

Socialist Republic of Vietnam

FOREST LAW ENFORCEMENT AND GOVERNANCE



The World Bank
East Asia and Pacific Region
Sustainable Development Department

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**The World Bank
East Asia and the Pacific Region
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ABBREVIATIONS AND ACRONYMS

5MHRP	Five Million Hectares Reforestation Program
CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CPV	Communist Party of Vietnam
DARD	Department for Agriculture and Rural Development
DDR	Due Diligence Regulation - DDR
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement Governance and Trade
FMB	Forest Management Board
FPD	Forest Protection Department
FSC	Forest Stewardship Council
GIS	Geographical Information System
LURC	Land Use Right Certificate
MARD	Ministry of Agriculture and Rural Development
MONRE	Ministry of Natural Resources and Environment
SFE	State Forest Enterprise
VPA	Voluntary Partnership Agreement

EXECUTIVE SUMMARY

The scale and extent of forest crime is difficult to assess, but the illegal practices are thought to be widespread and accountable for a significant proportion of forest loss.

Overview of Forest Crimes in Vietnam

Types of forest crimes in Vietnam include illegal logging, illegal land conversion, and wildlife trade. Crimes involving the misconduct of government officials include deliberate misclassification of forests to enable state-sanctioned logging, or ignoring suspected crimes of various kinds. Recorded forest violations range from 30,000 to 50,000 cases per annum. Because of lack of monitoring, poor case handling, and incentives that discourage local authorities from accurate and complete reporting, far more violations go undetected and under-reported. It is a general perception that only a small fraction of reported violations are investigated, and only a small proportion of forest crime results in criminal prosecution.

No one knows the actual extent of forest crime. It is likely, however, that illegal activity has been a major factor in the trends that have led to the impoverishment of Vietnam's forest. Only around 7 percent of Vietnam's remaining forests are considered 'primary' and 70 percent of remaining natural forest is poor-quality 'secondary' forest with much reduced biodiversity value. Primary natural forests have been declining to the extent of an average 29,000 hectares per year despite policies calling since 1997 for tight restrictions on logging in natural forests. Illegal hunting and trade of wildlife, another significant forest crime, has depleted wildlife populations in Vietnam's natural forests to the extent that most species of high value to wildlife trade are endangered. The endangered Indochinese tiger is on the verge of extinction in Vietnam. The leopard is probably already extirpated. Five of the 25 most threatened primate species in the world have been identified in Vietnam; this position earned mostly as a result of hunting and wildlife trade. There is a risk that these species will become extinct from hunting and trade in the next few years if ongoing population declines are not reversed immediately.

Forest laws in Vietnam seem to be violated because benefits of illegal activity are perceived to exceed the costs. Individuals driven by poverty and desperation commit some forest crimes; others crimes are activities of organized enterprises or networks preying on weaknesses in the management of forest resources. Forest crime too frequently involves local officials who benefit to a much greater extent and are exposed to far less risk in comparison with those involved in the day-to-day work of illegal cutting and transport of forest wood products. Sawmills and furniture enterprises are, sometimes inadvertently, the main consumers of stolen timber and probably generate the largest profit margins in the stolen timber 'value chain'.

Other impacts of forest crime have not been researched in quantitative terms. However, it is likely that forest crime results in millions of dollars worth of revenues lost to the state each year and reduces the medium- and long-term potential of Vietnam's forest sector to generate future revenues. Forest crime has a disproportionate impact on the poor since a large proportion of Vietnam's poor are dependent to some extent on forest resources for livelihoods and yet it is often the poor population that is primarily exposed to

enforcement actions. Vietnam's ambitious plans to develop hydropower will be impacted by watershed degradation and siltation caused by forest loss in upland watersheds just as will Vietnam's potential to harness financing from the rapidly growing carbon finance markets. Habitat loss and illegal hunting and trade of high-value species for domestic and international markets threaten much of Vietnam's remnant forest biodiversity.

Governance and Forest Crime

The legal framework has developed rapidly in recent years – an indicator that the Government of Vietnam is committed to addressing the forest crime problem. However, the legal framework is still ambiguous and over-complex and contains loopholes that enable criminals to make easy financial gains with little risk of legal sanction. Prosecutions are minimal, and fines for forest crimes are extremely low relative to the gains that can accrue. These weaknesses diminish the deterrent value of the legal framework. In poverty terms, the legal framework is regressive since it places the enforcement burden almost entirely on the 'needy' (mostly farmers living in or near forests) rather than the 'greedy' (often well-connected businessmen and officials). It is the latter that drive illegal logging and wildlife trade and who benefit most from the proceeds of forest crime. Addressing legal constraints to inspections of sawmills and wood processors would help balance the enforcement response – as will recent efforts by the Forest Protection Department (FPD) to target organized criminals with its enforcement 'Task Force' and inspections of restaurants and markets to suppress wildlife crimes.

The policy framework has seen the introduction of encouraging reforms in recent years that signal a gradual move away from inefficient state management of forests to more participatory approaches. However, institutional fragmentation (e.g., between Forest Department and Forest Protection Department and between different enforcement agencies), low incentives for legal forest use, incompetent state management through state forest enterprises (SFE) and a heavy reliance on state subsidies have diminished investment in forest management and have created opportunities and incentives for forest crime, sometimes by the state institutions charged with forest management responsibility. Incentives for forest management are needed to go well beyond the 'subsidy culture' established by the national target program for forests (known as the Five Million Hectares Reforestation Program or 5MHRP); the incentive program will require a re-thinking of current forest use and benefit-sharing regulations.

Reforms to state forest management institutions have been limited, resulting mostly in the transfer of forest management responsibility from one state entity (e.g., state forest enterprises) to another (e.g., forest management boards). This has released relatively little forestland for allocation to households. Forestland tenure is insecure for most forest users and diminishes the value of reform for both poverty reduction and sustainable forest management. Firm political and sector leadership, backed by technical and financial resources are required. A further impediment to sustainable forest management is the harvesting quota system. The Prime Minister sets the national quotas following advice from the Ministry of Agriculture and Rural Development (MARD). Quota allocations are made to provinces that are then allocated to state forest enterprises. Quota harvesting and transport is poorly monitored and, since the national quota is now extremely low (150,000–200,000 cubic meters per annum), most forests are effectively closed to all extractive uses. This works against forest protection efforts by eliminating incentives for

forest management and protection and by introducing plentiful opportunities for forest crime. Replacement of this system with an approach based on sustainable forest management planning with annual allowable cut levels would help redress this issue.

Forest Crimes and Trade

Vietnam is undergoing a transition to a globalized market-driven economy, but capacities to manage this transition, which include capacity to manage legal and illegal wood entering supply chains, has not kept pace. Vietnam's fast-growing wood processing industry has also created the *opportunity* for illegal imports to flourish and has *motivated* substantial trade in stolen wood exported illegally from source countries. A similar picture applies to the wildlife trade, where much wildlife passes through Vietnam and is re-exported to satisfy market demand in China. The significance and international dimension of forest crime in Vietnam poses a challenge to a country seeking closer economic integration with the international economy as a whole and a practical reputational challenge because continued growth may well depend on consumer perceptions of the legitimacy of wood supplies. Estimates of the national wood balance indicate that a significant proportion of raw material supply comes from unrecorded sources, including illegal timber sourced domestically and imported. Data show that Vietnam imports large amounts of timber, especially from Cambodia and Lao PDR, totaling nearly 900,000 cubic meters in 2006 alone (VIFORES 2007). Forest concessions in both these countries have been closed for several years, and so it is most likely that much of this wood is stolen.

Vietnam's wood industry has grown rapidly over the last 5 years and was said to be worth over US\$2.4 billion in turnover in 2007. A few wood processors make diligent efforts to ensure that wood is sourced from legal and even from sources certified by the Forest Stewardship Council (FSC). However, use of FSC-certified or legally verified sources is not the norm for most of the wood processing industry, especially those catering to burgeoning domestic markets for construction materials, furniture, and handicrafts. Stronger enforcement efforts (targeting wood processing industries), progressive government procurement policies (such as those now in place in a number of European countries), and verifiable systems to ensure wood is legally sourced will be required to counter a growing reputational and market access risk in Vietnam's main export markets.

Prevention, Detection, and Suppression of Forest Crime

Vietnam devotes substantial resources to forest protection and enforcement efforts across the country. The Forest Protection Department has recently established a new task force on forest protection to help strengthen its response to corruption and organized crime. Awareness of forest crime issues appears to have improved in recent years among judiciary, prosecutors, and police.

Refined strategy and tactics offer considerable potential for improving the impact and cost-effectiveness of enforcement efforts. Current enforcement efforts focus on the direct 'proximate' causes of forest crime – those caught violating law at the forest level or during the transport phase to village, district, and provincial level. This approach has some limited success in catching the 'foot-soldiers' of forest crime and far too much success at capturing the many people who depend on forests for livelihoods but allows the drivers and organizers of forest crime to escape largely unpunished. A more cost-effective approach would include a stronger focus on the consumers of illegal wood and

wildlife – notably sawmills and wood-processing enterprises. The Forest Protection Department has taken recent steps that promise to tackle wildlife trade in this manner through regular visits, inspections, and suppression of illegal activity at markets and wildlife restaurants. Licensing sawmills and wood-processing shops – supported by legal reforms to enable regular inspections without prior notification and imposition of stronger penalties for being in possession of stolen wood – offers potential for substantially reducing overall levels of forest crimes.

As a long term-program aimed at helping to address the fundamental supply/demand imbalance in the national wood supply, the 5MHRP has a great potential to help ease the forest law enforcement challenge. A serious risk posed by the manner of implementation, however, is that of misuse and abuse of budget resources. As discussed in a companion piece to this study, planning, budgeting, and control provisions for the 5MHRP are weak and limited (World Bank 2009). This presents enormous opportunities for fraud and corruption at various levels in the program. Introduction of provisions for improved planning, controls, and audits are urgently needed.

Unlike many other countries worldwide, Vietnam does not routinely monitor forest resource change using spatial technologies such as aerial and satellite methods. These approaches have proved extremely cost-effective within the Southeast Asian Region. This greatly limits the ability to understand changes in the forest or to motivate policy and regulatory responses to illegal or unsustainable activities.

Enforcement agencies beyond the forest sector have roles to play in forest crime management, and are being deployed with varying degrees of success. Prime Minister's Decision 08/2006 urges more inter-agency cooperation, particularly between Ministry of Agriculture and Rural Development, Ministry of National Defense, and Ministry of Public Security. This needs to be supported by resources and specific implementation proposals to make a tangible impact. The National Audit of Vietnam and the General Department of Customs (both under Ministry of Finance) and the Ministry of Natural Resources and Environment have been involved in various aspects of forest crime enforcement. The former has helped identify corruption within the national target program for forestry and the latter through interception of illegal log shipments and wildlife at border points. A targeted program to help improve awareness and capacity of these agencies could help strengthen their role in forest crime detection and enforcement. The Anti-Money Laundering Information Center under the State Bank of Vietnam was recently established to provide intelligence on money laundering and could in future play an important role.

Toward a More Effective Strategy

This assessment identified 6 areas where improved strategy and tactics could improve overall enforcement performance:

- Focus enforcement effort on the point of sale of illegal forest products – sawmills, wood processors, and markets and restaurants selling wildlife products, and at export points;
- Improve inter-agency coordination at both local and central level;
- Strengthen human resource capacity of enforcement agencies to implement the law;

- Modernize forest violation reporting systems as a tool for targeting enforcement effort;
- Adopt and integrate modern systems for forest monitoring and surveillance into enforcement planning, such as systematic aerial surveys and use of radar and satellite imagery; and
- Introduce basic forest asset security thinking into forest planning.

CHAPTER 1. AN OVERVIEW OF FOREST LAW IN VIETNAM

Vietnam has embraced policies and institutional arrangements to expand and improve forest resources and to make forest management sustainable. The Government of Vietnam has made great efforts over the past decade to strengthen the contribution of forestry to rural growth and poverty reduction and to improve performance in the sector. At many levels these are succeeding: Vietnam has rapidly expanded forest plantation area, there has been a phenomenal increase in secondary wood products production and exports, and exports of plantation-based chips for pulp are rapidly increasing. Remaining challenges in Vietnamese forestry, including the continuing loss of natural forests, encroachment on forest areas, trade in endangered species, and weaknesses in the effectiveness and efficiency of public spending, are due to many and varied factors.

Like many that of many countries, Vietnam's credibility as an exporter of legitimately sourced wood-based products is coming under increasing scrutiny. In addition, attention is increasingly being drawn to Vietnam's role in the international trade in wildlife and wildlife products, including products controlled under the Convention on International Trade in Endangered Species (CITES), and to the effectiveness of the Government in controlling illegal transit and trade. Vietnam's exposure to losses in its natural environments and damage to the reputation of its exports and exporters puts special priority on its development and maintenance of a robust and credible forest law enforcement system. Law enforcement in any sector can be an emotive and controversial topic and discussions of law enforcement policy are seldom based on data and a sound analytic framework. This report is aimed at supporting a stronger discussion among a range of stakeholders, including Vietnamese forestry officials, law enforcement authorities, civil society interests, forest-based industry, international donors, and others, on Vietnam's forest law enforcement policies and programs.

Where the goals and objectives of the forestry sector are formalized in laws, regulations, and other requirements and obligations, and where those laws relate specifically to criminal and administrative provisions and penalties, law enforcement is part of the forest development challenge. Forest laws, their enforcement powers conveyed on different authorities, perceptions among stakeholders about the legitimacy of control over resources, and the ways in which control is acquired and exercised are among the key governance-related matters in the forest sector.

1.1. Structure of Report

This report provides an overall assessment of the status and challenges of forest law enforcement and governance in Vietnam. It was prepared as part of a program of studies, technical assistance, and capacity building aimed at strengthening these aspects of the sector. These included training for forest law enforcement officials, assessment of forest crime databases and information systems, reviews of interagency law enforcement cooperation, surveys of judges, prosecutors and police, and study tours for Customs and forest law enforcement officials. Chapter 1 begins with a review of the context for forest

law enforcement in Vietnam that considers the country's overall governance context, issues, and constraints raised by forest policies and management strategies, and the dynamics of international and regional forest products market. The chapter concludes by discussing the risks that forest law enforcement and governance challenges pose to Vietnam, to its forest development goals and objectives, and to forest-dependent people and enterprises. Chapter 2 describes and assesses the laws and regulations in place affecting forest resource use in Vietnam and the ways these relate to the policy and development objectives put forward for the sector. Chapter 3 assesses law enforcement performance results in Vietnam. Chapter 4 summarizes the report's assessment and offers recommendations.

