THE EFFECTIVENESS OF LAW ENFORCEMENT AGAINST FOREST AND WILDLIFE CRIME:

A Study of Enforcement Disincentives and Other Relevant Factors in Southwestern Cambodia

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EXECUTIVE SUMMARY

Aim and Methodology

The aim of the Enforcement Economics Project is to identify ways in which the system of law enforcement against forest and wildlife crime can be made more effective. The study used an economic model to calculate the extent to which law enforcement discourages future offences - the Enforcement Disincentive - and to identify the weakest points in the enforcement chain, as a focus for investigation of the causes of those weaknesses. Responses were then developed that would overcome those weaknesses.

The Enforcement Disincentive is a calculated using the probability of occurrence of each of the stages of the enforcement chain (detection, arrest, prosecution, and conviction), the monetary value of the penalty applied, and the time between detection and the application of the penalty. This Enforcement Disincentive can be compared with the incentive to commit the crime, which is measured as the average value of all forest products and by-products seized.

Data input into the Enforcement Disincentive equation was derived from 231 case files from Southwestern Cambodia made available by the Forestry Administration, and from the patrol database maintained by the Cardamom Conservation Project. In total this material included 557 records of events which may have been offences under the Forestry Law. These sources were analysed under the supervision of a natural resource management specialist and a team of lawyers, and the relevant data was entered into a project database[1].

Four Enforcement Pathways

In reality law enforcement actions by the Forestry Administration (FA) follow one of four courses. The first, giving of a warning, is a legally valid action under the Forestry Law (FL) which involves no penalty. The other three actions follow different administrative and judicial pathways: Path I - Transactional Fines, Path II - prosecution through the Courts, and Path III - seizure of forest products or by-products without the arrest of an offender. Because these different courses of action involve different combinations of the stages in the law enforcement chain, it is necessary to calculate their Enforcement Disincentives (ED) separately.

- Warnings

Issuing of a warning has no ED which can be measured using the Enforcement Disincentive model. This is because no penalty is applied. However in a law enforcement regime in which offenders understood (and expected) that a second offence would lead to significant penalties, there would be some disincentive effect of the warning process. Unfortunately there is no consistent recording of warnings, or of consideration of previous warnings in deciding penalties for second offences. In addition, the low EDs for other pathways further reduces any concern that an offender might have about being caught again.

- Transactional Fines- Path I

Transactional Fines are applied and processed solely within the FA. Documentation follows what has been designated as Path I in this report. If the offender does not plead guilty at the time of arrest then the case is handled through the Courts (Path II). Documentation prepared during the Path I processing is intended to record the offence and to assist the FA Director to decide on the level of penalty. The FL provides a range of penalties, and a set of criteria for helping to determine the level of any fine which is applied. However in none of the case files examined was there any penalty other than a fine of three times the value of the Real Evidence (i.e. the seized

[1] This database was prepared solely for the purpose of this project and did not contain sensitive information such as the names of the offenders.

forest products or by-products). The option of confiscating the Other Evidence (equipment, vehicles, etc) was not only not applied, it was never recommended in the documentation prepared for the Director. In reality, the equipment and vehicles used in committing crimes that are punished under Transactional Fines are frequently returned to the offender after "pre-payment" of the fine - a process that is not legal in that the Director has not made a decision at that stage as to whether they will be confiscated as part of the penalty.

If it is assumed that all crimes committed are detected then the Enforcement Disincentive of Transactional Fines is $166.28, compared with an average value of the seized Real Evidence of $315.25. However if a more realistic probability of detection of ten percent is assumed, the ED is $16.63 - clearly not an effective deterrent.

The weakest points in the Path I process are the low probability of arrest once detected (40%), and the failure to use the maximum penalties available. For example, if the equipment and transportation had been confiscated in all cases, the ED would have been four times as high.

- Processing Through the Courts- Path II

Cases following Path II are those involving the more serious crimes, with penalties of up to ten years in prison and confiscation of all seized evidence, and which are processed through the Provincial or Municipal Courts. Of 268 activities which could have been offences of type that were detected since the FL began to be used in January 2003, only one case has been successfully brought to a conclusion which involved a penalty imposed by the Court. It is no surprise that the ED in relation to this type of offence is very low - $33.03 if the rate of detection is assumed to be 100 percent of crimes committed, or $3.30 if a more realistic detection rate of 10 percent is used. This compares with an average incentive of nearly $600.

The major weaknesses in the Path II enforcement chain result from the low probability of arrest once a crime has been detected (0.10), the relatively low probability of prosecution (0.6), and the fact that only around 14 percent of convictions actually involved a penalty (1 in 7).

The low arrest rate is connected to the excessive percentage of cases in which evidence is seized but no one is arrested (see Path III below).

Significant other weaknesses leading to the low ED are associated with documentation and Court procedures. The documentation prepared for Path II cases is essentially the same as for Path I, even though the in the latter pathway there is no need to prove guilt. There is an urgent need to improve the standard of documentation of cases going to the Courts, and this should be implemented in conjunction with a radical improvement in the investigative skills of JPs.

Problems in the Courts seem to stem largely from the way in which offenders are released on "bail", and then do not return for trial - in fact if these cases are treated as not having been completed, then the probability of prosecution falls to 0.4. This low figure is of even more concern when it is realised that all of the cases brought to court were flagrant offences - the offenders were caught "in the act" - and so the rate of successful prosecution should have been 1 (i.e. 100%).

Some of the weaknesses detected in this enforcement pathway stemmed from the very low level of routine communication between the FA field offices and the Court officials. This needs to be significantly improved as a part of a strategy of developing a situation in which the Courts and the FA have a common objective in addressing forest and wildlife crime. Improving communications will also be likely to address the view that forest and wildlife cases represent "victimless" crimes and are therefore not very important.

The investigation of Path II cases also revealed considerable differences between the numbers of cases that appeared to be pending at the Courts according to FA files, and the numbers actually pending on the Court registry. The discrepancy stems almost entirely from the lack of

communication between the FA and the Courts and probably applies to the 755 cases said to be currently pending with the Courts nationwide.

- Seizure of Evidence Without Arrest - Path III

Path III cases - situations where there was seizure of forest products or by-products (predominantly timber) - made up 56 percent of all enforcement cases in the sample, and 77 percent of the cases that went to the Courts. The incentive in this type of case was $812, significantly higher than either the Path I or Path II incentives, but the ED resulting from enforcement efforts was zero. No one was arrested, no penalty was applied. There may have been some slight disincentive resulting from the loss of the offender's expenses in making the illegal harvest, but this would have been more than offset by one more, successful, offence.

This represents very little benefit, in terms of forest conservation, resulting from the investment in law enforcement necessary to process these cases. This is recognised by Court officials; at least some Prosecutors and Judges seem to resent what they see as being used to validate poorly documented FA seizures so that FA can auction the timber.

There are likely to be various factors behind the failure to arrest offenders, the chief among which are likely to be: a lack of political and institutional willingness to investigate and prosecute all cases, no matter who the offender is; the general failure of FA Judicial Police to investigate non-flagrant crimes; and some element of corruption associated with cases of this type.

Not only does the processing of cases of seizure of timber without any associated arrest represent poor law enforcement "value", it also presents a variety of avenues for corrupt practices. These could include "taxing" of illegal harvests or even laundering of timber harvested specifically for the FA. It is not in FA's interests to have such a large proportion of such cases among its law enforcement outcomes, both because of the low ED that results and because of the doubt that it could case on the FA's motives. This is another reason for adopting the reduction of the proportion of such cases as an indicator of improvement in law enforcement. Such a reduction can be achieved through an organisational commitment to effective investigation of all non-flagrant crimes and to finding and prosecuting the real offenders behind the crimes. It will also require less emphasis on the number of cases "completed" and the volume of timber seized as indicators of successful law enforcement

The clear indication from the use of the Enforcement Disincentive model in relation to the Transactional Fines, processing through the Courts and seizure without arrest approaches to law enforcement is that as the incentive to commit the crimes increases, the ED correspondingly decreases. This is the exact opposite of what should be happening, and indicates problems in both the overall approach to law enforcement and in the technical aspects of its implementation.

- No Action Against Significant Crime - Path IV

A fourth type of "path" that is sometimes followed is not to take any action. While there are many valid reasons for not taking action on the detection of every apparent offence, the types of crimes that are of most concern in this category are those which do not get into the official reports or databases. These cases are widely known among FA and NGO staff, are often reported in the media, and frequently involve types or volumes of forest products with a high value. They are also characterised by the involvement of powerful persons or organisations, often including the military or the bodyguards of high-level individuals, and generally rely on the fact that FA staff at field level will not take action either because they know that this is not expected or out of fear of revenge action against them or their families.

The driving and facilitating factors behind this type of crime and the associated lack of enforcement action stem from social and institutional attitudes, including particularly expectations as to the rights and privileges associated with power and the expectation of loyalty to allegiance groups which cuts across administrative boundaries.

The level of this type of offence is unknown, but likely to be significant in terms not only of its value and its impact on the forest ecosystem, but also in terms of the extent to which it undermines any disincentive effect resulting from enforcement against other types of crime. If the sustainability of forest ecosystems in Cambodia is to be maintained it is imperative that strong and consistent law enforcement action be taken against these types of offenders. This will only come about through widely acknowledged expressions of political will (at the highest level) to see enforcement happen, together with legal and physical protection of field-level law enforcement staff.

Summary of Incentives and Disincentives

The incentives to commit these types of crimes and the disincentives generated through law enforcement efforts over the last four years are summarised in the following table.

	WARNING	***PATH I Transactional Fine***	***PATH II Prosecution Through Courts***	***PATH III Seizure of Evidence - No Arrest***	***PATH IV Powerful Offenders - No Action***
Incentive to Commit Crime	unknown no data recorded	$315.35	$599.89	$810.14	unknown but probably very large
Best Possible Enforcement Disincentive	close to zero	$166.28	$33.03	close to zero	zero
Most Likely Enforcement Disincentive	close to zero	$16.63	$3.30	close to zero	negative (encourages further crime)

Effectiveness of Judicial Police and Organisational Structure

The study also examined the conditions influencing the effectiveness of the FA Judicial Police. At present they are scattered through a variety of administrative levels within the FA, without any unity, real coordination or recognition of the professional nature of their role. Unless they can be brought under one national management unit, and given the level of practical, professional policing skills and knowledge that their task requires they are unlikely to become significantly more effective. An argument could be made for moving toward increased efficiency as well as increased professionalism by eliminating the duplication inherent in the present systems of FA, MOE and the civil Police, and amalgamating all forestry and wildlife enforcement under one organisation. Because of the similarities in the methodology and, in some instances, the perpetrators, such an organisation could be associated with, and under the same management as, enforcement against trafficking in humans and drugs.

Strong Law Enforcement vs Encouragement of Compliance

A finding of the study which has policy implications for the FA is that the current approach of using strong law enforcement as almost the sole strategy to deter potential offenders is likely to lead to an expensive and never-ending cycle of law enforcement and illegal activities. The best outcome that can be hoped for from this approach is that the loss of natural resource values is kept within acceptable limits and that the necessary level of law enforcement remains affordable. Taking a multi-strand approach which incorporates law enforcement with activities promoting respect for the law and appreciation of the economic, ecosystem services and cultural values of the forests is ultimately likely to be more sustainable and less expensive.

Monitoring of Effectiveness of Law Enforcement

The FA (and the MOE) currently have Forest Crime Monitoring and Reporting Units (FCMU) which are under the scrutiny of the Independent Forest Monitor. The FA FCMU operates a Case Tracking System (CTS) that is supposed to record all detections and actions relating to forest crime, and to track the progress of cases. Though the FCMU is responsible for monitoring the effectiveness of law enforcement, the CTS does not produce a sufficiently wide range of indicators to allow any useful assessment of either effectiveness or the location of weaknesses in the system. It also is not utilised in increasing the likelihood of successful outcomes of law enforcement in individual cases. Investment in upgrading this database, using its outputs in an adaptive approach to management of law enforcement, and making its output available to field offices would yield very significant improvements in law enforcement.

Overall, a change in the indicators used to judge success, not of the FCMU but of the whole FA, would make a substantial contribution to achieving sustainable forest management in Cambodia, including improved law enforcement. Success needs to be measured on the basis of changes to the area and quality of forest managed sustainably in accordance with its status (production, protection, etc.).

Organisation of Recommendations

The recommendations summarised above represent a part of the 95 separate recommendations emerging from this study. These can be grouped under the following 11 headings:

- how the FA measures its success in achieving sustainable forest management;
- organisation, coordination and management of the Judicial Police force;
- action and Investigation - policy, investigation skills - against ALL offenders;
- training of Judicial Police - effectiveness, efficiency and the range of skills and knowledge appropriate to policing work;
- use of a database for better case outcomes, and for monitoring and evaluation of the real effectiveness of law enforcement;
- documentation - as a tool in securing positive law enforcement outcomes;
- improving the cooperation between FA and the Courts;
- issues within the Courts - influence, “bail”, case tracking, filing and retrieval;
- legislation - covering key issues, filling gaps and creating more clarity;
- jurisdictional issues;
- ensuring appropriate levels of penalties.

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His Excellency, Hangrot Raken, Prosecutor-General of the Appeals Court gave freely of his time to brief us on the Provincial Court system, the legal aspects of the creation of Judicial Police, and to discuss aspects of the Forestry Law.

The Director of the Forestry Administration, His Excellency Ty Sokun made available the 231 case files on which much of this study is based, as well as giving us access to people at various levels within the FA. The Minister for Environment, His Excellency Dr. Mok Mareth, made available a number of MOE case files which were valuable for purposes of comparison of approach.

Officials at various levels in the FA, the MOE and the Ministry of Justice assisted us with explanations of policies, laws and procedures (see Annex 1 for a list of organisations consulted). We are particularly grateful to the officials of the Legislation and Litigation Office and the Forest Crimes Monitoring and Reporting Unit for a number of useful discussions.

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GLOSSARY

ADB	Asian Development Bank
CITES	Convention on International Trade in Endangered Species
CCP	Central Cardamoms Program
CCPF	Central Cardamoms Protected Forest
CI	Conservation International
CP	*Law on Criminal Procedure*
CTS	Case Tracking System
DNCP	Department of Nature Conservation and Protection
DOF	Department of Fisheries
ED	Enforcement Disincentive
FA	Forestry Administration
FCMU	Forest Crime Monitoring and Reporting Unit
FL	*Forestry Law*
FWTC	Forestry and Wildlife Training Centre
GPS	Global Positioning System
IMF	International Monetary Fund
JP	Judicial Police
LLO	Legislation and Litigation Office
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOE	Ministry of Environment
MOJ	Ministry of Justice
NGO	Non-Government Organisation
NTFP	Non-Timber Forest Products
Other Evidence	Materials, equipment and transportation used to commit an offence under the Forestry Law
PO	Prosecutor's Office
Real Evidence	Forest products and by-products or wildlife products which constitute the real evidence of an offence under the Forestry Law
SGS	Société Générale de Surveillance
UNTAC	United Nations Transitional Authority in Cambodia

THE EFFECTIVENESS OF LAW ENFORCEMENT AGAINST FOREST AND WILDLIFE CRIME: Analysis of Enforcement Disincentives and Other Relevant Factors in Southwestern Cambodia

Gordon Claridge[2], Veasna Chea-Leth[3] and In Van Chhoan[4]

PART 1: BACKGROUND

1.1 The Enforcement Economics Project

The aim of the Enforcement Economics Project is to highlight key features of the system of law enforcement against forest and wildlife crime that should be strengthened in order to improve the overall effectiveness of law enforcement. The study has been carried out using a combination of: application of the enforcement economics model to actual cases; analysis of relevant institutions and processes; and review of relevant laws. The enforcement economics model was applied to cases arising from law enforcement undertaken as a part of the Cardamom Conservation Program in the southwest of the country[5]. Analysis of processes focussed on the approaches used in the Southwest but the results are generally relevant throughout the country. The outcomes of reviews of institutions and legislation are similarly generally applicable nationally.

Some of the results of the study can be put into effect immediately. Others, that require administrative or legal adjustments, will take longer to implement. Still others can best be actioned through the assistance of outside agencies that can provide technical and financial assistance. In the Central Cardamoms Protected Forest (CCPF), where Conservation International supports the FA, and in other parts of Cambodia where support is available to the Forestry Administration (FA) from other sources, some key recommendations can be implemented relatively quickly as part of existing programs to enhance law enforcement capability.

1.2 Conservation International's Involvement

Conservation International (CI) supports biodiversity conservation in over 40 countries, and has been working with the FA in Cambodia since March 2001 to protect and manage the biodiversity of the CCPF and surrounding areas. Improving the effectiveness of law enforcement has proved to be one of the greatest challenges to achieving more effective conservation management.

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[5] It was initially proposed to include assessment of the Enforcement Disincentive (see p.11) of law enforcement programs carried out by the Ministry of Environment. However it was not possible to gather sufficient case files to allow a meaningful calculation of probabilities and thus the Enforcement Disincentive could not be calculated reliably. In addition, the procedures and legislation followed by the MOE are significantly different to those followed by the FA, so that a very substantial additional investment of time would have been necessary to gain an understanding of the MOE system.

The enforcement economics approach has been used in a number of other natural resource management regimes throughout the world. Over the period 2000 to 2004 CI has gained experience with the method in four countries: Brazil, Indonesia, Mexico and the Philippines (Akella & Cannon, 2004). In Brazil, for example, CI worked in partnership with the Institute for Social and Environmental Studies of Southern Bahia, to apply the enforcement economics model to a study of law enforcement effectiveness in a 72-municipality area of the Atlantic Forest located in the southern portion of the Brazilian state of Bahia (Akella *et al.*, 2004).

This experience, and the success of the model in the other three countries, led CI and Village Focus International to prepare a concept paper proposing to apply the method to improvement of conservation law enforcement in Cambodia. As a result CI secured USAID funding through the East-West Management Institute's Human Rights in Cambodia Project to analyse a range of cases in Southwestern Cambodia, with a view to identifying actions that can be taken to enhance the effectiveness of law enforcement efforts.

1.3 The Cambodian Context

Between 50 and 60 percent of Cambodia is covered with forest of some kind. This forest has a range of values at different levels, all of which are important in some way to the maintenance of livelihoods and the long-term health of the national economy.

These forest values include provision of a diversity of forest products and by-products (e.g. timber and non-timber forest products), and ecosystem services (such as watershed protection, maintenance of downstream water quality, quantity and seasonality of flows, and carbon sequestration). A recent investigation of the significance of evergreen and semi-evergreen forest areas in Cambodia (McKenney *et al.*, 2004) found that 1.4 million people (around 10% of the population) live close to such forest types. Surveys in three provinces found that these nearby communities obtained 42-48 percent of their income from the forest. This does not take into account the livelihood support derived from the country's extensive areas of dry Dipterocarp forests by other communities living in close association with that forest type.

The government of Cambodia has specifically recognised the importance of forests for poverty reduction in its Second Socio-Economic Development Plan (SEDPII) which says:

> *The most significant and sustainable contribution that forest resources can bring to poverty reduction is the value of timber and non-timber products to local communities.*

From a biodiversity conservation point of view, Cambodia's forests include extensive examples of several forest formations which are currently threatened in other parts of Southeast Asia. Understanding of the full conservation significance of Cambodia's forest areas is still incomplete, but it is clear that they contain a variety of plant and animal communities and species that are of global, regional or national conservation significance.

A recent review of the nature and status of forest areas in Cambodia (Ashwell *et al.*, 2004) suggests that the loss of forest cover since the late 1960s may have been of the order of 20 percent, and that the rate of loss since 1997 could be as high as 1.7 percent per year.

Ashwell *et al.* (2004) identified two recent phases of forest loss:

- between 1991 and 1997. During this period forest loss occurred mainly along the margin between areas of agriculture and the major forest blocks. In addition, logging concessions began to be issued in the mid-1990s, and between 1994 and 1997 estimated log production rose from 2 million m^3 to 4 million m^3, though even the lower volume exceeds

the estimated sustainable yield from all forest resources[6]. The period from 1994 to 1998 was also characterised by "very serious illegal logging activities" (May Sam Oeun *et al.*, 2001); and

- between 1997 and the present. Forest cover losses occurred mainly in specific areas of high value evergreen and semi-evergreen forest, the more remote deciduous forest areas[7], and the flooded forests around Tonle Sap. This period saw an increase in political stability and the end of Khmer Rouge control over some forest areas, leading to an expansion of both legal and illegal logging. Following a series of severe criticisms of the failure of the concession system to promote sustainable forest exploitation[8], the Prime Minister declared a moratorium on logging in concession areas in January 2002.

Since the moratorium, clearing of forest has largely been the result of either illegal logging operations or clearing in agricultural and forest plantation concessions, though there are ongoing losses due to factors such as illegal use of fire to convert forest to agricultural land. During this period the nature of illegal logging seems to have changed, at least partly as a result of more effective law enforcement. Large-scale illegal clear-felling and large illegal sawmills in the forest have mostly given way to a high level of small-scale illegal activity conducted largely by people from poor communities, though generally regarded as still being backed by the same powerful individuals. The exception to this scenario appears to be continued illegal activities by military units, which are generally conducted by the members of those units rather than by community members, though they are known to store timber with local villagers to disguise it as "customary use" harvests, until it can be transported out of the area.

The focus of the market has also changed, with the emphasis now on high-value timber, much of which reputedly goes via Ho Chi Minh City to Japan. Because of the fact that luxury wood can be marketed in shorter lengths, the transport is harder to detect. Shipments are often in the backs of taxis[9] and in four-wheel-drive vehicles, rather than in large trucks (though the Khmer-language newspapers still often publish photographs of large trucks loaded with what are said to be illegal shipments of sawn timber and logs, e.g. *Koh Santepheap*, 5 May 2005).

In 2004, Société Générale de Surveillance (SGS), the government-appointed Independent Forest Crime Monitor, conducted a satellite imagery review of selected forest areas where they knew forest loss was occurring. For the selected sites they found that forest cover loss since 2002 was between 0.4 and 4 percent in concession areas, and between 7.2 and 98.3 percent in Protected Areas. SGS put this loss down to "encroachment" due mainly to conversion to agriculture and plantations (SGS, 2004). However it should be noted that this information is in relation only to the selected areas, and also that the resolution of the satellite images used did not allow the detection of logging which did not remove a significant proportion of the forest canopy.

Not nearly the same level of attention has been paid to the location or extent of wildlife crime as to illegal forestry activities. The fairly limited data from the inadequate law enforcement that has been undertaken has not been systematically analysed to extract important information on sources, traders, routes, and nodes of trade. This is despite acknowledgement of the seriousness of these crimes. In discussing the results of a Cambodia country case study, Chuon Chanrithy (2004) referred to the need for "decisive and urgent action for the protection of

[6] Estimated to be 0.5 - 1.5 million cubic metres per year (May Sam Oeun *et al.*, 2001).

[7] Specific areas of loss have been: deciduous and semi-evergreen forests of far north-western Cambodia; semi-evergreen and evergreen forests of the basaltic soils in Ratanakiri; evergreen forests along the newly repaired roads in the coastal hinterland; evergreen forests associated with areas of good soil along National Route #4; deciduous forests across northern and north-eastern Cambodia (though some of this apparent change probably reflects improvements in the mapping of natural grasslands); and flooded forests associated with Tonle Sap Lake (though some of these apparent changes may also partially reflect improvements in the mapping of natural grasslands) (Ashwell *et al.*, 2004).

[8] For example, an ADB review in 2000 referred to concession management in Cambodia as a "total system failure".

[9] Taking up the back seat space through the trunk - a Camry sedan can carry up 0.6 cu.m. in this way.

Cambodia's remaining wildlife in the long-term through tough enforcement measures"[10], citing the roles of commercial dealers and professional hunters in the trade.

As a result of the lack of compilation and analysis of available data, it is not possible to make any definitive statements as to the extent or significance of wildlife trade throughout Cambodia. However where information is available it suggests that there is a continuing high level of trade and that it is having a devastating effect on wildlife populations. It appears that the majority of the high value and/or high volume trade is bound for Vietnam (with most of it going on to China) and is in the hands of powerful people, frequently said to involve Military Police and Police. Further analysis is urgently needed.

It is widely believed that ineffectual enforcement of forest and wildlife protection legislation is a critical problem facing conservation of Cambodia's biodiversity throughout the country. There is a common impression that detection, arrest, prosecution and conviction of offenders are extremely weak and are not leading to any significant or long-lasting reduction in loss of forest values.

This bleak picture of ineffective law enforcement is prevalent even in Southwestern Cambodia, where a number of NGOs have been working for the last several years to assist the Ministry of Environment and the Forestry Administration to protect and manage large areas of tropical forest. Since 2001, Conservation International (CI) has been working with the Forestry Administration to protect the 400,000 ha Central Cardamoms Protected Forest (CCPF). The Enforcement Economics Project has focused its analysis on forestry offence case files from the Central Cardamoms area, between 2001 and 2005.

1.4 Methodology

The Enforcement Economics Project was jointly funded by USAID, through the East-West Management Institute, and Conservation International. Project implementation commenced on 14 March 2005 and was completed on 30 September 2005.

Two Cambodian lawyers, Ms Veasna Chea-Leth and Mr In Van Chhoan, were contracted under this grant by CI's Cambodia Office as the Principal Investigator and the Legal Research Assistant respectively. Mr Todd Sigaty was contracted under the grant to participate in the legislative review. CI's Cambodia Office also contracted a natural resource management specialist, Mr Gordon Claridge, as Team Leader under separate funding, to oversee the implementation of the activity and analysis of results. Together, these four people constituted CI's core enforcement economics team.

Three Cambodian law students, Ms Chap Sodany, Ms Soth Sinoun, and Ms Pech Sangkhem were contracted on a part-time basis from early May to early August 2005 to review case files and enter relevant data into an enforcement economics database. This database was developed specifically for this project, and includes fields that store data needed for the calculation of the Enforcement Disincentive equation, as well as other information relevant to the effectiveness of law enforcement. A Technical Assistant, Mr Chea Sokha, with previous experience in analysis of forestry crime case files, was engaged on a part-time basis from early May to 31 August to provide day-to-day supervision of the student team, manage the database, and to assist in liaison with government agencies. In addition, Ms Anita Akella, a specialist in the enforcement economics methodology with experience in applying the approach in several countries, was contracted under this grant by CI's Washington office to provide expert backup on the enforcement economics equation and its use.

The project was executed in three phases. The first phase saw development of a preliminary profile of the enforcement system focusing on the Forestry Administration, and included a review

[10] Though he cautioned that tough law enforcement alone would not be likely to overcome the problem.

of legislation. This was published in a preliminary report (Claridge *et al.*, 2005). The first phase also included introduction of the project to relevant stakeholders (see Appendix 1 for a list of organisations and individuals consulted during the project).

The second phase focused on analysis of 231 forestry and wildlife crime case files in order to extract data that could be used to develop the relevant enforcement disincentive equations. The case analysis also provided an opportunity to examine a range of aspects of the enforcement chain, as well as highlighting significant legal and procedural issues. This was coupled with a more in-depth examination of the adequacy of relevant laws. In addition, the second phase included interviews with people from a wide range of organisations involved, directly and indirectly, in law enforcement against forest and wildlife crimes, with a view to the identification of factors affecting the success of the enforcement system.

The third phase comprised synthesis and analysis of the results of the previous phases to calculate Enforcement Disincentives, identify the causes of the most significant weaknesses in the enforcement system, develop recommendations for addressing weaknesses, and prepare the final report.

PART 2: STRUCTURE AND OPERATION OF THE ENFORCEMENT SYSTEM

Law enforcement against forest and wildlife crime in Cambodia is undertaken mainly by the Forestry Administration (FA) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Department of Nature Conservation and Protection (DNCP) of the Ministry of Environment.

2.1 Forestry Administration

2.1.1 Structure and Process

Prakas No.509 PK/MAFF/B on the *Organisation and Function of the Forestry Administration* provides for the creation of 13 Offices and Centers at the central administrative level of the FA, and four levels of field organisation: Inspectorates, Cantonments, Divisions, and Triages (referred to in this report as Sub-divisions).

The Forestry Law (FL) states that:

> *All levels of the Forestry Administration shall have the duty to investigate, control and suppress forest offences within their assigned territory[11]. (Art.76.2[12])*

Within the different levels of the FA (Headquarters, Inspectorate, Cantonment, Division and Sub-Division) there are legally appointed Judicial Police whose duties are:

> *... to investigate forest offences and file such cases and documents to the Court.* (Art.76.1)

Other agencies (outside of MAFF) are also required by the FL to be involved in enforcement against forest and wildlife crimes: According to Article 78 of the FL:

> *All levels of local authorities, armed forces, custom and excise agents, all airport and port authorities and other concerned authorities shall facilitate and assist in*

[11] It should be noted that the Article refers to all organisational levels having this duty, not to all staff of the FA, as is often suggested by FA staff.

[12] The notation used here for referring to parts of laws follows common practice in Cambodia. Thus Art.76.2(3) would refer to the third sub-paragraph of the second paragraph of Article 76.

the investigation, prevention and suppression of forest offences and temporarily safeguard any seized evidence, upon request of competent Forestry Administration officials.

The fact that the above Article requires other agencies to temporarily detain offenders and evidence if requested by the appropriate FA officials points to the breadth of legal authority that the FA has to fight forest crime.

The Legislation and Litigation Office (LLO) is a part of the central structure of the FA. According to Prakas No.509 the LLO has the following roles and responsibilities:

- to study, research and develop all the regulations in the forestry sector;
- to conduct extension, guidelines development, monitoring and evaluation on Forestry Law enforcement;
- to investigate and intervene in the suppression of irregular cases of forest offences and to strengthen law enforcement as needed;
- to compile forest offence reports, to resolve forest offences, and to collect Transactional Fines levied under Article 96 of the FL;
- to report the overall details of forest crimes throughout the country[13]; and
- to perform other duties required by FA leaders.

The LLO is divided into three Units: the Legislation Unit; the Litigation Unit; and the Enforcement Unit. It is also planned that the Forest Crime Monitoring and Reporting Unit (see below) will be incorporated under the LLO, though this has not yet taken place. The role of the LLO in the management of law enforcement is discussed further at page 58

2.1.2 Judicial Police

The laws in relation to forest and wildlife crime are enforced primarily by Judicial Police, either under the FA or the DNCP of the Ministry of Environment.

Forestry officials who have been certified by the Prosecutor General of the Court of Appeals and duly sworn are qualified to act as Judicial Police (FL Art.77.2). The appointment of Forestry Administration (FA) officials as Judicial Police (JP) is done on an individual basis, rather than on the basis of occupying a particular position in the organisation. Individuals are required to pass a short written examination before being appointed.

Box 1: What is a Flagrant Offence?

According to Article 18 of the *UNTAC Law*, a flagrant offence is an offence in which the offender is seen committing a felony or misdemeanor, is identified at the scene of the offence, or is seen trying to run away from the scene. It is significant that this definition does not require that the police catch the person in the act of committing the offence. Being seen or identified by witnesses at the scene, or attempting to flee from the scene also amount to a flagrant situation. (See p.58 for a discussion of FA Judicial Police responsibility to investigate flagrant and non-flagrant offences).

Until now there have been three intakes of nominees to become FA Judicial Police, leading to a total of 499 Judicial Police in the FA, according to the records of the Ministry of Justice[14].

The range of powers that can be exercised by JPs are subject to certain controls and limitations under the *Forestry Law*, the *Law on Criminal Procedure* (CP), the *UNTAC Law* and the Ministry of Justice Prakas No.27 (MOJ-27). These powers and controls are discussed further below.

[13] The responsibility to compile forest offence reports has now been moved to the FCMU Unit (SGS, 2005, Second Quarter Report).

