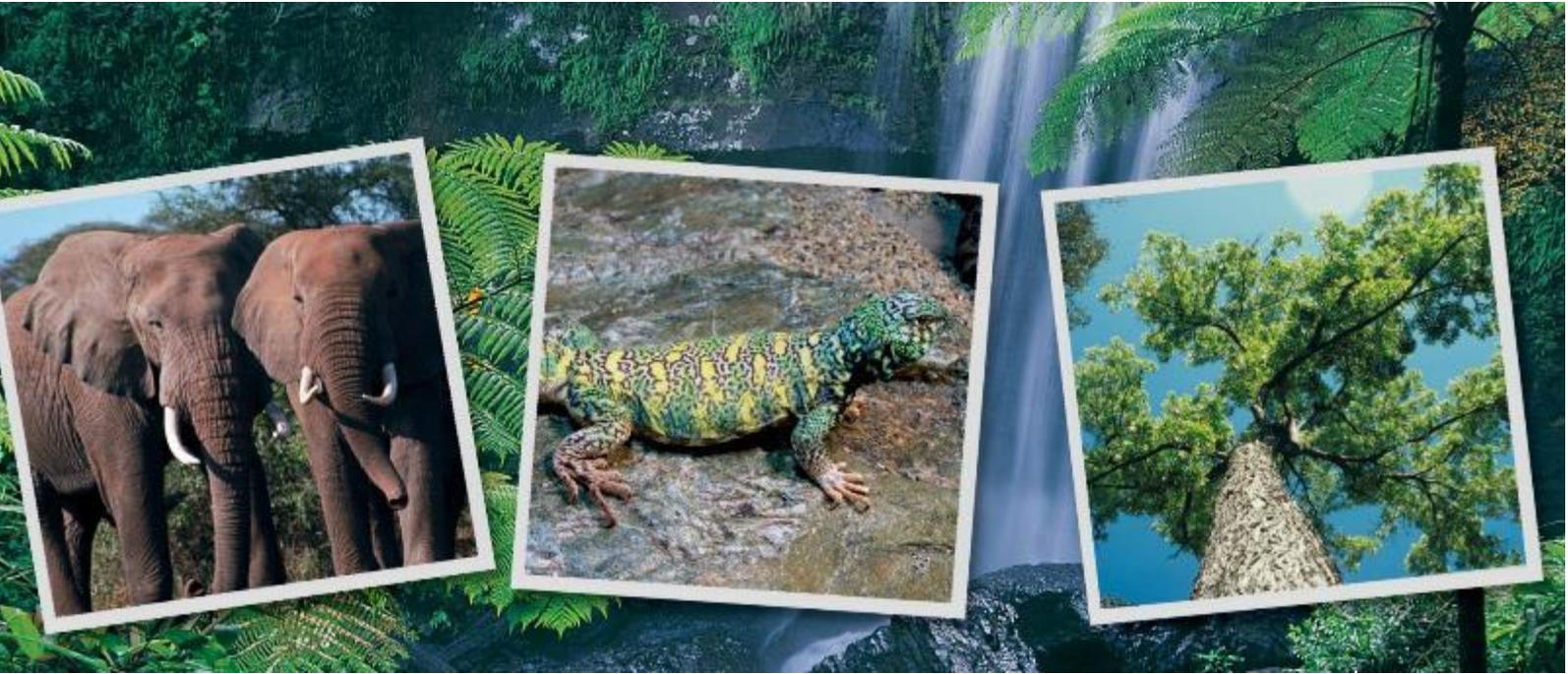




**UNODC**

United Nations Office on Drugs and Crime



# Wildlife and Forest Crime Analytic Toolkit

REPORT OF UNODC MISSION  
TO VIET NAM



**UNODC**

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# MAP OF VIET NAM



## **ACKNOWLEDGMENTS**

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## LIST OF ABBREVIATIONS

AFP	Australian Federal Police
AIRCOP	Air Communications Program
APG	Asia/Pacific Group on Money Laundering
ASEAN	Association of South East Asian Nations
ASEAN-WEN	Association of South East Asian Nations Wildlife Enforcement Network
CBD	Convention on Biological Diversity
CCCE	Central Committee for Communication and Education
CCP	Container Control Program
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMA	CITES Management Authority
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CrPC	Criminal Procedure Code
CPI	Corruption Perception Index
DPC	District People's Court
DARD	Department of Agriculture and Rural Development
EIA	Environmental Investigation Agency
ENV	Education for Nature – Viet Nam
EP	Department for the Prevention of Environmental Crime (Environmental Police)
EU	European Union
FAO	Food and Agriculture Organisation
FATF	Financial Action Task Force
FLEGT	Forest Law Enforcement, Governance and Trade
FIU	Financial Intelligence Unit
FPD	Forest Protection Department
FPF	Forest Protection Force
GMS	Greater Mekong Sub-Region
HCMC	Ho Chi Minh City
HSI	Humane Society International
ICCWC	International Consortium on Combating Wildlife Crime

IGO	Intergovernmental Organisation
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IUCN	International Union for Conservation of Nature
LE	Law Enforcement
LEA	Law Enforcement Agency
MARD	Ministry of Agriculture and Rural Development
MoD	Ministry of Defence
MoF	Ministry of Finance
MONRE	Ministry of Natural Resources and Environment
MoU	Memorandum of Understanding
MPS	Ministry of Public Security
NGO	Non-Governmental Organisation
PPC	Provincial People's Court
RAMSAR	Convention on Wetlands of International Importance, especially as Waterfowl Habitat
SOMTC	Senior Officials Meeting on Transnational Crime
SPC	Supreme People's Court
TCCCC	Transnational Crime Coordination Centre
TRACE	TRACE Wildlife Forensic Network
TRAFFIC	Wildlife Trade Monitoring Network
TT	Towards Transparency
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
USAID	United States Agency for International Development
VCIS	Viet Nam Customs Information System
VIET NAM WEN	Viet Nam Wildlife Enforcement Network
VNACCS	Viet Nam Automated Cargo Clearance and Port Consolidation Scheme
VMP	Vietnamese Marine Police
VNFOREST	Viet Nam Forest Administration
VPA	Voluntary Partnership Agreement

WCO	World Customs Organization
WCO CEN	World Customs Organization Customs Enforcement Network
WCS	Wildlife Conservation Society
WDC	Working Dogs for Conservation
WLFC	Wildlife and Forest Crime
WWF	World Wide Fund for Nature

## EXECUTIVE SUMMARY

Wildlife and forest crime (WLFC) is a growing threat globally. Criminal networks benefit from illegal fishing, logging and poaching, and illicit trafficking in endangered species. WLFC often funds other crime types and is linked to corruption and money laundering. Organised crime groups exploit natural resources leading to a devastating impact on biodiversity, security, the livelihood of communities and economies. Viet Nam is a biodiverse country, home to some of the most iconic and endangered species of fauna and flora. Viet Nam has recognised WLFC as a serious and growing threat. There is commitment from the highest level of government to respond with coordinated and concerted effort.

The International Consortium on Combating Wildlife Crime (ICCWC) developed the Wildlife and Forest Crime Analytic Toolkit (*the Toolkit*) to provide a framework to enable and support countries to undertake national analysis to better understand the current situation and main challenges in relation to wildlife and forest crime. The government of Viet Nam therefore requested ICCWC support for such an analysis to further their work in this area. The Government-led process was carried out with the participation of relevant stakeholder agencies in the country.

In support of the Toolkit process in Viet Nam, representatives from UNODC, WCS and CITES undertook a fact finding mission from 26 January to 10 February, 2015 to various parts of the country; ranging from border crossings, national parks, sea and airports and markets, to the two major cities and many provinces. Consultations were held with representatives and officials from central, provincial and local government, donor countries and civil society groups, including NGO representatives, judges, prosecutors, customs officials, police, border guard officers, and forest and park rangers. An additional fact finding mission was made to the Lao Bao border gate in Quang Tri province in August 2015.

As this report highlights, there needs to be timely and reliable information and actionable intelligence sharing, coupled with the necessary technical skills and advanced capabilities to identify, target and arrest criminals. There is room for improvement across all sections of the legal framework, and there are some serious deficiencies that are having a paralysing effect on successful prosecutions, particularly in relation to wildlife.

Viet Nam must also look beyond seizures and administrative sanctions as a measure of success in combating WLFC. Seizures made in the absence of arrests, particularly of the organisers and financiers of WLFC, have no impact on the trade, and there is a strong argument that seizures on their own merely perpetuate more WLFC.

The findings and recommendations of the analysis described in this report reflect both strengths and weaknesses of Viet Nam's capacity and capabilities to tackle WLFC, and have been used to design a detailed programme for national capacity building and technical assistance delivery in Viet Nam.

## PRINCIPAL FINDINGS

- Deficiencies in the criminal law, particularly the Penal Code, which in most cases leads to administrative sanctions only, irrespective of the serious nature of depletion of the wildlife and forest assets of the country.
- Manifestly inadequate sentence provisions for serious or transnational organised WLFC offences.
- Lack of sufficient knowledge and awareness of the WLFC issues and challenges among the Judiciary when dealing with WLFC cases.
- Inability and ineffectiveness of enforcement agencies to bring offenders to court due to weak or insufficient evidence discovered and presented, with critical flaws in the Penal Code requiring determination of the value of illegal WLFC products, leading to few cases presented to the Procuracy for trial.
- No evidence of international information or intelligence sharing channels operating effectively, even to guide border officials on the latest smuggling routes, trafficking methods or notification of suspect persons or cargo (there were only one or two examples given of any fast-time intelligence).
- Species identification of fauna, flora, and particularly rare timber, is hampered by a lack of law enforcement capacity and exacerbated by clever disguise and trickery, combined with fraudulent permits and mislabelling.
- Demand for wildlife for consumption as food and use in medicines for perceived health benefits is a key driver leading to an increase in wildlife trade, and complicates law enforcement.
- Inadequate monitoring, inspection, audit systems and mechanisms, which are crucial tools for enforcement effectiveness.
- A lack of investigative capacity to address transnational organised crime.
- A focus on seizures and administrative sanctions with very few cases of proactive law enforcement observed.
- A lack of advanced crime scene and forensic support services.
- An inability to address systemic organisational corruption at key posts and locations is a key factor in the failure of enforcement efforts against illegal wildlife trade.

A summary of the specific recommendations are included in *Section 13* of the report. An action plan to support implementation has been prepared separately.

## 1. PURPOSE

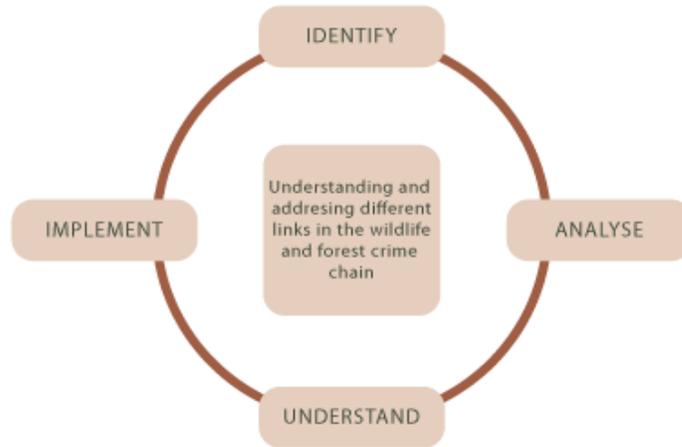
United Nations Office on Drugs and Crime (UNODC) is the global leader in the fight against illicit drugs and organised crime under the framework of The United Nations Convention against Transnational Organised Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC). The General Assembly affirmed the relevance of the UNTOC to fighting illicit trafficking in natural resources in its resolution 55/25 of 15 November 2000, in which it stated that the Convention "constitutes an effective tool and the necessary legal framework for international cooperation in combating such criminal activities as illicit trafficking of protected species of wild fauna and flora, in furtherance of the principles of the Convention on International Trade in Endangered Species of Wild Fauna and Flora".

On 30 July 2015 the UN General Assembly adopted a historic resolution number A/69/314 on *Tackling the Illicit Trafficking in Wildlife* where it made several recommendations, many of which are mirrored in this report. These recommendations include treating wildlife trafficking involving organised criminal groups as a serious crime, implementing anti-money laundering measures, establishing national level interagency wildlife crime task forces, strengthening judicial processes and law enforcement efforts, preventing and countering corruption, and reducing the demand for threatened wildlife species and products.

The toolkit provides a comprehensive framework, which has been shared with all stakeholders and participants during and prior to the mission. It provides a mechanism for detailed information gathering and assessment of a country's operational preparedness, and serves to raise awareness on the different approaches to tackling WLFC.

In recognition of the serious challenge presented by WLFC and its frequently transnational scale, an inter-agency alliance, the International Consortium on Combating Wildlife Crime (ICWC) was established in 2009. This comprises the Secretariat of CITES, the International Criminal Police Organization (INTERPOL), the World Bank, the World Customs Organization (WCO) and the United Nations Office on Drugs and Crime (UNODC). Each organisation is collaborating in efforts to combat the illicit trafficking in protected species of wild fauna and flora by coordinating the support offered to governments, national wildlife and forest law enforcement agencies and the sub-regional networks that work to protect the world's natural resources from criminal exploitation. The Toolkit has four key elements, which assist users in the following ways:

1. Identifying current patterns of wildlife and forest offences, including their drivers and actors;
2. Analysing the criminal justice response, including the legislative, enforcement, prosecutorial and judicial systems in use;
3. Understanding the different links and actors in the wildlife and forest offences chain; and
4. Implementing measures to address and prevent wildlife offences from being committed by offering alternative incentives



**Figure 1: Four Key Elements of the WLFC Analytic Toolkit**

It consists of five parts; however, the request from the Vietnamese Government was for the two experts supported by the field mission team to focus primarily on the following three areas:

- Legislation
- Law enforcement measures
- Prosecutorial and judicial capabilities



**Figure 2: Five Parts of the Wildlife and Forest Crime Analytic Toolkit**

## 2. METHODOLOGY

Whilst the implementation of the Toolkit is government-led, the ICCWC provides support through all stages of the process. The approach has been sufficiently flexible; using accepted and reliable academic principles, and responding to the needs and requirements of Viet Nam.

### The approach

- Establish relevant and influential ‘in-country’ nominated focal point for UNODC Global Programme and UNODC local representative – ensuring CITES MA is fully engaged.
- Hold an introductory meeting with nominated government officials where implementation of the toolkit is officially launched and presented, taking questions and initiating the process of engaging with principal stakeholders, both from government departments and the NGO and voluntary sectors.
- Simultaneous research and desk review of relevant legislation, WLFC literature and published reports by appointed experts.
- Establish and support an ‘in-country’ working group to manage and coordinate relevant activities; request, collection and collation of national studies, granting permissions and authorities for mission visit itinerary.
- Request national studies by LEA’s, courts and prosecutors mandated or responsible for combating WLFC.
- All parties agree to the purpose and scope of in-country mission.
- Set up a mission team, including representatives from CITES MA, principle NGO partners and other relevant stakeholders.
- Hold in-country seminar with all relevant LEA’s, NGO’s and other government departments to deliver national studies and allow experts to seek clarification and detail through open questioning techniques (*using T.E.D. – Tell, Explain, Decide and 5WH – What, Where, When, Why, Who and How – open questions with closed confirmation questions as needed*).
- Commence field mission with all team members and visit agreed sites and locations to speak with and interview staff from the relevant agencies to ensure a more in-depth understanding of roles, responsibilities and activities undertaken. The range and scope of the questions are based on the guidance and suggestions given in the Toolkit.
- Hold additional meetings as required and feasible with NGO’s and international partners, such as WCS, World Wide Fund for Nature (WWF), United States Agency for International Development (USAID), US Department of State and representative from the European Union (EU) Delegation.
- Hold a de-brief meeting following the mission with CITES MA Senior Director and other interested

government departments to discuss any issues or problems arising from the visit, and explain the next stages in the toolkit process (produce a succinct 2-page brief for circulation and discussion).

- Experts and UNODC local representative share thoughts, initial findings and agree on next stages in submission of initial draft report.
- Request translation of all Agency reports and feedback from mission team members, using a straightforward format from each agency/site visited.
- Experts to prepare an interim report within two weeks of conclusion of the mission for ICCWC partners to comment on, and then finalize the report.
- Preparation of final draft report with recommendations, and action plan for technical and capacity building programmes prioritised as short/medium and long-term actions.
- Presentation of report to the host Government.
- Provide feedback and recommendations for the enhancement of the toolkit and its implementation.
- Sharing of best practices and lessons learned during the implementation of the toolkit.

### 3. INTRODUCTION

Interviews and meetings were held with officials from Customs (land borders, seaports and airport sub-departments), the Border Guards, Environmental Police Department, Forest Protection Department, People's Court and People's Procuracy at ten different locations across Viet Nam. There were also additional meetings held with CITES MA Viet Nam, USAID, US Department of State, Delegation of the EU in Viet Nam, WCS Viet Nam and the WWF Viet Nam.

The forum with the Viet Nam criminal justice bodies and law enforcement agencies was supplemented with formal written responses from the Supreme People's Procuracy, Supreme People's Court, Ministry of Public Security (MPS), Customs and Forest Protection Department.

Over a two week period, field visits were made to:

1. Cau Treo Land Border Gate, Ha Tinh Province, with Customs and Border Guards
2. Quang Binh People's Court with Deputy Judge
3. Quang Binh Environmental Police Division, met with members of the management team
4. Quang Binh Forest Protection Department, DARD, met with Manager of Legislation and Inspection Department
5. Cha Lo Border Gate, Quang Binh Province, met with Head of Customs Sub-Department and management team
6. Ho Chi Minh City Forest Protection Department, met with Vice Director and Team Leader
7. Cat Lai Seaport Customs Sub-Department, HCMC, met with Vice Head and Team Leaders from Customs Sub-Department
8. HCMC People's Procuracy, met with members of the Prosecution and Administration Department
9. Tan Son Nhat airport, HCMC, met with Head and Deputy Head of Anti-Smuggling, of Customs Sub-Department
10. Yok Don National Park, Dak Lak Province, met with Deputy Director of District Forest Protection Department, members of the National Park management team, and a member of the Border Guards

An additional field trip was made on 31 August, 2015 to:

11. Lao Bao Border Gate, Quang Tri Province, met with Head of Customs Sub-Department team

All meetings had prior agreement and consent, and received full cooperation and engagement. The interactions were professional, courteous and informative, and hospitality was warmly extended by the host agency. A full list of the officials present is included in *Annex A*.

### **ICCWC Mission Team - Viet Nam**

Mr Manjit Iqbal, UNODC Expert for Legislation, Judiciary and Prosecution - former Deputy Attorney General, Somalia and UNEP Legal Officer, with experience in prosecution and drafting legislation, including capacity building of judiciary and prosecutors.

Mr Simon Ramsden, UNODC Expert for Law Enforcement - former Senior UK Police officer with extensive experience in international policing, operational effectiveness and capacity building.

Mr Stephen Carmody, UNODC Expert for Law Enforcement - former Australian Police officer with extensive experience in investigating wildlife and forest crime, international cooperation and training law enforcement officers in the GMS.

Ms Rhiannon Hudson-Jones, UNODC Viet Nam – Advisor, Environmental Crime and AML/CTF

Mr Hoang Kim Thanh, UNODC Viet Nam - National Programme Officer, Forest Law Enforcement

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Ms Le Hue Chi, WCS Viet Nam - Programme Assistant

## 4. COUNTRY CONTEXT

Viet Nam is ranked 16<sup>th</sup> in global biodiversity. Its forests are rich with biological resources and diverse ecology. It is home to nine biosphere reserves and two natural world heritage sites, about 16,500 species of plants (30% endemic) and about 10,500 species of terrestrial animals including over 6,600 species of insects, 317 terrestrial and 21 marine reptile species, 840 birds (18 endemic) species, 312 terrestrial and 25 marine mammal species, 167 amphibian species, about 600 freshwater fish, and around 2,500 marine fish species.<sup>1</sup>

### **Geography**

Viet Nam occupies the eastern and southern part of the Indochinese Peninsula in Southeast Asia, with the South China Sea along its entire coastline. China is to the north, and Laos and Cambodia are to the west. The Mekong River Delta lies to the south.

The combined length of the country's land boundaries is 4,639 km, and its coastline is 3,260 km. At its narrowest point in the central Quang Binh Province, the country is as little as 50 km across, though it widens to around 600 km to the north. The total size is about 339,560 square kilometres (95.82% or 325,361 sq. km land with 4.18% or 14,199 sq. km water).

Viet Nam's land is mostly hilly and densely forested, with level land covering no more than 20%, mountains accounting for 40% of the country's land area, and tropical forests covering around 42%.

### **Economy**

Following from the *Doi Moi* (renovation) economic reforms in 1986, Viet Nam's GDP has nearly tripled to its current steady rate of 6.0% annual growth<sup>2</sup>. International trade and foreign investment have expanded considerably, and one of the many facets of the 'Socio-Economic Development Strategy (SEDS): 2001-2010', and the two previous strategies, combined with *SEDS: 2011-2020*, is increased concentration on global expansion in agricultural and seafood processing, manufacturing, electronics and wood product exports. Another major focus has been the investment in the promotion of tourism. According to the Viet Nam General Development Plan, from 2015 to 2020 the tourism industry will account for 7.5 percent of the country's Gross Domestic Product (GDP).

Viet Nam is the world's eighth-largest exporter of leather and footwear. It has a large-scale wood processing industry with a nationwide network of 760 state-managed wood processing units. There are also over 200 local enterprises, 53 joint ventures, and close to 1200 small scale production units. The government owns an estimated 6,000 state-owned enterprises (SOEs): the majority are non-agricultural enterprises.

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<sup>1</sup> Ministry of Natural Resources and Environment: National Biodiversity Strategy to 2020, Vision to 2030. Ha Noi, 2013.

<sup>2</sup> World Bank, 2014, *GDP Growth (Annual %)*, <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>

This shift of employment from the agricultural sector to wage employment in manufacturing, construction and services presents other problems, such as an appropriately skilled workforce to match these fast moving developments.<sup>3</sup>

### **Population**

The estimated population is 89.71 million<sup>4</sup>, with an average annual population growth of 1.1%, including males accounting for 49.4% and females accounting for 50.6%. The average population density is 260 people per square kilometre. Approximately 70% of the population reside in rural areas, while the major cities of Hanoi have 6.5 million (metropolitan area) with 2.6 million in the city itself, Ho Chi Minh City (Saigon) has 7.4 million, Haiphong has 1.9 million, and Da Nang has 887,069.

The Vietnamese government recognises 54 ethnic groups, of which the Viet (Kinh) is the largest; according to official Vietnamese figures (1999 census), ethnic Vietnamese account for 86% of the nation's population. Literacy rate for the population aged 15 or over was 94% in 2009. Currently the Government has given priority to developing a quality training and education system.<sup>5</sup>

### **Government**

The Socialist Republic of Viet Nam is a one party state, where the Politburo and Central Committee and the Communist Party of Viet Nam decide major policy issues, which are then implemented by the Government. Constitutional and legislative powers are vested in the National Assembly, which is 'the highest organ of state power.' The National Assembly has the power to approve and revise the Constitution and laws and make important decisions on national matters.

President Truong Tan Sang has been in power since 2011, representing the Socialist Republic of Viet Nam on internal and foreign affairs. The Government is the highest administrative body, headed by Prime Minister Nguyen Tan Dung, who has been in office since 2006.

The People's Committee (at province, district and commune levels) governs management affairs within its administrative location; manages, directs, operates daily activities of local state bodies, and executes policies of the relevant People's Council and higher state bodies.

### **Environmental Profiles**

#### **Overview of Forest Resources**

Large areas of Viet Nam's forests were degraded, deforested, or defoliated following the conflicts of the mid-20th century. As a result, Viet Nam embarked on a national reforestation program in 1987. Its efforts increased forest cover from about 26% in 1994 to approximately 39.7% in 2011. However, while the country's total forest area has increased over the past twenty years, most of this growth is in the form of large-scale plantation development. In 2010, forest plantations comprised a quarter of all Viet

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<sup>3</sup> World Bank: Viet Nam Development Report 2014 – Main Report

<sup>4</sup> The World Bank, 2013

<sup>5</sup> KPMG: cutting through complexity – Investing in Viet Nam, 2011

Nam's forest area. Only one percent of the total forest area is considered primary forest, and the rest is regenerated natural forest.

In 2012, Viet Nam reportedly had 15.8 million hectares of forest with 25% canopy cover. Of this total, an estimated 10.3 million hectares are natural forest, 2.9 million hectares are plantation forest, 630,000 hectares are rubber plantations, and 1.12 million hectares are considered "other wooded land." Although rubber is considered an agricultural rather than a forest product in Viet Nam, standing rubber trees are counted as tree cover.<sup>6</sup> About 72% of forested land is publicly owned, with about 24% privately owned and the remainder under another type of ownership. National authorities estimate that approximately 80,000 hectares of forest are "rich forest" - a national designation for forests comprised of native species with no clearly visible sign of human activities, relatively undisturbed ecological processes, and high standing volume. This designation is analogous to the FAO's<sup>7</sup> "primary forest" designation. Six and a half million hectares, including rubber plantations, are considered production forest, comprising about 47% of total forest area. The remaining 7.27 million hectares, about 37% of total forest area, are designated for the protection of soil and water, with 16 percent of total forest in Viet Nam designated for biodiversity conservation.

The forests of Viet Nam can be divided into two broad categories: evergreen forests, which include conifers, and deciduous forests. There are more than 1,500 species of woody plants in the country, ranging from commercially important hardwoods, such as ebony and teak, to palms, mangroves, and bamboos. There also are numerous species of woody vines (lianas) and herbaceous plants. In the aggregate, the dense and open forests, savannas, brushland, and bamboo cover approximately half of the country's total area.

In most areas the forests are mixed, containing a great variety of species within a given area. Rainforests are relatively limited, and pure stands are few. The nearest to pure forest types are the pines, such as the three-needled *Pinus khasya* and the two-needled *Pinus merkusii* found in the uplands; and the mangrove forests of the coastal areas. In the mountainous regions are subtropical species from such genera as *Quercus* (oak), *Castanopsis*, *Pinus* (pine), and *Podocarpus*. Brushwood, bamboo, weeds, and tall grasses invade logged areas and grow around settlements and along arterial highways and railroads. Between the logged areas and the upland forests are other mixtures of forest types.

A large part of the forest in the central highlands is dense and rich in broad-leaved evergreens and semi evergreens, some of which yield valuable timbers. Some of this region is still composed of undisturbed (primary) forests. Other types of forests there include secondary forests; open forests, which typically have trees of the family *Dipterocarpaceae* and species from the genus *Lagerstroemia* (crape myrtle); mangrove forests; and barren lands of sand dunes with eucalyptus, small, thorny deciduous trees, and species from the *Casuarina* genus of flowering plants. Cogon grass (*Imperata cylindrica*) is commonly found in the open forests, and savanna vegetation occupies large areas formerly covered by forests.

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<sup>6</sup> Drawn from an extract of the Forest Legality Alliance, Viet Nam overview on forests, 2015

<sup>7</sup> Food & Agriculture Organisation of the United Nations

Grass and sedge swamps are characteristic of the Thap Muoi Plain (*Plain of Reeds*), a depression in the Mekong Delta.

### **Fauna**

Viet Nam's hot and humid climate supports an estimated 11,217 species of animals. Broadly, these include elephants, bears (Asiatic black bear and Malayan sun bear), tigers and leopards; as well as smaller mammals such as many rare primates, specifically langurs and monkeys (such as Tonkin snub-nosed monkey), bats, flying squirrels, civets and otters. Many species of reptiles and amphibians have been recorded, such as crocodiles, turtles, snakes, lizards, and frogs. While several fauna species have become extinct, like the Javan rhinoceros, the protection of large mammals is an area starting to be addressed. There are also around 2,500 species of fish, more than 300 species of corals, and many species of invertebrates recorded in the wildlife of Viet Nam.

Rare and little-known birds have been identified in Viet Nam, such as the Edward's Pheasant which was believed to be extinct, the white-winged wood duck and the white-shouldered ibis. The country lies on the East Asian flyway of Siberian birds, and is an important stopover for migratory waders. According to the Bird Life International records of 2011, there are 889 species of avifauna recorded, which includes 18 endemic species, 44 globally threatened species, and 6 introduced species.

### **Flora**

The country was once totally covered with forests but over the years due to the war, deforestation, and anthropological pressures, some areas have lost their biodiversity value. The floral richness of the rainforest habitats comprises a broad range of evergreens. According to the Conservation International List, Viet Nam is identified as the fifth biodiversity hot spot in the world, on account of its exotic flora and fauna. It is reported that between 1997 and 2007, almost 1000 new species were discovered. However, many areas still remain to be explored, and more species are likely to be found in the future.

Natural forests are at higher elevations in the northwest and mangrove swamps are in the coastal areas. Rainforest in the hilly region has wild rhododendrons in the northwest, along with dwarf bamboo and numerous types of orchids. The central dry region has pines and the river deltas have mangrove forests. The largest and the most conspicuous find in recent years are of the plant species in the Halong Bay area known as Halong Fan Palm.

Considered as one of the world's biological diversification centres, the flora estimated is of the order of 12,000 species (vascular flora) of which 9,628 have been recorded under 291 families. It includes 1000 endemic species. Trees, which provide timber, are of 1,000 species. Timber plants are 100 species.

There are 352 commercially-used species, including 42 listed as precious tree species including *Dalbergia cochinchinensis*, *Dalbergia annamensis* and *Dalbergia oliveri*. Further categorisation of the flora relates to 76 aromatic spices, 160 species providing vegetable oils, and also herbal species. Some of the well-

known herbal species are: ginseng, *Coscinium fenestratum*, *Coptis teeta*, *Panax vietnamensis* and *Stephania*.

### **Threats and conservation**

The protected areas in Viet Nam have suffered a decline over the past several decades. Trade in wildlife resources in Viet Nam is of considerable value. In respect to faunal species, legal trade varies between 3,700 and 4,500 tonnes per year (excluding trade in aquatic species); with faunal species used for medical purposes, pets, and as food and ornamentation. Insects are also a valuable source of trade with *coleopterus* and *lepidoptera* species contributing towards a major share. Medicinal plants are also harvested, and the legal trade is in the order of 20,000 tonnes per year.

Conservation efforts by the Government of Viet Nam have brought more areas under protected status and logging operations have been banned. The conservation efforts are showing some positive results with wildlife becoming re-established in some reforested areas. Mangrove forest areas are on the rise due to renewed planting. Fish fauna and crustaceans are proliferating and birds are seen more frequently. As a result of conservation efforts Siamese crocodile numbers have recovered in some areas on account of their reintroduction to ponds and lakes within some parks.

## **5. LEGISLATION**

The National Assembly is vested with legislative power; however, the executive organs also have an important role in legislation. In addition, the legal system is under the influence of the policies of the Communist Party. The Constitution has the highest legal validity, and all legal documents have to be consistent with the Constitution. Village customary regulations still exist in parallel with the Law of the State in some instances. To some extent the village customary regulations have affected law enforcement in Viet Nam. The People's Supreme Court holds power to issue circulars for providing guidelines on implementation of a particular law for lower courts.

Judicial precedents have not been defined as a source of law. However, this is set to change by September 2015. According to Article 22 of the Law on the Organisation of the People's Courts, the Judicial Council of the Supreme People's Court has the duty to review its cassation trial decisions, judgements and decisions of courts which have taken legal effect and are of standard nature; to summarise and develop them into court precedents for courts to study and apply at trial. The Chief Justice of the Supreme People's Court has directed that the Supreme People's Court must submit the first court precedent for Judicial Council's approval before September 2015.

Viet Nam has extensive legislation in the form of primary and secondary legislation such as laws, regulations, decrees, decisions, orders, circulars, and directives. These are not integrated, but formed in an ad-hoc nature. The adverse consequences of having too many laws are as serious as having too few; and it may create duplication of roles and responsibilities between the enforcement authorities resulting in reduced law enforcement. It can also lead to confusion about which existing laws are in force and which are repealed. An index of WLFC related legislation and sentencing guideline will be useful for the Courts and Procuracy to overcome this challenge.

### **INTERNATIONAL CONVENTIONS**

#### **1. Convention of International Trade in Endangered Species (CITES)**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the key international treaty that regulates the international trade in endangered species between countries, to avoid over-exploitation of species that could lead to extinction. CITES stands at the intersection between trade, environmental protection, and development, and it is recognised as the principal legal instrument that underpins collective global efforts to ensure legal trade and combat illegal trade. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival in the wild.

CITES protects over 5,600 species of animals and 30,000 species of plants. Such species are divided into three appendices which afford different levels or types of protection and regulation to species, according to the degree of protection they need:

- Appendix I includes endangered species that are threatened with extinction. International trade in these species is prohibited except under exceptional cases (see [Article III of the Convention](#)). In such exceptional cases, trade may take place provided it is authorised by the CITES Management Authority, and requires both an import permit and an export permit (or re-export certificate).
- Appendix II includes species that are not necessarily threatened with extinction, but that may become threatened unless trade is closely controlled. Trade in these species between countries requires an export licence issued by the CITES Management Authority of the exporting country.
- Appendix III includes species that are protected from unsustainable or illegal exploitation in at least one country, and need the cooperation of other member states to control the trade. Trade in such species requires an export licence issued by CITES Management Authority of the exporting country.

CITES Parties (e.g. member states) regulate international trade of CITES species through a system of permits and certificates that are required before specimens listed in its appendices may be imported, exported, re-exported or introduced from the sea. This depends on what Appendix such species are listed in and in some cases, countries can have stricter national controls and require additional permits than those required by the Convention to trade in species protected under CITES. When a specimen of a CITES-listed species is transferred between a country that is a Party to CITES and a country that is not, the country that is a Party may accept documentation equivalent to the permits and certificates described above.

Each party to the Convention is required to adopt national legislation and must designate one or more Management Authorities in charge of administering that licensing system and one or more Scientific Authorities to advise them on the effects of trade on the status of the species. In some cases, Parties designate a CITES Enforcement Authority to assist with CITES enforcement through cooperation with customs, police and other appropriate agencies, if this is not included within the mandate of the Management Authority. Parties maintain trade records that are forwarded annually to CITES, thus enabling the compilation of statistical information on the global volume of international trade in appendix-listed species. Article 8 of the Convention requires the Parties to take appropriate measures to enforce provisions of the Convention. These include measures to penalise trade in or possession of specimens listed in the Convention.

Viet Nam has been a signatory to CITES since 1994. Implementation of the Convention falls under the responsibility of the Ministry of Agriculture and Rural Development (MARD), which is also mandated under Directive No. 03/CT-TTg of the Prime Minister (Feb 2014) to lead in cooperating with relevant Ministries/Sectors and the Provincial People's Committees to ensure strict compliance with the Directive. Viet Nam has issued legal documents for the implementation of CITES as follows:

- Decree No. 82/2006/ND-CP on the management of export, import, re-export, introduction from the sea, transit, breeding, rearing and artificial propagation of endangered species of precious and rare wild fauna and flora.

- Circular No.40/2013/TT-BNNPTNT issued by Ministry of Agriculture and Rural Development regulating the List of species of wild fauna and flora in the CITES's Appendices.
- Decision No. 11/2013/QĐ-TTg dated 24 January, 2013 of the Prime Minister on banning from export, import, purchase and sale the specimens of some of wild fauna species in Appendices to CITES.
- Report No. 77/CTVN-THGP dated 25 March, 2015 of Viet Nam CITES Management Authority; Viet Nam CITES Management Authority will not grant CITES import permits for CITES specimens that are granted export CITES permits by the Laos authorities.

## **2. Convention on Biological Diversity (CBD)**

According to the Convention on Biological Diversity, the conservation of biological diversity is a common concern for human kind. The Convention requires Member States to conserve and sustainably use biological resources for the benefit of the present and future generations. Some renewable resources like timber play an important role in the global ecology by reducing the greenhouse gases in Earth's atmosphere, as carbon sinks, providing materials for construction, fuel and critically as habitats. Sound management is therefore a necessity to ensure regular supply to avoid unintended severe resource depletion.

The Convention regulates the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the utilisation of genetic resources, including appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies.

