to exist or be moved physically to be traded…citing 'gold' as the traded good on an invoice can be used to justify large movements of money, either domestically or across borders" (FATF, 2015). This makes gold "an extremely attractive vehicle for laundering money," providing the means "to convert illicit cash into a stable, anonymous, transformable and easily exchangeable asset or realize or reinvest the profits of their criminal activities." While much of the gold used in IFFs is produced domestically, it is estimated that 30-60% of Suriname's exported gold originates in neighboring countries, from which it is smuggled to Suriname for purposes of laundering criminal proceeds or evading gold duties in neighboring countries (OAS-DTOC, 2023).

In a report by the United National Development Programme (UNDP, 2015), corruption in Suriname is described as "a systemic problem that is embedded in almost all structures, institutions, sectors, and transactions conducted among business organizations both domestic and foreign, as well as among citizens and the government." The report lists Suriname's extractive industries, especially gold mining, as "vulnerable to corruption," adding:

> Gold is the country's main export, but gold mining lacks regulation, resulting in a substantial informal economy. It is estimated that illegal mining accounts for over two-thirds of gold extraction. Around 30,000-40,000 illegal gold miners are active in Suriname's interior, and this is seemingly tolerated by the government. The lack of regulation and a consequent lack of transparency facilitate corruption and serious environmental damage, which, in turn, threatens public health.

This swirl of permissiveness – in which illegal gold mining and TOC activity thrive, bolstered by state complicity in ML efforts – creates an atmosphere in which IFFs flourish. However, the exact scale of gold-related IFFs in Suriname is difficult to determine. A Global Financial Integrity report (Yansura et al., 2021) puts the range of total criminal proceeds (including, but not limited those related to gold) at "two to five percent of GDP," or "US$80 million to US$199 million annually." Of this range, approximately "US$56 million to US$139 million is related to ML" for which gold serves as a primary medium of exchange.

Owing to their illegal nature, IFFs are impossible to quantify with precision – as the wide range of the above GFI estimate makes clear. There are no published reports estimating, in detail, the proportion of Surinamese IFFs that are related to gold mining and the gold trade. However, there are methods that allow one to estimate the order of magnitude, if not the exact dollar amount of gold-related IFFs in Suriname.

One such method is to compare reported Surinamese gold exports to a specific destination country against the destination country's imports of Surinamese gold. In theory, there should be little difference in the reported amounts. If a significant gap exists between reported imports and exports, it represents a reasonable – though imprecise – estimate of illicitly traded gold.

For instance, in 2021, the year for which complete data are most recently available, the UAE reported bringing in US$648,913,528 of gold from Suriname, whereas Suriname reported shipping US$597,099,095 (UN Comtrade, 2023). The difference US$51,814,433 – or 9% of estimated exports – approximates the scale of gold that is smuggled, mis-invoiced, or otherwise unaccounted for in Suriname's exports to the UAE. The UAE is a known hub of international ML in the gold trade; Switzerland, the largest destination for Surinamese gold, does not report similar discrepancies.

Table 1 below summarizes export-import discrepancies between Suriname and the UAE from 2018-2021 (the most recent year with available data), with discrepant totals ranging from 9% to over 90% of reported gold exports. Using these figures, one can estimate that gold-related IFFs originating in Suriname total in the tens to hundreds of millions of dollars annually. This method has significant overlap with the GFI estimates discussed above, reinforcing both findings. Using either estimate, the projected range of gold-derived IFFs – from tens to low-hundreds of millions of USD – is quite significant when compared to the country's GDP of approximately US$3.5 billion.

Table 1. Export-import discrepancies between Suriname and the UAE from 2018-2021

Year	Suri Gold Exports to UAE	UAE Gold Imports from Suri	Dollar difference	Percent Difference
2018	$291,892,842	$398,768,673	$106,875,831	37%
2019	$534,992,619	$1,033,604,485	$498,611,866	93%
2020	$401,065,593	$703,726,892	$302,661,299	75%
2021	$597,099,095	$648,913,528	$51,814,433	9%

Source: author compilation from UN Comtrade; Currency: USD.

An Organization for Economic Cooperation and Development (Hunter, 2020) working paper, from which this methodology was borrowed, lists several caveats to estimating IFFs with this approach, all of which apply to the Surinamese-UAE case as well: "[T]here may be other explanations [for import-export discrepancies]…re-routing of exports through intermediary jurisdictions may result in difference in import/export records in producing and destination countries…This estimation is a best guess, based on the interviews and discussions with experts in the field and is used here for enabling a discussion on amounts of IFF…This report acknowledges the debates on robustness of figures and methodologies in this area and does not suggest that this figure is definitive, given the difficulties with data in this topic."

In addition to export-import discrepancies, Suriname often reports discrepancies between the total amount of gold in produces and exports. For the decade ending in 2021, Suriname reported exports exceeding production values in seven out of ten years (OAS-DTOC, 2023). The most common explanation for this discrepancy is that gold is illicitly trafficked from Guyana, Brazil, and French Guiana and then laundered into cash or exported to take advantage of Suriname's comparatively lower gold export tax (OAS-DTOC, 2023). Although exact estimates do not exist for the degree of tax evasion, it appears that Suriname acts as a regional hub for small-scale miners to avoid taxes in their home countries by smuggling bullion across an under-policed border. Of course, as when comparing export-import discrepancies, similar caveats apply to using export-production discrepancies to estimate smuggling activity, in particular that the informal nature of Suriname's gold mining sector may contribute to nonstandard record-keeping standards, undercounting domestically-produced gold.

Regardless of the exact figures in question, it is apparent that IFFs in the gold sector are enabled by a weak domestic financial system. Suriname's financial sector is unable to regulate IFFs either due to inadequate infrastructure, lack of will, complicity in ML, or a combination of all three. For a recent example of the country's enfeebled financial infrastructure and corrupt governance, consider the recent scandal at the Central Bank of Suriname. In 2020, Suriname's finance minister and Central Bank governor were charged with fraud and embezzlement after it was revealed that nearly US$200 million of deposits went missing (Yansura et al., 2021).

When such extensive corruption is coupled with the volatility of the Surinamese dollar, the domestic banking sector is placed at risk of isolation from the world financial system, driving consumers to an informal economy that prefers bartering with gold or cash-based exchange, often in foreign currency (Yansura et al., 2021). In turn, this increases local demand for gold and illegal gold mining. According to the US State Department (2020), much of the money in the gold mining and refining sector “does not pass through the formal banking system…In Suriname’s undeveloped interior, bartering with gold is the norm.” The largely unregulated Surinamese gold sector serves as a beacon to regional gold producers seeking avenues for mineral trafficking. There are reports of Venezuelan gangs and small-scale miners smuggling gold into Suriname, which is then “laundered into Suriname’s exports” (Yansura et al., 2021).

Suriname faces challenges related to gold and IFFs from multiple fronts. Weak institutions, inadequate enforcement of local laws, monetary incentives for small-scale miners, and elite support of ML activities drive local demand for illegal gold mining and trafficking. Corrupt officials and TOC organizations work in concert to launder tens-to-hundreds of millions of dollars of illicit funds, using gold as a medium. In turn, other regional gold producers see Suriname as a hospitable laundering hub. And because the officials with oversight of exports, banking, and policing benefit from this arrangement, the state remains committed to subverting the public interest on behalf of TOC groups and a small cadre of corrupt elites.

2.2. A Brief Case Study Illustrating the Conditions Enabling the Persistence of Gold IFFs

The UAE is Suriname’s second largest export destination, primarily as a recipient of gold, and is the home of Dubai-based Kaloti Precious Metals (KPM), one of the largest gold traders in the world (OEC, 2023). KPM has been extensively investigated for its suspected role in international ML activities. The story of KPM’s Surinamese operations provide a powerful illustration of the conditions that enable the persistence of IFFs. The interdependence of the Surinamese government and KPM substantiates claims that Suriname is a model of a “fully criminalized” state.

KPM has global operations touching nearly every step of the gold supply chain, from mining to refining to trading. Reporting on the “FinCEN Files,” a 2020 leak of nearly 3,000 documents from the U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN), brought to light three years of investigations into KPM’s allegedly illegal activities. The FinCEN Files reveal that the U.S. government identified approximately US$9.3 billion in KPM transactions that were suspicious for ML, including such red flags as “cash payments worth millions of dollars to KPM’s suppliers and cash withdrawals from KPM’s Dubai bank account so large they had to be carried out in wheelbarrows” (Sayari, 2020). Additional investigations by the BBC alleged that KPM laundered funds on behalf of international drug rings (Verity & Robinson, 2019). While the U.S. government labeled KPM a “primary money laundering concern” under Section 311 of the PATRIOT Act, they reportedly did not pursue enforcement for fear of jeopardizing Emirati-American relations (Sayani, 2020).

Among the numerous areas pursued by investigators were KPM’s activities in Suriname. In 2013, the Surinamese government under Bouterse announced a joint venture with KPM, Kaloti Suriname Mint House (KSMH). KSMH’s purpose was to build and operate Suriname’s first gold refinery (Gurney, 2020). Several years after the project was announced, it was reported that 30% of KSMH’s shares were controlled by Bouterse frontmen (Farah and Babineau, 2017). In 2015, when KSMH announced the refinery was open for operation, the Central Bank of Suriname transferred all responsibilities for valuing and collecting gold export taxes to KSMH. Overnight, KSMH was transformed into an appendage of the state itself, with regulatory oversight of 80% of Suriname’s exports by dollar value.

These circumstances by themselves represent a striking example of state capture and official corruption. However, there was another wrinkle: according to one well-publicized account, the KSMH refinery did not exist. Farah and Babineau (2017), who visited the purported refinery site in 2016, found no physical evidence of a refinery, findings corroborated in interviews with local gold dealers who confirmed that there was no local refining operation. The reporters concluded that the refinery "exists only on paper," serving as a cover for the state's real business. "For a price," they conclude, "TOC groups can use the state certification to launder almost unlimited amounts of cash as if it were gold, thereby giving the transactions the appearance of legality." As of 2023, the website for KSMH consists solely of a slickly-produced video insisting that "there is a misconception in the Surinamese community regarding the services provided" by KSMH, and that the mint house "does not purchase or sell…[or] export gold" (Kaloti Mint House, 2023). Rather, the video describes a limited role in refining gold on behalf of producers from Suriname and across South America and the Caribbean. The video reassures viewers that their purpose is to assess accurate taxes on behalf of the Central Bank of Suriname and the Surinamese people.

Ultimately, whether or not KSMH physically exists does not undermine claims about KSMH's role in ML. And the fact that KSMH's non-existence can be credibly alleged speaks to the baseline levels of corruption in Suriname. The preponderance of evidence suggests that the refinery was established (on paper at least) as a cover for the government to certify gold shipments – real and illusory – on behalf of customers seeking to legitimize ill-gotten gains. Moreover, the fact that KSMH serves international customers indirectly buttresses the case that it is involved in ML. Why would Peruvian, Colombian, or Venezuelan producers send gold to Suriname when they have their own streamlined mining, processing, and exporting ecosystems? From a cost standpoint, it only makes sense to pursue a disaggregated supply chain and send a portion of exports through Surinamese processing facilities if KSMH is able to provide an additional benefit, such as state-sponsored ML services. Otherwise, Suriname's neighbors would have little economic rationale to send legally sourced gold to a new facility in an underdeveloped country: "whatever gold moves through KSMH is unlikely to be legally produced in other South American countries, but is ideal for accommodating illicit flows of resources and the accompanying laundering at a high level" (Farah & Babineau, 2017).

The Surinamese state's historically active role in ML and drug-smuggling activities under Bouterse offers further reasons to suspect the legality of KSMH's operations. While Bouterse left office in 2020, he is still widely seen as the country's dominating political figure. KSMH's operations were not merely tolerated by easily bribed officials, but partially owned by the President, and subsidized through the delegation of the central bank's authority. The symbiosis between the government and TOC has deep roots in Suriname and, as long as the culture of criminality nourished by Bouterse persists, that influence remains. If the state remains an integral orchestrator of ML activity, TOC actors will be able to operate with relative impunity and will present significant challenges to attempts to resolve the issue of IFFs and official corruption.

3. The Social, Economic, and Environmental Impact of Gold-Related IFFs in Suriname

According to GFI (2023), IFFs in developing countries "result in a loss of what are often desperately needed resources to fund public initiatives or critical investments." IFFs misdirect funds that might otherwise have been deployed on behalf of economic growth, poverty elimination, and sustainable development. The following section provides a detailed summary of the social, political, economic, social, and environmental harms of IFFs in Suriname.

3.1. Political and Economic Harms

IFFs erode Surinamese state capacity and national sovereignty. With barely-concealed corruption reaching the highest echelons of power, public distrust of government and financial institutions is high (Boejoekoe, 2021). Public distrust erodes the integrity of governmental structures and diminishes the state's ability to act in the public interest. Furthermore, the state's historic partnering with TOC and foreign enterprises to finance and operate major components of the gold supply chain undermines local control over the country's largest resource by export value. Through their influence over corrupt officials, TOC groups exert substantial influence over internal affairs. In leafier districts of Paramaribo, for instance, neighbors describe the foreign absentee owners of new mansions as "powder people" – drug lords encouraged under the Bouterse regime to establish roots in in the capital. These new neighbors, through control of construction projects and jobs, exert considerable sway over local leaders and residents. Even more explicitly, the government delegation of tax assessment duties to an international enterprise, as in the case of the Emirati-controlled KSMH, demonstrates a deliberate diminution of state power. The large scale of ML and the international nature of IFFs leads to undue influence over Suriname's political sphere, threatening its sovereignty and compromising national interests.

All of this contributes to political instability. In some respects, the 2020 election of President Chandrikapersad Santokhi – who in a prior role as Minister of Justice had led criminal investigations into the Bouterse regime – can be seen as an expression of public will for political change. But Bouterse, as a major party leader, retains the role of political kingmaker and his acolytes hold positions of influence throughout government (Farah and Babineau, 2017). The culture of impunity and corruption that he built up over decades remains largely undiminished, and while it is not uncommon for the current Santokhi administration to acknowledge the graft and ineptitude of the preceding regime, it has been unable – or unwilling – to transform Suriname's political culture. One frustrated citizen summarized national sentiment when he wrote in 2022, "the current [Santokhi] coalition has only made promises to the people of Suriname…Poverty has risen alarmingly, while, for example, corruption, patronage and/or nepotism are rampant" (MacDonald, 2022).

Unsurprisingly, the harms of gold IFFs also affect Suriname's economy. While Suriname's substantial gold reserves have the potential to boost its economy, the industry's attendant violence, lawlessness, and widespread ML activities threaten the country's overall development and stability. The Surinamese government loses out on significant revenues due to illicit gold trading. In 2022, the government's gold royalty increased from 2.75% to 4.5%; IFFs in the gold sector result in increasing millions of lost revenue (OAS-DTOC, 2023).Taxes and royalties from legitimate gold exports could be reinvested into public infrastructure, health, education, and other critical areas. Such lost revenue widens the development gap.

Additionally, Suriname's associations with illegal gold trading and IFFs tarnish its reputation on the global stage. This can deter foreign investments and lead to stricter trade regulations, further stifling the nation's economic growth potential. As part of a greater trend in de-risking from countries historically associated with ML, foreign banks have largely abandoned Suriname and cut it out of the global banking sector. One report from 2019 (MacDonald, 2019) noted that only a single private bank in the country, of Trinidadian origin, maintained correspondent accounts for foreign banks – a measure of systemic trust between institutions, and a reflection of the banking sector's distrust of Surinamese banks. The costs of economic isolation are felt by everyday Surinamers. The 2019 report describes how isolation from global banking "greatly complicates economic activity in countries like Suriname, hitting everything from tourism to the ability for young Surinamers studying in North America and Europe to pay university fees there."

3.2. Social Harms

Illegal gold mining thrives in an atmosphere of general lawlessness and violence. In a 2022 interview, President Santokhi acknowledged the difficulties in governing the gold industry. In response to a query about the gold sector's vulnerability to organized crime, Santokhi implicated the government's own historical role in enabling social disorder: "The Bouterse government gave out concessions across the entire interior, so there's no free space anymore. And on all those concessions, you see informal Surinamese, Brazilian, and Chinese gold miners operating… There's a lot of violent crime. There are often shootings in these areas…Right now, the army is blowing up illegal gold dredges, but that's generating a lot of unhappiness in the local community" (Ford & den Held, 2022). Santokhi links the government's historic tolerance of illegal mining to violence, while also acknowledging efforts to curtail mining operations are bound to conflict with vested interests.

As Santokhi's reference to "unhappiness in the local community" makes clear, many Surinamese benefit from illegal gold mining, which serves as a major source of income for both indigenous and Maroon communities. Indeed, one anthropologist working with Maroon communities reports that 70-80% of Maroon households receive a portion of their income from relatives in the mines (ACT, 2015). However, financial gains from industry are unevenly distributed between and within tribal groups and the environmental destruction that follows mining poses a threat to long-term ways of life for all living in the interior. One team of researchers found that deforestation activity related to gold mining is more intense in Maroon-controlled lands than in neighboring concessions (ACT, 2015). While this reflects Maroon involvement in a mining industry from which many financially benefit, it also underlines the risks Maroon communities run by placing long-held lands at risk of environmental degradation. In the long run, deforestation of tribal lands risks forced displacement and tensions between and within tribal groups.

3.3. Environmental Harms

For gold to be used in ML, it must first be mined. Suriname's role as a broker of gold-related IFFs stimulates the local mining industry, much of which operates informally. Both foreign gold smuggled by TOC groups and illegally-mined domestic gold require laundering before entering global markets. Suriname's role as a conduit for gold-fueled IFFs drives unregulated gold mining and its attendant environmental harms.

Suriname's interior is dominated by largely pristine rainforest; the environmental risks of unregulated mining pose a threat to one of the country's most significant resources. By one estimate, approximately 95% of Suriname is forested, the second highest proportion of forest cover in the world (ACT, 2015). However, in recent years, according to the UNDP (UNDP, 2017), "deforestation and forest degradation have increased dramatically," driven largely by mining and extractive industries: "If deforestation risks are not addressed promptly, the loss of trees and other vegetation can cause climate change, desertification, soil erosion, fewer crops, flooding, [and] increased greenhouse gases in the atmosphere."

An additional challenge is the widespread and illicit use of mercury in artisanal and small-scale gold mining. Throughout Suriname's interior, small-scale miners – sometimes called "pork knockers" after their diet of pickled wild pork – combine mercury with gold-containing sediment harvested from river dredges. The resulting mixture is heated, vaporizing the mercury and leaving behind gold. Although since 2018 Suriname is signatory to the Minamata Convention on Mercury, even Suriname's current president has acknowledged that the government is unable to stop mercury from being smuggled into the country by small-scale miners (Ford & den Held, 2022). One report estimates that in Suriname, for every kilogram of gold extracted, one kilogram of mercury was released into local waterways – meaning "at least 20,000 kilograms of mercury have entered Suriname's river system for at least the last two decades" (OAS-DTOC, 2023).

Recurrent exposures to mercury are toxic to small-scale miners and to the local environment. The sequelae of mercury poisoning are evident in many long-term miners including peripheral neuropathy, muscular weakness, psychosis, and, in extreme cases, coma and death. As small-scale mines are typically built into river dredges, the surrounding wildlife and local communities dependent on rivers for food and water are also subject to dangerous mercury exposures (Gerson, 2022). In certain villages of the Matawai Maroon community, for instance, residents acknowledge that no local fish are safe to eat (ACT, 2015). Mercury can remain in rainwater, groundwater, plant life, and wildlife for decades. Because most dredging occurs within the watershed containing Suriname's capital Paramaribo, it is estimated that close to 75% of the country's population lives at risk of exposure to dangerous levels of mercury (ACT, 2015). Even if the government developed the will and capacity to enforce anti-mercury measures, the risks to health and environment will be felt for years to come.

4. Policy Approaches to Limiting IFFs in the Gold Sector

There are several policies that the Surinamese government could pursue as first steps toward combatting the scale and influence of IFFs in the gold sector.

4.1. Upholding EITI Standards

The Extractive Industries Transparency Initiative (EITI) is a set of global standards for transparency and accountability in the management of extractive sectors, such as oil, gas, and minerals, including gold. As a signatory member since 2017, Suriname has pledged to uphold these standards, including transparency in reporting revenues, making public data widely available, and continuously measuring the impact of policy interventions intended to improve accountability. To better align with EITI guidelines, Suriname can bolster its institutional capacities by investing in regular training for public and private sector stakeholders on the latest reporting mechanisms and standards.

Adherence to EITI standards would directly address many of the challenges presented by IFFs in the Surinamese extractive sector. EITI standards provide guidelines for companies and countries to create transparent and accountable systems that minimize opportunities for ML. More than anything, EITI standards seek to improve transparency of finances in extractive industries; when revenue streams are transparent and well-documented, it becomes challenging for corrupt officials and other entities to siphon funds illicitly. Moreover, enhanced public awareness and understanding of the extractive sector empowers civil society to hold the government and industry players accountable. By integrating the principles and guidelines of EITI into its gold sector management, Suriname can reduce vulnerabilities to corruption in its single largest industry.

Unfortunately, although signatory to EITI, Suriname has made little progress in upholding its standards. In an EITI report (EITI, 2022) for fiscal years 2018, 2019, and 2020, Suriname was said to have made "no progress" on achieving EITI goals such as having the government and industry "fully, actively and effectively engaged in the EITI process" and ensuring the public release of "comprehensive information about the recipients of mining, oil and gas licenses." Most pertinent to the scope of this essay, the EITI reports no progress toward the goal of ensuring that "all material payments and revenues are comprehensively disclosed by government entities and extractive companies." For EITI standards to have their intended influence, the Surinamese government will need to demonstrate a willingness to implement them.

