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Criminal Justice Responses to the Illegal Trade in Timber in Vietnam





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The information contained in this report has been sourced from existing literature, interviews with Government Officials and reports provided by national authorities of the Government of Viet Nam.

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INTRODUCTION

A third of South East Asia is covered by forests and Asia as a whole accounts for 18 per cent of total global forested areas.¹ This substantial resource has attracted considerable attention from national and international institutions, civil society and analysts, all concerned by the rate at which the forest is legally and illegally felled. Most discussions have focused on these threats from an ecological standpoint while, until recently, less attention has been given to assessing this depletion as a result of criminal activity. There is however growing evidence that sophisticated criminal operations are contributing to a significant degree to forest exploitation. As more laws and regulatory frameworks are applied to manage the remaining forests in a sustainable way, and in the context of the on-going demand for timber, this is a challenge which is likely to grow rather than diminish.

The objective of this study therefore is to determine what role criminal justice system in Viet Nam is playing in the struggle against the illegal trade in timber. It is based on a series of field visits to the country², a review of the available primary and secondary data, as well as interviews with key interlocutors. Interviews were mainly conducted with key players of the criminal justice system such as prosecutors, police, customs and environment/forestry officials involved in law enforcement. Whenever possible interviews were conducted at the level of officers in charge of investigations. In parallel, interviews were conducted with representatives of International Organizations and Civil Society.

The results of the study were presented to the Government of Viet Nam during the workshop *Good Governance and the threats of Transnational Organized Crime in the forestry sector*, organized by UNODC in Hanoi on 14 October 2013.

This report is primarily concerned with the illicit exploitation of timber within forest areas and its movement and then trafficking across borders for profit. These activities often exist in the grey area between clandestine and legitimate business activities. For the purposes of this report then the broad term “illegal timber trade” will be used to refer to the illicit movements (often transboundary) of illegal and quasi-legal timber and wood products. When used in the report, the term “forest crime” refers to a broader set of criminal activities against flora and fauna in forest areas. In this formulation, the illegal trade in timber is a subset of forest crime. For the purpose of this study no specific analysis has been conducted to identify a common and internationally acceptable notion of “illegal timber”. This study has simply analyzed the framework of responses to crime as defined by national laws.

The political commitment to use criminal justice resources to target the illegal exploitation and trade in timber is one of the starting points of the country analysis. The criminal justice

¹ Food and Agriculture Organisation, *State of the World's Forests 2011*, [accessed online 29th June 2012], <http://www.fao.org/docrep/013/i2000e/i2000e00.htm>

² Conducted in June 2012. UNODC is grateful for the openness in which the discussions were held with government and criminal justice officials.

system deals with multiple crimes and face considerable public and political pressure on a range of issues. Prioritising interventions is in practice the mechanism that criminal justice actors use to meet large demands with limited resources. The issue of political will is of great relevance too given on-going accusations of level corruption and the protection of illicit logging by those, including political leaders and senior officials, who profit from it.

While criminal justice systems are designed in theory to respond to all crimes, the purpose of this report is to map out as far as possible the processes in which forest crimes are detected, investigated and prosecuted – and by whom. The latter question is critical: the crime of timber exploitation and trafficking falls in the purview of multiple departments and effective coordination between them is crucial for success. Examining the different inter-linkages between the agencies involved, the report aims at stimulating a wider debate as to how the system may be assisted by external actors. The recommendations of the report are aimed at national policy makers, but also at generating a wider discussion as to how criminal justice interventions could play a more effective role in curbing the illegal exploitation and trafficking of timber.

The opening section of the report introduces briefly the extent of the illicit timber trade in South East Asia and some of the challenges that have been associated with controlling it. It then provides a short overview of the key issues and mechanisms through which the criminal justice system could play a more important role in the response to the illicit timber trade. The main body of the report is constituted by the the country study. This is followed by a series of concluding recommendations.

The illegal timber trade in South East Asia

Several factors impact on the rapid rate of wood consumption in the South East Asia region. China, India and several other emerging economies, as well as established U.S., European and Japanese markets, are key importer countries fuelling demand for wood goods. The availability and utility of timber means the majority of consumers are unaware of the practices behind illicitly sourced wood goods. The illegal timber trade is driven by the same factor that drives all illicit economies – profit. As timber does not share characteristics akin to luxury commodities, wood goods are not generally conceived to be prohibited items. In fact, rare species and breeds tend to dominate illicit luxury goods markets, although the rarer species of timber account for a small percentage of traded timber in the region.³

Bordering the Greater Mekong Sub-region, China's importing, processing and re-exporting role in the trade is of great significance when assessing the cross border trafficking of timber. As the developing world becomes more prosperous, life expectancy increases. Two of the most significant wood goods consumer countries, China and India, are also the

³ Vanda Felbab-Brown, *Not as Easy as Falling Off a Log: The Illegal Logging Trade in the Asia-Pacific Region and Possible Mitigation Strategies*, Brookings Institution, Working Paper 5, 2011.

world's most populated countries.⁴ On the Asian continent alone, the population is expected to increase by 25 per cent, reaching 5.2 billion by 2052.⁵ In the context of declining supply and pressures for greater regulation, the demand for timber from growing economies with expanding populations will continue to provide space for the illicit trade. That is, in the absence of any effective means to offer a disincentive to those involved. As Figure 1 illustrates, many countries East Asia, South East Asia and the Pacific have all suffered substantial forest area depletion during 2000-2010. These countries are vulnerable if weak law enforcement and lack of international judicial cooperation remain.

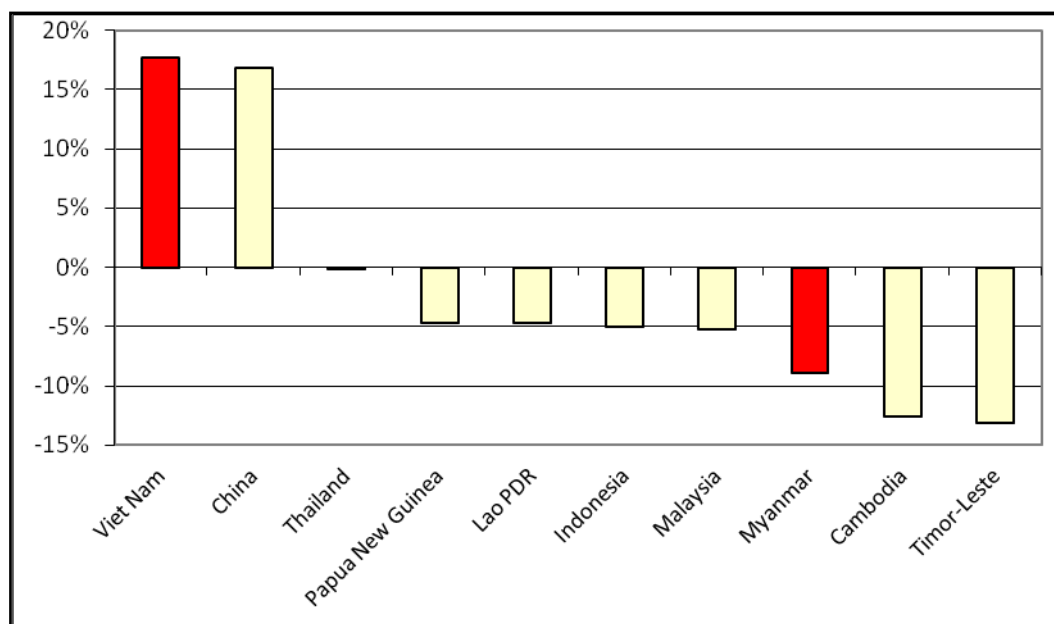


Figure 1: Share of forest changes across selected countries over 2000-2010 (FAO, 2010)

Within the Greater Mekong Sub region (GMS), Cambodia, Myanmar and Lao PDR are particularly vulnerable to increased illegal timber activity to meet growing demand.

Figure 1 also demonstrates the dramatic degree to which reforestation has taken place in Viet Nam and China. The latter has planted around 23m hectares of trees over 2000-2010 (FAO, 2010) which is more than the combined loss in all countries of the GMS. Yet reforestation does not decrease the pressure on law enforcement, most particularly in the exploitation of rare and protected woods in the remaining natural forests or in the cross-border movements of illegal timber coming from neighbouring countries. This is a key issue in each of the countries studied. While Thailand, for example, has a much lower rate of deforestation than other countries in the region, law enforcement officials are hard pressed to respond to sophisticated criminal operations targeting one rare species, rosewood.

⁴ United Nations Department of Economic and Social Affairs, "World Population Prospects: 2010 Revision", [accessed 9th July 2012] <http://esa.un.org/unpd/wpp/Analytical-Figures/htm/fig_11.htm>

⁵ United Nations Department of Economic and Social Affairs, "World Population Prospects: 2010 Revision", [accessed 9th July] <http://esa.un.org/unpd/wpp/Analytical-Figures/htm/fig_2.htm>

The exploitation and trafficking of timber has all the characteristics of other highly profitable criminal markets. This includes a high level of criminal organisation and their operation in flexible networks which easily span borders. Criminal operations of this sort, however, cannot operate without facilitation. The most prominent means of achieving this is through buying protection or the use of violence⁶, both classic hallmarks of organised crime.

In the case of the timber trade in South East Asia there have long been allegations from civil society, environmental activities and international organisations that corrupt practices grease the wheels. Complicity of high-ranking political and military personal facilitates large scale logging in parts of the Greater Mekong Sub-region. Furthermore, corruption can occur in source, producer and consumer countries. Little headway has been made in tackling those who ultimately profit from illegal logging and the illicit timber trade. Criminal justice responses have predominantly focused on low-level criminals and loggers. If the capacity of the criminal justice system can be enhanced to effectively handle the illegal timber trade and if there is political will, the sophisticated and resourceful “big fish” (to use a term that was widely used in interviews) behind forestry crimes can be brought to justice.

Criminal justice priorities to respond to illegal timber trade

The resort to criminal justice measures in response to forest crime is relatively recent. The focus has been on economic and regulatory measures, such as trade restrictions and certification, to control and reduce timber exploitation. The shift to thinking how criminal justice tools can be used and designed to be fit for purpose to counter crime in the forestry sector is a natural next step. As national regulatory efforts have solidified and forest resources have continued to shrink, the obvious requirement is to use those state institutions with the powers and capacity of enforcement.

Two recent publications have pooled together the available experience and lessons learned in tackling crime in the forest sector. The World Bank’s *Justice for Forests: Improving Criminal Justice Efforts to Combat Illegal Logging* has been a key marker in the debate.⁷ A consortium of organisations, including CITES, INTERPOL, the World Trade Organization, the World Bank and the United Nations Office on Drugs and Crime, which make up the International Consortium on Combatting Wildlife Crime, have also developed and recently published a *Wildlife and Forest Crime Analytic Toolkit*.⁸

⁶ Violence has long been a feature of the timber trade. In a well-publicised recent example in early 2012, a well-known activist Chut Wutty, Director of the Cambodia’s National Resources Protection Group, was shot dead in a confrontation over photographic evidence documenting illegal timber trade activities.

⁷ Marilyne Pereira Goncalves, Melissa Panjer, Theodore S. Greenberg and William B. Magrath, *Justice for Forests: Improving Criminal Justice Efforts to Combat Illegal Logging*, The World Bank, Washington DC, 2012.