The Introduction continues with discussion of two important organizing principles underlying the report and its analysis. The first is a holistic interpretation of what constitutes forest law enforcement. The second is its use of a risk-based and data-informed, but not evidence-constrained, approach. As discussed in detail in Chapter 2, precision is needed in using terms such as "crime", "criminal" and "legal". Vietnamese law establishes the specific meaning and definition of these concepts in Vietnam, and it defines judicial processes for reaching conclusive findings in relation to specific charges and allegations. The policy analysis in this report does not constitute an attempt to apply other standards or approaches. As practical matters, however, from an international perspective, certain basic facets of forest law are consistent across countries: virtually all countries have a framework of laws and regulations that proscribe or limit certain activities and transactions in relation to forests and forest resources.

1.2 Elements of Forest Law Enforcement

Forest law enforcement is not simply the investigation, arrest, or prosecution of suspected criminals. In this report, forest law enforcement encompasses the full range of measures, strategies, programs, and policies that prevent detect and suppress forest crimes. While reactive measures and responses to crimes are critical components of law enforcement, the need to resort to punitive measures after illegal activities have occurred has to be viewed as a sign of weakness in natural resource policy and management, and as an indicator of a failure to prevent crime in the first place.

In common usage, the subject of forest law enforcement includes the offenses enumerated as follows:

- Illegal logging,
- Land encroachment
- Corruption of officials
- Abuses of the forest quota system,
- Illegal wildlife trade,
- Illegal transport and import of timber,
- Arson, land clearance, and conversion,
- Intimidation and violence directed at forest protection rangers and other enforcement officials,
- Forest misclassification,

- Improper confiscation and resale, and
- Using infrastructure development as a pretext for salvage logging

Vietnam's forest laws are, as a practical matter, consistent with those of most other countries. Vietnam forest laws prohibit people from taking, using, or destroying forest resources that either do not belong to them or to which they do have a recognized right or authorization. The questions of rights, privileges, and uses that determine legality or criminality are the same concerns of forest policy generally. Forest laws concern forest resources and the conditions and circumstances under which certain activities and uses may occur; and the laws are about relationships among potential resource users. The same act or use (e.g., felling a tree or trapping an animal) may be legal or illegal depending on where it is done, and when and by whom it is done, depending among other things on approval or authorization from someone or some authority. Forest laws, at their core, are about relations among people and between people and authorities, more than they are merely about forest resources. Law enforcement becomes an issue when and where actual practices and resource use diverges from the expected and socially sanctioned uses of resources. Forest law enforcement is thus deeply embedded in resource policy, management, administration, and the whole issue of distribution and ownership of resources.

Three theories of crime and prevention. Prevention is the component of forest law enforcement that has the broadest and most far-reaching links into natural resource policy, management, and linkages to matters of overall economy- and society-wide good governance. Criminologists define crime prevention simply as the disruption of the mechanisms that cause crime. Among the three most important groups of theories of crime and associated methods of prevention are *structural*, *psychological*, and *circumstance or situational views*.

Structural theories of crime revolve around issues related to the structure of society and the functioning of social relationships. These theories emphasize such matters of social class conflict, unequal distribution of wealth and opportunity, racial and ethnic tensions, and poverty. The frequently offered suggestion that illegal logging is caused by poverty is an example of a structural theory of forest crime. Other structural theories of forest crime causation in developing countries make reference to excessive and indiscriminate consumption of wood by rich consumers. Generally, inasmuch as these theories view crime as arising from defects in society, they lead to suggestions that social change is needed to prevent crime.

Psychological approaches to crime focus on the behavior of the individual criminal. Deficiencies and defects in individual personalities, mental capacities, and weaknesses in moral and ethical judgment are among causes of crime that these approaches emphasize. Psychological theories tend to promote changing the individual as the means to prevent crime. These approaches to change the individual can involve training, counseling, reform, punishment, and continuing incarceration. Psychological causes of crime are generally considered to be of limited relevance in the developing country's forestry. In many industrialized countries, forest crime is often closely associated with narcotics and with so-called eco-terrorism, some of which may be considered to have roots in psychological problems of offenders.

Circumstantial or situational theories of crime generally involve some notion that crime is opportunistic and can occur when the environment or circumstances permit. Circumstantial

theories tend to build on the premise, supported by considerable evidence, that many, if not most, people will commit crimes when they consider the probability of arrest and sanction to be low and the potential for gain to be high. In forestry, and in developing country forestry in particular, the low levels of forest management, remoteness, difficulty of access, and many other factors combine to present very substantial opportunities for crime (Magrath and others 2007).

Specific examples of forest crime prevention measures include:

- Forest policies that create strong incentives for forest stakeholders to comply with the law and which pay attention to the macro ‘drivers’ of forest crime, such as imbalances in wood supply and demand;
- Well-designed forest management systems that create incentives for compliance and that reduce opportunities for circumventing management regulations;
- Clear and effective legal frameworks – appropriate to local needs that can be enforced and monitored;
- Public awareness and information provision to ensure that state agencies and the public are aware of forest law and management rules;
- Transparent and open forest governance systems to help deter corruption and collusion.

Detection in law enforcement. Information is a critical dimension of any law enforcement process, and probably the answers to *whether, where, and when a crime has occurred* are most important in a law enforcement system. As discussed in more detail below, there is a set of policy problems related to the intrinsic uncertainties of criminal activity and the need for a risk-based approach that these imply. Programmatically, however, detection has to be a specific component of any law enforcement system. In most criminal justice areas, crimes are reported by victims or are, more rarely, directly observed by police or other authorities. Under-reporting of crimes is widespread, often due to fear or embarrassment on the part of victims and distrust of police, or because victims have little incentive to report if they perceive the likelihood of recovery, compensation, or punishment of the perpetrator to be small.

In forestry, detection of crime is complicated by a number of additional factors. The spatial dispersion of forest resources, difficulties of access, and variations in natural processes can make it physically difficult for the manager to recognize the effects of crime. Establishing whether a forest fire, for example, was due to natural causes, accident, or deliberate arson can require sophisticated forensic methods.

Forest crime detection can also be complicated because of institutional considerations related to forest management systems. Forest managers, especially in developing countries, seldom have accurate and current data on forest areas, volumes, and conditions. Without knowledge of expected inventory parameters, it is virtually impossible for managers to estimate losses possibly due to criminal activity. Managers and field staff may moreover have limited incentive to report changes and losses if they could be held in some way accountable. As discussed in Chapter 2, for example, relatively slow losses in forest area can accumulate over extended periods when there are not serious and deliberate monitoring efforts.

Detection includes a range of techniques and approaches to collecting and processing information on forest crime, such as the following examples:

- Forest violation reporting and management systems;
- Case-tracking systems to help identify repeat offenders and target enforcement efforts;
- Anti-money laundering efforts to provide intelligence on suspicious financial flows for follow-up by security agencies;
- Forest crime monitoring systems using surveillance approaches, including spatial surveillance systems (including aerial surveys and GIS-based monitoring);
- Field-based surveys and patrols.

Suppression of crime. Ideally, good policies, sound management and prevention would keep crime to a minimum, and would reduce the need for resort to reactive measures against crime and criminals. Unfortunately, experience shows that even in the best-managed forestry sectors, as in all areas of human and economic activity, there will always be exposure to a risk of crime. While some specialists separate crime suppression into investigation and prosecution or into further additional parts, the critical unifying considerations are the reactive and strategic nature of the challenges. Police, investigators, and prosecutors have limited resources and are constrained by rules of criminal procedure and other legal and policy requirements, and typically face large numbers of crimes and criminals all seeking to conceal their actions, evade arrest, and escape punishment.

It is important to recognize that, subject to legal and other constraints, the design and conduct of crime suppression efforts involves significant scope for policy choice and innovation. These include choices of targets, priority setting across different crimes and victims, development and use of informant networks, and offers of witness protection and plea bargaining. Within any specific legal system and tradition, functional responsibilities (investigation, prosecution, arrest, indictment, etc.) may be assigned to different agencies and individuals. The ability and interest in cooperation and collaboration, and the specific mechanisms through which joint actions are conducted, may all be subject to discretion and innovation. Strategic choices in suppression will be influenced by the balance of such objectives as delivering a deterrent to future crimes, recovering the proceeds of crime, imposing punishment, or identifying and dismantling criminal networks.

Responding to crimes when and after they occur involves considerable risk and sometimes the potential for danger to police, victims, suspects, and bystanders. Suppression includes a range of investigation techniques resulting in sanctions and prosecutions, including:

- Field investigations and arrests;
- Anti-corruption investigations;
- Administrative and criminal sanctions, such as fines, confiscations, and imprisonment.

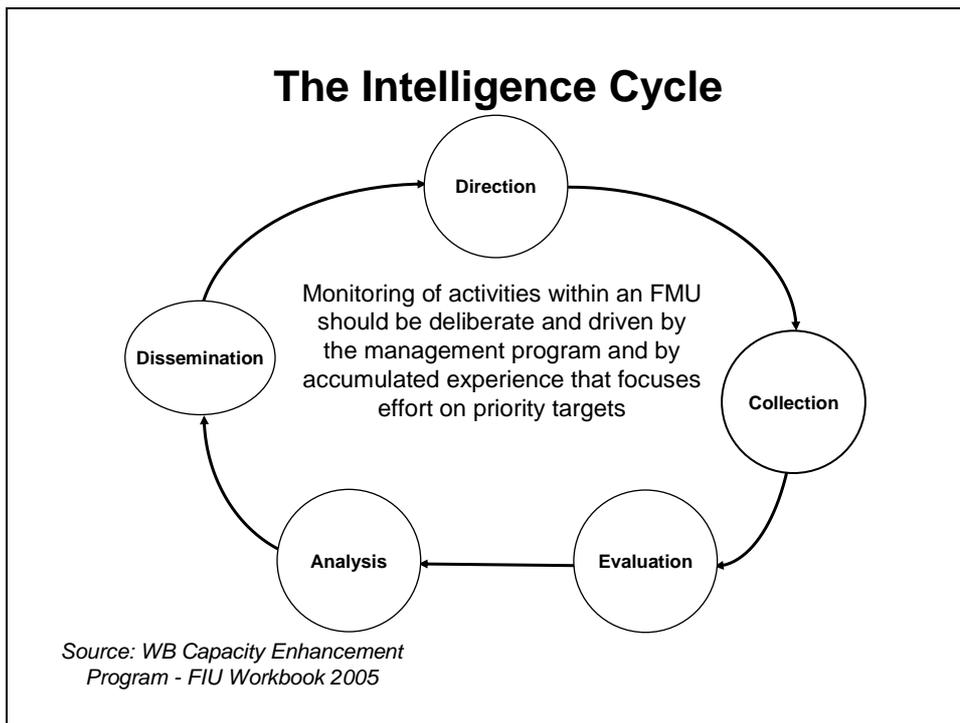
1.3. Risk-based, Data-informed Approach

Data limitation is an inescapable part of the problem when analyzing law enforcement in any sector, and especially forestry. Comprehensive and consolidated data on crime are, virtually by definition, nonexistent. In contrast to legal activities, which are subject to government reporting requirements, taxation, surveys, and other forms of supervision that can generate reasonably accurate and consistent information and data, criminal activities are concealed, deliberately obfuscated, and misrepresented. Government statistics on law enforcement results such as numbers of cases, arrests, sanctions, and seizures of contraband may be indicative of underlying crime problems. They invariably reflect not only the level of crime but also the level of effort and its efficiency in pursuing crime. Time series data on seizures of illegal logs, for example, does not directly provide meaningful insight into the level or trend in illegal logging. Seizure, incident, case, or arrest data does not alone convey meaningful information on what was not captured, how many crimes went undetected, or how many criminals evaded arrest. In some criminal justice areas, victimization surveys can provide a basis for adjusting and interpreting data on enforcement results; but this is seldom feasible in forestry.

Risk Assessment and the intelligence cycle. Since data on enforcement results cannot be relied on to convey a realistic picture of an underlying crime problem, policymaking needs to differ qualitatively from that in other sectors. Rather than to be constrained by the availability of data, law enforcement needs to be informed by data but, more fundamentally, to be based on risk. As suggested by the three theories of crime causes, the conditions, incentives, and motivations that can lead to crime are relatively easy to identify and assess. Factors such as poverty, imbalance between raw material supplies and industrial processing capacity, the quality and coverage of forest management planning, and the allocation and determination of harvest rights can be considered from the perspective of the ways they may contribute to risks of illegal logging, arson, wildlife poaching, and other crimes.

A complimentary approach also employed in this assessment is the Intelligence Cycle illustrated in Figure 1.1. At the outset of considering a forest law enforcement problem, policymakers initiate the collection of information and data on the basis of concerns, doubts, or allegations. Based on the direction of policymakers, analysts collect information from a variety of sources; evaluate the validity, priority, and significance of different pieces of information and data; analyze the information by consolidating it into intelligence reports and assessments; and finally disseminate the refined intelligence to a range of users. As a result of this last step, when merited, policymakers may redirect the process into follow-up on more specifically defined risks or questions.

Figure 1.1. The Intelligence Cycle



In the context of the largely undefined forest crime situation in Vietnam, the objective in this report with respect to crime data and information is not to reach definitive conclusions or to raise specific allegations. The objective is therefore to point to patterns of risk and to explore the extent and adequacy of the methods and systems by which Government currently addresses them.

Forest crime risk indicators in Vietnam. While scale of forest crime in Vietnam is not understood with any certainty, available data from violations reporting systems and forest cover monitoring are strongly suggestive of significant and widespread problems. Recorded forest violations range from 30,000 to 50,000 cases per annum. These probably represent only a fraction of the number of forest violations actually committed. Because of lack of monitoring, poor case handling and incentives that discourage local authorities from accurate and complete reporting, many violations go undetected and under-reported. Only a very small fraction of reported violations are thought to be investigated and only tiny proportion of forest crime results in criminal prosecution.