[14] The Prosecutor General's office advises that another 202 FA staff have been proposed to become JPs in August 2005.

While all organisational levels within the FA structure have a duty to investigate (and to "control and suppress forest offences within their assigned territory" (FL Art.76.2)), those FA staff who are properly appointed as Judicial Police have specific powers to carry out such duties.

JPs can, for example,

- require certain individuals to respond to their questions and provide information related to forest offences (FL Art.79.1(1)).
- carry out searches, including:
  - searching "the surroundings and inside of a building or residence" [in the case of an "actual forestry offence"] (FL.Art.79.2); and
  - monitoring and checking everywhere …[outside forest areas, in the case of "an actual forestry offence"] …in cooperation with the concerned authority (FL.Art.79.1(2)).

The FL and MOJ-27 define the duties and powers of JPs in relation to investigation, arrest and reporting in relation to three broad categories of offence: flagrant offences (see Box 1); offences where there is substantially incriminating evidence; and non-flagrant offences. Powers concerned with investigation and arrest are summarized in Table 1.

Clearly the role of JPs is a complex and demanding one. The training of JPs is discussed below (p.55). A question which does not seem to have received a lot of attention until now is whether or not forestry staff have the right backgrounds and interests to undertake police work, and whether or not FA should be policing its own operations. These issues are discussed below (pp.60).

2.3 Monitoring of the Effectiveness of Law Enforcement

In 1999 the Royal Government of Cambodia established two separate offices (the Forest Crime Monitoring and Reporting Units - FCMU), one in the Forestry Administration and one in Ministry of Environment (within the Department of Inspection), to monitor the effectiveness of law enforcement against forest and wildlife crime.

The FCMUs were established in order to:

- quantify and qualify the level of forest crime and how it changes over time;
- form a solid foundation on which to move forward with better enforcement systems;
- demonstrate the way in which forest crimes were being prosecuted;
- provide an information base responsive to the needs of all organisational levels; and
- build a protection and enforcement program at the national and provincial levels (Miller, 2004).

The two key components of the Forest Crime Monitoring and Reporting program are the Case Tracking System (CTS) which is a database for recording and following all reports of forest crime as they progress, and the Independent Monitor, a contracted body which acts as an independent verifier of the sound functioning of the monitoring units in the FA and MOE. The initial emphasis in the operation of the FCMUs was detection of, and subsequent tracking of response to, forest crime (May Sam Oeun *et al.*, 2001).

In reality, this monitoring and tracking process does not extend to an examination of the processing of cases through the Courts (a key stage in defining the success of law enforcement), but tends to focus only on completion of cases by the Courts.

Table 1: Power of JPs in Relation to Types of Offence (FL & MOJ Prakas No.27)

Investigate	*Arrest*
Flagrant Offence[15]	
Investigate forest offences [FL.Art.76] Require individuals to respond to questions and provide information [FL Art.79.1(1)] Monitor & check everywhere in cooperation with concerned authorities [FL Art.79.1(2)] Search the surroundings and inside of buildings or residence consistent with *CP* [FL Art.79.2] Visually inspect the crime scene, make a record, investigate the nature of the offence, collect the evidence & maintain the exhibits. [MOJ-27.5(a)] MOJ-27.Art.7 says that in the case of a non-flagrant crime, can search only with a house-search warrant issued by a representative of the Public Prosecutor's Office or Investigating Judge[16]	Receive custody of temporarily detailed offender from qualified persons [FL.Art.78.2(2)] JPs have power of arrest [MOJ-27 e.g. Art.5] Can detain offender for up to 48 hours in order to prepare documents and send to Court [FL Art.80.2]. Transport time not included in the 48 hours [MOJ-27 Art.5(a)] In "serious and complicated" cases can apply to extend detention time for another 24 hours [MOJ-27 Art.6] Seize Real Evidence[17] and Other Evidence[18] [FL Art.80.1(1)]
Offence where there is substantially incriminating evidence [MOJ-27]	
Investigate forest offences [FL.Art.76] Require individuals to respond to questions and provide information [FL Art.79.1(1)] [MOJ]Same as for flagrant offence, but Art.7 does not refer to this situation, so it is assumed that there is no power to search without a warrant.	JPs have power of arrest the same as a flagrant offence[19] [MOJ-27 Art.5(b)]. If the suspect escaped the scene and his/her background is not known, arrest can be made on a warrant from the Prosecutor [MOJ-27 Art.19].
Non-flagrant offence	
Investigate forest offences [FL.Art.76] Require individuals to respond to questions and provide information [FL Art.79.1(1)] Where a felony or misdemeanor occurs JPs "shall ... make an investigation ..." [MOJ-27 Art.9] House searches can be made with a warrant [MOJ-27 Art.7]	JPs can arrest only with a warrant issued by the Prosecutor or Investigating Judge [MOJ-27 Art.5(c)]

[15] A "flagrant" offence is a situation in which the suspect is "caught red-handed", was identified at the scene, was pursued from the scene "by public outcry" (UNTAC Art.18).

[16] There is a mistake in the commonly used English translation of this paragraph. The use of "flagrant" in the second sentence in the translation (i.e. "Where the flagrant crime or misdemeanour has occurred ...") is wrong. The original Khmer has "non-flagrant".

[17] "Real Evidence": Forest products and by-products or wildlife products which constitute the real evidence of an offence under the Forestry Law.

[18] "Other Evidence": Materials, equipment and transportation used to commit an offence under the Forestry Law.

[19] This appears to be a clear revision of Art.35 of the *Law on Criminal Procedure*.

2.3.1 The FA Forest Crime Monitoring and Reporting Unit

The FA's FCMU originally had around 35 staff, approximately one-third of whom were in Phnom Penh. However with decreases in funding (and probably also a realisation that such numbers were unnecessary) this has shrunk to six, all of whom are based in Phnom Penh.

The Heads of the 15 Forestry Cantonments compile statistics on forest and wildlife crimes each month and forward them to the FCMU (via the FA Director) on a datasheet designed for the purpose, together with copies of file documents relating to individual cases.

The company Société Générale de Surveillance (SGS) took over the role of Independent Monitor in December 2003 after the Government decided not to extend Global Witness' contract.

The FCMU generates monthly, quarterly and annual reports from the Case Tracking System (CTS) that are sent to the MAFF, the Council of Ministers, and to FA Cantonment offices. The reports include details such as the volumes of forest products and by-products seized, and some details on the finalisation of Court cases

2. The Provincial Courts

2.4.1 Prosecution and Investigation by Courts

The Prosecutor

Prosecutors are responsible for penal actions (which only they may initiate) and they also file indictments in Court. The Prosecutor General has the authority to review the legality of indictments by Provincial Prosecutors, and organizes and supervises their work (UNTAC Law Art.2).

The Prosecutor receives the case file from the FA. The Prosecutor's role can be described broadly as reviewing the documentation received, carrying out any necessary preliminary investigation, passing the case to an Investigating Judge where this is required, or passing the documents directly to the Trial Judge. The Prosecutor has the power to reject a case if he believes that there are not enough elements to constitute an offence (CP Art.59)[20].

The level of involvement of the Prosecutor and the Investigating Judge in a particular case will depend on a number of factors which are set out in the Forestry Law and associated regulations and the Criminal Procedure. The first is the level of the offence. For example, Prakas 91 under the Forestry Law provides in Art.2 that where the offender in relation to an offence punishable under Art.96 does not admit guilt, the case shall go directly to the Courts.

MOJ-27 Art.19 makes special reference to forestry crimes and streamlines the processing of most such offences which are required to be dealt with by the Courts. In line with Art.19, in all cases other than those involving Class 1 Offences (those punishable under FA Art.97 and having a penalty of five years in jail or longer) the Prosecution processing pathway would be:

a) completion of FA documentation (see Figure 3) and transfer of the case to the Prosecutor;
b) entry of the case details into Prosecution Register;
c) checking of the adequacy of documentation and evidence; and
d) if the case is adequate, forwarding to the Trial Judge with a Definitive Requisition for trial.

This means that the processing time would be relatively short and that a properly documented case could, in theory, go to trial almost immediately. This would have the effect of minimising the pre-trial detention of the offender. If the FA's documentation is inadequate the case can be

[20] However the case can be re-opened at any time within the statute of limitations for that particular offence (FL Art. 85 contains a statute of limitations in relation to forestry offences).

referred back to the FA with instructions, or can be referred to the Investigating Judge (see e.g. CP Art.62.1).

For Class 1 Offences, the Prosecutor transfers the case to an Investigating Judge to decide on detention or bail of the offender and then to carry out any necessary additional investigation before passing the case to the Trial Judge.

The Investigating Judge

Investigating Judges are responsible for the investigation of criminal cases (CP Art.68) that have been referred to them by the Prosecutor (CP Art.69)[21]. Their roles and responsibilities are set out in detail in Chapter 4 (Articles 68-95) of the CP, and include the power to carry out interrogations and house-searches, and to seize evidence (CP Art.87). Investigating Judges are limited to investigating those offences that are detailed in the Introductory Requisition issued by the Prosecutor. If they find that another (or a different) offence appears to have been committed, they are required to seek a new Introductory Requisition from the Prosecutor (CP Art.71).

After completion of an investigation, the Investigating Judge forwards the file to the Prosecutor (after allowing the accused person's lawyers access to it). Within three days the Prosecutor is required to make a charge in writing and refer it back to the Investigating Judge (CP Art.89).

2.4.2 Trial and Conviction

Forestry offences are criminal offences (FL Art.76). The Criminal Chamber of Municipal and Provincial Courts has competence in all kinds of criminal offence (CP Art.96). In order to be validly constituted the Criminal Court requires the presence of a Judge, a Deputy-Prosecutor, and a Clerk of the Court (CP Art.96).

The Trial Court has the power to conduct its own investigation to complement that of the Prosecutor or Investigating Judge (CP Art.107).

Where the Trial Judge believes that the type of offence cited in the referral documents is not consistent with the nature of the offence, the Court has the power to change the qualification of the offence (CP Art.105). However if the resultant change is from a misdemeanor to a felony the case must be returned to the Prosecutor for the preparation of a new charge (CP Art.106).

The form that a judgment must take is set out principally in CP Art.s 143,144 and 150.

In general, under the Cambodian Court system the conviction and the sentence are given at the same time.

Art.103 of the FL requires that "All Court verdicts or Court decisions on forestry offences shall be copied to the competent Forestry Administration".

2.4.3 Punishment

General

Article 90 of the Forestry Law lists eight types of penalties that can be applied for forestry offences: imprisonment, confiscation of evidence, Court fines, Transactional Fines, repairing damage, warning, and revocation or suspension of agreements or permits.

[21] It should be noted that the existence of these functions of the Investigating Judge in no way removes or reduces the duty of FA Judicial Police to thoroughly investigate offences.

Of these, Transactional Fines, repairing of damage and warnings can be applied by the Forestry Administration[22]. All other penalties can be applied only by the Courts, but the execution of Court verdicts or final Court decisions in relation to forestry offences, with the exception of imprisonment, is the responsibility of the FA (FL Art.102). If offenders refuse to pay Transactional Fines or to repair damage as required by the FA, then their cases are referred to the Courts for processing in the same way as other offences.

Transactional Fines

The penalties which can be applied under Transactional Fines are set out in Article 96 which provides that the amount shall be between two and three times the market value of the Real Evidence. Real Evidence is automatically confiscated[23].

This penalty can also be increased by use of the discretion to confiscate any Other Evidence which has been seized (Art.96.3). However in none of the Transactional Fine cases examined during this study was any Other Evidence confiscated.

Art.91.3 sets out a range of factors which must be taken into account when setting the level of a transactional fine, but the amount of the fine still cannot be higher than three times the market value of the Real Evidence (see p.75).

Paragraph 2 of Art.96 also attempts to impose a higher penalty (2-4 times the market value) where a person has committed multiple offences within a period of one month. However the wording of this paragraph allows this increased penalty to be applied only to persons who have "violated the provision of the first paragraph of this Article multiple times within a month". In doing so the FL makes the mistake of treating Art. 96 as defining offences, whereas it merely sets penalties in relation to offences which are defined elsewhere in the law. There are no prohibitions or requirements in Art.96 which can be "violated", and therefore the increased penalty cannot be applied.

Art.94 provides that an offender who has committed an offence harming the forest ecosystem can be made "liable for payment in order to restore or repair the forest ecosystem to its original condition". While this provision could be used to increase the penalty applied through Transactional Fines, so far as can be ascertained, it has not been used by the FA until now.

Penalties Applied Through the Courts

The Courts can apply any of the penalties listed under Art.90 (see above) with the exception of Transactional Fines, which are applied only by the Forestry Administration.

PART 3: THEORETICAL BASIS FOR THE ENFORCEMENT DISINCENTIVE APPROACH

Intuitively we are aware that a person will commit a forestry or wildlife crime only if they expect to have some "profit" as a result of doing it. If they assess that there is a strong probability of their being caught and suffering a penalty that is significantly greater than the benefit they can derive from the offence, then they will be less likely to commit the offence.

[22] The FA procedures for processing an offence under Art.96 where a transactional fine is to be levied are shown in Figure 2.

[23] Confiscation of Real Evidence(i.e. forest products and by-products illegally obtained) is not a penalty, since the illegal goods have never belonged to the offender but were always the property of the State. Confiscation of Other Evidence (equipment etc.) is a form of penalty, because this represents a loss to the offender of their own property.

This "perceived probability" of suffering a penalty is actually a combination of several estimates of probability on the part of the potential offender: the probability of being detected, of being arrested, of being prosecuted and of being convicted. The judgment of the individual as to whether or not the overall probability of experiencing the full chain of law enforcement is worth the risk is also affected by the magnitude of the penalty. How much does the likely "profit" from the offence exceed the disincentive represented by the combination of the perceived probability of enforcement action and the penalty that would be likely to be applied?

Of course, potential offenders do not, in reality, make such mathematical calculations, but they are generally aware (from the media and talk among their peers) of the values of the range of relevant probabilities and penalties.

Economists focusing on measuring the effectiveness of law enforcement have suggested that it is possible to calculate a monetary disincentive "value" for an enforcement regime by using the following equation:

$$\$(\text{Enforcement Disincentive}) = P_d \times P_{a/d} \times P_{p/a} \times P_{c/p} \times \$(\text{Penalty}) \times e^{-rt}$$

[where $\mathbf{P_d}$ is the probability of detection, $\mathbf{P_{a/d}}$ is the probability of arrest if detected, $\mathbf{P_{p/a}}$ is the probability of prosecution if arrested, $\mathbf{P_{c/p}}$ is the probability of conviction if prosecuted, **Penalty** is the monetary value of the fine or jail time, **e** is a mathematical constant (the exponential function of 1), **r** is the interest rate, and **t** is the time between detection and application of the penalty[24].]

This equation uses "observed probabilities", calculated from the actual numbers of instances of detection, arrest, etc. While these are not exactly the same as the probabilities perceived by the potential offender referred to above, the equation as a whole provides a useful model of the thinking of potential offenders, and thus an indication of the effectiveness of law enforcement in discouraging crime. It also has the significant benefit that the calculation of the various parameters highlights stages in the law enforcement chain where there are weaknesses (e.g. low probabilities, long processing times, low penalties).

Although the quantitative Enforcement Economics model can tell us the relative strength or weakness of the different stages in the enforcement chain, it does not reveal the causes behind these weaknesses. In order to know the causes it is necessary to carry out further research. Some of the relevant information can be found in the case files relating to the offences analysed to develop the equation, while other information must be sought from a detailed examination of the institutions, laws and processes associated with law enforcement.

Thus, a combination of the Enforcement Disincentive equation to show where the weaknesses are in the enforcement chain, and investigation of the factors contributing to each of those weakness, can provide valuable insights into the most efficient ways of improving the effectiveness of law enforcement.

PART 4: IDENTIFICATION AND INITIAL EVALUATION OF DATA

As explained above, the Enforcement Economics model provides a useful basis for examining the various stages in the enforcement chain. However calculation of the Enforcement Disincentive requires the analysis of information from files covering a significant number of cases.

[24] The time and interest rate parts of the equation are important because whereas the profit from an illegal action is usually more or less immediate, the penalty resulting from detection and arrest might not be imposed for several months or years. Thus an offender is comparing an expected immediate gain which can be spent immediately with a possible loss that might be far in the future.

In developing the Enforcement Disincentive database the team had access to a database that had been maintained by Cardamom Conservation Program since early 2001 on the basis of observations made during law enforcement patrols by FA ranger teams under the CCP. The geographical area covered by this Patrol Database is the same as the area from which the 231 offence case files analysed during this project have been drawn. When the records in the CCP database and the case files were compared, it was possible to construct a combined Detections Database for the period from early 2001 to mid-2005[25]. The combined Detections Database contains a total of 557 records to early June 2005. Around 500 of these were considered to be valid records for the period covered by the case file. Detected offences in the CCP database were matched up with case files relating to arrests or, where there was no arrest, relating to seizure of "Real Evidence"[26]. This allowed cases to be tracked from detection through the succeeding stages of the law enforcement process.

4.1 Processing Paths for Forestry Crime Cases

Broadly speaking all law enforcement can be sub-divided into detection, arrest, prosecution, conviction, and punishment. These feature in the Enforcement Disincentive equation described above and are used as the framework for the following discussion. However from an examination of the Forestry Law it quickly becomes clear that there are several paths that the enforcement process can take after detection of an offence, and that these paths affect the range of enforcement stages involved in a particular case.

The way in which the FA handles forest crime cases differs depending on (a) whether an intial evaluation of the situation suggests that a warning is appropriate; (b) whether or not there has been an arrest; and (c), in the case of offences with penalties listed under Art.96, whether or not the arrestee is willing to sign a document admitting guilt and to pay a Transactional Fine[27].

This leads to four possible processing paths, (termed here Warning, and Paths I, II, and III (see Figures 2-4) and three kinds of legal outcomes. These are discussed separately below from the point of view of arrest, prosecution, conviction and punishment.

4.1.1 Warnings

There are situations in which FA field enforcement staff assess that only a warning to the offender is required, possibly associated with seizure of the illegally obtained forest products or by-products. This is essentially a field-based process, with little or no involvement of offices above the Sub-Department. Warnings are a legally sanctioned penalty under the Forestry Law (Art.90). Such warnings often take the form of having the offender sign a "contract" admitting guilt and noting that he has received a warning ('thumb-print contracts"). However there are no guidelines on the situations in which warnings should be given instead of a more serious penalty. In addition, there seems to be no central record of when warnings have been given, to whom, and what the circumstances of the offence were. This means that the information usually cannot be accessed to be used in subsequent action against the same offender.

Warnings have no measurable Enforcement Disincentive because there is no penalty involved. In a well functioning enforcement system in which an offender believed that a second offence would be likely to lead to detection and a significant penalty, the thumb-print contract approach

[25] The CCP database also contains observations of actions which are not offences under the law,e.g. possession of traps or snares, as well as observations of animal sightings and signs. These and duplicate records were removed from the dataset.

[26] The FL (Art.82) divides evidence into "Real Evidence" (the forest products and by-products which constitute the evidence that an offence has occurred) and "Other Evidence" (materials, equipment and transportation used to commit a crime).

[27] The processing pathways and the relevant laws were identified in the first report of the project (Claridge *et al.*, 2005).

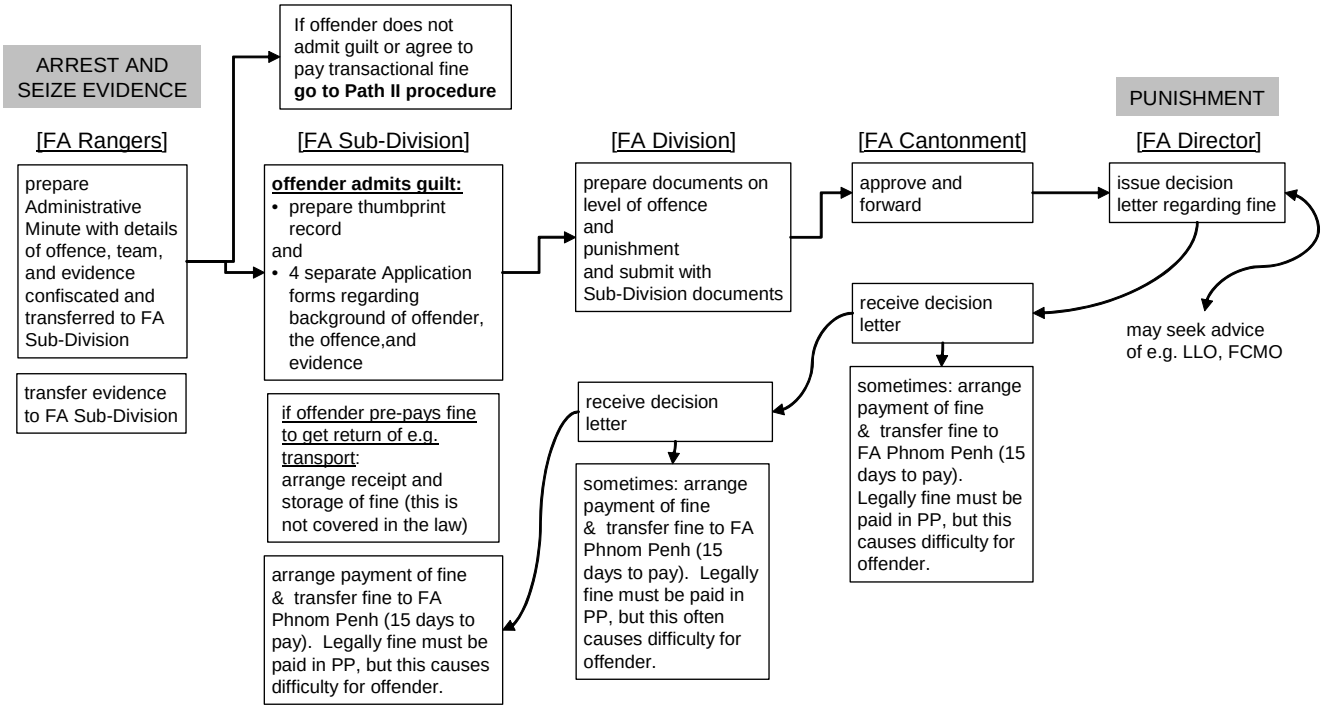

Figure 1: FA Documentation Path I - Arrestee Admits Guilt to Art.96 Offence

would be likely to have some discouragement effect. However where there are no records kept of such contracts, and the disincentive effect of other pathways is so low, it is unlikely that this approach represents much more than an annoyance to the offenders.

4.1.2 Path I - Transactional Fines

In the case of Path I (Figure 2) (the arrestee admits guilt to an offence which has a penalty specified in Art.96), the fine is decided by the Director of FA and then the offender either pays the fine (in which case the Real Evidence is confiscated and the Other Evidence may be returned), or refuses to pay the fine (in which case the file is forwarded to the Prosecutor for handling through the Courts – FL Art.90). Path I is an administrative process, carried out wholly within the FA, whereas Paths I and II involve processing through a judicial system that includes both FA and the Courts. This reflects the thinking that offences which have a penalty specified in Art.96 are regarded as "lesser offences".

4.1.3 Path II - Prosecution Through the Courts

Path II cases are situations in which the arrestee has committed an offence which has a penalty prescribed under FL Articles 97-99[28]. The documentation for Path II cases is prepared by FA staff at Sub-division, Division and Cantonment levels and submitted to the Prosecutor in the relevant province (see Figure 2). As discussed above, there are very few Art.96 cases which go to the Courts, so that the following discussion relates almost exclusively to more serious offences punishable under Articles 97-99. Path II offence are divided into three Classes, according to the seriousness of their penalties, with Class I being the most serious.

[28] Or the offender either does not admit guilt to an offence which has an Art.96 penalty, or refuses to pay a Transactional Fine.

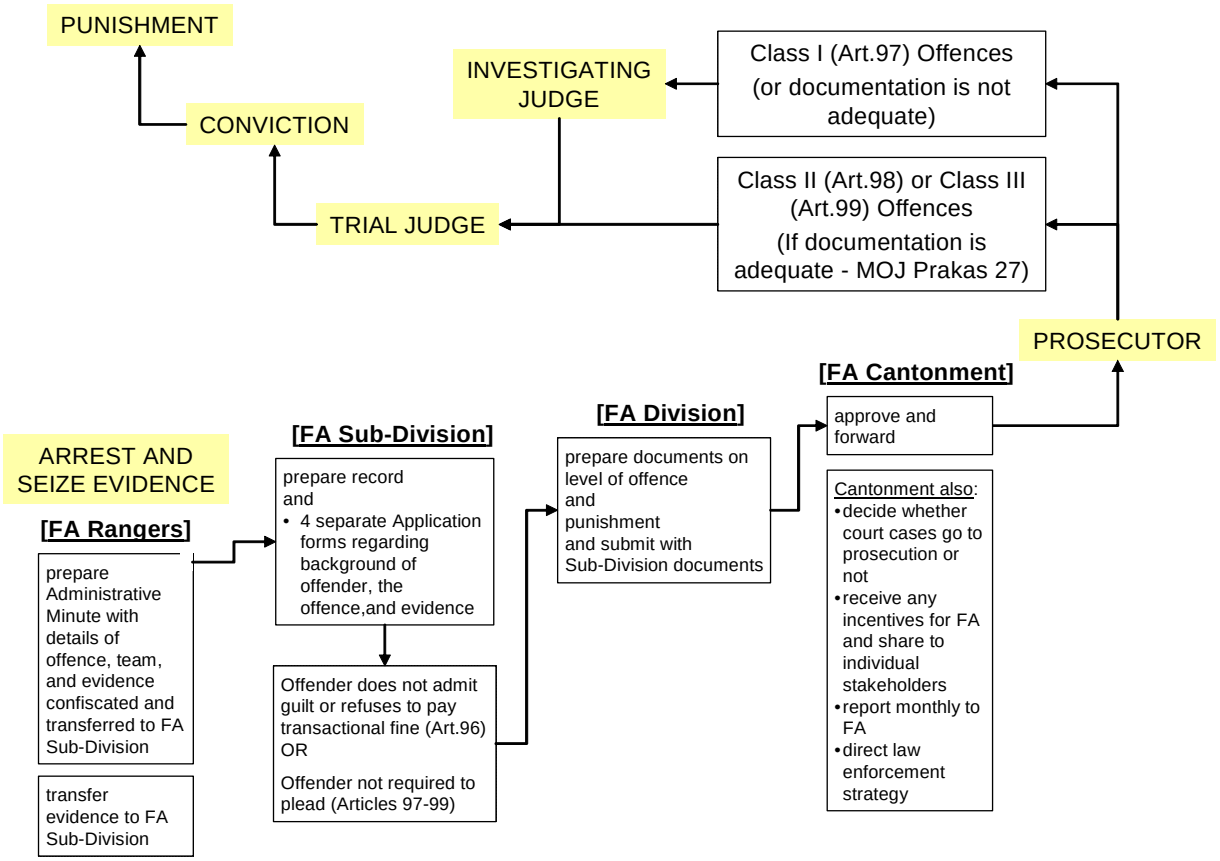

Figure 2: FA Processing Path II - Prosecution Through the Courts

4.1.4 Path III - Seizure of Evidence in the Absence of an Arrest

In the case of Path III (Figure 4) offences (i.e. where evidence relating to an offence has been seized, but no one has been arrested),after completion of the documentation the matter is passed by FA Cantonment to the Prosecutor to be handled through the Courts. As with Path II cases, FA Sub-division, Division and Cantonment offices are involved in the preparation of documents.

4.2 Observations from Preliminary Examination of Case Files

Table 2 is a compilation of the information from case files, divided into Paths I, II and III. It is noteworthy that there are more cases (129) in which no one was arrested but evidence was seized, than there are cases where an arrest was made (102). This is discussed below under Probability of Arrest Given Detection ($P_{a/d}$) of a Path II Offence.

In analysing the information in the Detections Database and the case files to prepare the above table, a number of surprising issues emerged. The following are discussed in detail below:

- the predominance of “transportation” offences;
- the lack of consistency between the “offences” cited and the definitions of offences in the Forestry Law;
- the fact that most offenders are charged with only one offence; and
- the lack of enforcement action against many detections of what is clearly participation in wildlife trade.

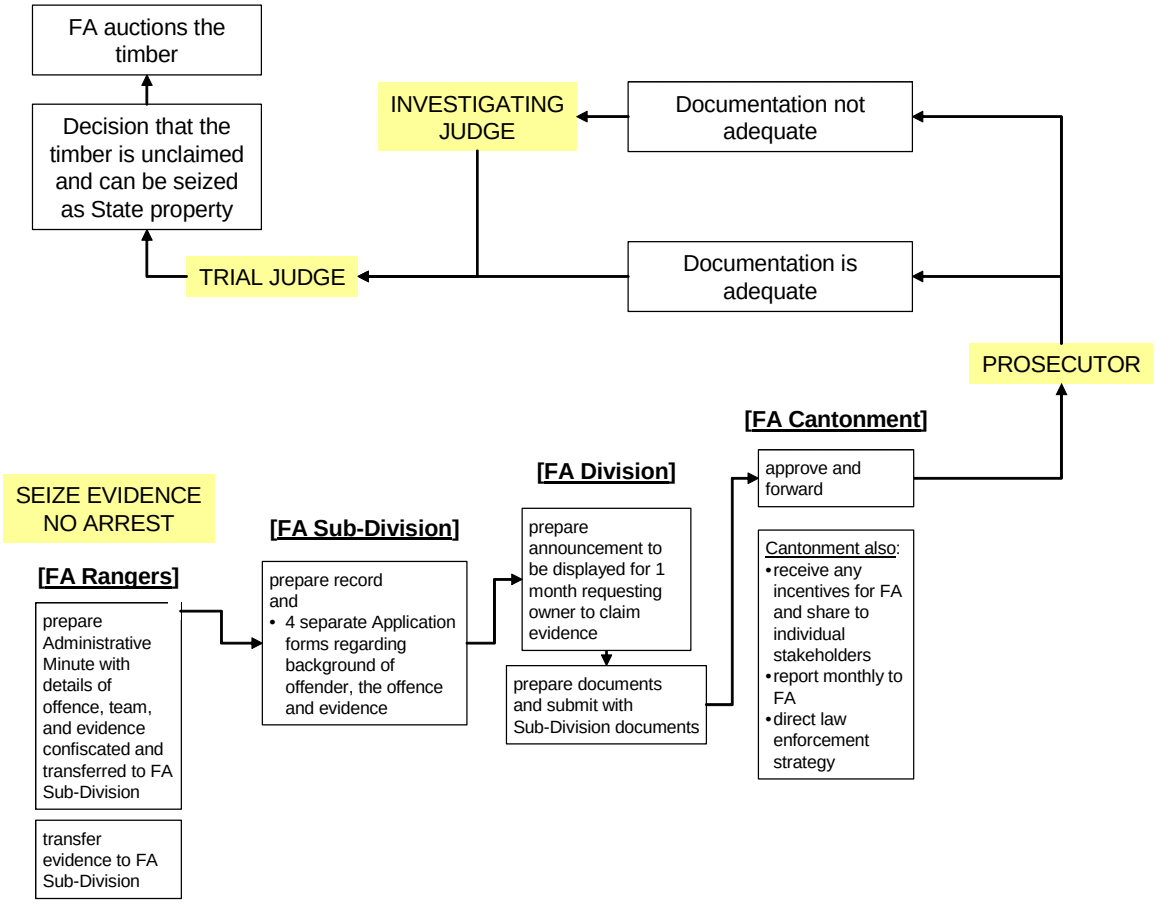

Figure 3: FA Processing Path - Path III - Seizure Without Arrest

Table2: Documented Cases Paths I, II, III by Cited Offence Type

Offence as Described in Case Files[29]	Path I (n=65)		Path II (n=37)		Path III (n=129)	
	no.	% of Path I	no.	% of Path II	no.	% of Path III
Transportation - forest products & by-products						
Transportation of forest products	54	83.08%				
Transportation of timber			1	2.7%		
Transportation of timber class I, II and III, and forest product and by-products			3	8.1%	46	35.7%
Transportation of luxury timber			2	5.4%	13	10.1%
Sub-total - 119 cases = 51.5% of all cases						
Transportation of wildlife						
Transportation of wildlife	9	13.85%	1	2.7%		
Transportation of rare species animals			1	2.7%		
Transporting of animals					1	0.8%

[29] Note that the descriptions of offences used here reflect the words used in the FA case files and are not necessarily consistent with the FL Articles which define offences.

