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UNITED NATIONS OFFICE ON DRUGS AND CRIME



Criminal justice response to wildlife and forest crime in Cambodia

A Rapid Assessment



Non-sales unedited

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Cover page photo © General Department of Customs and Excise: ivory haul at Sihanoukville port

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ACRONYMS

ACU	Anti-Corruption Unit
AECP	Anti-Economic Crime Police Department
ASEAN	Association of South East Asian Nations
ASEAN WEN	Association of South East Asian Nations Wildlife Enforcement Network
CITES	Convention on International Trade in Endangered Species
Customs	General Department of Customs and Excise of Cambodia
DLE	Department of Legislation and Law Enforcement
DFRM	Department of Forestry Resources Management
ELC	Economic Land Concessions
FA	Forestry Administration
FP	Forest Products
FB	Forest By-Products
GDANCP	General Department of Administration of Nature Conservation and Protection
GoC	Government of Cambodia
MAFF	Ministry of Agriculture, Forestry and Fisheries.
MEF	Ministry of Economy and Finance
MoE	Ministry of Environment
PP	Public Prosecutor
UNODC	United Nations Office on Drugs and Crime
WA	Wildlife Alliance
WB	World Bank
WCS	Wildlife Conservation Society
WRRT	Wildlife Rapid Rescue Team
WWF	World Wildlife Fund for Nature

1. INTRODUCTION

The Kingdom of Cambodia is a land rich in biological diversity, home to unique and rare species of flora and fauna. It is the most ethnically homogenous country in South East-Asia with 94% of its 15.5 million population made up of Ethnic Khmer. It is bordered by Vietnam, Thailand and Lao PDR and it is a royal monarchy governed by the Cambodian People's Party.

The Cambodian government and people have made tremendous advances rebuilding the social infrastructure that was so devastated by decades of war. This growth has been fuelled by international aid and the exploitation of their natural resources, both flora and fauna. In particular the Cambodian forests have undergone extensive commercial logging over the last 30 years with forest cover dropping from 72% in 1973 to 46% in 2013.¹

The percentage of timber products in 2011 was an estimated production volume of 50,000m³ of sawn-timber minus 25,000m³ of reported export timber, which clearly indicates that the domestic market consumes about 50% of the total production. Companies exporting wood products must obtain an export license usually valid for one year based on the sales contract. The export systems adopted in Cambodia, also, include the inspection of products that can be ultimately traced to the exporter and production mill, through export documentation such as PC-IMEX, export permits and export licenses.²

This exploitation has resulted in the extinction of some species and the reduction in others to such a degree as to make any trade in them illegal. Several flora and fauna species indigenous to Cambodia are now afforded protection under the Convention on International Trade in Endangered Species (CITES). These species include high value timber species such as *Dalbergia cochinchinensis* commonly known as Siamese Rosewood (*Appendix II*) and fauna species such as the Tiger (*Appendix I*), Leopard (*Appendix I*), Clouded Leopard (*Appendix I*) Elephant (*Appendix I*), Sun Bear (*Appendix I*), Banteng (*Appendix I*), Pangolin (*Appendix II*) and the iconic Irrawaddy Dolphin (*Appendix I*).

Despite protection under CITES, national laws, Royal Decrees and Prime Ministerial Sub Decrees there is growing evidence that transnational organised crime groups are continuing to target high value timber species in Cambodia and adjoining countries, particularly Thailand. Illegal logging and timber smuggling are a high reward but risky criminal activity which have resulted in armed confrontations, casualties and several deaths among rangers and smugglers.



Picture 1 - Seizure of 3 tonnes of African ivory at the Sihanoukville Port in May 2014 (Courtesy of the General Department of Customs and Excise of Cambodia)

¹ Open Development, *Forest Cover*. [accessed online 24 August 2014] <http://www.euflegt.efi.int/publications/-/document/25520>

² Global Forestry Services. *Understanding Timber Flows and control in Cambodia in the context of FLEGT*. Cambodia: European Forest Institute N.p.60-65, 2014. Print

It is not only Cambodia's forests that have been exploited. Many of Cambodia's fauna species have also been targeted and continue to be subjected to illegal trafficking to feed markets in China and Vietnam. Recent seizures point to transnational organised crime groups targeting Cambodia as a transit point for ivory and rhino horn from Africa.

The objective of this study therefore is to determine what role the criminal justice system in Cambodia plays in combating the illegal trade in timber and wildlife. In order to coherently achieve this goal, this report relied primarily on qualitative research methods applying an inductive interpretivist approach, by adopting a series of methods of data generation. This information, empirical and statistical, has been obtained through a variety of sources which include both primary – in the form of structured interviewing techniques³ – and secondary sources, i.e. publications, articles, government documents.

Although a variety of sources, and consequently conclusions and recommendations, will be presented at the end of this study, this report aspires to analyse the role of the criminal justice system in combating the illegal trade in timber and wildlife with a view to engage the Government of Cambodia to improve its performance. There has been careful consideration in the selection of the studied documents with regards to the origins in order to obtain a diverse range of material and at the same maintain a constructive dialogue with the Government. Ultimately, one must also acknowledge that establishing a methodology with the aim of assessing the criminal justice system in Cambodia is problematic within itself and a process susceptible of bias as influenced by numerous assumptions.

The political commitment to use criminal justice resources to target the illegal exploitation and trade in timber and wildlife crime is one of the starting points for this country analysis. Criminal justice systems deal with multiple crimes and face considerable public and political pressure on a range of issues. Prioritising interventions is in practice the mechanism that criminal justice actors use to meet large demands with limited resources. The issue of political will is of great relevance too given on-going accusations of wide spread corruption and the protection of wildlife and timber smuggling by those, including political leaders and senior officials, who profit from it.

For the purposes of this report "Wildlife and Forest Crime" refers to the taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora, including timber and other forest products in contravention of national or international law. This study has analysed the framework of responses to crime as defined by national laws⁴.

The opening section introduces briefly the legal framework of environmental law in Cambodia. It then provides a short overview of the key issues and mechanisms through which criminal justice systems could play a more important role in the response to these illicit trades. It also identifies the key enforcement agencies, how these agencies interact and their capabilities to undertake complex investigations. It concludes with a number of short and midterm recommendations.

³ Conducted in July 2014. UNODC is grateful for the openness in which the discussions were held and by the high level representation of government and criminal justice officials.

⁴ International Consortium on Combating Wildlife Crime. *Wildlife and Forest Crime Analytic Toolkit*.

2. LEGAL FRAMEWORKS

There are several pieces of legislation, Royal Decrees, Prime Ministerial sub decrees and Declarations in Cambodia that cover the investigation and prosecution of Wildlife and Forest Crimes. Some of these include;

- The *Law on Forestry, 2002*;
- The *Protected Areas Law, 2008*;
- The *Criminal Code, 2009*;
- The *Customs Law, 2007*;
- The *Environmental Protection Law, 1996*;
- The *Law on Anti-Corruption 2010*;
- The *Law on Anti-Money Laundering And Combating The Financing Of Terrorism, 2007*;
- *Royal Decree on the Establishment and Designation of Protected Areas, November 1993*;
- *Royal Decree 0305/149 2005 Designation of Animals and Plants as National Symbols of the Kingdom of Cambodia*
- *Sub Decree Number 131/20 of 2006 on Timber and Non-Timber Forest Products Allowed for Export and Import*
- *Sub Decree Number 79 of 2003 on Community Forest Management*
- *Sub Decree Number 5 of 2000 on Forest Concession Management*
- *Sub Decree Number 53 on Procedure for Establishment Classification and Registration of Permanent Forest Estate*
- *Sub-Decree Number 72 of 1999 on Environmental Impact Assessment*
- *Sub-Decree Number 209 of 2007 on The Enforcement of the list of Prohibited and Restricted Goods (Its Annex)*

However, the main legislation used to investigate and prosecute wildlife and forestry offences in Cambodia and those which will be examined in more detail include the:

- The *Law on Forestry, 2002*;
- The *Protected Areas Law, 2008*;
- *Sub Decree Number 131/20 of 2006 on Timber and Non-Timber Forest Products Allow for Export and Import*

Additionally, aspects of the *Criminal Code*, the *Law on Anti-Corruption* and the *Law on Customs* which impact or potentially impact on forestry and wildlife crime will also be examined.

Forestry Offences

The two pieces of legislation primarily used to investigate forestry crime in Cambodia are the *Law on Forestry, 2002* and the *Protected Areas Law, 2008*. The first deals with forest land set aside for productions purposes whilst the latter deals with forests set aside for conservation such as national parks, wildlife sanctuaries and the like. Prime Ministerial Sub Decree 131 of 2006 also plays an important part in identifying timber and non-timber products that may be exported from Cambodia.

Protected areas in Cambodia are divided in 23 areas – under the jurisdiction of the Ministry of Environment (MoE) and there are 15 protected forests under the jurisdiction of the Ministry of

Agriculture, Forestry and Fisheries (MAFF). The areas managed by MoE are regulated by the *Protected Areas Law, 2008*. With the exception of these 23 areas, the rest of the Cambodian territory is the jurisdiction of the Forestry Administration and regulated under the *Law on Forestry, 2002*. The Forestry Administrations' only role in relation to Protected Areas is the recording of extraction for issuing of licensing permits for royalty payments and issuing permits of conveyance for transporting logs to mills.⁵

As they are both designed to protect forests, albeit with different purposes both laws will be examined for similarities and differences in definitions, powers, offences and penalties.