Just as no one knows the actual extent of forest crime, its impact on forest resources is also unknown. It is likely however that illegal activity has been a major factor in the trends that have led to the current impoverished condition of Vietnam's forest. Only about 7 percent of Vietnam's remaining forests are considered *primary* and 70 percent of remaining natural forest is poor-quality *secondary* forest with little immediate economic value for timber supply and of much reduced value for biodiversity conservation. Primary natural forest has been declining in extent by an average 29,000 hectares per year despite policies calling for tight restrictions on logging in natural forests since 1997. The rapid depletion and level of threat to key wildlife species is also indicative of the extent of forest crime.

Crimes have different economic consequence. Crimes involving theft, for example, are largely resource transfers from a victim to the thief. They involve no direct or immediate net social loss although theft of renewable natural resources may involve dynamic losses in the form of lost or sub-optimal regeneration and regrowth. Arson, poaching, and some other crimes may generate direct, net social losses by involving destruction of resources or by lowering productivity and future yields. The ways in which different acts lead to economic consequences need to be considered in assessing the significance of crime, and even for judging the value of criminalization of the acts in the first place.

Forest laws in Vietnam seem to be violated because benefits of illegal activity are perceived to exceed the costs. Individuals driven by poverty and desperation commit some forest crimes; others crimes are orchestrated by large-scale criminal enterprises deliberately preying on weaknesses in the management of forest resources. Forest crime frequently involves corrupt local officials who benefit to a much greater extent and are exposed to far less risk in comparison with those involved in the day-to-day work of illegal cutting and transport of wood products from the forest. Sawmills and furniture enterprises, often unknowingly, are the main consumers of stolen timber and probably generate the largest profit margins in the stolen timber 'value chain'.

Other impacts of forest crime have not been researched in quantitative terms. However, it is likely that forest crime results in millions of dollars worth of revenues lost to the state each year and reduces the medium- and long-term potential of Vietnam's forest sector to generate future revenues. Forest crime has a disproportionate impact on the poor since a large proportion of Vietnam's poor are dependent to some extent on forest resources for livelihoods and yet the poor shoulder a share of the burden of enforcement. Vietnam's ambitious plans to develop hydropower will be impacted by watershed degradation and siltation caused by forest loss in upland watersheds just as will Vietnam's potential to harness financing from the rapidly growing carbon finance markets. Habitat loss and (especially) illegal hunting and trade of high-value species for domestic and international markets threaten much of Vietnam's remnant forest biodiversity.

Thus, while a definitive picture of the forest crime problem in Vietnam is not available, data and information that are available lend a strong presumption that the problems are widespread and significant. The next chapter takes up the task of applying in more detail the risk-based approach to looking at the Vietnam's forest resources.

CHAPTER 2. FOREST LAWS AND POLICIES

Critical for any assessment of forest law enforcement is determining what is being enforced and assessing whether policies, laws, regulations, and the government programs are aligned to encourage compliance across the range of actors using forest resources. Alignment on these dimensions should help to ensure that enforcement efforts are targeted at appropriate problems, that artificial or perverse incentives are not encouraging noncompliance, and that the whole orientation of sector policy serves to prevent and deter law enforcement problems before they emerge. This chapter reviews the overall directions and objectives of forest policy in Vietnam and explores the compliance and sustainability outcomes they promote.

Tale 2.1 simplifies the positive or negative direction that incentives and outcomes can combine in forestry and natural resource management. Actors in the forestry sector may be encouraged by the incentives that emerge from policies to either comply or not comply with the requirements of laws and regulations. The consequences may be either sustainable (positive) or unsustainable (negative). Ideally, laws and regulations will aim to prohibit activities that will lead to unsustainable outcomes and to promote activities that will lead to sustainable results. Policy should aim to avoid combinations of regulations and incentives such that compliance will lead to unsustainable results, or where sustainable outcomes require noncompliance. Where such perverse combinations have perhaps inadvertently been put in place, or where they arise because of conflicts among policy objectives or for other reasons, they point to a need for reconsideration of policies, legislation, or the ways in which they are implemented or enforced.

Table 2.1. Direction of Incentives and Outcomes

		<i>Outcome</i>	
		<i>Sustainable</i>	<i>Unsustainable</i>
<i>Direction of Incentives</i>	<i>Compliance</i>	+	-
	<i>Noncompliance</i>	-	+

2.1. Overall Policy Directions

Vietnam’s official forestry policy seeks to increase overall forest cover and protect natural forests, promote forestland tenure reform and land allocation, reform state forest enterprises, and improve forest-based livelihoods and employment opportunities.¹ Central Communist Party decisions and resolutions provide the broad framework for the sector policy. The National Assembly translates these into laws while line ministries issue the subsequent decrees, decisions, and implementation guidelines. Provincial party and local authorities also play a role in policy formulation. This has sometimes led to inconsistent policy direction and implementation in different parts of the country. Policy and particularly the

¹ This section draws heavily from Vietnam – Aligning Public Spending with Strategic Priorities in the Forestry Sector (World Bank 2009).

legal and program frameworks in forestry and related sectors are complex and sometimes appear confusing.

The 2001 Communist Party of Vietnam (CPV) policy established 5 objectives for the sector to be realized by 2010: (a) increasing overall forest coverage to 43 percent of the national land area; (b) completing the allocation of forestland to households and other entities; (c) promoting forestry-based livelihoods; (d) protecting 10 million hectares of natural forests through management contracts with smallholder households; and (e) accelerating the development of forest plantations.² A Party resolution in 2004 on environmental protection, including forests, emphasized action to be taken to conserve watershed and coastal-protection forests and to reduce the impact of road construction on forests (CPV 2004). The resolution also called on the government to allocate not less than 1 percent of its expenditure to environmental protection.

2.2. The Forestry Legislative Framework

Several laws, decrees, regulations, and other instruments address forests and forest resources and have bearing on forest law enforcement and governance in Vietnam. These include the *Constitution*, the *Penal Code of 1999*, and the *Law on Forest Protection of 2004* and others. Much of the legislative framework addresses the structure of the public sector apparatus, responsibilities and mandates of various entities, and the basic aims and intent of development and use of forest resources.

The *Land Law*, for example, re-affirms that land is the property of the State, but that certain types of land can be allocated to public or private entities by the government for periods of between 20 and 70 years. Under the *Land Law*, forestland is a sub-category of agricultural land and further categorized into production, protection, and special-use forests (national parks and nature reserves), consistent with the *Forest Protection and Development Law* of 2005. Private ownership is not allowed, but it is possible to inherit, transfer, or exchange forestland. The *Land Law* helps clarify the framework for forestland tenure and creates opportunities to allocate forestland to communities as well as to individual households, public management boards, and other state entities.³

The *Forest Protection and Development Law* of 2005 provides the legal framework for the management of forests.⁴ Consistent with the *Land Law*, it defines forests according to 3 categories: production, protection, and special use. The Law also provides for the assignment of forests to communities for the first time. This reform reflects changes in 2003 to the *Land Law*, and both laws now provide the basis for community forestry and the co-management of forests. The *Forest Protection and Development Law* also provides clearer terms for the leasing of production forests, including to households. It confers responsibility on forest owners for protection and requires ministries, including the Ministry of Public Security, the National Ministry of Defense, and the Ministry of Natural Resources

²The 2001-2010 Strategy accelerated a Socialist-oriented industrialization and modernization agenda, building an infrastructure base to lead Vietnam into an industrial economy by 2020. See CPV IX Congress document, 2001, and X Congress document, 2006; Social Economic Development Orientation in 2001-2005, and Social Economic Development Orientation in 2006-2010.

³*Land Law* (2003), passed by National Assembly. Decision 13/3003/QH11, November 26, 2003, National Assembly.

⁴*Forest Protection and Development Law* (2005), final amended after the 6th Congress of the XI National Assembly. Unofficial translation by Forest Sector Support Program Coordination Office.

and Environment, to collaborate with MARD at sub-national levels to ensure implementation.

The Law recognizes distinct categories of forest ownership, with varying responsibilities and rights for forest management. Most types of forestry use are permitted by the owners of production forests subject to compliance with management regulations. Within certain limits, non-timber forest products can be harvested and deadwood can be collected in both production and protection forests.

The *Law on Environmental Protection* of 2005 prohibits all activities that destroy or damage forests. It specifies the requirements for strategic and project-level environmental assessment to be undertaken, including assessments of both forestry projects and other projects that could impact on forests.⁵

2.3. Criminal Provisions of Vietnamese Forest Law

The Vietnam Penal Code classifies crimes as *less serious crimes*, which cause no great harm to society; *serious crimes*, which cause great harm to society; *very serious crimes*, which cause very great harm to society; and *particularly serious crimes*, which cause exceptionally great harms. The Code provides for acts “showing signs of crime” but posing minimal danger to society; these acts are therefore not classified as crimes and are to be handled by other presumably administrative measures. Provisions on forest crimes, similar to those addressing other crimes, distinguish among acts causing serious consequence, acts by repeat offenders, acts by officials, and acts committed in an organized manner. Gradations of fines, penalties, and terms of imprisonment are also specified proportional to the defined significance of the offense.

The Penal Code (section 8) defines crimes as specific proscribed acts that endanger society of which a number could involve forest resources. These include stealing property (Article 138); destroying or deliberately damaging property (Article 143); laundering money and/or property obtained through the commission of crime (Article 251); amending and/or using certificates and papers issued by agencies and/or organizations (Article 266); embezzling property (Article 278); and abusing positions and/or powers to appropriate property (Article 280).

The Penal Code also defines 5 specific forestry crimes:

- Breaching regulations on forest exploitation and protection (Article 175)
 - (a) illegally exploiting forest trees or committing other acts violating regulations on forest exploitation and protection,
 - (b) illegally transporting and/or trading in timber;
- Breaching regulations on forest management (Article 176)
 - (a) illegally assigning or taking forests and/or forestland,
 - (b) illegally permitting the transfer of the use purposes of forests and/or forestland,
 - (c) illegally permitting the exploitation and/or transportation of forest products;
- Destroying forests (Article 189) — arson or other acts of forest destruction;

⁵ *Law on Environmental Protection* (2005), passed by National Assembly November 29, 2005, No. 52/2005/QH11.

- Breaching regulations on the protection of precious and rare wild animals (Article 190) — illegal hunting, catching, killing, transporting and/or trading in precious and rare wild animals;
- Breaching the special protection regime for nature preservation areas (Article 191) —exploiting nature preservation areas, national gardens, natural relics or other natural areas put under special protection.

The *Law on Forest Protection* (Article 12) specifies a range of “prohibited acts”, including illegal logging, hunting and collection; forest destruction; ignoring forest fire prevention and pest regulations; encroachment on forestland; illegal forest products transport; and illegal grazing. The Law imposes a more restrictive management framework for special-use forests, providing for only deadwood collection within service areas (that usually cover only a small proportion of each special-use forest) and allowing forest management planning boards to contract out both forestry protection and development responsibilities for forest areas in the rehabilitation zones (usually the largest proportion of a special-use forest). The *Law on Forest Protection* provides that violations may be treated as administrative violations or as criminal offenses under the Penal Code (Article 84). It also provides for collection of liquidated damages from offenders (Article 86).

Article 4 of the Penal Code assigns responsibility to the police, procuracy, court, judicial and inspection bodies, as well as “other concerned agencies” for preventing and combating crime. Article 81 of the *Law on Forest Protection* gives authority to forest rangers to conduct inspections, gather evidence and conduct investigations, sanction administrative violations, and pursue criminal matters. Article 39 assigns main responsibility for ensuring compliance with forest protection to the Minister of Agriculture and Rural Development, including providing direction to provincial and municipal People’s Committees. The Ministry of Public Security and Ministry of Defense are also mandated to coordinate and cooperate in enforcement.

The Government Decision on forest management regulations sets out the regulations for managing the 3 forest management categories: production, protection, and special use forests.⁶ The general thrust of the regulations is that most of the forest estate remains closed to most types of extractive forest use. Where scope is introduced for local engagement in forest management, implementation guidelines appear to mostly foreclose these opportunities. There are 2 likely implications of this approach. The first is that the forest protection force will not be able to implement the regulations effectively, as was the case with Decision 08/2001. The second is that local-level forest users will continue to extract forest resources opportunistically since there are no incentives for compliance.

New provisions introduced in the Government Decision 186/2006 include that forest protection units are now empowered to contract and pay local forest users to help enforce the law (although this rarely happens in practice) and forest managers are granted increased discretion to enter into management agreements with local communities with the approval of the province or central government. Because of the strong emphasis on prohibition, the lack of attention to forest management incentives and limited enforcement capacity at field level, the Government Decision 186/2006 is likely to generate many reported violations

⁶ Promulgating the Regulation on Forest Management, Decision 186/2006/QD-TTg, (Government of Vietnam, August 14, 2006).

(since virtually all uses of forests will be deemed illegal) but will be of little value for prevention, detection, or suppression purposes.

The Guiding Articles of the Criminal Code Relating to Forest Protection and Management (Joint circular 19/2007/TTL, 2007) provides guidance to assist authorities in interpreting Article 189 of the Penal Code on the seriousness of forest crimes. This determines that the consequences of forest crimes can be considered serious if these (a) exceed the threshold for administrative punishment and (b) cause a loss of forestry product value exceeding certain thresholds set for certain types of forest. Guidance in the joint circular conflicts with Decree 139/2004, and this has reduced implementation performance.

2.4. Key Government Programs and Institutional Arrangements

With regard to forest governance and forest law enforcement, other line ministries and agencies play important roles. Security services (police and defense), judiciary, customs, and finance all have roles reflected in recent decrees and laws. Institutional reforms with direct relevance to tackling forest crimes are also taking place within these agencies and ministries. For example, under the Ministry of Public Security, an environmental police force was established in 2007, with the possibility in the future it may take the lead role in tackling environmental crimes, including illegal logging. Under the State Bank, a new financial intelligence unit, the Anti-Money Laundering Information Center, was established which, in future, may be able to assist investigation agencies by providing information on financial transactions that could point to money laundering from the proceeds of illegal logging.

The Government of Vietnam recognizes that organized forest criminal networks play a corrupting influence on Vietnam's institutions, requiring robust inter-agency responses. The Forest Law Enforcement and Governance (FLEG) assessment mission learned from the Quang Nam Provincial People's Committee and provincial police of the corrupting and pervasive nature of such networks in their province.