Offence as Described in Case Files[29]	Path I (n=65)		Path II (n=37)		Path III (n=129)	
	no.	% of Path I	no.	% of Path II	no.	% of Path III
Sub-total - 12 cases = 5.2% of all cases						
Clearing / cutting forest / harvest timber						
Clearing of forest			2	5.4%		
Using chainsaws or other ways to cut forest			7	18.9%		
Harvest forest products (timber)			1	2.7%		
Sub-total - 10 cases = 4.3% of all cases						
Chainsaws						
Carrying or bringing chainsaw in forest area			7	18.9%		
Stocking chainsaw					1	0.8%
Exploiting timber by using chainsaw			3	8.1%	8	6.2%
Sub-total - 19 cases = 8.2% of all cases						
Stockpiling - forest products & by-products						
Stockpiling luxury Timber	2	3.08%				
Stockpiling all types of timber, forest products, by-products/luxury timber					39	30.2%
Sub-total - 41 cases = 17.8% of all cases						
Establishment of Factories						
Establish factories in forest area			6	16.2%		
Establish factory base/ processing system to process timber or by-products			2	5.4%	3	2.3%
Sub-total - 11 cases = 4.8% of all cases						
Threaten FA Officer & Obstruct Justice			1	2.7%		
Sub-total - 1 case = 0.4% of all cases						
Exploiting of forest products/by-products					18	14.0%
Sub-total - 18 cases = 7.8% of all cases						
Sub-totals (% of Total 231 cases)	65	(28.1%)	37	(16%)	129	(55.8%)

4.2.1 The Predominance of "Transportation" Offences

Table 2 reveals that of among 231 case files examined, more than half (56.7%) were for illegal transportation of a forest product or by-product (including wildlife). Such a preponderance of one type of offence requires examination.

Illegal transportation is usually detected at checkpoints, though some transportation might be detected during patrols along minor roads and forest paths. This suggests a significant proportion of law enforcement effort being directed to the operation of checkpoints, though there is another explanation that may apply in some instances. Charges for offences other than transportation, which have more serious penalties, would take the case out of the control that FA has over the whole enforcement process in relation to Transactional Fines and pass it to the Courts. For example, a charge of possession of, or trade in, rare or endangered species (FL Art.49.3(3) & Fl Art.s 49.3(3)&(5)) would have more serious penalties than transportation of forest products (which might be rare or endangered species) without a permit, but would require the FA to submit the case to the Prosecutor.

Regardless of whether the charges laid are the most appropriate, experience in Cambodia and other countries indicates that checkpoints can be a comparatively ineffective way of enforcing the law against forest and wildlife crimes. There are a number of reasons for this, including:

- illegal operators are quickly warned by others of the location of a checkpoint and either take alternative routes or wait until the checkpoint is unmanned;

- checkpoints can easily develop into collection points for illegal taxes;
- checkpoint staff are usually reluctant to stop and search vehicles belonging to the military, police, and high-level officials or politicians[30]; and
- unless checkpoint staff are well trained and diligent they easily miss contraband (such as wildlife or NTFPs) hidden in other cargo, false compartments, etc.

In addition, checkpoints catch the offenders after the damage has been done to the forest ecosystem. Patrolling of the forest, either on the ground or using aerial surveillance potentially produces fewer "detections per enforcement dollar", but if there is sufficient patrolling effort it has the effect of deterring the commission of crimes.

Another issue is the difference in disincentive between the penalties for illegal transport of forest products and by-products and those for illegal harvesting of forest products. The former involves an Art.96 penalty (2-3 times the value of the Real Evidence, and possible confiscation of the Other Evidence, although such confiscation seldom or never occurs). Illegal harvest, on the other hand is subject to a mandatory 1-5 year prison sentence and a fine of 10-100 million Riel as well as mandatory confiscation of Other Evidence (Art.98.2(1)).

Box 2: Reference to FL Offence Articles in FA Case Documentation

Of 108 cases files (out of a total of 231) which made some reference to the Forestry Law:

- 57 did not specify which Article of the FL described the offence
- 25 cited Article 69.3
  (having a stock of forest products or by-products for which there is no transportation or stocking permit)
- 17 cited Article 69.4
  (transporting or stockpiling forest products or by-products without a permit)
- 5 cited Article 38.2
  (using a chain saw to harvest forest products within the Permanent Forest Reserve without an FA permit)
- 2 cited Article 25.1(4)
  (this Article does not describe an offence)
- 1 cited Article 33
  (carrying out forest clearing activities within the Permanent Forest Reserve not in accordance with Articles 31, 35 or 37)
- 1 cited Article 32.2
  (this is an incomplete reference and does not specify which of the five possible offences under this paragraph had been committed)
- 1 cited Article 65.1(8)
  (this is not a valid reference to a part of the FL)
- 1 cited Article 69.1
  (this paragraph does not appear to describe an offence - the correct reference seems to be 69.4)

Putting more effort into catching the offenders in the act of illegally harvesting timber, which carries a much more serious penalty, could enhance the deterrent effect of enforcement activity.
On the other hand, these penalties would be applied in most cases against poor people who are frequently doing the harvesting for the rich, and in general the most that the people behind the harvesters would lose would be their investment in chainsaws[31].

Even when enforcement action is taken against those involved in transportation, rather than
against the harvesting, unless the trucks are confiscated, catching those transporting the timber still will not penalise the powerful people behind the illegal logging, since they are most unlikely to be accompanying the shipments. As has been observed above, confiscation of Other Evidence, in addition to the levying of a Transactional Fine, is allowed under the FL but appears not to happen. The fact that virtually no investigation is done to determine who is behind detected forest crimes makes it even less likely that the key offenders will be punished in any way.

[30] According to an article in the *Cambodia Daily* (25 August 2005: p.15) vehicles with military licence plates cannot be stopped and checked by the Police. This is confirmed by FA JPs who operate checkpoints.
[31] Though the threat of the stronger penalty could be used as an inducement to encourage the offenders to reveal the identities and nature of involvement of their backers.

4.2.2 Unclear Identification of a Legally-defined Offence

Case files and the Detections Database consistently failed to provide clear statements of the law which had been infringed. Offences were usually identified by the use of phrases such as "transportation of timber", "cutting timber for exploitation", "secretly exploit timber", "bringing chainsaw into the forest to exploit timber" which did not reflect phrases found in the relevant laws[32]. In fact, references to specific articles in a relevant law were rare, and in 108 case files where an Article of the FL was cited, two Articles accounted for 39 percent of the offences. Furthermore, only eight different Articles were cited in total and four of these were incorrect references in that they did not specify an offence (see Box 2).

The combination of inappropriate descriptions of offences with the general lack of reference to relevant law seriously weakens the legal validity of the charges. At present this weakness may not be causing any reduction in successful prosecutions. However, at some future time when there is a good understanding of the law and legal principles, and defendants are represented by competent lawyers, it will significantly reduce the likelihood of successful prosecution.

Recommendation 1:

> All documentation and databases referring to offences under the Forestry Law should describe offences using words or phrases which occur in the relevant Article, and wherever possible should refer to the relevant Article.

4.2.3 Charging Offenders with Only One Offence

In general offenders were charged with only one offence, even though in many instances the documentation indicated or strongly suggested that more than one offence had been committed.

Where multiple offences are committed, it is the Courts which should decide whether to prosecute the offender in relation to one or more offences; the FA JPs have a duty to record all offences which have been committed.

One effect of the tendency to charge an offender with only one offence is to significantly reduce the enforcement disincentive through minimisation of the penalties incurred. For example, those cases that involved the use of chainsaws in the Permanent Forest Reserve clearly had the potential to be charged with either or both of the following offences

Offence	*Penalty*
• use of a chainsaw to harvest Forest Products without a Permit (Art.38.2 & 70.3)	1-12 months jail or fine and confiscation (Art.99.1(1))
• use of an unregistered or untagged chainsaw (Art.70.2)	Transactional Fine (Art.96)

In addition, where the case files indicate harvesting of forest products occurred, there were additional charges which could have been laid, such as

Offence	*Penalty*
• harvest Forest Products without a permit (Art.25.1(2))	1-5 years jail and fine and confiscation (Art.98.2(1))
• harvest forest products for commercial purposes without a permit (Art.24.2)	1-5 years jail and fine and confiscation (Art.98.2(1))

[32] One source has suggested that the terms used are often the reporting categories used in the FCMU's report form and/or their case tracking database. No time was available to check this, but if true it does not provide any justification for not using the terms found in the legislation.

The same logic applies to many other cases, for example, wildlife offences, where transportation of wildlife often involves the offence of possession.

It is understandable that FA officials would be resistant to charging poor people with offences carrying such a significant penalty as that under Art.98.2(1). However, the fact that it is probably common knowledge that the penalties actually applied are often relatively light reduces the Enforcement Disincentive. It also makes it very unlikely that the offenders can be persuaded to reveal the names of the people behind the activity in order to avoid a serious penalty.

4.2.4 Inadequacy of Enforcement Against Wildlife Trade

The picture of enforcement against wildlife crimes that is revealed by the analysis of the data in the Detections Database and the FA case files raises some serious concerns. This database includes 95 incidents involving the following species or their products: bear, birds, Dragon Fish, Gibbon, Hog Badger, Mouse Deer, Pangolin, porcupine, rabbit, Sambar, Slow Loris, snakes, tortoise, and wild pig.

The case files, on the other hand, include only 12 wildlife-related cases where law enforcement action was taken, and all were recorded as transportation of wildlife offences (see Table 2)[33]. Even allowing for the possibility that some small number of case files might not have been provided to the team, there seems to be a very significant difference between the number of detections of what might have been instances of involvement in wildlife trade and actual numbers of legal actions. Of the 12 cases where legal action occurred, eight were processed as Transactional Fines, two were prosecuted through the Courts[34], and in two cases evidence was seized but no offender was arrested.

A search of the Detections Database for detections involving bear, pangolin and turtle[35] located 15 detections of individuals with pangolin, 6 with bear products (skins, paws, gall bladders[36]), and 5 with numbers of turtles indicating involvement in trade. This amounts to 26 separate instances of clear involvement in wildlife trade (as well as numerous others which might have been established as trade under questioning by FA rangers, more than twice as many as were actually processed as offences. A disturbing aspect of this data is that there appears to be a lack of consistency in the way the law is enforced in cases with apparently similar circumstances.

Discussions with law enforcement staff revealed a confusing variety of views on how to deal with situations where community members were detected in illegal activities, or where relatively small amounts of forest products or by-products were involved (even where they were clearly of high conservation significance or destined for wildlife trade). Some of them may have been issued with warnings and / or required to sign a contract admitting guilt and promising not to re-offend.

[33] Warnings may have been given in some cases, but these were not recorded in the patrol database or in any other form known to the authors.
[34] But see comments below on the fate of these two cases, which both involved bear products.
[35] These species are key indicators of wildlife trade, because the value of the products makes it very unlikely that they would be consumed for subsistence.
[36] The detections database notes that two of the individuals with bear products were jailed and one was taken to Court.

Recommendation 2:

> There is a need for a set of guidelines on how to apply the law in situations where small amounts of forest products or by-products, particularly wildlife, are detected. Such guidelines should clarify the species and products of conservation concern, and should also present a graduated series of responses related to the numbers or volumes involved, the likelihood that the person is involved in trade, and whether or not he cooperates in providing information on middlemen or other aspects of criminal activities.

The data is also noteworthy for the lack of evidence of enforcement against wildlife traders. Neither the Detections Database nor the case files include any instances where very large volumes of wildlife were detected or seized, whether in transit or at a collection point. Similarly, there are charges for trading in wildlife. This tends to indicate that major local traders are not being caught, a circumstance that can be traced directly to a lack of investigation on the part of FA rangers.

It is possible that the low numbers of pangolins (typically one or two) associated with each detection are part of a strategy adopted by traders for minimising the losses they occur when intercepted by law enforcement agencies. Such strategies have been used in Laos (Nooren & Claridge, 2001). It is also possible that the low numbers in each detection represent individual hunters taking their catch to sell to a dealer. Whatever the explanation, the key fact is that FA law enforcement officers have not managed to find out the identity of the buyer at the intended destination of the detected carriers, and so have not apprehended any traders. Given the rumoured operation of a "protection racket" involving law enforcement staff and selected wildlife traders in the Southern Cardamoms, this lack of enforcement against traders in the CCPF is disturbing.

Recommendation 3:

> FA JPs need to use the threat of legal action to encourage offenders found with forest products and by-products to reveal the source of the material and particularly the name and location of the person for whom they are working or the dealer to whom they intend to sell it.

Of the 12 wildlife trade cases where a charge was made under the FL, there are some with "unusual" features. For example:

- an individual caught transporting two bear paws and a bear gall bladder was arrested and the car he was using was seized. The car was later released, and the offender was released by the Court "on bail". According to Court officials, the case was later tried *in absentia* and is regarded as closed, though it is unclear whether any conviction was recorded.
- in another case, a person caught transporting bear paws (in the same Commune as the case above) was processed through the same "bail" and "trial" procedure.
- of the 15 cases involving pangolin, (which clearly involve wildlife trade), only four were charged and these offenders paid Transactional Fines. In the other 11 cases the pangolins were seized and released, and no action was taken against the offenders. This does not seem to be in keeping with the commitment by the Cambodian Government, as a member of CITES, to the "zero harvest quota" agreement for this species made in 2000[37].

[37] International trade in Asian pangolins has been banned since 2000, when they were listed on Appendix 2 of CITES, but with the additional measure (adopted by all CITES Parties) that there would be a zero harvest quota.

Recommendation 4:

> There should be an investigation of the granting of "bail" by the Provincial Courts in relation to forest and wildlife crime, including the outcomes of cases in which bail is granted, taking into account whether there is any recorded conviction, and whether any penalty is imposed or enforced.

Recommendation 5:

> Because pangolins found in the possession of individuals are virtually always a part of wildlife trade, and because , under CITES, the allowable quota for harvest of pangolins is zero, the legislation should be amended to make it illegal to hunt, trade in, or possess pangolin or pangolin parts. This should be done whether or not it is determined that pangolins are rare or endangered in Cambodia. This should be incorporated into the Prakas on common, rare and endangered species.

PART 5: APPLICATION OF THE ENFORCEMENT ECONOMICS MODEL

5.1 Detection and Arrest

5.1.1 Detection

Detection is the process of finding that there are reasonable grounds to believe that an offence had been committed. It can involve activities such as: surveillance; patrolling; searching; interrogation; receiving, compiling and analysing information; and other aspects of investigation.

There is no way to know the proportion of crimes committed that are actually detected.

The low probability of detection of illegal forest or wildlife activities in Cambodia is generally acknowledged. It seems likely, on the basis of experience in other countries in the region, that detection of forest and wildlife crimes in countries with Cambodia's level of development would be no better than ten percent. However in making the initial calculation of the Enforcement Disincentive (ED), a detection rate of 100 percent was used, recognising that this would yield an ED value considerably higher than the true ED.

Detection can occur at any point in the chain of illegal activities, including (but not limited to): harvest, transport, stockpiling, sale (whether involving middlemen or end-users), and border-crossing. Detections can occur either through routine activities of responsible agencies or through reporting of incidental observations by government staff or members of civil society.

Detection by responsible agencies requires the presence of staff in areas where offences are occurring. However the resources (funds, vehicles, equipment) available to FA for detection operations are generally very limited. Staff report that in the absence of conservation projects there is generally no specific allocation of budget for detection (or any other aspect of enforcement), and that where these activities occur at all they are often funded from fines or the sale of confiscated evidence.

It could be argued that it would be possible to reduce the need for widespread presence of detection agents in the field by making use of an intelligence network. It is not known to what extent the relevant agencies make use of informants, but it does not seem to be common. In any case, such an approach is fraught with risk, as the informants may use the threat of reporting

new illegal operators into an area to protect the illegal operations of accomplices, or to remove those who refuse to pay "taxes" on their illegal operations[38].

Apart from the question of the adequacy and effectiveness of detection staff, there is also the fact that methods used by offenders become increasingly sophisticated. This is particularly true in the wildlife trade (e.g. Watkins, 2000; Nooren & Claridge, 2001), but also applies to illegal shipments of timber and other forest products.

It is also relevant to consider that actual detection rates could be significantly higher than reported detection rates. There are many reasons for field staff or others not to report detections, including jurisdictional confusions (see p.53) and corruption.

5.1.2 Arrest

The FL refers to two forms of arrest: detention for questioning and investigation (khwat kluen) and arrest for charging with an offence (chap kluen). They are treated here as the same process from the point of view of assessing the effectiveness of law enforcement. The many factors affecting the likelihood of making an arrest are discussed briefly below, but the three major influences are: motivation of the enforcement officers (including a lack of significant fear of retribution); a reasonable expectation that a guilty offender will be punished by the law enforcement system; and belief in the importance of the work that they are doing.

5.1.3 Factors Affecting Likelihood of Detection and Arrest

Factors Relating to Detection and Arrest

The probabilities of detection and arrest are each strongly influenced by:

- the motivation of field staff, including pay and rewards, but also commitment to conservation goals;

  The pay levels of FA field staff are very low. For people working in such difficult and often dangerous circumstances the level of pay needs to be considerably higher if their motivation is to be maintained. Additional considerations relate to the need to counter the temptations of corruption. Clearly it is not feasible to pay staff at levels which would remove all temptation to take bribes, but pay levels need to be at least high enough that enforcement staff are not constantly feeling that the rewards are not commensurate with the difficulties of the work.

  In general FA patrol teams are not provided with any in-depth explanation of the importance of suppressing forest and wildlife crime and have only a limited understanding of the conservation, economic and cultural values of these resources.
- the extent to which staff fear adverse consequences of reporting offences or arresting offenders;

  This is a very real consideration that is referred to elsewhere in this report. Not only is it common for staff who enforce the law against powerful individuals to be threatened, they also have justifiable fears as to their job security. In general FA JPs do not take action against powerful people - for this reason but also because they do not detect any institutional or political willingness for such action.
- the strategic disposition of staff (e.g. location and patrolling) so as to maximise the likelihood of encountering offenders;
- the existence and quality of information on locations and individuals associated with crimes and the timing of criminal activities;
- the views of staff as to whether subsequent conviction and punishment is likely to occur;

[38] There are reports that such a system was being operated by Military Police in the southern Cardamoms to ensure that only wildlife traders who pay "tax" are able to operate. Non-payers are reported to enforcement staff.

If field enforcement staff feel (as many do now) that there is no point in arresting offenders and sending them to the Courts because they will be back in business within a short time, then they are unlikely to make significant efforts to detect or arrest serious crime.

- the attitudes of staff toward the circumstances of offenders

  There is a general tendency for field enforcement staff (and their supervisors) to express the attitude that the people who are caught committing crimes are usually the poor who have no other way to earn a living. While this may be true, in combination with a lack of investigation efforts to identify the richer players in the illegal marketing chain, this attitude does not enhance the effectiveness of law enforcement.

Additional Factors Relating to Detection

The probability of detection is also correlated to:

- the numbers of people in the field who might observe offences or signs of an offence having been committed. These include forestry and community rangers, community liaison workers, and researchers, as well as others such as ecotourism guides and members of the general public who are motivated to report offences;
- the availability of equipment and technology that allows offences to be detected;

  FA field enforcement staff who are not working with conservation projects typically have very low budgets for equipment, transport and other field expenses, and expanded detection efforts would often involve significantly increased expenses.
- the possession by field staff of skills and knowledge that allow them to locate offenders and to recognise offences;

  This point relates to level of training in investigative techniques, sufficient depth of knowledge of the offences defined in the relevant laws; and to ability to identify animal and plant species and NTFPs;
- the likelihood that members of the public will report crimes;

  Members of the public are unlikely to report forest and wildlife crimes because of:
  - a lack of any mechanism for such reporting, particularly a mechanism that ensures anonymity or protection of the informant;
  - fear of retribution by offenders;
  - a lack of knowledge of what constitutes an offence under the Forestry Law;
  - a general lack of appreciation of the significance of the impacts of forest and wildlife crimes;
  - a lack of respect for the law (due at least in part to mis-understandings about what is, and is not permitted under the law, but also to a general impression that all extraction of forest products and by-products is prohibited to community members, while concessionaires and powerful figures are given wide-ranging rights to forest resources);
  - a general (and largely accurate) impression that the likelihood of detection resulting in any meaningful punishment is extremely low; and
  - a general lack of faith in the justice system and a widespread perception that staff of the forestry and environment agencies are likely to be involved in these activities[39].

  All of these matters need to be addressed if the public are to play an important role in detection of forest and wildlife crime.

Additional Factors Relating to Arrest

The probability of arrest once detection has occurred is also correlated to:

- capability of enforcement staff in relation to investigation, interrogation, analysis of information and development of effective strategies;

  As discussed elsewhere in this report, JPs receive virtually no training in the many aspects of investigation (see p.55) and are actively discouraged from undertaking investigations by the prevalent attitude in the FA that “forestry crimes are only flagrant offences” (see p.51).

[39] This observation is borne out by frequent references in the Khmer-language press to such involvement.

- knowledge of enforcement staff of what legally constitutes an offence;
- adequacy of powers provided by relevant laws;
- the degree of cooperation from relevant agencies (e.g. in issuing necessary warrants, allowing access to information and locations);
- the adequacy of equipment and manpower, including relative levels in relation to the equipment (e.g. vehicles, weapons, communications) and manpower of offenders.

Box 3: Law Enforcement Against Powerful Persons - the *Mreah Preu* Story

FA staff find it particularly difficult to enforce the law against powerful individuals or groups. In general they are afraid that if they carry out such enforcement they, or their families, will be subjected to some form of retaliation. As a result, staff are sometimes not even willing to report such cases.

This is not to say that FA teams never take such enforcement action. Where they are confident that their actions will be backed up at a sufficiently high level in the government, (and providing in a particular situation they possess superior "firepower"), they are usually prepared to enforce the law. In this regard, foreign advisors, being outside of the prevailing patron-client system, are seen as playing key roles in gaining support for particular law enforcement actions.

Even where FA enforcement officers do make arrests and submit cases to the Courts for prosecution, there is no guarantee that trial or conviction of powerful individuals will occur. In fact, evidence from the study area and elsewhere indicates that few such cases are prosecuted and if they are prosecuted are unlikely to be convicted and punished by the Courts. The following events provide a case study from the CCP area.

The forest near Veal Veng in the northwestern region of the Central Cardamoms Protected Forest is one of two sites in the Cardamom Mountains with extensive areas of the cardamom forests from which the mountains acquire their name. The cardamom grows as an understory in areas of tall forest. Local communities have close ties with the cardamom, both culturally and economically.

A large lowland tree species, *mreah preu*, grows in a symbiotic relationship with the cardamom. These trees produce an aromatic oil in their roots and lower trunk. The oil is of high value, and is obtained by cutting down the tree, digging out the roots, and chipping them and the lower trunk. The woodchips are then place into large distilling vats and boiled. The process is extremely destructive: firing the furnaces to boil the pots requires a large input of timber; the *mreah preu* trees are destroyed; the removal of the *mreah preu* trees causes the cardamom to die; wildlife are hunted for food for the crews; and waterways are contaminated with soil erosion and by-products.

In 2002, *mreah preu* oil production started in the Veal Veng area and within the space of a few months there were nine factories operating in the vicinity, with about 20 huge distillation vats in operation. This activity was illegal under the *Forestry Law* which came into effect in September 2002. The main backer was a Vietnamese ex-military officer with high-level connections, who had run similar operations in Vietnam and Laos.

Part of the rapid escalation in factories stemmed from some local forestry rangers being corrupted and paid-off by the industry, with the operator reported to have been paying $250 per month per vat (Barron, 2003). Although the factories were incredibly conspicuous – smoke plumes billowing from them; track marks from large trucks running to them; employees going to and from them, etc. – the corrupt rangers pleaded that they "didn't know about them". The honest rangers seemed to have no solution - they apparently did not feel capable of seeking assistance from higher authorities in the FA.

In January 2003, Conservation International provided the Director of the FA with a detailed report on the situation and its impacts, and describing the need for law enforcement action. This was met with real concern by the FA Director and he demanded action.
The corrupt rangers were removed and a new law enforcement team was assembled; there was collaboration between the FA teams and the courts; and the law enforcement rangers realised that they had full government support. The results were impressive: by the end of March 2003, all the factories were shut down, around 18 people had been jailed in Pursat, and the industry disappeared from the area.

(continued next page)

As a result, the ranger team primarily responsible for putting a stop to the industry gained respect among other staff as well as among the local community and were extremely proud of their achievement. This pride extended through the whole program – because all remaining staff had played a role in the removal. The rangers realised that they had high-level support and that they were capable of combating and defeating major threats to the Protected Forest.

Unfortunately the sequel to this case illustrates another side of law enforcement in Cambodia. Fifteen of those arrested and jailed were Vietnamese nationals, including the leader of the operation. Within a short time all had been released on bail paid by a representative of the Vietnamese embassy, and until now, two and a half years later, not one of them has been punished (pers.comm., Pursat Provincial Court officials, 2005).

5.2 Cases Following Path I - Transactional Fines

5.2.1 Probability of Arrest in Path I Cases

Of all the potential offences detected, 160 (33%) were of a type that could have incurred an Art.96 penalty, i.e. the case should have followed Path I and resulted in a Transactional Fine if an offender had been arrested. In fact, offenders were arrested in only 64 cases, giving a probability of arrest ($P_{a/d}$) of 0.4 (40%).

This is a comparatively low proportion of the detected offences. There are a number of reasons for such detections not resulting in arrests. Perhaps the major reason is that where the offence was not particularly serious and the person involved was a first-offender, then a warning might have been issued rather than making an arrest. It is not uncommon for FA rangers to require first-time offenders to thumb-print an agreement recognising that they have broken the law and promising not to re-offend[40]. Such cases would not be recorded as arrests. It is not known how many of the non-arrests represent such cases because there is no compiled record of such penalties.

Recommendation 6:

Any database which is meant to improve the effectiveness of law enforcement against forest and wildlife crime should include information on offenders who have signed "thumb-print" contracts admitting guilt and promising not to re-offend. Such a database should also include explanations for situations in which apparent offences were detected but no arrest was made, whether there was seizure of Real Evidence or not.

If we assume that all 96 Path I cases (60%) where no arrest was made were treated as minor first-offences, then this suggests that there was a very significant percentage of minor offences. Given that this Path I category includes some very serious offences (e.g. transporting large volumes of luxury wood without permission, and offences involving rare wildlife species), it seems rather unlikely that nearly two-thirds of all potential Path I offences detected could be regarded as minor first-offences.

It is also possible that there were offences detected in which there was no arrest because the perpetrators escaped, though this seems unlikely to explain the majority of the non-arrests.

[40] This constitutes a warning and is a valid form of penalty under the Art.93.1(4) of the FL.

If we consider only wildlife-related detections, the probability of arrest is quite low (0.13, or around 1 in 8). However a number of factors may be acting here. In particular, many of the detections of people with wildlife related to individual animals or small numbers of animals which might have been considered as customary user rights being exercised under Articles 10, 24 and 40 of the FL. The Detections Database does not contain sufficient detail to reveal whether this was a consideration in not proceeding with an arrest, though it seems unlikely because in most cases the wildlife was seized, which would not have been appropriate if the case had been treated as customary user rights.

Box 4: Refusal to Admit Guilt to a Path I Offence

In theory, if an offender refused to admit guilt then the case would be transferred to the Courts (Art.90.2) - this follows from the basic principle that someone who has been charged with the commission of an offence has the right to a trial if they do not admit guilt. In practice, there were no situations among the Path I offences in which the offender chose to have the case referred to Court.

The reality is probably that they were not aware (or not informed) that this option existed. In any case, anyone who had chosen not to admit guilt would have been jailed, either until the hearing (possibly several months) or until they paid a non-refundable "bail" to be released before the Court hearing.

Even if not guilty, an offender would be likely to prefer paying a transactional fine rather than spending time in jail. Furthermore, the amounts demanded as bail are commonly roughly equivalent to the average Art.96 fine (or higher), and payment of the bail would not entitle the offender to release of any vehicles or equipment held as evidence, which is the case if guilt is admitted and the transactional fine is pre-paid.

5.2.2 Probability of Conviction / Punishment in Path I Cases

According to FL Art.91 and MAFF Prakas 91, cases processed by FA under FL Art.96 are ones in which the offender has admitted guilt[41]. There is no process required whereby the FA needs to "convict" the offender - the FA's responsibility once guilt has been admitted is to decide on the penalty according to Art.s 91 and 96 of the Forestry Law. Thus, the probability of conviction and punishment once an offence enters Path I processes is 1.00 (100%).

5.2.3 Enforcement Disincentive in Path I Situations

If we assume that the average value of Real Evidence (contraband forest products and by-products) seized represents the average incentive which influences individuals to commit Path 1 crimes, then there is an average $315.35 incentive to commit this type of offence.
system which is only, at best, $166.28 (Table 3).

If we recognise that the probability of detection is not 1.00, and substitute probabilities of 0.5 or 0.1, then the ED is even less effective (Table 4).

This incentive can be compared with the value of the disincentive generated by the enforcement

Separating the dataset into timber and wildlife crimes yields the same result: the highest value of the Enforcement Disincentive is considerably less than the average incentive to commit the crime.

[41] If there is no admission of guilt, the case is referred to the Courts and follows Path II (but see Box 4).

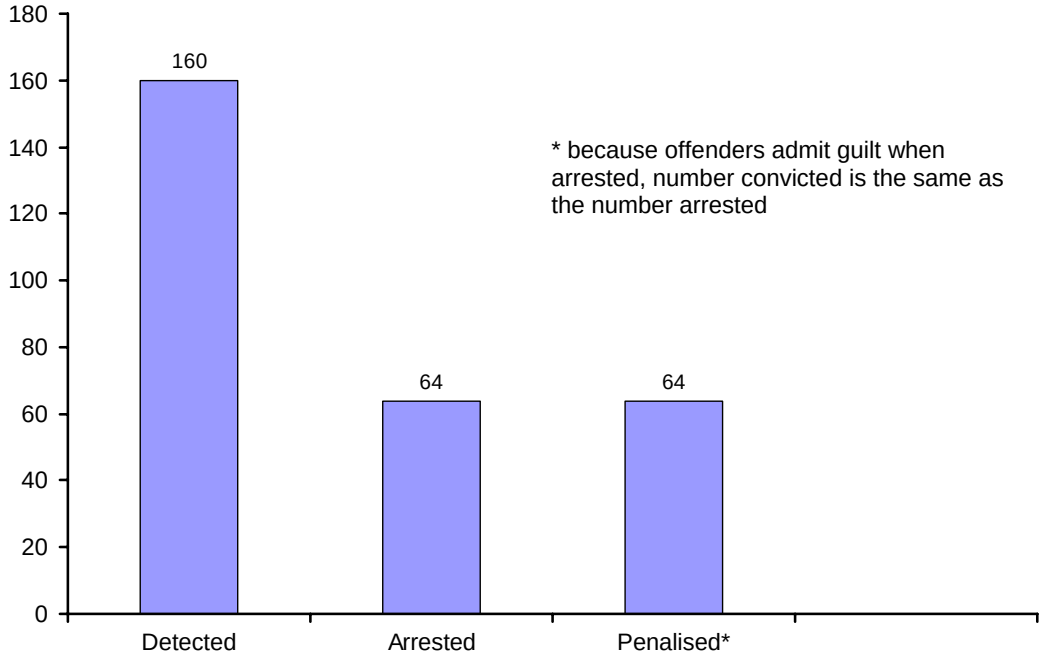

Figure 4: Transactional Fines: Numbers detected / arrested / penalised

Table 3: Enforcement Disincentive Calculations - PATH I Offences

	All Path I crimes	*Timber crimes[42] (I)*	*Wildlife crimes (I)*
Average Incentive	**$315.35**	**$320.40**	**$107.33**
P[43] detection[44]	1	1	1
P arrest	0.4	0.39	0.13
P sanction[45]	1	1	1
Average Fine	$430.89	$412.00	$125.68
Average Time to Penalty	66 days	62 days	54 days
Enforcement Disincentive) ED[46]	**$166.28**	**$155.33**	**$15.86**

Confiscation of Other Evidence as an Additional Sanction

In Path I cases the FA Director has the option of confiscating the Other Evidence such as vehicles and equipment (Art.96.3) and this would potentially add significantly to the disincentive generated by the enforcement system.