Definitions:

Law on Forestry, 2002	Protected Areas Law, 2008
<p>Permanent Forest: A unit of natural or artificial forest ecosystem, in the form of wet, inundated or dry land, covered by mixed vegetation, either natural or planted, including wildlife and other natural resources located therein, which the main utilization are the production of Timber Products and Non-Timber Products, and other forest services</p>	<p>Protected Area: An area of the State's public properties in land or water territories, including coasts and sea, located in the area established by a Royal Decree or a new area established in the jurisdiction of the Ministry of Environment. These areas are of physical and biological importance which requires management by law with the purpose of protecting and maintaining biological, natural and cultural resources, and shall be sustainably managed in every generation for environmental, social and economic benefits</p>
<p>Permanent Forest Estates are divided in:</p> <ol style="list-style-type: none"> 1. Permanent Forest Reserves; <ul style="list-style-type: none"> - Production Forest - Protection Forests - Conservations Forests 2. Private Forests 	<p>Each protected area is divided in:</p> <ol style="list-style-type: none"> 1. Core Zone 2. Conservation Zone 3. Sustainable Use Zone 4. Community Zone

Figure 1: Definitions of Permanent Forests and Protected Areas

Powers:

Article 76 of the *Law on Forestry, 2002* stipulates that forest offences are criminal offences and that Forestry Administration officials qualified as judicial police officials have jurisdiction to investigate them and file such case documents to Court.

Article 79 of the same Act stipulates that Forestry Administration officials qualified as judicial police officials have the rights to require certain individuals to respond to their questions and provide information related to the forest offence. They also have the rights to search the surrounding and inside of a building or residence consistent with the Law on Criminal Procedures. This search shall be

⁵ Global Forestry Services, *Understanding Timber Flows and Control in Cambodia in the Context of FLETG*. Cambodia: European Forest Institute, 2014.

carried out in the presence of the suspect and two witnesses who are neighbours or owners of the building or residence.

Article 80 of the Act stipulates that Forestry Administration officials qualified as judicial police officials have the rights to temporarily seize forest products and by-products that are in violation of the provisions of the law, animals in the process of destroying tree crops and machinery, vehicles, equipment and animals used as means to conduct forest and wildlife offences. The Forestry Administration officials qualified as judicial police officials have the rights to detain, for up to 48 hours, a forestry offender on order to file documents in the case and send it to courts.

Article 85 of the Act stipulates the statute of limitations to file a case for a forestry offence with the Court. This includes from the date of the offence 15 years for a Class I forestry offence; 5 years for a Class II forestry offence and 1 year for a Class III Forestry Offence.

Article 45 of the *Protected Areas Law, 2008* stipulates that natural resource offences are criminal offences. Officials of the General Department of Administration of Nature Conservation and Protection (GDANCP) having duties as judicial police officers shall have authority to investigate, prevent, and crack down on natural resource offences within their assigned territory and file such case with the court.

Article 50 of the Act stipulates that evidence of natural resources offences inside the protected area shall be defined as I: Natural resources products and by-products that are the actual evidence of illegal activities or II: Equipment and means of transport used for committing illegal activities.

There is no money laundering provision in the *Law on Forestry, 2002* or the *Protected Areas Law, 2008*. The legislation does address additional punishment to offenders which includes confiscation of assets, vehicles and equipment related to the offences, suspension or revocation of permits or revoked rights to use the forest, forestland and forest resources. It is unclear how far the provisions of this Article can reach when it comes to organised crime groups involved in the illegal timber trade.

There is no specific reference to CITES in the *Law on Forestry, 2002* or the *Protected Areas Law, 2008*. However, both make general references to international or regional conventions, protocols, and agreements.

Offences

For brevity relevant forestry offences are represented in the two tables on pages 7 to 11.

Prime Ministerial Sub Decree 131 of 2006 stipulates the timber and non-timber products that are permitted to be exported from Cambodia. This decree lists 26 groups of timber and non-timber products that can be exported including but not limited to items such as furniture, wooden toys, parquet and flooring and squared logs with a thickness width up to 25cm that have been air dried or dried by way of a kiln.

Importantly this Sub Decree also outlines those products that are prohibited from export. Those products that are prohibited include;

3. Logs, whether debarked or not;
4. Crude or rough sawn timber;

5. Squared logs with a thickness or width of more than 25cm, even when smoothed;
6. Oil extracted from Moreah Proeuv (*Dyosilum Lorreiri*), yellow vine and yellow vine powder;
7. Firewood and charcoal from natural forests.

Wildlife Crime

The main legislation used to investigate wildlife crime in Cambodia is the *Law on Forestry, 2002* and the *Protected Areas Law, 2008*. The main distinction being that the *Protected Areas Law, 2008* deals with offences occurring within protected areas. The *Law on Forestry, 2002* deals with offences occurring outside of protected areas.

Article 48 of the *Law on Forestry, 2002* defines wildlife as:

“All species of mammals, bird, reptiles, amphibians, insects, other invertebrate, and their eggs or offspring.”

Article 48 also defines wildlife specimens and includes;

“Dead wildlife, including the whole body, internal or external organs, the skeleton and processing products.”

Wildlife is divided into three categories.

1. Endangered Species
2. Rare species; and
3. Common Species

The placement of species into the three categories is undertaken by MAFF through the issue of a Prakas by the FA. These categories may vary between regions in Cambodia. The *Protected Areas Law, 2008* does not provide a general definition of wildlife, although it does define rare and endangered species. These definitions being similar to the *Law on Forestry, 2002*. There is no specific reference to CITES in the *Law on Forestry, 2002* or the *Protected Areas Law, 2008*. However, both make general references to international or regional conventions, protocols, and agreements.

There is no money laundering provision in either Act. The legislation does address additional punishment to offenders which includes confiscation of assets, vehicles and equipment related to the offences, suspension or revocation of permits or revoked rights to use the forest, forestland and forest resources. It is unclear how far the provisions of this Article can reach when it comes to organised crime groups involved in the illegal wildlife trade.

There are no offences within either Act that criminalize the preparation for, or commission of an offence by an organized band as can be found in the *Criminal Code, 2009*. Similarly there are no specific offences to aid, abet, counsel or procure another to commit an offence, or to attempt to commit an offence. Article 64 of the *Protected Areas Law, 2008* has a conspiracy provision but there is no such provision in the *Law on Forestry, 2002*.

Offences

The penalty provisions for wildlife offences under the *Forestry Law, 2002* and *Protected Areas Law, 2008* are identical to the forestry related penalties detailed previously in this report. Accordingly they will not be repeated here. However, no wildlife offence under the *Protected Areas Law, 2008* is punishable as a Fourth Grade Offence. For brevity wildlife offences are recorded in the table on page 10.

Article	Forestry Offence	Penalty
Article 93 <i>Forestry Law, 2002.</i>	Any person or legal entity that violates a provision of the Forestry Law, 2002	<p>Class I Forestry Offenses – 5 to 10 years in prison and confiscate all evidence as state property</p> <p>Class II Forestry Offenses - 1 to 5 years in prison and/or a fine of 10.000.000 Riels to 100.00,000 Riels and confiscate all evidence as State property</p> <p>Class III Forestry offenses – 1 month to 1 year in prison or fine of 1.000.000 Riels to 10.000.000 Riels and confiscate all evidence as State property</p> <p>May also receive a Warning, repairing damage, transactional fines, revocation or suspension of agreements or permits</p>
Article 96 <i>Forestry Law, 2002.</i>	<p>Fifteen forestry related offence clauses including;</p> <ul style="list-style-type: none"> - Unlawful clearing, possession, sale, transportation or permit related matters related to forest products or by products. 	Transactional fine for 2 to 3 times the market value of the real evidence
Article 97 <i>Forestry Law, 2002.</i>	<p>Nine forestry related offence clauses including;</p> <ul style="list-style-type: none"> - Forge or use fake hammer-Stamp, or destroying the mark of the Forestry Administration affixed on logs; - Falsification or unauthorized use of the uniform, insignia, hierarchical ranking badge of the Forestry Administration Officer; - Falsify public documents related to forestry or wildlife domain; - Destroy, hide, sell, or steal forest evidence; - Destroy, alter, or damage the boundary posts of the forest areas; - Clear forestland and enclose it claiming ownership; - Set forest fires intentionally; - Gird bark, poison, destroy, fell or uproot trees to collect stumps; - Establish processing base for yellow vine or craft base of other Forest By-products that leads to the destruction of forest or forest ecology; 	Class I forestry offense subject to 5 to 10 years in prison, revocation of applicable agreements, licenses or permits

Article 98 <i>Forestry Law, 2002</i>	Fifteen forestry related offence clauses including; - Non-compliance with the Code of Practice for Forest Management in Cambodia or the management plan and annual Forest Products & By-products harvest plan, misuse of a forest use permit to harvest Forest Products & By-products; and fell trees with a classified diameter smaller than allowed, that are rare species	1 to 5 years in prison and a fine of 10 million to 100 million Riel Multiple time offender penalized as stated for a class I forestry offence
Article 99 <i>Forestry Law, 2002.</i>	Six forestry related offence clauses including; - Using machinery to harvest Forest Products & By-products without permission; - Importing all types of machinery, vehicles and chainsaws to harvest Forest Products & By-products without an appropriate evaluation by MAFF	1 to 5 years in prison and/or court fines of 10 million to 100 million Riel
Article 100 <i>Forestry Law, 2002.</i>	Any official of a local authority, police officer, member of the armed forces or other authorities that directly or indirectly allow forest exploitation or other activities contrary to the provisions of this law, or to threaten a Forestry Administration officer, or to obstruct the performance of duties and operations of a Forestry Administration officer	1 to 5 years in prison and/or fines of 10 million to 100 million Riel