4.2. Implementing a Single-Window System for Facilitating Cross Border Trade

By implementing a single-window system for the gold trade, the Surinamese government can impose structural reforms that create a regulatory environment less hospitable to IFFs. In brief, a single-window system is an integrated clearinghouse that allows traders to provide standardized information and documents on a single platform to fulfill all import, export, and transit-related regulatory requirements. A single-window system limits the inefficiencies, human touch points, and other opportunities for corruption that allow IFFs to persist. A primary benefit of a standardized single-window system is to reduce human intervention in various processes that might otherwise lend themselves to official graft. Furthermore, by increasing the transparency in trade and traceability of currency exchanged, single-window systems allow for public oversight over historically shadowy processes. By streamlining procedures and creating a centralized point for trade-related activities, this system can reduce the opportunities for corruption and in turn reduce avenues for IFFs. In its 2017 Corruption Risk Assessment For Suriname (UNDP, 2017), the UNDP specifically lists the implementation of single-window system as a concrete step the government can take to reduce financial corruption.

4.3. Egmont Group and Other International Mentoring Opportunities

The Egmont Group is an international organization of financial intelligence units (FIUs) from various countries, including every country in South America except for Suriname and its neighbors Guyana and French Guiana (an overseas department of France). The group's primary objective is to foster cooperation and information exchange between FIUs internationally. These units typically gather and analyze financial intelligence related to ML, terrorist financing, and other financial crimes.

By joining the Egmont Group, Suriname could amplify its capabilities to combat IFFs in the gold sector. This cooperative framework offers multiple avenues for Suriname to enhance its anti-money laundering (AML) and counter-financing of terrorism (CFT) efforts. In particular, cooperation with international allies could provide Suriname with AML tools that it cannot, as a small developing nation, otherwise access. Suriname suffers from low state capacity and its government is often a less sophisticated technological actor than the TOC groups which drive many of its IFFs. If the Santokhi administration is to successfully implement the anti-corruption efforts it claims to support, it can partner with more advanced FIUs to enhance the state’s capabilities in tracking and interdicting IFFs. As of 2023, Suriname is actively seeking membership to the Egmont Group, with a particular aim to partake in Egmont’s Technical Assistance and Working Group (Zagaris, 2020).

Participation in the Egmont Group would enhance Suriname’s international credibility in the financial sector. As discussed above, Suriname’s current lack of credibility in this regard has led to abandonment by much of the international banking system. Joining organizations such as the Egmont Group would help Suriname in the slow process of building an international reputation as a trustworthy AML partner and potential target for foreign investment.

The Egmont Group is but one example of various international partnerships that Suriname could avail itself of in anti-IFF efforts. For instance, the United States Department of Justice offers mentorship to foreign governments to improve their ability to investigate ML and terrorist financing and assist in asset recovery (Yansura et al., 2021). Such focused partnership would, similar to participation in the Egmont Group, augment Suriname’s capacity to combat IFFs in the gold sector. Other examples of international technical and financial assistance that Suriname can participate in include the UN Office for Drugs and Crime Regional Programme in support of CARICOM [Caribbean Community] Crime and Strategy (UNODC, 2013), assistance from the Inter-American Development Bank with financial sector reform, and participation in international preceptorships such as the Basel Institute on Governance's courses to help partner states with financial crime investigations and asset recovery (Basel Institute on Governance, 2023).

4.4. Who Has the Power to Effect Change?

It must be acknowledged that even if all of the suggested recommendations were adopted, the challenge of IFFs would persist if public will and state capacity remain in their current attenuated form. While these recommendations are intended to suggest concrete policies the government may take to reduce the challenge of IFFs in the gold sector, they are also aimed at signaling a cultural shift from the attitude of state criminality that defined the Bouterse era. This shift would require buy-in from elites, public engagement with the political process, and investments in state capacity. A review of member-states in EITI and the Egmont Group reveals many countries with suboptimal records in achieving those organizations' goals; belonging to these groups alone does not guarantee ideal anti-IFF practices. Suriname's success in tackling IFFs in the gold sector hinges on a broader crackdown on corruption, which will require the support of the Surinamese state and its associated elites.

Specifically, the state will need to invest in able and independent administrators throughout government, especially within the Central Bank of Suriname. Given the importance of the Central Bank and its history of poor management, the government need not limit its search to native-born administrators. Private banks in Suriname routinely draw from the Netherlands for financial talent and the Surinamese government might similarly benefit from the employ of foreign technocratic expertise, which has the benefit of being removed from the country's endemic self-dealing political culture (Kurmanaev, 2020). In various parts of the English-speaking Caribbean, for instance, it is common practice that public administrators are drawn from the broader Commonwealth (Griffith, 2023).

The Central Bank is of such importance because in addition to monetary policy it has responsibility for tax assessment, financial sector regulation, and export controls – the areas most subject to manipulation by parties engaged in IFFs. Given the Bank's wide regulatory powers, the UNDP (UNDP, 2017) has identified significant potential for a well-run Central Bank in Suriname: "[the Bank] can play a vital role by developing its ability to more effectively identify, trace, and suppress money laundering and the financing of terrorism; prevent the informal economy; and enhance its financial investigations, especially in the mining and forestry sectors, by promoting stolen asset recovery initiatives and strengthening international cooperation." This potential, however, is far from a reality. A report (IMF, 2019) on the Surinamese economy and Central Bank found multiple "challenges facing the economy," including "a weak fiscal position and rising public debt, monetary and financial supervision frameworks that need to be enhanced, a low degree of economic diversification, and other structural impediments to growth."

Since 2020, President Santokhi's administration has made limited progress in achieving its anticorruption goals and financial sector reform. Of course, the administration's efforts have been slowed by its poor luck to take power during the height of the coronavirus pandemic. It would be overambitious for a single administration to simultaneously undertake financial sector reform, the transformation of a civic culture, and the reorientation of the entire economy. Yet, in a country suffering from decades of political lassitude, ambition is what Suriname needs.

5. Conclusion

The Surinamese economy is dominated by gold. And because gold serves as a primary medium of ML, the Surinamese economy is in turn influenced by its relationship to IFFs in the gold sector. If Venezuela or Saudi Arabia are termed “petrostates” to describe their society-wide orientation toward the extraction and distribution of a single predominant resource, then Suriname can fairly be considered a “gold state” or even a “laundering state.”

Together, Suriname’s economic reliance on gold exports and its historic alliances with TOC groups weaken the state’s ability to serve its citizens’ interests. IFFs in the gold sector lead to loss of government revenue, social disorder, increased public distrust, and environmental harms. As long as IFFs persist to their current degree, Suriname’s path to development will be an arduous one.

In the past decade, the French oil giant TotalEnergies has led the development of major new oil fields off the Surinamese coast. More foreign players, including Apache, based in the U.S., and QatarEnergy, have followed (Cavcic, 2023). Hotel lobbies in Paramaribo, once the sphere of sunburned Dutch tourists, increasingly host ad hoc gatherings of foreign engineers seeking a steady Wi-Fi connection to attend video conferences with executives in Houston, La Défense, and Doha. Suriname is on the cusp of an oil boom. The country’s long history of foreign economic exploitation – from the colonial era to the present – appears to be repeating itself. If the lessons of gold are any guide, the benefits of “black gold” will need to be weighed against its risks, including the potential for official graft, the prospect of new avenues for ML, and the dangers of environmental degradation.

Despite all these concerns, Suriname has great promise. It is a young country with large resource reserves relative to its small population. It possesses a largely pristine, biodiverse rainforest. It has great potential as a tourist destination, especially for eco-tourists looking to visit one of the few remaining unspoiled sections of the Amazon. Its close historical connections to the Netherlands and large diasporic community in that country allow many young Surinamese to pursue advanced training in medicine, engineering, and other valuable disciplines – even if, in the current economic climate, many professionals are reluctant to return. In their pursuit of resource riches, Surinamese elites are in danger of squandering the possibility of economic diversification and harnessing their population’s significant human capital.

The persistence of IFFs in the Surinamese gold sector raises fundamental questions about Surinamese society as a whole. To what extent does corruption determine who succeeds in economic and political life? What influence do TOC groups and foreign extractive enterprises maintain over the Surinamese economy? How sustainable is an economy overwhelmingly tethered to a single resource? Most of all, what are the costs to everyday people when they are born into a country where opportunity is constrained by such economic, social, and civic distortions? How Surinamese leaders and citizens choose to respond to these questions will play a major part in determining their country’s path to sustainable development.

Award information
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Research Paper

Taming the Untamable: Rethinking, Regulating, and Revamping *Hawala*

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Abstract: This paper examines the Hawala system, an ancient remittance mechanism enabling money transfers without physical fund movement. Originating from medieval commerce in the Near and Middle East and China's Tang Dynasty, Hawala now handles an estimated $100-$300 billion annually, operating in parallel with formal financial systems. Despite its vital role for unbanked communities, especially in South Asia and among migrant populations globally, Hawala is often associated with corruption and illicit activities, with post-9/11 links to terrorism and money laundering intensifying calls for its eradication. This study delineates Hawala's historical roots, unique characteristics, and structure through illustrative examples. It dissects its widespread popularity, exploring geographical prevalence and competitive advantages. Focusing on India, the paper provides a comprehensive overview of Hawala's socio-economic impact and regulatory complexities, advocating for a balanced dual-pronged approach to integrate Hawala into the formal economy without driving it underground.

Keywords:
1. Political economy
2. Global justice
3. Banking
4. Hawala
5. Illicit financial flows
6. Financial regulation

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1. Introduction

In an era dominated by digital banking and instantaneous money transfers, the ancient Hawala system stands as an enigma. An alternative remittance system, Hawala performs the curious act of transferring money without any actual movement of funds. Remarkably, Hawala predates the modern banking era, tracing its roots back to premodern medieval commerce in the Near and Middle East and China's Tang Dynasty (Nakhasi, 2009). Today, the vast scale of Hawala transactions, estimated between $100 billion to $300 billion annually, unfolds discreetly, in parallel to the formal financial structures that dominate our modern world (Henry, 2017). A migration-driven surge in remittances further fuels the system's allure, defying any presumptions of Hawala's obsolescence in today's world (El Qorchi, 2004). Notably, countries like India, Pakistan, and the U.S. emerged as key nodes in this intricate network, with India showcasing the system's resilience and its controversial intertwining with 'bad politics' and corruption (Daudi, 2005; Kapoor, 1996).

Yet, it's essential to underscore that Hawala isn't merely an instrument of vice. It operates in a realm of duality: on one side, facilitating terror and illicit activities, and on the other, a lifeline for innocents seeking affordable, speedy transfers. Post the 9/11 paradigm shift, the narrative around Hawala has been marred with vilification, often tying it inextricably to terrorism and money laundering (Teichmann & Wittmann, 2023; Wilson, 2005; Daudi, 2005). While these interpretations emphasize the need to eliminate Hawala entirely as a means to combat illicit financial flows (Malit Jr et al., 2017), they oversimplify the complex reality. This reductionist view fails to capture the nuance of Hawala's everyday functioning, its humanitarian value, and its contributions to global development. It is thus essential to discern between its illegitimate and legitimate uses, a distinction that hinges less on legality and more on the purpose behind the transaction. With this backdrop, our essay aims to transcend the monolithic narrative that paints Hawala solely as a malevolent system. Rather, recognizing its existence as both an unregistered entity and an entrenched financial network, we aim to address its multi-layered impact on global economic health. An unregulated Hawala is a double-edged sword — while it facilitates legitimate remittances, its very nature masks illicit financial flows and fosters tax evasion. Addressing this, we investigate the formidable challenge of taming the untamable i.e., formalizing an entity that, at its core, thrives on informality.

The structure of our essay will unfold as follows: firstly, we will delineate Hawala, navigating its historical roots, unique characteristics, and structure through an illustrative example. Then, we seek to dissect its widespread popularity, shedding light on its expansive geographical prevalence and delving into the driving factors behind its enduring appeal, particularly illuminating its competitive advantages. Furthermore, we take a multifaceted look at the contemporary manifestations of Hawala flows, accentuating its role as an indispensable tool for humanitarian aid, an everyday remittance network for the unbanked, as well as its darker side as a conduit for criminal undertakings. Next, we grapple with the complexities of regulating Hawala, laying out the imperatives for such oversight, and evaluating current global efforts. Acknowledging the challenge of regulating such an inherently informal system, we survey the merits and shortcomings of various approaches, using India as a focal point. In doing so, we argue for a dual-pronged approach, balancing both investigative and public-policy efforts. This essay posits that rather than merely seeing Hawala through a criminal lens, a comprehensive understanding that positions it within the broader socio-economic landscape is crucial for effective oversight and integration into the modern financial realm.

2. Origins and Characteristics of Hawala

2.1. Definition and Historic Origins

At its core, Hawala is an alternative remittance system, offering "financial services, traditionally operating outside the conventional financial sector, where value or funds are moved from one geographic location to another" (Passas, 1999). This description also includes other similar Informal Value Transfer Systems (IVTS) scattered across the globe, each marked by their regional nuances. These systems are efficient, discreet, and often operate around the clock, presenting a unique blend of secrecy and reliability. Their very nature makes them "fast, inexpensive, reliable, convenient, and, most notably, discreet," fostering a sense of mystery for those outside the ethnic communities that rely on them (Wheatley, 2005).

While the West witnessed the rise of its formal banking systems, the historical origins of Hawala predates these by several centuries, finding its genesis in the early medieval commerce of the Near and Middle East (FATF, 2003). Its historic inception can be traced back to the need for Arab traders to safely move their wealth without the physical burdens and perils of robbery on the Silk Road (Schramm and Taube, 2003). The etymology of the term 'Hawala' further underscores its significance. In Arabic, Hawala translates to 'payment' or 'debt transfer', paralleling the Roman 'delegation debiti'. Interestingly, when integrated into the Hindi lexicon, it further acquired the connotation of "trust" – an invaluable attribute that remains a bedrock of the Hawala system (Wheatley, 2005; Jost and Sandhu, 2000). Simultaneously, religious tenets furthered Hawala's acceptance, with Muslims leveraging it to fulfill their religious obligation of almsgiving (Wheatley, 2005)[1].

Entering the modern era, we witness the reshaping of Hawala under various sociopolitical and economic influences. The 1970s, marked by the oil boom in the Middle East, saw a surge in Islamic banks. Additionally, the gold smuggling endeavors between the Middle East and South Asia in the 1960s led Indian and Pakistani expatriates working in the Middle East to rely on Hawala for transferring funds to their families (Wheatley, 2005; Nissman, 2002) describes the South Asians who profited from gold sales utilized the Hawala system to distribute the proceeds. Today, Hawala remains a pivotal instrument within Islamic commercial law, serving both as a mechanism for transferring claims and enabling payments through intermediaries (Redin et al, 2014). Its international ubiquity has even garnered it a quasi-legitimate status in regions like South Asia and the Middle East (Passas, 1999). Thus, as Jost and Sandhur (2000) caution, terms like 'underground banking' may misrepresent these systems; many, like Hawala, function in plain sight, enjoying overt cultural recognition and socio-legal legitimacy.

2.2. An Illustrative Example

The brilliance of Hawala lies in its striking simplicity and the fact that money doesn't cross borders physically, but trust and faith certainly do. Drawing inspiration from Teichmann and Wittmann (2022), Wheatley (2005), and U.S. Hearing on Hawala (2002), we can break down this phenomenon with a real-world example:

> Rajesh, an Indian expatriate working in Dubai, decides to send some of his savings to his family residing in Delhi. His first thought is to use a bank. However, he soon realizes that to make a transaction, he'd need to have a dedicated account. This, paired with charges at the official exchange rate, and potentially extra costs if he opts for courier services, could mean his family wouldn't receive the funds for up to a week. Disheartened by this complicated and costly process, Rajesh remembers a conversation he had with a colleague about a local merchant in Dubai. This merchant, named Ali, not only runs a textiles business but also operates as a Hawaladar (a Hawala-broker). Unlike the bank, Ali only charges a minimal two percent commission and offers a more lucrative exchange rate. To add to the appeal, delivery charges are non-existent. Choosing the path of

[1] The practice of Hawala is not confined to the Middle East or South Asia, and other analogous informal value transfer systems manifested across various civilizations and epochs, such as the hundi in South Asia, defined by L.C. Jain as "a written order... for the payment, on demand or after a specified time, of a certain sum of money to a person named therein" (Jain, 1929). Moreover, in Tang Dynasty China, merchants developed fei-ch'ien, translating to 'flying money', echoing the foundational principles of Hawala (Ballard, 2005; Thompson, 2008). Other analogs include padala and chit in the Philippines and Thailand respectively (Wheatley, 2005; FATF, 2003). Given structural similarities across analogs, our proposals are applicable across these global systems.

efficiency and cost-effectiveness, Rajesh approaches Ali with his $1,000. Ali, with the aid of modern technology, promptly sends a WhatsApp Message to his business associate in Delhi, a fellow textile merchant and Hawaladar named Vivek. In this email, he instructs Vivek about the transaction. Rajesh, in the meantime, sends a previously agreed-upon password to his family. The following day, Rajeshs family visits Vivek, presents him with the password, and in exchange, they receive the converted amount in rupees, after deducting the commission. Astonishingly, the entire transaction is finalized within just 24 hours.

To further shed light on the intricacies of this system, one could look at the real-world account of Rahim Bariek, who testified before the U.S. Senate's Subcommittee on International Trade and Finance in 2001. As per Wheatley (2005), Bariek's Hawala venture catered to 200 and 300 customers in Northern Virginia with remittances ranging from $20 and $400 dispatched monthly to Pakistan, aiding in housing and basic sustenance. Bariek's services also accommodated larger transactions between $1,000 and $5,000, for occasions such as weddings and funerals. His operations were characterized by a five percent commission, twenty-four-hour delivery, and the mandatory password or identification protocol.

2.3. The Features of Hawala

In a Platonic sense, the 'being' at the heart of Hawala's 'form' are fundamental elements that both define and differentiate it from traditional banking structures. Namely, Hawala systems tend to be intricate, international networks, decentralized in nature, and typified by its operations—transfers of money that don't involve the actual movement of money. Such traits not only distinguish Hawala from conventional banking but also set the stage for the competitive advantages it offers, a question we will discuss in a subsequent section (3.3).

2.3.1. Money as a Social Relation

The very essence of Hawala seems to echo the Marxian sentiment: "money is not a thing, but a social relation" (Marx, 1847). Rather than being a mere transactional tool, money, in the Hawala system, is intrinsically tied to trust, community, and social networks. In our example, money is transferred without being moved: the Hawaladar Vivek assumes a debt for another, Ali, leveraging funds that were already positioned in India. Vivek's act weaves him into the expansive fabric of Hawaladars worldwide, a network held together by trust and social ties (Lascaux, 2015).

Interestingly, as the FATF (2003) observes, though theoretically there should be a balance of funds transferred in both directions, one side often dominates. Wheatley (2005) sheds light on this, stating that Hawala usually involves an unequal transfer, gradually offsetting one Hawaladar's debt to another. But this isn't always the case. Hawala can also be woven into broader commercial undertakings. Hawaladars might be entrenched in trade, with the Hawala transaction merely a segment of a grander scheme. Over time, these debts oscillate, and as Looney (2003) describes, Hawala often mirrors conventional banking, where transactions are cleared between units to level the books.

Addressing the eventual clearing of these debts, there are multiple avenues Hawaladars might explore. According to reports of the FATF (2003), they might resort to regular bank transfers, trade transactions, or even the physical transfer of cash. Teichmann and Wittmann (2022) emphasize the prominence of import-export transactions used by Hawaladars. This approach is so prevalent and lucrative that, in some instances, customers aren't even charged for a Hawala's services. Instead, the Hawaladar profits from the foreign exchange rate disparity between the black market and the standard rate. Settling debts can involve strategies like gold smuggling, manipulating invoices, or dealing in precious gems (Wheatley, 2005). Such strategies don't just clear debts; they can also mask the very existence of Hawala transfers. As Lascaux (2015) summarizes: "Hawaladars form cross-border networks and alliances with other informal bankers. They arrange capital flows and counterflows in multiple directions, while simultaneously entering into the multilateral relationships of debt."

2.3.2. A Matter of Trust

Central to the efficiency and reliability of the Hawala system is the incontestable element of trust. As Wheatley (2005) aptly notes, "In the absence of trust, the system would collapse and financial systems based on other principles would fill the void." In this universe of parallel transactions, theft is virtually an alien concept and the transaction points out, rests on a single line of communication and seldom the comfort of written documentation (Johnson, 2007; Looney, 2003). The power of trust within the system is so strong that, as Passas (1996) puts it, asking for formal identification would be considered an affront.

Another lens to scrutinize this trust phenomenon through is one of social control and reputation mechanisms. Each Hawaladar operates in a realm where their business thrives or withers based on their reputation of trustworthiness and competence (Schramm and Taube, 2003; Ballard, 2005; Redin et al, 2014). Looney (2003) points to the dire consequences of broken trust, where community ostracism becomes the Hawaladar's proverbial guillotine. Lascaux (2015) further suggests that Hawala's foundational trust is a manifestation of social control intertwined with community norms, religious beliefs, cultural affinities, and the weight of one's reputation. Hawala's underlying architecture ensures all parties have strong incentives to honor their commitments (Schramm and Taube, 2003). The value proposition is clear: honor your obligations and reap the benefits of an efficient value transfer system; deviate, and face economic exile (Lascaux, 2015). Razavy and Haggerty (2009) argue, though, that while trust and informal sanctions underpin the Hawala's operations, one must be wary of overly romanticizing such arrangements "to suggest that they are unambiguously preferable to the frustratingly alienating encounters based almost exclusively on bureaucratic credentials."