The last two rows of Table 4 show the impact that confiscation[47] of Other Evidence by the FA (rather than returning it after payment of the fine) would have on the ED for Path I crimes. In the 100 percent detection scenario, the resulting best case EDs are higher than the incentive, meaning that confiscation of equipment and transportation would result in an effective deterrent

[42] A broad definition of "timber crimes" has been used, including all wood products (e.g. poles).
[43] P=Probability
[44] Assumed to be 1 (100% detection) because of unavailability of data on total crimes committed. Note: this is a very generous overestimation - see the effect of other probabilities of detection on ED below.
[45] Calculated at 1 because our Path I data set was a biased one, and only showed sanctioned cases
[46] ED = $P_{detection}$ x P_{arrest} x $P_{sanction}$ x Fine x e^{-rt}
[47] The FL refers to "seizure" as the act of taking possession of evidence in the field, and "confiscation", which it the decision that the evidence is to become the property of the State (or was always the property of the State).

to these crimes. However if more realistic probabilities of detection are used, the ED is only either approximately equal to the incentive ($P_d = 0.5$) or is less than the incentive ($P_d = 0.1$).

Table 4: Likely Real Enforcement Disincentive Resulting from Transactional Fines

	All Path I crimes	*Timber crimes[48] (I)*	*Wildlife crimes (I)*
Incentive[49]	**$315.35**	**$320.40**	**$107.33**
Enforcement Disincentive) ED[50]	**$166.28**	**$155.33**	**$15.86**
ED if $\mathbf{P_d}$ is 0.5	$83.14	$77.66	$7.93
ED if $\mathbf{P_d}$ is 0.1	**$16.63**	**$15.53**	**$1.59**
Average Sanction (if Fine + Confiscation)	*$1676.98*	*$1801.43*	*$659.01*
***ED*$_C$** *(with confiscation - assuming* $\mathbf{P_d}$ *=1)*	*$646.97*	*$679.14*	*$83.18*
***ED*$_C$** if $\mathbf{P_d}$ is 0.5	*$323.48*	*$339.57*	*$41.59*
***ED*$_C$** if $\mathbf{P_d}$ is 0.1	*$64.70*	*$67.91*	*$8.32*

It is noteworthy that there were no instances among the Path I cases examined in which this Other Evidence was confiscated[51]. In reality, offenders who plead guilty are frequently allowed to pre-pay the fine so as to be able to regain their equipment without waiting for the processing of the documentation by the FA. This practice is contrary to the law in that it pre-empts the decision of the Director of FA as to whether or not to confiscate the Other Evidence. It also results in a further devaluation of the disincentive, as the offender is able to resume productive use of the vehicles and equipment (possibly for illegal activities) within a short time after being apprehended.

Recommendation 7:

> The practice of releasing equipment and transport (Other Evidence) to offenders who have "pre-paid" a Transactional Fine is contrary to the law and significantly reduces the deterrent value of the law enforcement process. No Other Evidence should be released until the Director of FA has made a decision on the case, including a decision on whether or not the seized Other Evidence is to be confiscated as a part of the penalty in accordance with Art.96 of the Forestry Law.

Recommendation 8:

> The standard documentation forms for Transactional Fines should include a recommendation as to whether the Other Evidence should be confiscated or released to the offender.

Consideration of Additional Factors in Setting Levels of Fines

Article 91.3 of the FL also allows the Director of the FA to take into consideration a range of other factors in setting the amount of the transactional fine. These are:

1- The economic gain realized as a result of the offence;
2- The damage caused to the environment;
3- How often the person charged has committed the offence;
4- How much of a fine is required to deter future offences from occurring; and
5- Whether the offence was intentional.

[48] A broad definition of "timber crimes" has been used, including all wood products (e.g. poles).
[49] Average value of contraband ("real" evidence) confiscated at the time of arrest (over all cases) can be used as a substitute for the incentive to commit the crime (see Akella & Cannon, 2004).
[50] $ED = P_{detection} \times P_{arrest} \times P_{sanction} \times Fine \times e^{-rt}$
[51] Though situations do arise in which Other Evidence is forfeited by the offender who decides not to pay the fine because it exceeds the value of the seized equipment.

In none of the cases examined during this project was there any indication that these factors had been considered in setting the levels of the fines applied.

An examination of the Transactional Fines levied on the cases examined under this project found that all of the fines were calculated as three times the value of the Real Evidence. No evidence could be found that any other factors had been taken into account. This means that opportunities to fit the level of the sanction more closely to the nature and significance of the crime have not been used.

Recommendation 9:

> In documenting cases which are subject to a Transactional Fine, the FA staff should include recommendations on whether or not any of the factors in FL Art.91.3 should be taken into account by the Director in setting the level of the fine, and if such factors are considered relevant, should recommend appropriate values to be added to the fines.

Recommendation 10:

> The relevant forms should be modified to provide space for recommendations on Art.91.3 factors.

This narrow use of the penalty provisions leads into consideration of the appropriateness of the range of offences that could be processed as Transactional Fines. These range from felling a tree which does not have an authorizing FA mark to transporting tens of thousands of dollars of illegally obtained timber. While it might be argued that the range of penalties provided by the formula of 2-3 times the value of the Real Evidence provides a sufficient range of sanctions, this does not take onto account the vastly different impacts on the forest ecosystem involved in the different levels of crime.

Requiring Payment to Restore Damage to the Ecosystem

In addition Article 94 of the FL provides that:

> *Any individual who has committed a forestry offence harming the forest ecosystem shall be liable for payment in order to restore or repair the forest ecosystem to its original condition.*

This is not meant to be a component of the fine, but constitutes an additional penalty that can be applied.

None of the offenders punished under Path I processes were required to pay anything for restoring the forest ecosystem.

Recommendation 11:

> FA should prepare a policy document indicating the kinds of offences where it may be appropriate to consider requiring offenders to pay for restoration or repair of the forest ecosystem under Art.94.

Recommendation 12:

> Documentation of all cases should include indications of whether or not payment for restoration or repair of the forest ecosystem should be required pursuant to Art.94.

Table 5: Summary of Path II Detections, Arrests, Prosecutions and Convictions

Stage of Enforcement	All	Timber[52]	Clearing	Wildlife	NTFP[53]	Chain-saw
Detections						
• detected under old law[54]	**68**	19	9	8	17	15
• detected under FL	**270**[55]	182	20	16	29	22
• total detections	**338**	201	29	24	46	37
Arrests						
• arrested	**37**	8	2	1	10	16
Current Status						
Pending						
• pending at FA	**3** (810)	1			1	1
• pending at Prosecutor	**4**	4				
• pending at Investigating Judge	**9**		2		3	4
Total Pending	***16***	*5*	*2*	*0*	*4*	*5*
Finalised (Prosecuted)						
• conviction under FL with fine	**1** (63)	1				
• conviction old law with fine	**1** (137)	1				
• conviction old law with fine and suspended jail	**2** (48)				2	
• conviction under old law with confiscation of Other Evidence (no fine)	**11** (158)	1				10
• tried *in absentia* under FL while on bail (assumed convicted)[56]	**6** (#)			1	4	1
Total Finalised (Prosecuted & Convicted)	***21***	*3*	*0*	*1*	*6*	*11*

() average number of days to completion or to 30 March 2005 if pending. Cut-off date based on date of acquisition of the study cases.

information from Court - files not sighted, so date of finalisation is not known

5.3 Cases Following Path II - Prosecution Through the Courts

Table 5 summarises the number, type and status of all the Path II cases. It reveals the rather disturbing information that of 338 observations in the study area of what might have been serious forest crimes warranting prosecution through the Courts in the last four years, only 37 resulted in arrests, and of those only 21 have been prosecuted and convicted until the end of March 2005.

5.3.1 Enforcement Disincentive in Path II Situations

Taking all Path II cases together, the average "incentive" calculated from the average value of the Real Evidence seized is almost $600 (see Table 6). However it needs to be remembered that the range of incentives represented by this average is extremely broad, ranging from a few tens of dollars to many thousands of dollars in the case of large volumes of luxury timber or of high value wildlife.

[52] Includes all kinds of wood-related offences, including logs, sawn timber, poles, etc.
[53] Includes all NTFP-related offences, including processing factories
[54] Kret-Chhbab/35 KR.C/25Jun88 Kret-Chhbab on Forestry Management.
[55] FL was legally in effect from 1 Sept. 2002. First use of FL mid-January 2003. Offences detected since mid-Jan.'03 = 268
[56] Information from Court August '05 - no details of judgement - see Annex 3.

This incentive can be compared with the "best case" Enforcement Disincentive (based on all the Path II cases which have been punished by the Courts in the last four years) of $33. Clearly potential offenders have little reason not to take the risk of committing this type of offence. This best case ED is based on an assumption that all crimes committed are detected. If we use more realistic values for the probability of detection then the ED could be as low as $3.30.

Clearly law enforcement is not providing a deterrent to serious forest crime.

Table 6: Enforcement Disincentive Calculations - PATH II Offences

	All Path II Crimes	*Timber crimes*	*Wildlife crimes*
Average Incentive	**$599.89**	**$565.78***	**$450**[1]
P detection (P_d)[1]	1	1	1
P arrest ($P_{a/d}$)	0.10	0.04	0.04
P prosecution ($P_{p/a}$)	0.6	NA	NA
P conviction($P_{c/p}$)	1	NA	NA
Average Penalty	$577		
Average Time to Penalty	150 days	NA	NA
ED if P_d is 1	**$33.03**	NA	NA
ED if P_d is 0.5	$16.51		
ED if P_d is 0.1	$3.30		

* note that the definition of timber crimes used to calculate the Incentive in this table is narrower than the range of activities counted under the heading "timber" in the previous table, and relates to sawn timber and logs for milling.
NA = number of cases too low to allow meaningful calculations.

Recommendation 13:

There needs to be a more widespread review of the outcomes of forest crime cases finalised by the Courts, possibly involving thorough analysis of all cases in selected provinces since the FL came into effect. The review should focus on the appropriateness of the penalties and whether or not correct legal procedures were followed in arriving at the conviction and the penalty.

Recommendation 14:

Judges and Prosecutors should be made aware of the significance of the negative impacts of forest and wildlife crime and should be persuaded to apply more severe penalties to these offences.

Recommendation 15:

Courts should be persuaded not to release offenders on bail when the circumstances fit Art.19 of MOJ Prakas 27 and the case can be sent to the Trial Judge relatively quickly. This will be more likely if FA case documentation is complete.

The following sections analyse the various components of the Enforcement Disincentive equation in relation to Path II offences.

Probability of Arrest Given Detection ($P_{a/d}$) of a Path II Offence

The probability of arrest once a Path II offence has been detected is 0.1, i.e. only one out of ten detections of what appear to be serious forest crimes results in an arrest (see Table 6). This is a very low overall rate of arrest. However for crimes involving timber and wildlife the probability of arrest is even lower. In both cases, only about one out of 25 detected offences results in an arrest.

Probabilities of arrest once an offence has been detected are similarly low for forest clearing offences (0.07), NTFP-associated offences (0.2), and illegal use of chainsaws (0.4).

It is important to recognise that even cases that became Path III cases (i.e. where it was reported that no offender was present when the offence was detected) could have followed Path II had the enforcement team either adopted a more effective detection strategy which resulted in the offender being caught at the scene, or pursued a more vigorous and skilful investigation so as to locate and arrest the offender. (see p.51).

Probability of Prosecution ($P_{p/a}$) in Path II Cases

The criterion used in this study to indicate that a Path II case had been prosecuted was that there had been a decision by the Court.

The Probability of prosecution after arrest is 0.6, i.e. approximately two-thirds of serious crime cases where arrests occurred went through to completion of the trial process. However, if we remove from the calculation those trials in which the defendants, having been released on "bail", were apparently not present and no judgement is available, the Probability of prosecution is 0.4.

Eight percent of the cases in which an arrest was made had not reached the Prosecutor, but were still with the FA after an average time of 810 days (2.2 years). This is not only a significant proportion (18%) of all the cases which were pending, but is also an unacceptably long time for a case to be still with the FA following arrest of an offender.

Recommendation 16:

> The FA should identify all cases where the offence should be prosecuted in the courts but which are still with FA offices more than one year after the date of detection. A written review of each case should be prepared and forwarded to the FCMU.

Given that the cases brought to the Court by FA were all flagrant offences, there should have been little likelihood of an unsuccessful prosecution (i.e. the $P_{p/a}$ should be close to 1.0). However, there is a range of factors affecting the likelihood of a successful prosecution (and therefore of a successful conviction). These are discussed below.

It is clear that in most cases there is little communication between the FA staff (both those at the field level and those who prepare the final case documentation) and the Prosecutors. Each group expresses frustration with the other, but apparently with little understanding of the conditions under which the other party has to work.

Recommendation 17:

> It is recommended that Prosecutors in the relevant Courts be involved in workshops with FA field and documentation staff with the objective of clarifying the needs and working situations of each group and arriving at common objectives and common standards in relation to documenting and processing forest and wildlife crime cases. In addition, there should be regular meetings between FA enforcement staff (at Cantonment level and below) and Provincial Court officials to review factors affecting the effectiveness of enforcement through the Courts.

Probability of Conviction ($P_{c/p}$) in Path II Cases

For the purposes of this study a conviction is defined as a decision by the Court that the defendant is guilty of an offence under the Forestry Law. Trials which resulted in a "not guilty" verdict would indicate deficiencies in either the investigation and documentation of the case, or the conduct of the trial.

Of the 21 cases under this study that went to trial, it appears that all resulted in "convictions", i.e. a probability of conviction of 1. However it is instructive to note that these convictions break down into several categories:

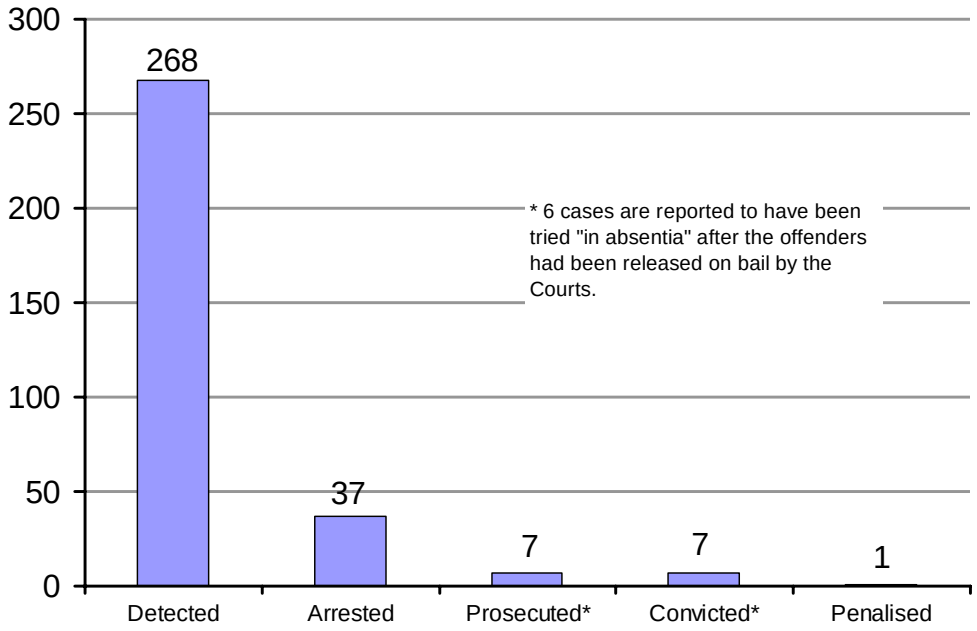

Figure 5: Court Prosecutions Since FL Came Into Effect: Numbers at different stages

- of the offences committed under the old forestry law (Kret Chhbab 35):
  - two resulted in fines, plus suspended one-year jail sentences, and confiscation of Other Evidence;
  - one resulted in a conviction with a fine;
  - 11 resulted in confiscation of Other Evidence. The Court documents cite Art.33 of Kret Chhbab 35 as the legal basis for the offence, but offences under this Article invoke a penalty of confiscation and a fine. There is no mention in the available documentation of a fine having been levied, neither is there any finding recorded on the file as to guilt or innocence of the offenders.
- of the offences committed under the new Forestry Law:
  - one resulted in conviction with a fine;
  - six were apparently tried *in absentia* while the offender was on bail[57], but the judgements have not been obtained.

Thus the apparent 100 percent conviction rate is not what it seems in terms of arriving at a definitive conclusion to the case. It masks the fact that in the sampled Path II cases the probability of reaching what is generally understood as a conviction is 1 in 7 (0.14), not 1.00.

Penalties Applied in Path II Cases

It is difficult to discuss the imposition of penalties given that in our dataset there was an almost total absence of penalties applied by the Courts. This is partly because the FA submitted few cases to the Courts in the study area during the four years covered by this report.

In practice, the penalties most commonly applied by the Courts in the case of forest and wildlife crimes were confiscation of Other Evidence. Fines were not common in the cases studied, and imprisonment was applied in only one instance,though in that case a one year sentences was imposed (under the old forestry law) and suspended for five years.

[57] Information from Pursat Court, August 2005.

Since the new Forestry Law began to be applied in January 2003 (it came into effect on 1 September 2002), of 268 detections of timber-related offences that appear, on the information available, to have been punishable in the Courts, only one has clearly been successfully prosecuted, with a resultant penalty of a fine.

The levels of penalties applied indicate that, in general, the Courts do not regard forest and wildlife crimes as particularly serious[58]. There seems to be a general impression among Court officials that such offences are "victimless crimes", and therefore not as serious as murder, rape or even robbery. The frequent poverty of offenders brought before the Courts by the FA also contributes to the impression that this type of crime is one that people take up when they have few other options, though Court officials complained to the team that FA only catches the poor people, not the rich ones behind the crimes.

Recommendation 18:

> Awareness raising activities (presentations, printed materials, posters, etc.) should be initiated to make Court officials aware of the seriousness of forest and wildlife crimes and of the way that these impact on livelihoods, ecological processes, ecosystem services and the natural heritage of Cambodia.

There is no equivalent in the FL provisions relating to prosecution in the Courts to Art.91.3 (which sets out guidelines for the Director of FA in deciding the amount of a Transactional Fine). While Judges might take into account factors such as economic gain from the offence, and the amount of damage to the environment, it would be useful to find such guidance in the FL. In particular, Judges require guidance on how to assess the likely environmental damage caused by a particular offence.

Recommendation 19:

> In relevant cases, the summary of the case provided to the Court by FA as part of the case documentation should include an assessment of the likely damage to the environment. This should take into account damage to ecological processes and ecosystem services.

Recommendation 20:

> Awareness raising activities targeting the Judiciary should include information on the effects of certain crimes on ecological processes and ecosystem services and, where appropriate, indications of the economic losses that could result.

Although Art.94 provides the Courts with the possibility of requiring offenders to pay for restoration of the forest ecosystem where an offence has caused damage, this penalty does not appear to have been applied. The authors are not aware of its having been used anywhere in Cambodia, even in relation to cases involving significant forest destruction. It is a penalty that could also be applied to killing of wildlife, or destruction of wildlife habitat.

[58] The recent sentencing of a wildlife trader in the Koh Kong Provincial Court to seven years in jail for transporting wildlife products was an exceptional event, and the severity of the sentence was no doubt due, to some extent, to the attention focused on the trial by international NGOs (*Cambodia Daily*, Friday Sept.2, 2005: p.20.

Recommendation 21:

> Judges and FA staff should be made aware of the provisions of Art.94 (payment to restore forest ecosystem) and the possibility of using it in conjunction with other penalty provisions of the FL in a way that would make penalties more closely fit the crime, as well as increasing their deterrent effect.

5.3.2 Factors Affecting the Outcomes of Path II Cases

The probabilities of prosecution and conviction in the Courts, and the imposition of penalties that create a strong disincentive to crime are influenced by a range of factors in addition to those discussed above. These are summarised and discussed briefly below. Recommendations in relation to most of these points are presented elsewhere in this report.

- the motivation of Court officials (including pay and rewards);

  Court officials in Cambodia are widely regarded as being seriously underpaid given the importance of their duties, and the excessive workloads that they face. The adequacy of pay and rewards is often said to be related to the likelihood that the outcomes of Court cases can be influenced by corruption. The current study did not attempt to identify instances of corrupt practices in the prosecution, conviction and sentencing of forestry offenders. Nevertheless, that some closer investigation of the payment of "bail" and the subsequent outcomes of prosecutions in these cases seems to be warranted.

- the perceptions of the Court officials of the significance of forest and wildlife offences;

  The attitude of Court officials to forest and wildlife offences probably reflects that of the general society. As mentioned above, there is a tendency to downgrade the significance of this kind of offence because of a lack of appreciation of the social, economic and environmental significance of its impacts, and because of the impression that offenders are forced into this type of action through poverty.

- the adequacy and accuracy of the documentation provided by field enforcement staff, including the quality of the evidence;

  This issue is discussed in detail elsewhere (see Annex 2). Court officials who were interviewed during this study frequently complained of the inadequacy of the documentation provided by FA, and often referred in particular to the lack of clear documentation of the evidence and the poor levels of investigation. It is noteworthy that the documentation of cases submitted to the Courts for prosecution is substantially the same as that for Transactional Fines, though in there is no need to prove guilt in Transactional Fine situations because the offender has admitted guilt at the outset. Clearly there are very different documentation requirements for the two types of case.

Recommendation 22:

> Develop documentation and documentation standards for cases to be submitted to the Courts that take into account the need to provide documentary proof of guilt and the importance of providing good documentation of cases so as to be able to access the fast-track prosecution provided for forestry cases in Ministry of Justice Prakas No.27 Article 19.

- the degree of cooperation between enforcement agencies and the Courts;

  It is clear from discussions with FA officials at all levels and with officials of the Courts that there is, in general, very inadequate communication and cooperation between FA and the Courts. This applies both to the processing of individual cases and to general issues related to securing more successful outcomes from law enforcement. The attitude

expressed by some FA officials can be summarised as "there is no need for direct communication between local FA and the Provincial Courts because they have their jobs to do and we have ours. If there is to be communication it should be done at the highest levels." Such an attitude will not lead to improved law enforcement outcomes in the Courts.

From the point of view of the Court and MOJ officials consulted during this study, there seems generally to be a genuine desire for more interaction and a recognition that the success of law enforcement depends on this.

- the extent to which the enforcement agencies and the Courts share a common objective in relation to forest and wildlife crime;

  This relates to the point above about perceptions as to the significance of forest and wildlife crime. Until there are shared perceptions of the significance of the problem, there are not likely to be entirely parallel objectives.

- the extent to which there is interference in the judicial process by powerful figures;

  It is not appropriate in a public document such as this to speculate as to the degree of interference in particular cases. However, from an examination of the case files, it seems that the widely held perception that powerful figures attempt to influence the outcomes of court cases has some validity. This is not a surprising or unique conclusion, but is one shared by many other studies[59]. This situation not only affects the likelihood of effective law enforcement through the Courts, but also affects the motivation of FA officials to send cases to the Courts.

- knowledge of the relevant law on the part of prosecutors and judges;

  Generalisation on this topic would not be fair or reasonable. There are members of the judiciary who have a working knowledge of the FL, and others who seem to be familiar mainly with the penalty Articles. Court officials have complained that they have inadequate access to copies of the relevant laws, and that too few copies are provided of new laws

Recommendation 23:

> Develop summary materials to clarify important legal aspects of forestry and wildlife crime cases, including the legal definitions of offences in the Forestry Law, Articles in other laws which are relevant to protection of forestry resources, and Ministry of Justice Prakas, and make these available to Court officials via workshop sessions in which there is two-way information flow on improving success in prosecution of forest and wildlife crime cases.

5.3.3 Other Issues Associated with Path II Cases

Two additional issues relating to the Courts were identified during the analysis of law enforcement against serious forest crime. The first has to do with the difficulty of identifying particular FA cases in the Court records, and the second concerns the large number of forestry crime cases that are reported to be "stalled" in the Courts.

Identifying FA Cases at the Court

Considerable difficulty was experienced in locating FA cases at the Courts. There were three main reasons for this:

[59] As summarised by the recent conclusion of the IMF that "Establishing an independent and well functioning judiciary within a transparent legal system is also a project for the longer term" (IMF, 2004).

- the FA case files did not contain any record of the date on which the file had been transferred to the Court, so that it was not easy to know where to start searching the Prosecution Register.

  It appears that there is no generally accepted procedure for creating duplicate records, that can be kept by both parties, of the actual handover of the case file from FA to the Prosecutor.

  From FA's side, issues such as the distance involved and transportation difficulties (bad roads, lack of vehicles, inadequate budgets) often mean that somewhat irregular methods are used to deliver case files to the courts. These include entrusting the case files to motorcycle taxis or to the drivers of regular public taxis for delivery to the Prosecutor. Court officials report that it is not unusual for case files to be left at the door of the Court.

  Once the case arrives at the Prosecutor's Office (PO), there is no system of issuing receipts for the documents, so that generally neither the PO nor the FA has a positive record of whether delivery occurred or of the date of delivery. Once in the PO, the case files are not always immediately recorded in the paper database (Prosecution Register) maintained by the Prosecutor's Clerk. Files can lie for days or, in extreme cases months, before they are noted in the Register.

Recommendation 24:

> The practice of having offence case files delivered to the Court by non-FA staff should be ceased immediately. Case files should not be left in public places. FA offices should be provided with sufficient budget and means to deliver the case files in a secure and confidential manner, and should be responsible for ensuring that files are delivered into the hands of Prosecution Office staff.

Recommendation 25:

> Develop and adopt an FA form to confirm the delivery of case files to the Prosecutor's Office. The form should record the date and method of delivery, who received the documents, and what documents were delivered. The form should also have multiple copies so that one copy can be provided to the Prosecutor's office.

- The FA and the Courts have their own systems for numbering cases. These systems are quite different, which means that it is very difficult to identify a case as it moves through the two systems. This significantly hinders communication between the two in relation to specific cases and leads to confusion and misunderstanding. There is a need to agree on a case numbering system that includes some common element that uniquely identifies each case in both the FA and Court records. Whether or not this can be achieved, the FA should standardise its numbering of case documents. One number should be allocated to each case and should then be used on all forms. The case number could be derived from the name of the Triage / Sangkat office where the offence was detected and a sequential number as well as the year number. For example, cases originating in Thma Bang might be numbered TB01/05, TB02/05, TB03/05.

Recommendation 26:

> Hold discussions between FA and the Courts (and including MOJ) to develop an amended numbering system for forest crime files, so that there is some part of the reference number used in FA and the Courts that is common.

Recommendation 27:

> All FA documentation in relation to a particular case should refer to the same case number. Case numbers might be derived from the name of the Triage / Sangkat office where the offence was detected and a sequential number as well as the year number. For example, cases originating in Thma Bang might be numbered TB01/05, TB02/05, TB03/05, etc.

- The Courts have little in the way of equipment for recording, tracking or storing files. In the three provinces in the southwest, the Courts not only do not have computers which can be used for tracking cases, they also have significant shortages of filing cabinets and other office furniture.

Recommendation 28:

> Provide assistance to Provincial Courts to obtain equipment for recording, tracking and storing case files and provide appropriate professional training in registration, storage, tracking and retrieval techniques.

The Situation of Cases "Pending at Court" and "Completed at Court"

One of the confusing factors in trying to use FA case files to calculate the probability of prosecution or conviction in relation to Path II cases has been the relatively high proportion of such cases which are regarded by the Courts as having been completed, but for which there is apparently no recorded conviction, judgement or penalty in the FA case files. These cases are commonly recorded by the FA as "pending at the Court".

In trying to clarify statistics for calculation of the Enforcement Disincentive, the Enforcement Economics team sought clarification from the Provincial Court of 16 cases which FA files showed were "pending at the Court" in Pursat Province. The Court had split one of the cases into three, so that the total cases in question was 18. Annex 3 provides brief details of each of the cases and the events leading to the current situation as described by Court officials.

The current status of these 18 "pending" cases, as described by Court officials, can be summarised as:

- 6 cases - trials were held (apparently *in absentia*) after the offenders were released following payment of bail, but the details of the judgements are not available. (Apparently regarded as "completed"[60]);
- 7 cases - offenders released on bail, and the case has been pending at the Prosecutor or Investigating Judge for periods of between 2 months and 2.5 years. (Because there is little likelihood of any action in the long-term cases, these are probably also regarded as "completed");
- 1 case - indefinitely pending because of lack of action on an arrest warrant. (Very unlikely to be any action due to the position of the offender - the case is almost certainly regarded as "completed");
- 2 cases - not officially registered at the Prosecutor's Office 9-10 months after receipt, and thus believed by the FA to be "pending at Court", but in reality they do not appear in Court statistics. (No action likely unless FA inquires and is able to identify the cases with Court officials and have them registered);
- 2 cases - relatively recent cases which are pending with the Investigating Judge.

[60] Discussion among the team of situations such as this revealed a difference in understanding of what the phrase "completed at the Court" might mean. For Cambodians involved in the legal process, it seems that a case can be regarded as completed when there is no likelihood of any further action.

It appears that where the defendants have been released (usually on bail) and usually do not return for the hearing of the case[61]. In at least some instances, according to Pursat Court officials, the hearings still went ahead.

Similar situations to the 18 described above may be behind the ongoing frustration of the FA at the apparent lack of finalisation of a large number of cases that they have brought to the Courts (reported to be 755 pending cases throughout the country in August 2005[62]). This situation is exacerbated by the inadequacy of communication between the FA and the Courts at the Provincial level. This includes a general neglect by the Courts to inform the FA of progress with cases, or even of the details of judgements (despite the requirement in FL Art.103 that "All Court verdicts or Court decisions on forestry offences shall be copied to the competent Forestry Administration.").

In the cases examined by this project it appears that the FA generally found out about judgements only on the rare occasions when they approached the Court for information and the case files could be located. It also seems likely that FA officials would be unenthusiastic about approaching the Court for information on cases because of the reportedly widespread practice by the Courts of requiring payment for lodging, or searching for, documents at the Court.

Recommendation 29:

> The Courts should be encouraged to establish a system of regular notification to FA of the status of forest and wildlife cases. Ideally this would be by communication with the relevant Cantonment office. However to simplify the process and to ease the burden that it would place on the Courts, the notification could be a part of the monthly reporting of the status of cases to the Ministry of Justice. Relevant parts of that report could be extracted and provided to the FCMU. This information would then be included in FCMU reports to Cantonment and Division levels.