Article	Forestry Offence	Penalty
Article 53, <i>Protected Areas Law, 2008.</i>	A person who commits offence against the provisions of this law shall receive punishment as follows:	<ol style="list-style-type: none"> 1. Natural resources offences of the first grade - Warning, payment of restoration damages, transaction fines, termination or suspension of agreements or permits 2. Natural resources offences of the second grade - 1 month to 1 year's imprisonment and/or fines from 1,500,000 to 15, 000,000 Riels 3. Natural resources offences of the third grade - 1 year to five 5 years' imprisonment and/or fines from 15,000,000 to 150,000,000 Riels 4. Natural resources offences of the fourth grade: 5 years to 10 years' imprisonment plus fines 15,000,000 to Riels 150,000,000 Riels <p>In case the offender is a legal entity the fines shall be from 150,000,000 250,000,000 Riels</p>

		All evidence shall be confiscated as State property
Article 57, <i>Protected Areas Law, 2008.</i>	Five forestry related offence clauses including; - Grazing cattle, bring in materials that may cause a fire, produce or possess tools for the purposes of committing natural resource offences	Written warning as punishment for natural resources offences of the first grade
Article 58, <i>Protected Areas Law, 2008</i>	Four forestry related offence clauses including; - Build or operate any burning kiln without permit, bring in chainsaw and machinery into a protected area without permit	Punishable by transaction fines from 100,000 to 1,000,000 Riels on top of restoration damages Multiple time offender – double transaction fine
Article 59, <i>Protected Areas Law, 2008</i>	Four forestry related offence clauses including; - Cut, uproot, fell, encroach and clear forest land, prune, strangle, collect, destroy natural resources, Stocking by-products of natural resources without permit	Punishable by transaction fine or pay restoration damages Multiple time offender – double transaction fine
Article 60, <i>Protected Areas Law, 2008</i>	Seven forestry related offence clauses including; - Causing forest fire by mistake; destroy young trees planted in restored ecosystem; Use all kinds of poisonous substances that can have adverse impacts to natural resources and build or install boundary posts or markers, fences, putting signs for the purposes of ownership	Punishable as offences of the second grade 1 month to 1 year's imprisonment and/or fines from 1,500,000 to 15, 000,000 Riels Multiple time offender – double transaction fine
Article 61, <i>Protected Areas Law, 2008</i>	Eight forestry related offence clauses including; - Displace, remove or destroy boundary markers and infrastructure for the management of protected areas, offences for impersonating an officer - Falsify legal documents of relevant institutions to commit illegal activities. - Destroy boundary markers, bridges, water pipes, roads, buildings, stations, and public infrastructures	Punishable as offences of the third grade 1 year to five 5 years' imprisonment and/or fines from 15,000,000 to 150,000,000 Riels Multiple time offender – double transaction fine
Article 62, <i>Protected Areas Law, 2008</i>	Six forestry related offence clauses including; - Fell trees, encroach and clear forest land, set forest fire, and bulldoze forestlands to claim ownership - Cut, transport and process all kinds of luxurious quality hard wood and Black wood - Bring in, or introduce into, store or discharge any type of pollutant or hazardous waste that can damage, or can cause damage to natural resources - Set forest fire intentionally - Dig, move the soil, bulldoze, or remove soil, stones, pebbles and minerals without permit	Punishable as offences of the fourth grade 5 years to 10 years' imprisonment plus fines 15,000,000 to Riels 150,000,000 Riels In case the offender is a legal entity the fines shall be from 150,000,000 250,000,000 Riels Multiple time offender – double transaction fine

	- Fill in soil on land or water area without permit	
Article 63, <i>Protected Areas Law, 2008</i>	Any person who threatens and causes obstruction, injury or interference to an NCPA Official performing his functions and duties	Imprisonment between 1 year to 5 years and be fined from 15,000,000 to 150,000,000 Riels Accomplice or collaborator shall receive the same punishment as the offender
Article 64, <i>Protected Areas Law, 2008</i>	Any Administration officer, inspection officer or environment officer who is negligent, careless or fails to abide by the order of the MoE	Administrative punishment or shall be prosecuted An inspection or environment officer, who conspires with the offender or facilitate the offences, shall receive the same punishment as the offender

Article	Wildlife Offence	Penalty
Article 96 <i>Forestry Law, 2002.</i>	Five Wildlife related offence clauses including; - Raising or breeding any rare or endangered wildlife, possess, transport or import any rare species or specimen of wildlife	Transactional fine for 2 to 3 times the market value of the real evidence
Article 97 <i>Forestry Law, 2002.</i>	One wildlife related offence clause of; - Hunt, kill, trade or export endangered wildlife species	Class I forestry offense subject to 5 to 10 years in prison, revocation of applicable agreements, licenses or permits
Article 98, <i>Forestry Law, 2002.</i>	Five wildlife related offence clauses including; - Hunt wildlife in closed season or in protected zones, hunt, kill, trade, or export rare species and possess, transport or import endangered wildlife species or specimens	1 to 5 years in prison and a fine of 10 million to 100 million Riel Multiple time offender penalized as stated for a class I forestry offence
Article 99 <i>Forestry Law, 2002.</i>	One wildlife related offence clause of; - Harass, harm, or collect egg or offspring of an endangered or rare wildlife species or destroy its habitat	1 to 5 years in prison and/or court fines of 10 million to 100 million Riel
Article 58, <i>Protected Areas</i>	Three wildlife related offence clauses including; - Importing or exporting fauna species without a permit, bring in hunting dogs for a	Punishable by transaction fines from 100,000 to

<i>Law, 2008</i>	hunting purpose and catching, trapping, poaching, poisoning or collecting the eggs or offspring of wildlife	1,000,000 Riels on top of restoration damages Multiple time offender – double transaction fine
Article 59, <i>Protected Areas Law, 2008</i>	Two wildlife related offence clauses including; - Causing injury to wildlife, raising or trading in wildlife and wildlife specimens	Punishable by transaction fine or pay restoration damages Multiple time offender – double transaction fine
Article 60, <i>Protected Areas Law, 2008</i>	Three wildlife related offence clauses including; - Using poisonous substances that are harmful to the environment, destroying wildlife habitats, collecting eggs and feeding, reproduction and nurturing wildlife or migratory species	Punishable as offences of the second grade 1 month to 1 year's imprisonment and/or fines from 1,500,000 to 15, 000,000 Riels Multiple time offender – double transaction fine
Article 61, <i>Protected Areas Law, 2008</i>	Two wildlife related offence clauses including; - Catch, trap, hunt, cause injury, poison, kill, take out, collect eggs and offspring from their original habitats of any vulnerable, rare, or critically endangered wildlife species, or - using weapons, explosives, chemical or poisonous substances, any equipment using electricity as a means for trapping animals	Punishable as offences of the third grade 1 year to five 5 years' imprisonment and/or fines from 15,000,000 to 150,000,000 Riels Multiple time offender – double transaction fine

Criminal Code, 2009

A key tool to target transnational organised crime is criminalising the participation in or membership of an organised crime group. The *Criminal Code, 2009* addresses this issue by criminalising the participation in an 'organised band' during the preparation or commission of a crime. Participation in or organised band is seen as an aggravating circumstance and thus attracts additional penalties.

Article 43 of the Act defines an organised band as constituting a grouping or illegal knock-out agreement that is set up in order to prepare or carry out one or several offences. Numerous offences attract additional penalties if committed as part of an organised band including: Genocide (Article 185); Crime against Humanity (Article 190); War Crimes (Article 196); Fraud (Article 383); Money Laundering (Article 409) and Endangering Persons (Article 419);

The Act does not criminalise membership of an organised band unless that membership involves the preparation for, or commission of a crime.

Article 453 of the Act deals with the offence of conspiracy. This offence requires several people to commit a criminal attempt, and this scheme being materialised by one or several concrete actions. The penalty for this offence is between 5 and 10 years imprisonment. This penalty is increased to between 10 and 20 years for civil servants.

Articles 634 and 635 of the Act create an offence for delivering forged documents and forging attestation. These offences are punishable by imprisonment from 1 month to 1 year and a fine from 100,000 Riels to 2,000,000 Riels (approximately between 25 and 500 USD).

Article 636 of the Act creates an offence for using a falsified or forged certificate. This offence is punishable by imprisonment from 1 month to 1 year and a fine from 100,000 Riels to 2,000,000 Riels (approximately between 25 and 500 USD).

Law on Anti-Corruption 2010

To combat corruption Cambodia has the *Law on Anti-Corruption, 2010*. This law addresses corruption across all sectors/sections of the community. Accordingly this legislation can (and in the case of forestry crime has) be used to investigate corruption related to the illegal trade in timber and wildlife.

Article 25 of the Act empowers the Chairman of the ACU or his officially assigned representative the duty to lead, coordinate and control an investigation, instead of the prosecutor, up to the point of arresting a suspect. After the arrest, the prosecutor exercises his power as stated in the provisions of the code of criminal procedure.

Perhaps the strongest article within the *Law on Anti-Corruption 2010* is Article 27. Unlike traditional law enforcement agencies in Cambodia who require an Investigating Judge to authorise the interception and monitoring of telephones, facsimiles or the internet, the ACU can order the following in a case where there is a clear hint of corruption:

- Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts

- Check and order the provision or copy of authentic documents or individual documents, or all bank, financial and commercial documents
- Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping
- Check documents and documents stored in the electronic system
- Conduct operations aimed at collecting real evidence

Article 32 of the Act allows for numerous corruption related offences of the Criminal Code to be implemented as part of the *Law on Anti-Corruption 2010*.

Article's 33 and 34 deal with bribes being offered to foreign public officials or officials of foreign public organisations and is punishable by penalty of between 5 and 10 years imprisonment.

Article 35 of the Act deals with abuse of power by public servants or any citizens invested with public office through election, such as taking action to hinder law enforcement in order to take any illegal advantage. This offence carries a penalty of between 2 and 5 years in prison and fine from four million 4,000,000 to 10,000,000 Riel. This offence is punishable by imprisonment from 5 to 10 years when that action does hinder law enforcement.