⁸ International Consortium on Combatting Wildlife Crime, [*Wildlife and Forest Crime Analytic Toolkit*](#), United Nations, New York, 2012.

As an introduction to the discussion which follows, and drawing on the conclusions of both *Justice for Forests* and the *Wildlife and Forest Crime Analytic Toolkit*, a number of initial points and responses to forest crime should be noted when considering each individual country review. They include:

- **Making justice a priority:** The importance of prioritising criminal justice responses to the issue of forest crime. As in other crimes, particularly in the economic sector, with a complex set of responsibilities shared by many players, there is a danger of the effective investigation and prosecution of forest crime “falling through the cracks” between organisations.
- **Ensuring real cooperation between agencies:** Cooperation amongst different agencies is essential to be able to achieve success in responding to these crimes. This is required not only at a policy level to set national priorities and design a common response, but also at operational level in the form, for example, of joint investigative task teams. What is critically important is to develop an overarching national strategy for criminal justice responses where the role of each actor is clearly articulated. “Cooperation” is a much abused word in the criminal justice sector; it is always emphasised as essential and often not practiced.
- **Defining a clear set of crimes:** Providing a clear legal framework to investigate and prosecute forest crimes is essential. A number of different pieces of legislation may apply and it may be difficult for investigators and prosecutors who do not work closely on the issue to make choices as to what offences should in fact be prosecuted. A common template outlining the specific charges which can be brought against suspects is indispensable. This should include those crimes that may on the face of it appear to have little to do with the environment but which may be easier to prove and which are dealt with relatively regularly by the criminal justice system (for example, customs, tax or immigration offences).
- **Labelling forest crime as organised crime:** Recognise that many forest crimes, including the exploitation and trafficking of timber, require a high level of organisation to achieve and retain significant profits. Those who perpetrate them may use forms of protection (like corruption or violence) to ensure their success. By definition then, these crimes can be classified as organised crime. Political leaders should treat them as such and say so publicly. Such crimes will require a sophisticated response from state law enforcement institutions.
- **Acting symbolically:** When a form of crime may be so wide spread that it is difficult to prosecute all cases, the importance of “symbolic prosecutions” must be borne in mind. A limited number of high profile prosecutions which are thoroughly investigated and well prosecuted send a powerful message to everyone engaged in similar forms of criminal activity. This is a much better approach than initiating numerous investigations and prosecutions which are unsuccessful. Criminal justice resources need to be harnessed to deliver a clear message.

- **Moving from reactive to proactive:** As in all forms of organised crime the initial response is often to try and tackle the problem by investigating the smaller and more visible offences at the bottom of the pyramid. The result is often that the criminal justice system becomes blocked with small scale investigations and prosecutions as a reaction. What is necessary in contrast is a more proactive strategy which targets the criminal networks higher up the pyramid of control. These are also the people who inevitably profit the most.
- **Building coalitions of support:** As part of the overall strategy it is important to build a domestic coalition with actors outside of the government and the criminal justice system. This includes civil society groups working on forest crimes, the media and community groups. Investigation and prosecutions, particularly of high level suspects, will need support, guidance, information and expertise from these groups.
- **Measuring the response:** Given that forestry crime may involve prosecutions under a variety of offences and may be recorded differently by different institutions within the justice system and outside of it, it is often extremely difficult to measure what law enforcement responses are underway and how effective they are. What is required is to develop a common set of approaches to data collection, analysis and presentation so that different agencies contribute to and use the same data set in order to measure progress.
- **Targeting the profits:** The most vulnerable place to attack criminal networks is their profits. Using money laundering and asset recovery legislation opens the way for “following the money” and if successful, greatly reduces the profit incentives for engaging in the crime in the first place. Amongst others, this means ensuring that forestry crime is listed or accepted as a predicate offence for money laundering.
- **Strengthening controls procedures at the border:** When preventive measures have failed to avoid illegal logging, border check-points (mainly land-crossings but also river and sea-ports) become crucial to break the link between supply and demand of illegal timber. Multi-agency and cross-border cooperation is crucial not only for the effective interception of timber smuggling, but also for the gathering of intelligence that can trigger the investigation of high-profile offenders.
- **Establishing networks to fight networks:** International cooperation on legal matters in all cases of trans-boundary movement of illegal goods must be a priority. Agreements must be forged with neighbouring countries, those with which offenders or networks may have strong links, and those who are the final market for the illicit goods. In some cases this may not be easy to achieve, but unless there is cooperation between different national criminal justice systems – in the form of Mutual Legal Assistance, Extradition, intelligence-sharing, controlled deliveries, etc. – it may not be possible to target those who control and benefit from illegal trafficking networks which span several countries.

VIET NAM

Forestry resources and the illegal timber trade

As much as 60 per cent of Vietnamese primary forest was destroyed during the Viet Nam war.⁹ From 1998 to 2003, legal logging fell from three million cubic metres to three hundred thousand cubic metres, a 90 per cent reduction.¹⁰ In contrast to the continuation of forest depletion in Myanmar and unchanging forest area in Thailand, Viet Nam presents an alternative story. According to FAO data, the Vietnamese forested area has increased by 17.7 per cent over the ten year period from 2000 to 2010.¹¹ This is largely due to government initiatives to reforest. FAO data from 2005 indicates Viet Nam to be the sixth largest contributor to reforestation.¹² What remains a challenge for Viet Nam is to protect the country's remaining natural forests and halt the importation of illegal timber from neighbouring countries.

Viet Nam's role in the timber chain process is as a producer of processed and finished wood goods, in particular outdoor furniture goods. The furniture trade is a rapidly expanding market; the Vietnamese furniture market grew approximately 25 per cent from 2009 to 2010.¹³ Vietnam one of the world's top exporting countries for furniture, at a value of \$3 billion, this equates to 2.4 per cent of global share. In 2010, Vietnamese timber exports equalled \$2.1 billion. Data from UN Comtrade also shows that Viet Nam is one of the top exporting economies of wood in chips and wood waste, at an annual value of \$299 million and 5.9 per cent of the total world trade.¹⁴

Due to the Vietnamese commercial logging ban, timber is imported from the neighbouring countries, mainly Cambodia, Lao PDR and Myanmar, but also Indonesia, Malaysia, Africa and South America. What is not imported (in the form of logs or semi-processed wood-based products) is harvested from domestic plantations. Raw timber is imported both by sea and land. Out-dated information suggested that 70% of the timber supplying the wood-processing industry in Viet Nam was imported (either as logs or semi-processed products). Yet, this information has been disputed within the Government and no accurate data is currently available. Nonetheless the high dependence on imports of this industry is clear.

The U.S. is the most significant destination for wood-based goods exported from Viet Nam, followed by the EU as the second largest importer, and Japan as the third.¹⁵

⁹ Felbab-Brown, *Falling Off a Log*, p. 30.

¹⁰ Felbab-Brown, *Falling off a log*, p. 30.

¹¹ FAO 2010, *Global Forest Resources Assessment: 2010*, FAO Forestry Paper 163, Rome.

¹² FAO 2010, p. 98.

¹³ UN Comtrade, 'Furniture and parts thereof; stuffed furnishings', 2010 (accessed online 23 July 2012)

¹⁴ UN Comtrade, 'Wood in chips or particles and wood waste', 2010 (accessed online 23 July 2012)

¹⁵ UNODC TOCTA. Annex 1: Formal trade in wood-based products (2009)

Competent law enforcement authorities

Within the broad criminal justice sector this study analyzed a number of entities that are responsible for responding to the illicit trade in timber. These are:

- Forest Protection Department, VNFOREST, Ministry of Agriculture and Rural Development;
- Ministry of Public Security;
- Customs; and,
- The Supreme People's Procuracy.

Forest Protection Department, VNFOREST, Ministry of Agriculture and Rural Development

The Forest Protection Department is the lead agency in Viet Nam concerned with countering the illegal trade in timber. The Department counts approximately 10,000 rangers that are responsible for patrolling, monitoring and initiating investigations related to forestry offences. Forest rangers have been involved in several violent exchanges with illegal loggers and timber smugglers. Just before the mission to Viet Nam a Forest Protection Officer was killed when chasing illegal loggers.

The role of the Forest Protection Department in investigations is prescribed by regulation. There are three options available to forestry protection officials:

- An administrative action for minor offences, most commonly the levying of a fine.
- In more serious cases, the Forest Protection Department gathers the relevant evidence and conducts interviews and the investigation as a whole. If the case can be solved within a period of seven days then the file is transferred directly to the office of the Supreme People's Procuracy.
- If the case cannot be solved within the seven day period or is regarded by forestry officials involved to be of a more serious or organised nature, than the Inspectorate Police is requested to take over the investigations. In such cases forestry protection officials will continue to support the investigation by, for example, accompanying police officials to the location of the crime and assist in locating witnesses.

It is unclear how strictly the seven day rule is in fact applied and whether an extension can be applied. VNFOREST officials indicate that prosecutors often return the file for further investigation or additional information collection by forestry protection officers.

Importantly, a 2006 decree (n. 8) transferred the responsibility for the Forest Protection Department from the Provincial People's Committees directly to the Departments of Agriculture and Rural Development in cooperation with Ministry of Public Security and Ministry of National Defence. The decree stipulated that Forest Protection Department officials have the power to stop and search vehicles if there are grounds for believing that

illegal timber or wildlife is being transported. Forest Rangers can also confiscate goods that they suspect to be illegal, as evidence for the subsequent investigation made by the Police. Yet, rangers have no authority to detain for more than 48 hours, arrest or use force. In addition, the decree provides the authority to the Forest Protection Department itself to engage in internal investigations where forest staff are involved in the perpetration of violations. The Forest Protection Department mounts thousands of checkpoints on roads throughout Viet Nam.

Senior forestry protection officials indicate that the department deals with thousands of minor administrative offences. In these cases the nature of the offence and the evidence to prove it are generally self-explanatory. The challenge is in more complex cases where rangers may not always have the training and skills to collect and present evidence to support a prosecution. The Forestry Protection Department appears to lack basic tools for evidence collection and preservation.

Ministry of Public Security¹⁶

Since 2006, the Ministry of Public Security has a special Department for Prevention of Environmental Crime (commonly called Environmental Police) comprising 100 staff. The Department of Environmental Police is responsible for the enforcement of national policies aiming at preventing violations of the Laws on Forest Protection and Development, Environmental Protection, and Biodiversity. The powers given to the Environmental Police are restricted to the mere monitoring of the compliance with the laws within its 13 duties and the undertaking of initial investigations for forestry crimes. Through an ordinance in 2009 the Environmental Police has been granted the power to conduct full investigations for minor cases and therefore to refer the case to Procuracy within 7 days. Just like the officials for the Forest Protection department, the staff of the Environmental Police can stop suspect offenders and seize goods, but for any serious offence the case must be handed over to the investigative police.

It is not entirely clear how the Environmental Police and the Forest Protection Department handle the clear overlap between their mandates. So far it seems that Environmental Protection has focused large part of its limited resources towards crimes related to illegal wildlife trade and to pollution offences, but the conflict of jurisdiction over wood-based crimes certainly needs more clarification.