The Convention requires each State Party, in accordance with its particular conditions and capabilities, to develop national strategies, plans and programmes for the conservation and sustainable use of biological diversity; and to develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and ecosystems.

This Convention entered into force for Viet Nam on 14 February, 1995. For implementation of this Convention, Viet Nam has issued the following documents:

- Law on Biodiversity, 2008
- Article 63 of the Constitution provides that organisations and individuals that cause environmental pollution, natural resources exhaustion, or biodiversity depletion, shall be strictly punished and shall rectify and compensate for damages
- Decree 160/2013/NĐ-CP on the criteria to determine species and the regime of managing species under List of endangered, precious and rare species prioritised for protection.

## **3. Convention on Wetlands of International Importance, Specially Waterfowl Habitat (RAMSAR), 1971**

RAMSAR requires each Contracting Party to consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands

within its territory. For the purposes of this Convention, waterfowl are birds that are ecologically dependent on wetlands.

The official name of the treaty reflects the original emphasis upon the conservation of wetlands primarily as habitat for water birds. Since that time, the Convention has broadened its philosophical horizons to cover all aspects of wetland conservation and wise (i.e. sustainable) use, recognising wetlands as ecosystems that are vital for biodiversity conservation, water management, and for the well-being of human communities, thus fulfilling the full scope of the original text of the Convention<sup>8</sup>.

The Convention came into force on 20<sup>th</sup> January, 1989 for Viet Nam. Viet Nam has six registered RAMSAR sites. The Government has issued Decree 109/2003/NĐ-CP on conservation and sustainable development of submerged areas. Organisations and individuals violating the provisions of this Decree shall, depending on the nature and seriousness of their violation, be administratively sanctioned or examined for penal liability; and if causing damages, compensation must be made.

#### **4. International Tropical Timber Agreement 2006**

The objective of this Agreement is to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests. It promotes the sustainable management of tropical timber production forests, especially to provide an effective framework for consultation, international cooperation and the development of timber economy policies, to contribute to the process of sustainable development, to promote the expansion and diversification of international trade in tropical timber from sustainable sources, and to improve forest management and the efficiency of wood utilisation.

The International Tropical Timber Agreement 2006 came into force for Viet Nam on 10 April, 2014.

#### **5. Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972**

According to this Convention, each State Party shall ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated within its territory; and each State Party to this Convention shall endeavour so far as possible, and as appropriate for each country:

- To adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community, and to integrate the protection of that heritage into comprehensive planning programmes.
- To take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

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<sup>8</sup>[http://www.ramsar.org/sites/default/files/documents/pdf/Ramsar40\\_booklet/Ramsar\\_LiquidAssets\\_E.pdf](http://www.ramsar.org/sites/default/files/documents/pdf/Ramsar40_booklet/Ramsar_LiquidAssets_E.pdf) (page 8)

Viet Nam accepted the Convention on 19<sup>th</sup> October, 1987, and has issued the Law on Environmental Protection and Law on Cultural Heritage to contribute to local implementation of the Convention.

#### **6. UN Convention Against Transnational Organized Crime, 2000**

The Convention is the main international instrument in the fight against transnational organised crime. The Convention represents a major step forward in the fight against transnational organised crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation to tackle this issue. States that ratify this instrument commit themselves to taking a series of measures against transnational organised crime, including the creation of domestic criminal offences (for participation in an organised criminal group, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitation period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

According to the Report No. 45/2012/TB-BNG issued by the Ministry of Foreign Affairs, this Convention came into force for Viet Nam on 8 July, 2012. In Decision No. 605/QĐ-TTg, the Prime Minister approved the Plan to implement this Convention. Reviewing domestic legal documents related to this Convention has been ongoing from 2013 to 2015.

#### **7. UN Convention Against Corruption (UNCAC), 2003**

The purpose of this Convention is:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.

In accordance with its terms, the Convention shall apply to the prevention, investigation, and prosecution of corruption; and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention. Each State Party must ensure the existence of a body that prevents corruption.

Each State Party must also establish the following activities as criminal offences: bribery, trading in influence, abuse of functions, illicit enrichment, and obstruction of justice.

Viet Nam ratified this Convention on 19 August, 2009. However, Viet Nam made reservations not to be bound by some specific regulations such as to criminalise illicit enrichment, and to impose criminal penalties for legal persons, set forth in Article 20 and Article 26.<sup>9</sup> Viet Nam issued the Law on Anti-Corruption in 2005.

#### **8. ASEAN Agreement on the Conservation of Nature and Natural Resources, 1985.**

The fundamental principle of this Regional Agreement is that the Contracting Parties within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate through concerted action, the measures necessary to maintain essential ecological processes and life support systems to preserve genetic diversity, and to ensure the sustainable utilisation of harvested natural resources under their jurisdiction, in accordance with scientific principles and with a view to attaining the goal of sustainable development. To this end, they shall develop National Conservation Strategies and shall coordinate such strategies, within the framework of a conservation strategy for the Region. Viet Nam submitted the Instrument of Accession on 3 July, 1997<sup>10</sup>. This Agreement entered into force on 16 November, 1997<sup>11</sup>.

#### **9. ASEAN Agreement On Transboundary Haze Pollution, 2002**

The objective of this Agreement is to prevent and monitor transboundary haze pollution as a result of land and /or forest fires, which should be mitigated through concerted national efforts and intensified regional and international cooperation. Each Party shall take appropriate measures to monitor all land and/or forest fires, and prevent and control activities related to forest fire; and to take legislative, administrative and other measures to implement their obligations under this Agreement. Viet Nam signed the Agreement on 10<sup>th</sup> June, 2002. Viet Nam issued Decree No. 09/2006/NĐ-CP on fire prevention and fighting for forests; and provisions for environment-related crimes in the Penal Code such as causing air pollution, or illegally burning forest.

#### **10. Hereunder is a list of international conventions that Viet Nam is not a Party to**

For the purpose of reference, hereunder are some relevant international conventions that Viet Nam is not a Party to. Generally, all conventions mentioned below have a role in constituting the legal framework for wildlife and forest crimes.

##### **10.1. Convention on the Conservation of Migratory Species of Wild Animals (CMS), 1979**

The Convention aims to conserve terrestrial, aquatic and avian migratory species throughout their ranges. Article II of the CMS states that the Parties acknowledge the need to take action to prevent any migratory species from becoming endangered. According to the Convention, the Parties shall also endeavour to provide immediate protection for migratory species threatened with extinction and included in Appendix-I of CITES.

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<sup>9</sup>[https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=xviii-14&chapter=18&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-14&chapter=18&lang=en)

<sup>10</sup><http://agreement.asean.org/agreement/detail/207.html>

<sup>11</sup><http://agreement.asean.org/search.html?q=1985>

Viet Nam is not a party to this Convention; however, it is a Range State to the CMS<sup>12</sup>. "Range State" in relation to a particular migratory species means any State that exercises jurisdiction over any part of the range of that migratory species, or a State whose flag vessels are engaged outside national jurisdictional limits in taking that migratory species.

#### **10.2. Convention on Access to Information, public participation in decision-making, and access to justice in environmental matters (Aarhus Convention)<sup>13</sup>.**

The Convention aims to protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, and each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.

The environmental information shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for environmental information has been ignored, wrongfully refused, whether in part or in full, or inadequately answered, has access to a review procedure before a court of law or another independent and impartial body established by law.

Viet Nam is not a member of the two Conventions mentioned-above. However, it is encouraged to join these Conventions.

### **DOMESTIC LEGISLATION**

It should be noted at the outset that the penalties for WLFC in Viet Nam's domestic legislation are manifestly inadequate to act as a deterrent to transnational organised crime, particularly as the upper end of the penalty scale is rarely, if ever, applied.

#### **Recommendation**

**To revise the existing penal code and other legislation including relevant Decrees and Circulars to provide deterrent penalties to discourage offenders from committing WLFC**

**1. Viet Nam Penal Code No. 15/1999 and Viet Nam Penal Code No. 37/2009/QH12 of June 19, 2009 amending and supplementing a number of articles of the Penal Code 1999**

<sup>12</sup><http://www.cms.int/en/parties-range-states>

<sup>13</sup>[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-13&chapter=27&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en).

### **Article 153: Smuggling**

1. Those who conduct illegal cross-border trading in one of the following objects shall be subject to a fine of between ten million dong and one hundred million dong, or a prison term of between six months and three years:

- a) Commodities, Vietnamese currency, foreign currency(ies), precious metals, and/or gemstones valued between one hundred million dong and under three hundred million dong, and the offenders have been administratively sanctioned for acts defined in this Article or in any of Articles 154, 155, 156, 157, 158, 159, 160 and 161 of this Code; or have been sentenced for one of these offences, not yet entitled to criminal record remission but repeat the violations, if not falling under the cases stipulated in Articles 193, 194, 195, 196, 230, 232, 233, 236 and 238 of this Code;
- b) Objects being historical and/or cultural relics;
- c. Banned goods in great volumes, or the offenders have already been administratively sanctioned for acts defined in this Article or any of Articles 154, 155, 156, 157, 158, 159, 160 and 161 of this Code, or have already been sentenced for one of these offences, not yet entitled to criminal record remission but repeat their violations, if not falling under the cases defined in Articles 193, 194, 195, 196, 230, 232, 233, 236 and 238 of this Code.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and seven years of imprisonment:

- a) In an organised manner;
- f) Gaining large illicit profits;
- j) Committing the crime more than once;

Clause 2 above mentions that offences committed in an organised manner, or that result in large illicit profits, or committing the crime more than once, shall entail imprisonment between three to seven years. This provision applies to wildlife and forest crimes.

### **Article 154: Illegal cross-border transportation of goods and/or currencies**

1. Those who illegally transport any of the following objects across borders shall be subject to a fine of between five million dong and twenty million dong, non-custodial reform for up to two years, or a prison term of between three months and two years:

- a) Goods, Vietnamese currency, foreign currency(ies), precious metals, or gemstones valued between one hundred million dong and up to three hundred million dong; or valued at less than one hundred million dong but the offenders have already been administratively sanctioned for acts defined in this Article or any of Articles 153, 155, 156, 157, 158, 159, 160 and 161 of this Code, or have been sentenced for one of these offences and not yet entitled to criminal record remission but repeat their violations; or if not falling under the cases defined in Articles 193, 194, 195, 196, 230, 232, 233, 236 and 238 of this Code;
- b) Objects being historical and/or cultural relics and the offenders have already been administratively sanctioned but repeat their violations;
- c) The banned goods are in great quantity, or the offenders have already been administratively sanctioned for acts defined in this Article or any of Articles 153, 155, 156, 157, 158, 159, 160 and 161 of

this Code, or have already been sentenced for one of these offences and not yet entitled to criminal record remission but repeat their violations, or if not falling under the cases defined in Articles 193, 194, 195, 196, 230, 232, 233, 236 and 238 of this Code;

Forest and wildlife products are listed in the banned goods List in Decree 59/2006/ND-CP.

Article 154, clause 2, item b) mentions the banned goods are in “very great quantity”. As noted, the terms “great quantity” and “very great quantity” are not defined in the Article.

#### **Recommendation**

**To revise Article 154 to include the definitions of “great quantity” and “very great quantity”**

#### **Article 175: Breaching regulations on forest exploitation and protection**

1. “Those who commit one of the following acts causing serious consequences, or who have already been administratively sanctioned for such act, or have already been sentenced for this offence and not yet entitled to criminal record remission but still commit them, shall be subject to a fine..., non-custodial reform... or subject to a prison term of between 3 months and 3 years:”

- a) “Illegally exploiting forests...”
- b) “Illegally transporting and / or trading in timber...”

2. “Committing the crime in very serious or particularly in serious cases, the offender shall...”

Joint Circular No. 19/2007/TTLT-BNT&PTNT-BTP-BCA guides **the application of a number of articles of the Penal Code regarding crimes in the domain of forest management, forest protection and forest product management**, providing some guidance of "serious", "very serious" and "particularly serious" consequences and corresponding adequate punishments.

#### **Article 176: Breaching regulations on forest management**

1. Those who take advantage of or abuse their positions and/or powers, committing one of the following acts and causing serious consequences, or who have been disciplined for such acts but still commit them, shall be subject to non-custodial reform for up to three years, or to a prison term of between six months and three years:

- a) Illegally assigning forests and/or forest land or recovering forests and/or forest land;
- b) Illegally permitting the transfer of the use of forests and/or forest land;
- c) Illegally permitting the exploitation and/or transportation of forest products.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between two to seven years of imprisonment:

- a) In an organised manner;
- b) Committing the crime more than once;
- c) Causing very serious consequences;

3. Committing the crime which entails particularly serious consequences, the offenders shall be sentenced to between five and twelve years of imprisonment.

4. The offenders may also be subject to a fine of between ten million dong and one hundred million dong, and a ban from holding certain posts for one to five years.

This is a good provision for prosecuting officials who deal with forest management for breaching the relevant regulations such as negligence of responsibility, causing serious consequences as found in Article 285 of this law.

**Article 189: Destroying forests**

1. “Those who illegally burn or destroy forests, or commit other acts of forest destruction causing serious consequences, or who have already been administratively sanctioned for such acts but still commit them, shall be subject to a fine of between ten million and one hundred million dong, non-custodial reform for up to three years, or a prison term between six months and five years.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:
  - a) In an organised manner;
  - b) Abusing positions and/or powers, or abusing the names of agencies or organisations;
  - c) Destroying a very large forest area;
  - d) Felling and destroying plants of precious and rare species on the lists prescribed by the Government;
  - e) Causing very serious consequences.
3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:
  - a) Destroying a particularly vast forest area;
  - b) Destroying protection forests or special-use forests;
  - c) Causing particularly serious consequences.
4. The offenders may also be subject to a fine of between five million dong and fifty million dong, and a ban from holding certain posts, practicing certain occupations, or doing certain jobs for between one to five years.

**Article 190: Breaching regulations on the protection of precious and rare wild animals**

Those who illegally hunt, kill, transport, raise, cage or traffic animals on the list of endangered, precious and rare species prioritised for protection, or illegally transport or traffic in body organs or products of these animal species, shall be imposed a fine of between fifty million and five hundred million dong, subject to non-custodial reform of up to three years, or a prison term of between six months and three years.

Committing the crime in any of the following circumstances, offenders shall be sentenced to between two and seven years of imprisonment:

- a) In an organised manner;
- b) Abusing positions and powers;
- c) Using banned hunting tools or devices;
- d) Hunting in no-hunting zones or seasons;
- e) Causing very or particularly serious consequences.

Offenders may also be imposed a fine of between ten million and one hundred million dong, and banned from holding certain posts, practicing certain professions, or performing certain jobs for between one and five years.

**Article 191: Breaching the special protection regime for nature conservation areas**

1. Those who breach regulations on the management of nature reserves causing serious consequences, shall be imposed a fine of between fifty million and five hundred million dong, subject to non-custodial reform of up to three years, or a prison term of between six months and three years.
2. Committing the crime with serious consequences to strictly protected core zones, offenders shall be sentenced to between two and five years of imprisonment.
3. Committing the crime in any of the following circumstances, offenders shall be sentenced to between three and ten years of imprisonment:
  - a) In an organised manner;
  - b) Using banned hunting tools or devices;
  - c) Causing very or particularly serious consequences to strictly protected core zones.
4. Offenders may also be imposed a fine of between ten million and one hundred million dong, and banned from holding certain posts, practicing certain professions, or performing certain jobs for between one and five years.

A deficiency in the Penal Code is that only individuals and not legal persons are subjects of crime. Therefore if a legal person such as a corporation commits an act, it shall only be punished by an administrative sanction, like any other individual. In spite of corporate entities making huge illegal profits from WLFC, they cannot be brought to court for their offences against WLFC because of the omission of legal persons in Article 191.

**Recommendation**

**To revise Article 191 of penal code to include “legal persons” in the provision**

Several recommendations to revise the criminal laws and particularly the Penal Code have been provided in this report. Viet Nam is in the process of undertaking penal reforms and a workshop sponsored by UNODC was held in Hanoi, on 15 December 2014, as a part of that process. It is hoped this report will contribute to that process.

**2. Decree No. 82/2006/ND-CP on Management of export, import, re-export, introduction from the sea, transit, breeding, rearing and artificial propagation of endangered species of precious and rare wild fauna and flora.**

Viet Nam’s domestic legislation is believed to generally meet the requirements for implementation of CITES. Decree 82/2006 sets out several provisions for the import and export of wildlife and applies to all species mentioned in the CITES Appendices I, II and III, and to the specimens of endangered species of precious and rare wild fauna and flora within Vietnamese territory.

The possession, use and domestic sale of wildlife products is largely regulated in other legal documents, such as Article 190 in the Penal Code 2009, and the Law Amending and Supplementing a Number of Articles of Penal Code 1999 on breaching regulations for protection of animals in the list of endangered, precious and rare species prioritised for protection.

The import and re-export of rhino horn is covered by Article I, clause I (a) of Decree 82; however, the possession, use or domestic sale of the rhino horn is not covered under this Decree. Because of this deficiency, the offenders are not penalised even if they are found in possession, found using, or found selling rhino horn in the domestic market.

#### **Recommendation**

**The Decree No. 82/2006/ND-CP should be revised to prohibit the possession, use and supply of rhino horn. The Decree should also include appropriate sanctions and penalties**

### **3. Decree No. 32/2006/ND-CP on Management of endangered, precious and rare forest plants and animals.**

The Decree makes a distinction between two groups of plants and animals. Group I consists of plants and animals that are strictly banned from exploitation and use for commercial purposes, including forest animals with scientific or environmental value, with high economic value but very small wild populations, or in high danger of extinction. Group II consists of threatened or rare forest plants and animals that may be permitted for restricted exploitation or use for commercial purposes. Individuals in violation of the Decree may be investigated for criminal liability according to the law.

Article 9, clause 2 of the Decree permits the processing or trade in the following objects for commercial purposes:

- “- Endangered, precious and rare forest animal species originating from artificial breeding and products thereof;
- Endangered, precious and rare forest animal species of Group IIB which are material evidences confiscated according to the State's current regulations as they can no longer be salvaged and released into the environment;
- Endangered, precious and rare forest plants of Group IA which are material evidences confiscated according to the State's current regulations;
- Endangered, precious and rare forest plants of Group IIA exploited from nature and those originating from artificial culture.”

Article 10 of the Decree sets out the handling of violations: "1. Organisations and individuals that commit acts violating this Decree's provisions on the management of endangered, precious and rare forest plants and animals shall, depending on the nature and seriousness of their violations, be administratively handled. Violating individuals may be examined for criminal liability according to current provisions of law".

This means that violations concerning breached regulations of the protection of animals on the list of endangered, precious and rare species prioritised for protection can be handled according to Article 190 of the Penal Code. Alternatively, the offender can be dealt with according to Article 285: Negligence of responsibility, causing serious consequences.

“1. Those who, due to negligence of their responsibility, fail to perform or improperly perform their assigned tasks, causing serious consequences in cases other than those stipulated in Articles 144, 235 and 301 of this Code, shall be sentenced to non-custodial reform for up to three years or between six months and five years of imprisonment.

2. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between three years and twelve years of imprisonment.

3. The offenders shall also be banned from holding certain posts, practicing certain occupations or doing certain jobs for between one to five years.”

#### **Recommendation**

**Article 9 of the Decree No. 32/2006/ND-CP should be amended to prohibit the commercial sale of any rare or endangered wildlife species**

#### **4. Law No. 29/2004: Law on Forest Protection and Development**

It is primary legislation and provides for the management, protection, development and use of forests and the rights and responsibilities of forest owners. The law sets out the prohibited acts, including illegal hunting, shooting, catching and trapping of forest animals, and illegal transportation, processing, advertising, trading in, exporting and importing forest plants and animals. It states that persons who carry out the prohibited acts shall be subject to administrative proceedings or investigated for criminal liability depending on the nature and seriousness of the violation.

Article 85 of this Law details the following handling of violations:

"1. Persons who destroy forests, burn forests or damage forest resources; illegally exploit forests; illegally hunt, catch, cage or slaughter forest animals; illegally purchase, sell, trade in or transport forest products, or violate other law provisions on forest protection and development shall, depending on the nature and seriousness of their violations, be administratively handled or examined for penal liability according to law provisions.

2. Persons who abuse their positions and/or powers to violate law provisions on forest assignment, lease or recovery, the conversion of forest use purposes, permission of forest use or forest exploitation; who are irresponsible or abuse their powers and/or positions in enforcing the legislation on forest protection and development; who cover violators of the legislation on forest protection and development; or who commit other acts violating the provisions of this Law shall, depending on the nature and seriousness of their violations, be disciplined or examined for penal liabilities according to law provisions."

Violations in the Article are compliant with the Penal Code at Article 176 concerning breaching regulations on forest management:

“1. Those who take advantage of or abuse their positions and/or powers, committing one of the following acts and causing serious consequences, or who have been disciplined for such acts but still commit them, shall be subject to non-custodial reform for up to three years or to a prison term of between six months and three years:

c) Illegally permitting the exploitation and/or transportation of forest products.”

Violations in this Article are also compliant with the Penal Code at Article 175 concerning Breaching regulations on forest exploitation and protection, and the Law on Handling of Administrative Sanctions:

“1. Those who commit one of the following acts causing serious consequences; or who have already been administratively sanctioned for such acts; or have already been sentenced for this offence, and not yet entitled to criminal record remission but still commit them, shall be subject to a fine of between five million dong and fifty million dong, non-custodial reform for up to three years, or subject to a prison term of between three months and three years:

b) Illegally transporting and/or trading in timber, if not falling into the cases specified in Article 153 and Article 154 of this Code”.

It also provides for compensation to be paid at Article 86 provided for compensation for damage:

“Persons who violate the legislation on forest protection and development, thus causing damage to the State, organisations, households or individuals shall, apart from being handled according to the provisions of Article 85 of this Law, have to pay compensation for such damage in accordance with law provisions”.

##### **5. Law No. 20/2008: Law on Biodiversity**

This is the first Law on Biodiversity in Viet Nam. Previously, the regulations on biodiversity were defined in documents of the Law on Forest Protection and Development. The Law on Biodiversity provides the regulations for biodiversity conservation and sustainable development, and the rights and responsibilities of agencies, individuals, organisations, households and communities for the protection and conservation of biodiversity. Article 7 of this law prohibits various acts including hunting, fishing and exploiting wild species in protected conservation areas, except for the purposes of scientific research. It also prohibits hunting, fishing, exploiting body parts, illegal killing, consuming, transporting, purchasing and selling species listed as endangered, precious and rare species prioritised for protection.

However, the law does not specifically provide for administrative or criminal sanctions. It does mention that organisations or individuals that cause damage to biodiversity shall pay for damages in accordance with the law (Article 75). In the future, a new draft of the Law on Biodiversity should include administrative and criminal sanctions. In the interim, a circular should be developed to guide the application of criminal sanctions to the Law on Biodiversity.

##### **Recommendation**

**A Circular be developed guiding the application of administrative and criminal sanctions until a new draft Law on Biodiversity is prepared**

## **6. Decree No. 103/2013/ND-CP on the Sanction of Administrative Violations for Illegal Fisheries**

This Decree provides that administrative violations in illegal fisheries activities may face:

- A fine between VND 3-5 Million for storage or transportation of electric shock tools on fishing vessels or other floating facilities; and
- A fine between VND 80-100 Million for acts exploiting, trading, collecting, rearing, preserving or the processing of a quantity of 30Kg or more of critically endangered marine species.

## **7. Decree No. 157/2013/ND-CP on Penalties for Administrative Violations Against Regulations on Forest Management, Development, Protection and Forest Product Management, and its Amendment (Decree No. 40/2015/NĐ-CP)**

This Decree regulates the violations, administrative penalties, mode of penalties, and remedial measures imposed on violations relating to forest management, forest development, forest protection and forest product management. It establishes the level of fine that may be imposed upon an individual or organisation in relation to offences pertaining to common, endangered, precious and rare species of plants and animals, including species listed as CITES Appendix I and II specimens that aren't covered under domestic legislation. For organisations, their fines are double that imposed on an individual. Given the potential profits to be made from WLFC, this is an insufficient deterrent to organisations and should be significantly increased.

Article 7(2) of this Decree also establishes the minimum fine required for an offence to warrant a criminal imputation:

- a) "Administratively illegal actions causing damage exceeding the maximum administrative penalty regulated in Articles 12, 16, 20; administratively illegal actions in which the exhibits are wild plants of Group IA and wild animals of Group IB causing damage exceeding the maximum administrative penalty stipulated in Articles 21, 22, 23."

Article 7(3) of this Decree importantly establishes provisions for violations involving forest plants and wild animals that are listed under appendices I and II of CITES, but not specified in the List of endangered, precious and rare forest plants and animals of Groups IA and IB. These provisions are:

- a) Administrative violations of species listed in Appendix I shall be settled in the same manner as violations against endangered, precious and rare wild animals of Groups IA and IB.
- b) Administrative violations of species listed in Appendix II shall be settled in the same manner as violations against endangered, precious and rare wild animals of Groups IIA and IIB.

Unfortunately, Article 7(3) also in effect creates a value threshold for CITES Appendix I and II specimens, requiring the value of the exhibit to exceed 160,000,000 Dong (approx. \$7,272 USD) before the matter can be dealt with criminally.

This provision is causing considerable issues as it has proven difficult, if not impossible for Vietnamese officials to establish a market price for wildlife products including ivory and rhino horn. This Article is also in conflict with the spirit of Article 190 of the Penal Code, and Decree No. 160/2013/ND-CP.

Another issue arising from Decree No. 157/2013/NĐ-CP is that Article 6(1)(a) permits the sale of confiscated exhibits of forest animals including fresh products and weak or injured animals not belonging to Group IB, or other fresh forest products not belonging to Group 1A, at the market price applied on the selling date, with the proceeds from the sale to be paid to the state budget.

Although offering a short term injection of funds for the State budget, the sale of confiscated products actually stimulates further WLFC, and in the long term is detrimental to enforcement and conservation efforts.

#### **Recommendations**

**Penalties for organisations should be significantly increased in Decree No. 157/2013/NĐ-CP.**

**References to the term “wildlife” should be removed from the Decree No. 157/2013/ND-CP, thereby removing the requirement to establish a monetary value for wildlife products.**

**Article 6(1)(a) of the Decree No. 157/2013/ND-CP permitting the sale of seized products should be removed, or restricted to timber products only.**

#### **8. Decree No. 160/2013/ND-CP on criteria to determine species and the regime of managing species under lists of endangered, precious and rare species prioritised for protection**

This Decree sets out the criteria for the identification and management of endangered, rare and precious species prioritised for protection as follows:

- The quantity of individuals of the species is few or in danger of extinction;
- The species is endemic or of special value to science, medicine, economy, ecology, environmental landscape, or cultural heritage.

In addition, the Decree defines the regime for managing species under the list of endangered, rare, precious, and wildlife species prioritised for protection. It also regulates the acts of exploitation, exchange, purchase, sale, gifting, hiring, storage, transportation, rearing, rescue, import and export of species on the list species prioritised for protection. A key gap in the application of this Decree is that it does not specifically provide for administrative or criminal sanctions.

#### **Recommendation**

**A Circular be developed guiding the application of administrative and criminal sanctions for Decree 160/2013/ND-CP**

### **9. Decision No. 95/2008/QĐ-BNN on the Management of Captive Bears**

Article 2 of the above decision which is secondary legislation, prohibits the hunting, trapping, catching, buying, selling, killing, transporting, advertising, export, import, temporary export, re-export of bears, bear products, or derivatives of bears; keeping bears in captivity without registration and micro chip, or bears of illegal origin; keeping bears in captivity without facilities, or with facilities that do not satisfy the requirements defined in the regulations. The provision seems to have a serious deficiency: on the one hand, trapping and catching of bears is prohibited; however, keeping them in captivity is allowed under certain conditions.

#### **Recommendation**

**This decision should be revised in compliance with the CITES convention**

Furthermore, Article 15 provides that, depending on the seriousness of the violation, the organisation or individual that violates the regulations shall be dealt with according to the regulations, and the bears that are confiscated will be settled in accordance with the regulations by MARD; however, no specific administrative sanctions or criminal punishments are provided in the regulations. It is widely reported that bear farming is quite a thriving industry in Viet Nam. This kind of contradiction could be a factor responsible for the depletion of wildlife resources in the country.

### **10. Prime Minister Decision on Tiger Breeding, 2007**

Tigers are afforded protection under Viet Nam's environmental laws including Decree No. 160/2013/ND-CP and Decree No. 32/2006/ND-CP. Tigers are also protected under CITES, and it is illegal to hunt, trap, keep, kill, transport, sell or advertise tigers or tiger products in Viet Nam.<sup>14</sup>

In 2007, Prime Minister Nguyen Tan Dung issued a Decision to allow three facilities to raise and breed 43 tigers that they illegally held in their possession. At the time, Mr Cao Duc Phat, the Minister for Agriculture and Rural Development (MARD), declared that the breeders in Ngo Duy Tan and Binh Duong Province had better facilities than the State-run zoos.<sup>15</sup>

A conscientious decision made in the interests of the 43 animals has since seen the number of tiger breeding facilities increase from 3 to 10, and the number of captive tigers rise from 43 to 121.<sup>16</sup> The

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<sup>14</sup> Anon, Viet Nam News at <http://vietnamnews.vn/economy/163593/tiger-breeders-get-the-go-ahead-from-pm-ending-controversy.html> accessed on 30 August 2015.

<sup>15</sup> Anon, Viet Nam News at <http://vietnamnews.vn/economy/163593/tiger-breeders-get-the-go-ahead-from-pm-ending-controversy.html> accessed on 30 August 2015.

<sup>16</sup> Ibid

issue is now much greater than it was in 2007, and should be addressed as part of a greater problem than just the welfare of 121 tigers. The presence of these facilities puts Viet Nam in direct conflict with CITES recommendations in relation to tiger farming.

In 2007, CITES voted that tigers should not be bred for trade in their parts, and that tiger farming should be phased out. Tiger consuming and captive breeding countries (China, Thailand, Laos and Viet Nam) fail to comply with CITES recommendations to:

- Limit breeding of captive tigers
- Audit and destroy stockpiles of tiger parts and derivatives
- Provide adequate reporting on breeding facilities (tiger farms), seizures, or the status and outcome of court cases
- Implement adequate legislation to prohibit the internal trade in parts of captive tiger

CITES Declaration 14.69 states that “Parties with intense operations of breeding tigers on a commercial scale shall implement measures to restrict population to a level supportive only to conserving wild tigers; tigers should not be bred for trade in their parts and derivatives.”

Given that the Prime Ministers’ decision was made in 2007, and in the proceeding eight years these facilities have not made any discernible impact on the conservation of the wild tiger population in Viet Nam, it is recommended that the Government bring Viet Nam back into compliance with CITES and close down these facilities. The Government should also consider appointing an independent reviewer to determine how to best dispose of the animals currently in these facilities.

In the meantime, strict measures should be enforced within these facilities to prevent breeding and exacerbation of this issue, by segregating male and female animals. Provisions should also be implemented to ensure that the carcass of any tiger that dies is surrendered to the relevant authorities, not disposed of at the facility as under current arrangements.

Consideration should also be given at the earliest opportunity to identifying reputable international zoos that would be prepared to take some of the tigers, and to seek sufficient funding through donor support for establishing and/or upgrading state facilities in Viet Nam to keep the remaining animals until they die. Should it be decided that the facilities are to remain open, then it is recommended to cease breeding additional tigers, and that the remaining tigers are DNA tested and the individual stripe patterns recorded to prevent laundering of wild or smuggled specimens into the facilities to replace deceased animals.

**Recommendation**

**To revise the Decision of the Prime Minister on Tiger Breeding (2007) so as to comply with the provisions of the CITES Declaration 14.69**

**Appoint an independent reviewer to determine how to best dispose of the animals in the tiger farms in Viet Nam**

## **11. Joint Circular No. 19/2007 on guiding the application of certain articles in the Criminal Code to violations of forest protection and management laws**

This Circular provides guidance on the application of Article 190 of the Penal Code to violations against forest management and protection, and management of forest products. It also provides guidance in relation to what constitutes “serious,” “very serious” and “extremely serious” violations by reference to the number/volume of the endangered, precious, or rare species affected by the offence, or the value of the product that constitutes the offence. For example, illegally trading one to two Malayan flying lemurs constitutes “serious consequences”, whereas illegally trading five or more constitutes “extremely serious consequences”. The Circular also takes into account the endangered status of the species when determining the categorisation of seriousness of the violation, and thus the severity of punishment. For example, illegally trading four or more individual leopards is considered to have the same “extremely serious consequences” as illegally trading one individual Indochinese tiger. In summary, the Circular suggests that the following are all principal factors when sentencing an offender under Article 190 of the Penal Code:

- (1) Value of the products derived from rare and precious wildlife species;
- (2) The number of species affected; and
- (3) The endangered status of that species

Regarding the issue of value of the illegal products of the wildlife crime, the Procuracy has been facing problems in prosecuting wildlife cases because of the difficulties in calculating the minimum value or worth of the objects of the crime seized. As a result, very few cases of rhino or ivory smuggling result in convictions because of an inability to determine the value of the seizures. This is a flawed rationale as there are many variables that affect the price of an illegal commodity. For narcotic offences in Viet Nam the possession of quantity determines the seriousness of the offence, not the monetary value of the narcotics. It should be likewise with WLFC products.

A similar rationale is applied to a SPC draft circular issued on 19.03.2014, titled ‘*Guidance on Criminal Prosecution of those who conduct smuggling, transportation, illegal storage of rhino horn and ivory from abroad under CITES*’, which takes into account the weight of the illegal ivory and the rhino horn smuggled rather than its monetary value.<sup>17</sup> The new system devised by the draft circular, if adopted, would be much more effective in enabling the successful prosecution of cases concerning ivory and rhino horn. The successful passage of this circular should be expedited as a matter of urgency, and consideration given to making it retrospective to allow enforcement of previously unpunished crimes that are still within the statute of limitations.

### **Recommendation**

**That the SPC draft circular ‘*Guidance on Criminal Prosecution of those who conduct smuggling, transportation, illegal storage of rhino horn and ivory from abroad under CITES*’ be ratified as a matter of urgency**

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<sup>17</sup> This has yet to be ratified

## **12. Summary**

Viet Nam has extensive legislation on WLFC such as Laws, Regulations, Decrees, Decisions, Orders, Circulars, and Directives. These are scattered and ad-hoc in nature. Those who need to apply the WLFC legislation, i.e. investigators, prosecutors and judges, have to make sure that they apply the correct legislation, which is a complex and challenging task considering that there is no codification of legislation or an index of legislation.

### **Recommendation**

**Undertake a project for the codification and preparation of an index of WLFC legislation**

## 6. ENFORCEMENT

### Enforcement Structure

There are several different law enforcement agencies involved in combating WLFC in Viet Nam, and the clarity of roles and responsibilities under the many different decrees, circulars, laws and decisions is confusing and there is some overlapping.

Each agency has different laws and decrees mandating their functions. For example, the Forest Protection Department under the Ministry of Agriculture and Rural Development are responsible for Forest Protection and Forest Management; whereas the Ministry of Public Security, through its main functional arm, the Environmental Police, or depending on the complexity or seriousness of the offence the Economic Police or Criminal Police, undertake the investigative role. Whilst the General Department of Customs under the Ministry of Finance clearly has a revenue collection role, they are also responsible along with the Border Guards under the Ministry of Defence (and the Vietnamese Marine Police – VMP) for the control of the land, air and sea borders to enforce trade laws and undertake seizure of illegal timber and illegally trafficked CITES species. The oversight and management of all law enforcement investigations falls to the Supreme People’s Procuracy (SPP). The respective roles of each agency within the criminal justice system pertaining to wildlife and forest crime are displayed in Figure 3.