2.3.2. Behind Closed Doors

Hawala's clandestine operations with its minimal or non-existent paper trail poses significant challenges for law enforcement and regulators (Wheatley, 2005). While the Hawala system might not adhere to Western accounting norms, it's a fallacy to believe that it operates in complete anonymity and secrecy. While the system may heavily rely on memory, it is inconceivable that all its transactions remain unrecorded, given their complexity (Ballard, 2005). From the hundi—a promissory note—to encrypted ledgers, Hawaladars maintain records, albeit with their unique practical purposes (Maimbo et al., 2003; Passas, 1999; Keene, 2007)[2]. Martin (2009) rebukes the erroneous belief that Hawala transactions are undocumented, challenging the derogatory tags attached to it as 'informal' or 'unorganized', and suggesting that these arise from a skewed perception that indigenous banking systems are primitive. Importantly though, the intent of these records isn't for external auditors but to keep track of their finances (Redin et al., 2014). Furthermore, Redin et al. (2014) and Martin (2009) converge on the idea that while Hawaladars keep records, their confidentiality levels and unique record-keeping methods challenge conventional scrutiny. Therefore, while the absolute secrecy of Hawala accounting is

[2] An example of a Hawaladar's bookkeeping can be found in Appendix-D of Jost and Sandhu (2000).

a misconstruction, its inherent confidentiality emanates from the principles governing it, making its finances and books largely inaccessible to outsiders – namely, regulators.

3. The Size, Scale, and Survival of Hawala

3.1. Size and Scale

Any attempt to precisely quantify the scale of the Hawala system is fraught with uncertainty. Due to its covert operations and lack of oversight, few definitive statistics exist (FATF, 2019). To begin, the task of measuring remittances and other formal money flows is inherently convoluted. The dynamics of these transfers are so fluid that when external factors come into play there can be substantial discrepancies between reported flows and actual transfers (World Bank, 2023a). There's a substantial underreporting of remittances, given that "[n]ot all small transactions by migrants conducted via money transfer operators (such as Western Union), post offices, mobile transfer companies (like M-Pesa in Kenya) are included in all the countries, neither are informal transfers (such as via friends, relatives or transport companies returning to the origin community)." (World Bank, 2023a) Hence, estimates of remittances are likely to underreported — in particular in the context of South-South corridors — potentially by up to 50% (World Bank, 2011; Irving et al., 2011).

Estimating the total value funneled through the Hawala system annually is even more formidable. The entire Hawala network remains predominantly invisible within countries, resulting in its near-total exclusion from national financial compilations like balance of payments or monetary accounts (Wilson, 2005). The extent of a Hawala transaction's scale is confined solely by the sender's readiness to transport cash and the recipient agent's capability to facilitate the transaction. This flexibility in Hawala transaction's scale, ranging from modest amounts by blue-collar workers to substantial exchanges in the tens of thousands of dollars, further complicates estimations of Hawala flows (Looney, 2003).

While exact figures remain elusive, snapshots from history provide some scale. For instance, Interpol's staggering 1998 assessment posited that India's Hawala dealings, accounting for up to 50% of its GDP, reached a monumental $680 billion. (Looney, 2003; Baldauf, 2002). In 2002, approximately $10 billion of the $14 billion channeled to India was routed through unofficial systems like Hawala (Daudi, 2005). A year later, the General Counsel of the U.S. Department of Treasury acknowledged the global transfer of "tens of billions" through similar systems, underscoring their convenience, affordability, and speed (Kapur, 2003). By 2008, Roger Ballard, a Hawala expert at Manchester University, emphasized the globalization of the world economy, estimating Hawala remittances at a staggering $100 billion (Fifield, 2008). In Pakistan, despite its illegality, the system has been a significant source of hard currency, with estimates ranging from $2 billion to $5 billion annually (Wheatley, 2005). In Europe too, Hawala's dominance is evident among migrants, who rely on it for approximately 90% of their transactions - This system manages an estimated $2.5 billion annually in the human smuggling trade alone, with an additional $390 billion in remittances sent home (Legorano and Parkinson, 2015).

Recent trends in remittances further highlight the scale. By 2021, remittances to low- and middle-income countries soared to an impressive US$605 billion (World Bank, 2023b). Given earlier estimations, a substantial portion of these remittances could very well be funneled through informal channels, including Hawala. Thus, while the exact scale of the Hawala system remains shrouded in mystery, the fragments of data available paint a picture of a mammoth informal financial system. We address the appeal of Hawala in the subsequent section to explain its competitive advantages as a global financial behemoth.

3.2. The Persistence of Hawala

3.2.1. Cost-Effectiveness

In a world of rising transaction costs, Hawala stands out as a cost-effective solution. A report from the World Bank (2023b) highlighted the high costs of sending money internationally, averaging 6%, even with technological advancements. This becomes even more pronounced when considering the 8.8% average for Sub-Saharan Africa. In sharp contrast, Hawala's transaction costs hover between 2 to 5% (Redin et al., 2014), with some regions like Afghanistan reporting even lower fees of 1 to 2%. Wheatley (2005) illustrates this point with a stark comparison: "Western Union charges $22 to transfer $200 from Karachi, Pakistan to New York City. In comparison, a competing Hawaladar charges a mere ten dollars." In certain corridors like Australia-Africa, Hawaladars even offer free services, as noted by Passas (1999). This cost-effectiveness arises because Hawaladars operate on leaner profit motives, have alternative commercial activities, and lack the extensive overheads that banks incur (Teichmann and Wittmann, 2022).

3.2.2. Speed

Time, in many situations, is more valuable than money, and it is precisely here that Hawala shines. Armed with modern communication tools like phones, emails, and faxes, Hawaladars can execute transfers rapidly, often within hours. Wheatley (2005) notes, "Some Hawaladars advertise that they can complete a transfer in two hours, but most do so within two days." Building on our illustrative scenario highlights this efficiency. Rajeev, who chooses Hawala for his transactions, bypasses the usual hassles. There are no banks to engage with, no cumbersome forms to fill, and no waiting period for a bank's courier. A simple phone call to a Hawaladar often suffices. Remittances between major international cities can be accomplished in a mere 6 to 12 hours, with even the more time-consuming rural transactions taking a maximum of 48 hours (Passas, 2005; Maimbo et al., 2003).

3.2.3. Lean and Mean: The Adhocratic Appeal

Hawala has earned its stripes not just because of speed or affordability, but due to its accessibility in places where formal banking systems might be absent. This is in stark contrast to Western-style banking systems, which are often mired in redundant information transfers and storage facilities. As Ballard (2013) aptly puts it, "[hawalas] are distributed systems: just like the internet, Hawala networks can operate reliably on a global scale in the absence of a central registry." It's this lean-and-mean approach that offers these 'branchless bankers' a formidable competitive advantage (Shabib-ul-Hasan & Naz, 2012).

Private financial markets, as observed by the former U.S. treasury secretary, Lawrence Summers, often sideline the impoverished, predominantly because they aren't lucrative clientele (Friedman, 2012). In juxtaposition, Hawala's agility allows its agents to operate anywhere – from the curbsides of South Asia to boardrooms in Switzerland and the USA. For individuals like Rajeev's mother from our example, who might reside in an inaccessible village, a Hawala operator might be her only lifeline to the world of funds transfer, while a bank might still be a distant reality. Hawala's significance extends further when viewed through the lens of banking inclusivity. The Federal Deposit Insurance Corporation (FDIC) classifies those without basic banking facilities as 'unbanked' and those who complement their banking with alternative financial services (like Hawala) as 'underbanked.' Hawala serves these 'underbanked' populations, meeting their financial needs when conventional systems fall short. As the 2002-03 FATF Report (2003) notes, Hawala "may be the sole reliable method available for getting funds to recipients in remote locations or those regions that do not have other types of financial services available."

Hawala bypasses bureaucratic quagmires and red-tape that ensnares many financial institutions. Orthodox banking systems, with their requirement for formal identification or registration, inadvertently exclude those who lack these documents – including those who wish to stay under the radar due to their immigration status. Dean (2015) provides a gripping account of Syrian refugees' reliance on Hawala, driven by the confiscation of their identification in non-government-controlled areas, which leaves them essentially invisible to formal remittance providers. Razavy and Haggerty (2009) elaborate on the cultural contrast between Western and Hawala systems, observing, "... individuals who lack credentials, Hawala is a subtle, culturally specific and appealing local solution to a series of financial dilemmas that flow from this lack of personal identification documents." This potent ability of Hawala to operate devoid of conventional identity markers is rooted in its reliance on a different trust framework than Western financial systems.

3.2.4. Cultural Familiarity

There's an inherent trust that threads its way through the fabric of the Hawala system. This trust, rooted in cultural familiarity, often makes it more appealing and reliable than the impersonal facade of global corporate banking entities. The nuances of culture, language barriers, and even religious considerations underscore the choice of many to opt for Hawala. For workers navigating these challenges in foreign lands, Hawala emerges as the preferred, if not the only, option (Redin et al., 2014).

Ergo, as Wheatley (2005) emphasizes, "in the developing world, Hawala possesses qualities that wire transfers lack." Its operations mirror what the World Bank recognizes as the quintessential elements for a payment system's efficiency, like "payment certainty, lowest cost, credit risk control, reliability, record maintenance, confidentiality, and convenience." (Martin, 2009)

4. The Many Faces of Contemporary Hawala

4.1. Remittances

Migration patterns, especially those traversing the North-South axis, augment Hawala's role as the primary medium of remittance. As Malit Jr et al. (2017) note, the sustainability of Hawala is firmly anchored in the diligent efforts of low-income migrants. For these migrants, sending money back home is not just a financial transaction, but a means to ensure the socio-economic well-being of their families[3]. Hawala has also come to symbolize the preservation of social and cultural ties. The diaspora, living thousands of miles away from their homeland, finds solace in the continuous interactions that Hawala facilitates 2004.

4.2. Humanitarian Purposes

In areas struck by the ravages of war, instability, and natural calamity, formal banking infrastructure collapses, but the decentralized network of Hawala perseveres. Most aid

[3] Dubai is considered the world's de facto clearinghouse for Hawala transactions. The stark disparity in formal financial services between the UAE and the home countries of its vast expatriate labor force inadvertently channels remittances through the Hawala network, further fortifying its importance in the UAE (Wilson, 2005). In lieu of reliable empirical statistics, Wilson (2005) relies on a blend of literature, hearsay, and on-ground conversations to contend that "[t]here is remarkable consensus that the 'degree of Hawala' for inward remittances to Pakistan is very high, and likely is also high for several other South Asian countries."

organizations, as Daudi (2005) points out, lean on this informal financial sector for their international and domestic remittance requirements. The United Nations too hasn't shied away from leveraging Hawala, using it in In countries like Somalia for aid delivery (Houssein, 2005). Thompson (2011) describes Afghanistan's five-year dependence on Hawala for tasks from national elections to infrastructure development. So much so that the "[H]awala is the core of Afghanistan's financial system." With limited banking access, most remittances, contributing up to 18% of the GDP, pass through it (Economist, 2020).

4.3. Criminal Purposes

Hawala's inherent attributes - its trust-based networks, speed, minimal checks, and low costs - are precisely the characteristics that endow it with the potential for misuse in the realms of illicit transactions, terrorist financing, and the evasion of taxes, exchange controls, and import/export duties (Wheatley, 2005). Notably, the FATF underscores the allure of Hawala for criminals. "Familiarity, culture, international reach, ease of use, and speed of transfers make Hawala attractive to money transmitters. Criminals and terrorist financiers are also attracted to the lax supervision, anonymity, and lack of political will enforcing regulations on transaction information" (FATF, 2013).

Money laundering, with its intricate choreography of moving illicitly gained funds through legal avenues, finds a natural partner in the Hawala system. As Wheatley (2005) observes, "money laundering and terrorist financing … regimes rely upon factors that Hawala usually lacks, namely detailed records, registration with the government, and connections to mainstream banking." Interpol, in its attempt to dissect the money laundering mechanism, has defined it through three distinct phases: Placement – where illicit funds are first introduced into the financial arena, Layering – a process that distorts the source of funds through a myriad of financial transactions, and Integration – the point at which the once-illicit funds are fully absorbed into the legal economy, appearing legitimate (Jost & Sandhu, 2000). Strikingly, the Hawala system effortlessly aligns with these three stages. Funds discreetly introduced into its channels align with the "placement" phase; its natural course of operations, involving transfers, aligns with the "layering" phase; and ultimately, when Hawaladars, who often run parallel legitimate businesses, deposit these funds in banks, they effectively achieve "integration" (Daudi, 2005). The process concludes with the once illicit money appearing completely legitimate, bearing testimony to John Kenneth Galbraith's notion of disguised truth (Galbraith 1995).

The Hawala system's inherent characteristic of leaving a minimal paper trail positions it as an attractive avenue for terrorism financing by obfuscating the origins and purposes of laundered funds (Wheatley, 2005). The system's traditional insulation from government oversight and its sparse record-keeping makes it a strategic choice for these groups such as al Qaeda (Landman, 2009). An illuminating case from the Financial Action Task Force on Money Laundering (2003) recounts the use of the Hawala system by terrorist outfits. Funds from international smuggling meant for a terrorist organization were laundered through the bureau, and its significant cash reserves were tapped into by the terror group. Such incidents paint a concerning picture of how informal money transfer systems can be manipulated by terrorist groups.

However, it is essential to approach this subject with nuance and care. As Wheatley (2005) accentuates, while some Hawala transactions might cater to illicit activities, the overwhelming majority remain legitimate. In this same vein, Passas (1999) warns against the danger of sensationalizing the misuse of IVTS like Hawala. He suggests that it's imperative not to be led astray by atypical cases that gain media spotlight. Instead, Passas stresses the need for solid evidence before formulating stringent policies, which might inadvertently jeopardize innocent people's privacy and malign cultural traditions. He goes on to explicitly state: "IVTS do not represent a money laundering or crime threat in ways different from conventional banking or other legitimate institutions. While criminal entrepreneurs do make use of IVTS, it appears that the amounts involved represent a rather small part of the dirty money in circulation" (Passas, 1999).

Much of the post-9/11 literature on Hawala's supposed criminality may be superficial and fraught with inaccuracies (Passas, 2003; Viles, 2008). By 2005, several experts believed that concrete evidence linking IVTS to modern terrorist organizations was scarce (Cheran & Aiken, 2005; Viles, 2008). However, as highlighted by Wheatley (2005), a lack of extensive evidence doesn't completely rule out illicit activity. A sizable minority of Hawala transactions might still be employed for nefarious purposes.

5. Regulating Hawala

5.1. The Imperative to Regulate Hawala

The Hawala system poses a significant policy challenge in today's globalized economic landscape. The dilemma stems from the necessity to achieve two simultaneous objectives: harmonizing economic aspirations and implementing robust AML/CFT (anti-money laundering/countering the finance of terrorism) mechanisms. The urgency to harmonize and formalize the system emerges from two paramount concerns: the economic necessities and the imperative to curtail criminal behavior.

5.1.1. Economic Necessity

At the heart of the economic concern lies a structural issue: the lack of transparency inherent to Hawala. Nakhasi (2007) articulates this, pointing out that the efficient capital markets theory predicates market prices on the availability of comprehensive information. In essence, this theory suggests that for capital markets to function optimally, all pertinent information should be accessible to stakeholders. The Hawala system, with its characteristic absence of formal records and regulations, inherently creates information gaps. Such gaps not only skew the market's perception of global economic health but also place the entire system on precarious grounds, threatening to undermine global economic stability in the long run.

The challenges posed by Hawala aren't just theoretical; they have real-world implications. Wheatley (2005) underscores the enigma that Hawala represents for financial auditors and law enforcement. This invisibility poses fiscal challenges as governments find themselves handicapped, unable to tax transactions they cannot identify or regulate (Johnson, 2007). Moreover, the ramifications of this unregulated system extend to both sender and recipient countries. Maimbo et al., (2003) highlight the fiscal implications, emphasizing that informal funds transfers remain outside the purview of the formal banking sector, thus escaping conventional taxation structures. This not only deprives governments of potential income but also indirectly impacts the formal financial sector, which loses business to its underground counterpart.

Further complicating the economic landscape is the influence of Hawala on broader monetary policies, with these informal transactions significantly altering the composition of broad money (Maimbo et al., 2003). By influencing the supply and demand for foreign currency, Hawala transactions have the potential to sway exchange rate operations.

5.1.2. Deterring Illicit Activities

As argued above, Hawala, inherently, does not exclusively support illegal transactions. However, the absence of malevolent intent does not exempt it from scrutiny or from the critical need for oversight. It is imperative not to allow the Hawala system to function as an unchecked playground for potential malefactors. Nakhasi (2007) draws attention to a critical concern: the system's secretive essence has rendered the unregulated Hawala an attractive avenue for money launderers. The very attributes that make Hawala a lifeline for many, such as its rapidity and discretion, simultaneously transform it into a haven for those with nefarious intentions. Furthermore, a tepid regulatory stance can send a misleading message. As Waterson (2013) points out, inadequate regulation can be perceived as a tacit endorsement, leading criminals to believe that they have a free pass to indulge in illicit activities due to the lack of stringent enforcement and penalties.

Regulation, however, is not without its own set of challenges. Passas (2005) elucidates that an ill-conceived regulatory framework could cause the underground to further recede into obscurity, adopting even more clandestine informal value transfer methods. The repercussions of such a shift are manifold: diminished transparency and traceability; attenuation of the positive economic impacts of remittances; more costly remittance channels for expatriates; undue penalization of legitimate participants; augmented financial burdens on immigrant families; and, critically, the alienation of vast population segments whose cooperation is indispensable in the fight against terrorism. Johnston (2005) adds that for regulation to be effective, it must offer tangible benefits that outweigh the perceived cost i.e., the regulations must be "incentive-compatible." A salient example of the consequences of regulatory missteps is provided by the Afghan central bank's experience in 2018. Under international pressure to ensure transparency in the Hawala system, the bank introduced measures that restricted traders from holding deposits and making loans. The mandate to collect comprehensive customer documentation was also imposed. However, instead of ushering in a new era of transparency, these measures sparked a massive backlash. Hawala traders, seeing their business threatened, went on strike. Their collective action underscored the significance of the system; as one scholar remarked, "shutting down Hawala markets would paralyse the economy" (Economist, 2020).

5.2. Caveats

Before evaluating any regulatory measures, we must discuss some critical caveats. Beyond the sheer economic and crime control rationale, the regulation must respect equity, face practical enforcement challenges, and most critically, address the moral and cultural nuances of the Hawala system.

5.2.1. A Holistic Approach

For starters, the dialogue surrounding Hawala has often been dominated by a focus on AML/CFT. However, casting a blanket of suspicion over Hawala based solely on this narrow viewpoint can be problematic for two reasons.

At its core, Hawala is a deeply entrenched socio-political norm, and any attempts at regulation need to acknowledge its intricate web of social relevance. By disproportionately spotlighting Hawala's association with illicit activities, regulators risk sidelining its predominant use for legal, non-criminal endeavors. Such an approach, albeit well-intentioned, can inadvertently perpetuate a black market of sorts, allowing unregulated Hawala transactions to persist. Hawala is as susceptible to misuse as any other financial institution (Passas, 2006). Looney's (2003) perspective further contextualizes Hawala's essence, emphasizing that it primarily remains an economic entity, with or without the tangential issues of terrorism financing, drug trade, or money laundering. Thus, limiting the lens to AML/CFT can potentially cloud our perception of Hawala's broader societal significance.

Secondly, Hawala is a cog in the wheel but not the wheel itself. When it comes to criminal undertakings, Hawala is but a conduit, a consequence following a primary illicit act. While Hawala itself might be deemed criminal due to its opacity, it's crucial to understand that it's not necessarily the root cause of these unlawful endeavors. Consequently, regulating Hawala solely from a criminality perspective can be likened to addressing the symptom rather than the ailment. Redin et al. (2014) echo this sentiment, arguing that Hawala isn't the magic bullet against organized crime. Criminal funds might flow through Hawaladars, but they equally traverse other conventional financial mechanisms. Moreover, as Wilson (2005) discerns after an in-depth analysis of balance sheets and the Hawala model, economically, Hawala's modus operandi is reminiscent of many other payment methods, particularly international remittances. The perceived difference between Hawala and these other mechanisms lies predominantly in their institutional versus informal channels.

In essence, a more nuanced, informed approach to regulating Hawala recognizes its multifaceted existence and can mitigate the risks associated with money laundering, and tax-evasion due to absent accountability.

5.2.2. Equity

Hawala fills the void between rich and poor, developed and underdeveloped regions, and more importantly, caters to a segment often overlooked by conventional banking systems due to their perceived lack of economic appeal or system overloads (Redin et al., 2014). A blanket, heavy-handed approach to regulating Hawala might seem progressive but comes with its own perils. After all, it is primarily the economically vulnerable who flock to Hawala, attracted by its cost-effectiveness and speed (Looney, 2003). Over-regulation risks not only alienating this group but also impeding essential humanitarian services that prefer Hawala's pragmatism over traditional channels.

The IMF, emphasizing the importance of remittances, especially for migrant workers, warns against painting all informal funds transfer systems with the same brush (Johnston, 2005). Such a perspective becomes even more relevant when considering the World Bank's estimation, which places informal remittances at par with half the volume of the formal sector.

5.2.3. Moral and Cultural Imperatives

Regulating the Hawala system raises profound moral and cultural questions that deserve careful exploration. Delston (2014) ponders the moral question of consent when he questions the legitimacy and obligations of global actors to enact financial laws to prevent terrorism. Furthermore, the West's response to Hawala has been largely shaped by fear and mistrust, intensified by the “secrecy and opacity” enveloping Hawala and often overlooks the deeply-rooted moral and cultural context within which Hawala operates. The moral legitimacy of Hawala isn't a derivative of Western perspectives but arises from its intrinsic goals, operational methods, contextual circumstances, and the eventual outcomes of its transactions (Redin et al., 2014). By elevating Western banking to a pedestal of legitimacy, there's an inadvertent, yet palpable, sidelining of Hawala as a legitimate alternative (De Goede, 2003) touches on another layer of this discourse. This kind of Eurocentric myopia not only marginalizes Hawala but also disregards its historical significance and socio-cultural resonance. Additionally, Western regulatory models, shaped by and for Western financial systems, might be ill-suited for IVTs like

Hawala (Keene, 2007). A regulatory approach designed without an appreciation for Hawala's cultural nuances is doomed for misalignment.