Recommendation 30:

> The FA Cantonment officials responsible for submission of cases to the Prosecutor should monitor progress of individual cases and should maintain regular contact with the Courts. A significant proportion of this contact should be at a senior level between Cantonment staff with law enforcement responsibilities and Prosecutors or Deputy Prosecutors.

Provision of Case Documents Directly to Court by Judicial Police

Article 9 of MOJ Prakas No.27 requires that were a crime occurs, Judicial Police must investigatee, prepare a criminal case file, and then "send it without delay to the Municipal / Provincial Prosecutor, and then report to their superiors about the activities of their operations attaching copies of the documents available with the case file".

This presentation of the file to the Prosecutor, even before it is forwarded to superiors in the line agency, shortens the time that suspects are held in pre-trial detention, and provides the Investigating Judge with the opportunity to decide on detention or bail if the offence does not qualify for immediate hearing (MOJ-27.Art.19).

The current procedure used by the FA does not necessarily comply with this requirement.

[61] The whole question of "bail", the proper recording of bail payments, and the nature (or lack) of subsequent legal proceedings needs investigation.

[62] Though it must be recognised that the great majority of these cases are to do with seizures of timber with no associated arrest. While these cases are of prime interest to the FA, they have little or no law enforcement significance.

In the past some JPs did forward case files directly to the Prosecutor, as required under Prakas No.27. However it appears that the FA now passes the documentation upward through the Division to the Cantonment which then forwards it to the Prosecutor[63].

This introduces delays and extra workloads into the legal process. It is recognised that the preparation of case documents involves substantial time, and that there are not sufficient JPs or other trained staff at the Sub-Division level to carry out this work. Nevertheless, some of the periods for which cases have been with the FA (as evident in Tables 5 and 7) are extreme.

Recommendation 31:

> FA should establish, as a high priority, the capacity for FA JPs associated with detection, investigation and arrest to prepare all case documents and to forward them to the Provincial Court, with copies sent to the relevant other parts of the FA.

5.4 Cases Following Path III - Seizure in the Absence of an Arrest

There seems to be an expectation in some parts of the FA that, where evidence has been seized but no arrest has been made, the Investigating Judge will carry out investigations into the identity of the offenders. However in general it seems that the main purpose in referring these "non-arrest" cases to the Court is to obtain a decision to confiscate the evidence so that it can be auctioned by the FA. In any case, given the workloads of the Courts and their very low budgets, it is not realistic to expect that the Investigating Judge will be able to make any significant inquiries. In general, the Courts quite rightly take the view that the investigation of non-flagrant offences is the responsibility of the FA JPs.

The majority of the cases where no arrest occurs are associated with seizures of timber (logs, sawn timber or poles), with other cases involving chainsaws, or wildlife, though no legal basis for non-timber cases to follow this Path could be found in the FL.

5.4.1 "Prosecution" of Path III Cases

For Path III cases there is, of course, no prosecution because no one has been arrested. The Court is presented with documentation relating to seized evidence (timber) that the FA testifies is unclaimed and which is generally said to have been associated with an offence. After the FA has met the legal requirements to advertise for the owner of the seized material to come forward and no one has done so, the documents are transferred to the Court. If the documents are in order the Prosecutor's Office transfers the case to a Judge, who is simply required to make a finding as to whether or not the material really is unclaimed and can be confiscated by the State. If the Judge agrees, the FA then sells the timber through auctions conducted by the relevant Inspectorate office.

At least some Prosecutors and Judges seem to resent being used in this way to validate FA seizures, particularly as they have no access to the evidence and have to rely on FA documentation to ascertain the existence and nature of the seized materials. In addition there is a certain amount of skepticism among Court officials about the extent to which the FA really have tried to determine the identity of the offender, or even as to whether or not there was an offender at all.

Sometimes Judges do not immediately finalise the case, but issue instructions to the FA that they should investigate the identity of the offender and bring the information back to the Court. In a situation where Courts are seriously under-resourced and the Court schedule is generally severely overloaded, there is a general tendency to regard Path III cases as not having

[63] Except in those locations where the area of the FA Division and the Province are substantially the same, in which case the FA Division passes the case file to the Prosecutor's office.

particularly high priority. This appears to be reflected in the times taken to process Path III cases (see Table 7).

There is another aspect of the Path III approach that has serious implications for the overall disincentive effect of FA's law enforcement actions. It seems that an unknown, but probably considerable, proportion of the public in and around forest areas believes that the seizures are for the enrichment of FA staff, not as some form of law enforcement. This seems to be a widespread attitude - MOE advisors report that when enforcement teams in the Southwest started burning seized timber rather than going to the trouble of transporting it out of the area, the reaction from community members was one of amazement at such a clear demonstration of honest commitment to law enforcement rather than personal benefit.

Table 7: Path III Cases - Status at 30 April 2005

Current Status	No. of cases	Average days*	Max. days*	Min. days*
Pending				
• pending at FA	24	616	927	44
• pending at FA (no receipt)[#]	1			
• pending at Prosecutor	42	276	630	96
• pending at Investigating Judge	1			
• pending at Court	1			
Finalised				
• completed at Court	60	301	721	67
Total	**129**			

* days from detection to 30/4/05

detailed investigation reveals that this case changed from a Path III case, to Path I when the offender came forward in response to the advertisement of the seizure of the evidence, to Path II when he later refused to pay the Transactional Fine.

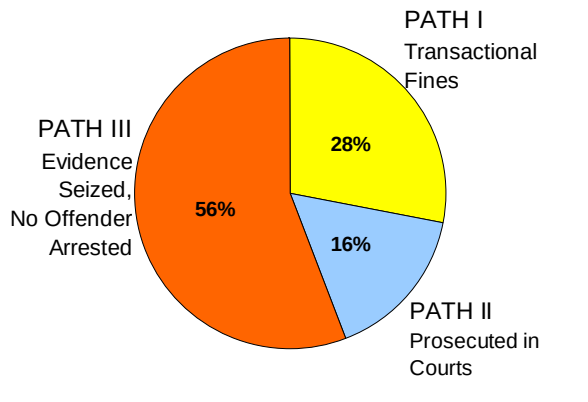

Figure 6: Relative Proportion of Path III Cases

Enforcement Disincentive of Path III Cases

The enforcement disincentive of seizing Real Evidence without arresting an offender is close to zero[64]. Because the forest products or by-products seized were never the property of an offender[65], their loss does not represent a penalty. All the offender has lost is the investment in harvesting of the material - often quite low and probably easily recouped from one successful illegal extraction activity.

There is no way that the ED can be increased without carrying out an investigation and making an arrest - and thus creating a Path II process.

[64] In fact, according to the ED equation, the disincentive is zero, but there is some minor disincentive effect due to the lost investment on the part of the offender.

[65] The purpose of the Court action in relation to Path III cases is not to confiscate property of the offender, but to determine that an offence has been committed so that the property of the State represented by the seized material can be confiscated. If no offence has been committed then the material has been legally harvested and is the property of the harvester, and cannot legally be taken by the State.

The implications of this in terms of the overall effectiveness of the investment in law enforcement represented by the four years of data sampled in this study are very significant. In the data sampled, 56% of all cases processed by the FA, representing 77% of all cases submitted to the Courts have an Enforcement Disincentive of close to zero. This represents a very poor return on the investment in law enforcement and is a situation that needs to be addressed urgently by the government.

The factors behind this situation are examined in the next section.

Recommendation 32:

> The FA needs to deal with the issue of the large number of cases going to the Courts where there is seizure of evidence, nor arrestee, and little or no evidence of investigation on the part of the FA JPs. This situation creates bad relationships with the Courts and does not advance the objective of reducing forest and wildlife crime.

5.4.2 Reasons for Not Making an Arrest

The most common explanation provided for the lack of an arrestee when Real Evidence is seized is that the offender(s) were not present, or that they ran away. That such a situation occurred in 56 percent of cases suggests a serious problem with law enforcement.

The following explanations seem possible:

a) the enforcement patrol schedules are very poorly planned, so that there is little likelihood of encountering offenders at the scene of the offence;
b) the enforcement teams have a serious problem in terms of leaking of patrol plans to offenders;
c) the offenders are using lookout systems, possibly equipped with radios, to warn of the approach of a patrol;
d) the manner in which patrols are sometimes conducted (noisy, conspicuous, undisciplined) makes it unlikely that offenders would be encountered;
e) patrol teams make little attempt to pursue and catch offenders caught in the act of committing a serious forest crime;
f) patrol teams do not regard it as worthwhile to go to the often considerable trouble of arresting offenders, transporting them to the nearest FA Division Office, and completing the necessary paperwork, especially if they believe that the offender will be released by the Courts within a short period;
g) patrol teams take the view that employees or "piece workers" who are engaged by a rich person to carry out an illegal activity should not (or cannot[66]) be punished for seeking their livelihood in this way, and do not investigate to find the person behind the crime;
h) law enforcement staff do not see it as their responsibility to investigate non-flagrant offences (where no one is caught red-handed committing the crime)[67];
i) law enforcement staff are reluctant to investigate non-flagrant cases because they are likely to come into potentially threatening confrontations with powerful individuals and organisations in which they do not feel that they have the support of their superiors;
j) the offenders were present and there is some corruption involved in the failure of the JPs to arrest them; or
k) there were no "offenders", and the legal procedure of seizure, confiscation and auctioning is being used for laundering illegally harvested forest products.

In reality the reasons are likely to be a combination of some or all of these, depending on the situation.

[66] There is considerable confusion and misunderstanding as to whether or not "employees" can be charged with an offence. (See discussion at p,49)
[67] See discussion of flagrant / non-flagrant cases at p.51.

Where law enforcement teams are based in small communities in remote areas, there are sometimes family or social connections between offenders and enforcement staff, so that some leakage of patrol plans is difficult to avoid. More significantly, offenders often have connections with families in the areas near ranger posts or in areas through which patrol teams must pass, thus they are able receive warning of patrol movements. Some offenders are also known to employ lookout systems. These range from simply posting someone near a track to keep watch for patrols to using two teams to transport wildlife, one team traveling ahead to detect and engage patrol teams, and the other some distance behind with the wildlife, so that it can see if the lead team has encountered a patrol or checkpoint.

Another factor may be that when a patrol team makes an arrest this disrupts the patrol schedule because of the need for at least part of the team to return to their base. They then to complete considerable paperwork and transport the arrestee to the nearest FA Division office.

The Probability That Drivers Were Often Present But Not Arrested

It is worth noting however, that 46 percent of Path III cases were recorded as transportation offences (see Figure 7), which means it is highly likely that in a significant proportion of these cases there was a driver who was not apprehended for some reason.

Lack of Investigation of Non-Flagrant Crimes

Perhaps the most significant issue associated with the lack of arrests in Path III situations is the lack of any real investigation. Not only do FA staff generally believe that it is not their duty to investigate non-flagrant crimes (among which they include crimes carried out by those claiming to be employees), but even at relatively high levels in the organisation there is the perception that documenting the seized Real Evidence and filling in the required forms constitutes an adequate level of “investigation”.

Other factors affecting willingness to investigate non-flagrant crimes relate to inadequacies in resources, both manpower and financial. Some FA officials have made the case that carrying out investigations would require levels of manpower that are simply not available in the FA. This argument may have some validity, though in a situation where the FA was previously geared to managing large numbers of sometimes very extensive concessions but currently does not have that responsibility (though it has the same staffing levels), it is not very convincing. It seems highly likely that at least the major cases could be investigated.

As discussed under Training of Judicial Police (p.55), Judicial Police are clearly hindered by deficiencies in the wide range of skills and knowledge required to carry out thorough criminal investigations. Relevant recommendations are presented under the discussion of training and also in relation to investigation of non-flagrant crimes (p.51).

Difficulties in Securing Adequate Cooperation from the Courts

Another factor is that investigation of non-flagrant crimes often requires the cooperation of the Courts, either to authorise and participate in major investigations, or to issue search warrants. FA officials report that it is not unusual for any dealings with the Courts to involve demands for unofficial payments, covering matters such as lodging case files, inquiring as to progress with cases, and issuing of warrants. If requests for warrants are not accompanied by unofficial payments either the warrant is refused or it may be significantly delayed. Such delays generally result in the escape of the offenders or the removal of evidence from the area to be searched.

Recommendation 33:

> There should be an investigation within FA of the situations in which Court officials have asked for payments for performing official services. The investigation should inquire into the frequency of such occurrences, the amounts involved, the impacts on law enforcement, and the names of officials involved. The investigation should be carried out at the national level, and the identities of FA staff providing information should be protected, so as to avoid any actions against them. The results of the investigation should be make known to appropriate agencies.

There are also unsubstantiated reports of situations where individual Court officials have threatened FA JPs that they will take legal action against them if there are mistakes in case documentation, and other reports of Court officials providing informal assistance to alleged offenders to prepare civil actions against FA staff. If true, such incidents can only discourage FA JPs from undertaking investigations.[115]

Laundering of Timber Through "Seizure" and Auction

The possibility needs to be seriously considered that in some cases of seizure of timber but no arrest there may, in fact, have been no "offender". Thirty percent of the cases where there was seizure of evidence without arrest were classed by FA as "stockpiling" - presumably meaning that the evidence was found somewhere. If we add the cases which were classed as "exploiting forest products or by-products", the is a total of 44 percent of Path III cases in which the material might have been "found" in the forest. This is high enough to warrant concern.

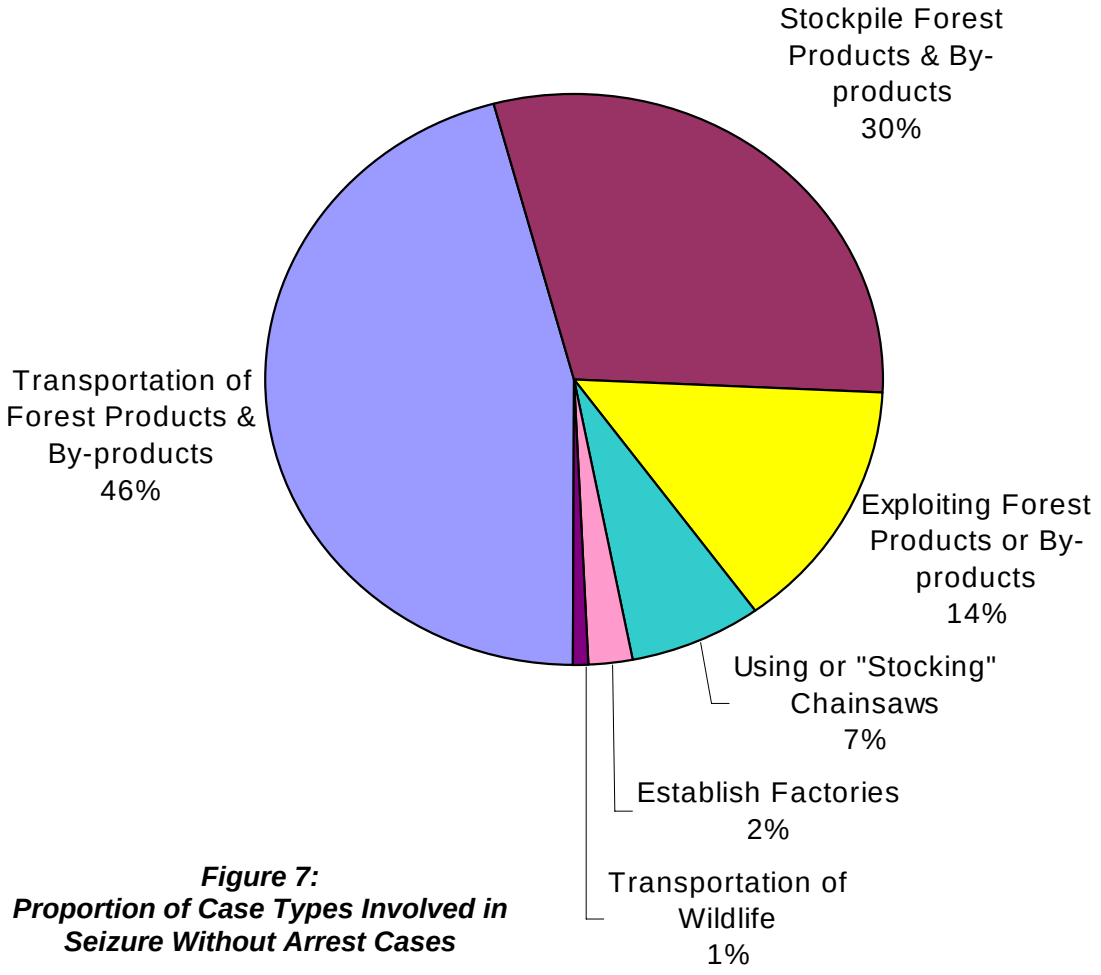

Figure 7:
Proportion of Case Types Involved in Seizure Without Arrest Cases

There is also a possibility that the amount seized might not always represent the whole of an illegal volume, but might represent a "fee" or "tax" imposed on the activity.

Also of concern is the current procedure of confiscation and auctioning of seized timber, particularly in combination with the poor standard of chain-of-custody documentation of timber stored in FA warehouses[68]. This potentially provides a ready-made opportunity for raising funds by "finding" stockpiled timber in the forest and then converting it into cash via the auctions. While there is no evidence available to the team to indicate that either of the above actions is occurring, it is highly desirable that there be an independent investigation into the factors behind the high proportion of Court cases involving "unclaimed" timber.

Recommendation 34:

> Government practice and policy in relation to seizures of forest products where no arrest occurred should be reviewed and tightened up.

Recommendation 35:

> There should be an independent inquiry into the circumstances where large volumes of timber are being "found" stockpiled (whether in individual large volumes or numerous smaller parcels).

Recommendation 36:

> There should be significantly improved documentation of seized timber and chain-of-custody control through the process of storage and auctioning.

Recommendation 37:

> Auctions of confiscated forest products should be conducted by an independent agency (possibly the Independent Forest Monitor), and the handling of money derived from these auctions should be rigorously controlled and audited. If some or all of such funds are to be used to offset the operating expenses of the FA they should be transferred to the Ministry of Economy and Finance and then credited back to the FA.

5.6 Cases Following Path IV - No Enforcement Action Taken

The four legally defined law enforcement pathways described above[69] do not constitute the FA's only approach to forest and wildlife crime. It is clear from discussions with FA and NGO staff and from the Khmer-language press, as well as examination of the detection database and the case files, that there is another procedure followed in relation to forest and wildlife crime. This can be termed "Path IV" - situations where no law enforcement action is taken.

Taking no law enforcement action after detecting an apparent offence is not necessarily a bad thing. There are often situations where law enforcement action is not appropriate - though these are generally situations in which it is found that no offence has been committed, or that there are extenuating circumstances.

Many of the cases where no action was taken on apparent offences recorded in the dataset used for this analysis were situations in which people, often from local village communities, were encountered with comparatively small amounts of forest products or by-products, including wildlife. This situation has already been discussed above (p.20), and a recommendation has

[68] See various SGS Quarterly Reports mentioning this problem.

[69] Warning, Transactional Fine (Path I), prosecution through the Courts (Path II), and seizure of forest products and by-products without arrest of an offender (Path III).

been presented for the establishment of appropriate law enforcement guidelines in such situations.

There is, however, another category of “no action” offences which is far more significant, both in terms of reduction of the overall success of law enforcement and also in terms of destruction of the forest ecosystem. These cases are the most significant problems currently facing law enforcement against forest and wildlife crime.

The details of these crimes are not to be found in the analysis of case files and official numbers of detections, arrests and convictions - in general they do not appear in any official records, though they are mentioned from time to time in the media, and their occurrence is widely known.

These types of cases generally have a number of the following characteristics:

- involvement of powerful people or organisations;
- products and/or volumes involved are of high value;
- organised involvement of military, sometimes including the bodyguards of high-level individuals;
- use of a combination of powerful political connections and teams of armed bodyguards to terrorise law enforcement agencies into ignoring llegal activities;
- use of letterheads and signatures of powerful agencies and individuals;
- use of military, police or other government agency vehicles that are not usually stopped by FA JPs;
- FA staff are generally afraid to act because of possible revenge action; and
- if action is taken, only the lower level people involved are charged.

The existence of this type of crime, and the lack of enforcement action against it, reduces respect for the law, and for the organisations which are supposed to enforce it, as well as sapping the morale of law enforcement staff. It is also likely that, in addition to significantly lowering the overall disincentive effect of law enforcement, it encourages forest crime by poor people who feel that they might as well take their share of the forest resources before the rich take all.

The problems behind these issues cannot be corrected by initiatives such as better training for law enforcement staff or development of case tracking databases. In order to begin to address this major law enforcement problem one can distinguish between the factors associated with the perpetrators of the crimes and those associated with the failure to take law enforcement action. Both are heavily influenced by the nature of Khmer society and social values.

The weakness of law enforcement in the face of such crimes is rooted in deep-seated weaknesses in governance that will only be overcome when there is a fundamental change in the organisational culture of the State apparatus. These issues stem from a combination of three attitudes: assumptions as to the rights of those in power to exploit the resources of the State for their own benefit; the idea that Ministries and their officials are the owners of natural resources, rather than being responsible for their sustainable management for the good of the nation; and an ingrained belief at all levels that loyalty to influence groups takes precedence over responsibilities for protecting the public interest.

The prevailing emphasis on loyalty, rather than good governance, is at the root a significant level of underperformance of the law enforcement system. Such bonds of loyalty are not just within the FA or MAFF, but across and beyond institutional boundaries, following party-political, friendship, kinship, and patron-client lines.

The priority given to demonstrating loyalty within these groups is not only not conducive to increasing the level of compliance with the law - it acts to sustain forest and wildlife crime. This is because such loyalty is measured, at least in part, by the level of contribution to informal flows

of resources toward the centre (Hughes & Conway, 2004). In the administration of the forestry estate such informal resource flows can originate only from illegal activities - whether through direct involvement, collusion or some form of "taxation" of such activities. In the current institutional ethos, if individuals in some part of the forestry administration act to prevent forest and wildlife crime, then they lose some of all of their ability to demonstrate loyalty to the structure which provides their financial, physical and social security.

There is another facet of loyalty to allegiance groups - the turning of a blind eye to special permissions for powerful people (e.g. governors, senior line agency officials, members or supporters of political parties) to extract forest resources - which has the same negative impacts as described above[70].

It is this pressure to conform to hierarchical norms and demands, much more than the often-cited low salaries or village-level poverty, that is primary driver of destruction of the forest estate. Paying higher salaries to government officials does not remove the pressure to conform: higher salaries do not provide a guarantee of not being dismissed, freedom from fear of physical retaliation, or prevent social ostracism, all of which are real consequences of going against the interests of the allegiance structure. Until that is dealt with, no amount of salary supplements, training, or equipment will overcome the worst excesses of forest and wildlife crime.

While changes in governance policy will not have any rapid effect on attitudes to power in Khmer society, it should be possible, with sufficient political will, to initiate policy and institutional changes that will increase the effectiveness of law enforcement against the category of crimes discussed here. These have to do with: (a) generating political and institutional will to investigate and prosecute all forest and wildlife crimes; (b) changing the way the FA measures its effectiveness; and c) giving FA JPs the right and the power to stop and search (without warrant) all vehicles, including those of military, police and other government agencies.

Recommendation 38:

> Adopt a policy, approved at the highest levels in government, to investigate and prosecute all forest and wildlife crime offences, no matter who is involved.

Recommendation 39:

> Institutionally the FA should adopt changes in area and quality of forest cover as the measure of its success. FA should stop publishing figures on the volumes of timber and head of wildlife seized as indicators of effectiveness of law enforcement. Other indicators should be adopted, including reduction in the proportion of Path III (seizure without arrest) cases.

Recommendation 40:

> FA Judicial Police should be given power to stop and search (without warrant) all vehicles, including those of military, police and other government agencies.

[70] There is also apparently an inability to enforce the law against such people, even when this enforcement is backed at Ministerial level. For example, the Minister for Agriculture, Forestry and Fisheries was recently reported to have complained to the Prime Minister that he could not enforce the law against those involved in land-grabbing near concession areas, because “They are too big ... It is our own colleagues.” (*Cambodia Daily*, 15-16 October 2005).

PART 6: OTHER MAJOR ISSUES AFFECTING THE SUCCESS OF LAW ENFORCEMENT

In addition to those already discussed above, the study has identified a number of issues which need to be addressed if there is to be a significant improvement in the number of successful outcomes of law enforcement.

These include: legal misconceptions on the part of FA staff regarding whether or not employees can be charged with an offence that they commit on behalf of someone else, and the FA's responsibility to investigate non-flagrant offences; jurisdictional uncertainties; quality of reporting and documentation; training of FA JPs; responsibility for management of JPs a law enforcement unit; and the role of encouraging compliance in FA's law enforcement strategy.

6.1 Two Key Legal Misconceptions

The lack of clarity among FA officials regarding two legal matters is one of the most significant issues currently affecting law enforcement. These relate to the widely held beliefs that employees who carry out an illegal activity cannot be charged with an offence, and that only flagrant crimes can be prosecuted under the FL. These two issues are together responsible for a considerable proportion of the situations in which the FL is not enforced. Resolving these issues in the minds of FA officials will result in a considerable increase in the effectiveness of law enforcement.

6.1.1 Can Employees be Charged with an Offence?

Article 86 of the Forestry Law says:

- *Paragraph 1:*

> *An individual who commits a forestry offence as stated in this law shall be responsible for his/her own action.*

That is, as a general principle, individuals are responsible for offences which they commit.

- *Paragraph 2:*

> *Individuals who are state employees, or employees of the private sector, who have used means from relevant State offices or private companies to commit forestry offences, the individuals or their employers shall be penalized as described in the provisions of this law.*

When employees use their employer's equipment, vehicles, etc. to commit a crime, then either the employee OR the employer can be penalized (but not both - note that the wording is "the individuals or their employers shall be penalized ...").

It seems logical that if the employees used the equipment without the knowledge and orders of their employer, then they are responsible and should be penalised. It is equally logical that if they were ordered to use the equipment by their employer, then the employer is responsible and should be penalised (though Paragraph 1 makes both culpable).

- *Paragraph 3:*

> *An employer who orders an individual or organised group working for him to carry out an action that is contrary to this law shall be penalised under the provisions of this law for forest offences committed by that individual or group*[71]*.*

[71] This last paragraph is a new translation which more accurately reflects the meaning of the Khmer than most other translations available.

If an employer orders an employee to carry out an action (whether or not the action requires the use of equipment, vehicles etc. - the "means" referred to in Paragraph 2), then the employer will be penalised. This paragraph says nothing about whether or not employees can also be penalized, and paragraph 1 makes it appear that they might be. However paragraph 2 appears to establish the principle (admittedly in relation to use of equipment) that either employees or employers are to be penalized, so it might be inferred that the drafters of the law did not intend both to be penalized.

Responsibility of the "Employee" to Prove Status and Orders

If individuals who claim to be employees have been found committing a crime, Paragraph 1 of Art.86 means that they are potentially responsible for the crime. However the key factor in paragraphs 2 and 3 is the existence of an employer / employee relationship. If they can establish that: (a) they are employees (and not contract workers, or piece workers, or independent agents); and (b) that they were acting under orders from their employer, then it appears possible to argue that they are not responsible for the crime.

There are various tests of the existence of an employee / employer relationship. They include:

- the existence of an employment contract or other documents which clearly establish this relationship (e.g. pay records);
- some proof that the individual is paid a daily, weekly or monthly salary, and that the amount of the payment is independent of whether or not they complete a task or the amount that they produce (otherwise they are contract workers or pieceworkers); and
- the testimony of independent witnesses to the fact that they are employees and describing the details of the employment arrangement.

There may be other tests which are acceptable in Cambodian Courts.

If the individuals can establish that they are employees, then they also need to provide reasonable evidence that they were acting under the orders of their employer in committing the crime. One form of evidence of such orders is that they were using the employer's equipment (chainsaws, trucks, etc.) with the employer's knowledge.

FL Article 82.3 provides some guidance on how FA enforcement staff are expected to proceed in such a situation. It says that:

> *During transportation of Forest Products & By-products, the driver who is not accompanied by the owner of the Forest Products & By-products shall be arrested*[72] *for the investigation of offenders and other people involved.*

This, in effect, supports the above conclusion. It provides that where a person is suspected or known not to be the owner of the contraband goods (and therefore potentially an employee acting under orders who would not be guilty of an offence), that person can still be arrested, in order to determine who the actual offenders are. This does not rule out the possibility that the driver will be found to be one of the offenders, if he cannot provide the proofs described above.

This Article also clearly reinforces the obligation of FA to carry out investigations to determine who is the offender behind the actual offence (see next Section).

[72] The commonly used English translation of this paragraph uses the words "temporarily arrested". However the Khmer term is "kwot kluen" which means "to detain" and is used throughout the FL for the first stage of arrest in order to make investigations. The English translation uses "arrest" for these other occurrences of "kwot kluen", so "arrested" is a better translation here than "temporarily arrested"

Recommendation 41:

> FA JPs and ranger teams should be made aware, by an instruction of the Director, of the provisions of Art.86 and the requirement to investigate offences. They should arrest those engaged in offences but claiming to be employees. If suspects cannot, or will not, provide the names of their employers and details of the employment arrangement then they should be charged with the relevant offence.

6.1.2 Can the FA JPs Investigate or Enforce the Law in Non-flagrant Offence Situations?

A flagrant offence situation is generally understood to be one in which the offender is caught in the act of committing the deed. It is also referred to in English language translations of Cambodian law as a "cognizable" offence, or an "actual" offence. To use a common English expression, it is a situation in which the suspect is "caught red-handed". The situation is described by the legal Latin phrase "in flagrante delicto". By extension, a non-flagrant situation is one in which an offence is discovered but the offender is not present, or was present but not caught in the act of committing the offence.

While the Forestry Law does not define a flagrant offence situation, Art.18 of the UNTAC Law refers to it as an offence in which the offender is seen committing a felony or misdemeanor, is identified at the scene of the offence, or is seen trying to run away from the scene. It is significant that this definition does not require that the police catch the person in the act of committing the offence. Being identified by witnesses at the scene, or attempting to flee from the scene also amount to a flagrant situation.

The Ministry of Justice Prakas No.27 on Judical Police Work, which was issued in June 2004, (after both the UNTAC Law (1992) and the Forestry Law (2002)), and which makes reference to forestry offences, defines flagrant offences as those which are described in Art.18 of the UNTAC Law.

FA officials at all levels often assert that "forestry offences are only flagrant offences" and they take a narrow view of what constitutes such an offence, believing that it requires the offender to be caught in the act of committing the crime. This "fact" has been so often repeated that some enforcement staff believe that it is a part of the Forestry Law.

In fact, the FL itself gives clear indications that forestry offences are not restricted to flagrant situations. For example:

- [Art.76.] Forestry offences are criminal offences which are specifically defined in this law. There is no mention of flagrant or non-flagrant offences.
- [Art.79] Sets out the rights of FA JPs. The first right is: *To require certain individuals to respond to their questions and provide information related to the forest offences*. There is no restriction to flagrant offence situations. However the second right of JPs is limited to the situation of an "actual" (i.e. flagrant) offence. Thus this Article views JPs as having enforcement responsibilities in both flagrant and non-flagrant situations, but with restricted powers in non-flagrant situations.
- [Art.82.3] (referred to above under the employee/employer question) also sheds some light on the question of whether or not the FA JPs are expected and empowered to pursue non-flagrant offences. In this Article JPs are instructed to investigate the "offenders and other people involved" who are not present with the driver who is doing the illegal transportation, i.e. JPs are clearly required to investigate offenders and others who were not present at the crime scene.