The Ministry of Public Security and especially the economic police responsible for anti-corruption investigations need to engage more effectively as part of inter-agency efforts to tackle forest crime. The social impacts of illegal logging are also well-recognized, particularly those to vulnerable and poor communities; in this regard, the Ministry of Labor, Invalids, and Social Affairs and Committee on Ethnic Minorities have key roles to play, particularly in forest management 'socialization' reforms.

As lead agency on the Convention on Biological Diversity and the National Environmental Protection Strategy, the Ministry of Natural Resources and Environment (MONRE) has a role to play in monitoring and reporting on the impacts of forest crimes and perhaps by supporting improved coordination at provincial and district level. The Ministry of Finance (e.g., through the General Department of Taxation and the General Department of Customs) and the State Audit of Vietnam have important roles to play in maximizing the revenue contribution that forests can make to the national economy. In terms of economics, lost revenues caused by theft of timber, wildlife, and the deliberate burning (arson) of forest resources cannot be re-invested in poverty reduction.

The highly decentralized nature of governance institutions in Vietnam further complicates efforts to coordinate and implement effective FLEG strategies. There are now 64 provinces,

approximately 650 districts, and over 10,000 communes to which most forest management functions have now been delegated. Given high levels of decentralization, much more effective management and reporting arrangements are needed to monitor policy implementation and ensure resources are targeted and used efficiently across provinces, districts, and communes. Current systems are extremely weak and largely ineffective.

Stronger institutional incentives will be needed to encourage real engagement by non-MARD institutions. These must go beyond the coordination mechanisms currently being introduced at various levels, important though they are. This is the major institutional FLEG challenge in Vietnam, and senior-level leadership will be required to identify and introduce suitable incentives. These might include creating dedicated budgets for inter-agency work on forest crimes, seconding staff from Ministry of Public Security and other agencies to the Forest Protection Department, substantially strengthening penalties for forest crimes, removing loopholes that enable forest criminals to exploit forest poor, and providing mentoring and performance standards for agencies responsible for tackling forest crimes.

2.5. Institutional Arrangements

The division between forest protection (the responsibility of the Forest Protection Department) and forest policy formulation, planning, and production aspects (the responsibility of the Forest Department) is the most obvious issue of institutional coordination in forest law enforcement in Vietnam. Working-level coordination and communication between the two departments at central level requires much improvement. Coordination between forest institutions and other agencies (e.g., police, customs and army) have in the past been very weak but have improved somewhat with Prime Ministerial decisions exhorting closer inter-agency cooperation (Box 2.1).

Box 2.1. Inter-agency Cooperation Mechanisms

Government has made significant efforts to improve inter-agency cooperation to address forest crime. The most recent of these is Prime Minister's Directive 08/2006/CT-TTg on "urgent measures" for forest protection. Reiterating earlier directives, it instructs ministries and line agencies to implement specific measures, including the establishment of committees at national and provincial level to improve coordination among MARD, Ministry of Public Security, and Ministry of National Defence of the handling of resettlement of 'free immigrants' away from forests and land allocation. The Ministry of Planning and Investment and Ministry of Finance are required to budget for implementation of Directive 08/2006. However, funds have only been made available to support a small secretariat and not to fund operational activities to implement the urgent measures. The decision also encourages provinces to move state forest enterprise reform forward – to encourage the release of land from state forest enterprises for subsequent allocation to farmers. It is too early to assess the impact of Directive 08/2006.

Other lower-level circulars and agreements provide operational guidance on inter-agency cooperation. Inter-ministerial Circular 29/2007 agreed among MARD, Police, Procuracy, Ministry of Justice and the Supreme People's Court gives guidance on case-handling jurisdictions since the Forest Protection Department's mandate covers mainly administrative-level violations. The Forest Protection Department can take 'simple' cases to the Procuracy without going through police. 'Complex' cases are handed directly to the police. Decisions on whether cases are considered simple or complex are defined by the amount and value of evidence; these guidelines are set out in the circular.

Reports from the field-level implementation however continue to indicate rather low levels of inter-agency cooperation and, in particular, a reluctance of police to become involved in forest crime investigations. Various factors contribute to this reluctance, including the remoteness of crime scenes, a tendency for confrontations with illegal loggers to become violent and lack of technical competence to identify illegally captured/hunted wildlife or illegal timber species.

Decree 119/2006/ND-CP sets-out organizational and operational arrangements for the forest protection service, pursuant with the *Law on Forest Protection and Development* (2004), and introduces an important change at provincial level – placing forest protection units under Departments of Agriculture and Rural Development rather than directly under Provincial People's Committees. Articles of particular relevant to this assessment include:

- Providing the Forest Protection Department with responsibility to manage the systems of special use and protection forests and other state management responsibilities (Article 3).
- Organizing and directing the inspection and handling of forest violations, including criminal violations in cases where forest protection staffs are involved in perpetrating violations (Article 5).
- Coordinating with other relevant state agencies (e.g., armed forces and forest owners) on forest protection activities, including prevention, detection, and suppression powers (Article 9).
- Granting powers to stop and inspect transportation (by road or waterway) when there are grounds for believing that illegal timber or wildlife is being transported. Powers are also granted to sanction administrative violations and to weapons in accordance with the law (Article 12).
- Granting commune forest protection forces with the same powers as stipulated in Article 12 (Article 13).
- Managing forest protection ‘collaborators’ – members of the public who can supply information on forest violations on condition of anonymity, for which payment can be made (Article 14).⁷

Decree 119/2006/ND-CP also provides the Forest Protection Department with powers to investigate administrative violations and apply appropriate administrative sanctions in accordance with Decree 139/2004.⁸ The Forest Protection Department also has powers to investigate criminal violations where these involve local forest protection agencies. Article 12 of Decree 119 provides local forest protection units with the power to investigate forest crimes and stop vehicles and boats, but only where there is prior information to suggest that such vehicles are carrying illegal timber or wildlife (Box 2.2). Article 14 provides forest protection units to engage and pay forest protection collaborators to supply information on forest crimes.⁹ Such information can be provided on conditions of anonymity.

Box 2.2. Wildlife Trade and the Law

From 2000 and 2002, there were 5,351 confiscations of wildlife in trade made in 53 provinces and cities; of this total, 4,410 resulted in administrative fines, and 578 cases were brought to court under the Criminal Law. In the first 7 months of 2003, it was reported that nearly 20,000 individual specimens and over 33 tons of animals were seized nationwide.

In the first 4 months following the implementation of Instruction No. 12/2003TTg-CT issued by the Prime Minister, 640 confiscations were made, some on a very large scale, such as the ones in Gia Lai and Binh Thuan provinces. Research studies estimate the number of confiscation cases of illegal wildlife trade to represent only from 5 percent to 20 percent of the actual figures. Extrapolating from this, thousands of tons of wild species and hundreds of thousands of individual specimens have been smuggled annually.

Source: The National Action Plan to Strengthen Control of Trade in Wild Fauna and Flora to 2010.

⁷ Organization and Operation of the Forest Protection Service. Official Gazette Decree, No. 119/2006/ND-CP (of October 16, 2006, issue 12/October 2006), on Organization and Operation of the Forest protection Service. Official Gazette. Issue 12/October 2006

⁸ Decree 139/2004/ND-CP has been revised, and the Prime Minister will issue a new decision.

⁹ Use of collaborators and informants to tackle forest crimes is an issue that the new Task Force on forest protection will develop over coming years.

Despite these promising new directions, greater attention is needed to introduce safeguards that ensure reforms do not provide short-term windows of opportunity for committing forest crimes during the necessary transition period as new institutional arrangements are put in place. Emerging transition risks of this kind include:

- ***Re-organization of forest development and protection functions at provincial level and below that have removed separation of powers between supervision and implementation of logging operations.*** The change also eliminates the direct access to the Provincial People's Committee once enjoyed by the Forest Protection Department.
- ***Recent forest reclassification driven by a Prime Ministerial directive to reduce the amount of public goods forest (i.e., protection and special use forests) requiring government support, while also stimulating greater private sector investment for areas re-classified as production forest.*** Analysis by the Institute of Legal Studies has documented the potential short-term risks associated with implementation of this reform (Duong and Hanh 2007). There are examples where the reclassification process of forest protection and their transfer to unreformed state forest enterprises has taken place with minimal safeguards (e.g., management plans) and monitoring.
- ***Allocation of forestland with natural forests without adequate guidelines and safeguards (e.g., forest management plans) leading to rapid clearance of natural forest cover prior to or following allocation.*** Frequently, such events are 'regularized' by subsequently issuing paperwork for agricultural land in contravention with the Land Law. Re-organization of state forest enterprises has also created great opportunities for illegal timber logging and deforestation since most state forest enterprises do not have clearly demarcated boundaries and lack Land Use Rights Certificates ('Red Books').

2.6. The Five Million Hectares Reforestation Program (5MHRP)

The 5MHRP (1998-2010) is the largest and most significant national target program in the forestry sector; spending averaged approximately US\$21 million during 2001-2005. Its prime objective is to increase Vietnam's forest coverage to 43 percent, with additional objectives including:

- Building a forest resource base for the forest processing industry;
- Creating jobs and income;
- Contributing to poverty reduction and livelihoods, security, and defense;
- Decentralizing forest management to local authorities, especially the commune level;
- Reducing shifting cultivation;
- Mobilizing overseas development assistance for forest development; and
- Supporting the application of advanced technologies in forest seedling production, timber plantation forestry, and forest product processing.

The 5MHRP delivers support from the Central Government to the provinces for both the establishment of new plantations and the protection of existing forests. Provinces usually sub-contract state forest enterprises and forest management planning boards to issue forest

planting and protection contracts with households and the program includes the provision of subsidized loans for plantations.

As a long-term program aimed at helping to address the fundamental supply/demand imbalance in the national wood inventory, the 5MHRP has a great potential to help ease the forest law enforcement challenge. A serious risk posed by the manner of implementation, however, is that of misuse and abuse of budget resources. As discussed in a companion piece to this study (World Bank 2009), planning, budgeting, and control provisions for the 5MHRP are weak and limited. This presents enormous opportunities for fraud and corruption at various levels in the program. Introduction of provisions for improved planning, controls, and audits are urgently needed.

2.7. State Forest Enterprise Reforms

State forest enterprises have been a major focus of reform efforts in recent years but still control around 37 percent of all forestland in Vietnam. Many years of over-exploitation of natural forests have exhausted the natural production base of state forest enterprises; and by the 1990s many had little prospect of becoming economically viable entities. Instead, many state forest enterprises became dependent on subsidies from the 5MHRP for planting and protection activities. Reforms began in 1995 with the *Law on State-Owned Enterprises* and more recently with Decision 187/TTg in 1999 and Decree 200/2004/ND-CP issued in December 2004. The reforms had a common objective – to separate business activities (logging and other extractive uses of forest resources) from those of public goods management (protecting watersheds and coasts and conserving biodiversity).

The SFE reform process is critical to tackling legality issues in wood supply chains and imports. State forest enterprises have played a key role in the degradation of Vietnam's natural forests, through over-harvesting and poor forest management practices (McElwee 2004). Provincial authorities have shown little appetite for reforming state forest enterprises as they are propped up by 661 contracts without which the funding burden (including high debt level and salary and pension commitments for SFE staff) would fall on provincial finances. The result has been extremely a slow and tentative SFE reform. Most land released by state forest enterprises has been re-allocated to other state bodies eligible for state subsidy (such as management boards); and this in turn has slowed the forestland allocation process, leaving most forestland under ineffective state management and many people in mountainous areas without legal access to forest resources. The SFE involvement in illegal logging and wildlife capture and trade has been recognized in recent years. Several state forest enterprises have integrated harvesting, transport, and processing structures making them central to tackling the supply chain management issue (World Bank 2004). Since some state forest enterprises undertake or contract logging operations in Lao PDR, there is also an issue relating to the legal verification of imports (World Bank 2005).

2.8. The Harvest Quota Management System

The Harvest Quota Management System (Figure 2.1) is the central tool of the national forest management system; its nominal objective being to protect the remaining natural forest estate from over-exploitation. As actually applied, the system does not seem to provide effective protection to forests, and in fact introduces serious distortions that undermine its potential value and contribute in various ways to the problems of forest law enforcement.

In recent years, the Prime Minister set the national logging quota for natural forests at 200,000–300,000 cubic meters per year. In 2006, the quota was only 180,000 cubic meters.¹⁰ This level of harvest is equivalent to approximately 0.01 cubic meters per hectare of forestland and perhaps 0.02 cubic meters per hectare of estimated production forest area (forests well stocked with commercial volume). On the basis that the quota should represent an estimate of the potential resource base that supplies a continuous harvest flow, the current quota suggests an assumed regrowth rate of about 0.5 cubic meters per hectare per year. The quota is significantly below the sustainable cut levels for the natural forest estate as a whole and substantially under-utilizes the potential of Vietnam’s forests.

A preliminary risk assessment of the quota management system is shown in Table 2.2, based on interviews with national and provincial officials during the FLEG assessment mission. The assessment suggests that the harvest quota management system leaves forests vulnerable to malpractice and forest crime at all levels – from quota allocation, through harvesting, transport and plot closure.¹¹

In summary, the quota system works against forest protection efforts by eliminating incentives for forest management and protection and by introducing vulnerability to and opportunity for forest crime. Economically, natural forests contribute significantly less than their full productive potential to the Vietnam economy. In terms of poverty, forest-dependent people are forced to risk fines (or worse) for extractive uses that could otherwise be sustained within a framework of well-managed, multiple-use forest management. Environmentally, illegal logging is depleting biodiversity and reducing the contribution that forests make for environmental services. In addition, the quota system contributes in important ways to the shape, size, and composition of Vietnam’s illegal logging problem. By excessively curtailing supplies of domestic material to well under the volume that is likely to be sustainable, the quota system helps to drive demand for imported raw material supplies. As discussed below, this increases exposure to the risks of importing wood that has been harvested illegally in the country of origin.

The policy for re-auctioning confiscated wood also introduces scope and opportunity for crime and also complicates enforcement efforts. Currently, confiscated timber is auctioned back to sawmills, a process that allows illegally harvested timber to become legalized. This makes subsequent enforcement and chain of custody management much harder as it becomes harder to distinguish legal from illegal wood passing through supply chains. There is little incentive in this system for controlling illegal timber harvest and trade – in fact, quite the opposite. There are very tangible benefits to allowing illegal harvesting activities. This aspect of forest management will complicate any future efforts at introducing licensing and verification systems, such as those that would be required for FLEG licensing.