The General Department of Police (Inspectorate Police) is responsible for investigating serious crimes as stipulated in the relevant articles of the Penal Code. Cases are referred to the Police generally from the Forest Protection Department, Environmental Police and Customs, who are responsible for the initiation of the case. The General Department of

¹⁶ During the visit to Viet Nam the assessing team could not meet any representative from the Police Department. As a consequence, the description below is based on desk analysis of existing literature and triangulation with other sources.

Police tends to view the quality of the evidence provided to them by the Forestry Protection Department to be insufficient for effective prosecutions.¹⁷

The Inspectorate Police also indicate that investigative time limits imposed in Article 119 of the Criminal Procedure Code provide a restrictive framework for their work, particular in the case of more serious cases. The time limit for investigating ordinary criminal cases cannot exceed two months. In the case of serious offences the period is extended to four months. For less serious offences this can be extended once for two months, for very serious offences it may be extended twice, for a period of no more than four months for each application.

Customs, Ministry of Finance

The Customs department has a specific unit dedicated to anti-smuggling operations. Senior customs officials from this unit indicate that since logs and timber from national forests in Viet Nam are prohibited from being exported, they focus as much attention as possible given their resources on these cases. At the same time, Customs officials indicate that if the paperwork (including certification and customs declarations) is correct then the timber is cleared for import and export. In the cases of imports, most notably from Cambodia, companies and individuals need to show a certificate from the Cambodian Ministry of Commerce which perfectly match the import certificate issued by Vietnamese authorities (VNFOREST). Customs declarations should include information on species, size and weight of the timber being imported.

The Custom Department employs a risk analysis technique, using intelligence to determine which shipments may be linked to criminal activities. These containers are then targeted for further examination and if necessary investigation.

Like their Forest Department Protection counterparts, Customs officers can classify any case into three categories:

- An administrative offence which the Customs manager in question can deal with immediately. This relates to more minor activities but includes such cases as wrongly declared goods.
- If there is evidence of criminal activity the Customs Department may investigate further. In less serious cases that investigation must be completed within 20 days and transferred to the prosecutor for a decision.
- In more serious cases, the Customs Department has a period of seven days to complete the preliminary investigation before handing the investigation to the Investigative Police.

¹⁷ The World Bank, *Socialist Republic of Vietnam: Forest Law Enforcement and Governance*, Washington DC, 2010, p. 31.

Customs Authorities conduct their investigations on wood products based on the Law on Customs Services and indirectly on the 2005 Law on Environmental Protection. During the past two years, many cases (number not identified) of illegal movements of timber have been identified, referred to Procuracy and consequently prosecuted. Yet no information was provided in relation to the number of convictions. Such cases seemed to have become more complex as the identification of the origin of timber is difficult to ascertain. A gross limitation in the recording of wood-related cases is that the current system adopted by Customs does not allow for the breakdown of data/statistics according to the category of timber or wood.

The Supreme People's Procuracy

The Supreme People's Procuracy in Viet Nam plays a significant role both in carrying out the prosecution, but also in directing the investigation. Under Article 37 of the Criminal Procedure Code, prosecutors have a clear leadership and advisory role during the investigation, including:

- Supervising the institution of criminal cases, the supervision of investigative activities and the compilation of cases files by investigative bodies;
- To set the overall requirements for the investigation;
- To summon and interrogate the accused and to take witness statements; and,
- To supervise arrests, custody and temporary detention.

Under Article 109 of the Criminal Procedure Code the prosecutor may cancel the decisions of other bodies, including the police and Forest Protection Department, if they believe the case to be unfounded. Equally, should they believe that a decision not to mount a criminal case is incorrect, the Supreme People's Procuracy can order the charging of a suspect or an investigation as required.

According to the interviewed prosecutors, the vast majority of forest offences prosecuted by this Office are based on violations of the Penal Code and the Circular 19 from 2007.

Interagency cooperation

The Ordinance on Criminal Investigation Organizations (1989 and revised in 2009 stipulates that Border Guards, Customs officers, Forest rangers, Police and Procuracy have the powers to undertake investigation and prosecution of criminal cases in accordance with the national law.

A Joint Ministerial Circular No 19 of March 2007¹⁸ lays out the functions of all of the relevant criminal justice bodies in respect of forest crime and the illicit timber trade. Most notably, the circular 19 identifies the seriousness of a violation based on the volume and value of the goods¹⁹. Interviews with senior officials indicate that there have been strong attempts in the past number of years to improve inter-agency cooperation. A crucial role in relation to forest protection more generally seems to lie with the Ministry of Agriculture and Rural Development, based on the circular 01 issued on 4 January 2012.

Three different authorities/departments are mainly responsible for the initiation of cases, which are the Forest Protection Department, Customs and Environmental Police. For minor offences they can handle investigations and refer to Procuracy within 7 days. For more complex investigations, they gather evidence and statements, which they will handover to the Inspectorate Police.

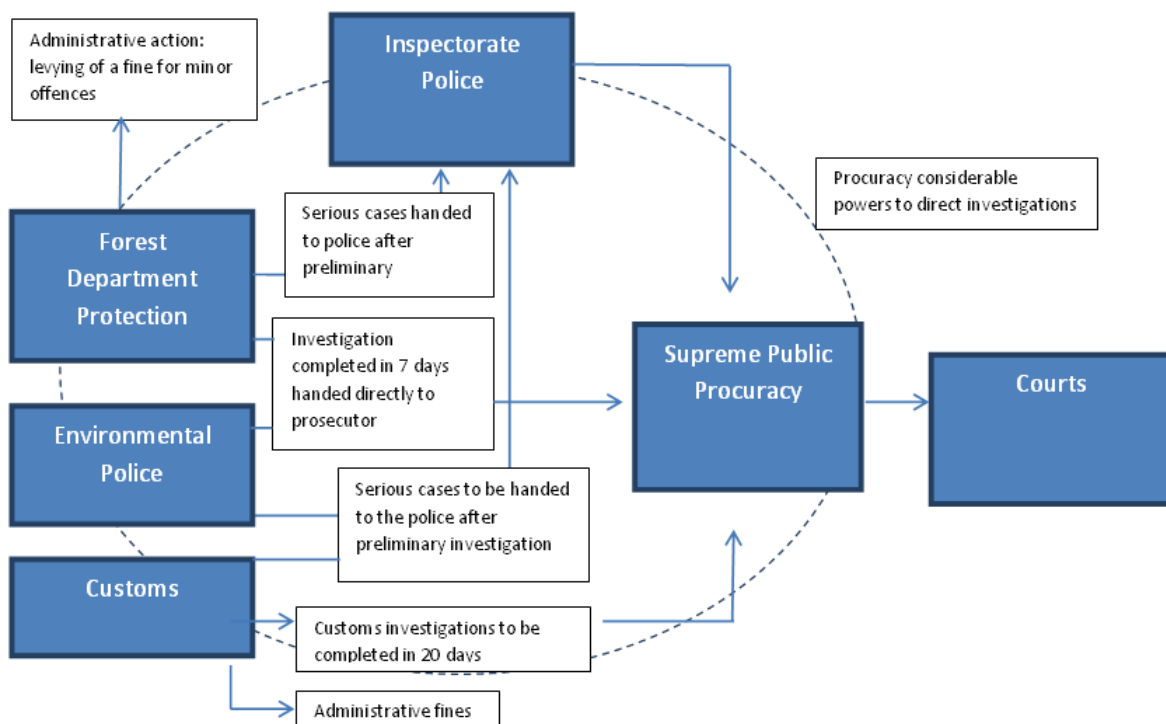


Figure 2: The criminal Justice System and inter-agency functions in cases of illegal timber trade in Viet Nam

No clear operational agreement seems to be in place between Forest Protection Department and Environmental Police. The former has a clear mandate on forest violations, it has a stronger presence on the territory but no authority to suppress criminal activity by arrest or use of force and no training in core policing. The latter has a broader mandate

¹⁸ Significantly, this and other circulars are issued in the name of several state entities: the Ministry of Agriculture and Rural Development, Ministry of Justice, Ministry of People’s Security, People’s Supreme Procuracy, and the People’s Supreme Court

¹⁹ For instance the Circular suggests that violations of the law for an amount of timber larger than 20 cubic meters should be treated a criminal offence as opposed to administrative violation

(beyond the violations related to timber and wood products), a closer partnership with Inspectorate Police (both under Ministry of Public Security), the necessary training in core policing, but very limited powers to enforce the law and to offer physical coverage of the territory.

Legal framework for investigation and prosecution

The Forest Protection and Development Law of 2004 provides for the legal framework for the management of forests in Viet Nam. It identifies and defines three categories of forests: production, protection and special use. The Law specifically requires that a number of Ministries collaborate with the Ministry of Agriculture and Rural Development to ensure the effective management of the country's forest resources. These are: the Ministry of Public Security, the National Ministry of Defence and the Ministry of Natural Resources and the Environment.

More stringent provision to identify the prohibited acts against forests (e.g. destruction, exploitations and transport of forest products) is provided by the 2005 Law on Environmental Protection.

Furthermore, the protection of species, ecosystems and genetic resources is regulated by the 2008 Law on Biodiversity.

A number of decrees, decisions, ordinances and circulars issued between 2008 and 2012 have attempted to further clarify the legal framework in terms of responsibility and powers of each respective key institution in the forestry sector.

Unlike the other countries under consideration in this study, offences in the area of forest crime are not contained in specific environmental or related legislation, but within the Penal Code of 1999. The advantage of this approach, senior prosecutors in particular point out, is the list of offences are both clear and situated within a criminal justice framework.

While being extremely useful in presenting a coherent set of offences, the Penal Code does allow for considerable room for interpretation. For example, higher penalties are provided for when forest crime are committed in a "serious or particularly serious" manner.

A series of circulars have been released jointly by the Government departments concerned to clarify the approach that various agencies should take in responding to offences in the forestry sector as listed in the Penal Code. In that sense, Viet Nam has achieved a comparatively clear legal framework to counter the illicit exploitation and trade in timber.

The provisions of the Penal Code regarding crimes in the domain of forest management, forest protection and forest product management are found in Chapter XVI covering "Crimes of Infringing upon the Economic Management Order." Four articles of the Penal Code are applicable:

- Article 175 covers acts in breach of the regulations on forest exploitation and protection. This includes “illegally exploiting forest trees” and “illegally transporting or trading in timber”. Offenders may be subject to a fine of between five million and fifty million dong (\$240-\$2400), non-custodial reform for up to three years, or a prison term of between three months and three years. In serious cases, the offender may be sentenced to between two years and ten years of imprisonment and may also be subject to a fine of between five million dong and twenty million dong (\$240-\$960).
- Article 176 concerns the breach of regulations on forest management. The offences in this section appear to be focussed mainly on the abuse of power by state officials and others who may have the power to illegally assign forests or forest land, illegally permit the transfer of forest land to other uses, or illegally permit the exploitation and or transportation of forest products. The penalty for such offences is a non-custodial sentence for up to three years or a prison term of between six months and three years. It appears from the provisions of the Code that officials would have had first to face disciplinary action internally or have caused serious consequences by the nature of their act or omission for the sentences to apply. Imprisonment is greatly increased, to between two and seven years, if the crime is committed in “and organised manner”, more than once or causing “very serious consequences”. If the consequences are “particularly serious” a sentence of between five and twenty years imprisonment may be applicable. In addition, offenders may also be subject to a ban of between ten million dong and one hundred million dong (\$480 -\$4,800) and a ban from holding certain posts for a period of five years.
- Article 189 focuses on forest destruction, including burning of forests. If such acts cause “serious consequences” or if the offender has already been administratively sanctioned for such acts previously, a fine of between ten million and one hundred million dong (\$480-\$4800) is levied. The level of imprisonment is increased through a two stage measure of the seriousness of the offence. A sentence of between three and ten years is applicable in cases where the crime is committed in an organised manner, where officials who abuse their power are involved, where a large section of the forest is destroyed, where the destroyed plants are rare, or where “very serious consequences” result. A sentence of between seven and fifteen years is applicable when a “particularly vast forest area” is destroyed, where protection or special use forests have been destroyed or where “particularly serious consequences” result. Offenders guilty of an offence under Section 189 may also be banned from practicing certain occupations or jobs for a period of between one and five years.
- Article 240 covers the issue of breaching regulations on the fighting and prevention of fires. In cases where “particularly serious consequences” occur the offender may be sentenced to between seven and twelve years of imprisonment. There is no

distinction made in the nature of the offence if the fire occurs in a forested area or not.