The UNTAC Law provides more detail of the roles and rights of Judicial Police:

- UNTAC Art.18 allows JPs to arrest an offender found in the act of committing an offence, but extends the definition by including situations in which the offender is "pursued by a public outcry", or has been "identified at the scene of the crime ... by witnesses or the victim" (i.e. the offender may be arrested away from the scene if there has been an identification at the scene, he does not need to be pursued from the scene)[73].
- UNTAC Art.19 introduces a new category of situation to the flagrant/non-flagrant debate. This is one where the JPs have "substantially incriminating evidence which is exact and consistent and indicates that the suspect participated in the commission of a crime". That is, the offender was not necessarily observed at the scene but there is very strong evidence of participation in the offence.
- UNTAC Art.19 also sets out that a suspect who has fled the scene may only be arrested pursuant to a warrant issued by the Court, though this is not clearly a reference to a non-flagrant situation (otherwise the wording used would be more likely to be "left the scene" rather than "fled the scene").

Thus the UNTAC Law appears to see JPs as responsible for law enforcement in all situations ranging between flagrant and non-flagrant.

MOJ Prakas 27 provides some clarification and extension of the UNTAC Law regarding the powers and responsibilities of JPs. MOJ-27 Art.5 (a) & (b) gives JPs the same powers in relation to both flagrant cases and those cases in which there is substantially incriminating evidence which is exact and consistent - i.e. power to investigate, collect evidence, and arrest. Art.5(b) also clarifies the UNTAC reference to suspects who have fled, making it clear that these are suspects who fit either the flagrant or "substantially incriminating evidence" categories, and that an arrest warrant is only necessary where the person has fled and their background (identity, address) is not known.

MOJ-27 Art.5(c) quite specifically states that in non-flagrant situations an arrest warrant is necessary. In other words this paragraph assumes that JPs will investigate non-flagrant cases, but restricts their powers of arrest.

In summary, there is ample evidence, starting with the Forestry Law and including the UNTAC Law and MOJ Prakas 27, that FA JPs have a responsibility to investigate non-flagrant situations in order to identify the offender and take law enforcement action.

Recommendation 42:

> The Director of the Forestry Administration should issue an order reminding law enforcement staff of the FA that they have a legal responsibility to investigate offences against the FL and to identify and arrest offenders. This order should clarify that this responsibility is not only in relation to flagrant offences.

Recommendation 43:

> There should be ongoing monitoring of the extent to which FA JPs investigate forestry crimes, particularly in non-flagrant situations. The incidence of Path III (seizure of evidence without arrest) cases should be taken as one indicator of the effectiveness of investigation.

[73] The authors are unaware of any situation in which FA JPs have exercised this power to arrest a person who was identified at the scene of the crime, but had left the crime scene. This appears to be evidence of a significant weakness in the investigation and enforcement process.

6.2 Jurisdiction

Many FA staff complain that a lack of clarity about FA's jurisdiction hampers law enforcement efforts. They cite three jurisdictional issues that are said to reduce the effectiveness of enforcement of the Forestry Law.

The first is the confusion regarding the responsibilities of the FA and the Ministry of Environment. The second relates to the role of the Ministry of Land Management Urban Planning and Construction (MLMUPC), while the third relates to responsibility within the MAFF in relation to certain groups of "aquatic" animals.

6.2.1 Jurisdictional Issues Involving the MOE

The MOE has general jurisdiction over environmental and natural resource protection issues within Cambodia and has management authority over the Protected Areas system in Cambodia. The Department of Nature Conservation and Protection within MOE has 755 rangers and operational staff who work in the range of National Parks, Wildlife Sanctuaries, Multiple Use Areas, and Protected Landscapes that make up the MOE Protected Areas system.

Article 3.1 of the Forestry Law says that the management of forests is under the general jurisdiction of the Ministry of Agriculture, Forestry and Fisheries. However paragraphs 2 & 3 of that Article go on to say:

> *The State delegates management of protected areas to the Ministry of Environment as provisions stated in the Environmental Protection and Natural Resources Management Law of 24th December 1996 and the Royal Decree on the establishment and designation of Natural Protected areas on 1st November, 1993 and other legislations.*
>
> *Ministry of Agriculture, Forestry and Fisheries has the authorization to cooperate with the Ministry of Environment, according to the provisions stated in chapter 14 of this law, on enforcement activities for all forest offences that occur within protected areas. However, such activities shall not affect the management jurisdiction of Ministry of Environment as provided by the Environmental Protection and Natural Resources Management Law.*

The exact meaning of paragraph 3 is not entirely clear. Does FA need to be invited to cooperate with MOE? How would this work in relation to an urgent pursuit or investigation? What would "affect the management jurisdiction" of MOE - and why would MOE invite cooperation that had this effect? Attempts by the Independent Monitor (SGS) to resolve the unclarity by seeking a better translation of the relevant paragraphs do not appear to have resulted in a clearer situation.

Several FA officials interviewed during this project raised the issue of confusion of jurisdiction between FA and MOE. In general the difficulties have arisen in relation to the right of Forestry Administration staff to pursue offenders into Protected Areas, or to carry out investigations in relation to known offenders who are using Protected Areas as a refuge.

It is unclear how widespread these issues are, though considering that MOE-controlled Protected Areas cover a significant proportion of the forest area in Cambodia (and some of these forests are being lost at an alarming rate (SGS, 2004)), this is a jurisdictional issue that needs to be resolved.

Recommendation 44:

> The MAFF or the Director of the FA should issue a statement clarifying the jurisdictional separation set out in paragraphs 2 & 3 of Article 3.1 of the Forestry Law, and in particular should set out the circumstances in which FA JPs should carry out law enforcement inside the MOE Protected Areas.

6.2.2 Jurisdictional Issues Involving the Ministry of Land Management Urban Planning and Construction

The MLMUPC is responsible for (among other things) titling of land, land resource allocation (including Participatory Land Use Planning - PLUP), and the delineation and demarcation of areas of State Public Land. All of these provide a basis for jurisdictional issues with FA in relation to law enforcement.

There have been numerous instances of individuals who have applied to the MLMUPC for title over some part of the Permanent Forest Reserve and been granted the requested title without consultation with the FA. This is contrary to the Land Law, which specifies State Public Property (which includes the Permanent Forest Reserve) cannot be owned (Art.43) and that a title issued to a private person, even if issued by the competent authority, is null and void and the person (and any authority which fails to take action) is liable under the civil and criminal codes (Art.44). The Prime Minister reinforced this prohibition specifically[74] in relation to forest land in his Order No. 01 (RGC) on Prevention, Suppression and Elimination of Logging, Burning, Clearing, and Surrounding for Occupation of Forest Land (June 09, 2004).

Similarly there are ongoing disputes and lack of jurisdictional clarity about the nature, scope and legal basis of community based management arrangements arising out of PLUP activities which have defined community land use within the Permanent Forest Reserve.

Recommendation 45:

> All heads of FA Cantonment, Division and Sub-Division offices should be issued with an instruction reminding them of the provisions of the Land Law, the Forestry Law and Prime Minister's Order No.1 of June 9, 2004 which restrict the authority of officers of the Ministry of Land Management, Urban Planning and Construction (and others) to issue title to areas within the Permanent Forest Reserve.

Recommendation 46:

> The above instruction should be copied to all Provincial and District Governors, and to Provincial and District offices of the Ministry of Land Management, Urban Planning and Construction.

6.2.3 Jurisdictional Issues Involving FA and the Department of Fisheries

The FL (Art.48) provides that all wildlife in Cambodia is State property and is a component of forest resources. No definition of wildlife is included in the FL, though Art.48 includes some examples of animal groups that are considered to be wildlife. "Forest" is defined in the FL (Annex) as including the wildlife located in the forest ecosystem.

However, Art.48 also states that "wildlife is under the management, research and conservation of the Forestry Administration, except for fish and animals that breed in the water". A decision by the Minister for Agriculture, Forestry and Fisheries[75] has made turtles, frogs and crocodiles the

[74] In paragraph (1) of that Order.
[75] MAFF No.901 21/2/05

responsibility of the Department of Fisheries (DOF). This raises significant potential for jurisdictional confusion over law enforcement. Do FA Judicial Police have the authority to act against wildlife crime involving those wildlife groups which have been put under the authority of the DOF? If not, is it necessary to include a DOF Judicial Police Officer on all law enforcement operations where crimes involving those species might be encountered?

Considering the prevailing institutional culture of Cambodian government agencies which results in as little as possible sharing of information and power, any splitting of responsibility for law enforcement in relation to wildlife can only be to the detriment of effective enforcement.

There appear to be no clear guidelines on how law enforcement can be carried out practically and efficiently in relation to the wildlife for which DOF is responsible. As a result FA enforcement teams throughout the country seem to have evolved a range of approaches to the issue, though without any certainty as to the legal or administrative acceptability of their actions.

Recommendation 47:

> An agreement should be developed between the FA and the Department of Fisheries that authorises FA Judicial Police to enforce legal protection of aquatic species in the Permanent Forest Reserve when an offence is detected and there are no Department of Fisheries enforcement staff present.

6.3 Training, Management and Institutional Location of FA Judicial Police Force

6.3.1 Training of Judicial Police

Judicial Police can be required to carry out a very broad range of tasks in enforcing the FL. These can include: surveillance; search; interrogation; interviewing of witnesses; identification of forest and wildlife products; operation of checkpoints; planning and carrying out of patrols; supervision of armed ranger teams; negotiation and conflict resolution; seizure, recording and custody of evidence; photography of crime scenes and evidence; escorting of prisoners; preparation of a range of official documents; liaison with Prosecutors and Investigating Judges; and appearing in Court as a witness.

Such a range of tasks requires a very broad range of skills and knowledge. Inadequacies in any of these areas can have serious consequences, including failure to apprehend law breakers, embarrassment for the MAFF, and serious injury or death. It is therefore vitally important that JPs are not only fully trained, but that they maintain their skills and knowledge at a high level.

So far as can be ascertained, only one national-level training course has been established by the FA which is appropriate to the needs of Judicial Police. This is entitled Forestry Law and Policy, and is one part of a larger package of courses on aspects of forest management. The training is organised by, and conducted at, the Forestry and Wildlife Training Centre (FWTC). The lecturers come mainly from senior levels within the FA.

The contents of the Forestry Law and Policy training are:

- forestry law (history and content of the law)
- criminal procedure
- proceeding of forestry offences
- forest crime monitoring and reporting, and
- forest policy[76]

[76] Source: *Evaluation Report: Project on Capacity Building for the Forest Sector* by FA and JICA (2004)

While this course is apparently aimed at JPs, much of the content of the course is of a general or theoretical nature. For example, the written course material on the Forestry Law deals with the process of development of the Forestry Law and summarises each section of the Law. The five topics in the course are covered in three or five days (the duration varies from course to course), and the most practical content seems to be instruction on how to complete the necessary forms. All training is conducted in a classroom lecture setting.

Information provided by the Training Centre indicates that, of the 297 FA staff who have completed this course in 2003-2004, 250 were field-based staff who might carry out JP actions in relation to forest and wildlife offences. However a cross-check of the names of trainees with the names of accredited JPs reveals that only 145 of the people who were trained are actually JPs[77], though some of the others are proposed to become JPs in August 2005.

Box 5: Examples of Training Modules Developed by WildAid

Wildlife Trade – Module 1.
- Introduction to the International wildlife trade
- Introduction to CITES

Patrol – Module 2.
- The Ranger – Protector of biodiversity
- Mental readiness for patrol
- Patrol goals and activities
- Preparing for patrol
- Patrol techniques

Investigation – Module 3.
- The six phases of a major investigation
- Sources of information
- Interviewing
- Informants
- Surveillance
- Evidence and its Processing
- Crime Scene Processing
- Case reporting
- Raid planning

Officer safety – Module 4.
- Approaching the suspect
- Recognizing and responding to threats
- The ten most deadly errors in law enforcement
- The fundamentals of firearms safety
- Defensive tactics without the aid of weapons

Prosecution and Court – Module 5.
- Testifying in Court

[Source: J.Gavitt (WildAid) 11/3/2002]

There is no doubt that field-level technical training of JPs is very much needed. The recent evaluation of the FWTC training program (Bun Radar *et al.*, 2005) found that law enforcement and suppression of forest crime is reported as a main task by all FA Divisions in Cambodia, though Division Heads estimated that, on average, their staff are only 54 percent effective in performing these functions. Among the trainees surveyed, 50 percent ranked "patrolling and suppression" as the highest priority among their current duties and, in a weighted ranking of priority duties of all respondents, this scored 53, compared with the next highest priority duty which scored only 19.

Informal telephone interviews by the Enforcement Economics team with ten randomly selected participants in the Forestry Law and Policy training course[78] revealed the following:

- among the ten interviewees, nine currently work directly with law enforcement processes, though only four were JPs. Another three were expecting to become JPs in August 2005;
- all felt that the training was useful, but only six believe that they have enough knowledge of the Forestry Law and Criminal Procedure to do their jobs[79]. In general the respondents depend on obtaining information on law and law enforcement procedures from their friends, staff of their Cantonment Office, or from the LLO office in Phnom Penh. Of the four who gave estimates of the effectiveness of participants to carry out JP work on the basis of what they learned in the training course, the average was 55 percent effectiveness;

[77] Out of a total of 499 JPs in the FA at the time.
[78] Names randomly selected from the list of participants.
[79] This may not be strictly true. It is quite likely that they are not aware of the gaps in their knowledge, but because they are able to function within their limited law enforcement roles without complaint from their superiors they believe that they have sufficient knowledge to do the work well.

- many people who work directly in law enforcement and carry out policing roles are not sworn JPs;
- staff at the Sub-Division level and/or in remote locations feel that they have difficulty in hearing about or being chosen to attend training; and
- law enforcement staff in general express a desire to get together with others doing the same work in different parts of the country to share information on how they overcome problems.

This finding that only six out of ten felt that they had the capacity to do their jobs after the Forestry Law and Policy training is consistent with the formal evaluation of the overall FWTC training program (Bun Radar *et al.*, 2005). A survey of 30 trainees showed that while 60 percent felt that their knowledge had improved as a result of the training, 19 percent reported that it did not meet their needs[80], 13 percent remained unclear about the subject, and 8 percent wanted more training.

Given the highly technical and practical nature of the policing abilities identified above, it would not be surprising if a short duration training course focusing on the law and administrative aspects of law enforcement did not meet the trainees' needs.

So far as can be ascertained there is no in-depth national-level training for FA Judicial Police in practical day-to-day policing skills. Some training courses have been developed and run for FA and MOE law enforcement field staff by Non-Government Organisations (NGO), particularly the Thailand Office of WildAid. WildAid have developed a wide range of practical modules (see examples in Box 5) and have carried out training under contract for other conservation assistance programs working with FA and MOE.

The content of these courses is well designed for providing field-level rangers (FA and Military Police) with the variety of skills and knowledge that they need to carry out patrols and follow-up activities. It is impressive that WildAid makes efforts to involve staff of the relevant Prosecutor's Office in their training. However there is still a need for more in-depth training in many of the abilities listed above, particularly those relating to investigation techniques, detailed aspects of the law (including the whole range of relevant law), and law enforcement management.

Similar highly practical but soundly based training, emphasising legislation and investigation is needed for FA staff at the Division and Cantonment levels who are involved with the preparation of case files and the supervision of field enforcement staff.

At present, identification of individuals for such technical training as is relevant to law enforcement appears to be somewhat ad hoc and is not based on structured identification of training needs or reference to the training histories of individuals. The FWTC sends a request to Inspectorate and Cantonment offices asking for nominations of trainees before a course is held, though the FWTC survey (Bun Radar *et al.*, 2005) found that nearly 20 percent of Division heads were unaware of the recent training courses. The resultant list of nominees is checked by the Administration Office of FA and the names of people who are considered unsuitable or who have been on too many training courses are removed, and others with more relevant needs are substituted.

[80] English translation of the questionnaire has this question as - "did not solve your issue".

Recommendation 48:

> Develop and implement a range of practical training courses for FA JPs working in the field, and others at the Division and Cantonment levels who are involved with the preparation of case files and the supervision of field enforcement staff. The courses should include surveillance; search; interrogation; interview of witnesses; operation of checkpoints; planning and carrying out of patrols; supervision of armed ranger teams; negotiation and conflict resolution; escort of prisoners; identification of forest and wildlife products; seizure, recording and custody of evidence; photography of crime scenes and evidence; preparation of a range of official documents; liaison with Prosecutors and Investigating Judges; the detailed aspects of laws relevant to forest and wildlife offences (not only those under their organisational jurisdiction), the types of offences defined in the laws and their characteristics, the requirements of the Courts in terms of documentation and evidence ; and appearing in Court as a witness.

Because other agencies (e.g. MOE, Ministry of Interior) have JP teams, they are likely to have similar requirements for training in policing skills to those listed above. Establishment of a joint national training course might be both cost effective and, at the same time, help to build networks among enforcement agencies that could be beneficial to forestry law enforcement.

Recommendation 49:

> Investigate the possibility of developing a series of law enforcement skills courses, particularly investigation-related topics, that are applicable to a range of agencies with Judicial Police teams (e.g. FA, Ministry of Interior, MOE), and which are run by an agency with appropriate responsibilities and expertise.

6.3.2 Responsibility for Oversight and Management of Law Enforcement

Within the current institutional structure of the FA, it is not appropriate to speak of the JPs as a "law enforcement unit" in the sense that a civil police force is a law enforcement unit. They are not grouped into a separate enforcement body, but are scattered throughout various administrations within the structure of the FA.

MAFF Prakas 509, which sets out the component parts of the FA and their responsibilities, might be expected to describe a law enforcement unit of some kind. However Prakas 509 mentions law enforcement only in relation to the duties of the Legislation and Litigation Office and the Division-level field offices, and does not mention responsibility for management or oversight of the activities of Judicial Police at all.

In practice, it is clear that there is no central location with the administration of the FA that has overall responsibility for the management of the JPs. The Enforcement Unit in the LLO, which might perhaps be expected to have such a role, currently has no staff[81], and its nominal staffing level of two individuals would be far too small to take on this responsibility. Further, the LLO has no staff with any expertise in policing work and only two qualified lawyers. The decision to locate the FCMU within the LLO also argues against giving the LLO overall responsibility for law enforcement, since this would create a conflict of interest with the law enforcement monitoring and evaluation role of the FCMU.

In reality, responsibility for the JPs is loosely spread across a number of bodies at different levels in the FA. It is generally understood that day-to-day management and monitoring of the effectiveness of the work of law enforcement teams (which may or may not contain JPs) is the responsibility of Cantonments and Inspectorates[82]. However there is no separate responsibility

[81] One has been seconded to another position and the other is on extended leave-without-pay.
[82] Overall responsibility for monitoring and evaluation of law enforcement lies with the FCMU (see p.7 & below).

for law enforcement at these levels, and JPs are treated as part of the general manpower of the organisation. With regard to monitoring of law enforcement effectiveness, there appear to be no criteria or guidelines for carrying out such monitoring at these levels, and the focus at Inspectorate level is on the identification of significant procedural errors or suspicions of corruption, rather than on measuring and enhancing the effectiveness of law enforcement.

In general, JPs who carry out regular, field-level law enforcement duties are located within the Sub-division and Division offices. The appointment of JPs tends to be seen as an administrative necessity brought about by the requirement for certain documents to be signed by JPs, rather than through any recognition of the need for a skilled and organised group of police to tackle forest and wildlife crime.

Under the current arrangement of the FA, individual JPs are not usually wholly allocated to law enforcement duties, though these do account for a significant component of the responsibilities of the Division and Sub-Division offices (Bun Radar *et al.*, 2005). JPs are likely to find themselves in the position of carrying out activities relating to the issuing of permissions or some other regulatory function that brings them into contact with people whom they may also encounter in their role as enforcement officers. This is not a situation that leads to effective and reliable law enforcement.

According to the law, Forestry JPs are under the guidance and coordination of the relevant Municipal or Provincial Prosecutor (MOJ-27 Art.18). However there is virtually no contact between JPs and Prosecutors, and there is no sense in which the day-to-day activities of the FA JPs are currently subject to the guidance and coordination of the relevant Prosecutor.

Much of the forest and wildlife crime in Cambodia needs to be tackled at the national level. This is because:

- forest and wildlife crime is often organised at the national level, or at least across regions which include several provinces;
- the groups committing the most serious crimes are often within powerful national-level organisations (e.g. the military) which cannot easily be confronted by locally organised law enforcement units;
- illegally harvested forest and wildlife products are often transported across large distances, through many Cantonment areas, and frequently across Cambodia's national borders. It is not realistic to expect that JPs scattered throughout an overly bureaucratic hierarchical structure can achieve the necessary coordination to deal with this;
- once forest and wildlife crime has been detected it often requires a rapid response with the shortest possible lines of communication. If it takes too long, or too many people are involved, the evidence of the crime may no longer be accessible by the time a response is mounted; and
- many necessary initiatives are not taken under the current "organisation" of law enforcement because of the bureaucratic complexity involved as a result of the horizontal and vertical fragmentation of law enforcement responsibilities. A unified national law enforcement body would be able to respond much more quickly to field-level needs, particularly in relation to initiatives involving other agencies.

Recommendation 50:

> Law enforcement against forest and wildlife crimes should be combined into a separate national-level structure which is more integrated, focused and responsive than the current dispersal of law enforcement staff throughout the FA structure.

6.3.3 Institutional Location of Law Enforcement Responsibilities

There are valid reasons for questioning whether the responsibility for law enforcement against forest and wildlife crime should lie within the Forestry Administration. These reasons derive from a consideration of four main questions:

1. Does it make sense to duplicate law enforcement structures, expertise, equipment and training across a range of government agencies?

   At the level of forest and wildlife law enforcement, both the FA and the MOE have similar responsibilities for law enforcement in relation to natural resources, so that establishing and maintaining two parallel law enforcement efforts, often in adjacent areas, does not make good economic or administrative sense. As pointed out elsewhere in this report, the same kinds of policing skills are required by a range of law enforcement bodies throughout the administration. There is no valid reason that civil Police, for instance, would not be more capable of carrying out enforcement against forest and wildlife crime than people who have trained and largely worked as forestry or wildlife managers.

2. Do the similarities between illegal forest and wildlife activities, the illegal drug trade, and human trafficking warrant combining responsibility for law enforcement under one organisation?

   These types of crime not only display very similar patterns but, at the more lucrative end of the trade, are often likely to involve the same powerful individuals or organisations[83]. Similar investigative skills and technology are required to tackle all these types of crime, and can be applied within one national law enforcement network.

3. Would civil Police, with their existing close relationships with the Provincial and Municipal Courts provide a more integrated and coordinated chain of law enforcement than the FA Judicial Police?

   There has been no indication that the FA is moving to establish a cooperative arrangement between its JPs and the Prosecutors in the Provincial Courts, and some evidence of resistance to developing such relationships. Since it has become clear from study of factors contributing to the success of trafficking cases that such relationships are important, it could make more sense to hand forest and wildlife crime law enforcement over to the civil police.

4. Should those responsible for managing the resource also be responsible for ensuring that management is carried out according to the law?

   This is a very pertinent question with regard to the FA in which, like virtually all other Cambodian government agencies, loyalty to the institution, the government and the state is largely organised through networks of personal allegiances. Such loyalty is demonstrated, in part, through ensuring informal upward flows of resources, and the pressure to maintain these flows can often involve staff in various degrees of rent-seeking activities.

Recommendation 51:

> There should be a study of the comparative advantages of transferring responsibility for enforcement against forest and wildlife crime from FA and MOE to the civil Police versus maintaining the current allocation of responsibility within FA and MOE. Factors which should be considered include whether increases in effectiveness and efficiency would result from grouping within one organisation which also deals with similar crimes in the fields of drug trade and human trafficking.

[83] Information from informal consultations carried out by CI as part of this study, as well as studies in other countries.

6.4 Centralising the Issuing of Warrants and Court Involvement in Major Investigations

FA Judicial Police have experienced a number of difficulties in dealing with the Provincial Courts in relation to investigation of forest and wildlife crimes. These problems have ranged from leaking of information on investigations, demands for unofficial payments for search warrants and other forms of assistance (see p.44), slowness in response, to threatened legal action against FA enforcement staff by officials suspected of being in collusion with those involved in offences.

Problems of this nature are not unexpected in the current situation of imperfectly developed judicial institutions, or in small or remote provinces where there may be close connections between officials and business people. Nevertheless, some solution needs to be found if effective investigations are to be mounted. Rather than attempting the Herculean task of overcoming local corruption it seems more logical and expedient to centralise the issuing of warrants and court involvement in major forest and wildlife crime investigations.

Recommendation 52:

> An arrangement should be developed whereby warrants associated with investigations of forest and wildlife crime can be issued by a centrally located court in Phnom Penh. This arrangement should also include any necessary involvement of Court officials in major investigations. The arrangement should be regularly monitored to ensure that it is meeting the needs for rapid and appropriate response to the needs of investigation teams.

6.5 Development and Optimal Use of a Law Enforcement Database

6.5.1 Uses of Law Enforcement Databases

Law enforcement databases have the potential to provide a number of important inputs that can significantly improve the effectiveness of law enforcement. These include:

- monitoring and evaluation of the effectiveness of law enforcement by producing statistics on a variety of aspects of the enforcement chain.
- tracking individual cases, to determine what stage they have reached in the enforcement chain;
- assembling information on individual offenders to determine their history of involvement in offences against the Forestry Law; and
- identifying patterns and trends in offences.

These are discussed separately below.

Monitoring and Evaluation of the Effectiveness of Law Enforcement

As described above (p.7), the Forest Crime Monitoring and Reporting Unit (FCMU) of the FA is responsible for monitoring of the effectiveness of law enforcement against forest and wildlife crime, and is under the oversight of the Independent Forest Monitor.

Whereas the FCMU was originally intended to provide the means to track reports of illegal activities from their initial reporting to final resolution (May Sam Oeun *et al.*, 2001), the unit now becomes involved in field-level enforcement from time to time. Involvement with law enforcement is contrary to the principles of independent monitoring and evaluation. It opens the way to charges that the unit is involving itself in the same practices that it is meant to eradicate in other parts of the FA.

Recommendation 53:

> The FCMU should not be involved in law enforcement. If it (or the Independent Monitor) finds examples of breaches of the Forestry Law that are not being dealt with by those responsible for law enforcement, it should report them to those bodies. If the FA does not have full confidence in the usual law enforcement units to deal with certain types of crime, it should establish a specific response unit for that purpose, rather than compromising the independence of the FCMU.

When the FCMU was first established there was initially considerable tension between the FCMU staff and their technical advisors, and between the FCMU and Global Witness, which at that time was the government-appointed Independent Monitor. This was particularly in relation to claimed failure to enter reported detections of offences by powerful individuals or companies into the FCMU database, but also involved accusations of withholding of information from the advisors and the Monitor.

A recent paper reviewing forest sector regulatory mechanisms in Cambodia (Miller, 2004) reported that the FCMU "has apparently not found it possible" to report some of the most significant crimes, which are associated with "powerful people". There is no clear evidence that this problem has been resolved[84], and in fact it points squarely to the near futility of attempting technical fixes in a system where the primary and overriding problem is one of fundamental weaknesses in governance.

The FCMU operates a Case Tracking System (see p.7) which could be expected to have some role in monitoring the effectiveness of law enforcement so as to provide feedback on weaknesses in particular capabilities. However reporting from this dataset tends to focus on numbers of cases, quantities of evidence seized, and whether or not a case has been completed. It is not used as a tool to monitor the effectiveness of different stages in the enforcement chain, or to identify or prioritise actions to improve the process. Indeed it may not be capable of this. For example, in its Second Quarter 2004 report the SGS recommended that the LLO "should produce more detailed reports on the progress of cases through the courts to highlight trends in the number of cases reported and time taken for resolution of cases". It seems strange to request such information of the LLO, which keeps only paper-based data on enforcement cases, unless the FCMU's CTS is incapable of producing such information[85].

The simple Microsoft Excel databases used to prepare the current enforcement economics analysis allowed the team to extract a wide range of indicators from the available data, including:

- the proportions of cases following the different processing pathways;
- the numbers of cases currently at each stage in the processing chain of a particular pathway;
- calculation of the probabilities of a case moving from one stage to another (e.g. the probability that an offence that has been detected will lead to an arrest);
- the time that individual cases had been in each stage of the chain;
- the average times taken to move cases through each stage and through the whole enforcement process;
- the average penalties applied (overall, and for different types of offence);
- the average values of evidence seized and confiscated (overall and for different types of offence); and

[84] The fact that the reported detection of a shipment of 200 cu.m. of luxury timber in five trucks (*Koh Santepheap* Daily, 5 May 2005) had not find its way into the FCMU database by October 2005 suggests that the problem still exists.

[85] The recommendation was withdrawn by SGS, not because such detailed analyses of cases became available, but "due to the reallocation of responsibilities in the restructured Forestry Administration" (4th Quarter SGS Report, 2004) so that the relevant duties became the responsibility of the FCMU.

- the types of offences occurring, and the types of offences for which enforcement action was taken; and
- the Enforcement Disincentive represented by law enforcement efforts in relation to a particular type of offence.

As can be seen from the current analysis, these and other indicators are important parameters for assessing the effectiveness of law enforcement, and identifying weaknesses in the system. A well designed database would allow FA to calculate changes in such indicators on a regular basis as a way of tracking changes in effectiveness. The results of such ongoing evaluations can then be used to make adjustments to the law enforcement system (e.g. in relation to policy, operations, training, staffing levels, etc.) in a truly adaptive approach to management of law enforcement.

The current FCMU CTS does not produce the majority of these indicators, and it seems that their significance for assessing the effectiveness of law enforcement has not yet been recognised within the FA. While the current CTS might be able to be modified so as to generate some of this information, assuming the input of relevant data, it needs to be recognised that the CTS was developed in 1999, and was based on a US database then running on an old mainframe computer, so that the underlying database design is now probably around 20 years old. Development of a new database would allow FA to take advantage of new software, while removing flaws in the current CTS, simplifying data entry and allowing inclusion of considerably more search and analysis options.

Tracking Individual Cases

A database which allows tracking of individual cases can be used, for example, to: determine the current status of any case; calculate the time since the last action (e.g. time since transfer to the Courts); provide case details such as offender's name, date of offence, nature of the offence, etc. Such a function can also be used to set up reminders to check progress of a case after a certain time has elapsed.

A database of this type should be a primary tool of law enforcement managers, in both the FA and the Courts.

Where such databases currently exist in Cambodia, they seem usually to be paper-based, apart from the FCMU databases operated by the FA and MOE (for example, case registries operated by the LLO, Prosecutors, and the Judges of Provincial Courts). There can be valid reasons for maintaining a paper-based system rather than using a computer program. Such reasons include: lack of computer equipment or expertise; lack of familiarity with relevant programs that would allow data input or querying of the data; lack of funds to maintain computer systems; and lack of confidence in the security of electronic storage of data (hence some government agencies run parallel paper-based and computer databases). However the reality is that paper-based systems cannot provide the range of outputs that are available from a computer-based system, and have a very limited usefulness for monitoring and evaluation of law enforcement.

Assembling Information on Individual Offenders

Law enforcement agencies often need to know the history of a particular offender - information such as details of previous offences or encounters with law enforcement staff, area of operation.

A computer-based Case Tracking System such as this could also make a substantial contribution to the efficiency of preparation and management of individual cases. However the usefulness of the current FCMU CTS for this purpose is limited due to the fact that the data is stored and accessible only in the FCMU office in Phnom Penh, and that there is some reluctance on the part of FCMU to share data on individual cases. Law enforcement managers in field (Cantonment, Division, Sub-division) need real time access to such a database.

An example of the usefulness of this type of data was provided by the recent conviction of a poacher in Koh Kong Provincial Court[86]. The FA was able to inform the Court that this individual had first been identified as a major wildlife trader in Preah Vihear in 2001,and that he had been apprehended in Mondulkiri in 2004, but was released after signing an admission of guilt with a promise not to offend again. Further information on the range and numbers of rare and endangered species that he had hunted was also available.