Article 36 of the Act deals with the illicit enrichment of an individual after they have declared their assets. Any increase in wealth that cannot be explained is subject to confiscation. Should that wealth increase be connected to any corruption offence then the owner is punished according to the *Law on Anti-Corruption 2010*.

Article 37 of the Act deals with any act to conceal, keep or transport with knowledge the proceeds of corruption. This offence is punishable by imprisonment of between 2 and 5 years and a fine of between 4,000,000 and 10,000,000 Riel. If this act has been done habitually, by comfort or convenience from professional duty or by an organised group then the penalty increases to a term of imprisonment from 5 to 10 years.

Despite the strengths of the legislation there are a number of areas in *Law on Anti-Corruption 2010* that could be enhanced. One major deficiency is Article 17 which requires certain persons including but not limited to: members of the Senate, members of the National Assembly, civil servants, police, military personnel, Trial judges, prosecutors, and leaders of civil society to declare their assets in writing to the ACU. Although the concept is sound, it does seem to go far enough in that it does not require immediate family members to also declare their assets. This loophole would enable the corrupt to simply transfer their assets to their immediate family to prevent disclosure.

Another Article that may need amendment is Article 11 of the Act. This article deals with the establishment of the Anti-Corruption Unit and stipulates that the Anti-corruption Unit is led by one chairperson with the rank equivalent to senior minister, and a number of vice-chairpersons with the rank equivalent to minister as his assistants. These chairman and vice-chairman are appointed by the Royal decree at the request of the Prime Minister. This article has drawn some criticism as it is felt that the leadership of the ACU is too closely tied to the executive of the Government and therefore may lose some of its independence. This independence is essential for the public to have confidence that the ACU is not biased or subject to the dictates of the government of the day. Similar agencies

established in other countries are completely independent of the government and do not answer to any Minister.⁶

Law on Customs, 2007.

Recent seizures of timber, Ivory and rhino horn by Cambodian Customs illustrates the importance that agency plays in the fight against transnational organised crime. In Cambodia Customs operate under the *Law on Customs, 2007* and any law or regulation related to it.

Article 8 of that Act allows the government to prohibit or restrict subject to condition the import or export of goods for any of the following reasons:

- National security;
- Public order and standards of decency and morality;
- The protection of health and life of persons, animals or plants;
- The protection of national treasures of artistic, historic or archaeological value;
- The conservation of natural resources;
- The compliance with the provisions of any legislation of The Kingdom of Cambodia currently in force;
- The fulfilment of obligations under the Charter of the United Nations.

Article 73 of the Act deals with those who commit minor violations of the law and are subject to administrative fines from 100,000 to 500,000 Riels.

Article 74 of the Act deals with the evasion of duty or taxes where the goods are not prohibited or restricted and are subject to administrative fines of between 1 to 3 times the duty and tax evaded, confiscations of the goods and conveyance and other things used to conceal the smuggled goods or imprisonment from 1 month to 1 year.

Article 75 of the Act deals with prohibited or restricted goods and are subject to administrative fines up to 3 times the value of the goods or conveyance, confiscations of the goods and conveyance and other things used to conceal the smuggled goods or imprisonment from 1 to 5 years.

The *Law on Customs 2007* does not specifically mention CITES, however Article 8 enables the application of Royal Decree 209 of 2007. This decree lists 1,537 prohibited and restricted articles including flora and fauna that are afforded protection under CITES. By using a combination of general and specific terms the decree provides sufficient scope to regulate the import or export of any CITES listed species.

Whilst Article 8 and Royal Decree 209 provide a solid foundation consideration should be given to amending the *Law on Customs, 2007* to include a specific article that criminalises the illegal import or export of a CITES listed species. If this article was supported by substantial monetary fines and periods of imprisonment it may deter those transnational crime groups targeting Cambodia's scarce natural resources and those who use it as a transit country for CITES listed species.

⁶ Independent Commission Against Corruption, 2014. Independence and Accountability. [Accessed online 10 November, 2014] at <http://www.icac.nsw.gov.au/about-the-icac/independence-accountability>

3. COMPETENT LAW ENFORCEMENT AUTHORITIES

Cambodia has several specialist law enforcement bodies responsible for the enforcement of wildlife and forestry laws. This study has analysed the following:

- Forestry Administration, Ministry of Agriculture, Forestry and Fisheries;
- Nature Protection and Conservation Administration, Ministry of Environment
- Anti-Economic Police Department, Ministry of the Interior;
- General Department of Custom and Excise, Ministry of Economy and Finance;
- Royal Gendarmerie, Ministry of National Defence;
- Wildlife Rapid Rescue Team
- Public Prosecutions Unit, Ministry of Justice.
- Anti-Corruption Unit, National Anti-Corruption Council is responsible for investigating cases of corruption across government, including those related to the forestry sector.

3.1 Forestry Administration – Ministry of Agriculture, Forestry and Fisheries

The Forestry Administration (FA) is the principal agency responsible for the enforcement of forestry legislation in Cambodia. The FA operates under the MAFF and from a law enforcement perspective it is responsible for the investigation, prevention and suppression of forest destruction, forest fires and forest clearing.⁷ The FA also undertakes forestry compliance duties and oversees the community forest program which enables them to grant areas of production forests to local communities to enable them to manage and benefit from the resource.

The FA comprises one thousand three hundred staff. Three hundred of these staff are centrally located, whilst the rest are distributed between forest inspectorates, forest cantonments, forest divisions and forest triage units. Approximately four hundred FA officers have a role as judicial police to detect, investigate and report violations against the Forestry Law. These officers come from a mixed background (lawyers, biologists, etc.) and receive some initial training on criminal procedures. Training on wildlife species identification is generally provided at the Wildlife and Forestry Training Centre or from various international organizations. FA employees are not equipped with firearms and instead rely upon the Gendarmerie to provide them with support during investigations where the suspects may be armed.

FA officers in their role of judicial police have power to detain suspects for 48 hours – with a possibility of extension for a further 24 hours with an order of the prosecutor. They may also seize timber and wildlife until the matter is finalised at Court or until the offender pays their fine. Like other law enforcement agencies within Cambodia upon notifying the Prosecutions Authority of a crime the conduct of the investigations is directed by the prosecutors.

⁷ Forestry Administration Website. Mission of FA. [Accessed online 15 October 2014] at http://www.forestry.gov.kh/AboutFA/VisionMision_Eng.html

Offences under Article 96 of the Forestry Law result into transaction fines. Violations under articles 97-101 are directed through the criminal procedures. FA is responsible for the first stage of the investigations, until the case is referred to the Prosecutors – generally provincial prosecutors – within a period of approximately one week (this term is not strictly regulated by law). Occasionally prosecutors reject the case when the evidence is insufficient to pursue a court case. More often they continue the investigation and they refer back to FA for additional information.

Through the database tracking system of the FA it is possible to collect information about the number of cases on annual basis. The period 2010-2013 seems to have registered the highest incidence of cases since 1999, with a minimum of 1,099 cases reported every year in that period. In 2013 there were 1,523 cases of which 79% (1,199) were criminal offences and 21% (324) were administrative violations. Among the criminal offences the most common ones are the transportation of illegal wildlife and timber, while few cases relate to encroachment.

If compared to the same data from its neighbouring countries, the justice system in Cambodia has a very high percentage of cases being dealt as criminal offences as opposed to administrative violations. This high percentage may not necessarily reflect the level of criminality but may be indicative of other factors such as the suspects not confessing to the crime, the suspect not agreeing to pay the fine or the time period for issuing the transactional fine has lapsed.

Many violations refer to logging companies operating within Economic Land Concessions. ELC are concessions provided by the Government to private companies to clear part of the existing forests and replace them with plantations. When the concessionaires operate beyond the limits of the ELC they incur into violations of the Forestry Law and the Public Procurement Act.

Violations of the ELC can also be perpetrated by the employees of the companies without the consent of the management. In these cases the prosecutors have to determine whether the managers were aware of the illegal activity and if so, the company will pay a monetary penalty.