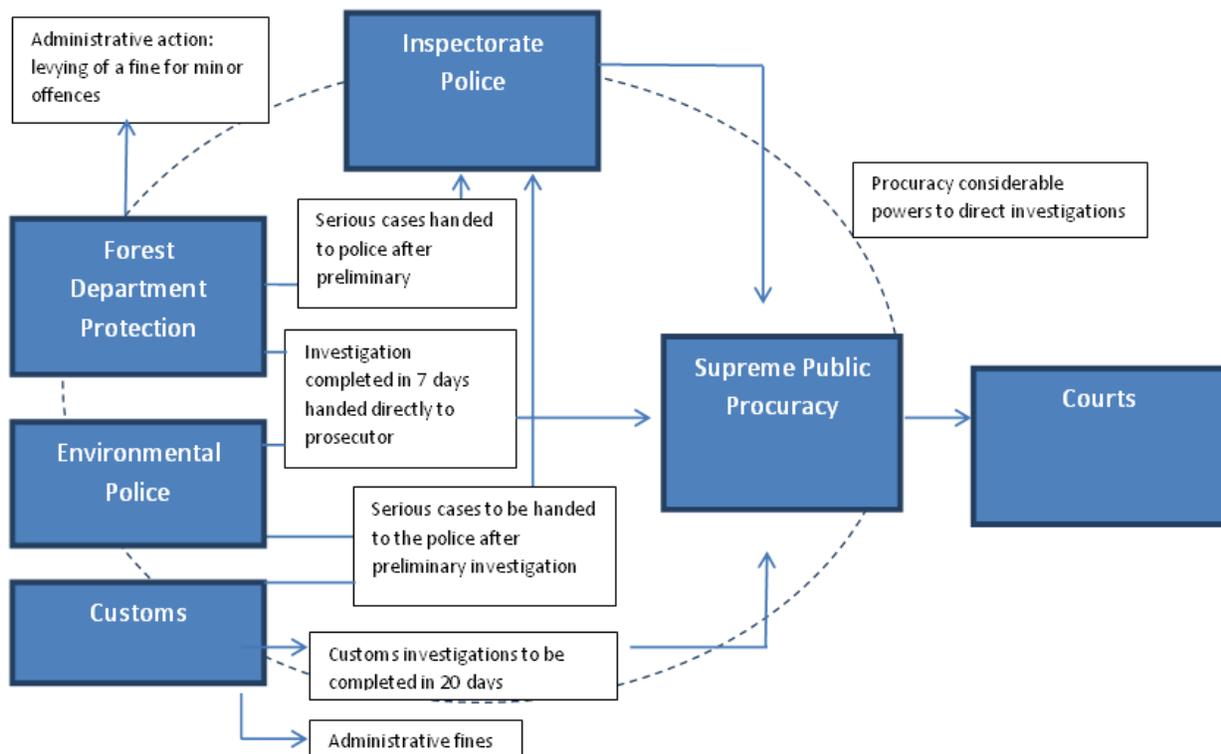


Figure 3: The criminal Justice System and inter-agency functions in cases of WLFC in Viet Nam

## **Enforcement Agencies**

The following agencies are either currently involved in the implementation and enforcement of the relevant laws of Viet Nam, or have a possible role to play in responding to, or combating, wildlife and forest crime.

### **Forest Protection Department**

The Forest Protection Department (FPD) is the lead agency in Viet Nam for forest protection and management, with a specific mandate to counter the illegal trade in timber. It collaborates with MPS, MARD, MoD and MONRE, to ensure the effective management of the country's forest resources.<sup>18</sup>

The functions of forest protection and management are delivered by the Forest Protection Force (FPF) with approximately 13,000 officers' nationwide. The FPD is responsible for inspecting and supervising the professional activities of the FPF nationally. At a provincial level, DARD is responsible for supervising the operation of the provincial FPF, and at a district level this role is undertaken by the District People's Committee.

The role of the Forest Protection Department in investigations is prescribed by regulation. There are three options available to forest 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 it is regarded by forestry officials involved to be of a more serious or organised nature, then the Inspectorate Police is requested to take over the investigations. In such cases, forest 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.

There were no statistics provided by the FPD Central Authority during this assessment in relation to the number of violations or investigations commenced. However, during a 2013 UNODC assessment, details were provided by both the FPD and the Supreme People's Procuracy for the periods 1 January, 2009 to 30 September, 2013. Although this does not include the years 2014/2015, it still enables trend analysis including violations detected, cases submitted, and the types of cases investigated. These details originally appeared in the 2013 UNODC report *Criminal Justice Response to the Illegal Trade in Timber in Viet Nam*.

Between 1 January, 2009 and 30 September, 2013, the FPD reported a total of 152,851 cases. The yearly breakdown of these cases is shown in Figure 3.

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<sup>18</sup> Criminal Justice Response to Illegal Timber Trade in South East Asia, UNODC, 2013

	2009	2010	2011	2012	2013 (Sep)	Total
<b>Violations of forest protection regulations</b>	40,800	33,857	29,551	28,940	19,703	<b>152,851</b>
<b>Administrative Proceedings</b>	34,801	28,718	25,147	24,604	16,660	<b>129,930</b>
<b>Criminal Proceedings</b>	287	399	266	284*	284*	<b>1,520</b>
<b>Criminal cases resulting in convictions</b>	43**	46*	46*	46*	46*	<b>227</b>
<b>People Prosecuted</b>	<b>326</b>	<b>214*</b>	<b>214*</b>	<b>214*</b>	<b>214*</b>	<b>1,182</b>

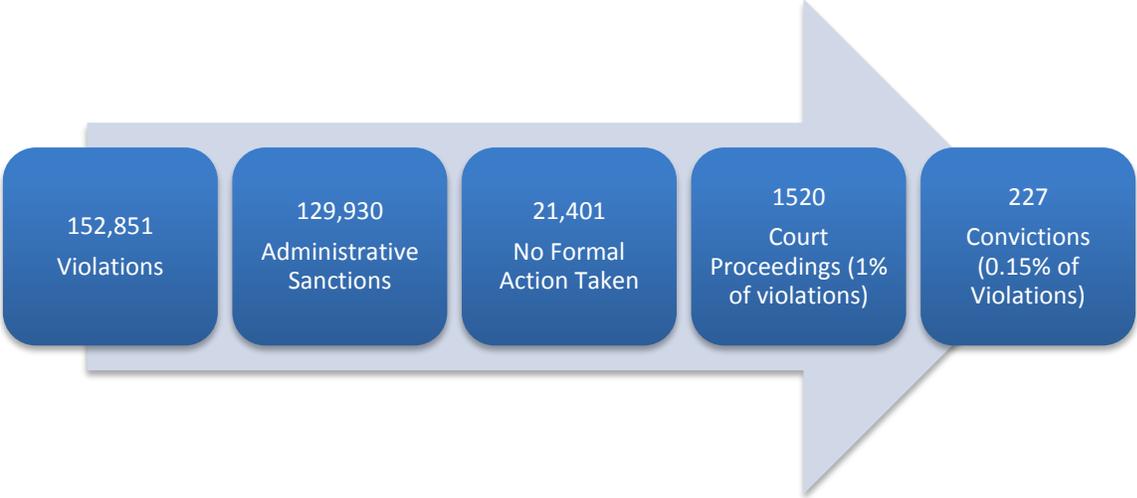
**Figure 4: FPD reported cases 2009 to 2013**

\* 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.

The worrying trend that emerges from this data is that only 1% of violations result in a prosecution at Court, and of those cases only 15% are successful. This represents 0.15% of total violations resulting in a successful criminal conviction. It is no wonder that the majority of offences are dealt with by way of administrative sanction. Officers faced with the prospect of preparing a complex criminal case only to see that case dismissed at Court will naturally revert to a system whereby the matter is finalised in the most expedient manner. A breakdown of violations and outcomes is displayed in Figure 4.



**Figure 5: Breakdown of violations and outcomes**

This poor success rate may also be indicative of greater problems. In relation to the FPD it may represent fundamental problems in evidence collection, case preparation and evidence presentation. If the SPP are only prosecuting a relatively small amount of cases and of those cases they only gain convictions 15% of the time then there may be issues in relation to the SPP’s knowledge and application of environmental law. There may also be an issue with the Courts interpretation of the law, such as the requirement to identify a price for an illegal commodity, or that the laws themselves are confusing or duplicitous.

Of all violations that were investigated by the FPD, by far the most prevalent offence is the illegal trading and transporting of forest products, representing 68% of all infractions. This is followed by illegal deforestation at 14%, and exploiting timber and forest products at 12%. What is evident from these statistics is that many offences are detected outside of protected areas. A full breakdown of case types from the period 1 January, 2010 to 30 September, 2010<sup>19</sup> is displayed in Figure 5.

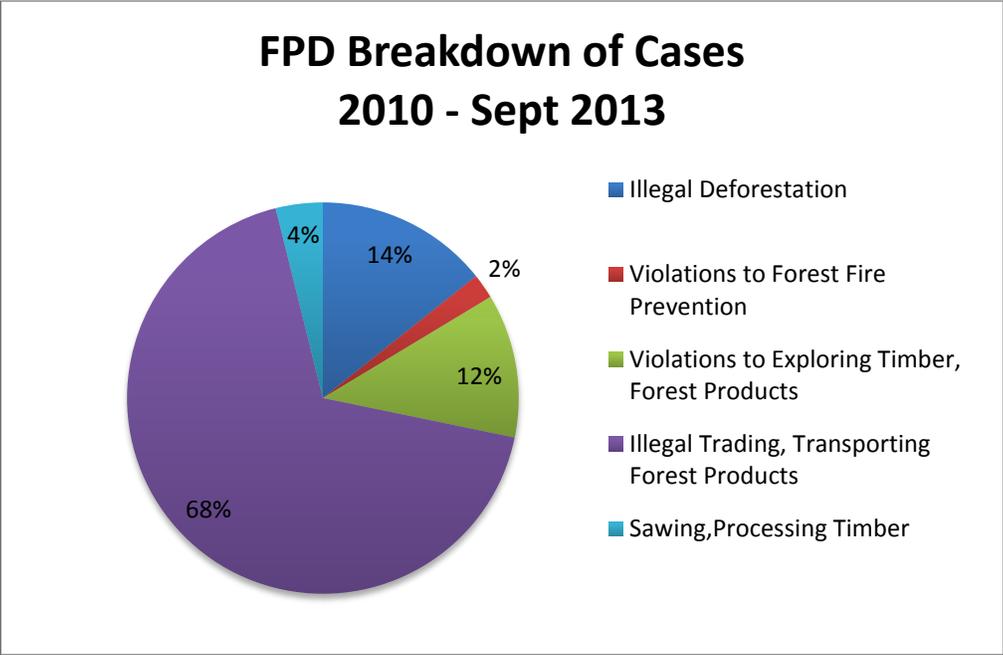


Figure 6: Breakdown of cases by type

<sup>19</sup> The FPD supplied figures for the period 1 January, 2010 until 30 September, 2013. The SPP provided figures from 1 January, 2009 to 30 September, 2013. This is why both dates are referenced in relation to data provided to UNODC in 2013.

In the period 2010 to September 2013 the FPD seized:

- 22,953 tools
- Various timber types: 139, 841m<sup>3</sup>
- Forest Fauna: 59,321 individual animals with the total weight of 122,464 kg

These are staggering figures and are indicative of the daily struggle that the FPD faces to protect Viet Nam's fauna and flora. The fact that the FPD are able to detect so many violations indicates that the FPD patrols are intelligence driven and have a good understanding of hot spots in their area of operation.

A good example of this is illustrated by a three month operation conducted in the Chu Mom Ray National Park between March and May 2014. In that period, Forest Rangers detected 5,795 snares, destroyed 27 poacher camps and confiscated more than 100 motorbikes.<sup>20</sup> Exact figures on violations detected during this operation were not provided.



**Figure 7: Some of the motorbikes seized during the 3 month operation in Chu Mom Ray National Park in 2014**

FPD officers operate in rugged terrain that is often vast and remote. Added to this challenge, FPD officers are generally poorly equipped and unarmed. Information provided by the FPD indicates that several officers have been assaulted in the execution of their duty, and in 2011 loggers kidnapped five forest rangers in the Phong Nha-Ke Bang National Park.

The decision to arm forest rangers is a difficult one and there are arguments for and against this. The presence of firearms, particularly in the hands of officers with minimal training can be more of a risk

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<sup>20</sup> Anon, IUCN webpage at [http://www.iucn.org/news\\_homepage/news\\_by\\_date/?14892/Poachers-Lose-Motorbikes-at-Chu-Mom-Ray-National-Park-Vietnam](http://www.iucn.org/news_homepage/news_by_date/?14892/Poachers-Lose-Motorbikes-at-Chu-Mom-Ray-National-Park-Vietnam). Accessed 21 August 2015.

than being unarmed. Being armed and coming into contact with armed poachers or loggers is likely to escalate the situation, particularly in a remote area where suspects may be able to affect their escape. In contrast, physical assaults on officers may be mitigated by the provision of personal protection equipment such as expendable batons, handcuffs and capsicum spray.

Radio systems (where available) are wholly inadequate and unreliable. Unfortunately this is a common issue faced globally by rangers working in remote locations, as the cost of establishing an effective radio network is usually prohibitive. Although not an ideal option, in the short-term consideration should be given to providing teams with satellite telephone communications or personal emergency position indication radio beacons (EPIRB) as some form of communication; particularly in an emergency it is better than having nothing. The cost of these units has dropped significantly, and a satellite telephone handset can be purchased for as little as \$250 USD and a handheld EPIRB for \$120 USD.

Training is one area where the FPD could improve their effectiveness. Frontline FPD officers receive limited law enforcement training and seem to lack the basic tools for evidence collection, preservation and storage. To improve its overall competence (funds permitting), the FPD should increase its basic and specialist investigative training to frontline officers, particularly officers of junior rank. Several IGO's and NGO's already collaborate with the FPD and assist with training of frontline staff. If possible this collaboration should be extended.

Local Forest Protection authorities develop monthly, quarterly and annual action plans to protect forests and wildlife within their management area, based on local conditions and profiles. It is not known if there is a formal mechanism or system that allows the dissemination of intelligence to other management areas on crime trends or active persons of interest.

The FPD have developed some effective working relationships with traffic police, environmental and economic police, and market control. They provide advice and guidance to district authorities on restaurant checks and spot checks. They run frequent media campaigns to notify the public of endangered species and warnings on violations. They have placed great emphasis on committing household dwellings to giving written commitments not to encroach forest land for illegal purposes. Although there is no analysis or results to measure the effectiveness or impact, it should be commended as a positive prevention strategy.

**Recommendations:**

**To undertake a comprehensive review of failed FPD cases to identify and address what is causing such a low conviction rate**

**Increase basic and specialist investigation training to frontline FPF officers**

**Provide frontline FPF staff with personal protection equipment and access to satellite communications when conducting patrols in remote areas.**

## General Department of Customs

The General Department of Customs is responsible for collecting tax from dutiable goods imported into Viet Nam, preventing customs fraud, facilitating cross border trade, and for identifying and seizing contraband smuggled into and out of Viet Nam. This includes illicit wildlife and timber trafficking. Customs Officers manage 120 land, sea and airports covering 4,639km of land boundaries with China, Lao PDR and Cambodia; and 3,260km of coastline with the South China Sea. Apart from the sea borders, which are predominantly under the jurisdiction of the Vietnamese Marine Police (VMP), the air and land borders are managed in collaboration with the Border Guards.

Customs Authorities conduct their investigations based on the Law on Customs 2014, the Penal Code of 2009, and indirectly the Law on Environmental Protection, 2014. 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.

Investigations are carried out by members of the Anti-Smuggling and Investigation Department, and by officers at a local level.

The volume of people, vehicles and cargo passing through each of the border points is staggeringly high. For example, Tan Son Nhat International Airport in Ho Chi Minh City has 202 international flights and 27,000 passengers per day, and nearly 9 million passengers per year.<sup>21</sup> In 2014, the Port of Hai Phong cleared 1,002,178 containers, down from the 2013 figure of 1,038,978 containers.<sup>22</sup>

To manage cargo entering and leaving the country, Viet Nam has introduced the internationally accepted VNACCS/VCIS (Viet Nam Automated Cargo Clearance System) and operates an electronic RMS (Risk Management System). Viet Nam Customs operates x-ray facilities at all international airports and border crossings. Mobile container x-ray units are in operation at Cat Lai Port, Viet Nam International Container Terminal Ho Chi Minh City, Phuoc Long – Thu Duc ICD Port, Hai Phong, Binh Duong and Dong Nai. Permanent vehicle x-ray facilities are available at most land border crossings; however, during the assessment it was identified that the x-ray machine at Lao Bao border gate has been out of service for about 12 months. In effect, this means that the busiest land border checkpoint between Viet Nam

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<sup>21</sup> Anon, Vietnam Breaking News website. Vietnam cracks down on illegal trade at <http://www.vietnambreakingnews.com/2015/08/vietnam-cracks-down-on-illegal-trade/> accessed 21 August 2015

<sup>22</sup> Anon, Port of Hai Phong Joint Stock Company website at <http://haiphongport.com.vn/en/output-report-.nd/output-report.html> accessed 21 August 2015

and Lao PDR is without the capacity to x-ray vehicles. The repair or replacement of this machine is required as a matter of urgency.

**Recommendation**

**That the vehicle x-ray machine at the Lao Bao border gate be repaired or replaced as a matter of urgency.**

In the six months from 1 January to 30 June, 2015, Customs played the leading role in detecting 9,670 cases of smuggling and commercial fraud, an increase of 8.4% from the corresponding period in 2014. The value of the goods in violation was estimated at 85 billion Dong; representing a decrease of 49.6% from the corresponding period in 2014.<sup>23</sup> In 2014 Customs played the leading role in detecting 18,448 cases of smuggling and commercial fraud. The value of the goods in violation was estimated at \$18.5 million USD with 9,670 cases referred for prosecution. Administrative violations totaling \$4 million USD were recovered.<sup>24</sup> Customs operate a hotline and an online reporting system for members of the public to report smuggling or tax fraud cases.

Customs use a recognised labelling system: red (for new business, suspect or hot spot countries), where both goods and documents are checked; yellow is for document checks only; and green corresponds to no check.

In 2013 Customs introduced an electronic lodgement of documents system to improve efficiency, but this is only available at sea and air ports, and is not yet deployed at land border checkpoints. Customs have identified that the current system is open to abuse and that criminals will attempt to use the green channel to avoid examination of their cargo. To minimise the risk of corrupt practices and to counter criminals purchasing legitimate businesses and using them as cover to smuggle wildlife and timber products, random checks are conducted in some locations on yellow and green label goods. It should be noted that this is not a universal practice, and at many facilities no random searches of yellow or green label goods are conducted.

Customs have achieved numerous notable seizures of wildlife and timber products. Between 2010 and 2015, Customs seized approximately 18,000kg of ivory, 55,200kg of pangolin, and 235 kg of rhino horn (plus an additional 34 pieces whose weight not declared)<sup>25</sup>.

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<sup>23</sup> Anon, Viet Nam Customs website <http://www.customs.gov.vn/Lists/EnglishNews/ViewDetails.aspx?ID=425&Category=News%20and%20Events&language=en-US> accessed 16 August 2015

<sup>24</sup> Anon, Vietnam Breaking News website. Vietnam cracks down on illegal trade at <http://www.vietnambreakingnews.com/2015/08/vietnam-cracks-down-on-illegal-trade/> accessed 21 August 2015

<sup>25</sup> Figures provided by Vietnam CITES Management Authority and can be found in *Annex H* of this report.

In relation to timber, Customs does not publicise the quantity it seizes, but during site visits information was provided in relation to seizures of rosewood. For example, at the Lao Bao border gate in 2014, Customs seized 1,460 kilograms of rosewood valued at 74 million Dong (\$3,545 USD); and in 2015 they have to date seized 1.8 tonnes of rosewood and 0.3 cubic metres of other non-CITES listed timber worth 108 million Dong.

Recent seizures of ivory and rhino horn would indicate that criminal syndicates are adopting concealment methods for wildlife products that are normally associated with drug shipments. In August 2015, Customs at Tien Sa port, Da Nang, seized three shipments containing nearly 3 tonnes of ivory and 120 kilograms of rhino horn. One of these shipments was declared as timber, but when officers searched the container they located 735 kilograms of ivory and 120 kilograms of rhino horn secreted inside plaster made to look like marble. Images of this seizure are shown in Figure 8.



**Figure 8: Concealment method for ivory and rhino horn intercepted at the port of Tien Sa, Da Nang, in August 2015 – Photos Courtesy of General Department of Customs**

In January 2015, the Lao Bao Border Gate in central Quang Tri province implemented a pilot programme for a ‘One Stop Shop’ Customs model. This ‘One Stop Shop’ is expected to improve efficiency and cut customs processing times in half. However, at the same time acting upon a request from the Ministry of Finance, Customs officials began scrutinising timber shipments that were temporarily imported into Viet

Nam for re-export. Customs measured and recorded every piece of timber that crossed the border to confirm that it was the same quantity of timber that was re-exported.

The end result of this increased due diligence was waiting times of between 6-10 days and over 100 trucks loaded with timber waiting for clearance. This shows not only the incredible volume of timber traffic coming through this one checkpoint, reported at 276,288 cubic metres in the eight months between 1 January and 31 August, 2015; but also how important this checkpoint will become when ASEAN integrates later this year. Customs continue to scrutinise timber that is temporarily imported into Viet Nam for re-export. Figure 9 shows the border gate, Customs officers measuring the timber, and the long waiting queues.



Figure 9 – Lao Bao Border Gate, January 2015 (Photos courtesy of Vietnamnet)

Customs have good local information sharing practices with other law enforcement agencies including the police and Border Guards. Customs signed Memorandums of Understanding (MoUs) with their international counterparts in Lao PDR (2014), Cambodia (2014) and China (2013), and hold regular meetings to exchange information.

On 1 July, 1993 Viet Nam joined the World Customs Organisation, and has been the beneficiary of several capacity building programmes coordinated through this organisation, including the provision of technical assistance to assist in the valuation and classification of goods for revenue purposes in 2013.<sup>26</sup>

Customs officers are generally well-educated and trained, with many possessing graduate and post graduate degrees. The initial Customs training programme lasts for between 3 to 6 months, depending upon what role the officer will fulfil, and is undertaken at the Customs College in Ho Chi Minh City or the Economics University in Hanoi.

One area where Customs have indicated that improvement is needed is the real time exchange of information and intelligence, in particular new techniques used to smuggle contraband, and individuals and businesses suspected of involvement in smuggling. This deficiency is not unique to Viet Nam Customs, and will be discussed in detail in the interagency cooperation section of this report. They also identified CITES species identification as a major problem.

The General Department of Customs is very effective at seizing smuggled WLFC products as they enter and exit Viet Nam. The clarification of laws, particularly relating to the value of wildlife products, will enable this agency to become much more effective at identifying and prosecuting those criminals responsible for importing or exporting these WLFC products.

#### **Environmental Police (Department for the Protection of Environmental Crime)**

The Environmental Police is responsible for wildlife and forest crime investigations under the jurisdiction of MPS. The Environmental Police is a statutory investigative body authorised to conduct criminal investigations, and impose administrative sanctions on environmental offences. Established in 2006, the department has a staff of 3,450 officers, 300 of which work at the Ministry level, and 3,150 at the Provincial level. The size of the department represents a significant investment and reflects the commitment of the Vietnamese Government to address environmental crime.

The Environmental Police are responsible for the enforcement of national policies aimed at preventing violations of the Laws on Forest Protection and Development, Environmental Protection, and Biodiversity. 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 seven 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.

The Environmental Police are not limited to WLFC cases but also investigate air and water pollution, waste and food poisoning matters.

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<sup>26</sup> Anon, World Customs Organisation Webpage at <http://www.wcoomd.org/en/media/newsroom/2013/may/vietnam-mission.aspx>; accessed on 26 August 2015.

In 2014 the Environmental Police investigated 760 wildlife and timber cases. This was a reduction from 2013 figures when the department conducted 865 wildlife and timber case investigations. Data was not supplied in relation to the outcome of these cases.

Environmental Police officers like other police receive between 3 ½ and 4 years training depending on what electives they choose at the Police Academy. Some officers elect to become part of the Environmental Police through course selection, whilst others are asked to join. Like other police in Viet Nam, the Environmental Police are well educated.

In hot spot areas, significant attempts are being made to target vulnerable species and smuggling routes. This patrol strategy arises from multiple but well-coordinated management boards across the whole of the forest area. The Environmental Police have made several significant seizures of wildlife including the tiger depicted in Figure 10. This tiger was seized in January 2015 and resulted in the arrest of five men including a restaurant owner and three of his employees. This investigation was handed over to the General Inspectorate Police.



**Figure 10: Remains of tiger seized by Environmental Police in January 2015**

Several issues were raised during discussions with EP officers including a lack of training in how to identify endangered species, and what options and support were available to assist them. Some training has been delivered by CITES MA Viet Nam and by MPS, and there has been some interagency training, principally with FPD at provincial level led by the People's Committee.

The Environmental Police have developed some effective working relationships with other units within the General Department of Police, with the Forest Protection Department and General Department of Customs.

## **General Department of Police**

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 Economic Police are part of the General Department of Police and are responsible for preventing and investigating violations in the area of forest management, including timber smuggling.

The Inspectorate Police have an intelligence collection and dissemination capability within MPS. Information or intelligence in relation to WLFC is shared with other agencies in an ad-hoc manner when the need arises.

The Inspectorate Police indicate that investigative time limits imposed in Article 119 of the Criminal Procedure Code provide a restrictive framework for their work, particularly for 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. Another area that is of concern is CITES species identification.

The Inspectorate Police have made several significant seizures of timber including a 2009 case involving 269 containers of Class 1 timber smuggled from Cambodia with an eventual destination of China; and a 2013 case where 22 containers of Class 1 wood with a volume of 600m<sup>3</sup> was seized at Da Nang after being imported from Lao PDR. As a result of this latter case, three Customs officers were prosecuted for corruption.<sup>27</sup>

The Inspectorate Police officers receive between 3 ½ and 4 years training depending on what electives they choose at the Police Academy. They may also receive additional in-service courses conducted locally or at the Police Academy. Police in Viet Nam are well educated and well trained.

The Inspectorate Police have good working relationships with other national and international law enforcement agencies. MPS joined INTERPOL on 5 October, 1970 and has been the recipient of several capacity building exercises including a recent data protection certification course.

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<sup>27</sup> Criminal Justice Response to Illegal Timber Trade in South East Asia, UNODC, 2013

## **Border Guards**

Formed on 3 March, 1959, the Border Guards are equivalent to a military service and are a component of the Viet Nam People's Army. The Border Guards' primary functions include controlling the border zone, protecting national sovereignty, territorial integrity, public order and security of national borders on land, at sea, and border gates as regulated by Vietnamese and international laws. It is also acts as a military force in defence zones of the border provinces and districts.

The Border Guards bear the main responsibility for coordinating with law enforcement agencies in local areas in controlling and protecting the national border lines and border landmarks, ensuring the implementation of agreements, regulations and laws on border issues, detecting and fighting against all illegal activities and crimes of all kinds to preserve sovereignty, security and public order in the border areas. The Border Guards also promotes external relations by maintaining contacts with concerned agencies of neighbouring countries to settle border-related issues, with a view to maintaining stability and promoting international cooperation.

Due to its military mission, information on the size and disposition of the Border Guards is unavailable. What is known is that they play a major role in patrolling Viet Nam's borders and there are numerous media reports of border forces arresting suspects for drug and human trafficking offences.

## **Financial Intelligence Unit**

The Financial Intelligence Unit is an administrative unit based in the Central Bank, the State Bank of Viet Nam. It has State Bank Departmental status, and as such is titled the Anti-Money Laundering Department or AMLD. It was formed in 2006/7 and currently has around 25 staff divided into a number of divisions including analytical, IT, Supervision and International Cooperation. Financial intelligence is passed onto the Economic Police. The FIU receives about 400 Suspicious Transaction Reports annually, but as of yet there has never been a money laundering prosecution in Viet Nam.

## **INTERPOL National Central Bureau (NCB)**

The Vietnamese National Central Bureau (NCB) for INTERPOL is part of the General Police Department for Crime Prevention and Suppression, located in Hanoi.

INTERPOL Hanoi is made up of four departments including: Transnational Crime Division; INTERPOL, ASEAN ASEANAPOL Cooperation Division; Transnational Crime Information and Database Centre; and the Staff Administration Division.

In 2014 INTERPOL launched Operation Infra Terra, an initiative targeting individuals who are wanted environmental fugitives. This initiative seeks to raise awareness of wildlife and forest crimes and to attract public support in locating these fugitives. Several Vietnamese citizens appear on the overall Infra Terra wanted list.

In June 2015 Viet Nam and Cambodia became the first South East Asian countries to adopt an INTERPOL global database to help track cross-border crimes. In this pilot project, two regional offices

and 12 border control points in Viet Nam and Cambodia have been linked to the INTERPOL i24/7 system. The pilot project is expected to last 12 months.<sup>28</sup>

### **Regional Enforcement Networks**

The Association of South East Asian Nations – Wildlife Enforcement Network (ASEAN-WEN) was launched on 1 December, 2005 with a wide ranging remit of collaboration, information sharing, capacity building and training, focusing on the CITES-listed species in the region. Each country is expected to establish and sustain a national interagency task force, comprising police, customs, and environmental officers, with focal points from each agency sharing information across the region.

To date, ASEAN-WEN is still yet to achieve widespread acceptance and fulfil its envisaged role as the focal point for the sharing of WLFC intelligence within the region. There are several possible reasons for the current shortcomings of the WEN model including an inability to share intelligence in a timely and secure manner, a lack of capacity and a reluctance of more traditional law enforcement agencies to be seen to be accountable to Forestry and Agricultural ministries. Several country WENS within ASEAN are also ineffective and are not provided with the access or support from more traditional law enforcement agencies. This failure to be accepted or recognised at a country level in turn leads to deficiencies at the regional level.

It is beyond the scope of this report to recommend a review of the current ASEAN-WEN model, but a country-level review of Viet Nam WEN should be conducted to gauge its level of acceptance by WLFC enforcement agencies, to identify what intelligence it collects, who this intelligence is disseminated to, and to establish what capacity building or training it has undertaken.

Although the opportunity to meet with Viet Nam WEN was not possible during the mission, they have been given a copy of the toolkit for their consideration.

#### **Recommendation**

**Undertake an effectiveness review of Viet Nam WEN**

During the mission, four of the major law enforcement bodies were visited; Customs, Border Guards, Forest Protection Department, and the Environmental Police. A more specific description of each of the nine (9) law enforcement visits are shown in *Annex E*.

### **Aspects of Wildlife and Forest Crime**

It was not possible in the time available for the assessors to examine in detail the wide variety of animal and plant species which may be affected by poaching and the illegal trade in Viet Nam. There is a huge problem with the illegal trafficking of timber, in particular Siamese Rosewood, and the illegal pangolin, reptile and amphibian trade are major causes for concern. However, the current rhinoceros (rhino) and elephant poaching crisis in Africa has been an important catalyst for the

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<sup>28</sup> Anon. Voice of America on their website at <http://www.voacambodia.com/content/cambodia-vietnam-add-interpol-database-for-pilot-project-161355165/1405470.html>. Accessed 16 August 2015.

global mobilisation of governments, IGOs, NGOs, and even ordinary people, to address wildlife crime and environmental crime generally.

Unfortunately, Viet Nam is one of several countries on centre stage when it comes to its involvement in the rhino and ivory poaching crisis. Viet Nam is a major destination country for rhino horn, and a major destination and transit country for ivory. Accordingly, each will be addressed in the following sections and strategies recommended that could also be applied to other major WLFC issues.

### **Rhino Horn Trafficking**

In 2007, a disturbing increase in rhino poaching in South Africa signaled the beginning of what has become an environmental tragedy. Fueled by a domestic demand for rhino horn, Vietnamese and Chinese organised crime groups coordinated with local poachers, brokers and crime gangs to target this iconic species. Nine years later, and the problem continues to grow despite increased law enforcement, increased penalties, and millions of dollars spent on capacity building in both Africa and Asia.

Vietnamese criminal involvement in trade is undeniable. In 2007, South African Police identified five Vietnamese criminal syndicates involved in the illegal rhino horn trade.<sup>29</sup> By 2012, 24 Vietnamese citizens had been arrested in South Africa on rhino horn related offences.<sup>30</sup> Initially these groups committed their crimes in the open, under the noses of the South African and Vietnamese CMAs.

The manipulation of the CITES Hunting Permit system enabled the unabated importation of rhino horn from South Africa into Viet Nam from 2003 until 2010. An analysis of CITES Hunting Permits issued by the South Africa CMA to Vietnamese citizens for export between 2003 and 2010 reveals that a total of 657 horns were exported. An analysis of import permits issued by the Vietnamese CMA for the corresponding period reveals that permits were issued for only 170 horns. This is a discrepancy of 487 horns, or 74% per cent, that were not declared when they were imported into Viet Nam. Given that there is no hunting culture per se in Viet Nam, this is a disturbing anomaly that should have been detected very quickly by both the South African and Vietnamese CMAs, and points to either incompetence, a serious breakdown in the management of hunting permits within CITES, or more nefarious causes.

In 2010, South African police, national parks and environment officials met with their Vietnamese counterparts in Hanoi to discuss ways to curb the trade in rhino horn. This first step in cooperation was followed up in December 2012 by a reciprocal visit by Vietnamese officials to South Africa, and the signing of a MoU for biodiversity management, conservation and protection, and is particularly aimed at promoting law enforcement cooperation to combat rhino poaching. In 2012 South Africa refused to issue any further hunting permits to Vietnamese citizens. However, this ban did not stop the criminal syndicates who had already identified other means to facilitate the importation of horns.

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<sup>29</sup> Milken & Shaw et al, 2012. *The South Africa – Viet Nam Rhino Horn Trade Nexus*. TRAFFIC

<sup>30</sup> Ibid

In December 2014, 16 people were arrested in the Czech Republic after they were identified as being involved in a hunting permit scam to move rhino horns through the Czech Republic to Viet Nam. Similar scams were identified using German and Polish hunters; however, no charges have been preferred in these countries.<sup>31</sup>

The Vietnamese law enforcement response to the rhino poaching crisis has primarily been addressed by the Customs Department through the arrest of couriers at Tan Son Nhat International Airport in HCMC and Noi Bai International Airport in Hanoi. The August 2015 seizure of 120 kg of rhino horn at Tien Sa port, Da Nang, represents the largest seizure of rhino horn in Viet Nam. Unfortunately the good work involved in arresting these couriers has not translated into identifying and arresting those criminals who were the masterminds of the crime. There has not been a single controlled delivery of rhino horn, or any wildlife or timber product for that matter, in Viet Nam. Obviously not every seizure will be suitable for a controlled delivery, but many are. In this way, although each arrest and seizure is a success, it also represents a lost opportunity. Until there is a change in mindset and a change in the law, Vietnamese authorities will continue to arrest couriers, whilst those who benefit most from the crime remain untouched.

Vietnamese demand for rhino horn ensures that the rhino poaching crisis continues unabated in South Africa. At the current poaching rate, it is estimated that all species of rhino in Africa could be extinct within 20 years. The species' best hope for survival rests with Vietnamese law enforcement authorities to proactively address the importation and supply of horn in Viet Nam, whilst working in conjunction with demand reduction efforts.

The 657 rhino horns exported from South Africa between 2003 and 2010 represent an excellent starting point for an investigation to identify the criminal syndicates involved in the importation of rhino horn into Viet Nam. Up to 74% of these horns were imported illegally and these individuals may have already committed a crime in failing to declare and pay duty taxes on the horns, and/or may have committed fraud offences in relation to obtaining the permits. But more importantly, these individuals may have knowledge of the people who facilitated the importation by paying for the cost of flights to and from South Africa, by paying the cost of the safari and the hunting permits. If the police follow the money trail, they may identify those who are behind the trade. Similarly, the horns themselves are not permitted to be sold and this also begs the question, where are these horns now?

It is recommended that a Task Force be established made up of officers from Customs, Environmental Police, General Inspectorate Police and the Procuracy. This Task Force should have a clear mandate to investigate the circumstances surrounding the importation of these 657 horns, with a view to identifying those who financed their acquisition. This will not only identify the actors behind this criminal conduct, but may also identify assets that could be seized using money laundering provisions. The task force should also be given access to couriers who are arrested after its formation, to determine if there are any links with their investigation.