5.2.4. Enforcement and Practical Challenges

Johnson (2007) aptly points out the glaring inadequacy of traditional anti-money laundering platforms: they do not tackle the foundational reasons that make Hawala so appealing and internationally accessible. The unique operational modality of Hawala inevitably stymies conventional monitoring efforts. Addressing illicit financial flows through such informal channels demands more than just a replication of existing anti-money laundering measures. We need to look beyond conventional tactics, like due diligence and suspicious activity reporting. Keene (2007) elucidates this by highlighting the importance of acquainting oneself with the intricate inner workings of Hawala and rallying the support of its key players. The intent behind any regulatory move should pivot towards enhancing transparency, thereby facilitating investigative endeavors. Yet, it's crucial to underline that the Western regulatory model, often flaunted as paragons of efficacy, might not resonate with the ethos of systems like Hawala.

In essence, if we are to usher Hawala into an era of transparency and minimize potential abuse, our efforts shouldn't be directed toward constricting the system itself. Instead, it should be directed at comprehending and, if necessary, regulating the methods through which Hawala operates.

5.3. The Case of India

The Hawala conundrum is especially profound in India. Despite being effectively outlawed, Hawala persists in India and remains part of the transnational financial pipeline and shapes the Indian economy and polity (Passas, 2005). The Interpol estimated that in 1998, the money involved in India's Hawala system amounted to a staggering $680 billion—equivalent to 40% of the country's GDP at the time (Wheatley, 2005; Baldauf, 2002). This demand for Hawala is driven by a mix of political-economic conditions, a general distrust of formal financial sectors, and the allure of gold markets (Johnson, 2007).

Since the early 1970s, the Indian government has sought to curtail this shadowy monetary system (Daudi, 2005). Yet, even with legislation banning Hawala transactions, it remains a “routine transaction” for many, indicating a palpable disconnect between law and practice. But despite the regulations and stringent laws against it, Hawala remains deeply entrenched in India's financial landscape. The network has been exploited for funding insurgency in regions like Kashmir and enabling groups like Al Qaeda to transfer funds to collaborators in Pakistan. “It's certainly not in the interest of my country to encourage Hawala. But for politicians and criminals, it's a handy tool,” notes Jyoti Trehan, Inspector General for the Punjab Armed Police and an expert on underground banking in India (Baldauf, 2002).

An analysis of India's regulatory efforts against Hawala reveals an intricate interplay of policies, politics, and public interest. In the 1990s, a paradigm shift occurred as the Indian government aimed to reduce Hawala's appeal. They introduced liberal economic reforms, including the establishment of floating exchange rates and a relaxation of gold restrictions (Passas, 2003). The lifting of the ban on importing gold and silver, for instance, resulted in a significant decrease in the smuggling of these precious metals, subsequently reducing the proceeds from their sales used in the Hawala system (Passas, 1999). However, economic liberalization wasn't the sole strategy employed. To foster transparency and oversight, the government introduced the India development bond scheme and the foreign remittances (immunity) scheme, aiming to legitimize money entering the country, even if its origin was dubious. These measures effectively converted illicit ‘black’ money into ‘white’, and unsurprisingly, some of the major contributors to these schemes were influential politicians, businessmen, and professionals (Passas, 1999). The sheer volume of transactions, compounded by the inability to differentiate between legitimate remittances and illicit funds, rendered record-keeping almost redundant. Adding to the complexity, many on the list included government officials, making the initiative a potential political minefield.

Further policy shifts throughout the 1990s included India's revised stance on foreign exchange regulations. In an epochal move, the government introduced a "no questions" policy related to residents' foreign exchange holdings. This policy reform potentially paved the way for the simple financial settlement of Hawala balances, which, as evidence suggests, did take place (Wilson, 2005).

The legal framework concerning Hawala in India has been continuously evolving. The Prevention of Money-Laundering Act of 2003 mandated Hawala brokers to keep detailed transaction records and introduced the suspicious transaction report (STR) system to enhance oversight (India Code, 2003). More comprehensively, India introduced the Financial Exchange Regulation Act (FERA) followed by its consolidated form, the Financial Exchange Management Act (FEMA), both of which explicitly prohibited "Hawala-type" transactions (Maimbo et al., 2003). Under these regulations, only specified institutions could deal with foreign exchanges, and specific transaction types were closely defined. The very wording of FEMA directly addressed Hawala by prohibiting certain types of financial transactions linked to foreign asset acquisitions. FERA went further, with sections outlining strict legalities around the Hawala market and imposing rigorous licensing requirements on money changers (Daudi 2005). While these laws are stringent on paper, the on-ground reality showcases the resilience and adaptability of the Hawala system. The assertion that even the most stringent regulatory frameworks might fail to curb Hawala transactions, especially given the evident corruption in Indian politics, underscores the scale of the challenge (Daudi 2005).

The Jain Hawala Scandal of 1991 is a stark example of the intertwingling of Hawala with political corruption and the pitfalls of the investigative process[4]. The very nature of Hawala, combined with political interference, makes regulation extremely tough. As Daudi (2005) aptly puts it, India's regulation of Hawala is an example where even the most stringent provisions might prove ineffective.

5.4. Two Models for Hawala Regulating

5.4.1. An Investigative Approach

An investigative approach towards regulation would target the criminal acts directly instead of merely controlling the hawala channels themselves. The US model for regulating informal financial systems such as hawala is instructive, particularly the USA PATRIOT Act of 2001. This legislation amended the Bank Secrecy Act to recognize “informal money transfer system[s]” like hawala as financial institutions (Wheatley, 2005). As per this act, such informal systems must now register as “money transmitting businesses.” Furthermore, the act also criminalizes the conscious transfer of funds derived from or intended for crimes, encompassing acts of terrorism (Office of the Federal Register, 2001). From December 2001 to 2003, there was a significant

[4] The Jain Hawala controversy surfaced when the Central Bureau of Investigation found account books while investigating a case tied to the funding of militants in Jammu and Kashmir. These books implicated India's elites, including the then Prime Minister, P.V. Narasimha Rao, for accepting illicit payments via Hawala (Kapoor, 1996; Baldauf, 2002). After the discovery of evidence in R.K. Jain's home, there were allegations of officials being pressured to overlook implicating evidence against politicians and instead focus solely on terrorists. Those who resisted these pressures faced consequences even losing their jobs. In the end, charges against the majority of implicated politicians were dropped (Baldauf, 2002).

surge in registrations. By 2008, the number of registered hawala dealers reached over 40,000, with these businesses now mandated to maintain records and adhere to "know your customer" rules equivalent to traditional banks (Fifield, 2008). Similarly, the FATF issued a Special Recommendation in 2001, aimed at increasing transparency in these systems and introducing oversight (FATF, 2003).

However, investigative approaches by imposing quasi-regulation on a system that inherently resists it presents its own set of challenges. The continued existence of many unregistered money remitters indicates loopholes in the system, and hawaladars circumvent registration requirements for IMVT services by rebranding themselves as non-profit organizations (FATF, 2003). Even those operating within the regulatory framework, like registered hawaladars, are mandated only to file Suspicious Activity Reports, leaving room for potential illicit activities (Wheatley, 2005).

Nakhasi (2007) posits that hawala transactions primarily gain value when converted to cash, suggesting a pivotal relationship between hawaladars and mainstream banks. This connection could be the hawala system's vulnerability, offering rich investigative opportunities. Echoing this, Patrick Jost's testimony emphasizes that money entering the U.S. via hawala is largely static until converted to a widely accepted form (Yousef, 2002). Nakhasi (2007) then advocates for bank investigators to diligently monitor unusual banking activities, such as heightened deposit activity or outgoing transfers to major financial hubs. Distinctive deposit patterns of hawaladars might also provide leads (Jost & Sandhu, 2000). The implementation of Anti-Money Laundering measures in the UK and USA resulted in several hawaladar convictions. Yet, as Passas (2007) points out, these rarely led to identifying terrorists or drug traffickers, undermining the intent of these regulations. Similarly, while FATF states that many jurisdictions have criminalized terrorist financing, few report actual convictions.

Additionally, such measures may deter illegal activities but do not diminish the economic attractiveness of hawala (Daudi, 2005). The hawala's inherent features, like vague paper trails and limited interaction with mainstream banking, can render some investigations fruitless – a challenge not just in India, but globally. Furthermore, investigative measures largely treat Hawala as a Western financial institution, which it decidedly is not (Razavy and Haggerty, 2009). While the operations of hawala in remitting countries might primarily face legal issues concerning registration or licensing, in receiving countries, the challenges compound. Here, potential clashes with exchange control regimes can further muddle the waters, dovetailing into broader concerns about the black market and underground economies (Wilson, 2005).

Despite external pressures, many argue that the hawala system possesses intrinsic self-regulation. Hawaladars often serve specific communities, forging personal ties that make identification easier without demanding formal documents (Ballard, 2005). These personal bonds mean hawaladars are better positioned to assist authorities in hunting major criminals, provided authorities respect the legitimacy of their operations. Keene (2007) reiterates this point, emphasizing the trust basis in hawala. Hawaladars, he contends, have a deeper familiarity with their clients than traditional bankers. This personalized approach enables them to better scrutinize suspicious transactions. As Martin (2009) suggests, the reputation mechanism intrinsic to the hawala system shields it from criminal infiltration. However, self-regulation isn't foolproof. Although Soudjin (2015) and Passas (2004) provide hawalas with indications to identify criminal transactions, these are not enforceable.

Other regulatory attempts go beyond individual scrutiny, focusing on disrupting hawala's overall efficiency. Levitt (2007) and Viles (2008) emphasize "targeting key nodes" and pressurizing "chokepoints" for funds transfers. This pressure tactic aims to constrict criminals' operating environment. However, Ballard (2005) asserts that overly zealous AML/CFT procedures detract from tracking substantive offenders, inadvertently leading to scapegoating while the real culprits escape. Aggressive crackdown ignores the humanitarian aspect and implementing standard AML/CTF rules in informal settings might hamper economic development and poverty reduction initiatives (Passas, 2006b).

Yet, as with any investigative challenge, the success of these efforts depends on a global approach and the adaptability of strategies to regional and local nuances. Financial control will be effective only if trade transparency parallels it (Passas, 2005). Outcasting could be a method by which international bodies and governments exert economic pressure on jurisdictions to encourage them to adopt statutory and regulatory standards for AML/CFT regimes. However, the inevitable presence of outliers, accompanied by moral and socio-political barriers, weaken this mechanism Jurisdictions can superficially enact AML/CFT legislation and claim compliance with international standards (Bowers, 2009). Inconsistencies in regulations provide hawaladars with loopholes, enabling them to shift their transactions to jurisdictions with weaker regulations, thus circumventing more stringent regulatory environments.

5.4.2. A Public-Policy Approach

Rather than imposing broad-based investigative regulations, it's more effective to mold policies based on conditional incentives. These incentives are deeply rooted in regional realities such as inefficient infrastructure, lack of comparable alternatives to hawala, and a global lack of coordination in tackling the challenge (Passas, 1999). Viewing hawala as an "economic phenomenon" influenced by demand and supply necessitates altering the economic landscape to reduce its appeal (Wilson, 2005).

The inadequacies of the formal sector, especially in countries like India, are exacerbated by burdensome bureaucracies, over-regulation, and a lack of public confidence in banking systems (Passas 1999). Hawala thrives where formal banking is absent or weak, and a robust, competitive private banking system can reduce hawala's allure (Maimbo et al., 2003; Nakhasi 2007; Looney, 2003). Notably, India is experiencing a shift with platforms like UPI and e-banking, promoting financial inclusion and growing trust in banking since the 1980s. While the upsurge of formal banking mechanisms is commendable, it cannot overshadow the intrinsic importance of financial inclusion. Martin (2009) underscores this by explaining how a profound understanding of traditional systems like hawala leads experts to a common conclusion: diversifying financial services invariably benefits migrant workers and their families A revamped financial architecture can lower transaction costs and elevate transparency, offering swift, affordable, and reliable services in developing regions (Kapur, 2003). Microlending platforms also have the potential to counteract informal sector incentives due to their alternative availability to mainstream banking, cultural familiarity, affordability, and offered anonymity (Bowers, 2009). State strategies should offer regulated banking alternatives aligned with global standards to boost confidence in conventional banking, including adopting standardized Know-Your-Customer procedures (Johnson, 2007).

Furthermore, liberalizing economies and adopting policies like lower taxes on remittances, floating currency rates, and a more relaxed approach to currency regulations and interest rates can counter the very conditions that sustain hawala (Wheatley, 2005). Building on this, shifting more financial activity into the formal sector can significantly benefit countries like India (Johnson, 2007). The logic is simple: More assets and revenue within the formal sector can amplify a nation's lending capacity. While individual incentives might not catalyze radical changes, the broader socio-economic benefits can be substantial.

The enduring popularity of Hawala largely arises from its lack of significant competitors, suggesting it will remain dominant until such competitors emerge (Wheatley, 2005). A notable emerging rival is Western Union, which, through a strategic alliance with the Indian national postal service, has transformed money transfers in India. This collaboration led to a pioneering International Money Transfer Service via post offices, enabling money remittances from nearly 195 countries to India (India Post, 2019). By 2011, it recorded transfers of USD 6.5 billion across 7,000 postal locations (Economic Times, 2011).

Mobile Money platforms like Remitly, M-Pesa, UPA, and Orange Money are reshaping the landscape of financial transactions. Mali (2019) accentuates the need to invest in the technological aspects that bolster the digital services of the formal sector, making them equally efficient and decentralized, akin to Hawala. The exponential rise of mobile money, especially in regions like the Middle East and Central Asia, attests to its demand and efficacy. The affordability of mobile banking striking: sending $200 using mobile money costs an average of just 1.7% of the transaction amount compared to banks which have an average cost of 11.8% (World Bank, 2023b). Mobile money, owing to its speed, is more prevalent than physical cash in regions like Somalia (Economist, 2020). However, for this system to thrive, it requires synergy between service providers and the government. The World Bank (2023b) underscores that the potential growth of mobile digital money faces hurdles due to regulations aimed at thwarting money laundering and terrorist financing. For costs to remain low and services to be accessible, competition must flourish in both sending and receiving nations, and regulations must facilitate, not stifle, this growth. India's example demonstrates an aggressive push towards digitization witnessed the birth of initiatives aiming to foster a transition from cash to digital payments. These efforts were bolstered by the bold, yet economically-dubious, move of demonetization in 2016, signaling India's determination to tackle corruption and promote digital transactions (Saraf, 2022).

Yet, even public-policy approaches for regulating hawala are fraught with challenges. Nakhasi (2007) illuminates how the inherent nature of hawala, combined with risks tied to privatization, creates daunting obstacles to the success of these formalization efforts. Complying with banking regulations might open banks to civil liabilities and introducing regulatory measures can escalate the costs associated with background checks in countries like India. Alternatives to hawala might not address the customers' need for anonymity or the efficiency and reliability that hawala offers. However, the digital age has made financial services like digital banking almost instantaneous and reliable. Although they might lack the trust associated with hawala, the global confidence in banking systems is growing. Initiatives like the National Mission for Financial Inclusion and platforms like UPI in India are bridging the accessibility gap. Alternatives also placate religious concerns, with the rise of Islamic banks ensure compliance with Sharia Law and regulatory norms.

5.4.5. What's Next?

A two-pronged approach emerges as a robust strategy. On one hand, there's the push towards driving financial activities into regulated channels, and on the other, a focused investigation on those hawala operators who remain beyond oversight. The ultimate goal should be to foster a sense of supervision without pushing hawaladars so far that they feel compelled to retreat into the shadows (Passas, 1999; Watterson, 2013). Johnson (2007) notes, "The lower the amounts of money hawala operators handle, the more difficult it is for them to make multiple financial deliveries or to handle large financial deliveries." The cyclical compounding effects of reduced money flow through hawala systems can change the very nature of Hawala. With less money flowing through Hawala, operators may find it challenging to keep the system operational as they would have to settle debts among themselves more frequently. This in itself could be a deterrent for using hawala for illegal financial transfers, gradually steering users toward formal banking systems that are more transparent and regulated.

However, while these strategies present a pathway to controlling the unchecked flow of money through hawala, an absolute resolution seems elusive. These systems will continue to exist and even expand as long as people find reasons to prefer them over formal financial systems (El Qorchi, 2004).

6. Conclusion

In addressing the intricacies of the Hawala system, it's clear that regulating it is not just a matter of legality or cultural understanding, but also a pressing issue for global security. The dual approach of enhancing state-backed remittance services while tightening oversight on hawala operators offers a pragmatic solution, considering the balance between supervision and not driving hawaladars underground. While technological advances and evolving financial practices, coupled with government incentives, could make formal systems more appealing, the tenacity of informal systems like hawala remains. As history has often shown, every financial solution will inevitably birth new challenges, emphasizing that in the realm of finance and governance, vigilance and adaptability are paramount.

Award information

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Research Paper

Battling the Illegal Wildlife Trade Through Regulatory Finance: The Southeast Asian Context

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The illegal wildlife trade (IWT) is a US$20 billion global industry, with significant environmental, economic, and sociopolitical harms. Fueled by a complex interplay of drivers and enabling factors, IWT poses concrete stumbling blocks for several UN Sustainable Development Goals. There is an urgent need for comprehensive reforms to address its multifaceted consequences around the world. In Southeast Asia, IWT is rampant as the region serves as a global hub for this black market. However, because of its characterization as an invisible threat, many aspects of IWT in the region remains understudied, particularly its relationship with illicit financial flows. In this paper, I look at the different economic and legal interventions to address IWT, focusing on regulatory finance. Adapting legal mechanisms from comparative jurisdictions, I propose three measures to be spearheaded by the Association of Southeast Asian Nations (ASEAN) Economic Community: first, to strengthen the implementation of existing financial crime instruments through specialized training and the utilization of emerging technology such as AI and blockchain; second, to append wildlife crimes as predicate offences to financial felonies, and; third, to utilize financial regulation instruments to fight poverty and support inclusive community development, encouraging communities to be proactive partners in long-term wildlife conservation.

Keywords:

1. Illegal Wildlife Trade
2. Sustainable Development Goals
3. Southeast Asia
4. Artificial Intelligence
5. Regulatory Finance

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1. Introduction: Invisible IWT

It is relatively easy to assume that the illegal wildlife trade is a matter far removed from daily life. After all, very few of us can afford to keep caged tigers at home, or have exotic plants bedeck our indoor gardens. Yet the cross-border trafficking of plants and animals is a growing problem that persists globally, with wide-ranging impacts that can affect our every day.

Illegal wildlife trade (IWT) refers to all unlawful activities related to the commercial exploitation and trade of wild species ('t Sas-Rolfes et al, 2019). This includes the illegal buying, selling, and trafficking of plants and animals, their body parts, or products derived therefrom. IWT encompasses all flora and fauna, including endangered and protected species (World Bank, 2019). It hides behind legitimate markets and digital platforms, slipping through the cracks of law enforcement efforts (Abano & Chavez, 2021). Figure 1 shows global wildlife trading hotspots based on trade reports from 1975 to 2020 (CITES, 2023).

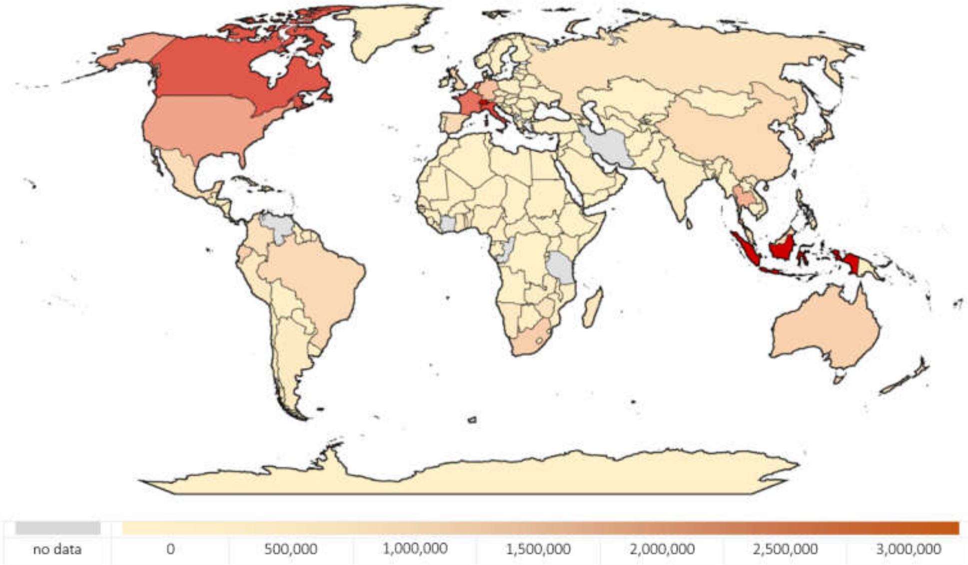

Figure 1. CITES-Reported Wildlife Exports by Country (1975-2020) by Number of Transactions

Operating in the shadows, the illegal wildlife trade (IWT) is a highly lucrative and organized transnational criminal enterprise. With an estimated annual value ranging from US$19 billion to US$23 billion in illicit cash flows, IWT surpasses the individual GDPs of almost half the countries worldwide (World Bank, 2019). It is the fourth most profitable criminal activity in the world, following only the trade in illegal drugs, weapons smuggling, and human trafficking (Doody et al, 2021; Kim, 2021). Figure 2 highlights the proportion of annual global revenues lost to the illegal wildlife trade (Yuliantiningsih et al, 2023; Tow, Symes & Carrasco, 2021).