Importantly, Joint Ministerial Circular of March 2007 states that that in the case of the illegal trade of timber across borders that provisions of the Penal Code in relation to smuggling (Article 153) and illegal cross-border transportation of good and/or currencies (Article 154) should be used. A summary of the most relevant provisions of these articles are as follows:

- Article 153 identifies sets of commodities for which “illegal cross border trading” shall be subject to a fine of ten million to one hundred million dong (\$480 to \$4800) or a prison term of between six months and three years. While timber or timber products are not specifically mentioned in the Article there is a catch-all clause prohibiting the trade in “banned goods in great volumes” which would presumably include timber. A series of circumstances provides for a more serious sentencing regime with a three stage test:
 - A sentence of between three and seven years if the crime is committed in an organised manner, is of a “professional nature”, gains large profits, abuses positions or powers, takes advantage of natural calamities, or the goods involved are value at between three hundred and five hundred million dong (\$14,400 to \$24 000).
 - A sentence of between seven and fifteen years if the objects are valued between five hundred million and one billion dong (\$24,400 to \$48,000), are in “great quantity”, they result in very great illicit profits, or cause “very serious consequences”.
 - A sentence of between twelve or twenty years in imprisonment, imprisonment for life, or capital punishment where the objects involved are valued at greater than one billion dong (\$48,000), gain “particularly great illicit profits”, or cause “particularly serious consequences”.
- Article 154 is concerned with the related issue of the illegal cross-border transportation of goods. The provisions are similar to Article 153 and although there is no specific reference to timber or forest products more generally it covers “banned goods [that] are in great quantity.” In such cases a fine of between five and twenty million dong (\$240 to \$960) is applicable, a non-custodial prison sentence for two years or a prison term between three months and two years. If a specific set of circumstances apply the fine is increased to between three million and five million dong (\$140 to \$240) with a sentence of between two and five years of imprisonment. These include: “the banned goods are in great quantity”, there is abuse of power or office, or the crime is committed repeatedly. A sentence of five to

ten years imprisonment is applicable if the goods are value at over five million dong (\$240) or are in a “particularly great quantity”.

Finally, it should be noted that Viet Nam recently ratified the United Nations Convention against Transnational Organized Crime on 8 June 2012. The country does not have specific legislation targeting organised crime thus criminalising membership of an organised crime group, although it can be seen from the various provisions of the Penal Code that the degree of organisation involved in any crime, including the forestry sector, has important implications for the level of sentencing. The current version of the Penal Code makes provision for Organized Crime under Art. 20 (Complicity), which in reality seems to embrace only part of the founding elements of TOC as laid out in the Convention.

Concerning Money Laundering, the Penal Code contains an important provision under Art. 251 with significant implications on anti-corruption (as in Abuse of Power). Yet the focus of relevant legislations/regulations seems to remain on currency control rather than prevention and interdiction of organized crime. Forest crimes are not predicate offences for anti-money laundering.

The impact of law enforcement responses

Measuring the impact of law enforcement activities in Viet Nam is relatively difficult as there is no consolidated data set which is publically available. Nevertheless, officials were helpful in providing an overview of key trends in relation to the various administrative and criminal justice actions and this has been supplemented with other publicly available (although now dated) data. The following is a set of broad conclusions based on the available information:

- The Forestry Protection Department reported that in the past there were some 35-40,000 administrative violations a year in the broad area of forestry protection and management. Due to the efforts of the Department that number has been reduced for the last three years, reaching less then 20,000 cases for 2013. These cases covered all aspects of the Departments mandate and were thus not necessarily specific to the illegal timber trade.
- Administrative violations generally result in fines. It was difficult to determine the extent to which the payment of fines was enforced, but the Forestry Protection Department indicated that this remained a challenge.
- Criminal cases investigated by the Forestry Protection Department for transfer to the procuracy were some 300 cases in 2011 and 108 cases between January and May 2012. Forestry official report that “only a few of such cases end in a conviction” and where they do the convicted person is likely to receive a light sentence. The number of cases transferred from the Forestry Protection Department to the Inspectorate

Police for further action is not publicly available. The Forestry Protection Department, however, estimates that during the period between 2010 and September 2013 about 96,463 violations were dealt with, with only 1,234 of them resulting in criminal proceedings (accounting for 1,3% of the violations).

- The Customs department indicated that “many cases” in the area of illegal timber had been transferred to the Supreme Public Procuracy for prosecution. However, the Department reported that it did not maintain statistics of the success rates for prosecution.
- The office of the Supreme Public Procurator reported that in the first 9 months of 2011 2,353 criminal cases in the broad area environmental and forestry sector were submitted for prosecution. These were a 20 per cent increase in the number of cases brought in the course of 2010. In line with the statistics from the Forestry Protection Department, The Supreme People’s Procuracy reported that an average of 300 criminal proceedings were started each year between 2009 and 2011 accounting for less then 1% of the estimated violations each year.
- The following table combines the data sets available from the Forestry Protection Department and the Supreme People’s Procuracy. It is worth noting that according to the calculations, only 1.16% of the cases raised by Forest Protection Department results in a criminal proceeding and only 15% of the latter results in convictions.

Figure 3: Violations of Forest Protection regulations and resulting criminal proceedings and convictions: combined data from Supreme People’s Procuracy of Viet Nam and Forest Protection Department. Data provided during the workshop *Good Governance and the threats of Transnational Organized Crime in the forestry sector*, organized by UNODC in Hanoi on 14 October 2013

	2009	2010	2011	2012	2013 (Sep)	Total
Violations of forest protection regulations	40,800	33,857	29,551	28,940	19,703	152,851
Cases raised by Forest Protection Department	35,088*	29,117*	25,413*	24,888*	16,944*	131,450
Administrative Proceedings	34,801	28,718	25,147	24,604	16,660	129,930
Criminal Proceedings	287	399	266	284**	284**	1,520
Criminal cases resulting in convictions	43***	46**	46**	46**	46**	227
<i>People Prosecuted</i>	326	214**	214**	214**	214**	1,182

* Estimated amount based on total aggregate figures for the period 2010-2013

** Annual breakdown is calculated as the average from total aggregate data

*** Estimation based on proportions derived from total aggregate values

NB: The data with one or more stars have been calculated by UNODC to fill gaps in the official data sets provided by The Supreme People’s Procuracy of Viet Nam and the Forest Protection Department. Therefore, those figures should not be considered as official data provided by government authorities. Nonetheless, these estimates have been included by UNODC in this table as they represent indicators of possible trends

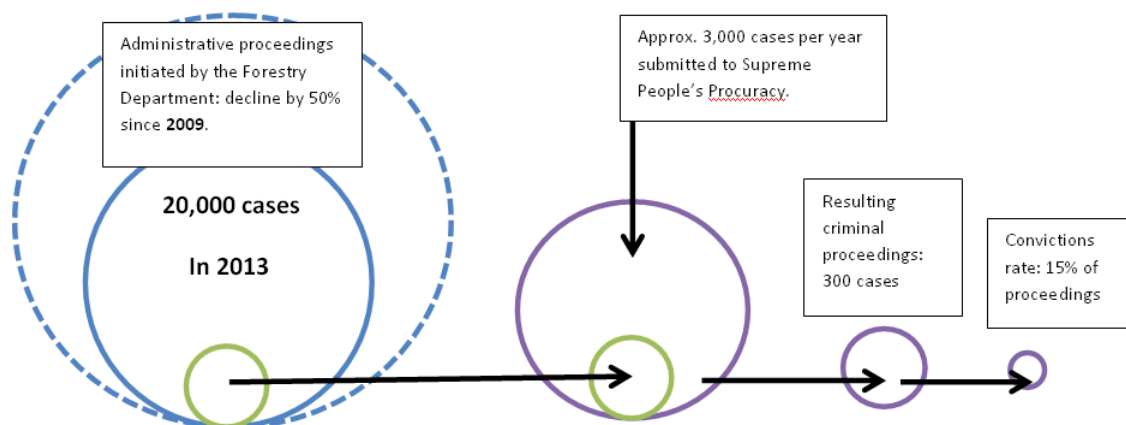


Figure 4. Estimated number of cases of forestry crime processed through the criminal justice system and possible success rate in Viet Nam

Challenges and policy options

Perhaps more than any other country in the region, there is a high level of stated political commitment to counter the illegal timber trade in Viet Nam. Nevertheless, a number of challenges remain. In particular, in discussions with different officials from a variety of departments it was emphasised that the nature of the illicit timber trade is increasingly sophisticated and that it involves wide spread corruption in government departments.

Although there have been some high level prosecutions it is an urgent requirement that investigations are less reactive – i.e. driven by the reporting of individual offences or the investigation of single cases – and more proactive, hence seeking to identify the nature of the illicit commercial networks which are driving the trade.

Criminal cases that are considered to be as serious, very serious or especially serious by the Penal Code and Circular 19 could be investigated by **a special task force comprising members of Police, Customs, VNFOREST and Procuracy**. Such investigations should be based on the provisions of Art. 20 of the Penal Code (Complicity) and make use of investigative techniques to identify not only executors and helpers of the offences, but particularly the organizers and the instigators. If the establishment of a special task force is not feasible, as a bare minimum Police Investigators and Prosecutors should start addressing timber criminal cases through **charges of complicity** as well.

The recent ratification of the UNTOC will require some amendments to national legal framework in order to introduce some provisions of the convention. In this context it is extremely urgent and import **to include forest crimes as predicate offences for money-**

laundering investigations. Furthermore the use of tools of international cooperation on legal matters in the area of Organized Crime and Corruption – such as **extradition and Mutual Legal Assistance** – should be promoted within a new legal framework.

The detection of offences could significantly increase if the **cooperation between Environmental Police and Forest Rangers** was clarified and strengthened. While the law does not make provision for forest rangers to use weapons, it was pointed out that forest protection officials are increasingly involved in violent episodes, without having the necessary training or equipment to handle such incidents. A **re-configuration of the current structure to protect forests** should require either a stronger empowerment of law enforcement jurisdiction for forest rangers or a more serious involvement of Environmental Police and Ministry of National Defence.