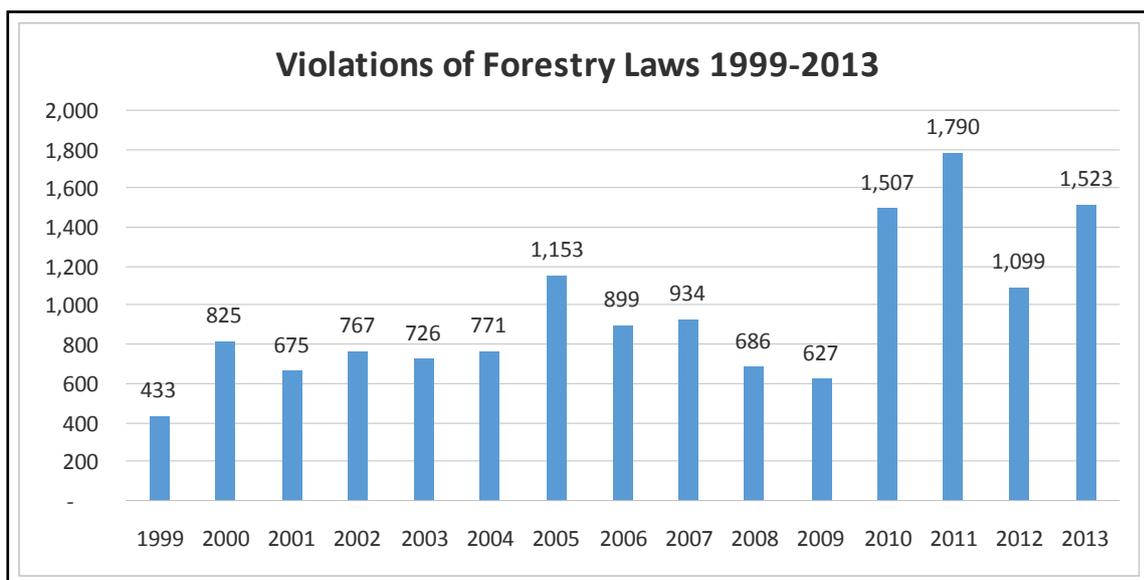


Figure 2: Forestry Administration Case Load 1999 – 2013. Source: FA

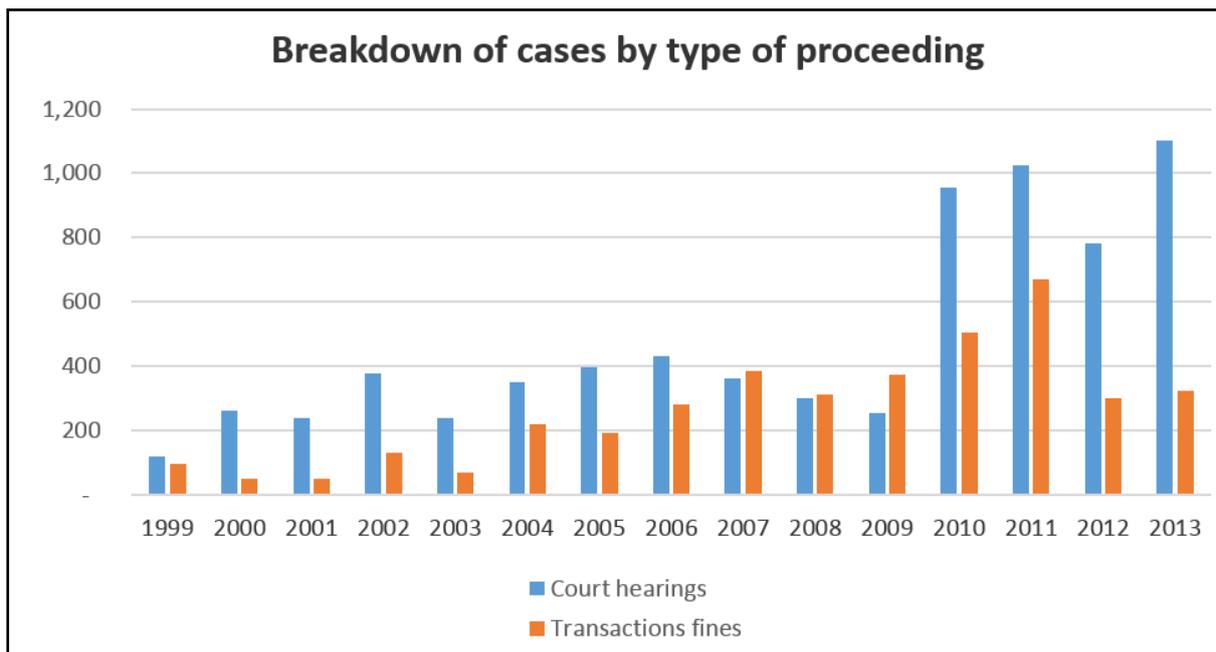


Figure 3: Comparison of Court Referrals to Transaction Fines. Source: FA

FA does not have information on the outcome of the cases once they are referred to the Prosecutor. Similarly FA does not have information about the number of violations/offences against the 2008 *Protected Area Law* under the jurisdiction of the MoE.

The level of cooperation with the Police is quite limited to provincial instances even for more complex cases. A much more intense cooperation takes place with the military police, with which FA formed the WRRT.

Contact between FA and Customs is also minimal as Customs are under no obligation to notify FA of any seizures of timber or wildlife seized in contravention of the Customs Law. In these instances Customs generally bring the case directly to the Prosecution.

The CITES Management Authority in Cambodia is under the MAFF and it comprises MoE, FA and the Fisheries Administration. The CITES Scientific Authority instead is part of FA.

To gather intelligence on persons suspected of forestry or wildlife offences the FA operates a network of informants and the details of these persons are recorded on a central database. The FA does not have trained intelligence analysts although some staff are dedicated to the collection of information on possible violations through media scanning and through liaison with local communities. FA does not share information with the MoE in relation to offences or suspects. This is a major oversight on their behalf.

The FA does not utilise advanced investigations techniques. Telephone interceptions are allowed only with orders from an Investigating Judge. The use of listening devices and controlled deliveries are similarly not used. There is a belief within FA that controlled deliveries may be in breach of Article 101 of the Forestry Law. This is not a belief held by the prosecutors who instead quote ethical and operational considerations as the main reasons this is not undertaken.

FA monitors the compliance of the logging concessions through inspection of the timber yards and a strict chain of custody. There is no current capacity to monitor logging activities through satellite imagery but in certain cases FA purchases satellite pictures from other countries. The majority of the logging companies operating within Cambodia are Chinese and Vietnamese.

A number of major factors have been identified that inhibit FA in the performance of their role. Firstly, Inconsistency in data and records pertaining to land use and forest management in Cambodia remains a gap to be addressed. Production forest areas totaling 1.2 million hectares are not identified on the current land use map. Areas of Economic Land Concessions (ELC) regulated by the Ministry of Agriculture Forestry and Fisheries (MAFF) and the Ministry of Environment (MoE) are not formally listed or mapped by the ministries. The zoning of Protected Areas, managed by MoE has not been completed to clearly define sustainable use and community zones that are eligible as part of the timber supply. This creates confusion and problems with investigating alleged breaches of the Protected Areas Law, 2008.⁸

Secondly the current licensing and permits compliance system used to regulate the flow of timber is flawed and in need of an overhaul. They are susceptible to manipulation as the source and quantity of the timber is frequently misrepresented. This can nullify compliance efforts and complicate investigations.

3.2 General Department of Administration of Nature Conservation and Protection, Ministry of the Environment

In 1993, the Royal Decree on the Designation and Creation of Protected Areas established 23 Protected Areas (PAs) in Cambodia under the management of the Ministry of Environment (MoE). As a result 18.23% of the total land area of Cambodia was officially declared as Protected Areas. These protected areas were categorised into seven national parks, ten wildlife sanctuaries, three protected landscapes and three multiple use areas.

Protected areas are patrolled by Park Rangers from the General Department of Administration of Nature Conservation and Protection (GDANCP) which is part of the MoE. The GDANCP has approximately 960 contracted rangers operating in these 23 protected areas. Some of these GDANCP rangers have a role as judicial police to detect, investigate and report violations against the *Protected Areas Law, 2008*.

GDANCP rangers liaise closely with local communities who are permitted to sustainably manage their own resources within protected areas⁹. Many GDANCP rangers are also recruited from local

⁸ Global Forestry Services, *Understanding Timber Flows and Control in Cambodia in the Context of FLETG*. European Forest Institute, 2014

⁹ World Wildlife Fund, *Law Enforcement Against Forest Crime in the Eastern Plains of Cambodia 2006 – 2011*. WWF 2012 [Accessed online 4 November 2014] at http://awsassets.panda.org/downloads/law_enforcement_against_forest_crime_in_the_eastern_plains_landscape_of_cambodia_2006_20.pdf

3.3 Anti-Economic Crime Police Department, Ministry of the Interior

The Anti-Economic Crime Police Department (AECF) is part of the General Police Department and operates under the Ministry of the Interior (MI). The AECF's primary role is to suppress tax evasion crime. The AECF achieves this through cooperation with other law enforcement and regulatory agencies including Custom and the Forestry Administration. The AECF is staffed with approximately 480 full time staff. The unit within the AECF that deals directly with forestry and wildlife crime is the Office of Natural Resource, Environment and Well Being Protection. This unit consists of approximately 45 investigators with staff deployed mainly in Phnom Penh and to some extent also in other provinces. This unit does not have any allocated intelligence analysts.

The AEP does not communicate and has no mechanisms or MOU's for the exchange of intelligence or information with similar type police units in neighbouring countries. Notwithstanding this – as part of the Cambodian National Police – it has access to international law enforcement groups such as Interpol and ASEANAPOL. Officers of the AECF receive 3 months basic police training. Individual officers may receive additional training primarily provided by IGOs or NGOs.

The Office of Natural Resource, Environment and Well Being Protection investigate about 100 cases per year mostly related to illegal fishing in the Tonle Sap Lake. The vast majority of the suspects in the cases are villagers. No serious crime of timber or wildlife crime has been investigated. When wildlife-related offences take place at provincial level, the case is handled by provincial authorities and the Office is rarely involved. The unit is not equipped or resourced to effectively address serious transnational organised forestry and wildlife crime.

3.4 General Department of Customs and Excise of Cambodia, Ministry of Economy and Finance

The General Department of Customs and Excise (Customs) is part of the Ministry of Economy and Finance. Customs are a well led and reasonably well resourced department with approximately 1,500 staff dispersed between Sihanoukville Provincial Autonomous Port, Phnom Penh International Airport, dry ports in major regional locations and border checkpoints for a total of 50 checkpoints. Customs is a member of the World Customs Organisation since 2001 and of its related Regional Intelligence Liaison Offices (RILO). Customs officers receive six months of basic academy training making it one of the better trained law enforcement agencies in Cambodia.

Customs are responsible for collecting tax from dutiable goods imported into Cambodia, preventing customs fraud, to facilitate cross border trade and for identifying and seizing contraband smuggled to and from Cambodia. This includes illicit wildlife and timber trafficking. When contraband is detected then it can be seized for up to 24 hours before contacting the Prosecutor. Even if the Customs Law does not prevent officers from conducting controlled deliveries, in practice these kinds of operations are never performed.

Customs utilise a risk profile model when determining what containers will be subject to inspection. This has resulted in several seizures of illegally smuggled timber and a record 3 tonne seizure of ivory at Sihanoukville Provincial Autonomous Port in May 2014 (See picture 1). Customs also seized 18 kg

of rhino horns arriving from Africa to Phnom Penh international airport and transiting to China (See picture 2).