There has been no formal assessment of the national chain of custody management system, and further work on this is needed. Documentation forms the basis of the national chain of custody system. Key documents are issued for chain of custody at the point of harvest (harvesting quota, wood record, identification, etc.) during transportation (transport permits) on entering and exiting processing facilities (wood entry and exit data books) and upon export (bill of lading, wood records, etc.). With the availability of increasingly

¹⁰ To put this figure in perspective, the wood requirement for coffins has been estimated at between 150,000-200,000 cubic meters.

¹¹ Risks may increase further as a result of recent institutional re-organization that places FPD under the line management of DARDs – thus removing the last semblance of independent monitoring capability.

sophisticated printing techniques, forged documentation is becoming difficult to identify. Specific capacity to recognize forgeries is very weak. General enforcement of the whole chain of custody is also limited by poor enforcement capacity.

Tracking systems are crucial in providing buyer confidence that a purchase is legal. Tracking systems usually include a legal standard to define what is and is not legal wood or timber and an independent third party auditor empowered with the authority to issue certificates of legality. These will need to be developed in order to build buyer confidence in the legality of timber and the integrity of the national system of wood supply.

Traditionally in many countries, including Vietnam, the tracking system has consisted of a document trail that accompanies timber consignments all the way back to their origin of extraction. Such a tracking system does not cover all elements of the legal standard but would include harvesting (or import), transport, storage, processing, and export. On paper, most of elements of a chain of custody legally exist already (in one form or another) in Vietnamese regulations, with the exception of the segregation of timber from known sources from timber from unknown sources. This missing element alone suggests a weak national chain of custody system. Systematic strengthening, institutional development, and capacity building will be required to improve confidence in the national chain of custody system and to bring this to international standards for compliance.

Figure 2.1. The Harvest Quota Management System

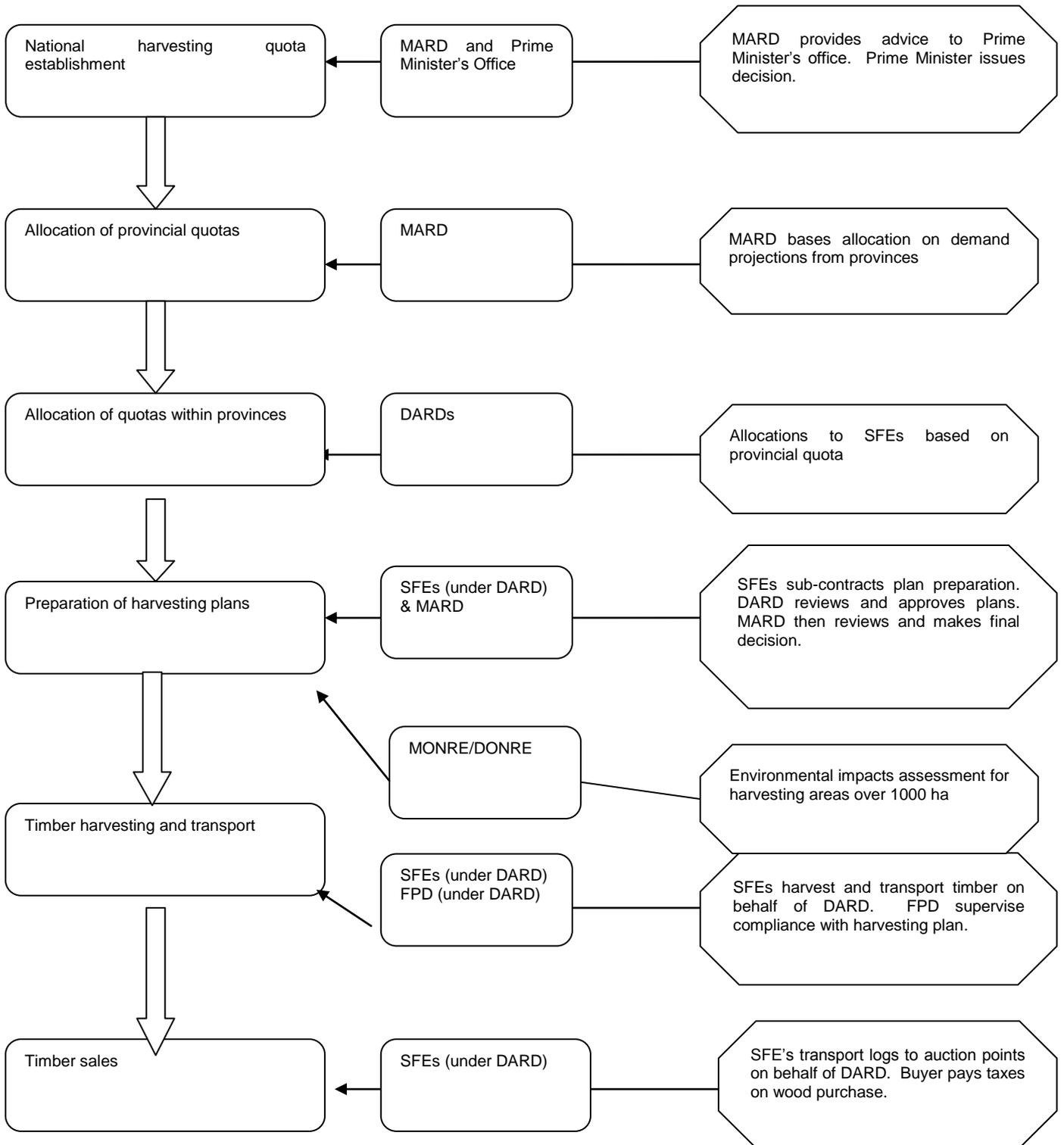


Table 2.2. Forest Crime Risks introduced by the Harvest Quota Management System

Stage	Forest crime and corruption risk	Risk to ...	
		...sustainable forest management	...economic contribution
National logging quota establishment.	Prohibition on extractive forest uses for most natural forest forecloses developing incentives for sustainable harvesting and encourages unmanaged, illegal forest uses.	Economic incentives eliminated for sustainable harvesting from protection forests (since quota only exists for production forest category).	Current quota levels significantly reduce the contribution that natural forests can make to the national economy on a sustainable basis.
MARD allocates logging quotas to provinces based on demand estimates.	Potential collusion between state and provincial officials in quota allocation.	High risk of over- or under-exploitation of particular forest blocks (since sustainable yield calculations in forest harvest plans are not institutionalized).	Over-exploitation will lower future revenues and increase costs (e.g., for rehabilitation, re-planting, fire management). Under-exploitation (i.e., cutting below the annual allowable cut level over the rotation period) reduces sector contribution.
Province sub-contracts extraction quotas to state forest enterprises.	Absence of official regulations and oversight runs risk of collusion between state forest enterprises and provincial officials.	Allocation is based on demand estimates and not sustainable yield estimates, thus risking over- or under-exploitation of particular forest blocks. Low incentives for sustainable forest harvesting since allocations are not performance based.	Lack of auction process, competition or forest valuation misses opportunity to generate substantial revenues for government and will systematically under-value forest resource base.
State forest enterprise prepares harvesting plan.	Risk of collusion between state forest enterprise and forest harvesting planners.	Harvest plans based on demand requirements rather than sustainable yields, therefore risk of over- or under-exploitation. Lack of direct involvement of Forest Protection Department in plan preparation means forest conservation and protection values may not be addressed adequately in harvest planning.	Lack of competition between planners (service providers) may increase costs and reduce quality of plans. Over-emphasis on extraction may increase costs and lower economic contribution of environmental services (e.g., watershed protection).
Timber harvesting and transport	Lack of separation of powers and roles increases risk of collusion between state forest enterprises and enforcement agencies, since both report to Departments of Agriculture and Rural Development. Recent MARD decision (Decision 119) to remove forest protection checkpoints on roads increases likelihood that illegal transport of logs will go undetected, including multiple use of permits issued for transport of single loads.	Weak supervision and enforcement may undermine compliance with sustainable forest management practices.	Lost revenues through unpaid taxes on illegally traded timber. Low-revenue streams in longer term in absence of longer-term compliance enforcement (due to forest damage caused by over-harvesting and from unpaid duties).
Plot closure.	Currently, there are no regulations requiring closure of logged forest blocks. Increased access via logging roads therefore greatly increases risks of subsequent illegal logging.	Leaving forest blocks open to follow-up illegal forest exploitation will make implementation of sustainable forest management more difficult.	Increased costs for forest planting and rehabilitation.
National logging quota establishment.	Prohibition on extractive forest uses for most natural forest forecloses developing incentives for sustainable harvesting and encourages unmanaged, illegal forest uses.	Economic incentives eliminated for sustainable harvesting from protection forests (since quota only exists for production forest category).	Current quota levels significantly reduce the contribution that natural forests can make to the national economy on a sustainable basis.
MARD allocates logging quotas to provinces based on demand estimates.	Potential collusion between state and provincial officials in quota allocation.	High risk of over- or under-exploitation of particular forest blocks (since sustainable yield calculations in forest harvest plans are not institutionalized).	Over-exploitation will lower future revenues and increase costs (e.g., for rehabilitation, re-planting, fire management). Under-exploitation (i.e., cutting below the annual allowable cut level over the rotation period) reduces sector contribution.

2.9. Forest Land Re-classification

In 2005, the Government introduced reforms to revise the proportion of land classified for protection, production, and special use through Decree 38/2005/CT-TTg. This was deemed necessary because the 5MHRP had, for many years, encouraged the provinces to over-report the area of protection forests to enable them to benefit from central state funding from the program subsidies. The reform required provinces to reduce the area of protection forest to approximately 5 million hectares, with a simultaneous increase in the area classified as production forests. The overall effect of this reform, which is still ongoing, is to lower by half the proportion of forest estate requiring government subsidy through the 5MHRP – thus releasing the resources required to finance the doubling of cost norms for forest protection contracts for the remaining protection and special-use forests.

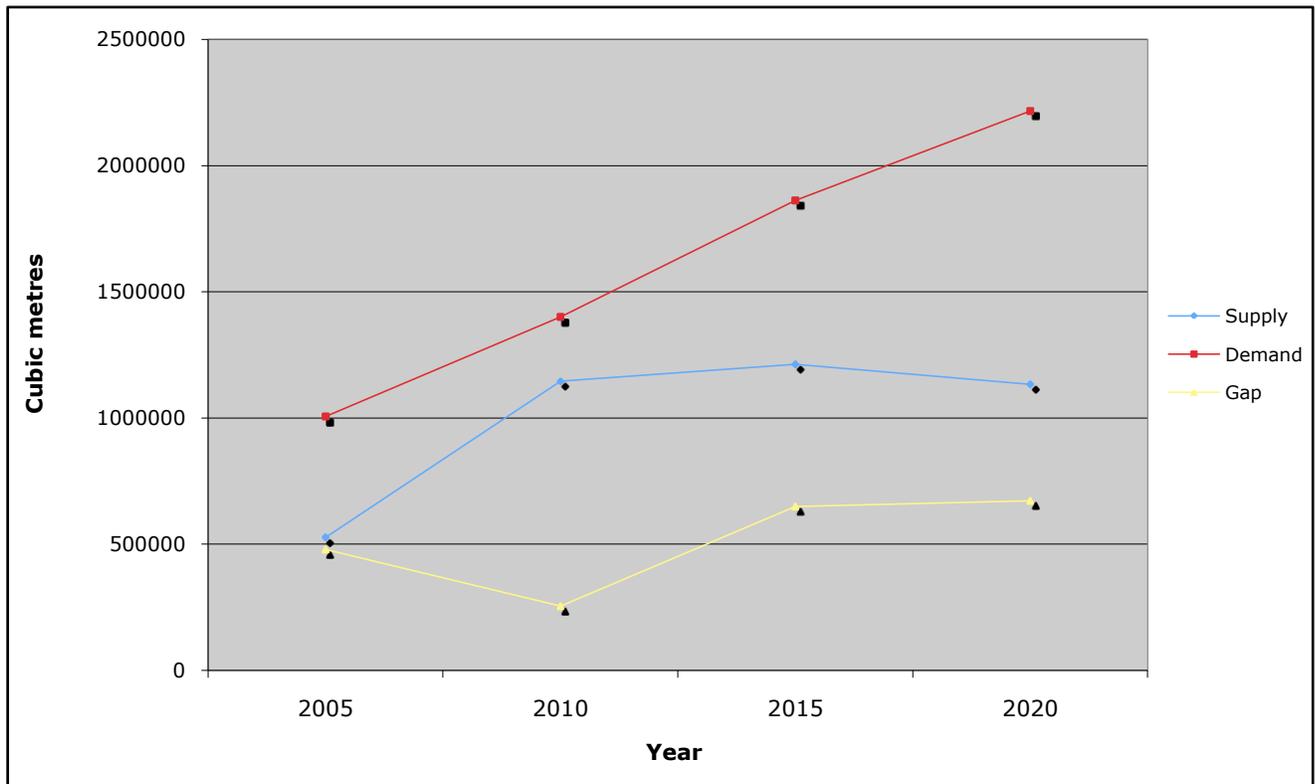
Table 2.3. Overview of 5 Forestry Programs of National Forest Development Strategy, 2006-2020

Program	Targets
Sustainable Forest Management and Development	<ul style="list-style-type: none"> • Establishment of the forest estate, including 3.63 million hectares of natural forests and 4.15 million hectares of plantation forests. • Completion of land allocation by 2010. • Institution of forest management plans and periodic inventories for all types of forests and ownership arrangements. • Increase in timber production to 9.7 million cubic meters per year by 2010 and 20-24 million cubic meters per year by 2020. • Increase in pulp wood production to 3.4 million cubic meters per year by 2010, and 8.3 million cubic meters per year by 2020. • Target average annual increment of 15 cubic meters per hectare based in plantation forests. • Enrichment planting in 0.5 million hectare of poor degraded natural forests, • Plantation of 1.0 million hectares of new forests by the year 2010 and 1.5 million hectares by 2020. • Plantation of 200 million scattered trees, equivalent to 100,000 hectares of plantation forests annually. • Forest management certification for at least 30 percent of all production forest areas.
Forest Protection, Biodiversity Conservation and Environmental Services Development	<ul style="list-style-type: none"> • Allocation of 1.5 million hectares of special-use forest and protection forests and issuance of protection contracts by 2010. • Reduction of forest law violations by 80 percent and infrastructure investments for forest protection and control. • Demarcation of 5.68 million hectares of protection forest and 2.16 million hectares of special-use forests and allocation to permanent owners. • Piloting of community-based forest management models. • Establishment of a Forest Protection and Development Fund by 2007.
Forest Products Processing and Trade	<ul style="list-style-type: none"> • Establishment of processing capacities: 6 million cubic meters per year of sawn timber; 320,000 cubic meters of particleboard; 220,000 cubic meters of MDF. • Exportation of wood products worth US\$7 billion and non-timber forest products worth US\$0.8 billion. • Employment of 1.5 million workers.
Research, Education, and Forestry Extension	<ul style="list-style-type: none"> • Research in key areas, such as biotechnology, processing of non-timber forest product, plantation forestry, agro-forestry, rehabilitation of degraded natural forests, environmental services. • Improving forestry training institutions and curricula and provision of training to students, technical staff, and forest owners. • Improve the quality of the forest extension system, including delivery of extension services through the private sector.
Institutional Development, Policy Reform, and Sector Monitoring	<ul style="list-style-type: none"> • Completion of the policy, legal, and forestry institutional systems toward decentralization and market orientation. • Institutional reforms to increase the effectiveness and improve functions of the state forest management system. • Establishment of state forest extension system. • Integration of sector planning and monitoring and evaluation.