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<sup>31</sup> Ibid

In conjunction with the operation of this task force, it is suggested to begin an intelligence collection operation focused at both the strategic and operational levels. At the strategic level, this could inform policy makers and allow the development of strategies to address future trends in the supply of rhino horn. At the operational level, intelligence would be collected to identify the actors, their routes, the modus operandi and the illicit flows of money. This intelligence could then be used to facilitate undercover purchases of rhino horn, which would provide a baseline price that could be used to determine the value of rhino horn, thus addressing the judicial issue of determining the value, should the introduction of weight-based offences instead of value-based offences be delayed or rejected. This is a relatively cheap and effective way of gaining information on actors, networks, pricing and availability.

In September 2015, UNODC will be training members of the Environmental Police in intelligence analysis. These officers will be supplied with the relevant software and computers to perform roles as analysts. Perhaps several of these officers could be tasked with undertaking the intelligence collection operation.

### **Ivory Trafficking**

There are many similarities between the current rhino and elephant poaching crisis in Africa and the global law enforcement response. In both instances, the profits generated multiply exponentially along the supply chain. For instance, ivory in source countries sells for as little as \$30 to \$150 per kilogram, representing between 1% and 6% of the end market value.<sup>32</sup> In both instances, the demand for the end products originates in Asia, with Viet Nam being one of the major transit and destination countries. In relation to ivory, the three leading consumer markets are believed to be China, Thailand, and Viet Nam.<sup>33</sup>

Between May 2010 and 31 August, 2015, Vietnamese authorities seized approximately 18,000 kilograms of ivory. These seizures have been divided amongst smaller courier delivered shipments which have been intercepted at the two main international airports, and larger shipments secreted in containers and intercepted at the port of Hai Phong, some of which may have been destined for Chinese markets.<sup>34</sup> As previously mentioned, an August 2015 seizure of in excess of two tonnes of ivory at Tien Sa port, Da Nang, may represent a change in routes as traffickers look for easier locations to import their ivory.

The NGO C4ADS recently completed a comprehensive study of global ivory trafficking patterns. During the study, C4ADS calculated that to poachers, each elephant represented a yield of approximately 7.4 kilograms of ivory. They also calculated that the top 100 global seizures of ivory between 2009 and April 2015 had a combined total weight of 190 tonnes. If those seizures represented 17% of the total trade in ivory, than this equates to a total of 151,033 elephants

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<sup>32</sup> Miller, Vira and Utermohlen, 2015. Species of Crime: Typologies of Risk Metrics for Wildlife Trafficking. C4ADS, Washington D.C.

<sup>33</sup> Ibid

<sup>34</sup> Ibid

poached in that time period. However, if the 190 tonnes represents only 10% of the total trade in ivory in that time period, then it equates to 256,756 elephants poached.<sup>35</sup>

Using this equation, if the 18 tonnes of ivory seized in Viet Nam between 2010 and 2015 represents 17% of the total domestic trade in ivory, then this represents a total of 14,308 elephants poached to meet the Vietnamese market. If the 18 tonnes of ivory seized in Viet Nam represents only 10% of the total domestic trade in ivory, then that figure is approximately 24,324 elephants poached to meet the Vietnamese market. To put this in context, there are approximately 100 elephants remaining in the wild in Viet Nam. Obviously it is possible that some of this ivory is making its way through Viet Nam to China; however, it is still a sobering realisation to consider the number of elephants killed in Africa compared to the ivory seized in Viet Nam.

The Vietnamese law enforcement response to the elephant poaching crisis has primarily been addressed by the Customs Department through the arrest of couriers at Tan Son Nhat International Airport in HCMC and Noi Bai International Airport in Hanoi, and the seizure of ivory secreted in containers primarily at Hai Phong port. Once again, the good work involved in arresting these couriers and identifying these containers has not translated to identifying and arresting the criminals who were the masterminds of the crime. There has not been a single controlled delivery of ivory in Viet Nam. Given that several major seizures have resulted from container interception, these are generally excellent candidates for controlled delivery. In this way, although each arrest and seizure is a success, it also represents a lost opportunity.

As the elephant poaching crisis in Africa deepens, it again falls upon Vietnamese law enforcement authorities to proactively address this issue in Viet Nam. It is domestic demand and use of Viet Nam as a transit point that is contributing to the elephant poaching crisis, and proactive enforcement combined with demand reduction efforts offers the best opportunity to stem the tide of ivory flowing into its borders and onwards to China.

Any starting point to address the ivory problem in Viet Nam should begin with an intelligence collection operation focused at both the strategic and operational levels. At the strategic level, this could inform policy makers and allow the development of strategies to address future trends in the supply and use of Viet Nam as a transit country for ivory. At the operational level, intelligence would be collected to identify the actors, their routes and modus operandi, and the illicit flows of money. This intelligence could then be used to facilitate undercover purchases of ivory which would provide a baseline price that could be used to determine its value, thus addressing the judicial issue of determining the value, should the introduction of weight-based offences instead of value-based offences be delayed or rejected. This is a relatively cheap and effective way of gaining information on actors, networks, pricing and availability.

As previously stated, in September 2015 UNODC will be training members of the Environmental Police in intelligence analysis. These officers will be supplied with the relevant software and computers to perform roles as analysts. Perhaps several of these officers could be tasked with undertaking the intelligence collection operation for ivory.

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<sup>35</sup> Ibid

Vietnamese law enforcement officers will also have to address the importation of ivory through land borders with Cambodia and Lao PDR, and the export of ivory through its land border with China. Close collaboration will be required, and it is suggested that a regional forum be convened to discuss the exchange of intelligence and coordinate a regional response to this issue, including establishment of protocols for controlled operations.

**Recommended Responses to Rhino Horn and Ivory Trafficking**

**To form a Task Force comprised of Environmental Police, General Inspectorate Police, Customs and Procuracy to investigate the importation of rhino horns under the guise of hunting permits into Viet Nam**

**That an intelligence collection operation be commenced to identify strategic and operational issues surrounding the rhino horn and ivory trade in Viet Nam.**

**A regional forum should be convened to discuss the exchange of intelligence, coordinate a regional response to rhino horn and ivory trafficking, and establish protocols for controlled deliveries**

**Responses to Wildlife and Forest Crime**

The following are aspects of enforcement that are currently in place in Viet Nam and are worthy of specific attention.

**Crime Scene Management and Examination**

The quality of crime scene management for WLFC in Viet Nam is very much dictated by the location of the crime scene. From the site visits made to Cau Treo Border Gate in Ha Tinh Province, Cha Lo Border Gate in Quang Binh Province, Cat Lai Sea Customs, and Tan Son Nhat International Airport in HCMC, and the reports received, many of the challenges faced are similar but the areas of good practice vary, predominantly around crime scene management, examination, adhering to collection protocols, and chain of custody.

Within major population centres, the General Department of Police has crime scene officers who can process scenes professionally, adhering to sampling and chain of custody requirements. These officers forward their exhibits to national labs or institutes for analysis, or occasionally if the capacity does not exist in Viet Nam, then to other countries. The assessors were told of one instance where tainted bush meat soaked in formaldehyde and served at a wedding was sent to South Korea for analysis.

Crime scenes processed by officers from the Environmental Police or General Police Department in the absence of dedicated crime scene officers are generally adequately managed. However, the provision of specialist equipment is still an issue, as both departments are poorly equipped.

Crime scenes processed by Customs officers are less likely to preserve trace evidence such as fingerprints or DNA left by the suspects who packaged the contraband; however, they will generally

display good chain of custody requirements. Customs officers at Tan Son Nhat International Airport are extremely proficient at chain of custody requirements. Customs forward exhibits for analysis to the relevant Crime Lab as required, as they have no capacity to undertake assessments themselves.

FPD officers receive very little training and are poorly resourced to effectively manage crime scenes. Many of the scenes that the FPD attend are in remote locations and must be accessed by foot. As such, scenes processed by FPD staff are often poorly managed and much evidence is lost or overlooked. Chain of custody is also an issue, and this has impacts on the ability of the General Inspectorate police or the Procuracy to prosecute serious matters. The FPD is in need of training in crime scene management and provision of manually portable crime scene kits that contain the necessary equipment.

The UNODC undertook its first WLFC forensic training for police officers from the Environmental Police, General Police Department and Customs Department in Ho Chi Minh City between 24 and 26 August, 2015. During this course, participants were trained on crime scene management, collecting evidence for DNA analysis, identifying wildlife poisoning, firearm cartridge evidence, and seizing electronic evidence.

This training was the first exposure that many of the participants had received in relation to obtaining this type of evidence. A number of deficiencies were identified during the practical sessions, including the failure to wear gloves and the incorrect packaging of bloodstained items. Even with trained staff these mistakes are frequently made, and adherence to correct procedures needs to be constantly reinforced.

It was also clear that in many locations there is no capacity to extract information from cell phones, tablets or computers, without forwarding these devices to the crime lab. This capacity is important for frontline officers, particularly when analysing the cell phones of couriers to identify facilitators or organisers of the crime before the arrest or seizure become widely known. The operational value of this type of equipment was shown in May 2015 when the Royal Thai Police utilised a Cellbrite phone analysis machine provided by the NGO Freeland, to identify the ringleaders of a human trafficking ring responsible for trafficking thousands of Rohingya from Myanmar. Another benefit of this technology is the ability to prepare forensic reports for presentation to the Procuracy or the Courts within the investigation time constraints placed upon WLFC enforcement agencies in Viet Nam.

The successful management of crime scenes requires adherence to protocols and access to specialist equipment. A needs assessment is required to determine the capacity gaps of Viet Nam's WLFC law enforcement agencies, and how this affects their ability to examine crime scenes.

**Recommendations:**

**Crime scene training be provided to frontline LE officers from the FPD, Environmental Police, General Police Department and Customs Department**

**The FPD be provided with manually portable basic crime scene examination kits**

**Donors be sought to provide cell phone analysis hardware and software**

**A needs assessment be undertaken to determine the forensic examination deficiencies of Viet Nam's relevant LE agencies and how this affects their ability to examine crime scenes**

## Forensic Science Support

There are several facilities providing forensic support services to law enforcement agencies investigating WLFC in Viet Nam.

The principle facility for providing forensic support for wildlife crime investigations is the Institute of Ecology and Biological Resources in Hanoi. The Institute is divided into 16 divisions and has approximately 140 full time and contractor staff.

The Institute undertakes DNA testing of wildlife seizures including ivory and rhino horn seized by customs and police. The current DNA procedures are sufficient for species identification, but the Institute has not been undertaking DNA testing to identify individual animals. The main factors affecting the Institute are cost and capacity. It costs the Institute 3,000,000 dong (approx. \$136 USD) per DNA test. This restricts the sample sizes for large seizures to between 5 and 10 pieces. The Institute is also limited by the quality and quantity of the forensic lab equipment it operates.

The Institute liaises with the Viet Nam CMA and sends samples of any ivory or rhino horn that it has tested to authorities in South Africa for analysis and possible linking to poaching sites. This is to be applauded, but it should be expanded to include samples from all specimens seized. Each seizure represents an opportunity to collect valuable intelligence and evidence in relation to crime scene locations, actors, supply sources and transport routes. This relatively small cost of \$136 per sample may be beyond the capacity of the Institute, but it represents a small investment for a potential donor.

Other institutes that also play a role in providing forensic science support for wildlife crime but do not have a capacity to undertake DNA testing, include the Centre for Environmental Resources, The University of Hanoi, the Marine Institute at Hai Phong, and the Forestry Science Institute.

The principle facility for providing forensic support for forest crime investigations is the Forestry Science Institute of Viet Nam. Established in 1961, the Institute provides timber species identification for forestry investigations.

The assessors are aware that the forensic laboratory of the U.S. Fish and Wildlife Service has welcomed for in-house training for scientists and appropriate laboratory technicians from around the world. The TRACE Network, based in the United Kingdom and dedicated to wildlife forensic science, has also undertaken *in situ* training in several countries in Asia including Viet Nam.

Science continues to develop new methods and means of analysing crime scene data. A needs assessment is required to determine the capacity gaps of Viet Nam's forensic science institutes and how this affects their ability to analyse specimens from WLFC crime scenes.

### Recommendation

**Funding be sourced to enable the Institute of Ecological and Biological Resources to conduct tests of DNA samples from all ivory and rhino horn seized by relevant LE agencies.**

**Undertake a needs assessment of Viet Nam's forensic science institutes to determine the capacity gaps and how this affects their ability to analyse specimens from WLFC crime scenes.**

## **Wildlife and Forest Crime Awareness**

There seems to be a good level of wildlife and forest crime awareness amongst law enforcement agencies and members of the Procuracy in Viet Nam. There is certainly an understanding within these agencies that the laws surrounding wildlife and forest crime need to be amended to enable more successful prosecutions and greater penalties. There is a greater need to raise awareness within the Judiciary of the implications of WLFC. This will be addressed later in the Judiciary section of this toolkit report.

## **Species Identification**

One of the main findings from visiting and speaking with the different law enforcement agencies engaged in combating WLFC is that they have insufficient technical knowledge of the CITES endangered species and products, apart from the most frequently trafficked: ivory, tiger, pangolin, sea turtle, cobra, and other endemic fauna and flora, which seem well known. This is one of the greatest challenges facing frontline officers involved in the investigation of wildlife and forest crime across the world, and is not restricted to just Viet Nam.

There are roughly 30,000 flora species and 5,600 fauna species afforded protection under CITES. These numbers are staggering, particularly for flora species, and this does not include 'look alike species' that are frequently used as cover by crime groups who misdeclare timbers to avoid CITES permit requirements. In addition, Vietnamese enforcement officers must also be aware of native species that are protected under Vietnamese national legislation.

Identification of timber products is particularly challenging because the diagnostic features generally used to identify tree species (i.e. leaves, flowers, and fruit) are often lacking. Law enforcement officers will require training and many years of experience to be competent at species identification, particularly at a level accepted by the Courts. Most importantly, officers who excel in this skill generally have an interest and passion for the subject, and they are often few and far between.

To address this issue in the short term, species identification training of frontline law enforcement officers should focus on those wildlife and timber species that are commercially or commonly trafficked. Although not ideal, this will allow a certain level of expertise to be developed that can be used in conjunction with other training, such as document examination and interviewing skills to assist in identifying suspicious shipments.

In the mid to long-term, the answers to this issue may rely more on technology than developing the skill sets of frontline officers. There are several exciting technological advancements in the pipeline that will contribute significantly to the identification of wildlife and timber species, including DNA barcoding and fingerprinting, population genetics, and smart phone applications for timber and wildlife identification, to name but a few. One such smart phone application that is already in use is WildScan. Developed by Freeland Foundation and available in several languages, this application has more than 300 CITES-listed plant and animal species in its current database. The system has experienced some teething problems but is certainly a step in the right direction. The International Consortium on Combating Wildlife Crime is also working with leading scientists and frontline law

enforcement officers to produce guidelines for the forensic identification of timber. It is anticipated that these guidelines will be finalised by the end of 2015.

### **Detector and Tracker Dogs**

Tracker dogs are utilised by Vietnamese Police and Border Guards to assist with search and rescue operations, as well as to provide support to law enforcement and border guards units. These tracker dogs are trained at the Border Guard Intermediate School 24 in Hanoi, which is the only facility of its kind in Viet Nam. Teams are located at the school and at five locations in border areas throughout the country.

In Viet Nam, the use of wildlife detector dogs is limited to the Port of Hai Phong, and these dogs are provided and trained by the NGO Working Dogs for Conservation (WDC). No reports were obtained in relation to seizures or the effectiveness of these dogs; however, Chinese wildlife detector dogs have proven to be successful and there is no reason to believe it would be any different in Viet Nam. The use of wildlife detector dogs should be expanded to include Tan Son Nhat and Noi Bai International Airports, and a mobile team to conduct random inspections at border checkpoints. It is unknown if Viet Nam Customs have trained their own dogs or if this would require an expansion of the WDC programme.

The presence of tracker and detector dogs can have a significant deterrent effect for those involved in wildlife and timber smuggling. Detector dogs have proved adept at locating wildlife products including ivory in other countries and represent a powerful tool in the law enforcement armory.

#### **Recommendation**

**The wildlife detector dog programme should be expanded to include Tan Son Nhat and Noi Bai International Airports, and a mobile team for use at land border checkpoints.**

### **Advanced Investigative Capabilities**

Transnational and national organised criminal groups engaged in WLFC in Viet Nam display a level of sophistication that make investigating them problematic for law enforcement agencies. Viet Nam has shown itself adept at seizing contraband and arresting low to mid-level criminals, but less adept at arresting and prosecuting the upper echelons of organised crime that profit the most from WLFC.

The interception of telecommunication devices, the deployment of listening and tracking devices, and the use of undercover officers, are globally recognised as standard practices when investigating transnational or national organised crime groups.

Although several agencies tasked with preventing, detecting and investigating WLFC in Viet Nam have access to advanced investigation equipment and methodologies, they are rarely (if ever) used to investigate WLFC offences. This places Vietnamese law enforcement agencies at a significant disadvantage when investigating national and transnational organised crime groups involved in these crime types, and it should be rectified as a matter of urgency.

A summary of the advanced investigation capabilities of the agencies tasked with preventing, detecting and investigating wildlife and forest crimes is shown in Figure 11.

	<b>Forest Protection Department</b>	<b>Environmental Police</b>	<b>Border Guards</b>	<b>Customs</b>	<b>General Inspectorate Police</b>
<b>Use of controlled deliveries</b>	No	No	No	No	No
<b>Forensic capacity including telephone or computer</b>	No	Yes	Unknown	No	Yes
<b>Availability of informants database</b>	No	Yes	Unknown	Yes	Yes
<b>Availability of linked case database</b>	No	No	No	No	No
<b>Intelligence database</b>	No	Yes	No	Yes	Yes
<b>Surveillance capacity</b>	Minimal	Yes	Yes	Yes	Yes
<b>Undercover operation capacity</b>	No	Yes	Unknown	No	Yes
<b>Telephone interception capability</b>	No	Yes	Unknown	No	Yes
<b>Listening devices</b>	No	Yes	Unknown	No	Yes
<b>Tracking devices</b>	Yes	Yes	Yes	Yes	Yes
<b>Social media monitoring</b>	No	No	No	No	Yes

**Figure 11: Advanced Investigative Capabilities**

### **Intelligence and Intelligence Sharing**

Any analysis of intelligence gathered or shared between law enforcement agencies tasked with addressing WLFC in Viet Nam must look at the three different types of law enforcement intelligence. These are:

- Strategic
- Operational
- Tactical

Each type of intelligence is collected for a different audience and purpose, and therefore needs to be addressed separately.

Strategic intelligence provides an organisation with an overview of criminal activities, vulnerabilities, trends and intentions with respect to certain crime types, for example WLFC. This type of intelligence informs decision makers and allows them to develop contingencies to address these issues in the long term. Much of the information obtained for strategic intelligence is open source. In fact, contemporary intelligence research shows that open source intelligence is playing an increasingly important role in the all facets of intelligence work. Even in traditional intelligence applications, such as national security, between 70-80 per cent of the data held by intelligence agencies is unclassified, open source information.<sup>36</sup>

These types of reports are generally confidential and not provided by law enforcement agencies. However, there are several strategic reports that have been published by organisations including TRAFFIC, EIA and the UNODC, that provide insights to assist policy makers in Viet Nam to develop long term strategies to address WLFC. There was no information provided to the assessors on how relevant law enforcement agencies in Viet Nam collect strategic intelligence, or if this drives policy decisions.

Operational intelligence is geared towards achieving enforcement objectives. This type of intelligence provides data pertaining to specific individuals or trafficking organisations, and allows decision makers to allocate resources to address these issues. Information provided by this type of intelligence includes modus operandi, capabilities, vulnerabilities, sources of supply, and trafficking routes utilised. This type of intelligence can be used to target transnational organised crime groups, and is generally proactive in nature. Similarly, these types of reports are generally confidential, but there are several excellent examples published by NGOs covering WLFC issues in Viet Nam including WCS, ENV, EIA and WWF.

Very few WLFC operations in Viet Nam are proactive in nature; the majority of operations result from the seizure of contraband, the discovery of WLFC crime scenes, or reacting to reports of violations. No information was provided to the assessors in relation to how operational intelligence is collected or disseminated. To the contrary, there appears to be a lack of this type of intelligence collection, with Customs in particular seeking access to this type of intelligence from INTERPOL or WCO. For WLFC law enforcement agencies to be effective in dealing with transnational organised crime, they need to collect and disseminate operational intelligence.

Tactical intelligence is oriented towards a specific criminal activity, with the goal of arresting the criminal committing that crime; for example, acting on information in relation to an impending ivory delivery. Tactical intelligence is usually short-term in nature, from one day up to several weeks, depending on the crime type.

This is the main type of intelligence collected and disseminated by WLFC law enforcement agencies in Viet Nam. This short-term intelligence can impact individual cases, but will generally not change

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<sup>36</sup> Dupont, 2003, *Intelligence for the Twenty-First Century*, *Intelligence and National Security* 18, no. 4, (2003): 15-39.

the criminal landscape or allow decision makers to formulate long-term plans. The exchange of this type of intelligence is generally ad-hoc and responsive to individual cases.

Customs, General Inspectorate Police and the Environmental Police have the ability to collect and share intelligence electronically within their organisations. Each agency maintains an intelligence repository of some sort.

There is no system in Viet Nam that allows the secure transfer of WLFC intelligence in real time between international law enforcement agencies. In 2015, UNODC conducted a study of WLFC intelligence sharing within ASEAN. The findings of this report were presented to the ASEAN SOMTC meeting in Bangkok in 2015, and identified that there was a need within ASEAN for a central repository for the collection of intelligence on WLFC. Unfortunately, the limitations of current international and regional legal instruments, as well as ASEAN Member States' domestic legislative frameworks, substantially restricts the opportunities to create a single expansive intelligence database containing production, trade, financial, law enforcement and customs data. Subsequently, the development of a single portal intelligence database for proactive intelligence discovery will be a lengthy process.

The report suggested that in the short-term, based on availability, cost and functionality, the World Customs Organization's (WCO) Customs Enforcement Network communications platform (CENcomm) offers the most suitable, and immediately available communication solution for ASEAN Member States for secure bilateral intelligence exchange and multilateral knowledge capture.

There is a new database that shares wildlife crime information being operated nationally by the Viet Nam Environment Administration in Hanoi (under MONRE) that does show particular promise. This database records all information pertaining to wildlife offences committed in the Hanoi area. This database provides a searching and reporting function that allows officers to search for specific information such as offender name, date of birth, address, place and description of offence, wildlife species concerned, case officer and court result. This database is accessed through the VEA website portal, and is available to law enforcement agencies in Hanoi including the FPD, Environmental Police, Customs and Procuracy. It is also available to the central-level Environmental Police.

Local officers have been given training, user manuals with instructions, and log in access to input data. The VEA are currently negotiating with the General Inspectorate Police for its officers to begin using this system. This system shows excellent potential and was the type of role that was envisaged for Viet Nam WEN.

It is much easier and efficient to use a system that is already in use and operating effectively than to develop one from scratch. Accordingly, all agencies tasked with investigating WLFC in Viet Nam should be provided with access to and training on the VEA database. An assessment of the database should also be made to determine whether it is capable of being used for forest offences as well as wildlife. Should the system go national, then it would be more practical for this database to be operated through its own website, rather than rely on the VEA portal.

It is unknown what types of analytical software are in use in Viet Nam, although it is believed that the AFP utilise the Siemens System at the Transnational Crime Coordination Centre, and that UNODC

will provide the Sentinel Software system to the Environmental Police. It is not known how many intelligence analysts are employed within each law enforcement agency.

Intelligence is crucial and drives law enforcement planning and operations. In fact, measurable improvements in performance would be seen by WLFC law enforcement agencies if they placed greater emphasis and resources on targeted intelligence-led patrols and investigations. The sharing of intelligence nationally and internationally in a real-time, secure environment is essential if Vietnamese law enforcement agencies are to combat transnational organised WLFC.

#### **Recommendations**

**That the VEA database be used as a national repository for WLFC matters that can be shared by all relevant law enforcement agencies.**

**That Viet Nam adopts the CENcomm platform for secure sharing of WLFC data and intelligence internationally.**

#### **Interagency Cooperation**

One of the most pressing and recurring issues that arose from the discussions was the lack of support and cooperation in information and intelligence sharing. This applied equally to national and regional partners, but also in relation to international law enforcement agencies. There was an understandable expectation that bodies such as the World Customs Organization, through their many outlets, and INTERPOL, along with other global units, would provide them with timely, reliable information on changing trafficking routes, modus operandi, suspect cargo shipments and known traffickers. There were some examples of *'one-off calls'* to notify them of a suspicious vehicle.

In Viet Nam there is a network of UNODC-supported Border Liaison Offices (BLOs) located close to recognised border crossings with Laos and Cambodia, typically staffed with frontline law enforcement officers. BLOs act as focal points for the real-time exchange of important intelligence along and across borders. BLOs were originally set up to deal with drug trafficking, but their remit has been expanded to include the illegal movement of people, and WLFC crimes.

The relationship with border counterparts in Lao PDR was reported to be very positive, with regular meetings and an open channel to share information via the BLO structures. The Vietnamese government has also provided equipment for their Lao counterparts.

The relationship with border counterparts in Cambodia is seen to be good, but could be improved. There is a prevailing view among some Vietnamese Law Enforcement Officers that their Cambodian counterparts are corrupt and cannot be trusted with sensitive information. This may well be the case in some areas, but these relationships need to be developed and strengthened.

The relationship with border counterparts in China was reported to be positive, with an open channel to share information via regular meetings. However, there is no border liaison mechanism in China for the exchange of information on WLFC.

The role and impact of INTERPOL as a coordinating law enforcement body to provide timely and actionable intelligence, either into CITES MA or through ASEAN-WEN or some other Viet Nam state body, is difficult to assess, and appears to have a more reactive and checking/verification function than a proactive role. INTERPOL is attempting to bring law enforcement agencies together to share operational issues and intelligence in relation to timber crime, and has held several meetings between respective WLFC law enforcement agencies under its Project LEAF. As previously mentioned, Cambodia and Viet Nam are trialing a pilot project where two regional offices and 12 border control points in Viet Nam and Cambodia are linked to the INTERPOL i24/7 system. The pilot project is expected to last 12 months.

In 2015 INTERPOL coordinated Operation Cobra III, a month long operation where WLFC officials from Asia (including Viet Nam), Africa, Europe and the Americas met in Bangkok to exchange intelligence and collaborate on ongoing investigations. As a result of Operation Cobra III, there were 139 suspects arrested and 247 seizures of wildlife and timber products from 37 countries. These results are significantly lower than the previous Operations I and II, however they are still to be applauded.

These types of operations are invaluable and promote the sharing of intelligence and networking, but they are not a substitute for a permanent intelligence sharing mechanism.

The Australian Federal Police operates a Transnational Crime Coordination Centre (TCCC) in Ho Chi Minh City for the exchange of intelligence pertaining to transnational organised crime between Australia and Viet Nam. The TCCC has enabled the exchange of information and intelligence that has resulted in the arrest of a number of drug syndicates operating between the two countries. It has also highlighted the important role liaison officers can play in facilitating the sharing of intelligence.

Viet Nam does not have any WLFC liaison officers operating in Africa or elsewhere in Asia. Given the clear nexus between Africa and Viet Nam for the smuggling of wildlife products, it stands to reason that the exchange of intelligence between key African nations such as South Africa and Kenya is imperative to stemming that flow. The placement of liaison officers would assist African nations to identify Vietnamese criminals operating in their area, but would also assist Viet Nam in identifying and mapping actors involved in smuggling and money laundering. Although Viet Nam does not have mutual legal assistant treaties with any African countries, it is a member of several international conventions, including CITES, which would allow for the exchange of information for law enforcement purposes.

**Recommendation**

**As part of a pilot project, establish WLFC liaison offices in South Africa and Kenya staffed by officers from the Environmental Police Department. Donors are encouraged to support the costs associated with staffing and equipping these offices**

## **Anti-Money Laundering**

Viet Nam has implemented Anti-Money Laundering (AML) legislation, Articles 250 and 251 of the Penal Code as amended by AML Law 2012, and Decree 116/2013/ND-CP on the Prevention and Combating of Money Laundering. The State Bank of Viet Nam and the Ministry of Finance have also issued related circulars. A Financial Investigations Unit (FIU), the Anti-Money Laundering Department (AMLDD), is in place under the State Bank of Viet Nam. In addition, Viet Nam is also a member of the Asia/Pacific Group on Money Laundering (APG).

In recognition of their efforts in establishing a legal and regulatory framework, the Financial Action Task Force (FATF) has removed Viet Nam from the compliance process for meeting its commitment to the FATF Action Plan, 2010.<sup>37</sup>

Despite the introduction of the AML legislation in 2012, there has not yet been a successful prosecution for a money laundering offence in Viet Nam. Given the size and scale of the WLFC problem in Viet Nam and the illicit profits generated by these crimes, this is disappointing. There are several possible reasons for this, including a failure to acknowledge that this type of offence is prevalent in Viet Nam, a failure to understand the legislation and its application within the Vietnamese legal framework, or the failure to allocate sufficient resources and expertise to tackle this problem.

Anti-Money Laundering investigations offer law enforcement authorities investigating WLFC in Viet Nam a real opportunity to identify those who are making the most from WLFC. Failing to use this tool limits the capabilities of law enforcement agencies to investigate and suppress organised crime. There is a significant need to develop the knowledge, skills and capabilities in financial investigations, both in terms of the potential scope and types of investigations, the role they play in tracing, identifying, freezing and seizing illicit assets and money, including the different sources of financial information, and how to identify assets and build financial profiles.

There is also a need to ensure close cooperation between enforcement agencies and the Procuracy when undertaking AML investigations. To promote this close cooperation and improve the understanding of AML laws and principles, joint training should be delivered to members of the Procuracy and relevant law enforcement agencies.

### **Recommendation**

**Joint anti-money laundering training should be delivered to members of the Procuracy and relevant LE agencies**

## **Social Media and eCommerce Monitoring**

During the assessment, internet-based trading of timber and wildlife products via eCommerce sites and social media was discussed, but it was indicated that there were insufficient staff and resources to monitor this. With 39.8 million active internet users and an estimated 28 million social media

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<sup>37</sup> FATF annual review, Paris, 14 February, 2014

accounts in Viet Nam, the sale of wildlife and timber products online is an area that offers many potential benefits despite the resource restrictions, and cannot be ignored.<sup>38</sup>

The internet provides the opportunity for environmental law enforcement agencies in Viet Nam to target, penetrate, prosecute and dismantle transnational organised crime groups operating both nationally and internationally. Enhancing their capacity to operate in this environment will result in a greater understanding of the problem and an increased capability to counter it. A failure to address this issue will continue to allow traditional organised crime groups to have unfettered access to Vietnamese citizens and markets.

Accordingly, it is recommended that the Environmental Police establish a unit to monitor the sale of WLFC products via social media and eCommerce sites. UNODC have provided training on investigating internet-related crime as part of the PATROL Program's Cross Border Cooperation training. This or similar training should be delivered to the Environmental Police Unit, along with a short mentorship program to guide officers until they are proficient in the use of overt and covert online investigative techniques. This unit would require a small number of computers, laptops and wi-fi devices at minimal cost.

To provide policy makers with a snapshot on the benefits of investigating the online trade of WLFC products in Viet Nam, a separate paper addressing this issued has been attached to this report as *Annex I*.

#### **Recommendation**

**The Environmental Police Department establish a unit to investigate the sale of WLFC products online through social media and eCommerce sites**

**That the UNODC seek funding to provide equipment, training and mentorship to this unit**

#### **International Capacity Building**

Given its role as a source, transit and destination country for WLFC products, Viet Nam has been the recipient of training and equipment provided by IGOs and NGOs to improve its capacity to counter WLFC. In preparing this report, the assessors sought access to training and capacity building specifically targeted at WLFC that had been undertaken in Viet Nam since 2011. Several organisations responded to our request, and a table showing the training that has been delivered is at Figure 12. No specific details were obtained in relation to equipment provided by these agencies. A table containing the type of training, locations and number of staff trained is attached to this report as *Annex J*.

An analysis of the training provided shows that species identification still remains a significant issue, despite it being the most widely delivered training type. WWF and WCS have delivered several courses targeting FPD officers, and given the important role this organisation plays, this is to be commended and if possible expanded. UNODC, with the assistance of Freeland Foundation, are the

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<sup>38</sup> We Are Social, 2015 at <http://www.slideshare.net/johnnyvo/vietnam-digital-social-mobile-2015>, accessed 24 July 2015.

principle agencies providing more advanced training including controlled delivery, intelligence, forensics, and cross border cooperation. Deficiencies were identified in anti-money laundering (only two courses provided by UNODC to members of the Procuracy), intelligence (only one course scheduled by UNODC to Environmental Police), human source, advanced surveillance and undercover operations training. There is also very little training provided to members of the Procuracy, and this an area that needs to be addressed.

There is some overlap between agencies, especially in the areas of advanced investigation, species identification and forest guard training. With this overlap comes the potential for mixed messages or different priorities to be delivered to course participants. It is important that the training material including handouts and manual are consistent and tailored to the Vietnamese WLFC context.

There is a need for NGOs, IGOs and the respective Vietnamese law enforcement agencies to collaborate in relation to the focus and content of training. This will ensure consistency, be more cost effective, and enable training in those priority areas identified by the relevant agencies.

It is recommended that a committee be established containing members of the relevant law enforcement agencies, IGOs and NGOs to identify the needs and manage the delivery of WLFC law enforcement training in Viet Nam.

<b>Training Provided</b>	<b>Forest Protection Department</b>	<b>Environ Police</b>	<b>Border Guards</b>	<b>Customs</b>	<b>General Inspectorate Police</b>	<b>Procuracy</b>
<b>Species Identification</b>	UNODC Freeland TRAFFIC WWF WCS CITES	UNODC Freeland TRAFFIC WCS CITES	UNODC Freeland TRAFFIC WCS CITES	UNODC Freeland BCA MONRE TRAFFIC WCS CITES	UNODC Freeland TRAFFIC WCS CITES	WCS CITES
<b>Basic Patrol Course</b>	WWF WCS	-	-	-	-	-
<b>Forest Guard Training</b>	WWF WCS	-	-	-	-	-
<b>Natural Resource Monitoring</b>	WWF	-	-	-	-	-
<b>Advanced Field Craft</b>	WWF WCS	-	-	-	-	-
<b>Anti-Smuggling</b>	UNODC Freeland	UNODC Freeland	UNODC Freeland	UNODC Freeland	UNODC Freeland	-

Undercover Operations	-	-	-	-	-	-
Surveillance	-	-	-	-	-	-
Domestic Controlled Delivery	UNODC	UNODC	UNODC	UNODC	UNODC	-
Advanced Investigators Training	UNODC Freeland WWF WCS	UNODC Freeland WCS	UNODC Freeland WCS	UNODC Freeland WCS	UNODC Freeland WCS	-
Anti-Money Laundering	-	-	-	-	-	UNODC
Intelligence	-	UNODC	-	UNODC	UNODC	-
Wildlife Forensics	TRACE TRAFFIC	TRACE TRAFFIC UNODC	TRACE TRAFFIC UNODC	TRACE TRAFFIC UNODC	TRACE TRAFFIC UNODC	-
Human Source Management	-	-	-	-	-	-
Container Control	-	-	-	UNODC	-	-
Cross Border Cooperation	UNODC Freeland	UNODC Freeland	UNODC Freeland	UNODC Freeland	UNODC Freeland	-
Prosecutor Training	-	-	-	-	-	WCS

Figure 12: WLFC Training delivered by type and agency in Viet Nam

#### Recommendation

That a committee be established, made up of the relevant LE agencies and representatives of IGOs and NGOs to identify the needs and manage the delivery of WLFC LE training in Viet Nam

## Mutual Legal Assistance Treaties

MLATs are a powerful tool when addressing transnational organised crime, particularly when dealing with WLFC. The strongest laws pertaining to WLFC are generally found in the source countries, where cultural symbols are being slaughtered or forests illegally harvested. Viet Nam has signed 20 mutual legal assistance treaties with the following countries:

Algeria	Kazakhstan (Not Confirmed)
ASEAN (only valid in approved nations)	Laos
Belarus	Mongolia
Bulgaria	North Korea
China	Poland
Cuba	Russia
Czech Republic	South Korea
France	Taiwan
Hungary	Ukraine
India	United Kingdom

Unfortunately there have been no treaties signed with any African countries or the United States, although the assessors were told that one is close to being reached with South Africa. In one recent case in South Africa, a Thai national was sentenced to 40 years imprisonment for rhino horn trading, later reduced on appeal to 30 years. This Thai National was allegedly working for a Laotian criminal with very close ties to Viet Nam, who remains free.