The supply of raw material for the wood industry combines exports and domestic production in an unclear proportion. Efforts to curb the illegal movements of timber should involve **both anti-logging measures and border control measures.** As the front end of the struggle against the trade in illegal logging the Forest Protection Department requires much greater support in the area of **investigative training for rangers.** Senior officials indicate that the collection of evidence and the presentation of case files has not been part of the core training of forest rangers. Yet, they are increasingly called upon to perform this function. Officials suggest that even basic investigative skills such as report writing and the preservation of evidence require improvement. Border control measures will require stronger **multi-agency mechanisms at key checkpoints** to support joint operations, information sharing and intelligence gathering.

An important area for future focus is to develop more effective ways in which to **monitor the overall impact of criminal justice responses** on the illicit timber trade in Viet Nam. Currently, as is demonstrated above, it is difficult to determine from the available data the degree to which success is being achieved. One obvious limitation is the fact that Customs Authority do not seem to be able to breakdown statistics of seizures on the basis of timber and wood products. One of the challenges, as in other countries in the region, is that given the different departments involved and the different legal routes for prosecution it is difficult to obtain a consolidated set of criminal justice statistics. It does not seem possible for example to obtain statistics determining the sentence that has been provided in such cases. In Viet Nam in fact doing so may be easier given that the vast majority of prosecutions in the sector take place under one piece of legislation, the Penal Code, and in relation to a relatively limited number of articles. In contrast to other countries in the region there also appears to be reluctance from officials to share those statistics that are available.

CONCLUSION AND RECOMMENDATIONS

Viet Nam experiences a growing awareness of both the extent and damage being wrought by the illegal timber trade. However, this has not yet translated into a coordinated criminal justice response. Illegal Timber Trade displays all the characteristics of organized crime, including illegal cross-border movements, the use of violence and widespread corruption to protect and facilitate activities, and a hierarchical and networked organisation. Yet, in most cases, the illicit trade in timber is not yet viewed as an organized crime, also within the criminal justice system. The focus of investigations is on volume crimes, essentially those that are reported or are discovered by relevant agencies. However, while there are some higher level prosecutions which have been undertaken, they are by far the exception than the rule, and have only targeted middle level players. *In short, the criminal justice system is not being used optimally to counter the illicit timber trade.* It is therefore recommended that:

- Parts of the illegal timber trade in the country should be recognised as organized and sophisticated crime by senior political leaders, politicians and criminal justice officials. Together with other countries in the region which are badly affected by the illegal timber trade, Viet Nam should lobby for it to be included as a priority for policing within the relevant ASEAN forum. There is also the need to increase the awareness about the impact of forestry crimes amongst the local population, providing information about the dangers related to these activities.
- National criminal justice strategies for responding to these sophisticated crimes be developed, with a clear focus on defining the roles of all players, including which agencies will take the lead and be held accountable for performance. The role of policy coordination mechanisms that have been established would be enhanced if these nascent bodies took the lead in the formulation of the strategy.
- Following the recent ratification of the United Nations Convention against Transnational Organised Crime Viet Nam should review whether the country meets all of its obligations. In particular, investigations into the illicit timber trade, as well as other crimes, would benefit from specific laws on organised crime, such as criminalising participation in a criminal group and the use of sophisticated investigative techniques within the framework of the rule of law, as laid down in the Convention. The illicit trade in timber and other forest crimes must also be specifically included within the purview of “serious crime” as defined by the Convention as an offence which receives a sentence equivalent to four years imprisonment or over.
- The legal system still has several loopholes that need to be addressed: clear provisions on which cases fall under criminal proceedings should be given and the sanctions for these crimes strengthened. A reform of the current administrative fines

procedure would also be important: calculating the fines as a percentage of the total value of the seizure (instead of a fixed sum) would provide a better deterrent against smuggling operations.

- The formation of investigative Task Teams, drawing on the expertise of all relevant agencies, with the express purpose of targeting select high level and symbolically important illegal timber trading operations. Such more sophisticated and proactive investigations could begin by targeting middle level players, learning lessons which can then be applied to prosecutions of more prominent figures within the networks.
- Seizures of valuable timber must be followed up by investigations, arrests and prosecutions. Seizures by their nature usually mean that some laws have been broken (timber may have been misdeclared on a customs statement for example). In short, it is a wasted opportunity if available evidence is not used. In addition, analysing all of the available data, particularly from Customs seizures, will provide the beginnings of a picture of the criminal networks involved. A failure to pursue these cases has three negative impacts: it sends a message that the state does not view these cases as a priority and builds a culture of impunity; it wastes an opportunity to follow-up on concrete evidence; and, *it doubles the cost for the environment – timber traffickers who remain at large will seek to replace the wood that they have lost.*
- At lower levels of the system, particularly amongst front line forestry enforcement officials and police, there is a requirement for training and skills development in the area of the illicit timber trade and forest crimes more generally. The same applies in the area of border control, where law enforcement officers need to significantly improve skills and requirements in order to intercept illegal timber movements. This must focus on amongst other aspects on the identification of the different types of wood, the collection and preservation of evidence, interview techniques and appearance in court.
- Data to measure criminal justice responses must be standardised across departments. It is currently impossible to determine with accuracy both the overall extent of the problem and whether progress is being made in countering it. There is a great deal of work to do in determining appropriate statistical measures and in assessing the threat posed by organised crime. The recording of large numbers of small cases does not in any way reflect overall progress, and may well be a measure that the battle is being lost without the key criminal players being affected. A consistent gathering of data and a wide use of tools such as surveys, amongst both law enforcement and local population, would provide a better understanding of the problem together with a picture of the progress made.

- There should be absolutely zero tolerance for corruption within criminal justice and forestry agencies tasked with responding to illegal timber trafficking. Where appropriate specialised units should be vetted and officials on the ground who have been found guilty of corrupt practices after departmental inquiries should no longer be allowed to work in the sector. Given the level of corruption some creative policy options should be considered: the granting of amnesties to those officials who come forward admitting guilt, but implicating those who have provided payments. Crucially too, it is critical to ensure greater independent oversight of those who work manning checkpoints and roadblocks in areas where timber is logged and at relevant border posts. This could include the appointment of civil society monitors for example.
- Greater criminal justice cooperation must be developed in the region on the illicit timber trade. While meetings and coordination agreements are important, nothing forges effective relationships amongst criminal justice actors than cooperation around actual cases. In many ways then, better regional and international judicial cooperation relies not on more meetings amongst officials but on building capacity at home to investigate and prosecute cases. This must be the starting point, bearing in mind that the legal framework for cross-border judicial cooperation must be in place.
- Money laundering and anti-corruption legal regimes within the country is relatively new and has not yet been used to trace and seize the assets acquired from the illegal timber trade. This is a critical tool in the hands of the government. Forest crime must be made a predicate offence for money laundering in a region where the profits derived from these activities may well rival drug trafficking as a source of illicit income.

Criminal justice responses to the illegal exploitation and trade in timber will remain an important challenge for South East Asia. Indeed, it is likely to be a challenge that grows in scale given that a much stronger legal and regulatory regime is now in place to protect the region's timber resources and remaining natural forests. The protection of individual protected species (such as rosewood, teak or yang) which are in short supply and for which there is an external demand must be tackled in a more sophisticated way. Governments must deploy criminal justice resources and prioritise their use if they are serious about combating crimes in the forest sector. In the final analysis, laws and regulations to protect the forest are only as good as their enforcement.

Annexes

Annex I – Report from the Supreme’s People Procuracy of Vietnam

-- UNOFFICIAL TRANSLATION --

INVESTIGATION – PROSECUTING OF ILLEGAL TIMBER TRAFFICKING

Department 1- The Supreme People’s Procuracy of Vietnam (SPP)

I. SUMMARY ON ENVIRONMENTAL CRIME IN GENERAL AND ILLEGAL TIMBER TRAFFICKING DURING THE PAST TIME

Environmental crime is rather complicated in many developing countries, including Vietnam. Depletion of natural resources and serious environmental pollution are consequently having negative impact on human life and nature. Due to the acts of violation of law by humans and their lack of thought, the environment is being harmed. This is no longer a private issue of each country and has become the problem of our planet. The countries are, more than ever, required to cooperate and work together to prevent and fight against this type of crime.

Environmental crime is understood as human action that directly has adverse and harmful impact to the environment, including illegal wildlife trafficking, illegal exploitation and smuggling of forest products. Such actions create and release into the environment ozone depleting substances (ODS). The consequence of this crime is caused by illegal exploitation of natural resources, etc. All of the above acts are in violation of international treaties that are established to limit violations on our planet.

In Vietnam, during the past time, the activities of illegal logging and timber trafficking are happening complicated. It is concerned that these activities are increasingly sophisticated. There are cases where they are highly organized to cope with law enforcement efforts from the authorities.

1. Illegal timber trafficking

According to the statistics, although the number of illegal timber trafficking cases of 2011-2012 was tended to decrease, their nature and severity become serious. With the total timber volume of up to 400m³ that was transported in the 15 carriages, the case of timber trafficking from Binh Dinh, Ninh Thuan and Quang Ngai stations to Tu Son station (Bac Ninh) and Gia Lam (Hanoi) is considered the largest scale ever. Though the case was discovered after more than two months, the authorities could not make any definitive conclusions about the origin of timber carriages as well as the persons involved. Notably, most of the timber included in the above 400m³ timbers are precious and rare timbers, which are in the list of timbers banned from exploitation such as *Aquilaria Agallocha* Roxb, *Dalbergia cochinchinensis* Pierre, *Sindora maritima* Pierre, *Dalbergia Oliverii* Gamble, of which there are approximately 330m³ of timber cut into small square chunks, the remaining of 70m³ were tigs, branches, stems and roots.

In this case, it is noted that although the shipment was carefully checked by the authorities before boarding at all stations, including the station of departure and the owner of the shipment also fully paid the freight to the management unit, i.e. Railway Freight Transport Company - Vietnam Railways Corporation, this unit did not detect the incident. Meanwhile, a number of subjects involved in the incident admitted their forging of documents, bills, vouchers and origins of shipping

timbers for the purpose of illegal timber trafficking. After comparing with the actual volume of timbers, a difference was up to 70-80 %. In particular, most of the timbers were not sealed by the forest protection unit hammer, and when the case was discovered, all the phone numbers listed in the bill could not be reached.

A similar timber trafficking case was also been detected in Huong Khe district, Ha Tinh on 12 December 2011 with a total volume of 44m³. Although the cargo owner, Director of Manh Huy Co., Ltd. (Ha Tinh), sufficiently produced all legal documents, including timber sales contract signed with the Huong Khe Forestry and Services Co., Ltd. (Huong Lam commune , Huong Khe district), the police of Huong Khe district requested to temporarily hold the shipment as they suspected those are illegal timbers (mainly old-time logged timbers) that had been unauthorizedly collected from people.

In addition to the above typical cases, in many other localities, the authorities also discovered and seized a series of illegal timber trafficking with the sophisticated tricks, of which there were a few cases hooking the line of cross-border consumption of timbers and even colluding with some employees of the authorities.

With regard to the tricks of the businesses in smuggling illegal timbers, the businesses have recently made corrupt use of the incentive on exemption from actual goods inspection in order to legalize the timbers of illegal origin, the seized exhibits were rare and valuable timbers. The subjects took advantage of the custom clearance through green channel inspection (exported wood products made of imported materials usually exempted from inspection) to illegally export timbers of Class 1A (prohibited items) that are of questionable origin or imported more than declared, or export not under the right type of timbers as declared in the customs declaration.