Customs are well staffed and reasonably equipped however like all enforcement agencies in Cambodia they have a shortage of computers, internet connectivity, radios and vehicles which would further enhance their operational effectiveness. The Department operates 22 X-Ray machines, of which 12 are mobile, to cover Sihanoukville Provincial Autonomous, Phnom Penh and Siam Reap International airports, major regional dry ports and border checkpoints. Customs have a dedicated surveillance team and an investigations unit.

Customs have a good working relationship with its national law enforcement counterparts involved in investigating environmental crime. There is no formal requirement to exchange information related to the results of enforcement operations although some exchange with other agencies is reported to take place on an ad-hoc basis.

Customs have ongoing working relationships with surrounding countries including Memorandum of Understanding (MOU) with Thailand (1999), Vietnam (2007) and Lao PDR (2008). It also shares information with other ASEAN members, China, Japan and South Korea. These MOU's allow for the exchange of information and intelligence for law enforcement purposes and will incorporate wildlife and timber smuggling.¹³In June 2014 a senior delegation from Customs were sent to Vietnam to discuss ways to reduce the illegal movement of timber from Cambodia to Vietnam.

3.5 Royal Gendarmerie, Ministry of National Defence

The Royal Gendarmerie is part of the Royal Cambodian Armed Forces and operates under the Ministry of National Defence. The Gendarmerie has a strength of 10,000 personnel operating on three levels, central, provincial and district. A Gendarmerie officer undertakes basic military and law enforcement training. Sub decree 77 sets forth the roles and responsibilities of the Gendarmerie including their role as Judicial Police Officers, under the instructions of the investigating judge.

A key mission of the Gendarmerie is to cooperate with other law enforcement agencies in Cambodia. The Gendarmerie frequently provides support to unarmed FA staff when it comes to potentially armed offenders.

Gendarmeries are part of the WRRT and actively investigate forestry offences under the control of the Public Prosecutions Service.

Despite their size, the Gendarmerie has no specialized unit on timber-related crimes and its staff is inadequately trained or equipped to undertake investigations into transnational organised wildlife or forestry crime.

¹³Interview with Senior Customs Officer, July 2014.

3.6 Wildlife Rapid Rescue Team

The Wildlife Rapid Rescue Team (WRRT) represents one of the most effective wildlife investigation units within Greater Mekong Sub-region (GMS). Despite being staffed by only twelve members made up of representatives from the Gendarmerie and FA the WRRT undertake on average 40 investigations per week. The WRRT used to operate as the National Taskforce in Cambodia for the ASEAN Wildlife Enforcement Network (WEN).

The WRRT is supported by staff from the Wildlife Alliance NGO who provides not only law enforcement advice but provide wildlife care and community outreach programs.

The WRRT may be called upon by other agencies to assist with wildlife investigations or it may generate its own investigations through a network of informants or as a result of information received on its hotline from community members.

Up to 90% of all wildlife investigations in Cambodia are undertaken by the WRRT. This reflects not only the capabilities of the unit but illustrates the widespread knowledge of its existence within Cambodian law enforcement agencies and a willingness to refer cases to it.

In 2013 the WRRT recovered 4,270 animal carcasses, 1,900kg of animal meat, animal skins and an additional 1,500 animal parts. Species recovered included an Asian elephant, native birds, reptiles and primates. Interestingly the WRRT recovered only 2 Burmese python carcasses but gallbladders from an additional 1,138 specimens.

Most importantly in 2013 the WRRT recovered 2,140 live specimens including 8 Malayan Sun Bears, native birds, reptiles and primates. These animals were either repatriated to the wild or – if this was not possible – were placed in facilities operated by Wildlife Alliance.

Although the WRRT is achieving concrete results there is room for improvement. Due to funding limitations and/or legal constraints, the unit lacks a dedicated intelligence analyst and training on advanced investigative techniques (including controlled deliveries, undercover operations, use of tracking devices, etc.) and this limits the effectiveness of the WRRT to target serious transnational organised crime.

Despite its success and illustration of an effective investigation model, the WRRT is entirely subsidized by Wildlife Alliance and as a result the survival of the unit depends on availability of external funding.

3.7 Department of the Public Prosecutor, Ministry of Justice

Cambodia's legal system is based upon the French civil law tradition¹⁴ and in accordance with Article 112 of the Cambodian Constitution only the Department of the Public Prosecutor (PP) shall have the right to file criminal suits.¹⁵ In Cambodia Judges and Prosecutors are judicial officers. They receive the same training at the Royal Academy for Judicial Professions. This training consists of 8 months of study at the Academy, a one month internship followed by a further four months of study. Judges can become prosecutors and vice versa¹⁶.

In accordance with the Cambodian Code of Criminal Procedure (CCP) the PP exert extensive power over the police including the power to lead and conduct investigations, to delegate power of investigation and if necessary revoke that power, to attend the scene of a crime, to participate in police interviews, issue search warrants and supervise the detention of suspects.¹⁷

Judicial police conduct investigations, gather evidence and bring offenders before prosecutors. After receiving a complaint, denunciation or police report of an offence the prosecutor may file a case with processing or may indict the offenders. Once the prosecutor has brought criminal charges against the offender, the case is sent to a judge for investigation.

The PP of Cambodia has approximately 128 prosecutors spread throughout the country. The workload on each prosecutor is considerable – approximately 200 cases a year – and depending on the geographic location the number of forestry and wildlife crime cases may represent a significant share of the workload. For example in a three month period during 2014 forestry crime represented 50% of the total caseload of the single prosecutor in Kampong Thom Province whilst wildlife crime represented 10% of his case load. Most of the forestry crimes are related to land clearing and timber trafficking. For most of the forestry offences it is difficult to identify the perpetrators.

In 2013 Prosecutors of the Phnom Penh Court submitted ten forestry cases (of which eight had identified offenders) and two wildlife crime case (no offenders) to Investigating Judges. Eight of these cases were sent to trial. For forestry crimes the maximum legal penalty is rarely applied and generally the sentences are limited to monetary fines or a short period of imprisonment. The profile of convicted offenders indicates that offenders are most likely to be Cambodian citizens involved in transportation of timber or wildlife. Rarely are higher level criminals implicated in any cases.

Between January and August 2014 Prosecutors in Phnom Penh had received 9 cases of forestry crime of which six had been sent to Investigating Judges, four of which have so far been sent to trial. Three matters are still under investigation.

¹⁴ J Holligan and T Abdulhak, *Overview of the Cambodian History, Governance and Legal Source*, 2011 [accessed online 30 August 2014] <http://www.nyulawglobal.org/globalex/cambodia.htm>

¹⁵ Cambodian Government. *Constitution of Cambodia* [accessed online 30 August 2014] <http://www.constitution.org/cons/cambodia.htm>

¹⁶ Dr L M Hay, et al, *Public Prosecuting in Cambodia*. 2008 [accessed online 31 August 2014] <http://www.article2.org/mainfile.php/0701/3>

¹⁷ Ibid

The Cambodian *Law on Anti-Money Laundering and Combating the Financing of Terrorism* was enacted in 2014. To date there have been no prosecutions for money laundering offences. However, actions have been taken against forestry and wildlife crime offenders using the proceeds of crime provisions contained with the *Law on Forestry, 2002*.

Despite the wide ranging powers of the prosecutor in Cambodia, only an Investigating Judge or the ACU has the authority to intercept communication systems. It is unclear what impact, if any, this has on the use of these investigative powers into investigations of serious transnational organised crime cases. It is unlikely that these powers would be used in the investigation of forestry or wildlife crimes. Similarly in Cambodia controlled deliveries are undertaken for drug offences only. No controlled delivery has been ever authorised by the PP in relation to timber- or wildlife-related offences, although there is no legal impediment for their use. In discussions with the PP there appears to be a reluctance to use controlled deliveries for wildlife or timber crimes. This may be due to a lack of understanding on how to conduct controlled deliveries, fear of losing evidence of a crime or concerns as being seen as agent provocateurs. Whatever the reasoning, a failure to use this valuable investigative tool limits the ability to identify those upper level wildlife and timber traffickers.

3.8 Anti-Corruption Unit, National Anti-Corruption Council

Corruption is a major driver in the illegal timber and wildlife trade worldwide. The fraudulent activity of politicians, police and other government officials to facilitate these illegal trades is documented by various (unverified) reports and court cases.

Cambodia is ranked 160th out of 177 countries by Transparency International in the 2013 Corruption Perception Index.¹⁸ To combat corruption, in 2010 the Government formed the Anti-Corruption Unit (ACU) of the National Anti-Corruption Council with a mandate to investigate corruption throughout every sector of Cambodian society. The ACU adopts five strategies to address corruption including:

- Education
- Prevention and Obstruction
- Law Enforcement
- Good Governance and Internal Audit
- National and International Relations¹⁹

In the four years that it has been operating the ACU has conducted various investigation addressing mid- and high-level public officials, including:

- The Secretary General of the National Authority for Combatting Drugs who received a life sentence for corruption related matters in 2011²⁰;

¹⁸ Transparency International, *Corruption by Country*. 2014 [Accessed online 10 November 2014] at <http://www.transparency.org/country#KHM>

¹⁹ Anti Corruption Unit, *Strategic Plan*, 2014 [accessed online 31 August 2014] http://www.acu.gov.kh/en_sub_index.php?4a8a08f09d37b73795649038408b5f33=1&03c7c0ace395d80182db07ae2c30f034=4

- A prosecutor from Pursat Province who was sentenced in 2012 to 19 years imprisonment on corruption related charges²¹
- The Meanchey District Police Chief for corruption related matters in October 2014.