2.10. National Wood Supply

There are no comprehensive assessments of the national wood balance since collection, management, and analysis of statistics is not undertaken consistently across the sector. Estimates of aggregated supply and demand indicate that demand (domestic plus export) significantly exceeds supply. The ADB (2000) estimated the deficit at around 2 million cubic meters based on 1999 data. The ADB also estimated that over one-third of large-diameter timber entering the supply chain in 1999 came from illegal sources. The National Forest Development Strategy preparation process used 2004 data as a baseline and then used different supply and demand scenarios to model supply needs to 2020. The analysis included in the Strategy identified a significant supply gap of around 1.5 million cubic meters per year (i.e., 10 times the 2006 annual allowable cut from Vietnam's natural forests). Using scenario analysis, it is projected that the gap would decline somewhat to 2010 as supply from Vietnam's recently established plantations reach the market, stabilizing at around 600,000 cubic meters per year until 2020 (Figure 2.2).

Figure 2.2. Demand, Overall Supply, and Supply from Domestic Plantations



Weak forest governance in exporting countries coupled with a lack of political commitment to address the issue provides the *opportunity* for illegal imports to flourish. Strong market demand from Vietnam's wood-processing industry for cheap raw material *motivates* illegal trade; and corruption and malpractice of government officials (including within customs) provide the essential *means* that enable illegal timber trade to continue and flourish. A

similar picture applies to the wildlife trade, where much wildlife passes through Vietnam and is re-exported to satisfy market demand in China.

The supply/demand gap suggested may be being met in part by domestic illegal logging and unrecorded (i.e., smuggled) imports of illegal timber. The volumes of wood contributed from illegal sources in Vietnam cannot be counted with much accuracy, but there are reports that significant volumes of stolen wood are imported into Vietnam from other countries (EIA/Telepak 2008). There is a strong likelihood that this gap is being met by unrecorded domestic supply (illegal logging) and unrecorded imports.

The VIFORES study (2007) throws light on this issue with its collated data on recorded wood imports from 5 countries (Cambodia, China, Indonesia, Lao, and Malaysia) totaling nearly 1.35 million cubic meters roundwood equivalent and accounting for around two-thirds of recorded imports (Table 2.4). Imports of wood from these countries have risen dramatically in recent years. Cambodia and Lao, neither of which have significant amounts of harvestable-age plantations, accounted for the largest share of imports. In 2005 alone, recorded wood imports from Cambodia totaled 466,796 cubic meters roundwood equivalent – despite all of Cambodia’s logging concessions being under official suspension during that year and since 2002. A conservative estimate of the lost royalties to the Cambodian economy (one of the poorest countries in the world) over the 5 years for which data was collected (2001-2005) is US\$55 million (US\$24 million just in 2005).¹²

In the same year, imports from Lao totaled nearly 400,000 cubic meters, including over 120,000 cubic meters of roundwood despite the presence of a log export ban.¹³ On the other hand, imports of wood from Brazil, Thailand, New Zealand and the United States are likely to be from legal sources, in some cases from certified forests.¹⁴ The figures quoted above are based on *imports recorded* by Vietnamese Customs and for obvious reasons do not include estimated volumes of smuggled timber. The figures may therefore substantially underestimate actual flows of wood into Vietnam. Some (in cases, many) of these are granted by provincial governors, the legality of which at source country might be dubious, but for Vietnam these are not a real problem.

An alternative explanation of the apparently excessive imports of wood from other countries could be the use of imported wood designation as a device to launder (make appear legal) wood derived from illegal harvests within Vietnam. The excessively restrictive harvests allowed under the harvest quota systems may combine with weaknesses in both Customs administration and forest protection to encourage and enable mislabeling. The absence of effective chain of custody systems makes it impossible to manage this issue effectively. Conversion coefficients and data limitations (e.g., use of nonstandardized categories) also introduce a margin of error.

¹² Based on a conservative figure of US\$50 per cubic meter on a volume of 1.1 million cubic meters.

¹³ It should be noted that the Government of Lao PDR grants occasional exemptions to their log export ban. The scale of these exemptions is not likely to be matched by the figures for recorded imports.

¹⁴ See for example, Seneca Creek Associates 2004.

Whatever the actual figures, they strongly suggest that large volumes of stolen wood are likely to be entering Vietnam's supply chains. Given growing market sensitivities to the legality of entering European and North American market places, the widespread use of stolen wood by Vietnam's wood-processing industry poses a reputational risk to Vietnam's wood-processing sector. This risk may grow as overseas markets respond to consumer pressure for public procurement and domestic supply to be sourced from legally verified sources.

Table 2.4. Wood Imports from Five Wood-Exporting Countries

		Volume (cubic meters)				
Country of Origin	Wood Import Type	2001	2002	2003	2004	2005
Cambodia	Roundwood	-	339	243	1,309	2,731
	Sawn wood	11,759	152,486	9,534	227,885	288,146
	Roundwood equivalent	19,050	247,027	15,445	369,173	466,796
China	Roundwood	286	757	1,056	958	1,552
	Sawn wood	11,832	337,602	2,297	14,623	68,270
	Roundwood equivalent	19,168	546,916	3,721	23,689	110,597
Indonesia	Roundwood	9,677	18,423	13,419	5,974	177
	Sawn wood	6,409	13,822	7,947	71,062	25,910
	Roundwood equivalent	9,800	22,392	12,874	115,121	41,974
Lao	Roundwood	28,262	9,436	26,319	136,633	120,794
	Sawn wood	49,222	10,981	92,747	138,639	243,686
	Roundwood equivalent	79,837	17,789	150,250	224,595	394,772
Malaysia	Roundwood	84,089	8,993	518,462	708,288	501,131
	Sawn wood	49,518	5,561	29,620	77,168	206,394
	Roundwood equivalent	80,220	9,008	47,985	125,012	334,358
Total five countries	Roundwood	122,314	37,948	559,499	853,162	626,385
	Sawn wood	128,740	520,452	142,145	529,377	832,406
	Roundwood equivalent	208,075	843,132	230,275	857,590	1,348,497
Total roundwood and roundwood equivalent		330,389	881,080	789,774	1,710,752	1,974,882

Note: The import data included is based on figures supplied by the General Department of Customs and collated by VIFORES (2007).

2.11. Conclusion

The substantial forest crime problem in Vietnam today cannot be addressed through adjustments to the legal and enforcement systems alone. Key to success will be a transformation of forest policies so that they become more relevant to the needs of forest-dependent poor; and the introduction of effective forest management systems, including forest management plans. The institutions responsible for managing and implementing these policies will also need to be strengthened. Good forest policy and planning systems can create incentives for forest users to engage in forest management while also reducing opportunities for forest crime to take place. Forest management systems designed with these considerations in mind can help prevent forest crime and reduce over-reliance on enforcement.

The key priorities are therefore to reform forest policies and management systems to create the economic incentives for local forest users to sustainably manage forests. The basic

policies are in place but are applied inconsistently and often unfairly. This effort requires progress in the following areas:

- ***Policy implementation*** to ensure that forest assets are transferred with appropriate safeguards and monitoring to those forest users in a position to invest properly in forest management and protection. In practice, this means state forest enterprises, other state bodies, and local officials should be required to handover forestland for re-allocation based on fair and transparent forestland use planning.
- ***Creating incentives for forest management and protection***, loosening and simplifying benefit-sharing regulations, abolishing the national harvesting quota system and replacing it with a management planning-based approach with regard to sustainable yields, and incorporating local needs and environmental planning.
- ***Eliminating stolen wood from supply chains*** requiring efforts by Customs departments of Vietnam and its supplier countries and inter-agency efforts within Vietnam. Current priorities are to agree on a definition for *legal* timber, develop and improve the current systems for chain of custody management, and put in place (and resource adequately) monitoring and suppression efforts targeted specifically at wood processors.

Reforms to Vietnam's forest management framework will improve the enabling environment for forest crime management modestly and will help address forest crime prevention at source. However, the slow pace and tentative nature of such reforms is unlikely to deliver measurable impacts in the near term. Even with reforms proposed in the national forest development strategy, there will remain a little incentive for local forest users to manage and protect most natural forests sustainably. Meanwhile, demand for stolen timber exported illegally from other countries will grow, and Vietnam jeopardizes exposing its wood processing industry, most of which may be using legally sourced wood, to a growing reputational risk in international market places.

CHAPTER 3. LAW ENFORCEMENT IN THE FORESTRY SECTOR

Government devotes significant attention and resources to enforcing the forest protection laws. The Forest Protection Department has established a task force to counter corruption among forest protection officials.¹⁵ There are thousands of forest rangers nationwide and with at least 1 forest ranger assigned to each commune in Vietnam. Additional forest rangers are also assigned to management boards for national parks and protection forests. This chapter reviews law enforcement and forest protection practices at operational level, assesses the extent to which forest crimes are prevented, detected and suppressed, and the degree to which forest protection measures are integrated into resource management, planning, and practice. The chapter also identifies options for improving the performance of forest protection and enforcement effort.¹⁶

MARD data show that, since 2002, the number of reported forest violations averaged between 30,000 and 50,000 per annum. Although high, those numbers are thought to represent only a fraction of forest violations actually committed; many violations go undetected or under-reported due to lack of monitoring, poor case handling, and perverse incentives that discourage local authorities from reporting actual violations levels. Only a few of reported violations get investigated, and thus fewer forest crimes result in criminal prosecution.

3.1 Government Forest Crime Incidence Data

According to MARD data, there were around 35,000 recorded forest violations in 2006. As indicated above, with limited reporting and recording of crimes, this figure substantially under-estimates the actual level of forest crime. MARD statistics on forest loss given in Table 3.1 show that illegal conversion of forests to other land uses accounts for the largest amount of forest loss, followed by over-exploitation and illegal destruction (presumably overlapping somewhat with other causes).

¹⁵ *Viet Nam Forestry Development Strategy 2006-2020*. Promulgated and enclosed with Decision No. 18/2007/QĐ-TTg dated February 5, 2007, by the Prime Minister (Socialist Republic of Vietnam, 2006).

¹⁶ This chapter is based on *Forest Law Enforcement and Governance in Vietnam*. Mission report (Dyson 2007).

Table 3.1. Recorded Causes of Forest Loss

	Hectares				
	Exploitation	Illegal destruction	Forest fire	Conversion	Totals
1998	15,806	2,342	8,432	20,198	46,778
1999	12,577	2,840	7,893	13,879	37,189
2000	9,390	2,208	679	9,799	22,076
2001	13,670	1,787	2,465	6,875	24,797
2002	14,365	39,670	6,603	3,165	63,803
2003	20,487	4,436	1,785	49,546	76,254
2004	16,600	3,661	5,563	34,942	60,766
2005	243	1,591	5,455	54,210	61,499
Total	103,138	58,535	31,875	192,614	386,162

Source: MARD.

3.2. Other Indicators of Forest Crime Levels

Other indicators suggest that the level of forest crime is substantial. The most obvious of these is the continuing decline in natural forest cover despite a near total logging ban; media frequently report on wildlife crimes and illegal log seizures, and the depletion of species valued by traders in Vietnam's forests. Open selling of wildlife in markets and wildlife restaurants (the latter frequently patronized by government officials) and widespread reports of forest planning and management malpractice are further indicators that forest crime levels remain high.

The Forest Protection Department developed a Forest Protection Action Plan 2006-2010 (MARD 2005), but it is not considered to be a formal guidance or policy document. The Forest Protection Action Plan estimates that illegal exploitation contributes annually to the loss of nearly 15,000 hectares of natural forest. Despite the substantial scale of illegal logging and wildlife trade identified in various government documents, practical enforcement priorities are not well integrated into key policy and planning mechanisms. For example, the National Forest Development Strategy 2006-2010 does not include a reference to enforcement in any identified programs. Nor is enforcement identified as a priority for capacity building despite a clear need for officer training and capacity building throughout Vietnam.

3.3. Current Enforcement Strategy

Government is committed to addressing forest crime, but declining natural forest cover and high levels of forest violations provide compelling evidence that current efforts are not working. The vast majority of cases are dealt with administratively (Figure 3.1), with criminal prosecution rates extremely low (Figure 3.2).