Due to its elusive and clandestine nature, IWT has been characterized as "invisible," which makes it challenging to detect, monitor, and quantify (Phelps & Webb, 2015; Baaniya, 2018). Unlike legal trade, which is subject to regulations and reporting requirements, IWT operates outside formal economic channels. Transactions occur discreetly, often in hidden locations and through secret networks, making it challenging for authorities to track the movement of wildlife and its derivative products. This lack of transparency hampers efforts to obtain accurate and comprehensive data on its scale and impact. Wildlife traffickers also use covert methods and sophisticated tactics to evade law enforcement and conservation authorities, further obscuring the trade's visibility (Keskin et al, 2023). This lucrative underworld remains largely unseen to the rest of the world, camouflaged by corruption, false documentation, and sophisticated smuggling networks.

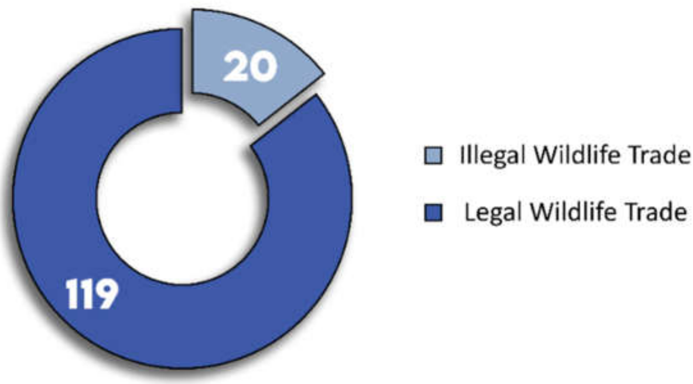

Figure 2. Annual Global Export Values in US$ Billions

Many IWT transactions involves cross-border and international networks, spanning multiple countries and regions. Traffickers take advantage of weak border control and corruption, allowing wildlife and products to pass through unnoticed. Online platforms have also facilitated the expansion of the illegal trade into the digital realm, where transactions are conducted anonymously, exacerbating the challenge of tracking and regulating the trade (Esmail et al, 2020). The invisibility of IWT is further compounded by limited resources for monitoring and combating wildlife trafficking. Many countries, especially in developing regions, face constraints in funding, technology, and trained personnel, impeding their ability to effectively address the problem.

As a result of this 'invisibility,' IWT has not been given significant priority in legislation, implementation, and international cooperation.[1] Many key law enforcement agencies lack awareness of the true extent of the damage caused by IWT and the concrete harms it inflicts. Per the last global survey spearheaded by the World Bank, nearly a hundred countries worldwide did not regard IWT as a serious crime (World Bank, 2019). Despite the urgency and far-reaching implications of IWT, from environmental, socioeconomic and even political harms, it frequently takes a backseat in matters of governance and remains overshadowed by other pressing concerns (ICCWC, 2022). At present, many countries still view IWT as second priority (ICCWC, 2022). This is apparent in the resources being poured into anti-IWT efforts. From the period of 2010 to 2018, an estimated US$100 billion is spent globally each year to combat the illegal drug trade; in stark contrast, spending on IWT amounts to roughly US$261 million a year (Open Society Foundations, 2012; World Bank, 2019).

There are several possible perspectives from which to attack this rapidly growing social problem. This includes supply-side, demand-side, and transactional interventions ('t Sas-Rolfes et al, 2019). One such transactional intervention focuses on illicit financial flows. It relies on the fact that IWT is an enterprise crime, and its continued existence is fuelled by monetary incentives (Albanese, 2023). By targeting how these incentives are transferred through ancillary enforcement, law authorities can prevent the commission of the primary illegal activities. There are well-documented initiatives led by developed countries in utilizing these financial regulatory measures to stem the tide of IWT, foremost among them cases like *US v. Bengis* and *US v. Rafael* (Sundareshan, 2019; Asner, 2017; Dick, 2019). However, there remains a gap in literature how this type of intervention could be concretely implemented in developing countries.

[1] It is interesting to note that even in the call for submissions of the Sen Prize under the Global Justice Program where it listed nearly 20 different sectors of illicit financial flows, wildlife was not mentioned in particular.

In this paper, we explore the international, domestic, and local policy mechanisms by which regulatory finance can contribute to the global fight against the illicit trade in wildlife, taking the Southeast Asian context into account. Part I of this paper discusses the concrete harms posed by IWT, its impacts on the United Nations Sustainable Development Goals (SDGs), and its incentives and enabling conditions. Part II zooms in on IWT in the context of Southeast Asia, and highlights why the Association of Southeast Asian Nations (ASEAN) is uniquely situated to forward policy reforms towards tackling IWT. To address the existing gap in literature, Part III discusses existing mechanisms and proposed reforms within the ASEAN. It focuses on regulatory finance both at the regional and domestic levels, with emphasis on community-based interventions, while also outlining context-specific limitations of the proposals. Thereafter, Part IV concludes with the recommendation of a paradigm shift and the necessity of adopting a multidisciplinary legal strategy to ensure that the harms of IWT are sufficiently addressed.

1.1.The Harms of IWT

IWT is problematic for several reasons. Its impacts are far-reaching, affecting both the natural environment and human society. It poses concrete adverse effects on multiple levels: from environmental and economic to political and social. It poses direct and indirect threats to various SDGs.

1.1.1. Environmental Harms

One of the primary causes of biodiversity loss and the resulting ecosystem damage is the excessive exploitation of wildlife (Blundell & Mascia, 2005). Indeed, IWT is considered the second biggest threat to global biodiversity after habitat loss (Smith & Pepper, n.d.). By 2050, approximately 30% to 50% of all known species are projected to face extinction (McKie, 2017). Of this, an estimated 950 kinds of flora and fauna are endangered as a result of substantial international demand and ongoing trade activities (Frank & Wilcove, 2019). Species abundance experienced reductions of up to 76.3% and 65.8% due to national and international trade, respectively (Morton et al, 2021). Across the globe, IWT poses a persistent threat to over 30% of all mammalian and avian species, jeopardizing their very existence (Rivalan et al, 2007).

Widespread poaching for commercial purposes contributes to the rapid population decline of numerous plant and animal species in their natural habitats. As key species disappear, this can have cascading effects on other plants and animals in the food chain, resulting in long-term ecological imbalances. This is especially true for ecosystem engineers, which provide vital services such as organic waste disposal, soil fertilization, and pollination, among others (US EPA, 2015; Richman, 2011).

An example is the African elephant (*Loxodonta africana*), now critically endangered mainly due to poaching, with one elephant falling victim every 25 minutes (Skinner, 2014). This unprecedented rate of killing not only causes extirpation of individual species but also have extensive consequences on the ecosystem (US EPA, 2015; Richman, 2011). The African elephant plays a crucial role in various ecological functions such as seed dispersal, creating watering holes, carbon sequestration, and enhancing browse heterogeneity (Kohi et al, 2011; Sawyer, 2021). Their rapid disappearance leaves a void of ecological functions on which other species rely.

Another ecosystem engineer at high risk is the hawksbill sea turtle (*Eretmochelys imbricata*). Due to their exquisite shells, these turtles have been subject to intensive transnational trade, leading to their current critically endangered status (Miller et al, 2019; Frazier, 2002; Deines, 2019). Extensive research has shown that turtles and tortoises have a significant impact on their ecosystems. They primarily feed on marine sponges, which in turn promotes coral growth, creating a conducive environment for other species residing in coral reefs to flourish (National Aquarium, 2022). When they are depleted or eradicated from certain areas, it often results in the drastic reduction of ecosystem quality (Lovich et al, 2018).

In addition to affecting individual species, IWT also drives widespread habitat destruction. Poachers often encroach upon protected areas or destroy natural habitats to access target species. For instance, Teoh (2019) notes that the illegal trade in rare orchids has led to habitat destruction as collectors seek out these valuable plants in their natural environments. This destruction further exacerbates the threats faced by vulnerable species and degrades the overall health of ecosystems.

Moreover, IWT can result in the release of illegally traded species into new environments, leading to invasive species that outcompete and threaten native flora and fauna (Mozer & Prost, 2023). For example, exotic pets that are unwittingly released into non-native habitats can disrupt local ecosystems by engaging in resource competition. They can ultimately suppress and displace the indigenous fauna, pushing native species to the brink of extinction. The same is true for invasive flora, which can negatively impact various ecosystem attributes of the local ecosphere, including soil cover, water retention, nutrient cycling, and fire regimes (Weidlich et al, 2020). Diagne et al (2021) provides a conservative estimate that invasive species incur annual costs of approximately US$160 billion globally, highlighting its considerable negative impact.
Based on these examples, it is clear that the consequences of IWT are far-reaching and have concrete impacts on the delicate balance of nature. Species extirpation, biodiversity loss, habitat destruction, and the introduction of invasive species are all tangible examples of ecosystem disruptions caused by this illicit trade.

1.1.2. Economic Harms

Numerous industries, including agriculture, fisheries, and forestry, rely directly on the ecological functions of biodiversity and ecosystem services (Neill, O'Donoghue & Stout, 2020; Kelleher, Henchion & O'Neill, 2019). Many of these industries provide basic market goods, including food, clothing, medicine, and shelter. Tourism is another industry that heavily depends on ecosystem services. Numerous underserved regions rely on travel and tourism as their main source of income, accounting for nearly 94% of the world's least developed nations (Bolwell & Weinz, 2008). Legal wildlife-based tourism generates substantial income for countries, benefiting local communities and economies (Saarinen & Rogerson, 2021). In 2018, it has contributed US$120.1 billion to the global GDP (World Travel and Tourism Council, 2019). Wildlife viewing tours and community-led conservation projects can provide essential sources of income for local residents, especially those living in biodiversity-rich yet poverty-stricken regions (Khan, 2001; Monsarrat & Svenning, 2022).

IWT diverts revenues away from legitimate sustainable channels, leading to the stunted development of community livelihood initiatives and economic losses in various local and regional industries. Its detrimental effects are magnified in underserved rural communities in developing countries, which are oftentimes the most biodiverse (Khan, 2001; Monsarrat & Svenning, 2022). Illegal logging and deforestation for the trade of timber and rare plant species, as well as poaching and unsustainable hunting, can lead to the destruction of natural habitats, the decimation of wildlife populations, and the degradation of ecosystem quality. This in turn hinders the growth of green initiatives such sustainable harvesting, eco-tourism, and other environmentally friendly industries, reducing potential community development opportunities. Negative effects of this lost economic potential are exacerbated further for those relying on and who could otherwise gain from legal, sustainable, wildlife-based activities for their livelihoods. At the benefit of the few who profit from these wildlife crimes, entire communities suffer.

On top of this, IWT also diverts financial resources and attention away from genuine conservation efforts addressing other causes of biodiversity decline and habitat loss. Law enforcement agencies and conservationists must allocate resources to tackle illegal trade, limiting their capacity to protect wildlife through sustainable conservation strategies. For instance, conservationists may have to allocate funds and efforts to combat poaching activities rather than invest in habitat restoration and community engagement projects, weakening overall conservation efforts.

Addressing IWT is crucial not only for preserving biodiversity but also for safeguarding economies and livelihoods. By combating illegal trade in wildlife, countries can protect their natural resources, support sustainable industry initiatives, and create opportunities for local communities to thrive while promoting long-term conservation efforts.

1.1.3. Political Harms

Some of IWT's political harms have implications for criminal justice and national security. For one, IWT fosters a culture of corruption within law enforcement and government agencies (Sundström & Wyatt, 2017; UN CAC, 2024). This compromises their ability to enforce conservation laws effectively. Wildlife traffickers bribe officials to turn a blind eye to their illegal activities or tip them off about potential law enforcement actions, undermining conservation efforts. Other crimes similarly overlooked include fraudulent documentation and money laundering (FATF, 2020). Unchecked, these predicate offenses enable illicit trade to persist.

Moreover, the high profitability of this illicit trade attracts transnational organized criminal networks that engage in other illegal activities (Anagnostou, 2021; Anagnostou & Doberstein, 2022). These criminal groups are also often involved in other transnational crimes such as human trafficking, drug smuggling, and the illegal arms trade. They offer both the resources and pathways to facilitate transnational trafficking, generating significant profits from affluent end-consumers (Duffy, 2016). In some regions, the combination of corruption and crime has further led to the formation of "wildlife mafias," where these criminal networks actively collude with authorities to facilitate the illegal movement of wildlife products, making it even more challenging to combat (Asia's Appetite for Endangered Species is Relentless, 2018; Bichell, 2010; UNI, 2023).

IWT can pose a significant threat to national security as well. The United Nations Office of Drugs and Crime (UN ODC, 2019) reports that some syndicates have been linked to armed conflicts and insurgency. These organizations exploit the illicit trade to finance their activities and fuel violence in affected areas. Advocating for peace processes essentially entail cutting off the funding source of organizations seeking to perpetuate conflict.

The convergence of IWT with other criminal enterprises creates complex challenges for law enforcement and international cooperation in addressing these interconnected threats. Left unchecked, IWT could seriously erode the credibility of domestic criminal justice systems and destabilize the integrity of national financial institutions (World Bank, 2019).

1.1.4. Social Harms

Beyond environmental, economic, and political impacts, IWT carries concrete consequences that extend to various social aspects, including global health, culture, and social justice. For one, it poses risks to public health: the handling and consumption of wildlife can transmit zoonotic diseases to humans (Bezerra-Santos et al, 2021). The recent COVID-19 pandemic, suspected to have originated from wildlife consumption, serves as a prime example of this. Repeated close contact between humans and wild animals in this underground trade creates opportunities for the transmission of diseases that can have severe impacts on global health (Aguirre et al, 2021; Bezerra-Santos et al, 2021).

IWT also disrupts communities that rely on wildlife, both for consumption and as part of their culture. Indigenous communities often possess valuable ecological knowledge about the wildlife in their regions (Fletcher et al, 2021). Many of these cultures have also developed sustainable practices for hunting, fishing, and utilizing wildlife, ensuring that resources are used responsibly and in harmony with nature. When certain species are targeted for illegal trade and harvested beyond sustainable limits, these indigenous knowledge and practices can become less relevant and eventually lost as the ecosystems change. In addition, the loss of iconic or culturally significant species due to illegal trade and other factors can result in a diminished sense of cultural identity and connection to their ancestral lands. Examples of endangered species with high cultural significance include the sawfish (*Pristidae*), the snow leopard (*Panthera uncia*), and the Tibetan antelope (*Pantholops hodgsonii*), among many others (*see:* Robillard & Séret, 2006; McCarthy & Mallon, 2016; Xin, 2023).

IWT being related to other transnational criminal activities, such as human trafficking, also results to social injustice and abuse of human rights (Osorio & Bernaz, 2024). Communities can be victims of criminal networks involved in wildlife trafficking, in tandem with corrupt government officials. Women, indigenous peoples, and those living in poverty are especially vulnerable to coercion from these unscrupulous actors (Paudel, Potter & Phelps, 2020; Stiles, 2011; Parry-Jones & Léger, 2021). All of these are concrete examples of the negative social consequences of IWT.

1.1.5. IWT and the SDGs

From the point of view of the United Nations, IWT has significant impacts on the Sustainable Development Goals (SDGs), both directly and indirectly, due to its wide-ranging environmental, economic, political, and social consequences.

Directly, IWT undermines SDG 15 - Life on Land, as it threatens the survival of various plant and animal species and harms terrestrial biodiversity. It also hinders progress towards SDG 14 - Life Below Water, as it can affect underwater ecosystems when illegal trade involves fish and other marine species. There are apparent not only in the decimation of individual species (especially ecosystem engineers) but also in the destruction of habitats and the introduction of invasive species, all contributing to gradual ecosphere collapse.

Indirectly, IWT negatively contributes to SDG 1 - No Poverty. It disrupts legal wildlife-based activities that can provide income and livelihood opportunities for local communities. By undermining initiatives on eco-tourism and other sustainable industries, it also impacts SDG 8 - Decent Work and Economic Growth, reducing potential revenue and sustainable economic development for these communities reliant on wildlife resources. It touches upon SDG 10 - Reduced Inequalities, too. IWT and its predicate activities disproportionately impact vulnerable individuals and underserved communities that depend on wildlife resources for their livelihood and basic needs. IWT also relates to SDG 3 - Good Health and Well-being. The consumption and handling of illegally traded animals can lead to zoonotic disease outbreaks, a threat to global public health, not to mention its negative repercussions on the basic human right to a healthy environment.

Lastly, IWT has implications for SDG 16 - Peace, Justice, and Strong Institutions. It can foster corruption and create challenges in enforcing policies and legislation related to wildlife protection, undermining the rule of law. Also because of its clandestine nature, among its many negative effects encompass Target 16.4, coupled with Indicator 16.4.1: the reduction of total value of inward and outward illicit financial flows. Continued IWT, including money and wildlife laundering, hinder the attainment of these SDG targets.

The significant adverse consequences of IWT are evident, posing direct and indirect obstacles to effectively achieving several SDGs. As a result, IWT becomes a critical barrier to worldwide sustainable and equitable development. Yet in the past few years, this underground economy has only continued to expand. The next section outlines the various drivers and mediating factors contributing to IWT.

1.2. Incentives and Enabling Conditions

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Report on the Sustainable Use of Wild Species presents a comprehensive analysis of the drivers and mediating factors influencing both legal and illegal trade in wildlife (see Figure 3 as adapted) (Balachander et al, 2022). This includes environmental, political, socioeconomic, and cultural drivers, as well as scientific and technological innovations that can facilitate or impede such trade. Examining the interplay of these drivers is crucial to gain a deeper understanding of their real-world implications when it comes to wildlife trade.

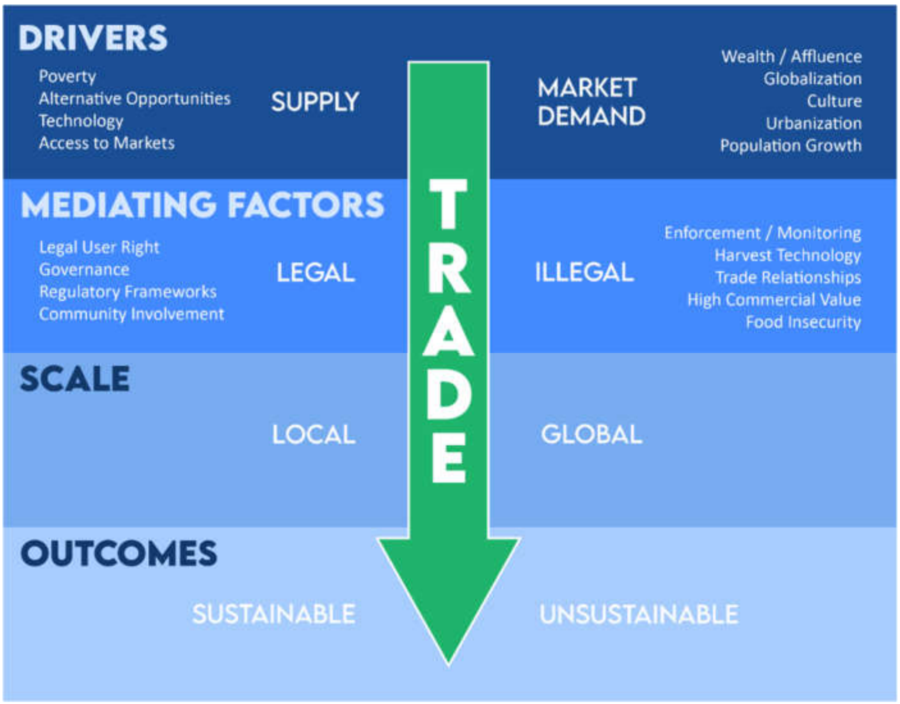

Figure 3. Drivers and Mediating Factors of Trade in Wild Species

IWT thrives due to various incentives that attract individuals and criminal networks to participate in this harmful activity. When it comes to supply, profitability is a significant driving force. Poverty and limited economic opportunities can push individuals in impoverished communities to turn to wildlife trafficking as a means of income generation (Di Minin et al, 2022). Certain wildlife products command high prices on the black market, such as rhino horns and ivory, but trading these items also comes with the possibility of arrest and prosecution.

Despite the high risk, the potential of atypical recompense due to the high incentives still spur people to engage in poaching and illicit trade.

Technology also plays a role in the growth of this underground market (Abano & Chavez, 2021). Due to the low barrier to entry in starting online businesses, emerging platforms like social media and web-based marketplaces even offer more illegal species than their brick-and-mortar counterparts (Sung et al, 2021). In effect, it increases access to international markets, too, which imposes heavier tolls on local wildlife populations.

When it comes to drivers for demand, sociocultural factors play a role in spurring IWT. Traditional medicine beliefs in some cultures contribute to the demand for rare plant and animal parts like the violet monkshood (*Aconitum violaceum*), tiger bones (*Panthera tigris*), and rhino horns (*Rhinocerotidae*) (*see* Tali et al, 2019; Li et al, 2017; Cheung et al, 2021). Another proposed driver for wildlife consumption is the need to be perceived as affluent (Vu, 2023; Sharif & Eisingerich, 2022). The demand for highly-prized exotic pets and rare ornamental plant fuels illegal trade. Similarly, owning products made from endangered species is seen as a status symbol in certain communities, spurring demand for items such as tiger skins, animal heads, and artisanal products such as ivory carvings. The same is true for wild meat consumption: in some areas, serving it in social gatherings is considered a mark of high socioeconomic status (Ngoc & Wyatt, 2013). These culture-specific aspects of wildlife use and consumption drive the demand for these goods across national borders.

Population growth also serves to compound the effects of IWT because it directly increases the demand for natural resources and consumer goods derived from wildlife, putting additional pressure on vulnerable species and their habitats (Kideghesho, 2016). This is further fueled by both globalization and urbanization. They enable the creation of larger markets catering to wildlife demand, especially in urban centers and across international borders. The increased connectivity and infrastructure associated with these also facilitate the movement of wildlife products, making it easier for illegal traders to smuggle and distribute them globally.

In addition to these drivers, IWT thrives due to a combination of enabling conditions. One of them is weak governance and limited law enforcement in certain regions ('t Sas-Rolfes et al, 2019). It allows criminals to exploit legal loopholes, porous borders, and limited governance resources, making it easier for them to engage in wildlife trafficking. Corruption within law enforcement agencies further undermines efforts to combat the illegal trade, enabling traffickers to operate with impunity.