The Laotian citizen is out of reach of the South African authorities because of the absence of an MLAT. The same can be said for the masterminds of WLFC who operate from Viet Nam and who send others to do their work in Africa and other parts of the world. Without MLATs, Viet Nam is in effect a safe haven for these criminals to operate internationally.

Fortunately Viet Nam has MLATs with countries in the GMS; however, no examples of Viet Nam extraditing suspects for WLFC offences were provided to the assessors.

### **Recommendation**

**That Viet Nam negotiate Mutual Legal Assistance Treaties with source countries of wildlife and timber products illegally imported into Viet Nam**

## 7. JUDICIARY

Viet Nam's highest judicial organ is the Supreme People's Court (SPC) and the highest appellate court in Viet Nam. It is also delegated as a court of first instance for trying cases involving high treason, national security, or other crimes of serious nature. The SPC supervises the trials by subordinate courts.

The Court system of Viet Nam is hierarchical including the Supreme People's Court, the Provincial People's Courts (PPC) and the District People's Courts (DPC). Military tribunals are constituted for cases related to the Military only (Articles 102, 104 of the Constitution). A chart of the organisational structure of the court system in Viet Nam is provided in Annex-D attached to this Report.

The composition of the SPC includes the Chief Justice, Deputy Chief Justice, other Judges and People's Assessors (Jurors). The Chief Justice, the Deputy Chief Justice and other Judges of the SPC are appointed for a term of five years, on the proposal of the President of the Republic and confirmation by the National Assembly (Article 88 Constitution).

There are 63 Provincial People's Courts and 678 District Courts in Viet Nam. The Provincial People's Court (PPC) serves as the appellate court for the DPC, and also adjudicates cases as a court of first instance. Each province has a PPC and each district has a DPC, which serves as a court of first instance for civil and criminal cases. According to the Constitution, except in the case of trials by summary procedures, people's assessors participate in both the first instance courts and the appellate courts, and are independent in performing their functions as assessors (Article 103 of the Constitution). Both the PPCs and DPCs deal with WLFC, whereas the SPC does not deal with such cases.

Judgments of the first instance courts may be appealed against to a higher level court within the time limits prescribed by the Criminal Procedure Code (CrPC). An appellate panel is composed of three judges and two assessors. The time limit for lodging appeals is fifteen days after the date of pronouncement of judgments. The appellate court has the right to:

- Reject the appeal and uphold the judgment of the first instance court;
- Amend the first instance judgment;
- Cancel the first instance judgment and transfer the case file for reinvestigation or retrial;
- Cancel the first instance judgment and dismiss the case

Viet Nam has a system of two-instance trials. If a party does not agree with the judgment of the first instance court, it may appeal to the second instance court. The decision of the second instance court is final and must be enforced. WLFC cases are heard in the District and Provincial courts as first instance trial courts. The courts of first instance have the right to order investigation of criminal cases including cases related to WLFC. The courts of first instance are composed of one judge and two assessors, while for serious offences the courts may be composed of two judges and three assessors. The Criminal Law does not, however, define what a serious offence is. This should be looked at while revising the Penal Code.

In one of the meetings with officials of the judiciary, it was revealed that the SPC did not hear appeals on WLFC cases, except in very serious cases. The criminal law, however, has no definition of “serious” and “very serious” cases.

The Constitution provides that citizens are innocent unless proven guilty. It also provides that the citizen has the right to legal assistance (Article 22 of the Constitution). This provision is for all criminal cases, and therefore would apply to WLFC cases also.

There is no consolidated information or record of WLFC cases in the country. It is, therefore, necessary to prepare a compendium of court cases related to the environment and WLFC court cases. The compendium will be a useful tool for judges in deciding WLFC cases. The SPC is the only court which publishes the proceedings of the cases it reviews.

#### **Recommendation**

**Design and prepare a compendium of court cases related to WLFC**

The courts do not apply the general principles of environmental jurisprudence such as ‘*the polluter pays principle*’, ‘*sustainable development principle*’ or the ‘*principle of prevention*’. These are universally recognised principles of environmental jurisprudence enshrined in international treaties and national regimes of several countries, wherein their courts apply these principles for the effective protection of the environment and conservation of natural resources, including the fauna and flora. With the adoption of these principles, the courts of Viet Nam would equip themselves with tools for preventing harm to the wildlife and forestry resources. Under the Vietnamese law, a victim in a forestry-related case has the right to request restitution of the land that is damaged or destroyed. The courts have the power to pass orders on the restitution of land and restoration of the environment as part of their judgments in dealing with cases of the wildlife and forest crimes.

Article 6 of Decree 99/2009, stipulates that in addition to the administrative penalties, the violator may also be ordered to perform one or some of the following remedial actions:

1. Restore the original condition of the land which was damaged due to the administrative violation, i.e.:
  - a) Grow trees to replace the lost ones, or pay for the cost of reforestation according to the investment rate applied locally at the time of violation;
  - b) Restore the facilities and means to protect the forest which was damaged or exploited, or pay for the cost of restoration;
  - c) Hand over the illegal forest products for confiscation as exhibits for the case.
2. Remove or pay for the removal of illegal construction work carried out in the forest.
3. Pay for the cost of fire extinguishment.
4. Pay for the cost of remedial measures for damage caused by pests.
5. Destroy infected wild animals or their organs that are the subject of the violation.

In addition to the principal sanction, the offender may also be prohibited from holding a certain post, practicing a certain occupation, or doing a certain job. The court does not have the authority to revoke licenses, but it has the authority to request a relevant institution to revoke the license of the convicted offender.

Article 18 of the CrPC states that courts shall conduct the trials in public and that everyone has the right to attend such trials, unless otherwise provided by the law. In special cases where State Secrets should be kept or the National Customs or Practices should be preserved, the courts shall conduct trials behind closed doors; however, the judgments of such courts shall have to be pronounced publically.

During the interview, the mission had a meeting with a judge of the PPC in Quang Binh province. The mission was informed that there was a general lack of understanding of WLFC among the judges and assessors, and that there was a need for capacity building in this respect; that there were gaps and deficiencies in the criminal laws of the country, because of which, very few cases were filed in the courts. It was also reported that the number of Judges in the court was insufficient considering the volume of cases brought before them.

**Recommendation**

**Design and prepare modules for training the members of the Judiciary in enhancing their knowledge and awareness in dealing with court cases regarding wildlife and forestry crimes**

**Organise a series of seminars for Judges to enhance their knowledge and awareness about the specialised nature of wildlife and forestry cases**

It was revealed that the Provincial People's Court at Quang Binh had not dealt with any case of wildlife crime since 2010. However, the PPC and the District courts in the province had dealt with 13 cases of first instance trials and six appeal cases involving illegal timber from 2010 to 2015. The full list of cases is provided in Annex-B, attached to this Report.

As we see from the list in Annex-B, in most of the cases, the offenders got off with very light sentences, and in some cases the offenders were only subjected to non-custodial sentences. This is because the criminal laws and particularly the Penal Code do not provide deterrent punishments for WLFC cases. In many cases, only administrative sanctions are applied, the confiscated illegal wildlife and timber is auctioned, and the offenders released without taking them to the courts for trial. Evidence of this was found in Yok Don National Park, Dak Lak Province, where the team were shown a lot of illegal timber and motorbikes seized from the offenders apprehended in the National Park.

To deal effectively with WLFC cases, the judges of the PPC and the District Courts need to exchange information and judgments of cases not only amongst themselves, but also with the judges of neighbouring countries such as Lao PDR and Cambodia, through the formation of a network of judges that hear WLFC cases. Seminars should also be organised for enhancing their knowledge about WLFC.

**Recommendations**

**Establish a network of judges for sharing substantive information among the Judges of the Provincial People's Courts and District Courts on the trial and appellate court cases for effectively dealing with wildlife and forest crime cases**

**To prepare and organise joint sub-regional seminars of selected Judges and Prosecutors of Viet Nam, Lao PDR, and Cambodia to share information and experiences of their legal and institutional systems to improve results on WLFC cases**

Several countries have established specialised green courts or tribunals to hear environment cases because of their special nature. Viet Nam may consider the introduction of special wildlife trial benches (Green Benches) or fast track courts to deal with the cases quickly and more efficiently, and to increase the number of convictions in WLFC.

**Recommendation**

**To promote a national study for creating special green benches or fast track courts at the Provincial People's Courts and District Courts to effectively and urgently deal with WLFC cases**

In one of the meetings, the mission was informed about a recent circular of the SPC, which has set a target of a minimum 86 cases that a Judge is supposed to complete in a year. This will assist the courts in avoiding undue delays in the trial of cases; however, it may also put undue pressure on Judges which could lead to wrongful judgments and decisions.

There are several provisions in the Penal Code for the accountability of the judiciary; i.e. it provides that the judges or the assessors shall be penalised for handing down illegal judgments (Article 295 of the Penal Code); and making illegal decisions (Article 296 of the Penal Code), which is an example of good practice.

## 8. PROCURACY

The People's Procuracy is organised into three levels including the Supreme People's Procuracy, the Provincial People's Procuracy and the District People's Procuracy.

The Supreme People's Procurator is appointed on the proposal of the President of the Republic and confirmation by the National Assembly. The Procuracy has the right to prosecute the offenders before courts (Article 107 of the Constitution).

The Procuracy has the task of supervising the institutions of criminal cases, investigating activities, and the preparation of case files taken to the courts for trial. Article 150 of the CrPC provides that the investigator shall lead the examination of the places where the crime has been committed or detected in order to detect traces of the crime and material evidence, as well as clarify circumstances meaningful to the case. All this involves special investigative techniques as well as legal expertise to decide whether to initiate a criminal case or not. This is crucial in deciding the fate of a case. It is quite possible that due to this lack of expertise, most cases are dealt with by administrative sanctions and not taken to the courts for trial as criminal cases. (Article 155 of the CrPC)

Defendants who are accused of crimes have the right to be present and have a defence lawyer at the trial in the courts. Defendants unable to afford a lawyer are generally provided one, in the case of juvenile offenders or in serious cases. The defendants and their defence lawyers have the right to cross examine witnesses. They also have the right not to be compelled to confess guilt and the legal option to refrain from testifying. As stated earlier, the convicted have the right to appeal to a higher court. These provisions are applicable to all criminal cases including WLFC.

Article 105 of the CrPC provides that if the institution bringing the case for prosecution withdraws that case before the court of first instance, the case may be closed. This gives the Procuracy extensive powers for not pursuing cases. However, the law provides a safeguard: where it is found that the institution in question has withdrawn the case due to force or coercion, the Procuracy or courts may continue conducting the case. Furthermore, if the defendants present new evidence of significance to the case, the court is obliged to reopen the case (Article 120 of the CrPC).

The Supreme Procuracy in Ho Chi Minh City informed the mission that the procurators were not provided with any special training for prosecuting WLFC. This created a possibility of case files not being well prepared before submission to the courts for trial. The framing of a proper charge of the law contravened is the essence of a trial. If the charge is not properly framed initially, the court is likely to dismiss the case.

Article 30 of the Constitution provides that everyone has the right to lodge a complaint about illegal acts of agencies, organisations or individuals. This provision can be linked with the recognised principles of environmental jurisprudence, such as the right to sue or the right to access justice, which means that any person who discovers an illegal WLFC activity may file a case to the competent authorities or the courts.

### **Recommendations**

**Design and prepare modules for training Prosecutors in special investigative techniques for investigating wildlife and forestry cases including the proper and safe storage of exhibits of crime in those cases**

- In one case in 2012, 158 kg of ivory was reportedly seized and the case brought to the court for trial. However, it could not be successfully prosecuted as there was no mechanism to find out the value of the ivory seized.
- Another case that was reported to the mission was of two frozen lions that were seized at the border. When the case was brought to the court, it could not be successfully prosecuted as in the Decree number 32/2006, there was no mention of lions. This resulted in the case to be dealt with by imposing administrative sanctions only, instead of criminal punishments being imposed.

### **Recommendation**

**To amend the existing criminal legislation to include all endangered species according to the CITES Convention.**

As indicated above, there was a significant gap and deficiency in the criminal legislation which requires a certain minimum limit on the worth or value of illegal WLFC products, seized during investigations, to qualify for filing a case in the court. This actually defeats the very purpose of punishing the criminals as they escape with minimum administrative sanctions most of the time, by only paying some fines.

Here it is pertinent to mention a draft circular issued by SPC on 19/03/2014, with the title '*Guidance on Criminal Prosecution of those who conduct smuggling, transportation, illegal storage of rhino horn and ivory from abroad under CITES*'. The prosecution has been facing problems in prosecuting WLFC cases because it is difficult to evaluate or calculate the value or worth of the objects of the crime; i.e. the ivory or rhino horn which is confiscated at the borders. According to the draft circular, the weight of the illegal ivory and the rhino horn smuggled will be taken into account instead of their value worth, which is the case according to the current practice and the provisions applicable from the Penal Code. According to this draft circular, the weight conversion rate between ivory and rhino horn is 1kg of rhino horn corresponding to 10 kg of ivory. The new system to be introduced by the draft circular seems to be much more effective and will result in successfully prosecuting cases of illegal ivory and rhino horn.

The delay in trials by courts is also an impediment in securing successful prosecutions, as the criminals may disappear and go missing during the long duration of trials, in some cases lasting five years. This can leave cases resulting only in the seizure of wildlife products, without criminals being arrested or brought to court for trial.

Ineffective enforcement of Viet Nam's wildlife conservation laws in effect results in a relatively low number of prosecutions of illegal WLFC cases. The situation is aggravated by inadequate

punishments imposed following convictions which do not serve as a deterrent, particularly in the context of the large illegal profits involved in the trade.

There are several provisions in the legislation for the accountability of the Procuracy; i.e. coercing judicial personnel to act against the laws (Article 297 of the Penal Code); applying corporal punishment (Article 298 of the Penal Code); forcing evidence for testimony (Article 299 of the Penal Code); falsifying case dossiers (Article 300 of the Penal Code); and neglecting responsibility resulting in escape of detainees (Article 301 of the Penal Code). Evidence that these provisions have been used was not found.

## 9. ANTI-CORRUPTION

There is extensive legislation on the crimes of corruption in the Penal Code, including Article 278 on embezzling property; Article 279 on receiving bribes; Article 280 on abusing positions and/or powers to appropriate property; Article 281 on abusing positions and/or powers while performing official duties; Article 283 on abusing positions and/or powers to influence other persons for personal profits; Article 289 on offering bribes; Article 290 on acting as an intermediary for bribery; and Article 291 on taking advantage of one's influence over persons with positions and powers to seek personal benefits. In addition, there are the following specific primary and secondary legislation on the subject:

- **Law No. 55/2005/QH11 – The Law on Preventing and Combating Corruption 2005**, effective as of 1 June 2006, and revised in 2007. In addition to criminalising several types of corruption such as embezzlement, forgery, bribery, abuse of office, and money laundering, this law sets out asset disclosure requirements for government officials to facilitate identification of illegitimate sources of income.
- **Decree No. 74/2005/ND-CP - Preventing and Combating Money Laundering:** The Decree, effective as of 1 August, 2005, applies to individuals, agencies and organisations in Viet Nam, as well as foreign organisations and persons residing in or conducting transactions relating to services and property in Viet Nam. It establishes a general responsibility to prevent money laundering and prohibits the participation or facilitation of money laundering. It provides for international cooperation on preventing and combating money laundering.
- **Law No. 03/2011/QH13 – Law on Denunciation 2011**, effective as of 1 July, 2011. The law provides for renunciation in relation to acts of violation by agencies, organisations and individuals. An effective whistle blowing system is vital as it encourages disclosure of misconduct and accountability.

In addition to the above legal provisions, the country has a National Strategy approved in 2009 for preventing and combating corruption towards 2020. The strategy includes an action plan for implementation aimed at increasing transparency, improving investigation and prosecution of corruption cases, and raising the awareness of society in its role to combat corruption.

The above mentioned provisions are suitable and enforceable tools which should be used to fight corruption.

The Corruption Perception Index 2014<sup>39</sup> ranked Viet Nam 119/175 of countries and territories globally, with a score of 31/100<sup>40</sup>. This represents a three year consecutive standstill, whilst most of the neighbouring Association of South East Nations (ASEAN) countries, apart from Myanmar which also remained the same, showed improvement. One of the key recommendations from the recent '*Towards Transparency: Corruption Perception Index Report*' proposed:

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<sup>39</sup> Towards Transparency(TT), Corruption Perceptions Index (CPI) released 03 December, 2014

<sup>40</sup> CPI is calculated based on a scale of 0-100 (of which 0 means the country is perceived highly corrupt and 100 as very clean

*'To make law enforcement more effective, it is necessary not only to improve coordination among relevant agencies, but also to empower and uphold the accountability of anti-corruption institutions. We recommend that the Government consider empowering one institution with a clear mandate, authority, independence and capacity to lead, coordinate and be accountable for overall enforcement efforts.'*<sup>41</sup>

The United Nations Convention against Corruption (UNCAC) was signed by Viet Nam on 10 December, 2003, and ratified by the President on 30 June, 2009. The institutions are led by the Government Inspectorate, MoJ, MPS, the Supreme People's Procuracy, the Supreme Court and the State Bank of Viet Nam. The principle offence of bribery, whether it is active or passive, is contained within the Penal Code, in Articles 289, 277 and 279 respectively. However, it is suggested in the 2012 United Nations Review of UNCAC, that these Articles are insufficiently robust and many provisions of the Convention have yet to be enacted or specified in Viet Nam law. According to Articles 21 and 22 of UNCAC, each State Party shall consider adopting such legislative and other measures as may be necessary to establish bribery and embezzlement of property in the private sector as criminal offences, when committed intentionally in the course of economic, financial or commercial activities. Existing Vietnamese legislation has not yet admitted bribery and embezzlement of property in the private sector as a criminal offence in any legal documents.<sup>42</sup>

The Government of the Socialist Republic of Viet Nam launched the '*National Strategy Against Corruption Up To 2020*' on 12 May, 2009 with some clear and strong objectives to '*remove opportunities and conditions for corruption, and consolidate confidence of the people and international community*'. There are some bold ambitions through a phased review process to meet development requirements and to comply with UNCAC. The primary responsibility for monitoring and evaluation sits with the Government Inspectorate and the Office of the Central Steering Committee against Corruption. Whilst there are undoubtedly positive and progressive steps being taken, as corrupt practices and the complexity of bribery and remuneration increases, the challenges become even more difficult and appear to be having little impact on cross border WLCF criminality and its facilitation, such as fraudulent issuing of licenses and permits by import and export authorities.

There are many areas of vulnerability and scope for corrupt practices and bribery. Large cash bounties for allowing illegally trafficked goods through checkpoints, and disparities in pay between FPD, Police and Customs, only highlight the dangers for frontline staff being presented with bribes and other inducements. It is probable that widespread and in some cases institutional corrupt practices are endemic.

It was reported that in some cases, the bribery culture is so entrenched (for example at Mong Cai, a notorious northern land crossing border with China) that staff rotation on its own would have little or no impact. This would indicate or at least suggest that the corruption is institutionally embedded in instances. It was commented that the 'risk' or even willingness to challenge and/or stop such practices, was prevented by the impotence of senior management, mainly due to the reliance on the additional payment to bolster very low wages and a failure to understand or appreciate the national

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<sup>41</sup> Recommendation from TT CPI, 2014

<sup>42</sup> Anti-Corruption in Viet Nam, Do Thi Phuong, 2010

and global impact of their apathy and reluctance to tackle trafficking, including WLFC. The concept of 'integrity checks' and use of covert methods, even based on 'hot spot' posts and locations was not widely accepted as necessary, or seen as the responsibility of senior managers.

These are difficult areas and when confronted with a multi-billion dollar transnational criminal enterprise, the scale of the challenge should not be underestimated. It should be recognised that the Communist Party, National Assembly and Government of Viet Nam are publicly acknowledging that corruption is a problem and that should be highly commended.

A commitment to clear direction, transparency and public accountability through the courts and in breaking the practices of paying bribes to conduct business is required. This also has a significant impact on international reputation, with long-term consequences for foreign investment and the confidence to sustain economic growth if not addressed.

**Recommendations:**

**Introduction of an accepted description for the offence of bribery for the public and private sector as part of the Penal Code, with strong deterrent sanctions and penalties**

**Set up a confidential and dedicated hot line for reporting corrupt officials and practices, with legal protection for whistle blowers and callers**

**Independent review of vulnerable posts and trafficking routes to devise realistic and effective mechanisms to counter corrupt practices and tackle dishonest staff**

## 10. DRIVERS AND DEMAND REDUCTION

### Drivers

The exploitation and abuse of endangered flora and fauna, exists at two distinct levels: transnational and national.

The mission, despite its best efforts and enquiries, was not provided with any clear information or evidence on the activities of transnational criminals, or a prevalence of large scale seizures of endangered wildlife, illegal timber or other flora or fauna which would demonstrate success in stemming the tide in the illegal trafficking. This irregularity is worrying when measured against reported illegal trafficking. The Viet Nam position is highlighted, albeit it minimally, in Annex F '*Open Source Reporting of Seizures*' and to a certain degree the seizure data shown in section 7 '*Enforcement*'. What is irrefutable is the near extinction of pangolin, tiger, elephant and bear from the wild in Viet Nam, not to mention certain endangered reptiles and rare plant species.

This disconnect should not necessarily be all placed squarely on the shoulders of the Viet Nam LEAs, Procuracy, Courts or Government; it is a combination of a number of factors, many of which are highlighted in the recommendations, and revolve around a weak and confusing Penal Code, increasingly sophisticated criminal movement and trafficking techniques, misdirection and falsification of trade licenses, and wholesale abuse of the farming, breeding and cultivation of flora and fauna. The massive sea and land borders, with approximately 120 customs-staffed points, present additional operational challenges and opportunities for land, sea and, to a lesser extent, air smuggling and trafficking.

The opportunities for corrupt practices, for both soliciting and giving bribes, only serve to make the genuine discovery, seizure, prosecution and conviction of WLFC an even rarer occurrence than it currently is.

Nationally and internationally, criminals are benefiting from inconsistent, misunderstood and often contradictory, legislation and decrees. This is exemplified in the confusion over the Law on Biodiversity (2008) in respect to farming of species under the List of Endangered, Precious and Rare Wildlife Species Prioritised for Protection. It is classified into two types, in accordance with Article 45 of the Law on Biodiversity. What this means in practice is there is a difficulty in separating the breeding and growing activities and facilities permitted to keep and raise wildlife. The result is complicated administrative procedures which the FPD try to interpret on behalf of CITES MA to differentiate between legal and illegal breeding.

De-facto licenses/permits are granted for 'legal' farming of endangered species, rare plants, fish and other sea mammals. It is a thriving export trade, with species stolen from the wild passed off as bred in captivity.

This is further exacerbated by the regulations for the handling of administrative violations on wildlife management, conservation and seizure, which are stipulated in various legal documents. The fines issued are often so low and the fact that seized wildlife – whether it is flora or fauna, dead or alive, is often sold back into the market and purchased by the very criminals who were in possession in the

first place, is a weak disincentive to commit the crime. There was nothing found during the mission to indicate or even suggest that the money received was being used to fund either preservation or prevention activities.

Even in the run up to and during Tet Nguyen Dan (lunar new year), which is considered the biggest and most popular festival of the year in Viet Nam, when consumption of exotic wild animals, plants and mammals is at its highest, there was little or no evidence presented of seizures. The tactic of checks on both legal and illegal markets, restaurants, and other food suppliers, appeared either ineffective or misdirected; it seemed to have little detrimental effect on the continued trade and consumption of endangered flora and fauna.

Officials argued that detection of local communities' consumption and sale of 'bush meat' was very difficult to police. Whilst it may not be the large scale pillaging that hits the transnational criminal markets, these practices arguably reinforce and perpetuate the view that the focus is on harvesting the land for profit, rather than conservation.

Despite the significant improvement in prosperity and livelihoods seen across most provinces in Viet Nam over the past 10-15 years, particularly those centred on large industries; there is still a significant gap between the wealthiest and poorest. There still remain challenges to secure and sustain alternative livelihoods for rural communities. This is particularly noticeable in remote villages and communes where the forest and land are the primary means of survival.

The forestry position is more a commercial and strategic debate. It is important to note that large areas of Viet Nam's forests were degraded, deforested, or defoliated following the conflicts of the mid-20<sup>th</sup> century. As a result, Viet Nam embarked on a national reforestation program in 1987. Its efforts increased forest cover from about 26% in 1994, to approximately 39.7% in 2011. However, while the country's total forest area has increased over the past twenty years, most of this growth is in the form of large-scale plantation development, mainly rubber.

The exponential growth in wood-based production and exportation in Viet Nam has probably outstripped the availability of high class, accessible timber. 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.<sup>43</sup>

This fast growing wood processing industry has increased the demand and opportunity for illegal imports to flourish, and has increased the trade in stolen wood exported illegally from source countries.

The domestic wood processing sector predicted a record export turnover of US\$3.9 billion in 2011. Figures from the Ministry of Agriculture and Rural Development show that wood export turnover in the year to November 2014 topped \$3.5 billion, up by 15 percent when compared to the same period last year. The United States, which accounts for a third of the total export value, remains Viet

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<sup>43</sup> UNODC: Criminal Justice Response to the Illegal Timber Trade in Viet Nam, 2013

Nam's largest wood importer. Wood export turnover is expected to top \$3.9 billion by year's end, which is \$500 million higher than the figure recorded last year.<sup>44</sup>

### **Demand Reduction**

Wildlife poaching and trafficking globally is driven by a rising demand for illegal wildlife products, especially from the rapidly growing economies of Asia. Species are illegally poached and removed from their natural habitats, traded live, dead, or as associated parts or products, and transported to consumer markets where they are purchased for use as traditional medicine, food, pets, ornaments, decorations, or an aphrodisiac.

Viet Nam has quickly transformed from a source state for wildlife to feed export markets (mostly in China), to a major importing consumer of wildlife. This is largely attributed to Viet Nam's rapid economic growth over the past 20 years, which has inflated demand for luxury goods, including high value wildlife products, which are most commonly consumed in specialty restaurants or used in traditional medicine. However, it is also a consequence of the widespread depletion of wildlife species from most forest areas within Viet Nam.

Many studies and surveys have been carried out in Viet Nam in recent years to attempt to understand more about the attitudes and behavior of wildlife consumers, and target demand reduction efforts. For example, TRAFFIC's 2013 study on rhino horn consumers in Viet Nam found that rhino horn buyers tend to be middle-aged or older women, well educated, and often buying for others; whereas rhino horn users tend to be wealthy men aged over 40 years old<sup>45</sup>.

Another survey carried out in 2007 in Hanoi by TRAFFIC showed that the majority of the public has a poor understanding of wildlife protection laws and the environmental impacts of wildlife consumption<sup>46</sup>. It also found that wildlife consumption in Hanoi was not only popular, but on the rise, as many surveyed participants identified themselves as future users. Furthermore, a survey conducted in Hanoi by the Institute of Sociology in 2014 made the same findings<sup>47</sup>, and also found that consumers are motivated by a deep underlying belief in the effectiveness of wildlife products (albeit often based on misinformation, myth, or rumour), and a low awareness of the impact that buying and using them ultimately has on nature.

These studies all point to complex social and economic factors as important influences that motivate wildlife consumption in Viet Nam, including the gift-giving culture in conducting business, deeply rooted traditions in using medicine made from wildlife products, and the desire to display wealth and social status. Wealth is a considerable driver for wildlife consumption, due to the high cost of rare wildlife products; and demand is greatest in Ho Chi Minh City and Hanoi, where there are higher concentrations of wealthy businessmen and state officials.

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<sup>44</sup> Information from fact sheet VIET NAMWOOD for Industry Fair 14-17 October, 2015 (published 19/02/15)

<sup>45</sup> TRAFFIC, 2013, *'Rhino Horn Users: Who Are They?'*, Hanoi, Vietnam

<sup>46</sup> Venkataraman, B, 2007, *'A Matter of Attitude: The consumption of wild animal products in Hanoi, Vietnam'*, TRAFFIC Southeast Asia, Greater Mekong Programme, Hanoi, Vietnam

<sup>47</sup> Institute of Sociology, 2014, *'Survey on Knowledge, Attitudes and Behaviours Related to the Use of Wildlife Products in Hanoi'*, produced under the GEF/World Bank project "Wildlife Consumption in Vietnam: Reforming Policies and Practices to Strengthen Biodiversity Conservation"

There are many NGOs working on various aspects of the demand reduction issue in Viet Nam, using targeted marketing and public awareness campaigns, including ENV, TRAFFIC, WWF, Humane Society International, Animals Asia Foundation, WCS Viet Nam, WildAid, Freeland, and others, in addition to government agencies such as CITES MA (under MARD) and the Biodiversity Conservation Agency (under MONRE). It is certain that over time, and in combination with effective law enforcement efforts, education and public awareness raising activities play a very important role in the prevention and reduction of illegal wildlife trade and consumption.

For example, ENV released a report in May 2015 showing the change in public attitudes to and use of bear bile over five years from 2009-2014 in Hanoi, Da Nang and Ho Chi Minh City<sup>48</sup>. ENV's findings indicated a 61% decrease in the number of bear bile users (people who had used bear bile in the past two years). Reasons given for stopping bear bile use included that they had no demand or need for bear bile; that it was ineffective; and that they were concerned for the bears. More than half of the survey participants also said they had been exposed to some kind of bear protection awareness materials or activities.

Following a year-long campaign, in 2014 Viet Nam CITES MA and Humane Society International also announced their findings of a 38% decrease in people who buy or use rhino horn<sup>49</sup>, with a quarter of the respondents agreeing that the product had no medicinal value. There is some debate on the validity of the assumptions made, based on a relatively small sample size, and lack of ongoing, robust and statistically consistent studies to verify these results; however, it should nonetheless be commended as a positive step towards raising awareness and striving to reduce demand for rhino horn.

Viet Nam is also currently considering destroying its stockpile of ivory, rhino horns and tiger bones seized from illegal trade, to show its commitment to combat wildlife trafficking. While there are some differing views on whether stockpile destruction can potentially generate further demand for wildlife products, it does clear stockpiles and reduces the chance of leaks to illegal trade. Stockpile destruction also presents a unique opportunity to draw public attention to the scale, nature and impacts of the serious crimes that lie behind these confiscations, and to act as a deterrent to illegal trade.

There is no one option that will solve the issues of WLFC, what is needed is a combination of measures attacking the problem simultaneously from all sides. Law enforcement is crucial, but as the drug problem has shown us, unless it is accompanied by demand reduction it will ultimately fail. It is this reason that makes demand reduction crucial to successfully addressing WLFC.

### **Local Communities**

Under the remit of district or commune People's Committee management there are a myriad of local groups/forums seemingly setup to protect the environment, working in collaboration with staff

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<sup>48</sup> Education for Nature - Vietnam, 2015, '*An Analysis of Changing Bear Bile Use in Vietnam*', Hanoi, Vietnam

<sup>49</sup> Vietnam CITES MA & Humane Society International, 2014, '*Vietnam Rhino Horn Reduction Campaign*', Hanoi, Vietnam

from the Forest Protection Department on joint patrols. In some areas nearer the borders, the Border Guards have a mandate to provide information to local communities on penalties for illegal hunting and trafficking, as well as raising awareness of endangered species. With little or no evidence of the impact or results of these arrangements, it is difficult to assess or comment on their effectiveness. The budget for rewards or remuneration for providing information or assisting prevention was seemingly very low, and would not appear to compensate for the risk and danger to informants or their families.

The use of administrative sanctions handed down to local communities appears to be rare, and may be reflective of an attitudinal indifference to consuming wildlife per se.

It is important to involve the communities living in the vicinity of wildlife, such as in forests and around protected areas, in policy development and decision making, and to contribute to and agree on conservation, protection and prevention strategies. This has to be linked with poverty eradication projects, so that the community is provided with enough means of livelihoods and they do not rely on wildlife for their survival.

From all the interviews conducted and visits made, there appeared to be a lack of meaningful involvement or engagement with civil society.

### **Poverty Reduction**

There are remote and isolated communities across Viet Nam where food and livelihoods are almost entirely derived from the forest and wildlife. What is also evident is that as wildlife trade continues to grow, there is a lack of government policy or other links to national development or poverty goals. The high investment in captive bred and propagated species brings significant income and profits, but little of this handed down or shared with local communities. There is little evidence of a community-based approach to the sustainable management of wildlife, and there is widespread confusion and complexity in the distinction between illegal wildlife trade and the legality of wildlife use. The role and importance of the People's Committee forums at district and commune level is fundamental in ensuring sustainable, alternative livelihoods are promoted, supported and managed.

### **Timber Management**

The Vietnamese government has made some progress towards tackling illegal logging and the associated trade. It is negotiating a voluntary partnership agreement (VPA) with the EU, a process that has prompted a review of legislation and sought to improve the government's relationship with civil society. This has also included the creation of the Forest Law Enforcement, Governance and Trade (FLEGT) task force within the Vietnamese Forest Administration. Using a legality assurance system (LAS), it strives to design a system which delivers more transparent verification and traceability of timber sources. There are also signed agreements in place with Lao PDR and Cambodia in which it has committed to coordination of forest management and trade.<sup>50</sup>

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<sup>50</sup> Chatham House: The Royal Institute of International Affairs, Trade in Illegal Timber: The Response in Viet Nam, Dec 2014

Unfortunately corruption, a lack of compliance, and poor data collection capabilities make confirming the traceability of timber sources in Lao PDR and Cambodia problematic. Several reports by EIA and Global Witness have outlined the extent of corruption and the frequent overuse or counterfeiting of permits in these two countries.<sup>51</sup> Unfortunately this impacts heavily on the veracity of any statements made by Viet Nam when certifying the traceability of timber sources from them. Until an electronic system exists whereby all permits and authorities are entered into a central electronic database accessible by all three countries and traceable back to a timber source, there will be doubt as to the traceability of timber entering Viet Nam from Lao PDR and Cambodia.

A recurring theme within law enforcement is the paucity of information about illegal shipments, and the absence of a formalised system for sending and receiving enforcement alerts about illegal shipment routes and destinations. It is suggested that the 'Division of Risk Management' at the General Department of Customs is developing a system, but as it stands, they have no responsibility for the legality of imports and exports.

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<sup>51</sup> The Environmental Investigative Agency has published several reports in the past few years, e.g. *Crossroads: The Illicit Timber Trade Between Laos and Vietnam* (2011), *Rosewood Robbery* (2012a), *Checkpoints: How Powerful Interest Groups Continue to Undermine Forest Governance in Laos* (2012b), *Appetite for Destruction: China's trade in illegal timber* (2012), *Routes of Extinction* (2014b) and *Myanmar's Rosewood Crises* (2014a). The advocacy group Global Witness (2015) has published most recently *The Cost of Luxury*, a report in which the authors sustain allegations about the organised networks and flows in Cambodia that enable the trafficking and illegal timber trade, involving high-ranking officials and private companies.

## 11. DATA AND ANALYSIS

It is clear that standardised data collection, storage, and management, are severely lacking across all agencies. What appears from the analysis is that there are a seemingly straightforward set of solutions which need to be understood, and need to challenge organisational and cultural differences, but in a sensitive and purposeful manner. This is exacerbated when an international context is introduced:

- ✓ Lack of trust and confidence between agencies both within country and internationally
- ✓ Different legal and procedural requirements for release of information and intelligence
- ✓ Information security and management
- ✓ Vulnerability of sources and compromise of trade craft secrets and techniques
- ✓ Misuse and/or inappropriate disclosure to outside parties

The World Custom Organization's (WCO) Customs Enforcement Network communications platform (CENcomm) offers the most suitable and immediately available communication solution for Viet Nam for secure bilateral intelligence exchange and multilateral knowledge capture. This platform should be adopted by WLFC LEAs within Viet Nam to collect data and share information and intelligence internationally.