Figure 3.1. Number of Recorded Administrative and Criminal Forest Violation Cases by Year

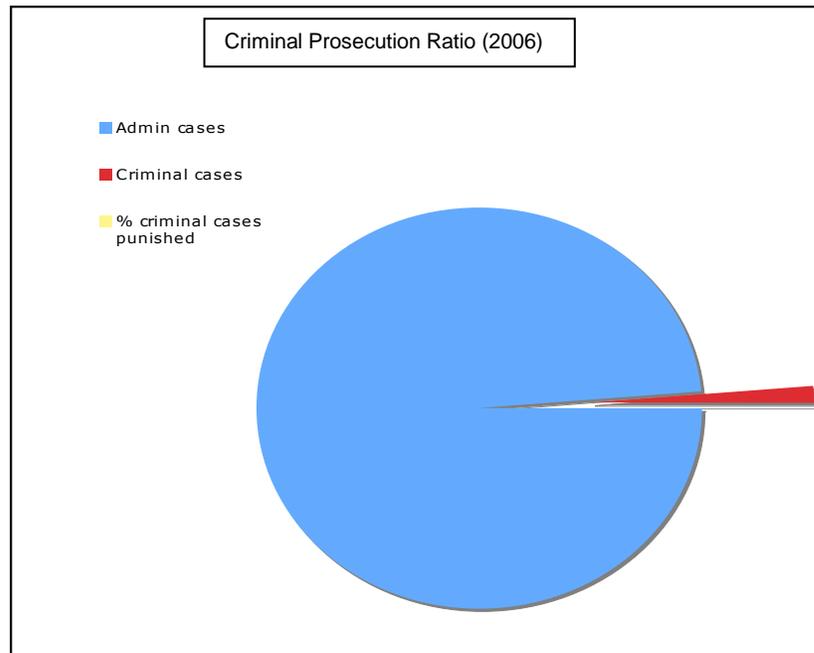
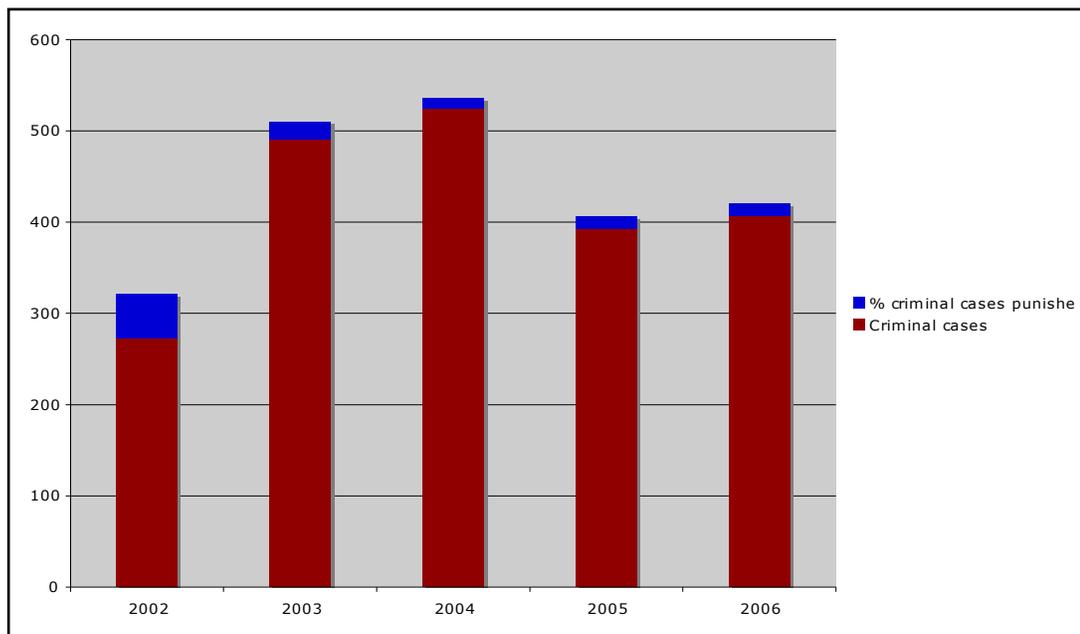


Figure 3.2. Criminal Prosecutions as a Proportion of Administrative and Criminal Cases



Overall strategy and tactics employed to address forest crime and enforce violations require refocusing. The Forest Protection Department and other agencies seem to have adopted a purely reactionary law enforcement strategy that is focused more on the transport process at forest level. The results of this strategy (Xuan Phuc and Sikor 2006) include the following impacts:

- Large numbers of relatively minor violations;
- High administrative burden to process administrative fines;
- Low fine collection rates (therefore minimal deterrent value);
- Frequent conflicts with local forest users over forest use;
- Plentiful opportunities for corruption by local enforcement officials;
- Difficulties in discriminating between legitimate and illegitimate timber use; and
- Disproportionate impact of forest enforcement (including fines and confiscations) on the poor.

The forest violation statistics demonstrate clearly that enforcement at this level does not successfully deter forest crime considering the unlikely event of being caught. The potential economic benefits of crime greatly outweigh the deterrent value of legal sanctions,

Different studies indicate that the detection rate is not particularly high, in part because most enforcement efforts focus on the transport phase (checkpoints) rather than addressing sources and demand stages of the trade. Overall, those who cut trees, capture wildlife, and trade in illegal forest products are not usually exposed to significant enforcement risk. The National Action Plan on Trade in Timber and Wildlife estimated that the detection rate was between 5 and 20 percent of actual violation levels,¹⁷ but other studies estimate the detection rate to be in the region of 2 percent of actual crimes committed (Robertson and Hoang 2004).

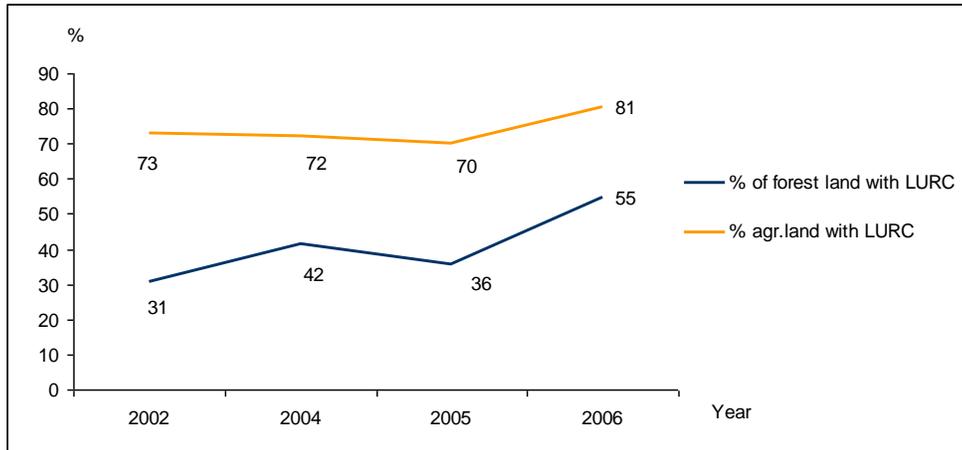
¹⁷ National Action Plan on Trade in Timber and Wildlife

Table 3.2. Assessment of Forest Crime Prevention, Detection and Suppression Performance in Vietnam

Forest Crime Management	Approaches used in Vietnam	Assessment
Prevention	Community awareness programs Legislation FPD patrols Road checkpoints Border inspections Forestland allocation	<ul style="list-style-type: none"> • Legislation has little prevention value. • Emphasis on tackling forest crimes on the highways is having little impact. • Large amounts of stolen wood imported from neighboring countries. • Low proportion of forestland allocated. • More focus at the consumer end and 'drivers' of demand would be more cost-effective and would shift burden from the 'needy' to the 'greedy'. • Few if any efforts to prevent the 'laundering' of illegal timber from other countries, especially Lao PDR and Cambodia.
Detection	Community reports FPD patrols (although limited in frequency) Border checkpoints Road checkpoints Forest monitoring Shop/restaurant inspections	<ul style="list-style-type: none"> • Patrols and checkpoints have limited prevention value due to infrequency and corruption. • Low morale and limited capacity to detect forest crime violations due to lack of knowledge, training, and physical resources undermine detection efforts. • The national reporting system for forest violations includes strong disincentives to report violations to their full extent. • Absence of case-tracking systems to help target detection efforts and identify repeat offenders for criminal sanctions. • Key techniques known to be cost-effective elsewhere are not used routinely in Vietnam. Techniques that could be introduced systematically include inspections of sawmills and wood-processing enterprises (and when used, require a search warrant), intelligence-based approaches, the use of aerial surveillance, and anti-money laundering legislation. • Few if any efforts to detect wood imported illegally from other countries.
Investigation	Field investigations by inspectorate police and forest rangers. Interviews of witnesses and suspects. Evidence collection. Case preparation.	<ul style="list-style-type: none"> • The Inspectorate Police appear to be confident in their capacity to investigate serious cases that are their responsibility. However, they often find the quality of evidence provided to them by FPD officers insufficient to allow cases to be prosecuted successfully. • Investigation capacity of forest rangers is very low. The FPD training focuses on forest management rather than on law enforcement. • The Inspectorate Police lack some basic physical resources such as video and still cameras that would help record evidence. • Some investigations of illegally captured and imported wildlife but few if any efforts to investigate stolen timber imported illegally into Vietnam. • Both the FPD and Inspectorate Police are constrained by statute of limitations in which they can launch a prosecution (2 months for 'normal' offences and 3 months for 'serious' offences). Extensions can be applied for if investigation agencies are able to demonstrate that a case is complex. These limitations appear to be too restrictive and could be improved if a 6-months limitation was placed on administrative-level violations and no limitation on criminal matters.
Prosecution	Administrative fines Criminal prosecutions Fines and confiscations	<ul style="list-style-type: none"> • Cumbersome and unclear legislation framework and lack of implementation guidance documents. • High failure rate for prosecutions due to defective or lack of evidence. • Majority of sanctions are administrative.

Sector evaluations also state that performance and achievement of targets have also been hampered by slow progress in forestland allocation, and delays in tenure reform have not created attractive investment conditions for the private sector, particularly smallholders. Forestland allocation to smallholders has in fact progressed much slower than land allocation for agriculture use. By 2006, only 55 percent of land classified as forestland had been allocated (i.e., granted land use rights certificates) as compared to 81 percent of all agriculture land (Figure 3.3).

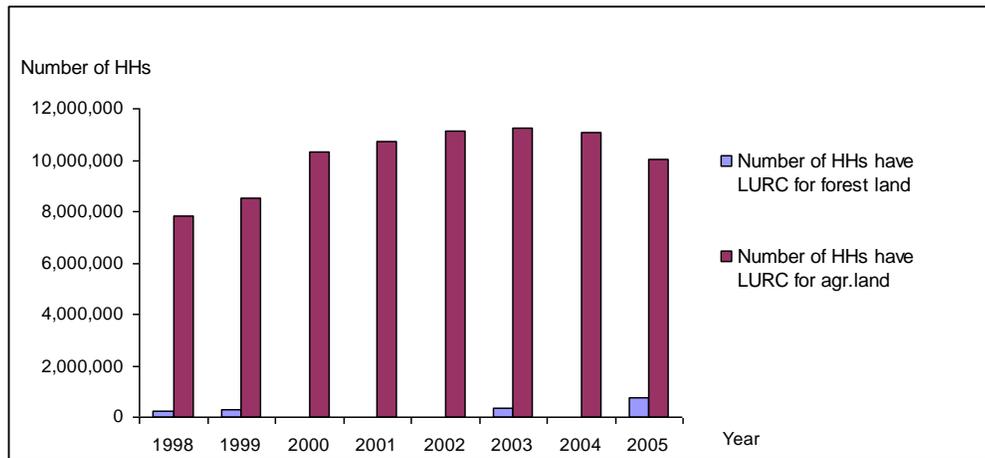
Figure 3.3. Share of Agriculture and Forestland with Land Use Certificates 2002-2006



Source: MONRE.

Similarly, the number of households that have been granted land use certificates for forestland has remained small when compared to the number of households with certificates for agricultural land. Performance and progress of land allocation is mixed across different regions and provinces, with the Northern Region lagging behind other regions. It is estimated that annually only 7,000 households are being allocated forestland and granted with land use certificates for such land (Figure 3.4).

Figure 3.4. Number of Households with Land Use Certificates for Agriculture and Forestland, 1998-2005



Source: MONRE.

CHAPTER 4. ASSESSMENT AND RECOMMENDATIONS

Vietnam's forestry sector can be described as enforcement intensive when compared with any other country in Southeast Asia. The degree to which laws and regulations restrict forest use is high. Expenditure of government staff effort and public funds on forest protection is high. And the formulation for inter-agency cooperation to suppress forest crimes is highly elaborate and advanced. Unfortunately, despite the attention given to law enforcement, three important qualitative features of the enforcement effort limit its performance. These limitations leave forest resources susceptible to unnecessarily high levels of crime and the forest sector vulnerable to reputational risks. The three limiting features of Vietnam's enforcement effort are (a) its reliance on reactive rather proactive responses; (b) a related reliance on suppression efforts rather than prevention; and (c) an inward, domestic orientation. Responding to these limitations should form the core of a forest law enforcement and governance-strengthening program.

4.1. Re-balancing Prevention and Suppression

Measures are needed to strengthen those aspects of forest law enforcement and governance that deal with both prevention and suppression. However, as noted above, Vietnam's current FLEG approach is heavily weighted toward suppression. A stronger focus of action on prevention would prove more cost-effective in the long term since it should also reduce the downstream needs for suppression and should also reduce the negative impacts that enforcement actions have on the forest-dependent poor.

Addressing corruption. Controlling corruption is widely understood to be central to Vietnam's efforts to move forward to becoming an equitable middle-income society. The National Anticorruption Strategy to 2020 lays out a plan that explicitly recognizes the role of openness and transparency in reducing corruption. A particular priority in forestry should be the 5MHRP. As a long-term program aimed at helping to address the fundamental supply/demand imbalance in the national wood inventory, the 5MHRP has a great potential to help ease the forest law enforcement challenge. A serious risk posed by the manner of implementation, however, is that of misuse and abuse of budget resources. Planning, budgeting, and control provisions for the 5MHRP are weak and limited (World Bank 2009). This presents enormous opportunities for fraud and corruption at various levels in the program. Introduction of provisions for improved planning, controls, and audits are urgently needed.

Instituting forest management plans. Multiple-use forest management plans are urgently needed for all natural forests to ensure that a better balance is struck among the economic, social, and environmental services that forests should provide. The National Forest Development Strategy calls for the introduction of forest management plans, but progress since the launch of the Strategy in 2006 has been slow. The Forest Protection Department and Department of Forestry should cooperate closely to agree on a suitable format and process for a forest management plan that would delegate provincial-level implementing authority. The objectives and prescriptions of forest management plans should be tailored to

local conditions. For example, zoning should take account of particular environmental services provided by the forest block and provide for local needs (by identifying areas of forestland suitable for allocation at community or household level or identifying suitable benefit-sharing opportunities). Forest management plans should introduce clear systems for asset protection to prevent theft of timber and wildlife, lower risk of forest fires, and prevent illegal encroachment onto forestlands. Forest management plans should agree on the roles and responsibilities of forest stakeholders and institutions at commune, district, and provincial level. Forest management plans should also be costed and the means for securing revenues from forest-based products and services be considered.