Thus the outcome of the case in Koh Kong Provincial Court was improved by the use of information derived from law enforcement actions in two other provinces. While in this case the information came from contacts within FA and the NGO community, it is the type of information that should have been available in a national forestry and wildlife law enforcement database.

It is possible that this individual's details from his previous encounters with FA law enforcement teams were stored in the FCMU CTS. However that database is not set up to be searchable on the names of offenders[87], and in any case there is a degree of sensitivity on the part of FCMU staff toward requests for information stored in the database.

Identifying Patterns and Trends in Offences

A strategic approach to law enforcement requires the ability to detect patterns in the types of crime that is being committed. Ideally such patterns should be detected as they are emerging, so that a timely law enforcement response can be mounted.

The types of patterns that might be of interest include: changes in the frequency or location of certain types of offence; and concentrations of certain types of offence in particular locations, perhaps suggesting the operation of an organised group or the presence of a local middleman.

Analysis of this type requires data that is referenced by location (e.g. GPS coordinates) and date. In addition it requires the ongoing availability of some degree of technical expertise in order to query the database in different ways. Though it is possible to program certain types of analysis into a database, there needs to be the possibility of responding to requests for other types of output as they arise.

In addition, for such a database to be reliable it must capture a significant proportion of the available information. Such information comes not only from case files, but also from detection information provided in patrol and checkpoint reports and from the media. This requires a commitment at several levels to searching for and providing information, and keeping data entry up-to-date- as well as to entering all relevant data, no matter who the offender is.

6.5.2 Issues Associated with Operating a Nation-wide Law Enforcement Database

Before a nation-wide law enforcement database of the type discussed above can be implemented a number of issues need to be considered. These are examined briefly below:

- the cost of operating such a database;

  The operating costs of a nation-wide law enforcement database which allows the types of monitoring required for effective monitoring and evaluation are unlikely to be significantly higher than the costs of the current FCMU database, apart from the costs of providing and maintaining computer facilities in the appropriate field offices.
- distributing up-to-date data to users;

[86] McFadden, 2005

[87] The capability exists in the underlying software, but was not programmed as an available function to non-expert users.

The real need for a law enforcement database is not in Phnom Penh but in the field offices of the FA where day-to-day law enforcement is mainly done. After six years of operation, the FCMU database has not been made available to users in the field offices.

It is not feasible in the current infrastructure development situation in Cambodia outside of Phnom Penh to have on-line real-time access to the data at the field offices. However it would be feasible to distribute updates to the data files to these offices once or twice per month on CD (and to receive new data the same way). This would be likely to require provision of appropriate computer equipment in many Division offices (and Sub-division offices if the database were to be installed in those offices).

- what confidentiality and access issues exist and how will these be handled;

  The only significant confidentiality issues should relate to the identities of those reported as having been detected, charged or convicted in relation to a forestry crime. Law enforcement staff preparing actions or cases involving particular individuals need access to information on their previous interactions with law enforcement. It is entirely feasible to design a database in which there are different levels of access, depending on need, and in fact the current CTS database has four such levels.

  Access to the database should be available to all law enforcement staff with a relevant need, including those responsible for tracking individual cases, monitoring the effectiveness of law enforcement in their jurisdiction and planning law enforcement actions. Again, access to the general information in the database can be restricted to those possessing the relevant security code.

- who is likely to use such a database and how likely they are to use it;

  For a database to meet its objectives it is necessary that it is actually used by the relevant groups, for the purposes for which it is designed. This will require a number of conditions to be met:
  - commitment of the FA to the collection and entry of all relevant data;
  - identification of users and agreement by the FA that relevant users can have access to the necessary data;
  - provision of computer hardware and operating and maintenance budgets for running the database;
  - ongoing training of FA law enforcement staff in the purpose and use of the data for law enforcement; and
  - commitment on the part of the FA to the use of the database for monitoring the effectiveness of law enforcement and to taking necessary action on the basis of evaluation reports.

  Experience with other databases indicates that unless the user groups are fully trained and aware of the benefits of using the range of options available in the database, and management is responsive to resulting reports, it is unlikely to be utilised for anything other than storing data.

Recommendation 54:

A fully functional law enforcement management and monitoring database should be developed in conjunction with the FCMU, expanding on the functions in the current CTS and incorporating existing data. All detections and case progress details should be entered into the database and the dataset and reports should be made available to FA Cantonment, Division and key Sub-Division offices for use in law enforcement. The operating agency should be responsible for training field office staff and should monitor the level and appropriateness of use of the database, as well as producing regular reports indicative of the effectiveness of all stages in the law enforcement chain. The results of these ongoing evaluations should be used to make appropriate improvements to the system of law enforcement in a process of adaptive management.

This new database should be piloted for further development over a period of 18-24 months in the southwestern provinces of Koh Kong, Kampong Speu and Pursat, and should incorporate the dataset already assembled by the Enforcement Economics project.

During the trial period the use of the database and its reports should be utilised and scrutinised by the Independent Forest Monitor.

6.6 Reporting and Documentation

The different forms used by the FA to document offences are listed in Annex 2. These forms are intended to record all the pertinent details of an offence that might be needed in order to decide on the level of a Transactional Fine, have unclaimed timber confiscated by the State, or secure a conviction in the Courts. Annex 2 also contains comments on the effectiveness of the forms from a law enforcement point of view, based on a detailed study of the case files accessible through this project.

The following recommendations are made on the basis of the reviews summarised in Annex 2:

6.6.1 Recommendations Arising from a Review of FA Documentation

Reference to the Relevant Law and Description of the Offence

Recommendation 55:

Ensure that the Article which describes the offence is included in the documentation.

Recommendation 56:

Refer to all offences which have been committed in the documentation.

Recommendation 57:

Make FA JPs aware of relevant offences under other laws such as the Land Law

Recommendation 58:

Refer to offences under other laws, not only FL.

Recommendation 59:

Ensure that the charged offence matches the evidence of an offence.

Recommendation 60:

> Include in the summary of the case a clear statement of the Class of the offence (FI Art.s 97-99) and a reference to the relevant part of MOJ-27 Art.19 which provides for streamlined processing for Class 2 and 3 Offences[88].

Interrogation and Investigation

Recommendation 61:

> Provide training in interrogation, including the development of questioning strategies that elicit information and follow-up on new information, and ensure that all relevant results of interrogation are recorded in the case files.

Recommendation 62:

> In Path III situations the Biographical Information on Offenders form should include as much information as possible on the offenders so as to allow follow-up investigations.

Recommendation 63:

> Develop and use a form for recording the details of witnesses and persons interviewed and their statements.

Documentation of Seized Evidence

Recommendation 64:

> Provide full descriptions of the seized evidence. Where motor vehicles are involved, include any registration numbers, engine numbers, etc. that can identify the vehicle in the future.

Recommendation 65:

> Include written descriptions of what is shown in photographs and its significance in relation to the offence.

Recommendation 66:

> Consult with MOJ and Prosecutor General of the Appeal Court and other relevant agencies to establish agreed protocols for photographs to be used as evidence.

Recommendation 67:

> Consult with the Ministry of Justice, the Prosecutor General of the Appeals Court, and other relevant parties to obtain a clear statement of policy in relation to presentation of large or perishable evidence in relation to FA offences.

Reasons for Not Making an Arrest (Path III)

Recommendation 68:

> Include more complete explanation of reasons for not making an arrest.

[88] Under FL Articles 97-99 offences which are punishable by the Courts are divided into three Classes, with Class 1 being the most serious and warranting the heaviest penalties.

Recommendation 69:

Include a verbal description of the surroundings and circumstances, preferably with sketch maps and photographs where appropriate.

Recommendation 70:

Develop a Non-flagrant Offence Minute which includes scope for recording detailed results of investigations.

Recommendation of a Penalty (or Decision on Amount of Transactional Fine)

Recommendation 71:

Document reasons for recommending (Path II) or deciding on (Path I) a certain penalty, mentioning the relevant factors in FL Art.91.3.

Recommendation 72:

For Path I (Transactional Fine) cases, the documentation should note the details of the Other Evidence (i.e. vehicles, equipment, etc.) and include a decision on the disposal of the Other Evidence - whether to be returned to the offender or confiscated.

Summarising the Case for the Prosecutor or for Further Investigation by FA

Recommendation 73:

Develop a Summary of FA Investigation form that brings together the key aspects of the offence which are relevant to follow-up investigations or to successful prosecution. This form should be used as a basis for further investigation within FA, or to present the Prosecutor with summary of the case as understood by FA. It should contain: a description of the offence, the circumstances of the offence, summary details of the offenders, details of witnesses, a full description of the evidence, summaries of the results of investigations undertaken, and recommendations for any further investigation.

Recommendation 74:

For forwarding to the Prosecutor the document should also contain: an assessment of the impact or social or environmental significance of the offence, reference to relevant considerations under Art.91.3, and a recommendation on the level of the penalty which cites relevant Articles of the FL.

Signing of Forms

Recommendation 75:

Where JPs sign forms they should always identify themselves as JPs and should cite their personal MOJ Identification Number.

Recommendation 76:

FA staff who are not JPs who sign offence documentation should give their official position and their civil service number.

Transfer of Case Files to the Prosecutor's Office

Recommendation 77:

> Develop a more complete Record of Transfer to Prosecutor form (*Deykar Oum*) in duplicate that will be signed by the Prosecutor's Clerk to acknowledge receipt of a case file and the date on which the transfer occurred. One copy of this form should be retained by the FA Cantonment and the other copy by the Prosecutor's office.

6.6.2 Preparation of Forms by Officials Not Involved with the Detection and Arrest

It is highly desirable that all documentation of offences is prepared by JPs who were involved with the case in the field. This would help to ensure that all available information relevant to securing a conviction is provided to the Prosecutor.

In reality, some of documentation prepared for the Courts is prepared by FA officials in offices often quite far from the staff involved in the enforcement action. In such a situation those preparing the forms are not only possibly unaware of important aspects of the case, but are often unable to contact those with the relevant information. This has the unavoidable effect of reducing the level of detail provided to the Prosecutor and will often make the case against the offender less convincing. This is exacerbated by the rather rigid format that the forms apply to the documentation of the case and the frequent lack of space on the forms for adding additional detail.

If all the case documentation is not going to be prepared by staff directly involved in the case, then those staff should be required to fill out very detailed forms with headings covering all possible information that could be relevant to the case. This can then be used by those preparing the final documentation for the Courts.

Recommendation 78:

> Have all case documentation prepared by officials who were directly involved in the detection, investigation and arrest. If this is not possible, require those officials to fill out very detailed forms with headings covering all possible information that could be relevant to the case. Use these detailed forms as the basis for preparing final documentation for the courts.

6.7 Strong Enforcement vs. Encouraging Compliance with the Law

This study has focussed on efforts to enforce the law, i.e. the use of detection, arrest, prosecution, conviction and punishment to create an Enforcement Disincentive that will convince potential wrongdoers not to break the law.

However it is important not to lose sight of the ultimate objective of law enforcement. From a resource management point of view, the real objective is not arresting and punishing law breakers, but preventing resources from being degraded through illegal activities, i.e. achieving compliance with the law. This might be achieved through repeated strong enforcement actions, through encouraging people to comply with the law, or a combination of these. Table 8 summarises the broad differences between the two approaches.

Table 8: Broad Differences Between Enforcing the Law and Promoting Compliance

Enforcing the Law	Promoting Compliance with the Law
• reactive (applied only after the law has been broken). There is damage to the ecosystem before action can be taken.	• preventative (avoids breaches of the law - and therefore damage to the ecosystem - and the necessity for enforcement).
• relies mainly on the law enforcement agencies and the Enforcement Disincentive they create.	• relies mainly on attitudes, values and beliefs of the general public and on respect for the law.
• depends on legal sanctions to create an adequate level of disincentive.	• depends on personal values and social sanctions leading to decisions not to do illegal actions.
• based on laws, and knowledge of laws by the enforcement staff.	• based partly on the public's understanding of the impacts of illegal activities on the resource and environment generally, and on knowledge of what is not permitted under the law.
• can create negative attitudes to enforcement agencies, and by extension, to the resource management agency.	• creates an impression of a caring management agency and promotes understanding of its role and responsibilities
• ongoing inputs required , often at a relatively high cost.	• once general acceptance is achieved the level of inputs reduces - community norms are generally self-perpetuating, requiring only occasional reinforcement messages.

Obedience to the law comes about as a result of two quite different driving factors. The first is that people are afraid to break the law because they see the Enforcement Disincentive as being significantly greater than the benefits that might be gained from not obeying the law. For a strategy based on an Enforcement Disincentive to be effective it is necessary that people are continually reminded of the probability of suffering significant adverse consequences of not obeying the law. There must be continuing strong and effective law enforcement activities so as to maintain the disincentive. If this is the only strategy used, then as soon as awareness of the Enforcement Disincentive decreases there will be an increase in illegal activities.

The second driving factor in achieving obedience to the law is that people choose not to break the law - either because a particular illegal action would be contrary to their moral values, or because they agree with the basis of the law. This suggests two additional law enforcement strategies:

- that law enforcement programs should promote respect for the law, and should try to emphasise moral arguments for complying with the law (possibly drawing parallels between the objectives of the law in relation to forests and wildlife, and values in the local religious beliefs); and
- that law enforcement against forest and wildlife crime can be enhanced by ensuring that stakeholders value the forest ecosystem and its components and services, and understand the significance of the negative impacts of forest and wildlife crimes.

Of course it is never possible in a large and heterogeneous population to achieve total compliance with the law. However, under this second approach, once the attitudes engendered by these alternative strategies have become the norm for a majority of the community, they tend to be self-reinforcing; that is, the majority of people do not break the law because to do so would not be socially acceptable.

What is clear is that at the outset all strategies need to be pursued. If only the first, disincentive-based, strategy is used, law enforcement becomes a never-ending cycle of law enforcement and

illegal activities, with perhaps the best outcome that loss of natural resource values is kept within acceptable limits while the costs of law enforcement remain affordable.

It can take a considerable time to reach a situation where all three strategies are producing positive results. However, once it has been reached this approach has the advantage of significantly reducing the costs of law enforcement, because the compliance-based strategies tend to produce self-reinforcing results.

Recommendation 79:

> The law enforcement strategy for protection of forest ecosystems should include components that are directed at (a) publicising the extent of law enforcement efforts, their successes and the scale of penalties that have been applied; (b) emphasising the moral reasons for obeying laws to protect forest ecosystems; and (c) ensuring that people value the forest ecosystem and its component and services, as well as understanding the significance of the negative impacts of forest and wildlife crime. The FA should considerably boost the level and technical competence of units involved in promoting compliance with the Forestry Law.

6.8 Aspects of the Forestry Law Detracting from Effective Law Enforcement

There are a number of aspects of the FL that detract from the effectiveness of law enforcement against forest and wildlife crime. These are discussed below, with recommended solutions. If it is administratively or politically difficult to amend the FL as recommended below, some other legislative means should be found to achieve the same effect, for example through the issuing of regulations under the FL.

6.8.1 Lack of Any Effective Prohibitions in Relation to Snares, Traps or Other Hunting Equipment

The FL (Art.49.3(2)) prohibits the following activities against rare or endangered species: hunting, netting trapping or poisoning. This prohibition is virtually unenforceable. It cannot be used unless a person is caught in the act of hunting, netting, trapping or poisoning AND at the same time there is a rare or endangered species which is clearly being hunted, netted, trapped or poisoned by that person.

The lack of effective measures against hunting equipment, particularly snares and traps, is a significant weakness in the law, particularly in relation to rare and endangered species, and leads to considerable difficulties for enforcement staff. Snares are a non-discriminating technique and kill many more species than those targeted. In the Southwest they are set in the thousands, or possibly tens of thousands, on a regular basis.

For some time now teams from Community Natural Resource Management Committees and the NGO Natural Resource Protection Group have been undertaking regular patrols and removing thousands of snares every month from the forests in the Southwest. The removal of snares is clearly having some effect on the illegal hunters, hence their ambush and murder of one of the NRPG team. Yet these snares are not illegal. They can be owned, transported and even bought in the market (e.g. locally in Chipat in the Southwest).

What is required is a law that controls the possession, sale and use of nets, snares, traps, and poison. This law should also include reference to types of nets, snares, traps (some may be allowable as customary use in certain situations), and to areas of specific status (for example,

the control might be stricter in Protection Forest). There should be an outright ban on certain types of snares and traps and severe penalties for their possession[89], sale or use.

Recommendation 80:

> A regulation under the Forestry Law should be passed as soon as possible which gives adequate control over the possession and use of snares, traps, nets, and poison. This law should specifically address the types of equipment and the location in which the possession or use takes place. The law should be prepared in consultation with field-level staff having experience of law enforcement against hunting, and who are familiar with PLUP and customary use issues.

6.8.2 Legal Inability to Enforce Prohibitions Related to Common, Rare or Endangered Species

The FL places several important restrictions on activities relating to wildlife. Some of these specifically refer to wildlife that is common, rare or endangered, and it is important that the law distinguishes between wildlife species having different status, and provides graduated penalties for offences affecting species with different conservation status.

However Art.48.3 requires all wildlife species to be classified into common, rare and endangered categories, and Art.48.4 requires the MAFF to issue a Prakas defining the criteria for each of these categories and to establish a separate list of species which are rare or endangered in consultation with the Ministry of Environment. By extension, species which do not appear in these lists will be "common".

Because no such Prakas has been issued, the offences involving common, rare or endangered wildlife defined under Articles 49 and 50 do not legally exist, and no charge can be brought against anyone for committing such offences. Similarly, no permits can be issued under Art.49.2 allowing the use of rare or endangered species for educational or scientific research, for captive breeding programs, or in international exchange programs[90].

Recommendation 81:

> A Prakas listing rare and endangered species of wildlife should be issued as a matter of urgency. This Prakas should not attempt to list common species, but should take the approach that species not listed as rare or endangered are regarded as common. It should also provide complete protection for Pangolins on the basis of the CITES agreement that the allowable harvest quota for this species is zero.

6.8.3 Legal Inability to Enforce Prohibitions in Relation to Forest By-products

The FL describes many offences that relate to the harvesting, processing, and transport of forest by-products. The Annex to the FL defines "forest by-products" as "products other than timber that are extracted from the forest" and requires that these products be defined by a MAFF Prakas. Because this defining Prakas has not yet been issued, there is no legal basis for asserting that any particular item is a forest by-product, and thus no legal controls in relation to forest by-products can be enforced[91].

[89] "Possession" needs to be defined in the regulation.

[90] Some FA officials rely on an old Prakas (Prakas 359) but this provides only lists of mammals, reptiles and birds that are protected unless MAFF has issued a permit. It does not define common, rare or endangered species, and it is questionable whether it has any legal effect since the introduction of the 2002 Forestry Law.

[91] In some cases particular forest by-products are mentioned in Articles which define offences. Those Articles can be enforced in relation to the mentioned by-products.

A Prakas has recently been introduced (PRAKAS No. 89 on Forest Products and By-products that are Prohibited to be Harvested, 14 February 2005) which appears from its title to meet this requirement. However examination of the text of the Prakas reveals that is does not in fact address the issue.

Recommendation 82:

> A Prakas defining Forest By-Products, in line with the legal requirement expressed under the definition of Forest BY-products in the Annex of the Forestry Law should be issued as a matter of urgency.

6.8.4 Lack of Clarity in Relation to Wildlife Offences

Art.49.4 requires that:

> Rules on the activities related to all types of wildlife species shall be determined by Joint-Prakas between the Ministry of Agriculture, Forestry and Fisheries and Ministry of Environment.

This seems to be at odds with the provisions already contained in the FL pertaining to activities related to wildlife species, and raises the issue of whether or not those provisions are valid if they have not been based on a joint MAFF/MOE Prakas. It is unclear what other "rules" might have been intended by the drafters of this paragraph.

Recommendation 83:

> The MAFF should issue an instruction clarifying the meaning of Forestry Law Art.49.4 and explaining its significance in terms of law enforcement and management planning in Protection Forest.

6.8.5 Confusion Between Articles That Define Offences and Those That Set Penalties

There is a tendency to regard the Articles of the FL which set penalties for specific offences as if they are the Articles which estabish the offences. Thus, both FA officials and the Courts frequently refer to offences under Articles 96, 97, 98 and 99 and often cite one of these Articles as the basis of a charge. In fact these articles only set penalties. Other Articles establish the offences.

The distinction is illustrated by the difference between the wording of Art.97 which sets the penalty in the following way:

> *An individual who has committed the following forestry offences shall be punished under a Class I forestry offence ...*
>
> *...*
>
> *7. Sets forest fires intentionally.*

and the wording of Art.36 defines an offence:

> *It is prohibited to set fires in the Permanent Forest Estate.*

Thus a person who was caught setting a forest fire would be charged under Art.36 and penalised under Art.97. Where this approach to legal drafting is used, there need to be corresponding offence-penalty pairs. Where one part of the pair is missing the law is ineffectual (see 6.8.5).

An alternative approach is illustrated by the wording of Art.101 both defines an offence and sets the penalty:

> *The following activities shall be regarded as forestry offences committed by a Forestry Administration Official and shall be subject to one (1) to five (5) years in prison and ...*

It contains the phrase "shall be regarded as forestry offences" which does not occur in Articles 96-99. Thus an offender could be both charged and penalised under this Article.

Recommendation 84:

> The FA should compile a table of offences under the Forestry Law and the corresponding penalties, citing the relevant Article of the law in each case. This table should be issued to all JPs and their supervisors, and should be used in all training courses relating to the Forestry Law or enforcement of that law. . FA staff should be clearly aware of the difference between Articles which define offences and those which set penalties.

6.8.6 Lack of Match Between Defined Offences and Penalties in the Forestry Law

Further to the discussion above, there are a considerable number of offences for which the offence-penalty pairs are incomplete. That is, there are offences with no prescribed penalties and penalties for which no offence has been defined (see separate report Apparent Inconsistencies Between Offence and Penalty Provisions in the Forestry Law).

In relation to wildlife, for example, there are ten offences described in offence Articles (Art.s 49 and 50) for which there appears to be no matching penalty. There are seven penalties for which there appears to be no Article defining an offence (Art.96.1(12,17,19); Art.97.1(10); Art.99.1(4)). Similar situations exist in relation to various forest offences.

This may contribute to the confusion which results in the citing of penalty Articles as the basis for charges[92].

Recommendation 85:

> Supplementary legislation needs to be issued which establishes the offences and penalties which are missing from offence-penalty pairs in the Forestry Law.

6.8.7 Logic of the Scale of Penalties

Some aspects of the logic of the scale of penalties evident in Articles 96-99 are difficult to understand.

For example, operation of an illegal large to medium scale sawmill is a Class II offence, punishable by 1-5 years in prison and/or a fine of 10-100 million Riel and confiscation of the equipment.

Yet, operation of an illegal yellow-vine processing operation is a Class I offence, with a considerably more serious penalty with a mandatory jail sentence of 5-10 years. It is difficult to see how a yellow-vine processing operation is a more serious forest crime than operation of a large-scale sawmill.

Similarly, Transactional Fines, particularly in the absence of confiscation of Other Evidence, can tend not to reflect the seriousness of the impact on the forest ecosystem.

[92] Though it is more likely that the reasons are a combination of a lack of detailed knowledge of the FL and the ease of finding references to many different offences brought together in the penalty Articles.

Recommendation 86:

> Review the relative seriousness of penalties for different offences to ensure that the relative difference in seriousness of offences is matched by the relative differences in penalties. Where necessary, create amending legislation to bring penalties into line with the findings of this review.

6.8.8 Inability to Increase Transactional Fines by Reference to Certain Relevant Factors

Art.91.3 appears to provide room to increase the penalties under Art.96 by setting out factors to be considered in deciding the amount of a transactional fine. This is a sensible provision, given that the value of the product is not always related to the seriousness of the crime. However even when matters such as the extent of damage to the ecosystem or the amount of a fine required to act as a deterrent suggest that a quite high fine is required, the amount applied cannot be greater than three times the market value of the Real Evidence because the wording of Art.96.1 does not allow for a higher penalty[93]. This inability to increase the penalty for the most serious offences significantly limits the Enforcement Disincentive that can be created.

Recommendation 87:

> Issue amending legislation which allows the level of Transactional Fines to be increased above the limits imposed in Art.96 where this is warranted by consideration of the factors in Art.91.3.

6.8.9 Limitation on the Offences for which an FA Official Can be Punished Under Article 101

Art.101.1(3) sets out penalties for forestry offences committed by a Forestry Administration Official, but does not include the phrase "or other activities contrary to the provisions of this law" (which occurs in a similar setting in Art.100). This has the effect of restricting those actions by Forestry Officials which are regarded as offences under this Article to only activities which directly exploit the forest. It does not, for example, apply to a Forestry Administration Official who illegally transports forest products or by-products. Such persons are therefore subject only to the transactional fine applicable under Art.96.1(2).

Recommendation 88:

> Issue amending legislation which extends the range of offences for which FA officials can be punished under Art.101 to include "other activities contrary to the provisions of the FL" (as is the case in Art.100).

6.8.10 What Amounts of Forest Products and By-products Constitute Traditional User Rights?

A number of parts of the FL provide for community harvest of forest products and by-products as traditional user rights, including Art.40 (especially 40.2), and Art.s10 and 24. However these references do not provide any real guidance on the amounts of forest products and by-products that are permitted under this heading.

[93] "..**shall** be subject to a transactional fine ... two (2) to three (3) times the market value ...". No exceptions are permitted, so that the amount cannot be above three times the market value, even if this is warranted by consideration of Art.91.3.

The situation is not simply one in which law enforcement staff need guidelines to allow them to determine what amounts to traditional use. There are issues of: whether or not restrictions on the harvesting of rare and endangered species override traditional user rights; and what extent of use of forest resources can be accepted under the resource uses identified through PLUP activities in the Permanent Forest Reserve.

The FL does not explicitly recognise that the situation in many parts of the Permanent Forest Reserve is different to that which prevailed when relatively small numbers of communities lived in dependence on large areas of mostly undisturbed forest. Forest areas are significantly reduced, the remaining areas are under pressure from a variety of threats, and species which were recently common have become rare or threatened. Since the core principles in the Forestry Law are the sustainable use of forest products and by-products and the protection of the forest ecosystem, it seems that there is a need to take into account (particularly in Protected Forests) that some restrictions may need to be placed on customary use in the interests of conservation. This could be done on a case-by-case basis, but there is a need for a general provision, possibly in the form of Prakas or Instruction, so that such restrictions can be put into effect where necessary.

Recommendation 89:

> Put in place a Prakas which provides guidance on the amounts of forest products and by-products which constitute customary use (strict amounts or volumes may not be useful, but some guidelines are essential).

PART 7: LESSONS FROM LAW ENFORCEMENT AGAINST TRAFFICKING CRIMES

As a part of this study Chantal Elkin, Wildlife Trade Manager with Conservation International's Center for Applied Biodiversity Science, carried out a brief survey to gain insights into the factors behind the increasing success of law enforcement against trafficking of people and drugs in Cambodia. She consulted with a range of individuals and organisations who have some connection with attempts to improve this aspect of law enforcement and identified a number of common strategies which have contributed to an increasing number of cases reaching court and increasing numbers of successful prosecutions.

These strategies clearly have benefits for improving law enforcement against forest and wildlife crime and are presented here as recommendations:

Recommendation 90:

> Establish good relationships with the prosecutors and judges.

Recommendation 91:

> Provide awareness raising to key officials of the Courts to ensure that they understand the significance of this type of crime.

Recommendation 92:

> Provide training to officials of the Courts in both what constitutes forest and wildlife offences and the key aspects of relevant laws.

Recommendation 93:

> Gather very detailed information and present an irrefutable case. Then present the details of the case in a summary format that can be read quickly but presents the relevant facts of the case and the relevant articles of the law. Give the summary to Judges and Prosecutors. Meet with the Judge to answer any questions he has about the case.

Recommendation 94:

> Follow up the case after it has been lodged with the Prosecutor, and even after conviction and sentencing.

Recommendation 95:

> Involve key agencies in a cross-sectoral approach to the both the general issue and to difficult aspects of law enforcement[94] (e.g. Forestry Administration, Ministry of Environment, Ministry of Justice, Ministry of Interior).

PART 9: CONCLUSION

9.1 General

As has been demonstrated in a series of other countries, the enforcement economics approach has proved to be a useful tool for assessing the effectiveness of law enforcement against forest and wildlife crime in Cambodia. In particular, its use has shown where the weaknesses lie in the enforcement chain so that further investigation and analysis could be done to determine the root causes.

There are four legal law enforcement actions that can be taken against forest and wildlife crime under the Forestry Law. The Enforcement Disincentives of giving warnings cannot be calculated, but may be appropriate to the level of offence (depending on the guidelines which are applied in deciding when to give Warnings instead of making an arrest). For Transactional Fines (Path I), prosecution in the Courts (Path II) and seizure of forest products without an arrest (Path III), the Enforcement disincentive of each of these is considerably lower than the incentives to commit that particular type of crime, as indicated by the average value of forest products and by-products seized. It is noteworthy that as the profit from crimes increases, the level of Enforcement Disincentive decreases (see Figure XX).

Of particular concern is the finding that the majority of law enforcement actions taken by the FA fall into what was termed Path III. It is questionable whether this type of action can truly be called law enforcement; it resembles a revenue-raising scheme more than law enforcement, and in fact its enforcement disincentive value is very close to zero. What this means is that 56 percent of all law enforcement cases, amounting to 77 percent of the cases sent to the Courts, have no effect in terms of punishing criminals or deterring future crime. This is a serious misallocation of law enforcement resources and priorities, as well as being a source of public skepticism as to the motives of law enforcement staff.

The Enforcement Disincentive of the "no action" option, termed Path IV in this study, of course cannot be calculated. However it is likely that the disincentive effect of ignoring crimes committed by rich and powerful individuals and organisations is negative - that is, it encourages crime by others. Two main reasons for this would be a decrease in respect for the law and a

[94] A study for Transparency International on ways to address forest crime highlighted the need for involvement of multiple stakeholders (FIN, 2002).

desire to obtain some of the benefits of the forests while they remain. Table 9 summarises the incentives and disincentives of the five options.

A finding of the study which has policy implications for the FA is that using strong law enforcement as almost the sole strategy to deter potential offenders is likely to lead to an expensive and never-ending cycle of law enforcement and illegal activities, with the best likely outcome that the loss of natural resource values is kept within acceptable limits and that the necessary level of law enforcement remains affordable. Taking a multi-strand approach which also includes activities promoting respect for the law and appreciation of the values of the forest ecosystem is ultimately likely to be more sustainable and less expensive.

Table 9: Summary of Incentives and Disincentives of Five Law Enforcement Options

	WARNING	***PATH I Transactional Fine***	***PATH II Prosecution Through Courts***	***PATH III Seizure of Evidence - No Arrest***	***PATH IV Powerful Offenders - No Action***
Incentive to Commit Crime	unknown no data recorded	$315.35	$599.89	$810.14	unknown but probably very large
Best Possible Enforcement Disincentive	close to zero	$166.28	$33.03	close to zero	zero
Most Likely Enforcement Disincentive	close to zero	$16.63	$3.30	close to zero	negative (encourages further crime)

9.2 Summary of Recommendations

The 95 recommendations that have emerged from this analysis have been grouped under 11 headings.

1. How the FA measures its success in achieving sustainable forest management

Summary Overview of Main Recommendations:

Success should be measured on the basis of changes to the area and quality of forest managed sustainably in accordance with its status - not on the basis of the volume of timber and number of head of wildlife seized, amount of fines, or numbers of cases completed.