The Viet Nam Environment Administration in Hanoi has created a database that offers solutions for the sharing of WLFC information nationally. This database is accessed through the VEA website portal and is available to law enforcement agencies in Hanoi including the FPD, Environmental Police, Customs and Procuracy. It is also available to the central-level Environmental Police. This system is currently used for wildlife crimes only, but should be expanded to incorporate forest crime.

A real success would be to encourage the national and international wildlife conservation, protection and enforcement bodies in Viet Nam to contribute in an open and inclusive manner, and provide independent and external scrutiny to ensure confidence and transparency.

## 12. CONCLUSIONS

It is estimated that each year in Viet Nam around 3700 to 4500 tonnes of wildlife fauna (excluding aquatic species) are used as food, medicine, ornaments and pets. In addition, more than 20,000 tonnes of medicinal plants are used annually (Government of Viet Nam, 2004; Nguyet Q.T. et al 2004). Sound management of natural resources is essential to ensure a regular supply of renewable natural resources, and avoid unintended, severe supply depletion. The direct consequence of mismanagement through over-exploitation and over-consumption is the extinction of species or the destruction of habitats. As highlighted in the report, there are several factors which are contributing to the depletion of wildlife and forest resources in Viet Nam, such as a lack of sufficient knowledge and awareness, heavy demand on wildlife for consumption as food and medicines, preference for administrative sanctions, inadequate monitoring and inspection, insufficient coordination and cooperation among the institutions, and deficiencies in the criminal law.

The Report reflects the strengths and weaknesses of Viet Nam's preventive and criminal justice responses to wildlife and forest crimes. It contains several recommendations and the implementation plan to deal with the challenges to improve the situation, such as the revision of the WLFC legislation, particularly the Penal Code, which will address issues such as the liability of legal persons, introduction of deterrent penalties, prohibition of the possession, use and domestic sale of rhino horn, and the introduction of a system that takes into account the weight instead of the monetary value of illegal ivory and rhino horn. Codification of laws, preparing a compendium of WLFC court cases, enhancing the knowledge and awareness of the judiciary, procuracy and the enforcement agencies about the specialised nature of wildlife and forest crimes, and creating a network of judges for exchange of information and judgments on WLFC, will streamline the functions of the Judiciary in combating WLFC. There is also a need to revise the legislation relevant to the implementation of international treaties and Conventions, particularly CITES, and strengthening the coordination and cooperation between the enforcement agencies. Comprehensive media campaigns to discourage consumption of illegal wildlife as food and medicines and community awareness is also crucial to wildlife conservation in Viet Nam.

### 13. LIST OF RECOMMENDATIONS

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- 1 Revise the existing Penal Code and other legislation, including relevant Decrees and Circulars, to provide deterrent penalties to discourage offenders from committing WLFC
  - 2 Revise Article 154 of the Penal Code to include the definition of “great quantity” and “very great quantity”
  - 3 Revise Article 191 of the Penal Code to include “legal persons” in the provisions
  - 4 Revise Decree 82/2006 to prohibit the possession, use and supply of rhino horn. The Decree should also include appropriate sanctions and penalties
  - 5 Revise Decree 32/2006 to prohibit the commercial sale of any rare or endangered wildlife species
  - 6 Develop a Circular to guide the application of administrative and criminal sanctions to the Law on Biodiversity, until a new Law on Biodiversity is prepared.
  - 7 Revise Decree 157/2013/ND-CP to increase the maximum penalties for organisations
  - 8 Remove references to the term ‘wildlife’ from Decree 157/2013/ND-CP
  - 9 Remove Article 6(1)(a) from Decree 157/2013/ND-CP which permits the sale of seized wildlife products; or amend the Article to only permit the sale of seized timber products.
  - 10 Develop a Circular to guide the application of administrative and criminal sanctions to Decree 160/2013/ND-CP
  - 11 Decision 95/2008 on the Management of Captive Bears should be revised to make it compliant with the CITES convention.
  - 12 Revise the Decision of the Prime Minister on Tiger Breeding (2007) so as to comply with the provisions of CITES Declaration 14.69
  - 13 Appoint an independent reviewer to determine how to best dispose of tigers held in farms in Viet Nam
  - 14 Ratify the SPC draft circular on ‘*Guidance on Criminal Prosecution of those who conduct smuggling, transportation, illegal storage of rhino horn and ivory from abroad under CITES*’ as a matter of urgency
  - 15 Undertake a project for the codification and preparation of an index of WLFC legislation
  - 16 Undertake a comprehensive review of failed FPD cases to identify and address what is causing such a low conviction rate
  - 17 Increase basic and specialist investigation training to frontline FPD officers
  - 18 Provide frontline FPD staff with personal protection equipment and access to satellite communications when conducting patrols in remote areas
  - 19 Repair or replace the broken vehicle x-ray machine at the Lao Bao border gate as a matter of urgency
  - 20 Undertake an effectiveness review of Viet Nam WEN
  - 21 Form a task force comprised of relevant LEAs and the Procuracy to investigate the importation of rhino horn under the guise of hunting permits into Viet Nam
-

- 22** Commence an intelligence collection operation to identify strategic and operational issues surrounding the rhino horn and ivory trade in Viet Nam
- 23** Convene a regional forum for law enforcement authorities from Lao PDR, Cambodia, Viet Nam and China to discuss the exchange of intelligence, and coordinate a regional response to rhino horn and ivory trafficking and establish protocols for controlled deliveries
- 24** Provide Crime Scene training to frontline law enforcement officers from the relevant LEAs
- 25** Provide the FPD with manually portable basic crime scene examination kits
- 26** Seek funding to provide cell phone analysis hardware and software
- 27** Undertake a needs assessment to determine the forensic examination deficiencies of Viet Nam's relevant LEAs and how this affects their ability to examine crime scenes
- 28** Source funding to enable the Institute of Ecology and Biological Resources to conduct tests of DNA samples from all ivory and rhino horn seized by relevant LE agencies
- 29** Undertake a needs assessment of Viet Nam's forensic science institutes to determine capacity gaps and how this affects their ability to analyse specimens from WLFC crime scenes
- 30** Expand the wildlife detector dog programme to include Tan Son Nhat and Noi Bai International Airports and a mobile team for use at land border checkpoints
- 31** Use the VEA wildlife crime database as a national repository for WLFC matters
- 32** That Viet Nam adopt the CENcomm platform for secure sharing of WLFC data and intelligence internationally
- 33** Establish WLFC liaison officers in South Africa and Kenya as a pilot project, staffed from officers of the Environmental Police Department.
- 34** Joint Anti-Money Laundering training should be delivered to members of the Procuracy and relevant LEAs
- 35** Establish a unit within the Environmental Police department to investigate the sale of WLFC products online. UNODC to seek funding to provide equipment, training and mentorship to this unit.
- 36** Establish a committee of relevant LEAs and representatives of IGOs and NGOs to identify the needs and manage the delivery of WLFC LE training in Viet Nam
- 37** Viet Nam should negotiate MLATs with source countries of wildlife and timber products illegally imported into Viet Nam
- 38** Design and prepare a compendium of court cases related to WLFC
- 39** Design and prepare modules for the training of members of the judiciary to enhance their knowledge and awareness in dealing with court cases regarding wildlife and forest related crimes
- 40** Organise a series of seminars for Judges to enhance their knowledge and awareness of the specialised nature of wildlife and forest cases
- 41** Establish a network of judges for sharing substantive information among the Provincial People's Courts and District Courts on the trial and appellate court cases for effectively dealing with wildlife and forest crime cases

- 42** Prepare and organise joint sub-regional seminars of selected Judges and Prosecutors from Viet Nam, Lao PDR, and Cambodia to share information and experiences of their legal and institutional systems to improve results of WLFC cases
- 43** Promote a national study for creating special green benches or fast track courts at the Provincial People’s Courts and District Courts to effectively and urgently deal with WLFC cases
- 44** Design and prepare modules for training Prosecutors in special techniques for investigating wildlife and forest crime cases, including the proper and safe storage of exhibits of crime in those cases
- 45** Amend the existing criminal legislation to include all endangered species according to the CITES Convention.
- 46** Introduction of an accepted and clear definition in the Penal Code for the offence of bribery for the public and private sector, with strong deterrent sanctions and penalties
- 47** Set up a confidential and dedicated hotline for reporting corrupt officials and practices, with legal protection for whistle blowers and callers
- 48** Independent review of vulnerable posts and trafficking routes to devise realistic and effective mechanisms to counter corrupt practices and tackle dishonest staff

## ANNEX A

### LIST OF MEETINGS AND PARTICIPANTS

**Monday 26 January, 2015**

No	Time	Authority/Agency/Area	Persons met
1	11:00	CITES MA Viet Nam <b>Hanoi</b>	Dr Nghai Mr Tung, CITES MA Director Zhuldyz Akisheva, UNODC Country Manager
2	14:00	USAID, Viet Nam <b>Hanoi</b>	Mr Jonathan Simon, Program Director Ms Laura McKechnie, Deputy Director Mr Brian Giacometti, Program Director, Governance & Accountability
3	15:00	EU Delegation, Viet Nam <b>Hanoi</b>	Mr Thanh Hoang, Programme Officer, Climate Change and Environment Cooperation

**Tuesday 27 January, 2015**

No	Time	Authority/Agency/Area	Persons met
4	09:00	WLFC Workshop chaired by Mr Do Quang Tung, CITES MA Director and Ms Olga Kuzmianok, UNODC, WLFC Global Programme Manager <b>Hanoi</b>	Wide representation from the Supreme People's Procuracy, Supreme People's Court, Department of Customs, MPS, FPD, MARD, CITES MA officers, Asian Development Bank, General Department of Fisheries, WCS and UNODC staff

**Wednesday 28 January, 2015**

No	Time	Authority/Agency/Area	Persons met
5	12:00	Customs Department and Border Guards <b>Cau Treo Border Gate, Ha Tinh Province</b>	Mr Cao Duc Thang, Deputy Head Customs Mr Dao Viet Cong, Officer for Customs Mr Pham Van Nhien, Head of Border Guards Mr Nguyen Huu, Deputy Head Border Guards

**Thursday 29 January, 2015**

No	Time	Authority/Agency/Area	Persons met
6	09:00	People's Court <b>Quang Binh Province</b>	Ms Pham Thi Hoang Mai, Deputy Judge Ms Truong Thi Thanh Thuy, Secretary of Criminal Court
7	11:00	Environmental Police Division <b>Quang Binh Province</b>	Mr Nguyen Van Duong, Head of EP Dept Mr Thuan, Team Leader 3, WLFC Mr Tran Anh Tuan, Dep Team Leader 1, Admin
8	14:00	FPD <b>Quang Binh Province</b>	Mr Le Thuan Thanh FPD Head of Legal & Inspection Team

**Friday 30 January, 2015**

No	Time	Authority/Agency/Area	Persons met
9	09:00	Cha Lo Border Gate Customs <b>Quang Binh Province</b>	Mr Tran Dinh Hai, Head of Cha Lo Customs Mr Phan Nhat Truong, Deputy Team Leader Operations, Customs Mr Nguyen Khac Dinh, Deputy Team Leader Administration Mr Le Quoc Hung, Customs Officer Mr Tran Huu Long, Customs Officer Mr Tran Van Sy, Customs Officer Mr Bui Thi Thang, Customs Officer

**Monday 02 February, 2015**

No	Time	Authority/Agency/Area	Persons met
10	09:00	FPD <b>Ho Chi Minh City</b>	Mr Nguyen Huu Hung, Vice Director FPD Mr Lam Duc Que, Manager of Rescue Centre
11	14:00	Cat Lai Sea Port Customs <b>Ho Chi Minh City</b>	Ms Nguyen Thi Bong, Vice Head, Saigon Port 1 Customs Mr Tran Ky Lan, Dep Leader, Import & Export Inspection Team, Customs Ms Duong Thi Minh Hanh, Deputy Head of Import & Export Team, Customs Mr Doan Huu Nghi, Deputy Team Leader, Customs

**Tuesday 03 February, 2015**

No	Time	Authority/Agency/Area	Persons met
12	08:00	Supreme People's Procuracy <b>Ho Chi Minh City</b>	Ms Pham Thi Thu Ha, Deputy Head of Department 1, Economic and Position-Related Cases Mr Tran Kein Xuong Bihn, Chief Administrator Mr Doan Thanh Khiet, Prosecutor Ms Ngoc, Prosecutor
13	14:00	Tan Son Nhat International Airport, Customs <b>Ho Chi Minh City</b>	Dr Quang Do, Director, Customs Mr Tong Le Dan, Deputy Manager, Head of Anti-Smuggling Branch, Customs Mr Ho van Bay, Customs Officer Mr Phan Duc Thang, Customs Officer

**Wednesday 04 February, 2015**

No	Time	Authority/Agency/Area	Persons met
14	14:00	Yok Don National Park, FPD and Border Guards <b>Dak Lak Province</b>	Mr Nguyen Huu Tao, Dep Head of Yok Don FPD Mr Le Van Thua, Vice Manager of Scientific and International Cooperation Mr Lo Van Xoan, Deputy Head of Station, Border Guards

**Friday 06 February, 2015**

No	Time	Authority/Agency/Area	Persons met
15	10:00	WCS, Viet Nam <b>Hanoi</b>	Mr Scott Robertson, Country Representative

**Tuesday 10 February, 2015**

No	Time	Authority/Agency/Area	Persons met
16	10:00	WWF-Viet Nam <b>Hanoi</b>	Mr Huynh Tien Dung, Conservation Programme Manager, WWF-Viet Nam Ms Katherine Birch, Programme Development Manager, WWF
17	11:30	MARD, CITES MA Viet Nam <b>Hanoi</b>	Mr Vuong Tien Manh, Deputy Director

## ANNEX B

VN Report					
LIST OF FIRST INSTANCE COURT WLFC CASES TRIED BY PROVINCIAL COURT OF QUANG BINH PROVINCE					
No.	Offence	Offender	Sentence	Volume of timber	Year
01	Article 175 Penal Code Forest Exploitation, Transportation of timber in group of 3-8	Doan Tuan Thanh	Nine months suspended sentence	3.3 m <sup>3</sup>	2010-2015
02	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 3-5	Nguyen Thanh Phuong	Nine months imprisonment	5m <sup>3</sup>	“
03	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 3-5	Dinh Tien Quang	Nine months imprisonment	3m <sup>3</sup>	“
04	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 3-8	Dinh Thanh Tung	Six months imprisonment	5.3m <sup>3</sup>	“
05	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 3-5	Hoang Van Dung	Six months imprisonment	1.5m <sup>3</sup>	“
06	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 7	Dinh Le Duan	Fifteen months custodial reform	3.3m <sup>3</sup>	“
07	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 3-6	Nguyen Van Dan	Nine months imprisonment	7.5m <sup>3</sup>	“
<b>The People's Court of Quang Ninh District (01 case)</b>					
08	Article 175 Penal Code Forest Exploitation, Transportation of Timber in group of 2	Nguyen Danh Trinh	Thirty months suspended sentence & fine of 8 million VND	13.106m <sup>3</sup>	2010-2015
<b>The People's Court of Bo Trach District (01 case)</b>					
09	Article 175 Penal Code Forest Exploitation of Timber	Nguyen Van Minh & 12 others	24-30 months imprisonment	19.52m <sup>3</sup> & 7100 kg	2010-2015

<b>The People's Court of Quang Trach District (02 cases)</b>					
10	Article 175 Penal Code Forest Exploitation of Timber in group of 7	Nguyen Van Luong	Six months imprisonment	<b>2.48m<sup>3</sup></b>	2010-2015
11	Article 175 Penal Code Forest Exploitation of Timber in group of 5	Tran Van Toan	Seven months imprisonment	<b>3.73m<sup>3</sup></b>	2010-2015
<b>The People's Court of Minh Hoa District (01 case)</b>					
12	Article 175 Penal Code Forest Exploitation, transportation of Timber (Import from Laos)	Nguyen Hong He and Phan Huu Phuoc	Twelve months imprisonment Six month suspended Sentence	<b>1397 kg</b>	2010-2015
<b>The People's Court of Dong Hoi District (01 case)</b>					
13	Article 175 Penal Code Forest Exploitation, Trade of Timber in group of 3	Nguyen Van The	Nine months Suspended Sentence	<b>21m<sup>3</sup></b>	2010-2015
<b>The Provincial People's Court of Quang Binh Province - LIST OF APPEAL CASES</b>					
01	Article 175 Penal Code Forest Exploitation	Nguyen Thanh Phuong	Nine months non-custodial reform		2010-2015
02	Article 175 Penal Code Forest Exploitation	Tu Van Than	Twenty seven months non-custodial reform		"
03	Article 175 Penal Code Forest Exploitation	Nguyen Van Luong	Fifteen Months imprisonment		"
04	Article 175 Penal Code Forest Exploitation	Nguyen Van Minh	Decision of first instance Court quashed		"
05	Article 175 Penal Code Forest Exploitation	Dinh Thanh Tung	Six months suspended sentence		"
06	Article 175 Penal Code Forest Exploitation	Hoang Van Dung	Eighteen months non-custodial reform		"

## ANNEX C

### CASE STUDY ON ARTICLES 189, 190 & 191 OF THE PENAL CODE (LAW NO. 15/1999)

#### Article 189 – Destroying forests:

1. “Those who illegally burn or destroy forests or commit other acts of forest destruction causing serious consequences, or who have already been administratively sanctioned for such acts but still commit them, shall be subject to a fine of between ten million and one hundred million dong, non-custodial reform for up to three years, or a prison term between six months and five years.”

The text of Articles 190 and 191 is exactly similar as above except for the fines and periods of imprisonment. If we look carefully at this provision, we note the following:

- Firstly, when an offender is apprehended with illegal timber, the object of the crime, which in this case is illegal timber, is confiscated and the offender is let off by imposing administrative sanctions only.
- This illegal timber which is seized as a result of the administrative sanction is then auctioned by the administrative authority, and the proceeds of the auction are deposited in the State treasury. The authority or the enforcement agency that detected the crime e.g. the customs department, the border police or the Guards, or the Forest Protection Department (FPD), gets a percentage of the proceeds of the auction.
- If the same offender is apprehended for the second time, committing another wildlife and forest crime, and having already been administratively sanctioned, another fine is imposed on him. The offender pays the fine which goes into the State treasury, and again a percentage of the fine collected goes to the authority that levied the fine, while the offender is let off.
- In the third instance, if the offender is once again apprehended with a WLFC product/object, e.g. illegal timber, the case is taken to a competent court. Upon conviction, the court sends the offender (who has already committed two violations) to non-custodial reform for up to three years, or a prison term of between three years and six years, which should be considered very low for a repeat and habitual offender who has already committed the crime twice.

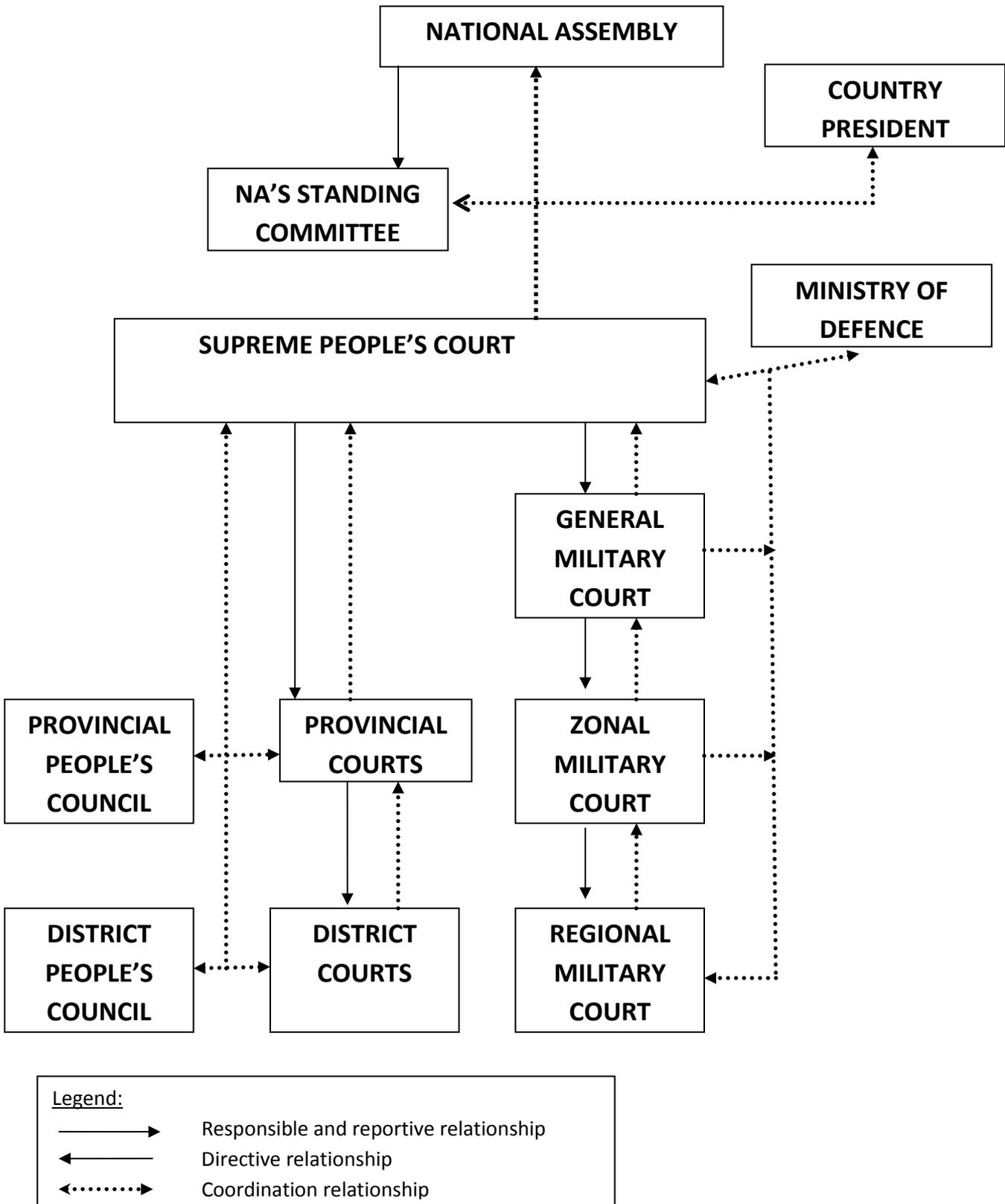
The following can be concluded from the above:

- Administrative sanctions are the preferred and easy option
- The offender is let off and the objects of the crime are auctioned. A percentage of the proceeds of auction goes to the enforcement agency
- Imposing fines is the next option as it provides incentives for the authority that is collecting the fines while the offender is again let off
- The case is taken to the court after the offender is apprehended for the third violation; the law provides that the court has an option of imposing a non-custodial reform or imprisonment even though the same offender has repeatedly committed the violation three times. The court generally imposes a sentence of non-custodial reform
- Punishments are not deterrent

**The legal provisions of three Articles need to be reviewed and revised to provide effective measures and punishments.**

ANNEX D

ORGANISATIONAL STRUCTURE OF COURT SYSTEM IN VIET NAM



## ANNEX E

### SYNOPSIS OF THE ENFORCEMENT INDIVIDUAL MISSION VISITS

#### 1. Cau Treo Land Gate, Ha Tinh Province

The land border gate with Lao PDR is jointly managed by Customs under the Ministry of Finance and the Border Guards under the Ministry of Defence. Customs jurisdiction is 1km either side of the gate, with the Border Guards having responsibility for the border and nearby villages and communes. An average of 1000 people and 200 vehicles cross per day between 07:00-22:00 (times agreed by bilateral agreement). A well designed, maintained and efficient operation, with adequate facilities and power.

#### Strengths

- ✓ Evidence of liaison with Lao PDR counterparts with monthly meetings, or adhoc if required
- ✓ Effective team work and activity plans agreed and delivered jointly by Customs and Border Guards
- ✓ Example of a visit by People's Committee leader in recognition of a successful discovery
- ✓ Indication of communication with local hamlets and villages by Border Guards to warn them on trading in endangered species and the likely penalties

#### Areas for Improvement/Challenges

- × Lack of technical support such as vehicle scanner and only two working luggage scanners
- × 80% of all goods passing through are under a green label and go unchecked, which creates an easy route for illegal trafficking
- × Increase of 26% people and 34% vehicle crossing in the last 12 months, with no staff increases or technical assistance, and current tenure of 3-5 years in post
- × Little evidence of operational knowledge of CITES species, apart from a management manual
- × No information or intelligence passed to check a suspect person or vehicle
- × Limited training; once or twice a year for senior manager in CITES species identification
- × No evidence of community engagement or requests for information on traffickers or routes, and no separate budget to pay for information

#### Results

2014 - Four violations detected, including eight cases of trade fraud and six cases of drugs smuggling, three cases of timber violations passed to FPD for further action, but no cases of wildlife crime.

## **2. Quang Binh C49 Environmental Police**

The Environmental Police Department is responsible for forest management and wildlife and forest crime investigation under the MPS. Quang Binh Province has two thirds of its area covered by forest and is in the biodiversity area of North Truong Son, where it contains a variety of unique flora and fauna. There are 493 species of fauna including 67 mammals, 48 reptiles, 297 birds and 61 species of fish; including many rare species such as Ha Tinh Langur, bear, tiger, Giant muntjac (*Muntiacus vuquangensis*), Vietnamese pheasant (*Lophura hatinhensis*), and imperial pheasant. The forest area of 641,132ha is a mix of 447,837ha natural forest and 38,851ha plantation forest, of which 17,397ha is pine. The non-forest land is 146,386ha. There are many valuable timber species in the forest such as ironwood, mahogany, ebony, *Tarrietia javanica*, pine and many types of bamboo and rattan, as well as other valuable forest products.

### Strengths

- ✓ 29 monkeys and langurs and 2 cobras have been returned to the forest
- ✓ Indication of involvement with local communities to identify crime ‘hot spots’ and reporting violations
- ✓ Examples of joint training with FPD and other LEAs in species identification
- ✓ Dedicated officers for designated areas with monthly, six and 12-monthly reviews to identify lessons learned

### Areas for Improvement/Challenges

- × Complicated and bureaucratic management boards; seven forest management and two company boards with overlapping roles and areas of jurisdiction
- × Individual departmental plans on forest and wildlife crime with little evidence of joint or cross cutting plans for ‘hot spots’ on either forest protection or management
- × Many communities live in or near the forest with livelihoods dependent on the forest, leading to destruction of forest land for farming and illegal hunting
- × No agreement or support between government and private sector on forest management and protection

### Results

26 cases of wild animal trafficking were discovered, with a total weight of 641.9kg

There were 285 illegal timber-processing workshops in 2014, of which 277 workshops have been removed

### **3. Quang Binh FPD, Department of Agriculture and Rural Development (DARD)**

The FPD are the focal point for violations in forest and wildlife crime and act as the coordinating partner with other LEAs on plans to tackle WLFC, forest management and prevention activities.

#### Strengths

- ✓ Run communication campaigns with local communities to raise awareness on WLFC
- ✓ Variable patrol routes and targeted action plans for each 'hot spot' area
- ✓ Provide advice to District authorities on restaurant checks and spot checks
- ✓ Legal authority to stop persons, vehicles and search houses and premises for suspected violations
- ✓ Examples of mobile rangers working with traffic police to assist detection and discovery

#### Areas for Improvement/Challenges

- × Illegal hunting, slaughtering and trafficking of wild animals have increased and become more complicated
- × Shares its borders with Cha Lo Border Gate and Lao PDR
- × There are 134 certified wildlife farms in the province
- × Lack of ICT support and technical equipment to assist in species identification or latest MOs
- × No assessment or management of vulnerable posts to bribery and corruption

#### Results

Since 2013: 2,192 cases have been detected, with four cases transferred for further police investigation, total fines issued of over VND10billion, and 2598.09 cubic metres of timber seized.

Between 2010-2014 there were 79 WLFC cases, all dealt with by administrative sanction with insufficient criminal intent for court proceedings. In some cases, offenders ran away and left evidence:

2010: 19      2011: 23      2012: 14      2013: 08      2014: 15

There was no explanation offered for the variance in the figures, or information on the type, location or number of persons detained.

### **4. Cha Lo Border Gate, Quang Binh Province**

The land border gate with Lao PDR is jointly managed by the Quang Binh Customs Department in partnership with the Border Guards (who were not present for the meeting, although actively

engaged on operational duties). Customs jurisdiction is 500m either side of the border and 5km in land. The Border Guards fulfils the role of community liaison and awareness campaigns. It operates from 07:00-19:30 daily, by bilateral agreement, and is one of 120 land, sea and air border gates across Viet Nam. In 2014, the Cha Lo Border Gate Customs Office conducted 21,900 (average of 60 per day) cases of customs clearance, a 69% increase compared to 2013; 75,100 (an average of 206 per day based on 365 days a year) cases of immigration vehicles, a 26% increase; 2.2 million tonnes of import-export products, a 24% increase. Imports and exports reached USD\$1.7 billion, a 6% increase compared to 2013; contributing 228 billion VND to the State Budget. There are good facilities, a specialist drug dog, two cars and two motor cycles, along with other equipment.

There are presently 39 employees, of whom 32 hold university and college degrees and 07 hold diplomas and professional certificates.

### Strengths

- ✓ Good coordination between Customs who take care of checking goods and vehicles, and the Border Guards who check people
- ✓ Operate VNACCS/VCIS (Viet Nam Automated Cargo Clearance) system. The system was used to solve 99% of customs declarations and has helped speed up the checking process
- ✓ Information provided on training by both CITES MA and WCS identification of CITES species
- ✓ Apparently good and productive relationship with Lao PDR counterparts on a scheduled basis, and an example of information being passed on a suspicious vehicle

### Areas for Improvement/Challenges

- × No updated information on current or changing smuggling MOs, and relying on self-learning
- × Review of workforce, in particular the need to strengthen the anti-smuggling unit
- × Lack of detailed information and ability to recognise different CITES species, and a general lack of knowledge of forests
- × No international intelligence sharing evident, either nationally through the General Department of Customs, WCO or other international law enforcement agency, through CITES MA, or the MPS
- × Outdated luggage scanners (from 2002 and 2013) and no vehicle scanner or other technical support

### Results

In 2014, there were 108 cases of predominantly smuggling, trade fraud and drugs discovered and handled, the total value of the confiscated products was 244 million VND, the total fines issued were 319 million VND. Since 2005, the Customs Office has discovered 31 cases of WLFC, seizing 20 cubic metres of rare and precious timber (Siamese rosewood) and 359kg of wildlife (turtles, monitor lizards, pythons, civets and monkeys).

## **5. Ho Chi Minh City Forest Protection Department, DARD**

They have the primary responsibility to manage and protect 36,727.39 hectares of forests and forest land in Ho Chi Minh City, working in collaboration with traffic department, environmental police, Market Control, Economic Police and Customs. They have extensive and demanding administrative duties, managing legal issues, conducting inspections, examinations and management of forest and wildlife products. They also have a mandate to monitor forest resources and the task of monitoring and controlling wild animal farming.

### Strengths

- ✓ Examples of good interagency coordination with traffic police, environmental police, economic police and market control
- ✓ Strong and effective programme at Cu Chi Wildlife rescue station rescuing and releasing rare and endangered species
- ✓ CITES arranges 2-3 training courses per year, but frontline officers still have difficulties to identify animals from images listed
- ✓ Evidence of spot checks at restaurants and markets, although no finds or seizures
- ✓ Wide-ranging communications strategy, including working with the People's Committee of Communes and towns to raise awareness and exchange information with forest owners, 34 Secondary schools and other forums
- ✓ Information given that high numbers of household dwellings had given written commitments not to encroach forest land for illegal purposes

### Areas for Improvement/Challenges

- × Training is weak on investigation techniques and forensic awareness is limited, rely on rescue centres and a technical officer or wildlife agencies to identify the species
- × Due to the terrain, patrols and many visits have to be undertaken by foot, or by boat on canals, to access some difficult areas
- × Significant pressure on staff to respond to the multitude of tasks and statutory duties
- × Evidence arises of significant internet trading presenting technical and logistical challenges to track criminal activity

### Results

In 2014 there were 38 cases of wildlife crime discovered, concerning 1,171 species with 1992 kg seized (approximately 60% of cases were initiated by HCMC FPD).

## **6. Cat Lai Sea Customs, HCMC**

The port now operates the VNACCS /VCIS risk management customs compliance e-system and procedures, to manage imports and exports. It is designed to comply with international and regional trade agreements, and reduce the number of physical and document inspections by customs. The impact is that a vehicle check now takes only 15 minutes. It is a modern and very busy international seaport receiving a high volume of containers per day: 1,590m export vehicles/containers and 1,500m import vehicle/containers per year through the port

### Strengths

- ✓ Well organised monitoring and patrol teams
- ✓ Use of 'hot spot' countries to raise check level to red (full search)
- ✓ Modern electronic surveillance vehicle scanning equipment – 5% (80-100 per day)
- ✓ Excellent welfare and team development practices

### Areas for Improvement/Challenges

- × Heavy reliance on green, yellow and red labeling system to determine checks
- × Difficulty with interagency cooperation, particularly international information and intelligence sharing

### Results

Between 2011 and 2014, there were only two cases of WLFC discovered: 282kg ivory, pangolin skins and elephant tails mislabelled as soya, and 45.2 cubic metres of protected timber labelled as natural rubber. In both cases, the 'offender denied criminal knowledge', and were dealt with by administrative sanctions.

## **7. Tan Son Nhat International Airport Customs, HCMC**

Professional, well-led and highly organised workforce, managing 183 passenger flights and 120 cargo flights per day, and 20 million passengers per year in 2014.

### Strengths

- ✓ Good use of electronic risk management checking system
- ✓ Positive communications campaign using different media; brochures, charts and messages to warn and alert passengers and carriers of the legal requirements to transport goods, particularly illegal trafficking of wildlife and products
- ✓ Excellent Chain of Custody procedures, from initial suspicion to transfer to competent authority

### Areas for Improvement/Challenges

- × Lack of guidance and instruction on how to value and proceed with seized CITES species, such as ivory, rhino horn and pangolins
- × Lack of international information and intelligence sharing on new MOs, trafficking routes or suspect persons or shipments, and particular wildlife being trafficked into, out of and through Viet Nam
- × Limited staffing to manage an increasing workload and passenger and cargo throughput
- × Insufficient training on CITES species identification

### Results

Between 2013 and 2014, there were 16 WLFC cases discovered, involving 496.512kg ivory and ivory products, 48.429kg of rhino horn, and 7kg of pangolin scales, with 13 persons detained. A total of 11 cases were handed over to the police for further investigation, and 4 cases are still pending.

### **8. Yok Don National Park, Dak Lak Province**

It is a large Park of 115,000 hectares, with the west section sharing a 60km border with Cambodia. It is managed through a management board with 14 operational teams and two mobile ranger teams.

### Strengths

- ✓ Formalised joint community patrols within the park and border area
- ✓ Managed programme by WWF to train rangers in the use of GPS equipment to record, monitor and track wildlife movement, and mark endangered CITES species
- ✓ Naming and shaming of captured offenders by posting their pictures within the community
- ✓ Structured hot spot patrolling updated from GPS mapping
- ✓ High performing officers attend international scholarships in India and Japan

### Areas for Improvement/Challenges

- × Limited budget with little scope for new or extra activities
- × Difficulty dealing forcibly with families living within the park boundaries and using the forest resources
- × Large, open forested area sharing the border with Cambodia, and over 100km<sup>2</sup> of forest area, present patrolling difficulties
- × Scope for a comprehensive communication strategy to reach a wider audience
- × Insufficient training on species ID, and limited training on crime scene management and chain of custody

### Results

Between 2010 and 2014, there were 79 wide-ranging cases, of which only three were classified as criminal as they involved the use of military grade AK47 rifles, rather than home-made weapons. All three cases from 2011, 2012 and 2013 are still pending with the police. There were 37 local Vietnamese nationals detained and dealt with by administrative sanctions.