Reforming forest management categorizations. Forest management plans will not be effective within the existing system that classifies forests too broadly and rigidly either as protection, production, or special use. Instead, the functional aspects of all three should be blended within each management plan depending on local circumstances. As such, forest management plans would gradually replace the current broad-brush categorization that applies uniform management prescriptions across whole forest blocks, and would also replace the quota system that currently sets off-take levels without regard to sustainable yield levels. This system results in the over-harvesting of some forests and the under-harvesting of others.

Strengthening legal safeguards. A great deal of unnecessary damage to forest resources results from weaknesses in planning and safeguard systems. Much stronger legal measures are needed to protect natural forests from avoidable damage. National parks and nature reserves – the jewels in the crown of Vietnam’s forests – seem particularly vulnerable to degradation in this matter. In Chu Yang Sin National Park, reservoirs and roads have been constructed without regard to the environmental services provided by these forests. Ba Be National Park has been damaged by a reservoir and road. Yok Don National Park suffers damage by road development. And Cuc Phuong National Park, Vietnam’s first national park, is now bisected by a major highway. If these trends continue at the current pace, most remaining natural forests that support important biodiversity and protect important watersheds will be fragmented, making their long-term conservation much more difficult and costly.

Re-aligning forestry institutions. In tandem with the introduction of forest management plans, the roles and responsibilities of the Forest Protection Department should change with focus more on cooperative action that supports planning, implementation, extension, and monitoring. At central level, this would make more sense and would likely work better if the Forest Protection Department and Department of Forestry were merged into a single institutional framework. There would be obvious advantages for forest law enforcement and governance since protection and development functions are entirely inter-linked. At sub-national levels, steps have already been taken to integrate the Forest Protection Department with the Department of Agriculture and Rural Development.

Closing legal loopholes. Various loopholes allow perpetrators of forest crime to escape punishment; and there is a widespread belief among enforcement agencies that organized criminal gangs exploit these loopholes to commit forest crime. Loopholes should be

addressed in their many forms, such as exemptions granted to siblings of martyrs and regulations that prevent or deter inspections of vehicles suspected of carrying wildlife and stolen timber.

Defining legal standards and licensing. Vietnam lacks a standard definition and verification system for legal wood that covers both domestically harvested and imported timber and wood products. This practical measure should be addressed to underpin any efforts to require importers to prove legal provenance of wood entering Vietnam. Standards are available, and work has been undertaken to adapt these to Vietnam's national system for domestic and international timber harvesting and supply. Legal standards when agreed could then underpin a licensing and inspection system linked to the issuance of business licenses for sawmills and wood-processing yards.

4.2. Intelligence-based Enforcement to Replace Reaction

An intelligence-based approach should assist the Forest Protection Department and other authorities to better target major commercial violators who drive the demand for illegal forest products. The Forest Protection Department has identified advantages of intelligence-based policing and is seeking external expert assistance to develop this strategy. The Forest Protection Department receives information informally from the community to help identify 'hot-spots' of illegal activity. They then use this information to mount tactical operations (sometimes involving other agencies) to target the area. In its effort to better target suppression, the Forest Protection Department and its cohorts will want to boost its approach by expanding investigations of sawmills and wood processors, and using informants and the intelligence from the Anti-Money Laundering Information Center when it begins operations in the future.

Targeting point-of-sale enforcement. A highly cost-effective reform would be to place stronger emphasis on enforcement at the point of sale – saw mills, wood-processing units, restaurants, and wildlife traders. These are also the drivers of forest crime. Most enforcement effort takes place at the forest crime scene where success of apprehension can be uncertain due to difficult terrain and remoteness. In any case, the burden of enforcement falls on the poor who in most cases cannot afford to pay administrative fines (thus diminishing the fine's deterrent value). Points of sale are much easier targets for enforcement, shifting the enforcement burden onto those who benefit most from forest crime. Changes to legal provisions would have to allow effective enforcement at this level since loopholes in the current law prohibit inspection of points of sale without prior evidence that stolen timber or illegal wildlife is present. For this reason, MARD and Ministry of Public Security should work closely together to propose necessary changes to the legal framework.

The basic elements of such a point-of-sale approach would require:

- A licensing system for all sawmills, wood processors, and wood product exporters;
- A legal and enforceable requirement for mills and processors to demonstrate legal sources of raw materials;

- Systematic and concerted inspection visits by trained forest enforcement and Customs officials;
- Introduction and implementation of strong legal sanctions (imprisonment, fines, confiscations, and license revokement) for possession of stolen wood (or wood of unproven provenance);
- Training of enforcement officials;
- Mobile enforcement teams with the capability for undertaking random inspections; and
- Removal of the requirement for enforcement officials to provide wood processors with prior notice of inspection visits.

Improve data and data sharing. A shift away from field-level to points-of-sale enforcement could free resources to support a more intelligence-based enforcement effort. Less time would be spent on collecting and reporting on information of little value, which is most often the case. More vital information could be collected and shared with other agencies that better target the major offenders in forest crime, including illegal logging gangs and traders, and professional traders of illegal wildlife. Aerial surveillance and other spatial technologies such as satellite imagery and radar can provide cost-effective means of identifying illegal logging as well as routine monitoring. These approaches are significantly under-utilized in Vietnam in comparison with other Southeast Asian countries.

Sharing data can be difficult institutionally and technologically. But this task can be made easier by identifying the specific types of data that need to be shared. For example, most of the data collected on recorded violations by the Forest Protection Department would be of little interest and value to the Environment Police, the General Department of Customs, or the Anti-Money Laundering Information Center. The protocols and information management systems now in use do not allow sharing precise data that could otherwise be useful for intelligence-based enforcement efforts involving more than one agency or even among two or more provincial administrations. This makes it very difficult to identify repeat offenders. Analysis of datasets to identify trends that could help pinpoint organized criminal activity is also not possible. Careful scoping to identify the precise type of data that could usefully be shared would help simplify subsequent efforts to develop databases and design data-sharing protocols.

For a variety of reasons only few actual violations are reported, and many violations that are reported are not recorded. Finding ways of improving the system of recording forest crimes is important because current violation statistics cannot be used as a reliable guide to the levels of forest violations and do not provide a reliable basis for targeting enforcement resources. An obvious consequence of under-reporting of forest crime is that unrecorded violations are not investigated and so perpetrators escape entirely unpunished – diminishing the deterrent value of the law. Another consequence is that the Government is deprived of the important information needed to develop effective forest management and protection strategies. The Government’s interest is best served if it has more accurate knowledge of the true extent of forest law violations regardless of how bad it might look. If crimes are

reported fully and accurately, resources can be deployed more efficiently, effectively, and economically to tackle the real problems that would have more serious consequences if left unchecked.

Improving inter-agency cooperation. Inter-agency cooperation is undoubtedly a primary condition to enable effective forest law enforcement. Without free and unencumbered sharing of information, intelligence, and physical resources, each agency – or worse, the Government – will lose all sense of situational awareness. Inter-agency cooperation needs to improve dramatically to deal effectively with the forest crime challenge.

There does appear to be a majority agreement among agency officials and others that inter-agency cooperation is needed. And there appears to be a willingness among agencies to cooperate. However, there also appears to be formidable issues that could keep inter-agency cooperation from working properly: uncertain financing; conflicting legislation, policy or guidelines; and lack of human, physical, or financial resources. These obstacles are common when any government requires agencies to work together for any purpose. Leadership, focused planning, development of protocols and procedures, and well-defined funding arrangements could help overcome these issues.

The Forest Protection Department has the responsibility to implement the law on forest protection, and forest crime is frequently perceived as an issue to be dealt with by Department alone. However other agencies have key roles to play in enforcement and suppression efforts, including various branches of the police (especially the economic and transport police), the General Department of Customs, and MARD Department of Processing that is responsible for state management of the wood-processing sector.

Systems of cooperation between MARD, Ministry of Justice, and the General Department of Customs are necessary to identify changes needed in the legal framework to improve preventative action. Preventative actions encompass introducing legal provisions that would oblige importers of all wood and wildlife to prove legal provenance at source of origin, regardless of its status under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); and at enforcement level, capacity building in species identification for timber and wildlife, data and intelligence sharing, and case handling. All preventive actions require willingness and protocols to enable different agencies to work together effectively. A structured approach featuring multi-disciplinary, task-oriented teams supported by adequate financial resources and clear reporting and line management will be needed. The Committee 127, tasked with anti-smuggling efforts and chaired by the Ministry of Industry and Trade, provides the umbrella under which work at the national and provincial level can be undertaken.

Improved inter-agency cooperation, especially at the local working level, needs new approaches. These include revised institutional working relationships between the Forest Protection Department and enforcement agencies, particularly police and Customs, and a concerted effort to train police and Customs officers in forest crime-related enforcement and suppression efforts. One approach might be to second police officers to forest protection units, conferring police authority to the units in the event that serious violations are detected.

This could help improve investigation techniques, case handling, and linking forest crimes with other organized criminal activity. In particular, it could help the Forest Protection Department to address forest crimes more effectively at market points (for endangered wildlife) and in wood-processing enterprises (for stolen timber).

Strengthening human resource capabilities in forest crime enforcement. The complexity of the legal framework requires forest guards in remote areas to have sufficient capacity to understand and implement the law, including case handling, evidence collection, and other technically complex issues. By and large, adequate human resource capacity does not exist at forest level; and training opportunities are not helping to replenish this shortage. Curricula in forest colleges, where most forest rangers are trained, are out-of-date with any advance knowledge in the modern challenges of forest law enforcement. Efforts are underway to modernize training curricula for forest guards, including an ongoing initiative supported by the Trust Fund for Forests. However, any substantive improvements in capacity will take years before a difference is seen at the forest level.

While forest rangers receive training in the law, they receive little training in law enforcement skills. The capacity of the Inspectorate Police to investigate forest law violations has not yet been determined, however it appears that any investigations that they carry out need to be supported by the technical expertise of the Forest Protection Department with regard to any species identification and other technical skills. The same need can also be said of Customs officials.

4.3. Tackling International Forest Crime

Understanding reputational damage. The imports of timber and wildlife sourced from illegal or questionable sources are substantial – driven by strong and growing market demand. Domestic supply continues to decline and demand continues to grow, so it is inevitable that this situation will worsen unless realistic and effective steps are taken. Vietnam legislation does not require proof of legal provenance for imports of species other than those listed under CITES. This leads to situations whereby some wood imports considered *legal* in Vietnam are considered to have been *illegally* exported; this has been the case where log- and sawn-wood export bans are in place in Cambodia and Lao. These difficulties are compounded further by the practical difficulties that border control agencies and the CITES management authority face in determining the authenticity of documentation accompanying import shipments.

Legal provenance of imported wood and wildlife. The relevance of legal provenance issues lies in the reputational risk to Vietnam. Vietnam's policymakers worry of the potential and growing damage that trade in illegally sourced wood inflicts on Vietnam's reputation in its international export markets, and in the risks faced by investors in Vietnam's wood processing industry – most of whom purchase raw material from entirely legal sources. Trade-related measures, such as the European Commission's Voluntary Partnership Agreement (VPA), could help in identifying legal timber or timber products from the countries concerned through the issuance of a Forest Law Enforcement Governance and Trade (FLEGT) license. The VPA is not a trade measure as such (at the moment any wooden product with or without VPA can enter the EU), but it will help those countries affected by

the foreseen Due Diligence Regulation-DDR (which will be a trade measure) to comply with it. After the entry into force of the DDR, imports into the EU will have to demonstrate legality, and this will be automatically the case when accompanied by a FLEGT license. These agreements will mean that all the products covered by the Agreement can be considered to originate from legally harvested timber. An important component of these agreements is the development of a so-called timber legality assurance system. The timber legality assurance system consists of a legality definition which is based on the laws and procedures of the partner countries and of a series of control procedures including controls on imports. The EU provides FLEGT partner countries with technical and financial assistance to implement these controls and improve forest governance and transparency. Products of Vietnam having a FLEGT certificate would probably also be in a position to comply other trade measures, as the Lacey Act in the US, for example.

There are significant challenges in verifying legality at each step of long and complex wood supply chains – often involving several countries and multiple administrations and negotiations of Voluntary Partnership Agreements have proven to be a lengthy and difficult approach, even in countries that export round logs and sawn wood, where supply chains are much shorter.

More immediate and practical solutions are needed to ensure that wood without documentation showing it has been imported legally is eliminated at the point of import. This places the focus on Vietnam's border control and market control institutions and the extent to which they are capable of working effectively with each other and with their counterparts in sourcing countries. This is a difficult and complex arena. Efforts should be placed on (a) ensuring that the burden of proof of legality rests with importers, traders, and processors; and (b) identifying and suppressing organized networks known to be involved in illegal international timber trade. The latter implies a need to broaden the toolkit to include anti-money laundering efforts and the use of international criminal intelligence. Any future efforts to tackle imports of illegally sourced timber will impact the wood-processing industry; Vietnam's regional neighbors; and its major export markets in Europe, North America, and Japan.

Inter-agency cooperation across international borders. Inter-agency cooperation at the international level will be key to success in preventing imports of illegally sourced timber and wildlife. The Ministry of Industry and Trade has state management responsibility for Vietnam's trade interests, and its Department of Market Control is well positioned to contribute to both preventive and enforcement efforts (at border controls and points of sale) given its mandate and that of its many available field agents. However, the efforts of Ministry of Industry and Trade and other relevant agencies, such as MARD management authority of CITES and the General Department of Customs, can only be successful if there are systems in place for communicating and sharing data with counterpart agencies in the exporting countries.

Without such systems it will be virtually impossible to verify document authenticity and prevent well-organized, illegal shipments. Vietnam has made an important start on this issue by putting in place a Memorandum of Understanding and Action Plan for Cooperation on

these issues with the Department of Forestry Inspection in Lao PDR and is seeking to do likewise with Cambodia. However, much work remains to effectively translate policies and intentions into practice. These efforts for inter-agency cooperation are likely to include a need for sharing analysis and intelligence with the Anti-Money Laundering Agency and Interpol in order to identify organized criminal activity; and joint working among market control officials, Forest Protection Department, Environment Police, and Customs. Such efforts cannot be undertaken on an ad hoc basis; they require a structured approach that involves multi-disciplinary team working, dedicated budget allocations, and the establishment of new reporting and line management responsibilities.

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