Through the cases discovered and seized by the customs authorities, it is found that some enterprises did export declarations and produced goods to customs authorities for inspection by the end of day and at nearly the ship's departure time, in order to put pressure on cargo inspectors. The businesses transported the cargoes to the port at which all cargoes were fully filled in the 20' containers and officials could only inspect the outer of containers. As the inside goods could not be checked, it is hard to conclude whether the declarations were accurate.

For the goods contained in 40' containers, the customs officers could only check the goods at the top of the containers and could not check the goods at the bottom. On the other hand, it is hard for the forest inspectors to differentiate wood types and forest protection unit hammers appeared on each of timber log (bar). As mentioned above, the businesses used tricks to make false statements about categories, number of timber bars and timber volumes to export timbers of illegal origin.

For example, Phu Ninh Co. Ltd. (Quang Binh) made declaration No. 2535/XK/KD/C34E dated 17 November 2012 at the Customs Department in Da Nang bordergate. As declared, the export timbers consist of 64m³ sawn Aquilaria Agallocha Roxb timbers (including 655 bars of timbers). However, after being inspected by the customs authorities, the four containers had 975 bars of timbers more than as declared, equivalent to 26m³.

Also, there are some cases of making corrupt use of classification of the goods into green channel inspection to fraud the measures. In some cases, businesses take advantage of the limits existing in inspection of wood products by customs officials to fraud timber names.

According to statistics, in 2012, the Ho Chi Minh City Customs Department discovered and seized dozens of illegal containers of illegal export timbers. For example, Phuc Hung Construction, Trading and Services Joint-Stock Company made a declaration at the Saigon Port Customs Office Region 3 declared the 3 containers of bamboo chopsticks exported to China. As regulated, the shipment was categorized into the green channel and exempted from actual inspection and cleared immediately. As informed by the detective investigators, there were 3 containers of exported chopsticks suspected to contain illegal goods, the Anti-Smuggling Investigation Department of the Southern Region under the General Department of Customs collaborated with the Saigon Port Customs Office Region 4 to conduct an actual inspection of the whole shipment. As a result, the 3 containers contained nearly 50m³ of Rose wood, worth approx. VND10 billion.

The misstatement of merchandise names and the abusing of green channel inspection to illegally export precious timbers are deemed to be common tricks used by the businesses. When making customs clearance, the businesses often declare to be the goods under export incentives such as textile products, handicrafts products and food to cheat the authorities. Declaring the above items, the businesses will enjoy preferential treatment on procedures. During the process of completing the procedure, on 17 August 2012, the Saigon Port Customs Office Region 1 made minutes on violation and temporarily seized one container of illegal export timbers of N.T. Co., Ltd. As declared by the business, the shipment contained dry pressed coconut jelly mixture that was exported to Malaysia. With the information above, it was categorized into the green channel inspection. However, while awaiting boarding for export, the Saigon Port Customs Office Region 1 conducted sentinel surveillance, check the logbook and stopping the export of the said container and collaborated with the dispatch force to inspect the cargoes. Opening the container, the customs authority detected that the container contained dozens of large wooden blocks, including 19.7m³ Pomu wood, not coconut jelly as declared by the business.

The difficulties that the customs authorities encounter in the process of inspection and control over these items include: currently, wood products are mainly exported and imported under 2 types, i.e. Temporary Import – Re-export and Import for Trading – Export for Trading. However, the cases where the customs authorities have discovered over time primarily occurred in the type of Import for Trading – Export for Trading. After importing wood for domestic timber trading, the businesses do not export them immediately but store at a time then sell them to foreign partners. After importing them for domestic production, the entire shipment of the business will not be managed by the customs office but inspected and monitored by the forestry office until the entire shipment is exported. When the business applies for a declaration for export, through the risk management system of the customs office, the declarations will be separated into green and red channels inspection and must be subject to the actual inspection of the shipment. However, the customs authority has faced a difficulty in inspection and control of goods. After importing and domestically storing the goods, the business will pack the goods in the containers and transfer them to the office to make declarations. The officials face many difficulties in inspection of wood in the containers, because when examined by the naked eye, officials just check what is seen. Consequently, they can only check the timbers in outer layers (the timbers will be arranged in layers from the inside out in container, depending on long or short timber bars), and wood or other goods concealed in containers will not be detected. Unless otherwise questioned, the customs authority will discharge the entire container to examine.

On the other hand, due to objective reasons, the operation of inspection of customs officials for wood products is still limited, they can only measure and inspect with the naked eyes and cannot differentiate types of wood.

In addition, the current cross-border timber trafficking under small scales seems also to be complicated. Timbers are often divided into several small bags, then rent "porters" to carry them across the two side wings of the border or use boats to transport the wood across the rivers adjacent to the border between the two countries. A series of cases were detected and seized by customs authorities/ For example, on 11 July 2012 at Hai Yen Ward, Mong Cai City, the Customs Control Team No. 1 - Quang Ninh Customs seized an iron boat, shipping 6 blue bags of timbers which included small wooden blocks and pieces, with a total weight of 250kg. According to the evaluation results, the shipment contained *Dalbergia tonkinensis* Prain wood listed in Table 1A, Class 1 of forest vegetation prohibited from exploitation, worth over VND1 billion. Earlier, in late March 2012, the Cau Treo International Border Customs Department - Ha Tinh Customs collaborated with the Border Guard in the Cau Treo International Border and spotted a group of people who were sending rosewood across the border from Laos to Vietnam. When detected by the competent force, the objects quickly abandoned the wood to escape. The seized evidence included 74 bars, 23 boards of *Dalbergia cochinchinensis* Pierre with a total of 0.6m³.

2. Causes of illegal timber exploitation and smuggling

Through analysis of illegal exploitation and trafficking of forest products, there are a number of causes as follows:

- People are not granted the rights to enjoy sustainable and long term benefits from forests, causing illegal logging that is small in scale but large in number with respect to violation cases.

- If relying on measures to strengthen the law enforcement, the situation of small-scaled illegal logging may become more serious because it creates many loopholes for some local officials to corrupt.

- According to statistics, the number of illegal logging in small scales does not reflect the true nature of the problem. Offense is not only caused by the participation of local people in poverty and corrupt local officials who smuggle timbers. The illegal logging is rampant not only from simple causes which include weaknesses in law enforcement. This offense is a combination of many factors, mainly from the local people who are living near the forests of precious wood and are not granted the rights to enjoy benefits from forests. The current legislation has not given them the right to enjoy benefits from forests, i.e. timbers and the increase of resources for law enforcement without creating changes in the current forest management will not be effective as expected

- The situation of illegal forest products trafficking has increasingly been sophisticated and complex. The main reason is that in the key areas of deforestation, the local government has not fulfilled the responsibility of state management regarding forest management and protection; forest protection is primarily assigned to forest protection force and forest owners, no synchronized direction of agencies, departments and organizations involved in forest management and protection. Meanwhile, most of the forest owners are now not capable of protecting the assigned forests; as accountability mechanism is not clear, some forest owners also show signs of negligence and irresponsibility. And a number of the current policies on forest protection and management

show shortcomings, inevitably resulting in some cases where forest owners take advantage of their capacities to illegally transport, process and smuggle timbers and forest products.

- The current management of the facilities processing and trading in wood in a number of localities is not really effective. Specifically, the licensing of wood processing facilities is not associated with raw materials and lack of planning. Meanwhile, the strengthening of inspection and supervision by the authorities has not been frequent and drastic. Thus, there are still illegal timber trafficking and processing.

- The demand for wood products in Vietnam market is very large, however, the number of legal timber is insufficient to meet the consumer demand within the country (not to mention the demand of foreign wood products). Therefore, it is also one of the causes that increase acts of illegal timber logging and trafficking.

3. Some results of the combat against crimes in illegal timber exploitation and trafficking during the past years

According to the statistics of the Department of Forestry, in 2011 Vietnam has more than 29,500 cases violating the forestry law, down from the figure of 33,800 cases in 2010 and 40,800 in 2009. The amount of confiscated timber due to violation has also decreased, i.e. 19,154m³ in 2011, while 42,385m³ in 2010 and 51,953m³ in 2009 . However, when compared with statistics on the results of the investigation, prosecution and adjudication of the Supreme People's Procuracy, the majority of the forestry law violations are only administratively sanctioned and the cases that are subject to criminal penalty take a very small percentage. For example, there were only 283 cases in 2009 (Article 175) and 4 cases (Article 176) / the total of 312 defendants sentenced and 153 cases/326 defendants prosecuted / a total of 40,800 cases of violation of forestry law accounting for 0.71 % of violations. Similarly, there were only 399 cases of forest law violations in 2010 that were dealt with out of a total of 33,800 criminal cases, accounting for 1.18% in 2011 with 266 criminal cases out of 29,500 cases, accounting for 0.9%. Thus, it can be seen that, the criminal measures only account for around 1% out of the total number of cases of violation and thus, it is not enough to deter acts of the subjects who have violations. Although the authorities in recent years have made many efforts to combat this crime, but the effectiveness and efforts are not sufficient to prevent the exploitation of forest products, as well as illegal trafficking of wood products of questionable origin.

II. SOME SOLUTIONS - RECOMMENDATION

Through analysis of the situation of illegal timber logging and smuggling during the past time as well as the results of the combat of the authorities, as well as analysis of the causes of this situation, we would like to offer a number of proposals and recommendations to gradually limit and prevent acts of illegal timber logging and smuggling as follows:

- Conduct surveys and statistics, re-check all wood processing facilities in the provinces in the country, upon which build mechanisms to closely manage the wood processing facilities so that they can do business in accordance with law.

- Satisfactorily invest in and further strengthen the management and protection of forests, especially at the grassroots level, decisively and strictly deal with law violators, promptly reward those who have achievements in the management and protection of forests. Given such, people will play a positive role in sustainable forest management if they are given full tenure of forest resources, i.e. the right to exploit wood. Stable tenure rights and the right to logging is a practical incentive for community members to work together with the local forest protection force to protect forests and prevent the objects who conduct illegal logging.

- Consider the management and protection is the responsibility of the Communist Party and the whole people of all political system; better the propaganda work, help the people understand the Law on Forest Protection and Development; actively participate in the management, protection and reforestation in the areas where they reside.

- Build an interdisciplinary collaboration project among the Forest Authority, the Customs, the Border Guards, the Ministry of Public Security and the Supreme People's Procuracy on anti-smuggling and illegal logging; study the suggestion on incentives of socialization of resources to serve the work of anti-illegal timber exploitation and smuggling.

- Identify the characteristics of the acts of illegal timber exploitation and smuggling to have prevention and forecasts, and regularly review and draw experience, renew fighting methods of competent forces; combine the fighting and prevention; implement area management which is to prevent illegal timbers penetrating into the domestic market and exported to foreign countries, and support functional forces to fight and prevent at the transport routes and at border gates.

- Strengthen cooperation with international agencies and organizations in research, training and organization of survey delegates to learn experience from the combat against illegal timber smuggling, exploitation and trafficking so that the staff of the Vietnam authorities who are directly involved in this work can improve the qualifications, skills, experience and improve the efficiency of fighting against timber smuggling activities.