#### **9. Lao Bao Border Gate, Quang Tri Province**

The land border gate with Lao PDR operates a one-stop inspection facility in cooperation with their Lao counterparts, which enables joint inspections by Customs, Border Guards and Quarantine. Customs jurisdiction is 500m either side of the border, and 5km in land. The Border Guards fulfil the role of community liaison and awareness campaigns.

There are presently 48 Customs employees, of whom 100% hold university and college degrees.

#### **Strengths**

- ✓ Good coordination between Customs who take care of checking goods and vehicles, and the Border Guards who check people
- ✓ Operate VNACCS/VCIS (Viet Nam Automated Cargo Clearance) system. The system was used to solve 99% of customs declarations and has helped speed up the checking process
- ✓ Apparently good and productive relationship with Lao PDR counterparts on a scheduled basis

#### **Areas for Improvement/Challenges**

- × No updated information on current or changing smuggling MOs, and relying on self-learning
- × Lack of detailed information and the ability to recognise the different CITES species and a general lack of knowledge of forests, relying on officer experience
- × No international intelligence sharing evident, either nationally through the General Department of Customs, WCO, or other international law enforcement agency through CITES MA or the MPS
- × Container x-ray facility has been inoperable for 12 months

#### **Results**

In 2014 there were 5 cases of illegal transportation of rosewood totalling 1,460 kg and worth an estimated \$74.4 million Dong. All of these matters were dealt with by way of administrative fine. In 2015 there have been two timber cases involving 0.3 cubic metres of non-CITES timber and 1.8 tonnes of rosewood worth an estimated \$108 million Dong. Both matters were dealt with by way of administrative fine.

In 2014 there were 3 cases of wildlife smuggling totalling 35 kg of pangolin, 67 kg of snakes, 13.5 kg of softshell turtles, and 1 live turtle. All matters were dealt with by way of administrative fine.

## ANNEX F

### OPEN SOURCE REPORTING ON SEIZURES

Despite the fact that the field mission did not discover wide-scale, cross-border, or transnational criminality, apart from the seizures documented at both the sea and airports in Ho Chi Minh City, it is apparent from the reported seizures over the past number of years that the trafficking of endangered flora and fauna, particular the endangered species of pangolin and the seemingly unfettered activities of Vixay Keosavang, point to a worrying and endemic problem of corruption and flaws in the issuing and authenticity of trade licences.

#### **The Black Market Trade**

As a preamble to the published data, it is important to understand the scale and demand that exists for the most endangered species. The pangolin, a scaly ant-eating creature, is almost extinct, and there are many published articles and surveys indicating the decline. '[Havoscope: Global Black Market Information](#)' website was used as a freely available source of information. In 2013 alone, an estimated 8,125 pangolins were confiscated by wildlife officials in 49 incidents that took place across 13 countries. A conservative estimate would indicate that this is as little as 10-20% of the actual trade. This represents between 40,625 to 81,250 pangolins were probably killed in 2013. These staggering figures are only the tip of the iceberg. The average price for a kilogram of pangolin scales (remembering it is only keratin, like finger nail) in 2013 was USD\$3000 and across Asia, a full pangolin would cost USD\$1000. It is a similar picture for elephant ivory fetching USD\$850 per kg, and rhino horn as much as USD\$97,000; bear bile USD\$200,000; tiger bone USD\$2000 and Clouded Leopard USD\$5,700. This list is endless, and as animals, plants and other fish and mammals become even rarer, the prices are increasing exponentially.

To illustrate the amount of trafficking taking place, details of reported seizures will be highlighted from a range of published sources, internet and media accounts. Many of the below reports are drawn from the *TRAFFIC- the wildlife trade monitoring network: TRAFFIC Bulletin Seizures and Prosecutions, March 1997 – October 2014*

- ***Togo – Viet Nam***

On 28 January, 2015, Togolese security forces in the port of Lome seized 2.1 tonnes of ivory in a container ready to be shipped to Viet Nam. The tusks were disguised as cashew nuts and timber. Two Togolese men and a Vietnamese man Dinh Huu Khao who operates an import-export business in Lome were allegedly involved.

- ***Togo – Viet Nam***

On 22 January, 2015, Togolese security forces in the port of Lome seized 1.7 tonnes of ivory in a container ready to be shipped to Viet Nam. The tusks were again disguised as cashew nuts and timber. Two Togolese men and a Vietnamese man Dinh Huu Khao who operates an import-export business in Lome were allegedly involved. It is likely that at least 500 elephants would have been slaughtered in the haul, which has an estimated value of USD\$8 million on the international market.

- ***Lao PDR - Viet Nam***

On 27 November, 2014, Vietnamese authorities at the Lao Bao Border Gate in Quang Tri Province found pangolins and reptiles hidden in the luggage hold of a bus. The bus driver admitted to being hired by an unknown person to transport the animals.

- ***Vaclav Havel Airport, Prague***

On 23 July, 2014, authorities seized 24 kg of elephant ivory from a Vietnamese citizen living in the country travelling to Hanoi. Four complete tusks divided into 15 pieces were confiscated.

- ***Vaclav Havel Airport, Prague***

On 23 July, 2014, authorities seized 35 kg of elephant ivory from a Vietnamese citizen living in the country travelling to Hanoi.

- ***Quang Ninh Province, Viet Nam***

On 30 June, 2014 police from the Ministry of Public Security rescued 350kg of live pangolins.

- ***Hai Phong Port, Viet Nam***

On 24 June, 2014, Customs officials seized more than one tonne of cut ivory pieces smuggled from Hong Kong by sea, in a container bound for China, which was claimed to contain charcoal.

- ***Tan Son Nhat International Airport, Ho Chi Minh City***

On 22 June, 2014, Customs officers seized 39 elephant tusks and 100 ivory items (total 90kg) described as food, which had been smuggled through several transit airports.

- ***Vaclav Havel Airport, Prague***

On 15 June, 2014, authorities seized 33 kg of elephant ivory from a Vietnamese citizen living in the country travelling to Hanoi.

- ***Tan Son Nhat International Airport, Ho Chi Minh City***

On 11 June, 2014, Customs officers seized 77 elephant tusks (total 110kg) in luggage declared as personal goods. The ivory reportedly originated from Nigeria and had arrived on a flight from Doha, Qatar.

- ***Frankfurt Airport, Germany***

On 8 June, 2014, officials detained a Vietnamese citizen living in the Czech Republic travelling to Viet Nam, carrying 31kg of ivory.

- ***Lao PDR - Viet Nam***

On 8 June, 2014, border guards in Kon Tum Province, Viet Nam, apprehended a local man transporting nearly 15kg of ivory. The suspect claimed he had bought the ivory in Lao PDR and was “preparing to sell it” in Viet Nam.

- ***Quang Ninh Province, Viet Nam***

On 18 May, 2014, police in Mong Cai seized 21 pangolins, weighing a total of 85.5kg. Most of the pangolins were still alive.

- **Frankfurt Airport, Germany**  
In May 2014, officials detained a Vietnamese citizen living in the Czech Republic and travelling to Viet Nam carrying 60kg of ivory
- **Thừa Thiên–Huế Province, Viet Nam**  
In April 2014, Environmental Police seized one pangolin from a cage on the back of a motorcycle, which also contained other wildlife including cobras and turtles.
- **Ninh Binh Province, Viet Nam**  
On 28 March, 2014, Provincial Police discovered and seized 52 pangolins from the back of a pickup truck. They were alive at the time.
- **Svay Rieng Province, Cambodia at its border with Viet Nam**  
In March 2014, officials seized 263kg of ivory tusks.
- **Tan Son Nhat International Airport, Ho Chi Minh City, Viet Nam**  
On 10 March, 2014, authorities arrested a Vietnamese national in possession of 13kg of rhinoceros horn (five whole horns and pieces) in his luggage.
- **Siem Reap International Airport, Cambodia**  
In February 2014, Customs officers arrested two Vietnamese nationals for smuggling 79.5kg of elephant tusks.
- **Rwanda - Middle East - India - Thailand - Viet Nam - Lao PDR**  
On 27 February, 2014, Thai Customs arrested traffickers who attempted to smuggle five rhino horns hidden inside sculptures from Rwanda while transiting through Bangkok. The consignment was destined for Lao PDR, but was routed through the Middle East, India, Thailand and Viet Nam.
- **Thailand**  
On 19 February, 2014, police arrested two men and seized from a vehicle five Tiger cubs (*Panthera tigris*, CITES Appendix 1) and other animals (turtles and monitor lizards) being smuggled to Lao PDR, for onward transit to Viet Nam.
- **Siem Reap International Airport, Cambodia**  
On 16 February, 2014, Customs officers arrested two Vietnamese nationals after almost 80kg of elephant tusks were found in their luggage. They had allegedly brought the tusks in Angola via South Korea and Cambodia, before attempting to take them to Ha Noi, Viet Nam.
- **Suvarnabhumi International Airport, Bangkok, Thailand**  
On 19 January, 2014, Royal Thai Customs seized 21.8kg of rhinoceros horns (nine whole horns) from a transit passenger arriving from Nairobi, Kenya en-route to Ha Noi, Viet Nam.
- **Angola - Dubai - Singapore - Lao PDR**  
On 14 January, 2014, Singapore's Agri-Food and Veterinary Authority seized luggage and arrested two Vietnamese men at Changi Airport for smuggling 13 pieces of elephant tusks, 16 pieces of ivory bangles and 109 pieces of ivory cubes. The bags arrived on a flight from Angola to

Lao PDR via Dubai and Singapore. Investigations revealed that the two men were approached by an unknown Vietnamese man at a market in Angola who promised a payment of USD 1000 if the goods were successfully smuggled to Lao PDR. The two men were later sentenced to 16 months in prison.

- ***Uganda - Dubai - Singapore - Lao PDR - Viet Nam***

On 10 January, 2014, a Vietnamese national left Uganda for Viet Nam on a flight via Lao PDR, making transit stops in Dubai and Singapore, where he was arrested and found to be in possession of 22kg Black Rhinoceros (*Diceros bicornis*) horns. He was later sentenced to 15 months in prison.

- ***Thanh Hoa Province, Viet Nam***

On 23 December, 2013, police seized 200kg of water monitors (*Varanus salvator*), 60kg of elongated tortoises (*Indotestudo elongata*) (both CITES Appendix II) and 50kg of radiated ratsnakes (*Coelognathus radiata*) from a bus travelling through Thanh Hoa City, apparently en-route from the Mekong Delta Province of Dong Thap to the northern Province of Quang Ninh.

- ***Phu Yen Province, Viet Nam***

On 18 November, 2013, Le Van Tung was fined VND450 million (USD 21,150) after having been caught in Dong Hoa district a month earlier illegally transporting 49 (256kg) live pangolins from Ho Chi Minh City to Ha Tinh Province in an ambulance bearing false number plates.

- ***Hai Phong Province, Viet Nam***

In early October 2013, Customs officials seized ivory tusks weighing 2.4 tonnes, concealed inside a container imported from Malaysia and labelled as carrying sea shells.

- ***Hai Phong Province, Viet Nam***

On 4 October, 2013, Customs officials seized ivory tusks weighing 2.1 tonnes, concealed inside a container imported from Malaysia, also labelled as carrying sea shells, bound for China.

- ***Hai Phong Province, Viet Nam***

In August 2013, Customs officials at Hai Phong Port found more than six tonnes of live pangolins (*Manis javanica*) (CITES appendix I) inside a container purportedly containing frozen fish. The cargo from Indonesia was due for onward shipping to an unknown location. This year to date, more than 10 tonnes of pangolin – both live and dead - and 1.2 tonnes of pangolin scales, have reportedly been confiscated at Hai Phong port.

- ***Hanoi Noi Bai International Airport, Viet Nam***

On 6 August, 2013, Customs officers arrested two Vietnamese nationals carrying 50kg of ivory from Russia.

- ***Hanoi Noi Bai International Airport, Viet Nam***

In August 2013, Customs officers arrested two men carrying 122kg of ivory from Singapore.

- ***Hai Phong Port, Viet Nam***

On 23 July, 2013, Customs officials seized 1.4 tonnes of pangolin scales smuggled in a container ship from Sierra Leone. The scales were concealed under a layer of dried sardines.

- Tan Son Nhat International Airport, Ho Chi Minh City, Viet Nam**

On 30 June, 2013, Customs officers seized ivory handicrafts (21kg) that had been smuggled from France. A Vietnamese national was arrested.
- Con Dao National Park, Ba Ria-Vung Tau Province, Viet Nam**

On 9 June, 2013, Forest Rangers arrested two local men collecting a total of 498 green turtle eggs (*Chelonia mydas*) (CITES Appendix I) from nests on a protected beach. Each person was fined VND23 Million (USD1090).
- Tan Son Nhat International Airport, Ho Chi Minh City, Viet Nam**

On 20 May, 2013, Customs officers arrested a man arriving from Europe with six pieces of rhinoceros horn (CITES Appendix I) weighing 5kg.
- Education for Nature – Viet Nam (ENV) has produced a report '*Summary of tiger seizures 2006-2013*' in which they document a total of 280 violations involving tigers and tiger products since 2006. These include 120 incidents of advertising and selling tiger bone TCM teeth, claws and products, and other similar criminal violations. However, it is extremely important to understand that not all seizures were reported to ENV by enforcement agencies and it does not fully reflect the scale and criminality of illegal tiger smuggling, illegal farming, or use of tiger parts for pharmaceutical or other manufacturing purposes.

## ANNEX G

### Conservation of trade in tigers and other Appendix-I Asian big cat species (Conf. 12.5)

#### Report to the CITES secretariat from the CITES Management Authority of Vietnam

January 2014

#### 1. Introduction:

Vietnam is home to Asiatic golden cat (*Catopuma temminckii*), Clouded leopard (*Neofelis nebulosa*), Leopard (*Panthera pardus*) and the Indochinese tiger (*Panthera tigris corbetii*). Surveys on the status and distribution have only been carried out on the Indochinese tiger. Results from a rapid survey of tiger and tiger habitat conducted in 2011 estimates (based upon local reports) that less than 50 individuals remain mainly in remote areas along Vietnam border areas with – Lao PDR and Cambodia. Wild tiger populations in Vietnam have been decreasing for many years from thousands to now being on the verge of extinction. The main threats to wild Asian big cats in Vietnam are habitat lost, illegal poaching tiger, leopard, wild cat and their preys as well as illegal trade on big cat's part and derivative

#### 2. Legislation:

The hunting, trading, and transport of Asian big cats, their parts and derivatives are prohibited by law. Violations on hunting, poaching, smuggling, trading are treat as a crime under the Penal Code of Vietnam and may be punished from 6 months to 7 years in jail, fined up to US\$25,000, and removal of business operating licenses. In the period 2012 - 2013 the following legislative updates/revisions have occurred:

- Decree No. 157/2013/NĐ-CP on the administrative punishments in the field of Forest Protection, Development and Forest products management set the maximum fine level for illegal wildlife trade at US\$25,000.
- Decree 160/2013/NĐ-CP issued by the Ministry of Natural resources and Environmental as a sub-decree of the Biodiversity law on criteria and list of endangered species that priority protection by law lists Indochinese tiger as a species of 'priority protection'

In addition the following regulations are in the process of revision:

- Decree No. 32/2006/NĐ-CP on management, protection of endangered species of terrestrial fauna and flora.
- Article No 190 on wildlife protection violations in the Penal Code of Vietnam
- Circular 90/2010/TT-BNNPTNT on the management of seized wild fauna specimens

### **3. Protection of tigers:**

The Ministry of Agriculture and Rural Development are currently finalizing a National tiger recovery program to 2022 for the Prime Minister's approval. Six tiger 'recovery' landscapes have been identified to focus on habitat and prey restoration including Yok Don, Chu Mon Ray, Vu Quang, Pu Mat national parks and Song Thanh, Sop Cop Nature Reserves. Two of these, Yok Don and Pu Mat will receive additional protection as they were also identified as priority sites for the recovery of Asian Elephants in Vietnam as part of the Government's recently approved US\$4 million elephant conservation program

146 Protected Areas have been gazetted by the Government (Decree No 117/2010/NĐ-CP), in which more than 2.2 million ha of forest is protected for wildlife and habitat conservation. A Protected Area strategy to 2020 has been developed and submitted to the Prime Minister at the end of 2013.

### **4. Enforcement:**

The Vietnam wildlife enforcement network was established in 2010 to improve the monitoring capacity of central government on wildlife law enforcement activities. The members of Vietnam-WEN include representative from CITES MA, Forest Protection Department, Environmental Police, General Department of Customs, Border Security Department, Biodiversity Conservation Agency, Interpol and the Supreme People's Procuracy. The Vietnam – WEN has identified its priorities as monitoring the illegal trade on Asian big cats, elephants, pangolins, and rhino specimens.

During 2012-2013 enforcement agencies including police, customs, forest rangers intercepted a number violations of trade, transport and processing tiger (c. 20 specimens), clouded leopard (1 specimen), Asiatic golden cat (2 specimens) as well as ungulate animals (tiger prey). See table below.

## 2012

No	Type of specimen	Scientific name	Place of seizure	Description		
				Live	Dead	Product
1	1 full skeleton	<i>Panthera tigris</i>	Hà Nội			x
2	1 frozen body	<i>Panthera tigris</i>	Quảng Ninh		x	
5	1 frozen body	<i>Panthera tigris</i>	Hà Nội		x	
6	3 frozen bodies	<i>Panthera tigris</i>	Nghệ An		x	
7	2 Skins	<i>Panthera tigris</i>	Hà Nội			x
8	4 Canines	<i>Panthera tigris</i>	Hà Nội			x
9	22 Claws	<i>Panthera tigris</i>	Hà Nội			x
10	1 full skeleton	<i>Panthera tigris</i>	Hà Nội			x
11	1 frozen body	<i>Panthera tigris</i>	Hà Nội		X	
12	1 full skeleton	<i>Panthera tigris</i>	Hà Nội			x
13	Meat and bone on processing	<i>Panthera tigris</i>	Phú Thọ			
14	2 frozen bodies	<i>Panthera tigris</i>	Quảng Bình		X	
15	4 live cubs	<i>Panthera tigris</i>	Hà Tĩnh	X		
16	1 frozen body	<i>Panthera tigris</i>	Thanh Hoa		X	

## 2013

No	Type of specimen	Scientific name	Place of seized	Description		
				Live	Death	Products
1	01 live Tiger	<i>Panthera tigris</i>	Nghệ An	X		
2	01 Fake tiger (frozen)	<i>Neofelis nebulosa</i>	Hà Nội		X	
3	02 whole animal	<i>Catopuma temminckii</i>	Hà Nội		X	
4	01 Tiger were processed	<i>Panthera tigris</i>	Hà Tĩnh			X

### 5. Awareness raising campaign

A series of training course to improve capacity of enforcement officers in CITES and wildlife law implementation have been conducted during 2012 and 2013 with the supporting on financial and technical from Government, NGOs, International Institutions. The participants are police officers, forest rangers, custom officers, and border soldiers in key trading areas on international borders (e.g. Ha Tinh, Quang Binh, and Quang Ninh provinces) or in urban consumption hotspots (e.g. Ho Chi Minh City and Hanoi).

In 2012-2013, CITES Management Authority and the Biodiversity Conservation Agency conducted a series of awareness campaign, workshops,

and meetings to raise awareness on wildlife conservation, wildlife laws and to reduce wildlife consumption for several target group including government officers, journalists, University students, Women's union, youth union and Communist Party members.

CITES Management Authority of Vietnam in cooperation with NGOs has published poster, leaflets in order to raising awareness of people on tiger conservation and related regulations on wildlife protection.

## 6. Captive tiger breeding facilities:

There are 10 captive tiger facilities both government and private in Vietnam managed by Provincial Forest Protection Departments. Currently legal regulations on wildlife protection prohibit the zoos or farms to use the tiger for commercial purposes. In case of tigers that die they have to be disposed properly according to the regulations.

### Figures of tiger in captive facilities

No	Name of facility	Total number	Sex		F1
			Male	Female	
1	Dai Nam zoo	21	4	5	12
2	Thai Binh Duong	22	5	9	8
3	Thanh Canh	7	2	5	0
4	Cu Chi water park (zoo)	7	3	3	1
5	Thanh Hoa Facility	12	4	5	3
6	Thai Nguyen Facility	5	1	2	2
7	Sai Gon zoo	6	2	4	0
8	Hanoi Zoo	10	2	4	4
9	Soc Son Rescue Center	12	1	2	9
10	Bao Son zoo	5			0
	<b>Total</b>	<b>107</b>	<b>24</b>	<b>39</b>	<b>39</b>

Source: CITES MA of Vietnam 2012

## 7. International cooperation

- Vietnam has been an active member of the Global Tiger Forum since 1995

- Vietnam Forest Protection Department and Lao PDR Forest Inspection Department signed MOU in 2011, and at the annual meeting in September 2013

## ANNEX H

### CITES MA – VIET NAM ACTIVITY REPORT, 2015

*Types of training given (who, where, what, when and why and by who - partnership with particular NGO, Viet Nam Department/Agency and/or international collaboration):*

1. Training course on species identification for participants from Customs, Forest Ranger, Environmental Police, Border Guards, and Market Control.
2. Training course on CITES regulations and national laws on wildlife for Customs, Forest Ranger, Environmental Police, Border Guards, Market Control, Prosecutors, Judges.
3. Partners:  
Viet Nam Agencies: Forest Protection Department, Nature Conservation Department, Anti-Smuggling and Investigation Department, Market Control Department, Environmental Police Department, Supreme People Court, Supreme People Procuracy, Border Guards Board Management.  
NGOs: WCS, TRAFFIC, WWF, HSI, TRACE.

International collaboration: CITES Secretariat, ASEAN-WEN, GTF, UNODC, FAO

#### **Agencies and locations**

Viet Nam CITES Management Authority was created in 1994 under the Ministry of Agriculture and Rural Development, and is composed of director and deputy-directors. It is composed of sections for enforcement, information, communication and training, permit issuance, management of breeding farms, rearing farms and artificial propagation establishments, and international relations. Viet Nam CITES Management Authority represents the Socialist Republic of Viet Nam Government in exercising the rights and performing the duties of CITES member countries, as well as coordinating the activity of CITES implementation in Viet Nam. With the cooperation of relevant agencies and the strict and timely direction of the Government, the Ministry of Agriculture and Rural Development and the Administration of Forestry, CITES implementation in Viet Nam has witnessed many significant achievements.

Firstly, to develop and strengthen the system of laws and policies to control wildlife trade, including laws and regulations in accordance with international regulations, particularly CITES. Viet Nam now has the international CITES Secretariat 'A ranking' for the development and implementation of legal documents related to the implementation of CITES.

Secondly, considering captive breeding and artificial propagation of wild fauna and flora as a practical measure for effective conservation and CITES enforcement, the Government of Viet Nam has issued many policies to encourage more people and the private sector to make investment in promoting captive breeding and artificial propagation. In addition, advocacy and awareness about CITES and CITES implementation in Viet Nam have been intensified. The law enforcement agencies in Viet Nam are regularly trained to improve awareness of CITES provisions as well as the skills to identify the commonly traded species.

Thirdly, many handbooks on identification of wildlife, trade techniques, and illicit trafficking have been compiled, translated into Vietnamese, and disseminated to the enforcement agencies, contributing to improve the effectiveness of CITES implementation. This handbook is an effective tool for law enforcement authorities to help better control the illicit trafficking in animals and wildlife across the country. Also through these documents, communities are more aware of the roles of wildlife via their joint efforts in protecting the country's natural resources. Many people already

“say no to wildlife products” and actively take part in the contests “exploring the life of wildlife” and “protecting wildlife for today and the future”, launched by many Ministries and organisations.

Fourthly, CITES enforcement in Viet Nam is not only linked with the ASEAN community, including Laos, Cambodia, Indonesia, and Thailand, but also extended to other countries in the region and other continents such as China and South Africa. Viet Nam is also actively conducting assessments for some prohibited species originating from Viet Nam, as recommended by the CITES Standing Committee and European Union, and developing export quotas for some species in accordance with CITES provisions. With the participation of the CITES Scientific Authorities, the assessment has a scientific basis to provide a picture of the conservation and trade status, as well as to propose recommendations for effective conservation measures. In particular, many assessments are implemented with the close collaboration of international non-governmental organisations such as WCS, WWF and TRAFFIC. Viet Nam has not only been active in the current initiatives, but also a player in developing and promoting new cooperation mechanisms such as CITES, the Convention on Biological Diversity, and the Ramsar Convention.

Furthermore, Viet Nam is also an active member at global wildlife forums such as Global Tiger Forum, Global Tiger Initiative, and ASEAN Wildlife Enforcement Network. Viet Nam has received the appreciation of international communities for its active participation in CITES, which has helped Viet Nam to avoid trade sanctions and economic damages, and at the same time, improves the role and position of Viet Nam in CITES enforcement, not only in the ASEAN but also in the Asia region.

Location of Viet Nam CITES Management Authority: B9 Building, No. 2 Ngoc Ha street, Ba Dinh district, Ha Noi, Viet Nam.

*Levels trained: senior management, team leaders and frontline staff (different agency equivalents)*

1. Levels trained: Post graduates of biology, law, economics, finance, forestry, and police.
2. Senior management director and deputy directors of Viet Nam CITES MA have finished master programmes of biology and CITES.
3. Team leaders of Environmental Police, Customs, Market Control, and Forest Protection Department have a lot of experience in combating wildlife crime. They have participated in many training courses on CITES regulations and CITES species identification. In addition, they have been provided the knowledge of national laws on wildlife protection such as Law on Forest Protection and Development, Law on Fisheries, Law on Biodiversity, Penal Code, etc.

#### **Anti-Corruption strategies, approaches, integrity checks, and who by (People's Council or other)**

On 10 December, 2003, Viet Nam officially signed the UN Convention Against Corruption at the Summit held in Merida. In order to actively implement the Convention Against Corruption, the Viet Nam Government issued an Action Plan of the Convention Against Corruption (under Decision No. 445/QD-TTg, dated 7 April, 2010 of the Prime Minister). This plan fully complies with regulations on the position and application of international treaties in Viet Nam. The objectives, content and roadmaps of this plan are synchronised with those of the National Strategy on Preventing and Combating Corruption towards 2020 of Viet Nam. To enforce the plan, the National Steering Committee on Anti-Corruption and the Government Inspectorate play the key roles. To ensure the full enforcement of the anti-corruption law, it was important to have a comprehensive legal system and behaviour code, as well as professional ethics for civil servants and public employees, as these people were the ground troops in the struggle. In general, all agencies, organisations, units and citizens must be responsible for preventing and fighting corruption, including a number of key agencies: inspectorates, auditors, investigation agencies, procuracies and courts.

The National Steering Committee on Anti-Corruption includes a Chairman who is Secretary General of Communist Party, two Vice-Chairmen who are the Vice Chairman of the National Assembly and the Deputy Prime Minister, a head of Internal Affairs Committee, and members from Inspectorate General, Vice Minister of National Defence, Minister of Public Security, Prosecutor General of Supreme People’s Procuracy, Chairman of Supreme People’s Court, and Chairman of State Audit. This Committee has the responsibility to direct, coordinate, inspect and urge anti-corruption activities throughout the country, including directing and urging the inspection, auditing, investigation, prosecution and adjudication of serious and complex corruption cases, and to ensure the handling of these cases complies with the current provisions.

In 2011, a governmental Decree (No. 68/2011/ND-CP) established the obligation of publicising all property and income declarations within agencies or units. While the law does not require public disclosure of the information, it can still help to identify wrongdoings. Each Ministry has its own “inspection”, which reports to both the Government Inspectorate and its own Minister. The People’s Procuracy is in charge of prosecuting cases of corruption. The People’s Court is in charge of supervision and ensuring uniformity of the implementation of the legal system on anti-corruption. The State Audit of Viet Nam is the supreme audit institution in the country, responsible for verifying the accuracy and legality of the state budget. All reports on anti-corruption must be sent to the National Assembly Standing Committee.

In the field of forests and wildlife, we are implementing the National Biodiversity Strategy toward 2020 and vision toward 2030 by drafting the National Programme for Controlling Illegal Trade and Consumption of Endangered Species. As a result of this programme, Viet Nam hopes to gather different sources to protect forests and wildlife and combat the corruption. However, until now, Viet Nam has not discovered any case of corruption in forestry and wildlife.

*Information/Intelligence centre/hub - numbers of actionable intelligence received, auctioned (who to) and crucially, any results in terms of seizures, persons arrested and outcomes:*

Since 2010, Viet Nam agencies have detected and seized a lot of illegal trade in wildlife. The specimens included elephant tusks, rhino horn, pangolins (live, scales and meat), tortoises and fresh turtles, and many more.

We receive information on illegal trade from enforcement agencies, and through all members of Viet Nam – WEN Steering Committee, such as Customs, Forest Rangers, Environmental Police, Border Guards, and Market Control. Unfortunately, because all specimens are listed as prohibited goods and the investigators did not identify the owners of the illegal shipments in some cases, we could proceed with criminal charges, and therefore decided to impose administrative sanctions instead. All specimens have been destroyed, or transferred to scientific bodies, museums (for the dead specimens), or rescue centres for release into the wild. Wildlife criminals are employing increasingly sophisticated techniques to avoid being controlled by law enforcement agencies, particularly using the internet to facilitate the trade in and consumption of wildlife. All data of seizures is covered in the Annexes.

#### **Annex 1 – Seizure of rhino**

<b>Date</b>	<b>Nam of species</b>	<b>Type of specimen</b>	<b>Description</b>	<b>Place of seizure</b>
16 Nov 2011	Rhino	3 Pcs	Horn	Ha Noi
26 Feb 2012	Rhino	22 Pcs	Horn	Ha Noi
4 Nov 2012	Rhino	23.5 kg	Horn	Ha Noi
6 Nov 2012	Rhino	3 Pcs	Horn	Quang Ninh
6 Jan 2013	Rhino	16.5 kg	Horn	Ho Chi Minh City

4 May 2013	Rhino	7.28 kg	Horn	Ho Chi Minh City
4 May 2013	Rhino	0.65 kg	Horn	Ha Noi
4 May 2013	Rhino	0.55 kg	Horn	Ha Noi
4 May 2013	Rhino	0.95 kg	Horn	Ha Noi
20 May 2013	Rhino	5.07 kg	Horn	Ho Chi Minh City
30 May 2013	Rhino	0.85 kg	Horn	Ha Noi
10 May 2013	Rhino	6.89 kg	Horn	Ho Chi Minh City
10 May 2013	Rhino	3.4 kg	Horn	Bac Giang
24 Dec 2013	Rhino	6.3 kg	Horn	Thai Binh
20 Mar 2014	Rhino	13.1 kg	Horn	Ho Chi Minh City
27 Oct 2014	Rhino	6 Pcs	Horn	Ha Noi
1 Nov 2014	Rhino	7 kg	Horn	Ha Noi
25Dec 2014	Rhino	0.2 kg	Horn	Ha Noi
12 Mar 2015	Rhino	1.4kg	Horn	Ho Chi Minh City

#### Annex 2 – Seizure of elephant

Date	Nam of species	Type of specimen (kg)	Description	Place of seizure
13 May 2010	Elephant	2,194.2	Ivory	Hai Phong
13 May 2010	Elephant	1,518.4	Ivory	Hai Phong
25 May 2010	Elephant	370.0	Ivory	Hai Phong
25 May 2010	Elephant	1,245.6	Ivory	Hai Phong
23 May 2010	Elephant	82.0	Ivory	Thai Binh
19 Mar 2010	Elephant	149.3	Ivory	Quang Ninh
27 Nov 2010	Elephant	14.0	Ivory	Nghe An
10 Jan 2011	Elephant	1,168.0	Ivory	Hai Phong
6 Apr 2011	Elephant	506.0	Ivory	Hai Phong
18 Apr 2011	Elephant	296.0	Ivory	Quang Ninh
3 Jul 2011	Elephant	15.0	Ivory	Hai Duong
12 May 2011	Elephant	856.0	Ivory	Hai Phong
02 Nov 2011	Elephant	350.0	Ivory	Hai Phong
28 Nov 2011	Elephant	209.4	Ivory	Nghe An
18 Apr 2011	Elephant	300.0	Ivory	Quang Ninh
22 Nov 2011	Elephant	1,061.0	Ivory	Quang Ninh
30 Dec 2011	Elephant	65.0	Ivory	Ha Noi
17 Mar 2012	Elephant	8.1	Ivory	Ha Nam
4 Apr 2012	Elephant	282.0	Ivory	Ho Chi Minh City
18 Jul 2012	Elephant	137.0	Ivory	Ho Chi Minh City
30 Jul 2012	Elephant	2,475.0	Ivory	Ho Chi Minh City
17 May 2012	Elephant	744.5	Ivory	Hai Phong

4 Apr 2012	Elephant	282.0	Ivory	Ho Chi Minh City
22 Jun 2012	Elephant	27.6	Ivory	Ha Noi
8 Nov 2012	Elephant	61.2	Ivory	Ha Noi
3 Dec 2012	Elephant	64.7	Ivory	Da Nang
31 Jan 2013	Elephant	92.0	Ivory	Ho Chi Minh City
22 Mar 2013	Elephant	29.0	Ivory	Tay Ninh
5 May 2013	Elephant	28.0	Ivory	Quang Ninh
31 June 2013	Elephant	21.0	Ivory	Ho Chi Minh City
31 July 2013	Elephant	50.2	Ivory	Ha Noi
16 Sep 2013	Elephant	167.0	Ivory	Ha Noi
25 Sep 2013	Elephant	74.0	Ivory	Hai Phong
9 Oct 2013	Elephant	2,162.5	Ivory	Hai Phong
21 Oct 2013	Elephant	2,400.0	Ivory	Hai Phong
10 Nov 2013	Elephant	39.8	Ivory	Bac Giang
16 Dec 2013	Elephant	144.0	Ivory	Ha Noi
12 Feb 2014	Elephant	4.2	Ivory	Ho Chi Minh City
23 Apr 2014	Elephant	30.0	Ivory	Quang Ninh
9 May 2014	Elephant	51.0	Ivory	Ha Noi
16 May 2014	Elephant	243.7	Ivory	Quang Ninh
24 May 2014	Elephant	1,000.0	Ivory	Hai Phong
10 June 2014	Elephant	110.0	Ivory	Ho Chi Minh City
22 June 2014	Elephant	90.6	Ivory	Ho Chi Minh City
1 Aug 2014	Elephant	14.6	Ivory	Ho Chi Minh City
18 Aug 2014	Elephant	1,262.0	Ivory	Hai Phong
28 Aug 2014	Elephant	40.0	Ivory	Ho Chi Minh City
12 Mar 2015	Elephant	0.41kg	Ivory	Ho Chi Minh City

### Annex 3 – Seizure of pangolin

Date	Nam of species	Type of specimen	Description	Place of seizure
20 Mar 2010	Pangolin	158 kg	Live	Ho Chi Minh City
10 May 2010	Pangolin	1778.3 kg	Scale	Hai Phong
26 Aug 2010	Pangolin	3 head	Live	Lam Dong
20 Nov 2010	Pangolin	28 kg	Live	Thanh Hoa
19 Dec 2010	Pangolin	160 kg	Live	Hai Duong
5 Jan 2011	Pangolin	500 kg	Live	Thai Binh
19 Jan 2011	Pangolin	2.8 kg	Live	Ha Tinh
24 Jan 2011	Pangolin	4726 kg	Meat	Hai Phong
24 Mar 2011	Pangolin	55 kg	Live	Ha Tinh
15 Jul 2011	Pangolin	410 kg	Scale	Quang Ninh