In relation to forestry and wildlife related corruption the ACU arrested a member of the Gendarmerie in 2012 who was allegedly providing protection to rosewood smugglers and who threatened a number of FA officials²². In August 2014 two FA officials were arrested for extorting pepper farmers to allow them to transport their crop to market.²³

Between January and September 2014 the ACU received between 700 and 800 complaints of corruption. This number is expected to reach 1000 by the end of 2014.²⁴ In the framework of this study, UNODC attempted to meet with the ACU however they declined to be interviewed. Accordingly no information was provided to identify the number of cases that were initiated out of those complaints or how the ACU prioritises an investigation.

²⁰ Cambodia Daily, 27 January 2012. [Former Anti-Drug Czar Gets Life in Prison](http://www.cambodiadaily.com/archives/former-anti-drug-czar-gets-life-in-prison-1554/). [Accessed online 8 November, 2014] at <http://www.cambodiadaily.com/archives/former-anti-drug-czar-gets-life-in-prison-1554/>

²¹ Phnom Penh Post, 7 March 2013. [Conviction Stands in Pursat Extortion Case](http://www.phnompenhpost.com/national/conviction-stands-pursat-extortion-case). [Accessed online 8 November, 2014] at <http://www.phnompenhpost.com/national/conviction-stands-pursat-extortion-case>

²² Phnom Penh Post, 5 November 2012. [Cop nabbed in timber bust](http://www.phnompenhpost.com/national/cop-nabbed-timber-bust). [Accessed online 8 November, 2014] at <http://www.phnompenhpost.com/national/cop-nabbed-timber-bust>

²³ Cambodia Daily, 20 August 2014. [ACU Call in Officials Over Pepper Shakedown](http://www.cambodiadaily.com/news/acu-calls-in-officials-over-pepper-shakedown-66882/). [Accessed online 8 November, 2014] at <http://www.cambodiadaily.com/news/acu-calls-in-officials-over-pepper-shakedown-66882/>

²⁴ The Phnom Penh Post, 15 September 2014. [Anti-Corruption Unit makes first arrests of journalists in Kampot](http://www.phnompenhpost.com/national/anti-corruption-unit-makes-first-arrests-journalists-kampot). [Accessed online 8 November, 2014] at <http://www.phnompenhpost.com/national/anti-corruption-unit-makes-first-arrests-journalists-kampot>

4. ADVANCED INVESTIGATIVE TECHNIQUES

Many advanced investigative techniques, including controlled deliveries, the interception of communications devices such as telephones or computers, the use of tracking devices on people or objects, and the use of covert recording devices are standard practices when investigating serious or organised criminal activities. These methods offer several benefits to law enforcement agencies including real time monitoring of suspects conversations and movements.

In Cambodia the power to use these capabilities resides with the Prosecutors and in the case of telephone intercepts Article 172 of the *Criminal Procedure Code 2007* stipulates that only an Investigating Judges (or the ACU) can order the interception and monitoring of telephone calls, facsimiles and the internet. Although there is no legal impediment to the use of controlled deliveries for forestry and wildlife offences it has not yet been undertaken. Currently the use of controlled deliveries is restricted to drug investigations only.

For brevity the capabilities of Cambodian environmental law enforcement agencies to use advanced investigative techniques is illustrated in Figure 5.

	Forestry Admin.	Anti-Econ Crime Police	Gendarmerie	GDANCP (Park Rangers)	Customs	Wildlife Rapid Rescue Team
Use of Controlled Deliveries	No	No	No	No	No	No
Forensic Capacity including telephone or computer	No	No	No	No	No	No
Availability of informants database	No	No	No	Yes*	Yes	No
Availability of linked case database	No	No	No	Yes*	Yes	No
Intelligence database	No	No	No	No	Yes	No
Surveillance capacity	Minimal	No	Minimal	Minimal	Yes	Yes
Undercover operation capacity	No	No	Yes	No	Yes	No
Telephone Intercept Capability	No	No	No	No	No	No
Tracking or Listening Devices	No	No	No	No	No	No

Figure 5: Advanced investigative capabilities by agency. * Generally in areas with NGO support

5. INTER-AGENCY COOPERATION

Co-operation in forestry matters is fragmented and generally ad hoc. The role of the Gendarmerie is often limited to supporting the Forestry Administration, which is unarmed. The Department of Customs operates as a separate entity and is not obliged to inform the Forestry Administration or Ministry of Environment when they perform a seizure. There is very little interaction between the Forestry Administration and the Ministry of Environment. The Public Prosecutors Department oversees each case but there is no dedicated unit that deals with forestry crime so much of the information is maintained by individual prosecutors.

This lack of cooperation and coordination inevitably leads to information silos and a reduction in the exchange of intelligence between agencies. This reduces the effectiveness of these agencies to tackle the legal timber trade, particularly when offences are committed by transnational organised Crime Groups.

By contrast the investigation of wildlife offences in Cambodia is undertaken overwhelmingly by the WRRT. Made up with 12 officers from both the Forestry Administration and Gendarmerie this unit is responsible for 90% of the wildlife investigations in Cambodia. Many of these investigations result from referrals from other units of the Police, Forestry Administration and Gendarmerie highlighting the good interagency cooperation when it comes to wildlife crime. Because this one unit deals with the majority of cases there are few information silos and it is in a much better position to identify current and emerging crime trends. Figure 6 illustrates the current approach to detecting, investigating and prosecuting wildlife and forest offences in Cambodia.

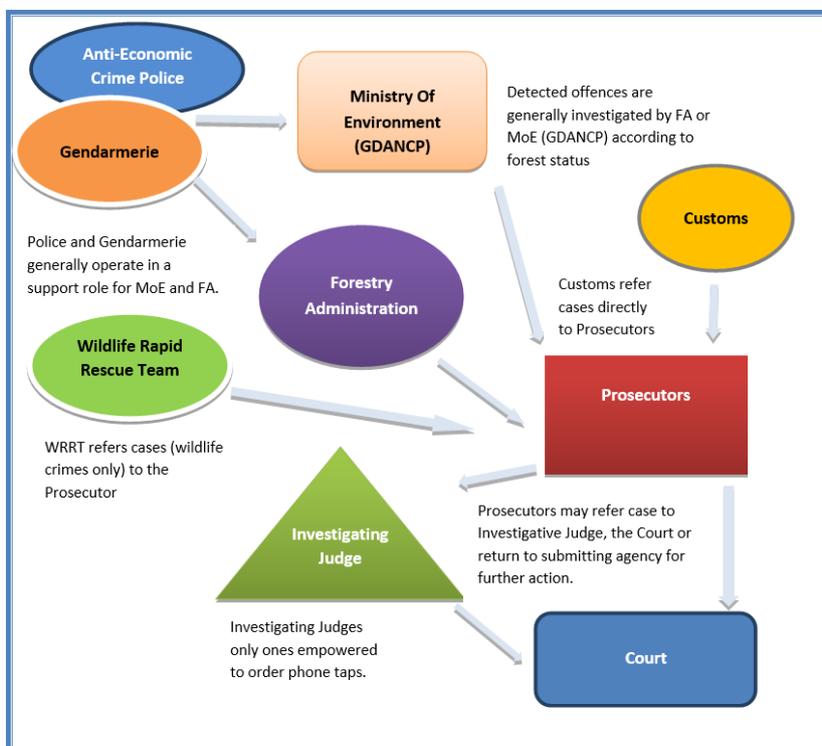


Figure 6: Workflow in the detection, investigation and prosecution of offences under the Law on Forestry (2002) and the Protected Areas Law (2008)

6. STRENGTHS AND WEAKNESSES OF ENVIRONMENTAL LAW ENFORCEMENT AGENCIES

Agency	Strengths	Weaknesses	Recommendations
Forestry Administration	<ol style="list-style-type: none"> 1. Strong mandate as lead agency for wildlife and forestry investigations 2. Can refer matters directly to the Public Prosecutor 3. Well-staffed. 4. GIS capability 	<ol style="list-style-type: none"> 1. Poorly resourced 2. Poor background on law enforcement 3. No operational intelligence system 4. No centralised informant management system 5. Lack of experience with advanced investigative methods 6. No forensic capability 7. Poor data collection capability 	<ol style="list-style-type: none"> 1. Improve law enforcement capabilities to conduct major investigations 2. Provision of computers for the creation of an Intelligence Management System and improved data collection capability 3. Increased training including joint training with other agencies on a wide range of basic and advanced investigative techniques 4. Contribute to the formation of a joint task force to address serious forestry crimes
General Department of Administration of Nature Conservation	<ol style="list-style-type: none"> 1. Strong mandate as lead agency for wildlife and forestry investigations in protected areas 2. Excellent local knowledge of hot spots within protected areas 3. Local Informant Network 4. Strong support from International NGO's 5. Some data collection capabilities 6. GIS capability 	<ol style="list-style-type: none"> 1. Poorly resourced 2. Poor background on law enforcement 3. No operational intelligence system 4. No centralised informant management system. 5. Lack of experience with advanced investigative methods 6. No forensic capability 	<ol style="list-style-type: none"> 1. Improve law enforcement capabilities to conduct major investigations 2. Provision of computers for the creation of an Intelligence Management System and improved data collection capability 3. Provision of GPS systems, satellite telephones and radios 4. Provision of equipment and training to confirm the identification of suspects in remote areas 5. Increased training including joint training with other agencies on a wide range of basic and advanced investigative techniques 6. Seek funding for the development of a pilot project for the use of surveillance drones to monitor illegal logging, poaching and wildfires in protected areas
Anti-Economic Crime Police	<ol style="list-style-type: none"> 1. Dedicated law enforcement agency with managers who possess a law enforcement mindset. 2. Some access to international law enforcement agencies i.e. INTERPOL 3. Sound organizational framework 	<ol style="list-style-type: none"> 1. No MOU's with regional counterparts 2. Short staffed 3. Poorly resourced 4. Lack of experience with advanced investigative methodologies 5. Poor data collection capability 6. Poor analytical capability 	<ol style="list-style-type: none"> 1. Increased training including joint training with other agencies on a wide range of basic and advanced investigative techniques 2. Provision of equipment to increase investigative capacity and capabilities 3. Creation of MOU's with other financial investigative agencies in the region 4. Contribute to the formation of a