Modern harvest technology also makes it easier for plant and animal poachers and traffickers to find, capture, kill, and/or transport endangered species.[2] This includes such as advanced firearms, GPS traps, remote identification systems, efficient storage tech, and other analogous tools. These technologies provide an advantage over traditional foraging, hunting, and trafficking methods and can result in larger quantities of illegally harvested wildlife.

Lastly, trade relationship between countries can influence supply, demand, and ease of market access to illegal wildlife products (Busilacchi et al, 2022). Countries with high demand for these goods may drive poaching and trafficking activities in countries with abundant biodiversity and vulnerable species. Strong trade relationships facilitate not only resource access but also the movement of these products across borders. This is especially true for highly profitable wildlife specimens and their derivative products.

[2] Another good example is when poachers hack conservation systems to use it for their own benefit. See Ismail (2017).

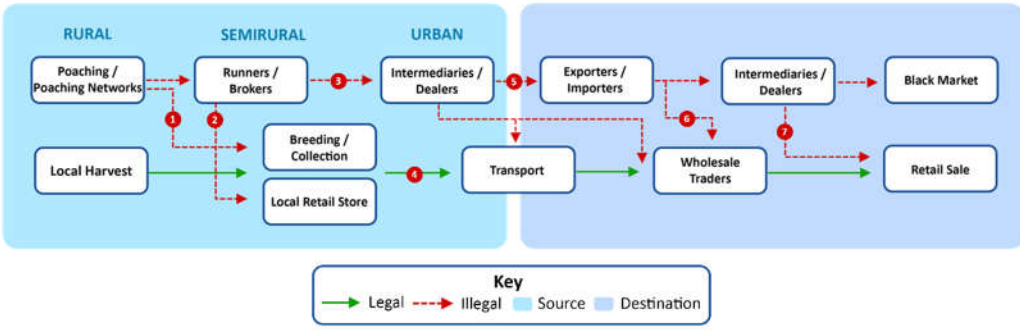

Figure 4. Legal and Illegal Wildlife Trade Flow and Merge Points
(Adapted from Basel Institute of Governance, 2021)

It is important to note that in addition to being a driver for supply, poverty is also a mediating factor for IWT, especially when it translates to food insecurity (Anagnostou et al, 2021). The commission of wildlife crimes do not necessarily arise from malicious motives. Where alternative livelihood opportunities are scarce, individuals may turn to wildlife poaching and trafficking as a means of survival. The promise of quick profits in the illegal trade can be tempting when faced with limited economic prospects. At the same time, many communities rely on wildmeat for food consumption (Booth et al, 2021). Subsequent unavailability of wildmeat supply, either due to policy intervention or environmental resource-provisioning limitations, can lead to shocks to global food systems. Managing both poverty and food insecurity is essential in ensuring that wildmeat is harvested within sustainable limits in the long term.

A critical mediating factor magnifying the harms of IWT is illicit financial flows (In version 5 of the IPBES Report, the matter is covered under the section on globalization and telecouplings.). Illicit financial flows provide essential resources to wildlife traffickers to fund their criminal activities, at the same time keeping their tracks covered (Anagnostou & Doberstein, 2022). By operating outside the formal financial system, wildlife criminals can effectively launder the proceeds from IWT, making it difficult for law enforcement agencies to trace and seize illicit funds. The profits generated from IWT are often funneled through hidden financial channels, further sustaining and expanding criminal networks involved in wildlife trafficking. These funds finance various aspects of the trade, including poaching, smuggling, bribery, and corruption (Wyatt, van Uhm & Nurse, 2020). The availability of substantial financial resources allows criminals to influence and corrupt law enforcement and regulatory institutions, further bolstering the invisibility of their operations.

Illicit financial flows fuel the demand and supply of illegal wildlife products by perpetuating the profitability of IWT. The vast sums of money involved in the trade create financial incentives for traffickers to continue their illegal activities, despite endangering vulnerable wildlife species and undermining global conservation efforts. Addressing this is crucial in dismantling the financial support systems that enable wildlife trafficking. In the succeeding sections, I focus on illicit financial flows as an enabling condition for IWT in the context of Southeast Asia. I will propose plausible ways to curtail the problem through legal mechanisms of regional regulatory finance.

2. Institutional Background: IWT in the Context of ASEAN

The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization that fosters political and economic cooperation among ten countries in Southeast Asia (Narine, 2008). ASEAN was established on August 8, 1967, with the signing of the ASEAN Declaration (Bangkok Declaration) by its founding member states, which included Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Over the years, ASEAN has expanded its membership to include Brunei Darussalam (1984), Vietnam (1995), Laos (1997), Myanmar (Burma) (1997), and Cambodia (1999). The primary objectives of ASEAN are to promote regional peace and stability, enhance economic growth and prosperity, and strengthen cooperation among its member states.

ASEAN functions on the principles of mutual respect, non-interference in internal affairs, consensus-building, and cooperation (Ramcharan, 2000). It operates through regular meetings and consultations among its member countries. It has established various mechanisms and frameworks to facilitate regional cooperation in areas such as trade, investment, security, social and cultural matters, and sustainable development. One of the significant achievements of ASEAN is the establishment of the ASEAN Economic Community (AEC), which aims to create a single market and production base among member states, allowing for the free flow of goods, services, investment, and skilled labor within the region. Collectively, this has resulted in ASEAN being considered the fifth largest economy in the world (Lee & Adam, 2022).

The regional organization also plays a crucial role in regional diplomacy. It acts as a platform for dialogue with other countries and international organizations, forming strategic partnerships with several countries and regions around the world. ASEAN serves as an important forum for promoting cooperation and addressing common challenges faced by its member states. It has contributed to the overall stability and development of Southeast Asia and is considered a significant force in regional diplomatic affairs.

Applying the discussion above in the Southeast Asian context, IWT has profound effects on the goals of ASEAN countries, impacting both individual and regional environment, economy, society, and security.

For one, IWT has far-reaching consequences on ASEAN's rich biodiversity, with country-specific and species-specific examples highlighting its negative impact. Southeast Asia accounts for 25% of global wildlife trafficking, with numerous endangered species being sourced from this region (Duckworth et al, 2012; Krishnasamy & Zavagli, 2020; Lin, 2005; Njman, 2010; OECD, 2019; Rosen and Smith, 2010). One striking example is the pangolin, the most trafficked animal worldwide (Aisher, 2016). Eight species from the *Manidae* family, to which pangolins belong, are listed as threatened by the International Union for Conservation of Nature (IUCN); two of these species call Southeast Asia their home (IUCN, 2023; WWF, 2004). Yet an estimated 900,000 of them have been smuggled across the region in the past two decades (AFP, 2020). The Asian elephant (Elephas maximus) also faces significant decline, with its population dropping by 50% over the past century (WWF, 2018). In mainland Southeast Asian countries like Thailand, Myanmar, Laos, Cambodia, and Viet Nam, elephants face dire threats as they are targeted for their ivory tusks, leading to a decline in their populations and disrupting ecological balance (Asian Elephant, 2023). The Javan rhino (*Rhinoceros sondaicus*) and the Sumatran rhino (*Dicerorhinus sumatrensis*) are both critically endangered, with populations of fewer than 70 and 80 individuals in the wild, respectively (OECD, 2019). Birds are also heavily affected, including species like the Javan banded pitta (*Hydrornis guajanus*), Oriental magpie-robin (*Copsychus saularis*), and various hornbill species (*Bucerotidae*) (*see* Cowan, 2021; Neme, 2016).

The loss of these wildlife affects other species dependent on them, creating imbalances in the biosphere.

In addition to the natural inherent value of environmental protection, other dimensions which are heavily affected involve the economic, political-security, and sociocultural pillars of ASEAN (ASEAN Ministry of Communications and Informatics, 2023). Southeast Asia supplies high-demand countries legal wildlife and derivative products. Approximately 79% of China's legally sourced wildlife imports from the region come from Indonesia, Laos, and Malaysia (Jiao, Yeophantong and Lee, 2021). These three countries contribute to 88% of the total wildlife imports, which consist of only ten species. The list includes the common water monitor (*Varanus salvator*), the Indian rat snake (*Ptyas mucosus*), and the Siamese crocodile (*Crocodylus siamensis*). This legal trade is worth millions of dollars in revenues every year. Unfettered IWT can exhaust these otherwise sustainable resources, making continued legal trade non-feasible.

The ASEAN tourism industry is also affected by IWT. Prior to the pandemic, travel and tourism generated 12% of the collective GDP of the Southeast Asian region (OECD, 2023). With the continued increase in wildlife tourism, this contribution to the regional revenue is only set to grow over time (Rivera, Knight and McCulloch, 2021). IWT can negatively impact this potential source of sustainable income by decimating species for illegal transport and trade, replacing potential long-term, community-based eco-tourism initiatives with short-term private profits. The slaughter of Asian elephants and tigers living in animal reserves and nature sanctuaries in countries like Thailand, Laos, and Viet Nam is a leading example (AP, 2012; Slow, 2019).

When it comes to political harms, IWT can pose national security threats to the Southeast Asian region through organized crime groups and terrorist funding. Criminal networks crucially contribute to IWT by providing both the means and the trade routes for transporting illicit wildlife goods from source to consumer countries (Di Minin, 2022). One example is the Xaysavang Network, leading the illegal ivory trade in Southeast Asia (Bergenas & Knight, 2015). As of 2023, the U.S. Department of State is offering a US$1.0 million reward for information leading to the dismantling of this organized crime group (US Department of State, n.d.). This gives an indication of the seriousness and extensive reach of wildlife trafficking across continents.

Transnational markets for these illicit goods also tend to be resilient, providing potential sources of long-term funding to insurgent groups (Nellemann et al, 2016; Di Minin et al, 2022). The long-standing conflict in the Philippines with the Moro Islamic Liberation Front (MILF) and the current military junta dictatorship in Myanmar are just two of the many possible situations which can provide an enabling environment for armed separatist groups who are likelier geared towards extracting natural resources for immediate monetary benefits to use for their political causes rather than focusing on long-term environmental stewardship (van der Ploeg, Araño & van Weerd, 2011; McEvoy et al, 2022). Profits from IWT can contribute to prolonging these political conflicts and undermining peace negotiations in the region.

IWT also affects the socio-cultural pillar of ASEAN member-states. One species-specific example is the orangutan. Orangutans (*Pongo spp.*) hold cultural importance in Indonesia, especially on the islands of Borneo and Sumatra, where they are believed to be "people of the forest" and possess mystical powers (Nadler et al, 1995; Aini, 2019). Both habitat destruction and the illegal primate trade have led to a decline in orangutan populations, and in related cases, caused their displacement nearer human settlements (Flores, 2019). This has affected their interaction with local communities, including increases in human-wildlife conflict (Kuswanda et al, 2021). Additionally, the loss of orangutans impacts the ecosystem's health, which is linked to the well-being of indigenous tribes residing in the same forests. Another example is the pangolin (*Manidae spp*). In 2019, more than 12 tonnes of pangolin scales were seized in Singapore

(Marshall, 2020). Scientists have flagged the pangolin as a potential intermediary host for coronavirus variants (Liu et al, 2020). Continued trade in pangolin parts, especially in small, high population density countries which serve as global transit hubs, can exponentially increase the possibility of another pandemic breaking out and again affecting our way of life. Yet despite the gravity of this issue and the breadth of sociopolitical and economic domains affected in the region, there is a glaring lack of studies, analyses, and projects specifically tackled IWT in Southeast Asia (Fisher, 2021). This is a major limitation in literature which needs to be addressed.

On paper, all ASEAN member countries share a strong commitment to wildlife conservation. Individual countries have extensive laws related to wildlife trafficking (see Table 1).

Table 1. CITES-related Laws in ASEAN Countries

Country	CITES-related Laws	
Philippines	RA 9147 of 2001	Wildlife Resources Conservation and Protection Act
	RA 8550 of 1998	Philippine Fisheries Code
Cambodia	Royal Kram NS/RKM/0802/016 of 2003	Law on Forestry
	Royal Kram NS/RKM/506/011 of 2006	Law on Fisheries
	Royal Kram NS/RKM/0208/007 of 2008	Law on Protected Areas
	Royal Kram NS/RKM/0707/017 of 2007	Law on Customs
	Sub-Decree 53 of 2006	On international trade in endangered species of wild fauna and flora
Vietnam	Law 20/2008/QH12 of 2008	Biodiversity Law
	Law 16/2017/QH14 of 2017	Forestry Law
	Law 55/2014/QH13 of 2014	Law on Environmental Protection
	Law 59/2005/QH11 of 2005	Law on Investment
	Decree 160/2013/ND-CP of 2013	Decree On Criteria to Determine Species and the Regime of Managing Species Under Lists of Endangered, Precious and Rare Species Prioritized Protection
	Decree 06/2019/ND-CP of 2019	Decree On Management of Endangered, Precious and Rare Species of Forest Fauna and Flora and Observation of Convention on International Trade in Endangered Species of Wild Fauna and Flora
Thailand	BE 2535 of 1992	Wildlife Preservation and Protection Act
	BE 2542 of 1999	Plant Varieties Protection
	BE 2557 of 2014	Conservation and Protection of Wild Animals Act
	BE 2562 of 2019	Wild Animal Conservation and Protection
Singapore	Act 5 of 2006	Endangered Species (Import and Export) Act
	Ordinance 5 of 1965	Wildlife Act
Myanmar	Pyidaungsu Hluttaw Law 12 of 2018	The Conservation of Biodiversity and Protected Areas Law
Malaysia	Act 686 of 2008	International Trade in Endangered Species Act
	Act 716 of 2010	Wildlife Conservation Act
Laos	Law 07/NA of 2007	Wildlife and Aquatic Resources Law
	Law 06/NA of 2007	Forestry Law
Indonesia	Act 5 of 1990	Conservation of Living Resources and their Ecosystems
Brunei	Order S 77 /07 of 2007	Wild Fauna and Flora Order
	Act S 130/81 of 1981	Wild Life Protection Act

In addition, all ASEAN member-states are signatories to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[3] This shared commitment between all ASEAN countries lays a solid legal foundation for regional cooperation in tackling IWT and upholding international conservation obligations. At present, the organization has also established specific frameworks and action plans to address wildlife trafficking. This includes the ASEAN Wildlife Enforcement Network (ASEAN-WEN). This network facilitates intelligence sharing, capacity building, and joint operations, promoting a more coordinated and efficient enforcement response to IWT within the region. However, as evidenced by the continuously growing IWT in the region, much more needs to be done.

ASEAN, as a regional intergovernmental organization with significant biodiversity and geographically a wildlife trafficking hotspot, possesses the necessary responsibility, capacity, and motivation to effectively combat IWT. The next section proposes potential reforms which ASEAN can undertake do so, in particular focusing on transactional interventions and regulatory finance.

3. Exploring Potential ASEAN-Led Reforms

To address the adverse effects of IWT, ASEAN countries must continue to collaborate and strengthen its enforcement efforts. By sharing critical information, harmonizing laws, and raising public awareness, ASEAN countries can collectively combat wildlife trafficking, protect their invaluable natural heritage, and promote sustainable conservation practices. The first part of this section provides general proposals to strengthen supply-side and demand-side interventions, while the second part will expound in greater detail transactional interventions related to financial regulations and illicit financial flows.

3.1. Supply-Side and Demand-Side Interventions

When it comes to supply-side interventions, ASEAN can help curb IWT in the region through strengthening law enforcement efforts focused on limiting supply. Various studies have shown effective mechanisms and management techniques in doing so. This includes increased patrols in wildlife habitats and trafficking hotspots, specialized units dedicated to wildlife crime, and intelligence-led operations to disrupt trafficking networks (Keskin et al, 2023). Enhanced border control and customs cooperation among ASEAN countries are also vital to intercept illicit shipments and prevent cross-border movement of illegal wildlife and derivative products (Jiao, Yeophantong & Lee, 2021). Prosecution and deterrence also play a significant role in disrupting supply chains. This requires ASEAN countries to ensure effective prosecution of wildlife crimes with comprehensive and harmonized wildlife protection laws, coupled with proportionate penalties. Capacity building for law enforcement agencies, customs officials, and judiciary personnel is therefore essential to enhance wildlife crime investigation techniques, evidence collection, wildlife identification, and successful prosecution (Harper, 2023).

In addition to these, addressing the root causes of poaching and wildlife trafficking is also necessary. Sustainable livelihood options for local communities such as eco-tourism and sustainable agriculture should be emphasized (Anagnostou et al, 2021). Involving local communities is also critical in law enforcement, increasing collective vigilance and reporting illegal activities (Acharya et al, 2020; Roe & Booker, 2019). Raising awareness about wildlife conservation within these communities garners support for these initiatives. Collaborating with

[3] CITES has been touted as the world's leading international agreement on the protection of wildlife. See Harfoot et al (2018); Shepherd et al (2020); Fukushima et al (2021), and Rivalan et al (2007).

them, as well as with wildlife conservation organizations, offers valuable support through expertise, training, and resources, further bolstering enforcement actions and conservation projects.

On the other hand, interventions targeting demand within the ASEAN include public awareness campaigns focused on consumers. This is essential to reduce the financial incentives driving wildlife trafficking. One key approach involves educating consumers about the consequences of IWT. These campaigns can emphasize IWT's impacts on biodiversity, its threat to endangered species, and the connections to other illicit activities, with the goal of encouraging responsible consumer behavior by discouraging the purchase and use of wildlife products (Boissat, Thomas-Walters & Veríssimo, 2021). Involving celebrities, influencers, and opinion leaders to support conservation messages can amplify the reach and impact of such initiatives (Okuah, Scholtz & Snow, 2019). Education and outreach initiatives in schools and universities can also play a crucial role in instilling a sense of responsibility and respect for wildlife. Integrating wildlife conservation and the harms of IWT into curricula can help shape future generations' attitudes towards wildlife protection (Song et al, 2021).

Regulatory measures are equally crucial in reducing demand for illegal wildlife products. Proponents of strengthening regulations and enforcement against the sale and possession of these items argue that doing so can act as an effective deterrent to potential buyers (Yang et al, 2020). By implementing strict penalties and fines for offenders, ASEAN countries can create an environment where IWT becomes less appealing. An alternative solution, especially when demand is less sensitive to price changes, is to encourage the use of sustainable or synthetic alternatives to wildlife products (Chen & 't Sas-Rolfes, 2021). This can help reduce the pressure on commercial items derived from endangered species.

Curbing both demand and supply as regards IWT is very important. Understanding their underlying economic incentives can hold the key to lowering this illicit trade. Area-specific interventions can simultaneously and separately be implemented on both sides.

An oft-understudied strategy worth exploring is to disrupt the interplay of both demand and supply by focusing on transactional interventions. Below, I illustrate how regulatory finance, as a prime example of transactional interventions, can be used as an effective measure against IWT in the region.

3.2. Transactional Interventions, Focused on Regulatory Finance in the ASEAN

In his legal practice, US Federal Prosecutor Marcus Asner (2016) emphasizes that:

> "Any illicit trafficking operation—whether it involves wildlife, narcotics, blood diamonds, guns or even counterfeit goods—involves a supply side, a demand side, and a flow of money."

This flow of money can be monitored, analyzed and assigned legal responsibility through regulatory finance. Also known as financial regulation, regulatory finance in institutional economics refers to the system of laws, rules, and regulations implemented by government authorities and financial institutions to oversee and control the financial industry. The primary objective of regulatory finance is to maintain the stability and integrity of the financial system, protect consumers and investors, and prevent fraudulent or unethical practices. These financial regulations cover a wide range of areas, including banking, securities, insurance, and other fiscal-related services. Regulatory finance covers many various aspects, such as capital requirements, risk management guidelines, disclosure requirements, consumer protection measures, and anti-money laundering provisions, among others. It plays a crucial role in safeguarding the financial sector from systemic risks, ensuring fair and transparent financial practices, and promoting confidence in the markets. Various government agencies and regulatory bodies, such as central banks, financial supervisory authorities, and securities commissions, are responsible for enforcing financial regulations within their respective jurisdictions.

Regulatory finance plays a significant role in preventing IWT around the world. It does so by implementing measures to monitor and then disrupt the financial flows that sustain this illicit activity, targeting the financial networks and transactions associated with wildlife trafficking. Because financial institutions are required to adhere to anti-money laundering (AML) and anti-terrorism financing (ATF) regulations, this system can help identify suspicious transactions linked to IWT. It strengthens the monitoring network of IWT beyond conservationists, wildlife enforcement agents, and customs officials by providing forensic finance expertise to these environmental crimes. Following the money trail, from the macro to the micro and vice versa, can help trace actors in the illicit wildlife supply chain and identify those who are most responsible for purposes of criminal prosecution (Haenlein & Keatinge, 2023).

Targeting the connection between illicit financial flows and IWT was the primary strategy used by the prosecution in *US v. Bengis*, which resulted in an award of US$ 22.5 million in damages to South Africa.[4] The same technique was used in *US v. Rafael*, where the investigation that resulted in Rafael's indictment was carried out by Internal Revenue Service agents under the Department of Justice’s financial crimes division rather than the National Marine Fisheries Service under the DOJ division focused on environmental matters (Sundareshan, 2020). By merging the fields of forensic finance and green criminology, wildlife criminals are arrested, prosecuted and convicted; this can serve as an effective deterrent for others from committing further similar acts.

Another concrete example of the impact of regulatory finance in preventing IWT include the seizure of wildlife assets; doing so disrupts the illicit trade chain. In 2019, Operation Thunderball, a joint initiative involving multiple countries and international agencies like Interpol and the World Customs Organization, resulted in the seizure of millions of dollars in assets linked to wildlife and timber trafficking (Interpol, 2019). By tracking and freezing the assets of traffickers and their associates, as well as seizing the products complicit in IWT, regulatory finance measures hinder their ability to profit from this criminal enterprise. Similarly, these actions can also deter other criminals from engaging in IWT by sending a strong message that the financial community is actively combating this illicit activity, and that once caught, they shall not profit from their crimes.