Annex II – Report from the Inspectorate Police of Vietnam

-- UNOFFICIAL TRANSLATION --

THE ROLE OF THE POLICE IN INVESTIGATION OF ILLEGAL WOOD TRANSPORT

Vietnam is one of the largest exporters of processed wood products in the world. In Vietnam, the annual wood consumption for wooden furniture, housing, processing of exports, production of crafts, etc. reaches tens of million cubic meters. Vietnam's export turnover of wood and wood products has hit a fairly good growth, the annual average over the period is as follows (calculations are based on the data of the General Statistics Office of Vietnam): 1997-2003: USD323 million; 2004-2006: USD1,535 billion, 2007-2009: USD2,583 billion; 2010-2011: USD3,695 billion and 2012: USD4,641 billion.

Although Vietnam has applied a restriction on timber logging in natural forests, plantation forests have not met the wood consumption of the businesses. As a result, domestic wood processing businesses and exporters still use round timber and split wood imported from New Zealand, the EU countries, the U.S., Canada, South Africa, Congo, Brazil, Laos, etc. wood that is imported mainly originates from plantation forests. Every year, Vietnam spent more than USD1 billion to import various types of raw material wood.

Besides the official import, timber smuggling still exists. Apart from the wood consumption of a number of people, the profits gained from timber smuggling are huge, amounting to billions of US dollars. Consequently, although Vietnamese authorities have increasingly prevented the smuggling, a considerable amount of timber are transported into Vietnam through illegal timber trafficking.

The Economic Crime Investigation Department – the Ministry of Public Security shall be liable to prevent, investigate and handle law violations in the area of forest management, including timber smuggling.

The police in charge of economic crime investigation has advised and provided the leaders at all levels of many legal documents guiding the combat against illegal timber trafficking. Some documents include Plan No. 222/KH-BCA-C41 dated 15 December 2011 implementing Directive No. 1685-TTg of the Prime Minister on "*strengthening direction and implementation of measures of forest protection, prevention of deforestation and fight against the person on public duty*", Circular No. 144/2002/TTLT-BNN-BCA-BQP dated 13 February 2012 guiding the collaboration of forestry protection forces, police, army in forest protection, Regulation No. 503/CSKT-KL 27 June 1998 guiding the coordination between economic police forces and forestry protection forces to combat against law violations on forest protection and management, including timber smuggling.

On a yearly basis, the Police Department of Economic Crime Investigation issues notices, official letters, confidential letters of timber smuggling to enable the Police Office of Economic Crime Investigation and the local police to monitor the problem, proactively take action plan in order to prevent and fight it effectively. The Police Department of Economic Crime Investigation regularly delegate the officials to work with the Forest Protection Department, the General Department of Forestry, the Bureau of Smuggling Investigation and Prevention – the General Customs Department to participate in the fight against illegal timber trafficking.

To conduct operational measures to monitor the activities of wood processing and trade in general and timber smuggling in particular, and proactively build a plan on collaboration with the forest protection forces to prevent timber smuggling; to conduct prompt investigation on timber smugglers and apply strict measures to deter, educate and suppress crimes.

To make a track record on complicated locations where illegal timber trade occurs, the smuggling rings, lines and organizations of timber smuggling; to make a plan on prevention and education of the leader so that they will neither do illegal timber trade nor entice the poor people to get involved in illegal timber trafficking that disorders local security and affects diplomatic relations with bordering countries or organizations that protect the environment in the world.

Through the monitoring, the police of economic crime investigation shall directly advise the local authorities and relevant agencies so that they promulgate legal instruments to manage the use of wood imported for processing and the import of wood will be closely and efficiently managed, reducing timber smuggling cases over the years.

The economic police handled and investigated large-scaled wood smuggling cases as follows:

- In 2009, Van Phuoc Company Limited, located in Dong Ky ward, Tu Son, Bac Ninh, represented by Duong Van Mai, Director smuggled 269 containers of Class 1 wood from Cambodia to Vietnam and then transported by sea from Cat Lai Port to Hai Phong Port for export and later transported by road via Mong Cai border gate for export to China. The Police Department of Economic Crime Investigation took legal action against the case and prosecuted Duong Van Mai, the accused and his accomplices. The case was applied with strict sentences. Dozens of Class 1 wood containers were confiscated and sold on auction. The sale proceeds were put into the public fund.

- In 2013, the Investigation Police Agency of the Ministry of Public Security prosecuted and arrested Truong Van Lieu, Director of Ngoc Hung Co. Ltd. in Dong Hoa Town, Quang Tri Province regarding the smuggling of 22 containers of Class 1 wood with a total volume of about 600m³ from Laos to Vietnam via the Lao Bao border gate in Quang Tri province and exported to China through Da Nang Port. The investigation agency prosecuted three customs officials due to their lack of responsibility, causing the Ngoc Hung Company Limited case of timber smuggling.

Through actual combat against the acts of timber smuggling, some main reasons of timber smuggling are known as follows:

*** Objective reasons:**

- Demand for Vietnam's wood from natural forests and plantation forests are huge.
- Profits brought by timber smuggling are high.
- The issued policies on management of wood trade, transport, business and processing do not match actual developments and therefore not promote the efficiency of state management in preventing the acts of timber smuggling.
- Some localities neither focus on strengthening the examination and inspection of wood trade and processing nor have strict treatment of violations of law in trade, transportation and processing of wood of questionable origin.

...

*** Subjective reasons:**

- Some officials of the competent forces abet timber smuggling.
- The preferential treatment is not satisfactory to competent forces, i.e. forest protection guards.
- Forest protection guards are poorly-equipped, the forces are thin and lack of knowledge on law and discipline.
- Unemployment and poverty: criminals have abused the poor people who lack of knowledge on laws and policies to incite and solicit them to participate in timber smuggling.
- Due to the focus on economic development, some localities pay less attention to the strict management of legal origin of timber and is not aware of serious harm to the environment by deforestation for timber, causing mud slides and floods, resulting in serious consequences.

Annex III – Report from the Customs Department of Vietnam

-- UNOFFICIAL TRANSLATION --

RECENT SITUATION OF SMUGGLING, ILLEGAL TRANSPORTATION OF TIMBER PROSECUTED BY CUSTOMS AGENCY

*Anti-Smuggling and Investigation Department,
Vietnam General Customs Department*

In recent years, the situation of smuggling, illegal transporting of timber has become complex. Many cases of smuggling, illegal transporting of timber have been revealed and prosecuted by authorities.

Vietnam Customs is the governmental administration organization that has responsibilities of investigation, supervision of goods, transportation vehicles; prevention and control of smuggling, illegal cross-border transportation of goods; provision of statistics related to imported and exported goods; recommendation of strategies, methods of governmental management related to customs of importing and exporting activities as well as immigration, emigration, transit and tax policy with imported, exported goods.

As a gatekeeper of the national economy, the Customs force has greatly contributed to activities of prevention of smuggling, illegal cross-border transportation of timber.

1. Situation of smuggling, illegal transportation of timber in Vietnam:

In reality, activities of timber imports and exports in Vietnam are mainly conducted as business imports, business exports, and temporary importation for re-exports.

Timber is imported into Vietnam mainly from Laos, Cambodia. Addition to that, timber is imported into Vietnam from several countries e.g. Australia, Russia, South Africa etc...

Vietnam exports timber and timber products which have origins of imports and plantation forests to 04 key markets: United State of America, China, Europe and Japan. Among those markets, China is the main exporting market and export commodity to China is timber with different categories.

Due to the geographical characteristics of Vietnam that have border-lines with 03 countries i.e. China, Laos and Cambodia, cross-border timber smuggling occurs mainly in north border provinces, central and highland border provinces and border ports of Ho Chi Minh City.

In recent years, activities of prevention and combating smuggling, illegal transportation of timber have been seriously undertaken by the Customs force. This has helped to prevent many big timber smuggling cases. However, size as well as the complexity of activities related smuggling and

illegal cross-border transportation of timber have not been reduced but become more sophisticated, organizational and shadowed under legal forms in order to avoid the detection of authorities.

According to 2012 data, the Customs force detected and seized 1.833,2 m³.

Several reasons can be listed for the situation of smuggling, illegal transportation of timber as mentioned above, particularly taking advantages of the flexibility of customs procedures, inadequate of regulations as well as management policy for timber commodity. Particularly, the majority of cases related to smuggling and illegal transportation of timber with great values which were detected by Customs lastly were mainly business exports. For timber commodity which is imported into Vietnam, after completing customs procedure, it will not be managed by Customs Department but by investigation and supervision of Forest Protection Department. For exports, enterprises only need to make a sufficient custom declaration about quantity and types without clarification of timber origins and do not need to ask for permission. This leads to a gap where enterprises can use then re-use legal documents many times or make a fake stamp of an authority organization. Moreover, taking advantages of customs procedure, some persons manipulate advantages of green channel (exported timber commodity with origins from imports usually does not undergo investigation) to smuggle timber belonging to group 1A (forbidden commodity) which does not have origins or more imports but less in declaration, more exports but less in declaration, or exports in incorrect timber types as declared in the Custom declaration. Besides, it is difficult for custom officer to differentiate hammer marks of Forest Protection Department in each timber slat (currently only visual investigation – checking by eyes). Therefore, enterprises can easily take advantages of this to make a wrong declaration in terms of category, quantity, weight so that they can smuggle timber with no legal origins. Additionally, the collaboration mechanism among authority forces in combating smuggling, illegal transportation of timber has not been frequent. This is one of the reasons for the fact that prevention and combating activities have not achieved expected results. The collaboration mechanism now only focuses on cooperation in arrest and prosecution.

2. Main tricks for trading and transporting illegal timber:

2.1. For exporting timber:

Many cases that have been detected and arrested by the custom authorities show a popular situation that enterprises open export declaration and present their commodities to the customs at the end of the day and closed to departure time, in order to put pressure on custom officers. When enterprises deliver their cargoes to the port, all of the cargoes have been built up in full containers so the custom officers can only check the outside of the containers, while the inside cannot be checked, hence, hardly to conclude whether the cargoes are correct with the declaration.

On the other hand, distinguishing timber categories, hammer mark on every log is difficult for officials who inspect.

Enterprises have taken advantage of the above trick to inaccurately declare the category, mass and number of logs to export timber from illegal sources.

2.2 For imported timber:

In practice, the combat against smuggle and illegal transportation of goods across border shows a situation that enterprises have taken advantage of the fact that custom authorities apply risk management techniques to promote exporting and importing activities and imported commodities are usually categorized as green channel by system to defraud the mass, category, the number of logs ... or to fake documents of foreign partners for import.

The cases that have been detected and arrested by custom authorities show that the delinquent enterprises have used the following tricks:

- By using fake vouchers for import procedures and taking advantage of the risk management techniques of custom authorities that their imported commodities are usually free from actual inspection, their actual quantity of imported commodities is smaller than the quantity which they declare in custom declaration form, then adding those from illegal sources which have been gathered in local to get adequate quantity for export.

- Not doing identification procedures by custom authorities about the origin of goods when doing export procedures.

- When being detected and arrested, they fiercely oppose, provide incorrect information to press agencies, Timber Association, Delegates Congress, foreign Embassy in Vietnam... to create pressure and difficulties for custom authorities in investigation and verification process.

- Enterprises gather commodities at border, rounding import documents to transport them into Vietnam.

3. Challenges and difficulties for Customs Department in investigation, control procedure for timber commodity:

Currently timber commodity is imported and exported under two categories i.e. temporary import for re-export and business import for business export. However, the majority of cases that were detected by Customs Department recently occurred in the category of business import for business export. Enterprises will not immediately export timber right after they were imported for business, but keep them domestic for a while then sell to foreigner partners.