Agency	Strengths	Weaknesses	Recommendations
	4. Staff have all received basic law enforcement training	7. Limited forensic capability	joint task force to address serious forestry crimes
Gendarmerie	<ol style="list-style-type: none"> 1. Dedicated law enforcement agency with managers who possess a law enforcement mindset 2. Strong anti-corruption stance 3. Access to international law enforcement agencies i.e. INTERPOL 4. Previous experience with investigation of environmental crimes 5. Access to basic surveillance assets 6. Sound organizational framework 7. Staff have all received basic law enforcement training 	<ol style="list-style-type: none"> 1. Plays more of a support role in environmental crime investigations 2. Lack of experience with advanced investigative methodologies 3. Lack of advanced specialist investigative capacity 4. Poorly resourced 	<ol style="list-style-type: none"> 1. Increased training including joint training with other agencies on a wide range of basic and advanced investigative techniques 2. Provision of equipment to increase investigative capacity 3. Contribute to the formation of a joint task force to address serious forestry crimes
Prosecutors	<ol style="list-style-type: none"> 1. Well trained staff on legal matters 2. Overall control of all wildlife and forestry investigations 	<ol style="list-style-type: none"> 1. Poorly resourced 2. Poorly staffed 3. Limited experience with advanced investigative methodologies 	<ol style="list-style-type: none"> 1. Greater involvement of Prosecutors office in major crime investigations in relation to environment offences 2. Increasing the numbers of prosecutors, particularly in regional areas 3. Provision of training to anti-corruption and anti-money laundering training 4. Contribute to the formation of a joint task force to investigate serious forestry crime
General Department of Customs and Excise	<ol style="list-style-type: none"> 1. Dedicated regulatory agency with managers who possess a law enforcement mindset 2. Access to international law enforcement agencies i.e. WCS 3. Relatively well-staffed 4. Developing computerized intelligence system 5. Developing computerized informant database 6. Good data collection 	<ol style="list-style-type: none"> 1. Its mandate is not limited to environmental crimes so it will constantly need to balance priorities 2. Lack of experience with advanced investigative methodologies 	<ol style="list-style-type: none"> 1. Provision of advanced investigative training to Customs Officers located at major airports and seaports 2. Provision of additional equipment to support investigative capacity and capabilities 3. Contribute to the formation of a joint task force to investigate serious forestry crimes 4. Improve cooperation with WRRRT through joint operations and information exchange 5. Addition of specific CITES related offences with the Law on Customs, 2007.

Agency	Strengths	Weaknesses	Recommendations
	capability 7. Moderately resourced		
Wildlife Rapid Rescue Team	1. A Joint investigative team brings the power and resources of two organizations together 2. Core group of experienced officers 3. Environmental crime hotline	1. Reliant upon donor funding to continue operating 2. Limited intelligence capability	1. Provision of funding for the appointment of an intelligence analyst with the necessary software and computer equipment 2. Increased cooperation with Customs authorities either through MoU or deployment of personnel 3. Provision of funding to continue the activities of the WRRT

Figure 7: Strengths and weaknesses of environmental law enforcement agencies.

7. CONCLUSIONS AND RECOMMENDATIONS

Criminal justice responses to the illegal exploitation and trade in timber and wildlife will remain an important challenge for the Government of Cambodia. The protection of endangered timber species (such as rosewood, teak or yang) or the trade in CITES protected wildlife species such as Tigers, Rhino, Elephant and Pangolin which are in short supply – and for which there is an increasing demand – must be tackled in a more sophisticated way by using the full gambit of advanced investigative methods.

Several of the interviewed officials raised the fact that corruption represents a stumbling block for the effective suppression of timber-related crimes. The GoC has recognised the risk corruption poses to good governance and it has created the ACU and enacted the *Law on Anti-Corruption* to address this. Those agencies involved in suppressing and investigating forestry and wildlife crime are not immune to corruption and in fact it was identified by several agencies as a major driver in forestry and wildlife crime. Accordingly the ACU needs to be expanded and play a greater role in the oversight of forestry and wildlife crime investigations.

Cambodia has shown some capacity to interdict the illegal flows of wildlife and wildlife products, largely through the WRRT model. Despite some progress, no high-profile investigation has been completed and most of the successful prosecutions have resulted in convictions of small scale offenders. There is room for improvement in this area and the adoption of the following recommendations will be a significant step forward in achieving this goal.

The Cambodian government has enacted forestry and protected areas legislation that attract substantial penalties including between 5 and 10 years imprisonment for those offenders who commit serious offences. Penalties of this magnitude could pose a serious deterrent to forestry crime, if they are enforced. Unfortunately there is scant data available to identify if offenders are ever sentenced to imprisonment and what is the extent of the penalty. The problem does not seem to rest with the law but rather with the capacity of prosecutors and judges to pursue penalties that fit the crime. There is also a need to examine what role major corporations are playing in the illegal timber trade, and what support – if any – these organisations receive from corrupt officials.

Those agencies involved in the investigation of forestry crime in Cambodia have an ad hoc working relationship. There is little interaction between agencies particularly in relation to the exchange of information and intelligence, which therefore perpetuates the existing information silos. In contrast the investigation of wildlife crimes is conducted primarily by the WRRT which is an encouraging example of multi-agency strike forces.

The problems faced by the Cambodian Government in combating transnational organised crime are not unique to Cambodia. Their neighbours face similar problems and have similar issues. Increased information sharing and joint operations will enhance each nation's capacity to address transnational organised crime and will be mutually beneficial.

There are several actions that the Cambodian government can undertake and which can have an immediate effect on the investigation and prosecution of wildlife and timber crimes. Other recommendations will take longer to implement so accordingly the recommendations have been broken down into two areas, short- and mid-term.

Short-Term Recommendations

- Those offences within the *Law on Forestry, 2002* and the *Protected Areas Law, 2008* that attract penalties of four years imprisonment or more should be viewed as Serious Crimes by senior political leaders, politicians and criminal justice officials
- Consideration should be given to creating a specific offence that deals with the illegal trade in CITES listed flora and fauna species within the *Law on Customs, 2007*. This offence should attract a substantial penalty or period of imprisonment and may help to address the emerging trend of using Cambodia as a transit point.
- The creation of an Environmental Court where investigative judges, trial judges and prosecutors can develop a specialised knowledge of the impacts and consequences of these types of crimes and develop an in-depth understanding of the laws governing them
- Provide sustainable support to WRRT through Government resources, consider to expanding the number of WRRT staff and improve cooperation with Customs – with a view to promote information sharing and joint operations. In order to scale-up the capacity to address most serious and transnational crimes, WRRT staff should receive equipment and training on advanced investigative skills
- Replicate the model of the WRRT – as a multi-agency operational unit – to address timber-related crimes such as illegal logging and timber smuggling
- Provide equipment and training to the Anti-Economic Crime Police Department and Prosecutors Department to enhance their capability to investigate and prosecute money laundering and financial crimes
- Establish a computerised data base to record verbal warnings, cautions, arrests and prosecutions that can be accessed by all regulatory agencies involved in the detection, suppression and investigation of the illegal trade in timber and wildlife, including the Prosecutions Department and the Government Inspection and Anti-Corruption Authority
- Increase training for border officials, park rangers and police focussing on the detection of potential offences, basic surveillance techniques, the collection and preservation of evidence, interview techniques and preparing for and appearance in court
- Provide equipment and training to create a dedicated environmental surveillance team based in Phnom Penh – staffed by FA, Gendarmerie and Police – that is capable of supporting investigations into serious wildlife and forestry crimes. Additional training should be provided to selected staff from provincial areas that can undertake basic surveillance duties or assist the Phnom Penh based unit on major cases

Mid Term Recommendations

- A complete review of the current compliance system including transportation permits, ELC licences, timber legal assurance systems and export permits with a view to making the system more robust, transparent and accountable
- Introduction of specific provisions in the *Law on Forestry, 2002* and the *Protected Areas Law, 2008* to address offences committed by organised criminal groups
- Introduction of specific provisions in *Law on Forestry, 2002* and the *Protected Areas Law, 2008* to address those who aid, abet, counsel, procure, attempt or conspire with another to commit forestry or wildlife offences
- Expanding Article 17 of the *Law on Anti-Corruption 2010* to include immediate family members of persons required to submit financial information in accordance with Article 17
- Consideration should be given to ensuring the independence of the ACU by making it a standalone department not answerable to any specific Ministry
- That the ACU develop a policy or guidelines in relation to the acceptance of gifts by government officials or members of their family if that gift may pose a conflict of interest
- The provision of equipment and training to increase the capabilities of all environmental crime agencies to use geospatial intelligence systems
- Greater criminal justice cooperation must be developed in the region on the illicit timber and wildlife trade. This must be the starting point, bearing in mind that the legal framework for cross-border judicial cooperation must be in place
- Money laundering and anti-corruption legal regimes within Cambodia are relatively new and have not yet been used to trace and seize the assets acquired from the illegal timber and wildlife trades. This is a critical tool in the hands of governments. Forest crime and wildlife trafficking must be made a predicate offence for money laundering in a region where the profits derived from these activities may well rival drug trafficking as a source of illicit income
- The establishment of a computerised intelligence system that can be accessed and updated by all regulatory agencies involved in the detection, suppression and investigation of the illegal trade in timber or wildlife
- The establishment of a pilot program in a protected area to measure the effectiveness of utilising small surveillance drones to combat poaching, illegal logging and wildfires



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