Anti-IWT initiatives are further boosted by international cooperation and information sharing between financial regulatory authorities. For instance, the Financial Action Task Force (FATF), an intergovernmental organization that sets global AML and ATF standards, issued recommendations in 2020 specifically endorsing collaborative efforts to address the risks posed by transnational wildlife trafficking (Financial Action Task Force, 2020). This includes international co-operation and public-private joint efforts. All actors are encouraged to implement these recommendations, creating a coordinated global approach to tackling the financial aspects of wildlife trafficking.

These salient, non-exhaustive examples show how regulatory finance measures around the world have helped close financial loopholes being exploited by wildlife traffickers and choke off their financial resources. By targeting the financial aspect of the illegal trade, these regulations

[4] The execution of judgment has been criticized as problematic, but this is another issue altogether separate from the criminal conviction. See Glazewski (2019).

negatively impact the economic incentives of IWT, complementing conservation efforts and reinforcing the global commitment to preserving endangered species and biodiversity. Learning from and utilizing these strategies, ASEAN can play a critical role in curbing IWT by focusing on preventing illicit financial flows associated with this criminal activity. As a regional organization and a global wildlife trafficking hotspot, it is well-placed to disrupt the profitability of this illegal transnational trade and deter criminals from engaging in IWT. What are the concrete ways that it can do so?

Figure 5. Proposed Regulatory Finance Measures in the ASEAN against IWT

First, ASEAN countries should strengthen regional financial regulations by implementing existing anti-money laundering measures more robustly (*see* Table 2). At the same time, not only should there be additional in-country training for its law enforcement and prosecution agents, institutionalizing international cooperation and information sharing should be spearheaded as well. In line with this, raising awareness among financial professionals about the harms of IWT can play a significant role in preventing money laundering and other financial crimes associated with wildlife trafficking. By providing coordinated training and resources to domestic financial institutions to recognize and report suspicious activities related to IWT, ASEAN can build a more vigilant financial sector in the fight against illicit trade in wildlife.

Collaborating with e-commerce platforms and financial institutions is also a crucial example of joint efforts between the public and the private sectors in battling IWT through AML + ATF regulations. These collaborations with financial intelligence units, public and private banking institutions, and law enforcement agencies in other jurisdictions allow ASEAN countries to more easily trace and freeze IWT-related illicit financial flows. Key in these efforts are asset seizures and other forfeiture measures to confiscate both the assets and the proceeds of wildlife trafficking from these environmental criminals, depriving them of their ill-gotten gains.

Special attention must also be given by law enforcement agencies to target online platforms better, as the internet has increasingly become a major marketplace for IWT (Siriwat and Nijman, 2020). These can be guided by the San Jose FATF Principles, which highlight the use of different technologies in AML and ATF initiatives (Pavlidis, 2021). One of these is Artificial Intelligence, optimizing AML efficiency in the process. Machine learning algorithms can be trained to flag transactions involving entities or regions known to be associated with wildlife trafficking. For instance, if a large sum of money is transferred from an account in a country with a high incidence of wildlife trafficking to an account in another region known for its demand for illegal wildlife products, the AI system could trigger an alert for further investigation.

Table 2. Money Laundering Laws in ASEAN Countries

Country	Laws related to Money Laundering and Terrorism Financing	
Philippines	RA 9160 of 2001	Anti-Money Laundering Act
	RA 10168 of 2012	The Terrorism Financing Prevention and Suppression Act
	RA 10365 of 2013	An Act to Further Strengthen the Anti-Money Laundering Law
	RA 11521 of 2021	An Act Further Strengthening the Anti-Money Laundering Law
Cambodia	Royal Kram NS/RKM/0620/021 of 2020	Law on Anti-Money Laundering and Combating the Financing of Terrorism
	Royal Kram NS/RKM/0620/019	Law on Combating the Financing of Proliferation of Weapons of Mass Destruction
Vietnam	Law 07/2012/QH13 of 2012	Law on Prevention of Money Laundering
	Law 14/2022/QH15 of 2022	Law on Anti-Money Laundering
	Law 28/2013/QH13 of 2013	The Anti-Terrorism Law
Thailand	BE 2542 of 1999	Anti-Money Laundering Act
	BE 2551 of 2008	Anti-Money Laundering Act, No.2
Singapore	Act 29 of 1992 (Original No.)	Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
	Act 16 of 2002	Terrorism (Suppression of Financing) Act
	Act 54 of 2018	Developers (Anti-Money Laundering and Terrorism Financing) Act 2018
	Act 7 of 2019	Precious Stones and Precious Metals (Pre vention of Money Laundering and Terrorism Financing) Act 2019
Myanmar	The Pyidaungsu Hluttaw Law 11 of 2014	The Anti-Money Laundering Law
	The Pyidaungsu Hluttaw Law 23 of 2014	The Counter Terrorism Law
Malaysia	Act 613 of 2001	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act
	Act 769 of 2015	Prevention of Terrorism Act
Laos	Law 50/NA of 2014	Law on Anti-Money Laundering and Counter-Financing of Terrorism
Indonesia	Act 9 of 2013	On the Prevention and Eradication of Terrorism Financing
	Act 8 of 2010	Concerning the Prevention and Eradication of Money Laundering
	Act 15 of 2002	Concerning The Crime of Money Laundering
Brunei	Act S 41/02 of 2002	Anti-Terrorism (Financial and Other Measures) Act
	Act S 57/00 of 2000	Anti Money-Laundering Act
	Order S 47/12 of 2012	Criminal Assets Recovery Order, 2012
	Order S 29/07 of 2007	Drug Trafficking (Recovery of Proceeds) Order
	Order S 52/00 of 2000	Criminal Conduct (Recovery of Proceeds) Order
	Act S 187/81 of 1981	Prevention of Corruption Act
	Act S 9/83 of 1983	Internal Security Act

Another potential technology which can be explored include blockchain technology, which can help ensure that due diligence and anti-money laundering requirements are sufficiently complied with (Woolard, 2016). In particular, through blockchain, the provenance of wildlife products can be verified, making it exceedingly difficult for traffickers to pass off illegally obtained goods as legitimate. These technologies can be instrumental towards confiscating the laundered gains of IWT.

Second, ASEAN countries should amend respective domestic laws so that financial crimes include wildlife trafficking as a predicate offense. This proposal has two supporting arguments:

- Fines as traditionally imposed on IWT violations are not enough. The gains derived from IWT can surpass the cumulative fines by as much as a factor of four (Ngoc & Wyatt, 2013). This leads to the outcome that even when penalties are imposed on those involved in illegal wildlife trading, it can still yield substantial profits. The fines therefore simply serve as a slap on the wrist. Making IWT a predicate offense to AML + ATF crimes necessarily provides for heavier penalties when convicted (Sundareshan, 2020). Fleshing out the correct level of penal proportionality for these environmental crimes can provide a more effective deterrent against them (Ali & Setiawan, 2022; Osorio, Leucci & van Zeben, 2024). Evidence supporting this has been seen at the community level: local IWT logisticians were observed to pause their operations temporarily after news of criminal apprehension circulated, resulting to marked decrease in demand (Archer et al, 2021).
- Member-states have traditionally had varying standards on the ancillary activities related to AML and ATF (UNODC, 2009). Considering IWT as a predicate crime empowers financial institutions to consolidate what these ancillary activities are, and help them track and report suspicious financial transactions related to wildlife trafficking. This creates a uniform standard in the region, making implementation across trading partners more efficient and easier to regulate; later on, this standard can also be used with ASEAN's external trade deals.

Combining both regulatory finance and wildlife crime, focusing on preventing illicit financial flows within the ASEAN and creating a uniform standard in the region, can significantly affect both the profitability and feasibility of IWT, thus reducing its overall negative impact on regional biodiversity, economy, and society.

Lastly, it is good to remember that these financial regulation strategies should also be applied not only at the regional level, but also at the grassroots. After all, international law can be limited in what it can do for conservation efforts (Wiersema, 2017). At the same time, it is essential not only to focus on law enforcement, but also to engage local communities, civil society organizations, and other stakeholders in the fight against IWT.

The World Bank reports that the investment of US$1.3 billion in countering IWT between 2010 and 2016 saw a distribution of funds with 65% primarily towards law enforcement, and only 15% allocated for projects focused on communities (Wilson-Holt & Roe, 2021). Grassroots efforts are crucial in raising awareness, detecting suspicious activities, and preventing illicit financial flows related to wildlife trafficking. That said, conducting workshops and awareness campaigns, providing educational materials, and partnering with NGOs and local organizations can inform communities about their role in preventing IWT, establishing effective monitoring systems, and reporting suspicious activities to authorities. These are all initiatives that member-countries, with the lead and support of ASEAN, can implement.

More than this, increased effort needs to be devoted to sustainable livelihoods related to wildlife and biodiversity. Once local communities start receiving substantial income from legal socioeconomic practices in relation to wildlife protection and sustainable trade, they can turn from poachers to protectors, as the preservation of the wildlife merges with their own interests in the long-term (Cooney et al, 2017). This not only enhances enforcement but also fosters a sense of ownership and responsibility among local communities to protect their natural heritage and contribute to the larger conservation goals of the region. Providing legal financial flows to these communities sans the resulting risk of criminal acts creates a bottom-up approach to combating IWT and preventing illicit financial flows. Improving regulatory finance frameworks, with special focus on how it can positively impact underserved communities in the ASEAN, can help forward these goals for inclusive development (Divanbeigi & Chen, 2019).

3.3. Context-Specific Limitations

While regional, national, and community-based financial regulation instruments provide much promise as highly potent tools to aid in investigating, prosecuting, and convicting wildlife crimes in the ASEAN, these are met with certain limitations. ASEAN faces several obstacles when it comes to implementing financial regulations aimed at wildlife protection.

A primary challenge lies in the lack of harmonization among ASEAN member states regarding legal frameworks and financial regulations regarding IWT, precisely because of the organization's emphasis on non-interference and the ASEAN Way (Osorio, 2020). This is an oft-mentioned critique frequently attributed to cultural differences. This resulting lack of consistency creates loopholes that traffickers can exploit, impeding cross-border enforcement and cooperation efforts. A regime of weak governance and limited institutional capacity results in inadequate enforcement and oversight of financial regulations, thereby hampering its effectiveness. A strong political will to encourage ASEAN to collaborate and institutionalize the above-mentioned proposals is necessary in order to address this limitation.

At the same time, resource constraints hinder the implementation and enforcement of financial regulations related to wildlife protection in many ASEAN countries. Insufficient funding, the use of outdated technologies by law enforcement, and the lack of specialized training on both financial crimes and IWT hamper the fight against illicit financial flows linked to the illegal trade in wildlife. The identification, tracking and successful prosecution of such flows require technical expertise in financial investigations and wildlife trafficking, posing a challenge for ASEAN countries in developing a skilled workforce with the necessary knowledge and training.[5] Awareness campaigns, especially targeting domestic policymakers as well as international representatives to the ASEAN, could help mitigate this challenge with the goal of encouraging them to pour more money and political attention to this important cause.

Lastly, collaboration with the private sector, particularly financial institutions, is crucial for detecting and reporting suspicious transactions related to wildlife trafficking. However, building effective partnerships with these stakeholders may prove challenging due to concerns surrounding data sharing and cooperation, especially for ASEAN countries whose governments enjoy low trust ratings. Directly and indirectly, good governance remains essential in ensuring that biodiversity and environmental conservation targets are met (Heid & Márquez-Ramos, 2023).

Acknowledging these limitations and addressing them sufficiently necessitates both strong political will and a comprehensive, coordinated approach among ASEAN member states and its representatives. Both inclusion and good governance are necessary to make this a success. This way, strengthening financial regulations related to wildlife protection can truly become an effective measure in curbing the flow of illicit funds that fuel the global illicit trade in wildlife.

[5] This is supported by the fact that as of 2016, nearly a hundred countries around the world do not consider IWT as a serious crime, indicating its low priority in governance. *See* World Bank (2019).

4. Conclusion

The illegal wildlife trade's estimated US$20 billion revenues per annum is merely an indication of its wide-ranging scope. It casts a long shadow across various dimensions, simultaneously manifesting as environmental degradation, economic losses, and negative sociopolitical impacts. The substantial harms inflicted by IWT underscore the urgent need for comprehensive reforms to address its multifaceted consequences.

There are a number of strategies which have been forwarded to address this challenge, met with various rates of success. These encompass supply-side, demand-side, and transactional interventions. Among these, regulatory finance emerges as a promising solution, as seen in a number of successful cases brought before Western courts. After all, understanding demand and supply for IWT is essential to curbing it, but so is analyzing incentives for actors within the wildlife trade supply chain and targeting them through regulatory finance. Doing so can modify the risk equation by improving the likelihood for arrest, prosecution, and conviction, as well as increasing associated penalties of wildlife traffickers (Osorio, Leucci & van Zeben, 2024). This can disrupt the financial networks that sustain this illicit trade and provide sufficient deterrents for similar criminal activities in the future.

In the context of the ASEAN, there are three proposed measures to alleviate IWT through regulatory finance. First is to strengthen the implementation of existing financial crime instruments, including money laundering and anti-terrorist financing initiatives. This can make environmental criminals liable for both wildlife trafficking and financial crimes, thus casting a wider fishing net for better chances of arrest for either set of felonies. Second is to append wildlife crimes as predicate offences to financial felonies. This increases penalties and improves rates of prosecution and conviction, both effective deterrents against the commission of further similar crimes. Lastly is to utilize financial regulation instruments to support inclusive community development. Doing so can align potentially competing interests and encourage communities to be partners in long-term wildlife conservation.

It is important to recognize, however, that the implementation of these reforms may encounter context-specific limitations. This includes the ASEAN Way and its focus on non-interference, the perception of IWT as a problem of lesser public priority, and reduced trust in government institutions. Before the proposed solutions for IWT through regulatory finance can be properly implemented, these issues need to be addressed.

In conclusion, combating IWT mandates a paradigm shift that extends beyond traditional conservation efforts and the long arm of environmental criminal justice. It needs a multidisciplinary approach to take into account economic incentives and enabling conditions that allow this illicit trade to continue, and in the process casting a wider net to apprehend environmental criminals. By leveraging regulatory finance and cultivating collaborative networks within the region, ASEAN can pave a transformative path towards stopping IWT in its tracks. Through multifaceted finance reforms tailored to the Southeast Asian context and grounded in community empowerment, ASEAN can recalibrate its trajectory against the global illicit trade in wildlife, fostering a more harmonious future for its environment and its people.

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Research Paper

Multicultural Citizenship: Justice and Recognition of Difference for Indigenous Peoples in Brazil

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Abstract: The fundamental rights recognised in Brazil's Federal Constitution seek to guarantee all individuals a life with dignity. It turns out that such rights have been marked by a process of transformations based on social relations, which today incorporates the recognition of the differences between different peoples and cultural diversity. The objective of this work is to analyse how Kymlicka's multicultural citizenship proposal manages to extend the protection of justice and fundamental rights for indigenous peoples by combining the guarantee of individual rights with collective rights. A theoretical approach was used, supported by secondary sources, and, as a methodological procedure, bibliographical, documentary, and descriptive research. Given the framework presented, it is found that multicultural liberalism promotes the implementation of fundamental rights of Indigenous peoples, with the protection of minorities and differentiated rights, but within state political barriers and without ignoring individual responsibility, and placing the discussion within a broader context.

Keywords:

1. Multicultural citizenship
2. Indigenous peoples
3. Fundamental rights
4. Justice

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1. Introduction

Brazil's Federal Constitution guarantees fundamental rights, which can be understood as the minimum set of rights to which an individual is entitled simply because they are human – be they Brazilian, a foreigner residing in Brazil, or even if it is just passing through the national territory.

Some limits are drawn, as in the case of non-resident foreigners, who do not have the legitimacy to file a class action but still maintain the fundamental right to life and physical integrity. However, it is necessary to understand that the Constitution constitutes a comprehensive document which establishes public social policies within society, which extends from the field of health through social security and education, reaching even the right to an ecologically balanced environment and a healthy quality of life (Outeiro & Nascimento, 2020). There are many ways to interpret these rights, but as it is written - as the minimum set of rights to which an individual is entitled – they tend to be understood inside a framework which emphasises the idea that all should have enough and that is unjust that someone falls below some threshold. Still, we do not know what resources (internal and/or external), capabilities or even utilities. Therefore, the discussion on the level of state responsibility for implementing fundamental rights can range from direct provision by public entities to regulating the private sphere and/or creating incentive/penalty systems for civil society (Outeiro et al., 2016).It turns out that a conservative view prevails regarding the legal treatment of indigenous peoples in Brazil. There is constitutional recognition of a series of rights, accompanied by duties that limit their citizenship (Beltrão & Oliveira, 2010). The constitutional rights of these people can be associated with the set of basic rights so that they can have a dignified life, but which tend to restrict their right to cultural diversity. In this sense, considering cultural diversity, the question arises: Is it possible to recognise differentiated fundamental rights in a comprehensive theory of justice?

With this issue as its guiding principle, we address the problem from the perspective of Will Kymlicka's theory (1995), as a conception of liberal justice based on multicultural citizenship. The objective is to analyse how Kymlicka's multicultural liberalism, by combining the guarantee of individual rights with collective rights, manages to extend the protection of justice and fundamental rights to indigenous peoples (Kymlicka, 1995; 2006; 2014).

Many works discuss the poverty rates among indigenous peoples in Brazil (Menezes-Filho et al., 2021) or propose a decolonial perspective (Ferreti, 2024; Pereira, 2024) with roots in critical theory that sometimes fails to provide rational standards for political action. I argue that this study offers new perspectives on this topic by combining other key elements of a conception of social justice.

This work is divided into three stages. Section 1 brings concepts of liberal justice, which are within a theoretical current called egalitarian liberalism (Gargarella, 2008), which includes John Rawls (1999), Amartya Sen (1995; 2011), Ronald Dworkin (2002) and Kymlicka (1995). Section 2 shows Kymlicka's multicultural justice, in which the liberal perspective is made compatible with the protection of minorities. The third section examines Brazil’s constitutional provisions in light of the theoretical framework in order to ensure moral equality between different people and groups, such as members of the political community, in which the value of fundamental rights will depend on how issues involving the application of justice are treated.

A theoretical approach, a methodological procedure, and bibliographical, documentary, and descriptive research were used. Without intending to exhaust the debate, I hope to contribute to the discussion on protecting fundamental rights, placing it in a broader context involving justice and minorities in Brazil.

2. Liberal Justice

Fleischacker (2006) discusses that social justice involves the distribution of wealth among the members of a society, and this dates back to classical antiquity with Aristotle. In this vein, Kymlicka (1995) aims to build an impeccable liberal theory. But why within the liberal framework? At the very least, there are communitarian[1] frameworks that could be used. In general terms, liberal theorists are criticised for excessive individualism, which allows the elaboration of nonhistorical theories, ignoring culture and social relations (Kymlicka, 2006). However, this is true for Lockean Contractualism (Locke, 1998), which deals with the state of nature and the formation of Civil Government. In that case, the same cannot be said for contemporary liberals, such as Dworkin (2002) and Sen (1995), who consider that culture shapes individuals' preferences for choosing their life projects and defining a dignified life within their context.

Vita (2008) suggests the two basic theses of liberalism are: 1) the state protection of a set of fundamental rights of citizens and 2) state neutrality with regard to citizens' conceptions of the good life. In short, these are elements common to a range of authors, such as Rawls (1999), Dworkin (2002), Kymlicka (1995; 2006), Sen (1995; 2011) and Vita (2008), within the theoretical axis called egalitarian liberalism (Gargarella, 2008).

For Sen (1995), every political theory of justice presents its version of the materialisation of abstract equality, which establishes a connection with liberal justice. Although there is compatibility with some aspects of liberal theories, it is worth mentioning that there is a diversity of authors with different theses. Given that conflicts between their members mark societies, we need to adopt a common denominator, which allows the resolution of these divergences, and each author will present their thoughts to accommodate differences and resolve conflicts within a framework that ensures equality in some aspect.

So, egalitarians believe in equality, but from there, it is complicated (Stone, 2022). Even if we agree that we want an equal society, we still do not know if people are supposed to receive equal amounts of something or be treated equally or as equals – and we could go on to ask in what ways. Rawls set the terms of contemporary debate regarding equality through his theory of justice as fairness. For Rawls (1999), equality of condition must be developed as a component of a theory of justice, intended to be the foundation of a democratic society and acceptable to all reasonable members of this society. A just society should not be forced to do whatever is necessary to bring about its members to attain any given level or share of quality of life. Several scenarios need to be considered. On the one hand, there are issues that individuals cannot control, such as natural talents and some social aspects, such as being born into a low-income family without access to certain social resources. On the other hand, some aspects of an individual's life are their choices. Rawls suggests that the conception of resources to be deployed in an ideal of equality is primary social goods. These are defined as goods a rational person wants, whatever else he or she wants. Rawls has suggested that the scope of this problem of devising an index of primary goods is lessened by giving some primary goods, the fundamental liberties, priority over the rest. Then, Rawls (1999) elaborates his theory based on mechanisms that place participants in a position of prudence, reinterpreting the state of nature of the Lockean social contract. Thus, it proposes principles of justice that serve to guide the distribution of essential goods among the members of a well-organized society, presenting a theory in which everyone is morally equal, with the right to live according to their life plans. However, it is with the difference principle that means are provided to combat poverty more efficiently that argues that social and economic inequalities must be arranged so that they are to the most significant benefit of the least advantaged members of society, consistent with the just savings principle.