6 Nov 2011	Pangolin	450 kg	Frozen meat	Lang Son
2 Dec 2012	Pangolin	46 kg	Live	Ha Tinh
8 Dec 2011	Pangolin	400 kg	Live	Hai Duong
12 Dec 2011	Pangolin	477.7 kg	Live	Ha Tinh
13 Dec 2011	Pangolin	250 kg	Live	Ha Noi
16 Dec 2011	Pangolin	439 kg	Live	Thanh Hoa
27 Dec 2011	Pangolin	30 kg	Live	Ha Tinh
3 Jan 2012	Pangolin	90 kg	Scale	Quang Ninh
5 Jan 2012	Pangolin	9 kg	Live	Thanh Hoa
19 Mar 2012	Pangolin	1200 kg	Frozen meat	Quang Ninh
26 Mar 2012	Pangolin	41 kg	Live	Thanh Hoa
4 Apr 2012	Pangolin	2 kg	Scale	Ho Chi Minh City
24 Apr 2012	Pangolin	304 kg	Live	Nghe An
7 May 2012	Pangolin	14.2 kg	Live	Ha Tinh
22 May 2012	Pangolin	5927.1 kg	Meat	Hai Phong
11 Jul 2012	Pangolin	729 kg	Scale	Quang Ninh
17 Jul 2012	Pangolin	7200 kg	Live	Hai Phong
27 Jul 2012	Pangolin	33.9 kg	Live	Thua Thien - Hue
31 Jul 2012	Pangolin	16 kg	Live	Binh Phuoc
4 Sep 2012	Pangolin	424 kg	Live	Ha Tinh
Sep 2012	Pangolin	93.7 kg	Live	Thua Thien - Hue
Sep 2012	Pangolin	35 kg	Live	Thua Thien - Hue
20 Dec 2012	Pangolin	20 kg	Live	Quang Tri
26 Dec 2012	Pangolin	500 kg	Live	Ha Tinh
18 Jan 2013	Pangolin	173 kg	Scale	Hai Phong
28 Mar 2013	Pangolin	517 kg	Scale	Hai Phong
25 Apr 2013	Pangolin	6 kg	Live	Lao Cai
15 May 2013	Pangolin	5556.2 kg	Meat	Hai Phong
18 May 2013	Pangolin	80 kg	Live	Quang Ninh
28 May 2013	Pangolin	178 kg	Live	Hai Duong
31 May 2013	Pangolin	58.1 kg	Live	Thai Nguyen
17 Jul 2013	Pangolin	280 kg	Live	Quang Ninh
18 Jul 2013	Pangolin	263 kg	Scale	Ha Noi
18 Jul 2013	Pangolin	348,6 kg	Live	Quang Ninh
3 Jul 2013	Pangolin	24.4 kg	Live	Ha Tinh
12 Jul 2013	Pangolin	6262 kg	Frozen meat	Hai Phong
14 Aug 2013	Pangolin	471 kg	Live	Quang Ninh
30 Aug 2013	Pangolin	233 kg	Live	Hung Yen
24 Sep 2013	Pangolin	3040 kg	Frozen meat	Hai Phong
24 Sep 2013	Pangolin	990 kg	Scale	Hai Phong
1 Oct 2013	Pangolin	230 kg	Live	Quang Ninh

11 Oct 2013	Pangolin	5900 kg	Meat	Hai Phong
18 Oct 2013	Pangolin	255.8 kg	Live	Phu Yen
1 Nov 2013	Pangolin	92.3 kg	Live	Ha Tinh
3 Dec 2013	Pangolin	487 kg	Live	Quang Ninh
28 Mar 2014	Pangolin	197.3 kg	Live	Ninh Binh
8 May 2014	Pangolin	29 kg	Live	Lao Cai
18 May 2014	Pangolin	85.5 kg	Live	Quang Ninh
22 June 2014	Pangolin	220 kg	Live	Quang Ninh
23 June 2014	Pangolin	315 kg	Live	Thanh Hoa
30 June 2014	Pangolin	350 kg	Live	Quang Ninh
22 Jul 2014	Pangolin	1471 kg	Scale	Hai Phong
26 Jul 2014	Pangolin	100 kg	Live	Thanh Hoa
29 Jul 2014	Pangolin	196 kg	Live	Quang Ninh
29 Jul 2014	Pangolin	70 kg	Live	Quang Ninh
29 Jul 2014	Pangolin	20.5 kg	Live	Thanh Hoa
17 Aug 2014	Pangolin	175 kg	Scale	Thanh Hoa

#### Annex 4 – Seizure of turtle

Date	Nam of species	Type of specimen	Description	Place of seizure
14 Jan 2011	Turtle	87 head	Live	Ha Tinh
20 Feb 2011	Turtle	20 head	Live	Quang Ninh
03 Jul 2012	Turtle	43 head	Live	Dong Nai
30 May 2013	Turtle	15 head	Live	Nghe An
24 Oct 2013	Turtle	94 head	Live	Quang Ngai
09 May 2013	Turtle	1 head	Live	Quang Ngai
26 Mar 2013	Turtle	10 head	Unknown	Ha Tinh
10 Jan 2013	Turtle	38 head	Unknown	Ha Tinh
21 Feb 2013	Turtle	200kg	Live	Quang Ninh
20 Aug 2013	Turtle	90 head	Live	Quang Ninh
21 Apr 2013	Turtle	1 head	Unknown	Quang Ninh
10 Oct 2013	Turtle	3 head	Live	Thua Thien Hue
19 Apr 2014	Turtle	29 head	Live	Quang Ninh
19 Apr 2014	Turtle	29 head	Live	Quang Ninh
29 Jul 2014	Turtle	25 head	Live	Thanh Hoa
29 Jul 2014	Turtle	114 head	Live	Quang Ninh
5 Jul 2014	Turtle	9 head	Live	Ho Chi Minh City
2 Jul 2014	Turtle	1,400 kg	Live	Quang Ninh
29 Jul 2014	Turtle	114 head	Live	Quang Ninh
20 Dec 2014	Turtle	31 head	Live	Thua Thien Hue

## ANNEX I

### INTERNET TRADE IN WILDLIFE AND FOREST PRODUCTS IN VIET NAM

The Internet has revolutionised the way we live, the way we communicate and the way we do business. Social media platforms such as Facebook and Twitter serve to connect individuals, families and like-minded interest groups wherever they are in the world. Online e-commerce sites such as eBay and Alibaba provide suppliers with access to global markets and consumers with increased purchasing power. The potential of these new mediums has not gone unnoticed by organised crime groups who have been quick to capitalise on the anonymity and access these systems provide. What were initially designed as platforms to connect people have been hijacked to organise and commit crime with impunity in many areas of the world.

Viet Nam is not immune to this phenomenon, as its citizens and particularly the young embrace technology. According to the website *We Are Social* and as shown in Figure 1, there is an estimated 39.8 million Internet users in Viet Nam, of which 28 million have active social media accounts.<sup>52</sup> These numbers currently represent unfettered access to citizens and markets for organised crime.



Figure 1

This annexure will briefly examine two online methods used to facilitate the trade of wildlife and timber products in Viet Nam, namely social media and online e-commerce sites.

<sup>52</sup> We Are Social, at <http://www.slideshare.net/johnnyvo/vietnam-digital-social-mobile-2015>, accessed 24 July 2015.

Potential issues that each platform poses to law enforcement will be discussed, as will strategies that could be adopted to address these issues.

The use of the Internet to facilitate crime is not new. From the moment it was conceived, criminals have used the Internet to perpetuate fraud. Many countries, including Viet Nam, have introduced legislation to try and regulate the use of the Internet and criminalise certain conduct. Decree 72 of 2013 provides definitions and offence provisions that enable the policing of Internet-based communications in Viet Nam. Article 3(22) of Decree 72 defines a social network as, “a system of information that provides its users with services such as storage, provision, use, search, sharing, and exchange of information, including the provision of private websites, forums, online chats, audio and video sharing, and other similar services.”

Article 5 of the decree identifies offences including subsection (b) propagating crimes, and subsection (dd) trading in banned goods and services. These articles obviously do not preclude law enforcement agencies from taking action under the Penal Code, but offer alternatives if insufficient evidence is available to proceed for the substantive offence.

Whilst the legislative framework exists for monitoring internet-related activities, Vietnamese law enforcement authorities tasked with investigating forest and wildlife crime have indicated that they have insufficient resources and training to address the issue of Internet-facilitated wildlife and timber crime. Whilst enforcing this medium can pose issues in relation to equipment, expertise, jurisdiction, and admissibility of evidence, it also offers Vietnamese law enforcement agencies the opportunities to collect intelligence and evidence, facilitate the introduction of undercover officers, and increase the knowledge on the size and scope

of the wildlife and forest crime problem in Viet Nam.

The first area that will be examined is social media and how it impacts on the illegal wildlife and timber trade. The advent of smart phone technology and ease of Internet access has helped to propagate the global popularity of social media. Legitimate businesses use social media to advertise their products, they help to connect family and friends, and users can join social groups with like-minded individuals. Conservation groups and even law enforcement agencies have embraced social media to connect with the global community.

When opportunities present, criminals are quick to take advantage, and social media is no exception. Criminals are able to use social media platforms to source products, arrange logistics, use agents to extend their audiences, communicate in real time, and actively seek out buyers. They rely upon a lack of law enforcement capacity, blending with legitimate businesses (particularly for timber), and benefit from improved access to products or consumers that would not normally be available to them.

The NGO TRAFFIC has undertaken several studies of the online illegal wildlife trade and continues to monitor it. In one Chinese study targeting the sale of CITES-listed products using social media, TRAFFIC identified six dealers selling hundreds of items including ivory and rhino horn.<sup>53</sup> An in-depth study of Viet Nam has yet to be undertaken, but it is likely that similar, albeit smaller, results would be obtained.

There are a number of ways that law enforcement agencies can monitor social media. These include the specific monitoring

of individuals or interest groups, the collection of metadata and subsequent analysis of that data, and the creation of fake or 'avatar' profiles.

The targeted monitoring of an individual or interest group may provide opportunities for intelligence and/or evidentiary collection. Individuals will often post images on their accounts that can be used to identify their real identity, such as vehicle registration numbers, where they live, where they work, what school they went to, their family members, relatives, and who their associates are. From this investigators are able to map networks, and from that identify other possible persons of interest.

Given the transnational nature of wildlife and timber crimes, networks will frequently operate across several countries. Monitoring of a suspect's social media account may help to map these networks and provide valuable intelligence to foreign law enforcement agencies.

Monitoring of interest groups will identify persons who have a subject matter interest, and could also identify interconnected networks of individuals. Membership in one group will prompt requests to join other similar groups, which in turn increases intelligence and potential access. An example of a link chart based on social networking, Figure 5 is located at the end of this annexure.

Given the ease of creating subscriptions, social media also offers law enforcement authorities the opportunity to create 'avatars,' fictitious profiles where undercover officers can interact with suspected criminals and facilitate the purchase of contraband. These 'avatars' can be used to undertake 'buy-bust' operations, or used in more protracted investigations.

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<sup>53</sup> Traffic, 2015. Moving targets: tracking Online Sales of Illegal Wildlife Products in China,

The monitoring of social media also enables law enforcement to understand the methodologies used by the traffickers, to identify the cost price and availability of the commodity, and to identify emerging trends. Suppliers will often initiate contact with potential buyers by offering them products for sale. Armed with this information, officers can develop strategies best suited to target the critical nodes in the illicit supply chain.

The monitoring of metadata generated by social media is also an option available to law enforcement to address Internet-facilitated wildlife and timber crime. There are several search platforms available (through subscription) to law enforcement agencies (and private citizens) to collect and analyse metadata. One such platform is Geofeedia, which can be tailored to search globally using key words or usernames, or can be refined to search a defined geographical area as little as 100 metres in radius anywhere in the world. The main drawbacks with the system include the cost to acquire it, that the photograph or post must be geo-tagged for it to be accessible to the system, and the sheer amount of the data that these systems generate.

Geofeedia searches across several popular social media platforms including Twitter, Instagram, Facebook, Youtube, Flickr, Picasa, Yik Yak and Sina Weibo, and allows for real time searches or the capability to record a particular site over several months. The amount of 'hits' within a defined geographical area will be dictated by the amount of posts made in that area over a given time frame. As illustrated in Figure 5, over 5,750 'hits' were received in a 2-hour period in a five-kilometre radius in Ho Chi Minh City. (A larger version of this image is shown in Figure 6 at the end of this Annex)

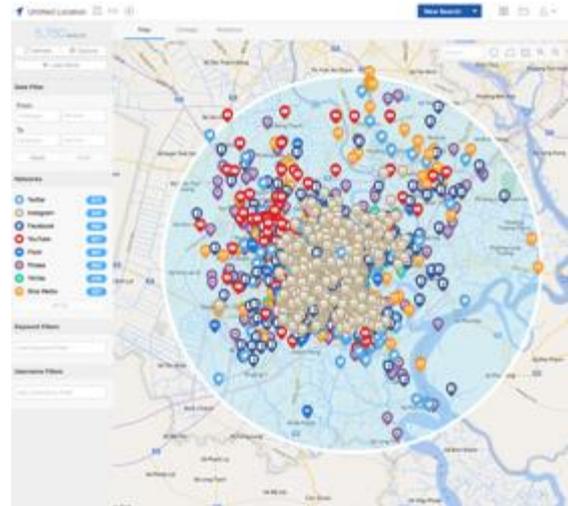


Figure 2

Like most metadata collection systems, much of the data collected will not be relevant to law enforcement authorities. However, if within those masses of data a post is made that is of interest to law enforcement, it will be collected and available for later analysis. Even if the post is subsequently deleted there is still a record of it, albeit minus the photograph.

Where this tool is perhaps of greater benefit to law enforcement is its ability to conduct more refined geographical searches and the keyword or user name functionality. Searching within the vicinity of border checkpoints, national parks or forest areas, or along smuggling routes, may identify people who are present in those areas or may produce photographic evidence of a suspected crime. An example of this is illustrated in Figure 3, which shows a search conducted in the vicinity of the Cat Tien National Park in southern Viet Nam. This search revealed only 243 hits over a period of several months; however, one of those hits, shown in Figure 4, depicts a bear inside a small cage.

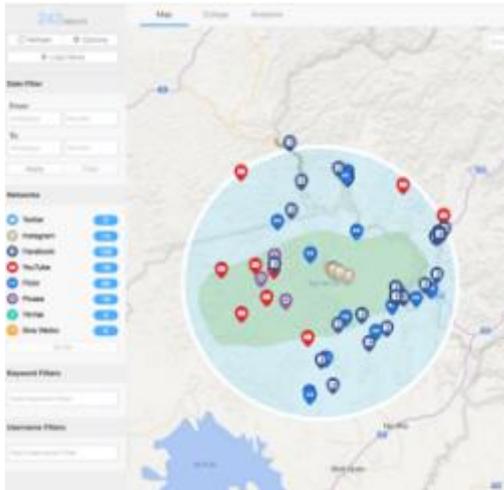


Figure 3

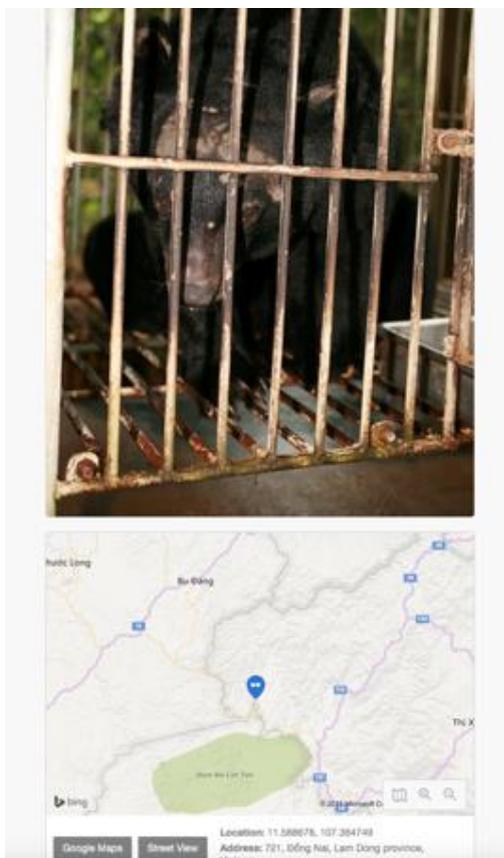


Figure 4

This 'hit' provides the GPS location where the photograph was taken and the user name of the person who took it. These details can be used by investigators should they wish to follow up with an investigation. The user name and key word functionality also offer refined search capabilities that could be used to identify instances of wildlife and forest

crime. A search of the term 'ivory' over a one-month period in June/July 2015 returned 5,857 hits. Although there was a significant number of processed ivory items such as bracelets or chess sets for sale, the vast majority of those hits did not pertain to elephant ivory but the colour ivory, wedding dresses, cakes, makeup and vehicles.

A search of the term 'rhino horn' in both English and Vietnamese did not result in any hits within Viet Nam. This does not mean that criminals are not using social media to offer or facilitate the sale of rhino horn in Viet Nam. It may be that criminals are using a code word or term to describe their products, or more likely, that they have not geo-tagged their photos.

The Geofeedia system and others like it are not cheap, and its acquisition is probably beyond the current capabilities of environmental law enforcement agencies in Viet Nam. However, this does not necessarily preclude law enforcement from benefitting from these systems.

There are several environmental NGOs that have well-educated and motivated staff with extensive experience in social media investigations, and access to metadata collection systems, which would be prepared to assist law enforcement agencies if approached. These NGOs are a force multiplier that is insufficiently used by environmental law enforcement agencies in the fight against wildlife and forest crime globally.

The second medium that this annexure will briefly examine is online e-commerce sites in Viet Nam, with a focus on the rosewood trade. Rosewood is a high value timber that is in high demand in China and Viet Nam. The trade in *Dalbergia Cochinchensis* (Siamese

Rosewood) is governed by CITES after an application from Thailand. Another high value species *Dalbergia bariensis*, (Burmese Rosewood) is locally protected in Viet Nam, and is being widely exploited throughout the Greater Mekong Sub-Region (GMS).

Major online e-commerce sites utilised by rosewood traders in Viet Nam include [www.alibaba.com](http://www.alibaba.com), [www.globalwood.org](http://www.globalwood.org) and [www.tradekey.com](http://www.tradekey.com). These websites offer rosewood in wood logs, sawn timber, timber veneer and furniture. These online e-commerce sites allow suppliers and potential buyers to connect without having to physically inspect the goods in-situ. For criminal groups, this has the added advantage of reducing being caught with illegally obtained timber, as the location of the timber is not initially declared. It also enables organised crime groups to use proxy companies as fronts to advertise and dispose of illegally obtained timber products.

Analysis of online e-commerce sites such as Alibaba offers Vietnamese law enforcement agencies a view of the size and scale of the marketplace for rosewood timber products in Viet Nam. They also offer the opportunity for law enforcement to pose as suppliers to identify brokers or buyers of rosewood, or to pose as customers to ascertain the legality of the rosewood being offered by a supplier.

Once details have been obtained from a supplier, it is then possible to cross reference the supplier's claims with the actual paperwork submitted to import/export the rosewood, to verify compliance with Vietnamese laws and regulations. This is just one example of how law enforcement could use online e-commerce sites to determine operate in this environment will result in a greater understanding of the problem, and an increased capability to counter it. A failure to

trends and measure compliance within Viet Nam, for both timber and wildlife products.

As previously stated, Vietnamese law enforcement authorities have indicated that they have insufficient resources and training to address the issue of Internet-facilitated wildlife and timber crime. Accordingly, UNODC has started to provide training to frontline law enforcement officers on using the Internet as an intelligence tool. Officers were shown how to create 'avatars' and how to use these avatars to target suspected traffickers. One such 'avatar' established during a training seminar now has over 1200 'friends', and was the avatar used to collect the information provided in this annexure. In conjunction with other Consortium members, this training should be expanded to include FPD and Environmental Police Officers in Hanoi, Ho Chi Minh City, and other wildlife and timber crime hot spots in Viet Nam.

To gain a greater understanding of the role that social media and online e-commerce sites play in wildlife and timber related crimes in Viet Nam, and to inform law enforcement agencies on how to best approach the issue, it is recommended that a comprehensive study be undertaken to identify the size and scale of the problem. As previously stated, the NGO TRAFFIC has undertaken several such studies in China, and would be well suited to undertaking a similar study in Viet Nam.

The Internet provides environmental law enforcement agencies in Viet Nam the opportunity to target, penetrate, prosecute and dismantle transnational organised crime groups operating both nationally and internationally. Enhancing their capacity to address this issue will continue to allow traditional organised crime groups unfettered access to Vietnamese citizens and markets.

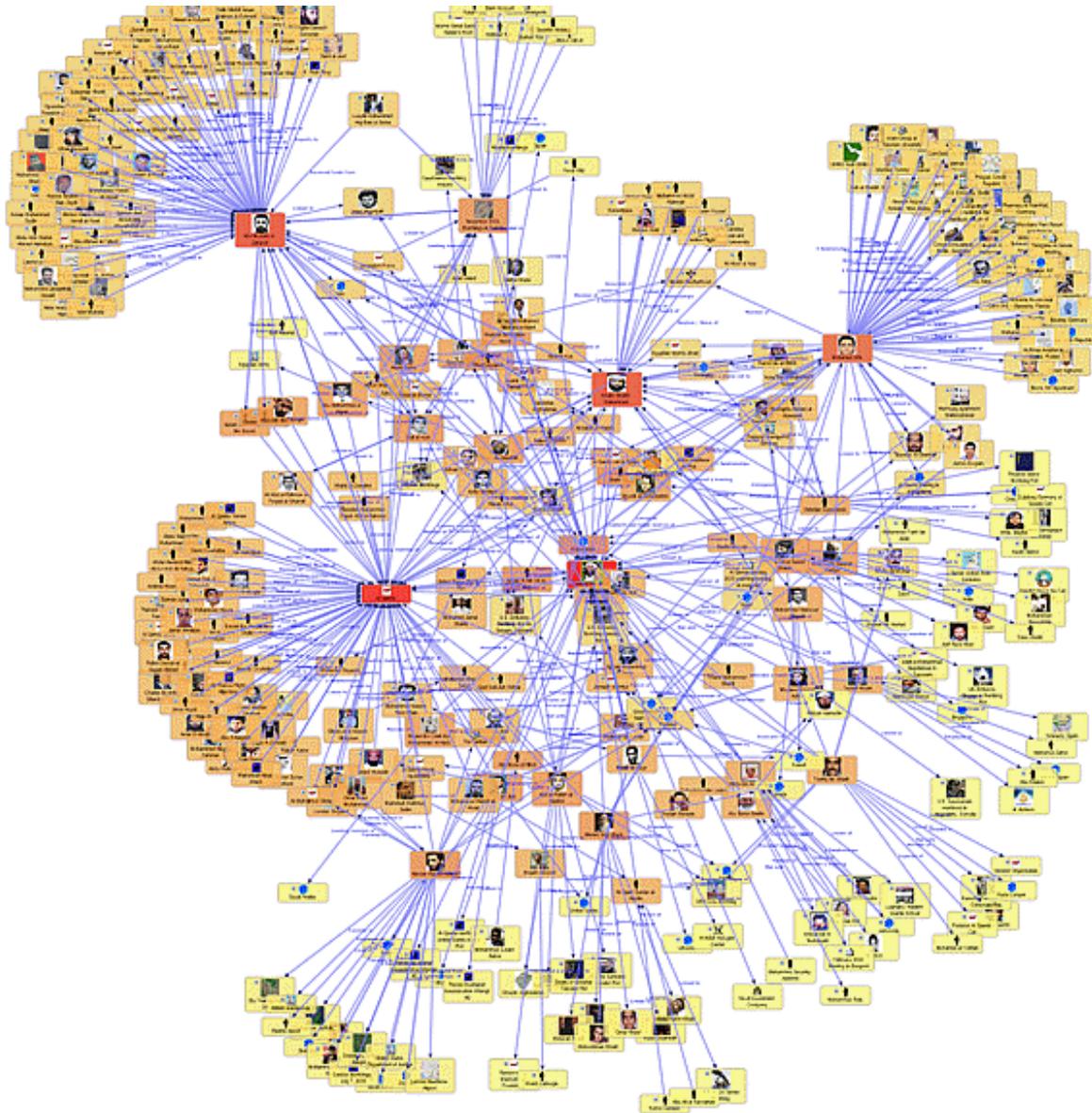


Figure 5 - An example of Social Network analysis (Source - Sentinel Visualizer)

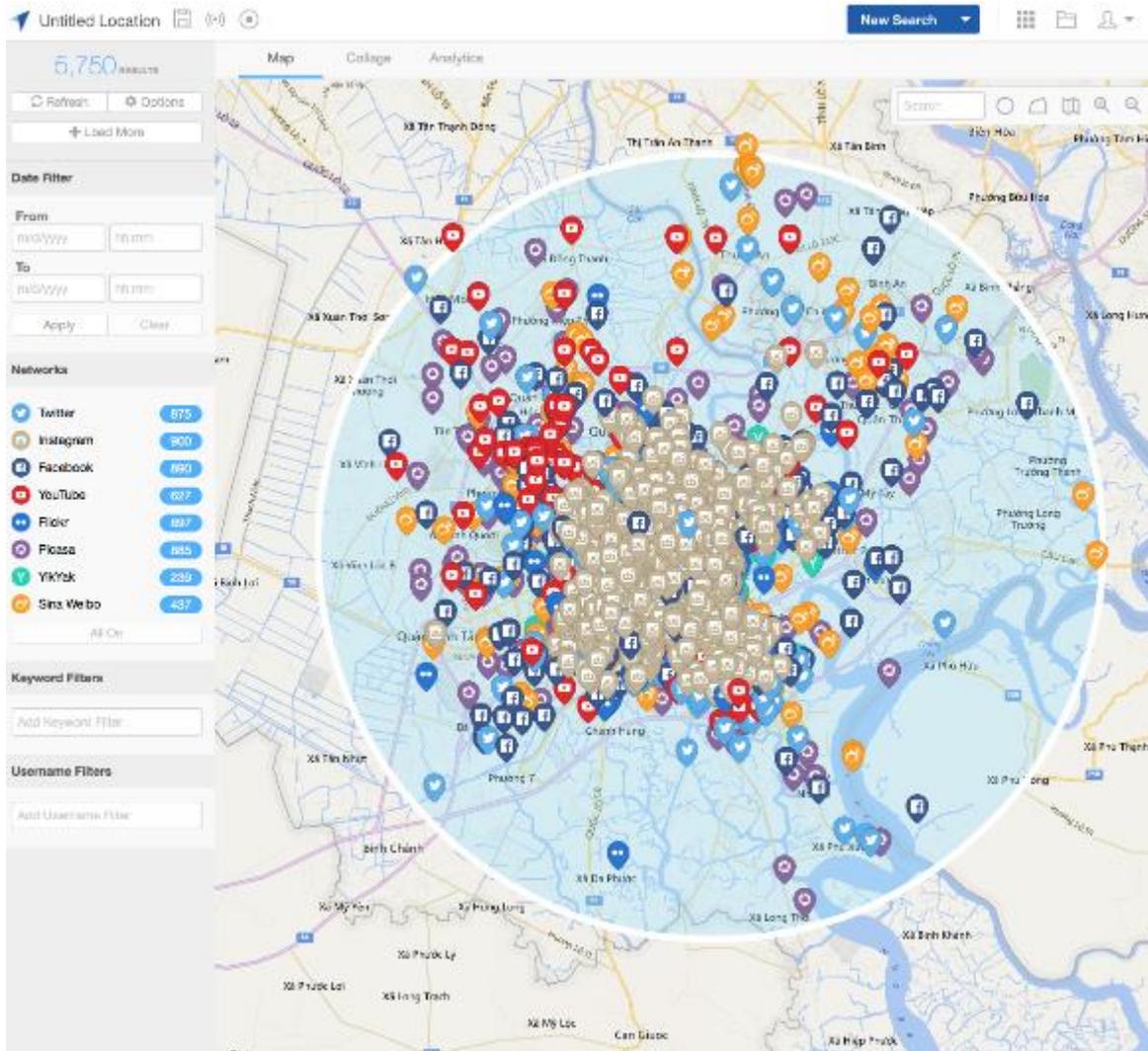


Figure 6 – Geofeedia search of Ho Chi Minh City

**ANNEX J**  
**IGO AND NGO LAW ENFORCEMENT CAPACITY BUILDING**  
**FOR WLFC 2010-2015**

<b>Training Course</b>	<b>Delivered by</b>	<b>Date</b>	<b>Location participants came from</b>	<b>Participating Enforcement Agencies</b>
PATROL anti-smuggling training course	UNODC, Freeland	Sep 8-12, 2014	BLOs in Quang Tri, Ha Tinh, Nghe An	Police, Customs, Border Guards (total 20 participants)
PATROL anti-smuggling training course	UNODC, Freeland	Sep 15-19, 2014	BLOs in Dien Bien, Son La	Police, Customs, Border Guards (total 22 participants)
PATROL anti-smuggling training course	UNODC, Freeland	Nov 17-21, 2014	BLOs in Lao Cai, Ha Giang	Police, Customs, Forestry, Border Guards (total 35 participants)
PATROL anti-smuggling training course	UNODC, Freeland	Nov 24-28, 2014	BLO in Quang Ninh	Police, Customs, Forestry, Border Guards (total 35 participants)
Electronic Surveillance and Domestic Controlled Delivery	UNODC	May 26-29, 2015	BLOs in An Giang (4 locations) and Tay Ninh (2 locations); HCMC Airport	Police, Customs, Forestry, Border Guards from BLOs, + Customs at Tan Son Nhat International Airport (total 25 participants)
Electronic Surveillance and Domestic Controlled Delivery	UNODC	Jun 1-4, 2015	BLOs in Quang Tri, Ha Tinh, Nghe An; & Da Nang Airport	Police, Customs, Forestry, Border Guards from BLOs, + Customs at Da Nang International Airport (total 24 participants)
Wildlife Friendly Skies awareness training – on species ID, smuggling methods, detecting and responding to wildlife trafficking	Freeland, BCA/MONRE	Jan 28 & May 12, 2015	Noi Bai International Airport	Airport officials in ground services, customs, cargo handling, quarantine services and other departments relating to the inspection and detection of wild animals (total 220 participants)
Annual MAPs Project Law Enforcement Training (on species identification, survey techniques among others)	TRAFFIC	2011 - present	Bac Kan	Bac Kan Forest Protection Department
Training workshop on	TRAFFIC	Jul 11-	Ha Noi, Lang	Police, Customs, Forest

CTIES policies and identification of rhino and elephant species		12, 2013	Son, Quang Ninh, Hai Phong, Nghe An, Ha Tinh, Ho Chi Minh City	Protection Department (total 43 participants)
Workshop to improve customs capacity to combat illegal trade in rhino horn	TRAFFIC	Sep 19 – 30, 2013	14 cities and provinces throughout Viet Nam	Anti-smuggling and Investigation Department under General Customs of Viet Nam (total 49 participants)
Wildlife Forensic Training	TRACE, TRAFFIC	Apr 23 – 24, 2014	Ha Noi, Quang Ninh, Hai Phong, Nghe An, Ha Tinh, Hue, Ho Chi Minh City, An Giang, Tay Ninh	Police, Customs, Forest Protection Department, Morphology experts (total 51 participants)
Basic patrol training. Capacity to do basic patrol	WWF Việt Nam- CarBi Project	2012	Thua Thien Hue	CarBi Forest Guard, Hue SNR rangers (24 participants)
Natural Resources Monitoring and Assessments basic training for staff of two SNRs and their govt rangers. Capacity to conduct supervised natural resource monitoring and assessment	WWF Việt Nam- CarBi Project	2012	Thua Thien Hue	CarBi Forest Guard, Hue SNR rangers (40 participants)
10 day basic Forest Guard Enforcement and Field craft training	WWF Việt Nam- CarBi Project	2012	Thua Thien Hue	CarBi Forest Guard, Hue SNR rangers (24 participants)
Training on job for Hue Saola staff and forest guards on methodology of Saola intensive survey within Saola PA areas.	WWF Việt Nam- CarBi Project	2012	Thua Thien Hue	CarBi Forest Guard, Hue SNR rangers (10 participants)
Advanced Field Craft and Enforcement for the SNRs and BMNP	WWF Việt Nam- CarBi Project	March, 11 to 13, 2013	Thua Thien Hue and Quang Nam Provinces	CarBi Forest Guard, Hue SNR rangers, Quang Nam SNR rangers, Bach Ma NP rangers (19 participants)
Key wildlife identification in Saola landscape	WWF Việt Nam- CarBi Project	Oct, 25 to 30, 2013	Thua Thien Hue and Quang Nam Provinces	CarBi Forest Guard, Hue SNR rangers, Quang Nam SNR rangers, Bach Ma NP rangers (54 participants)
Basic training for multi-agency team focus on	WWF Việt Nam- CarBi	Feb, 24 to 28, 2014	Thua Thien Hue and Quang Nam	HSNR, QNSNR, BMNP; Sub-FPD

Filed and LE skills like First Aids, Relevant Regulation, Investigation Crime scene...	Project		Provinces	and Police of A Luoi, Dong Giang, Nam Dong Districts; 637 border Guards base; Commune Police of buffer zone communes around PAs (26 participants)
Key Flora Identification training for Hue FGs, HSNR Rangers	WWF Việt Nam- CarBi Project	March, 27 to 28, 2014	Thua Thien Hue	CarBi Forest Guard, HSNR rangers (26 participants)
Key Flora Identification training for Quang Nam FGs, QNSNR and Bach Ma NP rangers	WWF Việt Nam- CarBi Project	May, 24 and 25, 2014	Thua Thien Hue and Quang Nam Provinces	CarBi Forest Guard, QNSNR, BM NP Rangers (30 participants)
Mong Cai journalist training	WCS	2010	Mong Cai, Quang Ninh	Journalists from different newspapers, VTV
03 Basic Training Courses (Species ID, Law, Dealing with Seized Wildlife)	WCS- CITES MA co host	12 -16 Apr, 26-29 Apr, 17-21 May, 2010	Hanoi, Cuc Phuong NP, Soc Son Rescue Centre	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine
Advanced Investigation Training	WCS		Ha Long city, Quang Ninh	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine
Species ID Training course	WCS-North Regional FPD co-host	09-10 June, 2011	Ha Long city, Quang Ninh	FPD, Police, Border Guards, Customs, from Quang Ninh, Haiphong and Lang Son
Basic Training for Ha Tinh Law Enforcement agencies	WCS-FFI- CITES MA- Vinh university co host	14-18 May, 2012	Vinh city, Nghe An	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine from Ha Tinh and Quang Binh
Training in Hanoi for Quang Binh authorities	WCS	4-7 Dec, 2012	Hanoi	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine from Quang Binh
Training for prosecutors	WCS- HCM Prosecutors co-host		Cat Tien	Prosecutors from the South
Basic training in HCM for Dong Nai authorities	WCS	19-22 Aug, 2013	Ho Chi Minh city	FPD, Police

Basic training in Vinh	WCS- CITES MA co host	April 2013	Vinh City, Nghe An	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine from Quang Binh
2013 Basic training in Ha Noi for Quang Ninh authorities	WCS	19-21 Nov 2013	Hanoi	FPD, Police, Border Guards, Customs, Procuracy, Market Control, Animal Health, Animal Quarantine from Quang Ninh
Wildlife Crime Law enforcement Training Program	EP National, and FPD zone 3	Mar 3-6, 2015	HCMC, Binh Duong and Tay Ninh province	FPD, EP, Economic Police, Customs, Procuracy, Market Control, (40 participants)
Law enforcement operation	FPD zone 3	Dec 10, 2014	HCMC, Binh Phuoc province	FPD zone 3, FPD Binh Phuoc
Wildlife Crime Law enforcement Training Program	FPD zone 4	Aug 11-14, 2015	Dak Nong, Binh Phuoc	FPD, EP, EcoP, Customs, Border Guards, economic security police.
On the job training for Environmental Police of Hanoi	WCS – Hanoi EP co-host	2015	Hanoi	Hanoi Environmental Police
Wildlife Crime Training Program: Advanced OTJ course	WCS	Jan 3-8, 2011	Lam Dong	Environmental Police, Forest Protection Department
Dong Nai basic training 2010	WCS	2010	Dong Nai	FPD, EP, Customs, Market Control and Procuracy
Dong Nai basic training 2013	WCS	2013	Lam Dong	FPD, EP, Customs, Market Control and Procuracy