See Recommendations: 39

2. Organisation, coordination and management of the Judicial Police force

Summary Overview of Main Recommendations:

- The FA Judicial Police need to be organised as a police force, not as multi-tasked staff scattered among many administrations within the FA structure.
- There needs to be national coordination of law enforcement action against forest and wildlife crime.

- Consideration should be given to rationalizing the approach to forest and wildlife crime, so as to avoid duplication, increase efficiency and recognise the similarities between this type of crime and trafficking in humans and drugs. The benefits of transfer of the responsibilities to a national civil police force should be evaluated by an independent expert task force.

See Recommendations: 50, 51.

3. Action and Investigation - policy, investigation skills - against ALL offenders

Summary Overview of Main Recommendations:

Investigate and Prosecute All Offences

- Establish and demonstrate, from the highest levels in government down to the field level, political and institutional willingness to take action against all forest crimes, no matter who the offenders are.
- The Director of FA should issue an order reminding all law enforcement staff that they hve legal responsibility under the Forestry Law to investigate all offences, and to identify and arrest all offenders.
- Adopt a policy of investigation of all forest crime (including non-flagrant crime) and provide Judicial Police with in-depth training in practical policing skills including all aspects of investigation.
- Adopt reduction in the proportion of law enforcement actions involving seizure of forest products without arrest of an offender as a key indicator of improvement in law enforcement.

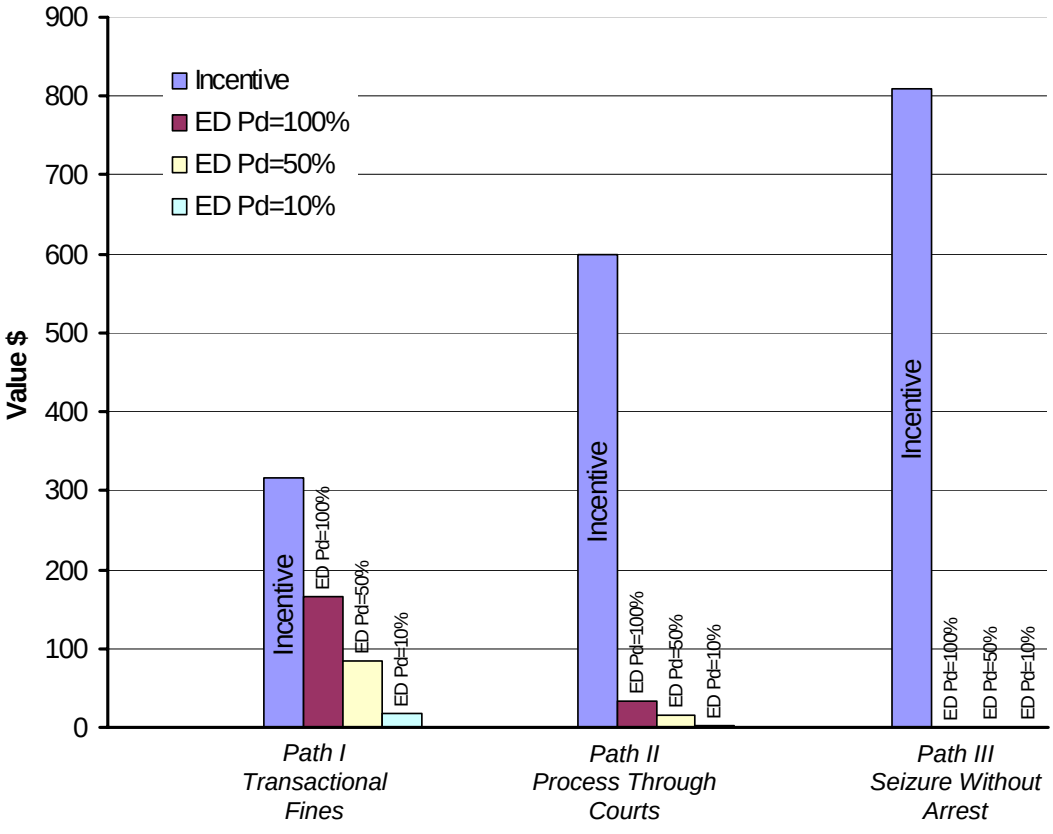

Figure 8: Comparison of Incentives and Enforcement Disincentives - Paths I,II,III

Seizure Without Arrest Cases

- There is a need to significantly reduce the proportion of Path III (seizure without arrest) cases both because of their lack of disincentive to offenders and also because of the bad relationships with the Courts that they create and the suspicion that falls onto FA motives because of them.
- FA should stop publishing (e.g. in FCMU reports) figures on volumes of timber and head of wildlife seized as indicators of effectiveness of law enforcement and adopt less ambiguous and more meaningful indicators.
- Establish an independent legal inquiry into the situation in Cantonments with the highest levels of seizure without arrest cases to determine the circumstances giving rise to these cases.

See Recommendations: investigate and prosecute all crimes [38, 40, 42. 43]; seizure without arrest [32, 35, 39]; JP training in policing skills [48, 49]

4. Training of Judicial Police - effectiveness, efficiency and the range of skills and knowledge appropriate to policing work

Summary Overview of Main Recommendations:

- Judicial Police need to be trained in a very wide range of practical policing skills in order to increase the proportion of cases in which arrests are made. These skills include: surveillance; search; interrogation; interview of witnesses; operation of checkpoints; planning and carrying out of patrols; supervision of armed ranger teams; negotiation and conflict resolution; escort of prisoners; identification of forest and wildlife products; seizure, recording and custody of evidence; photography of crime scenes and evidence; preparation of a range of official documents; liaison with Prosecutors and Investigating Judges; the detailed aspects of laws relevant to forest and wildlife offences (not only those under their organisational jurisdiction), the types of offences defined in the laws and their characteristics, the requirements of the Courts in terms of documentation and evidence ; and appearing in Court as a witness.
- Investigate the possibility of combining practical policing skills training courses with training needs of other agencies such as Ministry of Interior and the Ministry of Environment.

See Recommendations: 48, 49.

5. Use of a database for better case outcomes, and for monitoring and evaluation of the real effectiveness of law enforcement

Summary Overview of Main Recommendations:

- Establish an improved case tracking and law enforcement monitoring database which builds on the approach taken in the current Cast Tracking System operated by the FCMU but incorporates a much wider range of indicators, including particularly those used in the Enforcement Disincentive equation
- The database should be available for use by FA Cantonment, Division and key Sub-Division offices for use in planning and carrying out law enforcement, including preparation of case documentation.
- The new database should be piloted for further development over a period of 18-24 months in the Southwestern provinces of Koh Kong, Kampong Speu and Pursat, and once the pilot database becomes operational its reports should be utilised and scrutinised by the Independent Forest Monitor.
- The database should include information on offenders who have signed “thumb-print” contracts admitting guilt and promising not to re-offend, including the nature of the offence that was committed.

- The body responsible for monitoring and evaluation of law enforcement (FCMU) should not be involved in law enforcement.

See Recommendations: 6, 53, 54

6. Documentation - as a tool in securing positive law enforcement outcomes

Summary Overview of Main Recommendations:

The report contains a total of 36 recommendations which relate to aspects of improvement of documentation of cases. There is too much detail to be summarised usefully here. The full list of recommendations is provided under various headings below. The following are the highlights of the needs as regards documentation.

- The documentation of offences should be regarded as an essential tool in securing convictions, not merely as a bureaucratic step in the process.
- Develop documentation and documentation standards for cases to be submitted to the Courts that take into account the need to provide documentary proof of guilt and the importance of providing good documentation of cases so as to be able to access the fast-track prosecution provided for forestry cases in Ministry of Justice Prakas No.27 Article 19. There should be ongoing consultation with the Courts on the adequacy of documentation.
- Include a presentation of the case in a summary format that can be read quickly but presents the relevant facts and the relevant Articles of the law. Giver the summary to Prosecutors and Judges. Meet with the Judge to answer any questions he has on the case.
- All FA documentation in relation to a particular case should refer to the same case number. Case numbers might be derived from the name of the Triage / Sangkat office where the offence was detected and a sequential number as well as the year number. For example, cases originating in Thma Bang might be numbered TB01/05, TB02/05, TB03/05, etc.

See Recommendations: reference to the relevant law and descriptions of the offence [55, 56, 57, 58, 59, 60]; interrogation and investigation [61, 62, 63]; documentation of seized evidence [64, 65, 66, 67]; reasons for not making an arrest [68, 69, 70]; recommendation of a penalty [9, 10, 71, 72]; summarising the case for the Prosecutor [19, 73, 74]; signing of forms [75, 76]; delivery and transfer of cases to the Prosecutor [24, 25, 77,]

7. Improving the cooperation between FA and the Courts

Summary Overview of Main Recommendations:

- It is very important to improve the relationship between the FA and the Courts, with a view to establishing a partnership in which there is a common goal of achieving effective law enforcement.
- There needs to be frequent communication between FA and the Courts, both in relation to progress with individual cases and in relation to improvement in outcomes of prosecutions generally. The Prosecutors and Judges should be involved in training of FA staff wherever relevant.
- There is an urgent need for FA to work with the Court officials to increase their awareness of the seriousness of forest and wildlife crimes and the way that these impact on livelihoods, ecological processes, ecosystem services and the natural heritage of Cambodia. It is also important to dispel the impression that forest and wildlife crimes are “victimless” crimes and therefore not as important as other cases that the Courts deal with such as murder, rape, robbery, etc.

- FA should assist the Courts by developing summary materials summarising and clarifying important legal aspects of forestry and wildlife crimes and key aspects of relevant laws.
- There is a need for FA, MOJ and the Courts to develop a numbering system that can be used as part of the case identification in FA and the Courts to assist in case tracking.
- An arrangement should be developed whereby warrants associated with investigations of forest and wildlife crime can be issued by a centrally located court in Phnom Penh. This arrangement should also include any necessary involvement of Court officials in major investigations. The arrangement should be regularly monitored to ensure that it is meeting the needs for rapid and appropriate response to the needs of investigation teams.

See Recommendations: good relationship between FA and Courts [17, 90]; frequent communication [17, 29, 30, 94] awareness raising [14,18,20,91]; development of summary materials on legal issues (23, 92]; common numbering system [26,27] centrally issued warrants [52]

8. Issues within the Courts - influence, "bail", case tracking, filing and retrieval

Summary Overview of Main Recommendations:

- Courts should be persuaded not to release offenders on bail when the circumstances fit Art.19 of MOJ Prakas 27 and the case can be sent to the Trial Judge relatively quickly. This will be more likely if FA case documentation is complete.
- There should be an investigation of the granting of "bail" by the Provincial Courts in relation to forest and wildlife crime, including the outcomes of cases in which bail is granted, taking into account whether there is any recorded conviction, and whether any penalty is imposed or enforced.
- There needs to be a more widespread review of the outcomes of forest crime cases finalised by the Courts, possibly involving thorough analysis of all cases in selected provinces since the FL came into effect. The review should focus on the appropriateness of the penalties and whether or not correct legal procedures were followed in arriving at the conviction and the penalty.
- Provide assistance to Provincial Courts to obtain equipment for recording, tracking and storing case files and provide appropriate professional training in registration, storage, tracking and retrieval techniques.

See Recommendations: 4, 13, 15, 28.

9. Legislation - covering key issues, filling gaps and creating more clarity

Summary Overview of Main Recommendations:

- There is an urgent need for legislation to control the possession, sale and use of snares, traps, nets and poison.
- There is an urgent need for a Prakas listing rare and endangered species of wildlife. This Prakas should not attempt to list common species but should take the position that anything not listed as rare or endangered is common. The Prakas should contain a special provision in relation to the total protection of pangolins, having regard to the CITES agreement that annual harvest quotas will be set at zero by all range state.
- There is an urgent need for a Prakas defining forest by-products as set out in the Annex to the Forestry Law.
- Supplementary regulations are needed to establish the offences and penalties which are missing from the Forestry Law

- A Prakas is needed which provides guidance as to the amounts of forest products and by-products that constitute customary use.
- There needs to be a review of the levels of penalties for different offences to ensure that the relative seriousness of offences is matched by relative differences in penalties.

See Recommendations: 5, 80, 81, 82, 83, 85, 86, 87, 88, 89.

10. Jurisdictional Issues.

Summary Overview of Main Recommendations:

In relation to the MOE:

- The Minister for Agriculture, Forestry and Fisheries or the Director of the FA should issue a statement clarifying the jurisdictional separation set out in paragraphs 2 & 3 of Article 3.1 of the Forestry Law, and in particular should set out the circumstances in which FA JPs should carry out law enforcement inside the MOE Protected Areas.

See Recommendation: 44

In relation to the issuing of title over parts of the Permanent Forest Reserve:

- All heads of FA Cantonment, Division and Sub-Division offices should be issued with an instruction reminding them of the provisions of the Land Law, the Forestry Law and Prime Minister's Order No.1 of June 9, 2004 which restrict the authority of officers of the Ministry of Land Management, Urban Planning and Construction (and others) to issue title to areas within the Permanent Forest Reserve.
- The above instruction should be copied to all Provincial and District Governors, and to Provincial and District offices of the Ministry of Land Management, Urban Planning and Construction.

See Recommendations: 45, 46.

In relation to the FA and the Department of Fisheries:

- An agreement should be developed between the FA and the Department of Fisheries that authorises FA Judicial Police to enforce legal protection of aquatic species in the Permanent Forest Reserve when an offence is detected and there are no Department of Fisheries enforcement staff present.

See Recommendation: 47.

11. Ensuring Appropriate Levels of Penalties.

Summary Overview of Main Recommendations:

- Use should be made of a range of options within the Forestry Law for increasing the penalties for forest and wildlife crime. These include: Article 94, which allows FA to impose a requirement to pay for the restoration of the forest ecosystem; Article 91.3, which allows Transactional Fines to be increased on the basis of consideration of a number of factors; and Article 96, which allows the confiscation of equipment, transportation, etc. in addition to Transactional Fines.
- Prosecutors and Judges should be made aware of the social, ecological and economic impacts of offences (or types of offence) as a part of the case documentation that is presented to them. They should be encouraged to take this into account in setting the penalties for forest and wildlife crimes.

See Recommendations: 8, 9, 10, 11, 19, 21, 72, 86.

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LIST OF ANNEXES

ANNEX 1: ORGANISATIONS CONSULTED

Institution	Detail	Person Met
Appeals Court		
	Prosecutor General's Office	• Prosecutor General • Chief Clerk of Appeals Court
Ministry of Justice		
	Office of the Undersecretary of the MOJ	• Secretary of State of the MOJ
	Cabinet of Undersecretary of MOJ	• Secretary of state of MOJ
	Criminal Affairs Department	• Head of the Department
	Prosecution Affairs Department	• Head of Prosecution Department
	Administration and Documentation office	• Head of the Office and staff
Ministry of Environment		
	Minister's Office	• Minister's personal assistant
	Department of Nature Conservation and Protection	• Director of the Department
	Office of the Nature Conservation and Protection	• Head of Office
	Department of Planning and Litigation	• Director, Deputy Director, Chief Officer for Legal Affairs
	Department of Legal and Political Affairs	• Head of Department
	Koh Kong Province Department of Environment	• Director Koh Kong Department of Environment
	Pursat Province Department of Environment	• Director of Samkos Wildlife Sanctuary
	Samkos Wildlife Sanctuary - Pramouy Office	• MOE Ranger Team
Ministry of Agriculture, Forestry and Fisheries		
	Office of Forestry Administration	• Head of the Forestry Administration
	Legislation and Litigation Office	• Deputy Chiefs and staff
	Forest Crime Monitoring and Reporting Unit	• Head of FCMU and staff
	Forestry and Wildlife Training Centre	• Subject Coordinator

Institution	Detail	Person Met
	Southern Tonle Sap Inspectorate	• Deputy Head of Cantonment - Legal Affairs
	FA Kompong Spue Cantonment	• Head of Cantonment and staff
	FA Pursat Cantonment	• Chief of FA Pursat Cantonment
		• Chief of FA Sangkat at Kror Kor
		• Vice Chiefs FA Sangkats at Veal Veng, Kror Kor
	Central Cardamoms Program	• CI Head of Law Enforcement
		• FA Head of CC Program
		• FA Judicial Police at Thma Bang, Areng, & Roveang Ranger Stations
		• Military Police Rangers at Thma Bang, Areng & Roveang Ranger Stations
Military Police		
	Military Police	• Chief of CCP Military Police staff
Courts		
	Kompong Spue Province Court	• Chief Judge, Prosecutor, Chief Clerk, Clerks of the Court, Trainee Judges
	Pursat Province Court	• Prosecutor, Deputy Prosecutor, Clerk in Prosecutor's Office, Chief Judge, Judges and the Clerk of the President Judges
	Koh Kong Province Court	• Chief Judge, Judge, Prosecutor
Kompong Spue Province Government		
	Cabinet of the Governor	• First Deputy Governor
Non-Government Organisations and Projects		
	Conservation International	• Cambodia Program
		• Centre for Applied Biodiversity Science
	FFI Phnom Penh	
	FFI Aural Wildlife Sanctuary	
	Global Witness	
	WildAid Cambodia	

Institution	Detail	Person Met
	WildAid Bangkok	
	Wildlife Conservation Society	
	WWF	
	Cambodia Defenders Project	
	SGS - Cambodia Liaison Office	
	Cambodia Criminal Justice Assistance Project	

ANNEX 2: ANALYSIS OF USE OF FORMS TO DOCUMENT OFFENCES

Form Type	*Comments*	*Recommendations*
General comments on completion of offence forms	• where forms are signed by JPs they do not always identify themselves as JPs and never use their Identification Number[95] • where forms are signed by FA staff who are not JPs they seldom give their official position or their civil service number.	• where JPs sign forms they should always identify themselves as JPs and should cite their personal MOJ Identification Number. • FA staff who are not JPs who sign offence documentation should give their official position and their civil service number.
Flagrant Offence Minute kMNt;ehtubTelµIsCak;Esþg	• provides a good description of a flagrant offence • is not suitable for documenting even the first stages of an investigation of a <u>non-flagrant offence</u>. (There is no Non-flagrant Offence Minute) • users seldom	• develop a Non-flagrant offence Minute • ensure that the Article which describes the offence is included in the documentation

[95] Individual Judicial Police are issued with a personal Identification Number on their certificates of appointment from the Ministry of Justice. JPs are not aware that this is an Identification Number that is linked to records kept in the Ministry of Justice.

[96] Making FA JPs aware of relevant offences under other laws and collecting evidence of such offences for use in documentation to the courts could considerably strengthen protection of the Permanent Forest Reserve. For example, Articles 44, 248,259,261, 262, 265 and 266 of the Land Law (2001). There should be an examination of the extent to which FA JPs can enforce these Articles in relation to the Permanent Forest Reserve.

Form Type	*Comments*	*Recommendations*
	identify the Article of the FL which describes the offence (sometimes refer to the penalty Article as if it described the offence). Often uses a vague phrase which does not appear in the FL to describe the offence • there are a number of cases in which the charged offence does not match the evidence cited or the situation shown in photographs • there needs to be a clearer explanation in cases of seizure of evidence where no arrest is made of the reasons for not making an arrest • there needs to be better description of the setting of the offence, including a sketch map and photographs • generally refers to only one offence, when frequently the offender has	• ensure that the charged offence matches the evidence of an offence • include more complete explanation of reasons for not making an arrest • needs to include a verbal description of the surroundings and circumstances, preferably with sketch maps and photographs where appropriate. • refer to all offences which have been committed in the documentation • make FA JPs aware of relevant offences under other laws such as the Land Law • refer to offences under other laws, not only FL

Form Type	*Comments*	*Recommendations*
	breached several Articles of the FL or other laws[96] (the form provides space for only one offence) • refers only to the FL, not to other laws which have been breached	
Record of Seizure of Evidence lixitTTYlEfrkSavtßútag	• documentation of the seized evidence (in this form and the Offence Minute) is frequently vague and inadequate. • photographs should be accompanied by a written description of what is shown and its significance in terms of the offence • photographs should be taken according to an agreed protocol (and should include a scale)	• provide full descriptions of the seized evidence. Where motor vehicles are involved, include any registration numbers, engine numbers, etc. that can identify the vehicle in the future. • include written descriptions of what is shown in photographs and its significance in relation to the offence. • consult with MOJ and Prosecutor General to establish agreed protocols for photographs to be used as evidence
Search Record kMNt;ehtuEqkeqr	• very seldom used because FA JPs seldom carry out investigations and therefore do not usually seek	

Form Type	*Comments*	*Recommendations*
	warrants for search.	
Record of Temporary Arrest kMNt;ehtuXat;xøÜnbeNþaHGasnñ		
Interrogation Record kMNt;ehtusYrcMelly	• there are usually only 2 or 3 questions and answers recorded and the questions are generally not effectively formatted for eliciting information. • frequently information provided in answers (e.g. on persons behind the detained offender) is not followed up with further questions	• provide training in interrogation, including the development of questioning strategies that elicit information and follow-up on new information.
Delivery and Control Record of Arrested Offenders kMNt;ehtuRbKl; nig TTYlCnelµIsEdl)anXat;xøÜn		• develop similar form for the delivery and control of case files to the Prosecutor's Office
Transactional Fine Decision on Forestry Offence esckþIsMercsþIBIkarBin½yGnþrkarN¾elIbTelIséRBeQI	• this records the decision of the Director of FA on the case in Path I situations. • it does not usually contain information on why a particular level of penalty was applied (the law gives broad discretion in	• document reasons for deciding on a certain penalty, mentioning the factors in FL Art.91.3 • indicate the FL Article which describes the offence and the Art.96

Form Type	*Comments*	*Recommendations*
	deciding the level of penalty) • does not usually indicate which Article of the FL describes the offence, and does usually indicate the paragraph in Art.96 which is considered as verifying that a transactional fine is appropriate. • "other evidence" seized is not described, and there is no record of a decision by the Director as to the disposal of the other evidence.	paragraph which verifies that a transactional fine is appropriate • include a decision on the disposal of the "other evidence" (e.g. vehicles, equipment, etc.) - whether to be returned to the offender or confiscated
Offence Record kMNt;ehtuénbTellµs		
Biographical Information on Offenders RBwtiþb½RtBt'man ¬CnelµIs¦	• when this form is filled out for a Path III situation (evidence seized but no arrest) the only information provided is "unidentified offender", and the form is not usually signed.	• in Path III situations the Biographical Information on Offenders form should include as much information as possible on the offenders so as to allow follow-up investigations
Level of Penalty Recommendation	• this form provides only the number of	• develop and adopt a Summary Conclusion

Form Type	*Comments*	*Recommendations*
slakb½RteTasTNĐ	the Article under which the penalty is determined. There is nothing about the circumstances of the crime, or its impact or social or environmental significance. MOE have a form (Conclusion Report) that is addressed to the Prosecutor and presents an overview of the offence, its significance and the recommended level of the penalty.	Report form addressed to the Prosecutor to replace the Level of Penalty Recommendation form. This form should describe the offence, the circumstances of the offence, its impact or social or environmental significance, and presents a recommendation on the recommended level of the penalty
Investigation Record of Forestry Offense kMNt;ehtuesIubGegátbTelIµséRBeQI	• this form was not used in any of the case files examined. It is possible that it is meant to be used the investigation of non-flagrant offences, but this could not be confirmed	
Warrant (For Sending the Case to Court) dIkaGm		
Other Forms Needed		
Witness / Interview Details and Statements	• there is no form for recording the details of witnesses or their	• develop and use a form for recording the details of witnesses

Form Type	*Comments*	*Recommendations*
	statements	and their statements
Summary of Investigation	• there is no Summary of Investigation form that brings together the key aspects of the offence which are relevant to follow-up investigations or to successful prosecution	• develop a Summary of Investigation form that brings together the key aspects of the offence which are relevant to follow-up investigations or to successful prosecution. When accompanying documents provided to the Court, this document should summarise the nature of the offence, the details of relevant law, the significance of the crime (in social, environmental and economic terms), and should recommend an appropriate level of penalty.
Record of Transfer to Prosecutor	• there is a form which is currently used by some, but apparently not all, FA offices to accompany case files transferred to the Court (Deykar Oum, or "warrant"). This form lists the documents included in the file and provides spaces for	• develop a more complete Record of Transfer to Prosecutor form in duplicate that will be signed by the Prosecutor's Clerk to acknowledge receipt of a case file and the date on which the transfer occurred. One copy of this form should be retained by the FA Cantonment

Form Type	*Comments*	*Recommendations*
	recording brief details of the prosecution and the punishment. It is intended to be signed by the relevant official in the FA Khan office, but provides no space for signature by officials from the Prosecutor's office to acknowledge receipt, and is apparently not meant to serve as such.	and the other copy by the Prosecutor's office.

ANNEX 3: REVIEW OF CASES "PENDING" AT PURSAT PROVINCIAL COURT

Offence Date	Offence	Date to Prosecutor	Details	Explanation of Current Situation	Actual Status of Case
19/3/03	Operating a tepiru processing factory	21/3/03	2 Vietnamese arrestees. Released after payment of bail by the VN Embassy. Enforcement Team pursued the remainder of offenders, resulting in the following two lots of arrests.	Reported by the Chief Clerk of the court that three (of what became five) cases went to trial, after the release of the offenders on bail, but there is no record of this in the Registry and it seems unlikely that a trial would have been held in the absence of the offenders and considering the Vietnamese involvement. The "trial" may have been only in relation to confiscation of seized evidence, with a pending conviction of the defendants.	3 cases: Tried in absence of defendants after their release on bail. (No details of judgement available) 2 cases: Pending at Investigating Judge. Defendants released on bail two years ago.
25/3/03	Operating a tepiru processing factory	21/3/03	1 Vietnamese and 3 Khmer arrestees. The Vietnamese offender was released after payment of bail by the VN Embassy. No information on the Khmer offenders but apparently released and have not been tried.		
26/3/03	Operating a tepiru processing factory	28/3/03	12 arrestees, all Vietnamese. Case was divided into three separate cases by the Court. One of those arrested was an ex-military officer from the VN army (his wife was also arrested). He was the leader of the operation and had run similar factories in Vietnam and Laos. They were arrested *in flagrante* delicto with the processing team at a factory site. The offenders were released on bail[97] which was paid by a representative of the VN Embassy. There is no record in the Prosecution Register of the date of their release or of the amount of bail paid.		
01/6/03	Threatening FA officials who were enforcing the law against timber transportation offences and	no record	The offender was a senior Police official from Pursat Province. He was in charge of a shipment of 21cu.m. of timber, accompanied by a number of Military Police. When stopped by FA he gave his details, but when told to have the truck follow the FA vehicle to be impounded he ordered the MPs to resist, using a number of AK-47, a B-40 and some hand-guns. Under threat, the FA enforcement team allowed the vehicle to leave. The timber and one of the	The case was transferred to the Prosecutor in Pursat. The Court issued a warrant for the arrest of the offender, but no arrest has been made.	1 case: Pending at Prosecutor because of failure to arrest the offender despite issue of a court warrant.

[97] In December 2003 the Pursat Prosecutor was quoted as saying that the 12 offenders had been released on bail in August, and that a trial date had not been set (Barron, 2003).

Offence Date	Offence	Date to Prosecutor	Details	Explanation of Current Situation	Actual Status of Case
	obstructing justice[98]		MPs was later found near a village. The MP confirmed the identification of the offender and said that the timber was for a high-level official in the Department of Investigation and Intelligence in the MOI. This MP was arrested and charged with possession of an illegal gun, but we have no record of the case.		
17/3/03	Transportation Tepiru oil	19/3/03	1 Arrestee, was released after payment of bail.	Cases are with the Investigating Judge. The vice-prosecutor said that the arrestees were released after payment bail. They were in jail about one to two and half months.	4 cases: Pending at Investigating Judge. Defendants released on bail 8-15 months ago.
05/8/03	Clearing the forest for farming	06/3/03	1 Arrestee, was released after payment of bail.		
30/8/03	Using chainsaw to harvest forest products	31/8/03	1 Arrestee, was released after payment of bail.		
03/10/04	Using chainsaw	5/10/04	1 arrestee, was released after payment of bail.		
25/6/03	Transportation of wildlife	26/6/03	1 Arrestee, was released after payment of bail.	The court reports that the cases have been tried already. [But unable to locate the record of the decisions or the details of the judgements]	3 cases: Tried in absence of defendants after their release on bail. (No details of judgement available)
05/8/03	Using chainsaw to harvest forest	06/8/03	2 arrestees, They were released after payment of bail.		
15/12/03	Transportation of bear gall bladder and bear paws.	16/12/03	1 Arrestee, he was released after payment of bail. The vice prosecutor said the evidence was sent to Phnom Penh and the FA destroyed it because it had spoiled.		
14/2/04		10/10/04	Both of these cases are for offences involving Transactional Fines (Art.96) but the offender refused to pay the fine. As a result they become Path II cases and were transferred to the Court.	No action. Cases were not in the Prosecution Registry in early August and the files were on a	2 Cases: Pending at Prosecutor, BUT not

[98] This is an offence punishable under Art.100 of the FL and is subject to a mandatory jail term and fine.

Offence Date	Offence	Date to Prosecutor	Details	Explanation of Current Situation	Actual Status of Case
4/4/04		24/11/04	Despite receiving the case files the Prosecutor's Office has not [in early August 05] entered them into the Prosecution Registry records or transferred them to the Chief Judge. Stated reason is lack of time, but it seems that there may be no procedure for dealing with cases of this type (though such cases have been dealt with by the Koh Kong court.	shelf in the Prosecutor's Office.	officially registered by Prosecutor's Office 9-10 months after receipt of the files.
17/9/04	Clearing forest in the Permanent Forest Estate	18/9/04	Arresting officers were threatened by offender and another person and bodyguard. According to court officials a relative of a very high-level politician came to court and paid the bail of the offender. This person also wrote a letter to the court seeking the release of heavy machinery used for forest clearing. The machinery was also released, before a trial had been held and contrary to the law.	No trial has been held.	1 Case: Pending at court.
26/5/05	Using chainsaw	27/5/05	3 arrestees, currently in jail.	Cases are with the Investigating Judge	2 cases: Pending at Investigating Judge (offenders still in jail after 2 months)
03/6/05	Using chainsaw	04/6/05	2 arrestees, currently in jail.		

ANNEX 4: LIST OF THE MOST RELEVANT LAWS

Forestry Law, 31 August 2002

Kret-Chhbab/35 KR.C/25Jun88 *Kret-Chhbab on Forestry Management*[99]

Prakas No.509 PK/MAFF/B on the Organisation and Functioning of the Forestry Administration, 17 September 2003

Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period (UNTAC Law), 10 September 1992

KRET CHHBAB No. 21 on Criminal Procedure (Law on Criminal procedure), 29 January 1993

PRAKAS No. 27 (MOJ) on Judicial Police Work, 11 June 2004

SECHKDEY PRAKAS No. 01 PRK-RGC on Measures to Control and Suppress Anarchic Activities in the Forestry Sector, 25 January 1999

Order No.01 (RGC) of the Prime Minister on *Prevention, Suppression and Elimination of Logging, Burning, Clearing, and Surrounding for Occupation of Forest Land*, 9 June 2004

Land Law NS/RKM/0801/14 2001

Note: For a full listing of relevant laws see Chea-Leth, V. and In Van Chhoan (2005). *Laws Relevant to Forestry and Wildlife Crime in Cambodia*. Conservation International, Phnom Penh. This publication includes the most relevant articles of the key laws.

[99] This is the old forestry law and has not been in effect since 1 September 2002 when the new Forestry Law came into effect (though FA still continued to charge offenders under the old law until January 2003, despite the lack of a transition provision in the new Forestry Law. However a number of the cases which make up the data source for this analysis relate to offences which occurred before that date and were processed under Kret-Chhbab 35.