It turns out that there are authors who understand Rawlsian justice as not being egalitarian enough[2], such as Dworkin (2002), and, therefore, propose equality of resources, conceived through a hypothetical auction, in which participants bid to obtain the set of goods whatever they wish. It turns out that in life, everyone is subject to events that may represent a situation of risk or social vulnerability, which requires that some resources be allocated to an insurance system (Dworkin, 2002). At a theoretical level, equality of resources respects moral equality among all members of the community, being more sensitive to individual aspirations (through the auction, in which each person acquires what they want) and using an instrument to balance or reduce situations of deprivation (through insurance, which can be associated with a social security system). However, both theoretical models discuss abstract equality or equal consideration through different means.

According to Kymlicka (2006, p. 111-118), it is common to describe the political landscape placing liberals between libertarians, on the right, who believe in freedom, and Marxists, on the left, who believe in equality, making the Social State compatible with liberalism, by combining freedoms and inequalities of the market economy with various egalitarian social welfare policies. For Sen (1995), every theory defends equality in some field. Marxists would defend greater socioeconomic equality, even if this ends up partially sacrificing freedom (Kymlicka, 2006). Furthermore, some liberals, such as Dworkin (2002) and Rawls (1999) do not present equality in conflict with freedom. According to Dworkin (2002), there is no conflict between freedom and equality. However, if there were, freedom could only be lost under the penalty of asserting that some citizens are more important than others.

Still, the new sociopolitical context enables us to theoretically conceive an era of diversity with Indigenous peoples at the heart of this process. So, even if it is possible to maintain a basic justice structure along the lines defended by Rawls, his difference principle can benefit from reflections made by Kymlicka (2001).

By leaning towards the protection of fundamental rights and the freedom of choice of members of the political (and cultural) community to question and reject cultural traditions, Kymlicka's multiculturalism (2001) is closer to the liberal vision than to communitarianism, which allows discussing political, economic and social arrangements – despite being a succinct and superficial form, it is possible to associate communitarian thought with the ideas of cultural relativism in the conception of human rights. Although Kymlicka understands that the cultural context is fundamental for individual members of society and the group as a social organization, its starting point is individual autonomy (Camati, 2022, p. 3).

Rawls (1999) argues that justice is the first virtue for social institutions, having a normative meaning, having as its scope the guarantee that all citizens can live with dignity, which may require specific state action, such as public education, or even justify some affirmative actions. The first consequence of the normative sense of justice is that political, social and economic institutions can be analysed from this perspective. If they prove to be inadequate, they must be changed. Secondly, the choice of a variable to measure equality will justify the existence of specific political arrangements until this equality is achieved and, as the case may be, maintained. One way of understanding this is selection for income equality: until everyone has the same income, wealth redistribution programs are necessary, and factual conditions may demand that such policies be permanent. Depending on the theory, equality may be civil and political rights before the law (formal equality), more incisive income equality (a version of material equality close to the thinking of analytical Marxism), or equality in human dignity to encompass fundamental civil, political, social, cultural, economic and diffuse rights, within some limits that respect individual responsibility (which would be material equality in the liberal vision).

In short, we are trying to identify what can be distributed and how. By way of illustration, a well-known mechanism is progressive taxation on income, in which people who earn higher salaries suffer higher rates when paying taxes. At the same time, the State is responsible for providing a type of "social insurance", which can be education and public health, a social security system and/or social assistance, among other measures. On the other hand, the State should not bear any misfortunes, but only those recognized as materially fundamental and, therefore, foreseen in the Federal Constitution.

The Constitution formally and materially recognises fundamental rights to life with dignity (Sarlet, 2010). It should be noted that the defence of a set of fundamental rights, to guarantee everyone a dignified life, allows us to affirm that at least some aspects of egalitarian liberalism are compatible with the constitutional text (Cittadino, 2009), even more so when it is noted that the dignity is one of the foundations of Brazil's Federal Constitution (FC) (Article 1º, III, FC), which has as its constitutionally defined fundamental objectives the reduction of social inequalities (Article 3º, III, FC) and the promotion of the good of all, without distinction (Article 3º, IV, FC), in addition to providing that everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security and property (Article 5, FC).

In this way, the formulation of social and distributive programs in Brazil must have as its fulcrum an idea of justice, which takes into account what is best for the entire society and for the individuals that make it up (Brito Filho, 2012). Thus, it is common to demarcate a dividing line between individuals experiencing a situation of deprivation of essential goods and those with access to these goods, considered indispensable for a dignified life (Sen, 1995). Therefore, liberal equality considers people responsible for the decisions they can make as a lifestyle and does not penalize them when they are harmed or deprived of essential goods they cannot choose. This ensures that everyone is guaranteed a minimum level of material well-being that meets their fundamental needs.

Despite the argument that this theory endorses, at some level, the Welfare State, there is no way to say, on an abstract level, what concrete measures are necessary to ensure that all individuals can live with dignity, which may depend on the context, the society or the situation that people are going through. Equal consideration, within liberalism, is the basis for adopting specific treatments for specific groups, recognising that they are in some vulnerable situation. Therefore, implementing some policies favouring specific individuals is a way of redistributing wealth within the community so everyone can live with dignity. In this step, liberal equality demands more than treating equals equally and unequally to the extent of their inequality. To treat everyone as equal, it is essential to recognise the differences between individuals and, in some cases, encourage or discourage the plurality of conceptions of what constitutes a dignified life. Within this school, Kymlicka presents his conception of liberal justice, with differentiated rights for groups.

3. Multicultural Liberalism

Justice guarantees each individual an inviolability that not even the majority of society can violate (Rawls, 1999). This sphere of inviolability is easily understood as a set of fundamental rights recognised in Western democratic Constitutions (Kymlicka, 1995), being beyond the reach of political negotiations. It turns out that recognising only this group of rights may prove insufficient in the face of some deprivations, making it necessary to discuss other ways of protecting individuals, especially those from minority cultural groups, classified as national minorities and ethnic minorities (Kymlicka, 1995). For individuals to have autonomy, they must first be able to choose how to live their life according to their own beliefs, which involves some relationship with the culture of the society in which they are inserted, which provides meaning to life, through social activities, educational, religious and economic (Kymlicka, 1995). It is common for this society to be concentrated in one territory, share a common language and practices, and see its culture institutionalized in schools, media, economy and government.

At this point, there is room to better understand liberal neutrality from a multicultural perspective. It is common to understand liberalism as a thought committed to individual rights, in conjunction with a neutral State, in the sense of not adopting cultural, religious projects or collective objectives, in addition to guaranteeing personal freedom and security to people (Walzer, 1998). However, it is possible to endorse a liberalism that accepts the defence of collective goals, as long as individual rights are guaranteed, as neutrality resides in the creation of equitable conditions for the development of all groups that so desire and not in the total absence of interference (Camati, 2022, p. 7).

A dignified life only materialises within a given context, allowing people to make meaningful choices. The problem for Kymlicka (1995) is that the State ends up promoting a notion of the dominant culture (which can be religious or secular, conservative or liberal, etc.), which will inevitably create benefits for the majority of the population, who share the same ideals and will harm those who do not share, which are generally minorities. Despite being a superficial example, it would be the case of a State that recognizes the Christian religion as official, that can even finance some Christian religious activities, and that has Jews or Muslims living in the same territory - and these will not have access to the same support as Christians will either have to use their resources to maintain their culture.

This situation leads to the adoption of differentiated rights for minority cultural groups (Silva; Oliveira, 2015), which is required by liberal thinking that defends measures to reduce inequalities that are not the fault of the individual (Kymlicka, 1995). It is a similar reasoning to that which postulates that a person with a disability must have more resources to be able to live with dignity (Sen, 1995).

For Silva and Oliveira (2015), Kymlicka distinguishes two types of demands that minority groups can make: internal restrictions and external protections. The first refers to the demands of the group that seeks to use state power to limit its members' basic civil and political freedoms in the name of solidarity, which proves to be incompatible with liberalism. External protections refer to the request to protect the group from the impact of external decisions taken by the majority, which is already consistent with liberalism (Kymlicka, 1995). External restrictions promote equity between groups and can, therefore, be defended, while internal restrictions limit the rights of group members to question and review their traditions, being generally prohibited and, only exceptionally, can be accepted.

Multiculturalism understands that there are multiple systems of cultural meaning that can lead to different ways of seeing the world (Lücke; Kostova; Roth, 2014). At this point, the rights recognised in the Constitution, when interpreted in a more conventional way, cannot solve society's problems or resolve cultural conflicts within the community or between different communities (Kymlicka, 2011). Therefore, it is important to conceive such rights and differentiate minority groups: ethnic minorities and national minorities (Silva; Oliveira, 2015).

Thus, Kymlicka (1995) understands that national minorities are historical communities that occupy territory, share a language, culture, identity and nation, and are involuntarily absorbed by other majority groups with a distinct culture, which also occupies part of the territory. Therefore, they have the right to self-government (political autonomy to administer their territory), polyethnic rights (to preserve their culture) and representation rights (reserving seats in the Legislature for their group). National minorities are those present at the founding of the State, with a previous history of self-government, shared culture and language, and use of institutions to exercise their government.

Self-government rights concern the territorial political autonomy of groups to govern themselves, ensuring the full development of their cultures, without resorting to the right of secession, in which independence from the nation-state is sought. Federalism would be a mechanism to respect national minorities. It is applicable to national minorities and is permanent. A Federative State corresponds to a form of vertical distribution of government responsibilities, between several internal political units (Oliveira, 2016, p. 44). For Riker (1964, p. 11), a State is Federal if it establishes two levels of government over the same territory and people, whether each level has at least one area in which it is autonomous, and whether there is any guarantee of its autonomy within its sphere of activity.

Brazil adopted the Federation system in 1889, with Decree No. 1/1889 and the end of the Empire, foreseen in all Republican Constitutions from then until 1988, which established three levels of government: Union, States/Federal District and municipalities (Article 1, FC/1988). Polyethnic rights are group-specific measures to help them express their particularity in the face of the dominant culture. As cultural differences are not intended to be eliminated, there are permanent rights to integrate different groups through institutions that combat harmful discrimination. Special rights of representation are those arising from the concern about the lack of representation in the political process of issues of diversity and disadvantaged groups. They can ensure a reserve of seats in the legislative body for these members. Ethnic minorities are groups that voluntarily left their land and, when entering another territory, intend to preserve their culture, even though they are integrated into the new society and accepted as members of this new community, having the right to accommodate their cultural preferences and try to preserve them (Kymlicka, 1995).

This theory has limitations, as it does not include Afro-descendants, environmental refugees or fugitives from wars and armed conflicts, minorities that involve group lifestyles, or new social movements, which for Kymlicka (1995) does not impede applying his theory indirectly, insofar as the lack of access to culture for these groups can lead to injustice.

Despite collective fundamental rights not being well accepted in a traditional liberal model (Donnelly, 2003), Kymlicka's reasoning allows for recognising this group of fundamental rights based on the individual right to manifest and express cultural identity. Furthermore, citizenship is emergent in everyday life, reproduced continuously and intimately with the sensations, routines, environments, memories, aspirations, and other embodied qualities that comprise how people understand and inhabit the world (Edensor; Sumartojo, 2018). Conceiving citizenship in simple terms or in a unitary way is ignoring that people can be in different situations, have different conceptions of a dignified life and may require protection because they belong to specific groups.

4. Multicultural Citizenship, Indigenous Peoples and the 1988 Federal Constitution

Within a liberal framework for protecting human beings, sensitive to differences between cultural groups (ethnic or national minorities), the State must ensure some minimum material well-being for individuals and, in some cases, implement external protections for minority groups.

Even so, the poverty rates among indigenous peoples in Brazil are higher than the non-indigenous population (Menezes-Filho et al., 2021). The social and economic inequality of indigenous peoples is rooted in Brazil's colonization history. According to the latest census data carried out in the country, there are about 1.6 million indigenous people, in contrast to a total population of 200 million (IBGE, 2022). However, at all levels of comparison, the illiteracy rate is higher than that of the rest of the population, and there is more incredible difficulty in accessing quality health, education, and housing services. Generally, the Indigenous communities are located in risk areas; most of the Indigenous peoples are in informal work without a formal contract, with difficulties in accessing public health services.

As an example, Assunção et al. (2023) examined the prevalence of cases of vitamin B1 deficiency, which is common in the low-income population, in a situation of food insecurity, based on cases notified to the Ministry of Health, between the years 2013 and 2018. In the end, this study concluded that the indigenous population has a higher incidence of the disease, which confirms their position of deprivation. Based on the previous premises, it is possible to sustain differentiated rights for minority groups; in the case of indigenous peoples, their differences must also be respected with differentiated rights.

It is possible to identify national citizens, temporary immigrants on vacation or work, permanent immigrants, and political or environmental refugees – each having a different relationship with others and the State in terms of rights and duties, individually and collectively.

Citizenship, as a set of rights legitimised by a given political community, when understood by the liberal values of nationalism and state sovereignty, encounters limitations that do not favour Indigenous peoples and end up leading to interpretations that compromise the collective rights of Indigenous peoples (Beltrão; Oliveira, 2010, p. 716).

The social movements, which fought in the 1970s in Latin America for the recognition of the right to cultural difference and diversity, achieved changes in the legal system of several South American countries, including the constitutional provision of rights for indigenous peoples. Some international instruments have also contributed to this cause, such as the International Labor Organization Convention 169 and the 2007 International Declaration on the Rights of Indigenous Peoples.

In this way, several Latin American countries have promulgated or modified their Constitutions, inserting rights in favour of Indigenous peoples, including Brazil, with the 1988 Charter. Among the rights of Indigenous peoples are:

- Bilingual and intercultural education at the elementary school level for Indigenous peoples (Article 210, §2, FC/88);
- Protection of manifestations of Indigenous cultures (Article 215, §1°, FC/88);
- Recognition of Indigenous peoples' social organisation, customs, languages and original rights over traditionally occupied lands (Article 231, FC/88);
- Full civil capacity and individual and collective active legitimacy to take legal action. (Article 232, FC/88).

It turns out that these constitutional rights coexist with certain restrictions:

- Portuguese language as an official language (Article 13, FC/88);
- Private competence of the Union to legislate on Indigenous populations (Article 22, XIV, FC/88);
- Exclusive competence of the National Congress to authorise, on Indigenous lands, the exploration and use of water resources and the research and mining of mineral wealth (Article 49, XVI, FC/88)
- Competence of the Public Ministry to judicially defend the rights and interests of indigenous populations (Article 129, V, FC/88).

When observing this situation, on the one hand, there are advances that guarantee education and the protection of indigenous culture and social organisation, which can be characterised as external protections and poly-ethnic rights. On the other hand, it is possible to question what level of citizenship is intended with the provision of certain restrictions, such as the non-recognition of indigenous language(s) as an official language, the exclusive attribution to the Union to legislate on Indigenous populations, the power of Congress to authorise the exploitation of wealth in Indigenous lands and the attribution to another body for the judicial defence of their interests. For us recognising the identity of minority groups involves accepting that there is more than one nation within the state (Fragoso. 2014), which is one of Kymlicka's arguments (1995).

Firstly, language is one of the most basic means of protecting/violating a culture, as it is the very possibility of communicating and attributing meaning to the world (Kymlicka, 1995). Next, there is no guarantee of self-government, which could occur at some intermediate level of the Federation (such as a type of local government) or even the guarantee of representation rights in any sphere of Government. The attribution of the defence of Indigenous interests to the Public Ministry translates into the idea that these people need special protection or that they cannot choose who represents them in court – without ignoring that the actions of the Public Ministry can meet the interests of Indigenous peoples and that this body is equipped with infrastructure that could very well reinforce Indigenous rights.

In other words, based on multicultural citizenship, it is viable to question the absence of other instruments to protect indigenous peoples, which in the current situation could even be interpreted as unconstitutional. However, in fact, they would bring with them the potential to recognize different citizenship, with individual and collective rights distinct from those attributed to other citizens, for whom the State has the duty to ensure a basic level of well-being. Therefore, differentiated rights do not imply the primacy of the community before the individual in a liberal framework.

Based on the theoretical framework, three questions arise:

1. Wouldn't it be possible to recognize the indigenous language (although there are different versions) as an official language, just as other countries have more than one official language?
This would lead to broader measures than just teaching Indigenous people their original language, and it could take time for other people to adapt to learning. However, it is not impossible, as it is known that there are countries that coexist with more than one language.

2. It would not be possible to conceive some system of Federation which respects the current general contours (Union/States and Federal District/Municipalities), attributing specific competencies to an indigenous Government through the sharing of certain responsibilities that today belong to other spheres of government?
There does no impede conceiving an Indigenous territory with the competence to administer and legislate over its space, respecting general norms; when it is concurrent competence or when it is exclusive competence, it would have full powers to rule on the matter. This would allow the adoption of some judicial structure to apply its laws and promote the defence of its interests.

3. Finally, could the recognition of some difficulties legitimise the adoption of a system for reserving seats in the National Congress?
Considering that indigenous people are legitimate citizens who have their political agenda, political representation could give a voice to its members and could be adopted in other spheres, such as at the state level, in addition to permeating other bodies, such as the higher courts. New philosophical provocations have emerged from recent events, whether the Arab Spring, Occupy Wall Street movements, or technological advances in communication, which have pointed to questions about traditional notions of political representation (Farias Júnior, 2021).

The evolution of constitutionalism in Latin America imposes new legal rights for indigenous peoples, marked by multiculturalism and interculturally. However, there are contradictions and paradoxes when we think about the enforcement of these rights. For instance, in Brazil, there is a timeframe thesis (called "marco temporal") created by the Supreme Court in the 2009 "Raposa Serra do Sol" Case that prevents the guarantee of the right to land of indigenous peoples who were not living there on the date of the 1988 Constitution enactment.

Therefore, when indigenous peoples are dispossessed of their lands, other aspects of their way of life are affected, such as access to cultural practices related to their territory and access to food and water. Consequently, respecting this relationship between territory and culture allows us to design public policies and actions that can combat poverty specific to indigenous peoples.

Then, intergroup justice requires that members of better-off groups grant rights to groups that are at a disadvantage (Fragoso, 2014). If we consider the role of socio-historical structures (like basic institutions) as the macro sources of deprivation and systematically affect certain groups and that poverty is not only about income but also plural sources of deprivation, such as those related to health, literacy, or having access to shelter (Fragoso, 2024), there are institutions that need change.

Justice would demand the recognition of targeted actions, such as exemption compliance with certain legal norms for cultural reasons, such as a bias related to the context of local diversity (Kymlicka, 1995). These measures are consistent with the external protections, which guard sense with the relationships established between the groups (inter-group); that is, the ethnic group can safeguard its existence and their identity, limiting the impact of the decisions made by society (Kymlicka, 1995).

This does not deny that implementing the theory may be difficult to visualize or require several modifications within the Constitution. However, an analogy with the thinking of Sen (1995) is appropriate, which focuses on reducing injustice and inequality, ensuring that everyone can live with dignity, to the detriment of presenting a theoretical model with a perfect, fair and utopian society. Moreover, while there is no consensus in societies about what is fair, it is possible to think about inequality and how to reduce it.

This effort extends the Rawlsian liberalism strand by equipping it with culturally appropriate tools. Existing theories sometimes fail to distinguish some levels of analysis, where it is essential to differentiate an ideal theory (which on an abstract level would be how a just society would work) from the second-best prescription (what justice requires here today) and the empirical description (what people or groups are currently demanding).

However, why keep this discussion within a resource liberalism approach? Although it is not the focus of this work, it is possible to understand that this theoretical model offers advantages for discussing the situation of people in different social positions without giving up the primary social goods (Pogge, 2002).

Recognising the difficulty of applying the theory in its entirety at once, or even the impossibility of implementing all of its theoretical aspects slowly, should not be confused with the possibility of implementing some aspects of the author's thought, progressive implementation or even recognition of current demands. The 1988 Federal Constitution can be changed through Amendments, which already make it possible to adjust its text. In a way, there is some compatibility between the Greater Law and part of the principles of the theory of multicultural citizenship. It is up to legal scientists to reflect on ways to harmonise conflicting positions in search of a better future for all so that moral equality is recognised and does not cancel diversity and the differences between people.

5. Conclusion

This paper addressed the citizenship of indigenous peoples from the perspective of liberal multicultural justice theory. The combination of guaranteeing individual rights with collective rights allows us to understand ways of protecting the culture of Indigenous peoples, allowing them to enjoy their rights and live in a dignified manner.

By placing the debate in a broader context, it is not argued that there is a kind of revolution, nor is it advocating the adoption of radical stances, but rather that, based on an abstract theoretical model, it is viable to discuss current political, social and economic arrangements to understand what justice requires today and now, as well as how to accommodate new concerns.

It is essential to differentiate the ideal theoretical model from the second-best solution, which can progressively point out ways to reach the ideal situation. Thus, new questions are raised, and new hypotheses are possible within the Brazilian legal system, which must be duly tested in favour of a fair and supportive society, theoretically and in practice. Future research would be an interesting opportunity to collect primary data from indigenous groups, which could contribute even more to the study of this topic.

Notes

1. There is no central core for communitarian theses, although they discuss some themes, such as ethnic-cultural diversity, which extends to indigenous peoples. There isn't a big debate over prohibitions against slavery, genocide, murder, torture, etc. There's, however, a grey area of debate that includes women's rights, social and economic rights, and the rights of Indigenous peoples. So, communitarianism has to deal with moral relativism, which is problematic to change the *status quo*, in which there are human rights violations perpetrated against minorities, such as indigenous people. See Fraser & Honneth (2004). *Redistribution or Recognition: A Political-Philosophical Exchange.*
2. Amartya Sen's egalitarianism also criticises Rawlsian resources for focusing on fair shares of resources. Since all people vary in their personal traits and other features of their circumstances to determine what each one can do with a given resource share, what we can do with our resources will also vary and affect our real freedom. The capability approach offers some insights into ethnic-cultural diversity but is quite limited on that matter, which doesn't justify its application. For more on the capability approach, see Sen (1995). *Inequality reexamined*. For a critical examination of capability approach limits, see Pogge (2002). *Can the Capability Approach Be Justified?*

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