After they are imported by enterprises, all packages of goods will not be managed by Customs Department but under the investigation and supervision of Forest Protection Department until those goods are exported. When an enterprise registers a outward cargo manifest through risk management of Customs Department, there will be some undergoing green channel (free of goods investigation), meanwhile some undergoing red channel (100% investigation of goods).

However, there is a challenge for Customs Department in investigating and examining goods because after importing and keeping goods domestically, enterprises will pack all goods into containers then containers will be loaded to Customs Department for registration. The examination of timber products in containers currently encounters lots of difficulties. It is due to the fact that officers can only examine by eye-contact; hence, officers can only examine timber products at outer layers (timber slats are organized by their lengths and arranged by layers from inside out). Thus, timber or other goods are hidden in containers will not be detected unless the Customs Department suspects and requests to unpack the whole container for investigation.

Additionally, due to an objective reason, goods investigation skills and practices of custom officers are currently inadequate, officers only measure and examine using eye-contact and have not been able to differentiate timber categories.

4. Methods of control and prevention of smuggling and illegal transportation of timber by Customs Department:

In order to effectively prevent and combat smuggling, illegal cross-border transportation of timber, the Customs force has implemented several methods as follows:

- Consult with different levels to develop comprehensive law documents related to prevention and combating smuggling, commercial fraud in general and for timber commodity in specific. This ensures a consistency and agreement with the system of specialized governmental management documents and governmental management documents on Customs in which concentrate on customs control areas, increasing authority of customs force; enabling the flexibility and increasing the effectiveness of implementation procedure.

- Increasing the management of custom profiles, developing an action plan for timber commodity in which concentrates on information collection, basic investigation, understandings of situation of timber imports – exports; updating the risk management system to categorize and produce timely control methods.

- In collaboration with other implementing forces, as well as between implementing forces with organizations and associations, there should be more information sharing, technical supports, training and education activities on how to identify and differentiate timber categories, hammer marks.

- In international relations, there is a need to develop a contact point to frequently share information on crimes related to timber smuggling. This helps supply information for clarification and investigation.

Annex IV – Report from the Forest Protection Department of Vietnam

FOREST ISSUES, FOREST PROTECTION AND FOREST PRODUCT MANAGEMENT

(Discussion on “Good management and cross-border organized crime risks in forestry” held by Supreme People’s Court in collaboration with UN Office for Drug and Crime on October 14th, 15th 2013)

HOANG XUAN TRINH

FOREST PROTECTION DEPARTMENT

Forest management, development, protection and forest product management nationwide have recently witnessed positive changes which have greatly contributed to economic development and environment protection.

Based on the enforcement of law on forest protection and forestry product management as well as other relevant information related to the forestry, at the request of the workshop organizer of “Good management and cross-border organized crime risks in forestry”, the bellows are issues on forest situation, timber related industry and trade in Vietnam.

1. Forest situation and protection

a) Overview:

According to statistics stated in Decision No. 1739/QD-BNN-TCLN dated Jul. 31st 2013 of Ministry of Agriculture and Rural Development, the whole nation's forest area by end of 2012 is as follows:

13,862,043 ha of forest land (10,423,844 ha of natural forest; 3438,200 ha of plantation forest).

In which: 2,021,995 ha of special used forest (1,940,309 ha of natural forest; 81,686 ha of plantation forest); 4,675,404 ha of protection forest (4,023,040 ha of natural forest; 652,364 ha of plantation forest); 6,964,415 ha of production forest (4,415,855 ha of natural forest; 2,548,561 ha of plantation forest); 200,230 ha of forest not in forest land planning,

Forest for timber is production forest with 3,695,039 ha;

Plantation forest accounts for 1,873,659 ha (in which production forest is 1,350,233 ha). The nation’s plantation forest increases annually about 200,000 ha on average.

Following the Party and State’s guideline on socializing forestry, provinces has promoted forestry land, forest allocation, forest leasing, forest protection packages, etc. which involved people in forest protection and development.

b) Forest protection management, forest product management:

- Over the past years, the State has enacted many legal documents on forest protection management and forest product management such as: Law on forest protection and development, Decree No. 23/2006/ND-CP guiding the implementation of Law on forest protection and development, Decision No. 186/2006/QD-TTg of the Prime Minister stipulating forest type

management regulations; Decree No. 09/2006/ND-CP dated 16/01/2006 of the Government stipulating forest fire prevention and fighting; Decree No. 32/2006/ND-CP dated Mar. 30th 2006 of the Government on managing endangered, rare and precious forest flora, forest fauna; Decree No. 99/2009/ND-C dated 02/11/2009 of the Government on administrative fine in forest management, forest protection and forest product management; Decision No. 57/QD-TTg dated Jan. 9th 2012 approving forest protection and development plan for period 2011 - 2020; Instruction 1685/CT-TTg dated Sep. 27th 2011 on reinforcement of directing the implementation of measures for forest protection, deforestation prevention and forest officer defying; ...

- Regarding forest product management, apart from other relevant documents, Ministry of Agriculture and Rural Development issued Circular No. 35/2011/TT-BNNPTNT guiding the implementation of exploring, utilizing timber and forest products other than timber on May 20th 2011; issued Circular No. 01/2012/TT-BNNPTNT dated 04/01/2012 regulating legal dossier and forest product origin checking; these documents are issued to assure attaching forest product management to sustainable forest management, encourage the development of commercial forest products made from plantation forest, minimize forest shrinking and degradation.

Vietnam is also under a process to develop a timber legality assurance system (TLAS), voluntary partner agreement VPA/FLEGT with European Union on enhancing forest law enforcement and forest management, in order to achieve the transparency of timber origin, assure the compliance with international practices, the compatibility with Lacey code of USA and Regulation 995 of European Union prohibiting trading of plants and products with illegal origin; program on execution of law on forestry, forest management and timber trading of European Union (FLEGT).

2. Timber trading

a) Exploring timber:

According to provinces' report for 2012, the entire nation explored about 15 million m³ of various timber types. In which: exploration from centralized plantation forest accounted for approximately 11 million m³; rubber timber accounted for approximately 2 million m³; dispersed tree timber, garden timber, timber for exploration, side exploration from domestic natural forest accounted for approximately 2 million m³ (in which, timber explored from natural forest was approximately 200,000 m³).

b) Processing, exporting and importing timber

- Raw timber is mainly made into products for consumption. Due to provinces' statistics, by May 2013, there are approximately more than 17,000 timber operators (including 4,628 businesses, 11,855 business households and 338 cooperatives); provinces are now reviewing and planning timber operators so as to be in line with timber processing industry management and development.

- Regarding export timber, timber product, according to Ministry of Industry and Trade's statistics, in 2012, the country's timber and timber product export volume reached USD 4.67 billion, up 15.3% against 2011, exceeded nearly 7% compared to the budget and increased nearly 200% against 2007 (USD 2.4 billion). Compared to 2011, export value to America, China, Japan, Europe increased by 24.4%, 14.3%, 12.5% and 7.3% respectively (but export weight to these markets decreased from 15.7% to 14.3%). Timber and forest product export is one of the sectors with high ratio of export surplus among other sectors (more than equivalent to 65%). Vietnam ranked the 6th in the world, 2nd in Asia and 1st in South East Asia concerning timber and timber product export.

The segments that contributed greatly to export volume are indoor and outdoor furniture, raw wood shaving. Foreign direct invested businesses occupied approximately 60% of export turnover. Provinces and city with high export volume are Ho Chi Minh City, Binh Duong with more than 1 billion USD, and Binh Dinh with more than 200 million USD.

Timber export market of Vietnam has made significant improvements. Nowadays, many businesses have shifted from focusing only on export to a third country through an intermediate market to exporting directly to consumption market. In 2012, timber products of Vietnam appeared in more than 100 countries and territories with a focus on 4 key markets: America more than 38%, China more than 15%, Japan and Europe approximately 28%. Wood shaving exporting markets are mainly China, Taiwan, Japan and Korea.

Materials for producing export goods (including wood shaving for export): approximately 20-30% imported, the remaining of 70-80% is from centralized plantation forest timber, domestic dispersed trees and rubber timber (almost all 100% exporting businesses do not use domestic natural forest timber). Product with high export volume and material consumption is wood shaving, approximately 5.5 million tons, equivalent to 11 million m³ of raw timber.

- In 2012, Vietnam imported approximately 4 million m³ of round timber, with turnover of approximately USD 1.5 billion. In which, Laos ranked the first with turnover of USD 285.3 million, occupying nearly 20% of the total import volume, down by 9.1% against 2011. Then came China with USD 200 million, raised 4.5% compared to 2011, America ran the third with USD 196.7 million, up 30.5% against 2011, only Cambodia underwent a sharp fall (33.5%).

3. Violations to forest protection management, forest product management

Since 2010 up to now (Sep. 30th 2013) violations to forest management, protection, forest product management detected are 112,051 cases; violations to forest protection management, forest product management have been on a descent trend over years (2010 with 33,857 cases; 2011 with 29,551 cases; 2012 with 28,940 cases; Sep. 2013 with 19,703 cases).

However, violations to regulations on forest protection management, forest product management remain complicated; major breaches to laws on forest protection management and forest product management are: illegal deforestation; violation to regulations on forest fire prevention and fighting; illegal forest exploration; illegal trading and transporting of forest products; illegal hunting of forest fauna, statistics from 2010 to Sep. 30th 2013 shows that:

- Illegal deforestation: 11,996 cases, destroyed 13, 503 ha of forest, including 10,031 ha of natural forest. The destroyed areas are mainly those with usage transforming purpose and deforestation for cultivation, etc.

- Violations to forest fire prevention and fighting: 1,727 cases; damaged area: 8,007 ha (2,105 ha of natural forest; 5,902 ha of plantation forest);

- Violations to exploring timber, forest products: 9,981 cases;

- Illegal trading, transporting forest products: 56,968 cases;

- Sawing, processing timber: 3,259 cases.

* Dealt cases: 96,463 cases.

In which:

- Administrative fine: 95,229 cases;
- Criminal proceeding: prosecuted 1,234 cases, 859 accused; heard 185 cases with 170 dependents.

* Seized evidence:

- Various tools: 22,953 tools;
- Various timber types: 139,841 m³;
- Forest fauna: 59,321 individuals, equivalent to 122,464 kg.

3. Officer defying cases:

Acts of fighting against forest protection management officers, for recent years, have become complicated, severe and organized resulting in damages to health, life of forest rangers, assets of the State, public rage and threats to officers working on forest protection.

According to statistics from beginning of 2010 to present, there were 216 cases of defying on-task officers regarding forest protection management, causing injuries to 170 officers.

Most of the cases led to injuries to forest rangers, however, sanctions to the violations are not as strict as the law prescribes and not strong enough; the majority of the cases were closed with administrative measures which are not educationally and legally sharp enough. Besides, human resource for forest protection management tasks is limited, working at dangerous, remote areas with limited equipment; there are insufficient regulations on forest rangers' use of weapons, protective depending tools and tools to suppress acts of violation.

It is required that relevant bodies of different levels pay more attention to forest management, forest protection and development, forest use, forest products./.

Hanoi, Oct. 10th 2013

Thank you



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